1. The IFoA welcomes the opportunity to contribute to this consultation and the proposals for regulatory protection to consumers in this area. We are grateful to the FCA for consulting with us, and some of our members who are engaged in funeral plan trust work in the UK, prior to issuing this consultation.

2. Actuaries currently have a statutory role in relation to pre-paid funeral plans where these are trust-based in the UK. The IFoA has previously called for more robust regulation of trust-based funeral plans and raised concerns that there was no legislative requirement to ensure that the assets of a trust are managed well enough to be sufficient to meet the cost of the plan provider's contractual agreement with the consumer. This currently therefore poses a risk for consumers as trust-based plans are not currently regulated by the FCA or a compensation scheme.

3. We note from the consultation that from 29 July 2022, activities involving the provision and distribution of pre-paid funeral plans will become fully subject to FCA regulation and firms conducting these activities will need to be authorised by the FCA. The consultation paper sets out the proposed rules to govern funeral plans entered into before 29 July 2022 and firms are being encouraged to apply for authorisation (part of which will include actuarial valuations) as soon as possible from September 2021. We have previously suggested that a timescale of around two years would be appropriate for the implementation of the transition to a new regulated environment.

4. We would welcome an ongoing discussion with the FCA in particular on their approach to the upcoming requirements concerning trusts and the role of actuaries within these. There will be a requirement to review the current IFoA standards and guidance that are in place for IFoA members who carry out work for UK trust-paid pre-paid funeral plans. We would welcome working with the FCA on our reviews of these going forward, as well as our consideration to the relevance of our Practising Certificate Scheme, as discussed below.

IFoA Practising Certificates

5. The IFoA runs a Practising Certificate Scheme for specific roles identified in legislative, regulatory requirements and/or guidance which are reserved for actuaries, or which are commonly held by actuaries.

6. As the current proposals from the FCA contain specific requirements that must be carried out by the 'trust actuary' who is a fellow of the IFoA, we would welcome the FCA's views and seek further engagement on this newly created statutory role and the relevance to our PC Scheme. We understand that there are currently around 20 actuaries performing this type of work to around 15-20 trusts.

7. Additionally, the FCA proposals include proposing to apply the Senior Managers and Certification regime as part of the range of measures to improve governance standards and oversight. We would be grateful for the FCA to clarify their expectations around the trust actuary being subject to this regime.

Solvency assessment report

8. We welcome the FCA's proposal (4.30) that funeral plan providers must "arrange for a solvency assessment report (SAR) to be produced on an annual basis by an actuary who is a fellow of the Institute and Faculty of Actuaries (IFoA)".

9. We note that the duty to obtain a SAR rests with the provider, but for actuaries likely to be producing the SAR, their current client is not the provider but the funeral plan trust. The proposals would give the FCA an entitlement to request information from the trustees. However, the purpose of the request would be to understand how the information has affected the provider and not the trust.

10. It would be helpful for actuaries involved in this work for the FCA to clarify their expectations on who the actuary's client may be in any situation in order to help avoid potential conflicts or confusion.

11. The draft handbook in the consultation paper states (3.2.3 R) that the SAR must be published by the provider "within 30 days of the date on which the actuary conducts the valuation". We would welcome the FCA clarifying if 'conducts' should read 'completes', as publication within 30 days of the effective date would generally not be possible.

12. We understand that a key purpose for the SAR is to demonstrate that the provider is able to meet its liabilities when they fall due. We would suggest that this goal is equally important for insurance-based providers, and the FCA should therefore consider if they too should be required to produce a SAR.

13. In some trusts we understand that the liabilities of the trust are the amounts to be paid to the funeral director as determined by the trustees or as determined by the provider or as agreed between trustees and provider. This amount may be the current at-need price or something more or something less. It may also be something different to the actual cost of carrying out the funeral – the "wholesale cost" - albeit this cost is not a simple number to determine, not least as it will vary around the country. A trust could be in deficit on the basis that the liability is the at-need price or the current plan value but in surplus on the wholesale price.

14. Given the different business models within the sector, the actuary involved will need to determine what the liabilities are with trustees/provider before completing the valuation to meet the FCA requirements. Depending on what question the valuation is trying to answer, the actuary may also need to consider solvency from a mass cancellation perspective or under the scenario that the provider ceases to exist and the trustees or the insolvency practitioner for the provider have to find another provider/trust that is willing to take on the plans.

15. We welcome these issues being clarified or set out, if possible, ahead of the new rules regarding SARs being implemented.

16. We note that some applications for FCA authorisation may take place before the FCA has finalised the rules relating to valuations. In that interim period, there is a potential for divergent approaches and a risk that actuaries working on these may be exposed to criticism if they carry out valuations in a way that does not align with the new rules. It would therefore be helpful for the FCA if possible to provide a uniform format for key outputs for such valuations. Additionally, as the valuations could be published, they could therefore be used to choose between providers.

Solvency limit

17. The proposals include (at 4.33) that a firm can only deduct surpluses if the trust's solvency level is above 100% and this is signed off by the trust actuary.

18. We would request the FCA to clarify the basis for setting this limit and to help explain how it has been calibrated to a 1 in 200 event. For example, it would help actuaries involved in this work to know if this limit largely represents mortality risk, assuming investment and inflation risk are taken into account? We feel that providing clarity on this will help to provide a robust basis for the proposed limit and a framework for making any changes in the future.

Guarantees

19. In some cases providers offer guaranteed services known as disbursements. We are unclear about how levels of liability can be assigned to such guarantees on a 'best estimate' basis. Elsewhere in the handbook draft (FPCOB 15.2.4G) the concept of 'realistic adverse projections' are introduced. It is not clear to what degree the FCA would expect such projections to be supported by actuarial input.

Disclosure

20. We welcome proposals that will encourage consistency and transparency for consumers. We note and support that the proposals include a requirement for providers to send the SAR to the FCA and make it freely available to consumers on request.

21. We are mindful that there could be conflicts between reporting to the trustees or to the providers. The FCA may wish to consider an alternative requirement to provide a full report for the trustees and a shorter version for its own purposes, which could be in a more appropriate format to be made available to the public. The Summary Funding Statement for pension scheme valuations is a relevant example here (though this can sometimes be less accessible to members than it should be).

22. We would support standardisation to provide a comparable format for reports and to help minimise any unnecessary costs. We note that published funeral data could potentially be misleading because of structural variations, such as by region or between cremations and burials. The valuation reports may be unlikely to be used in practice to choose between plans, and this makes us question the necessity to require providers to share confidential information with their competitors.

23. There is some risk that the requirement to make the SAR publically available may not achieve its overall purpose if providers have the flexibility to adjust the figures to make itself compare favourably with competitors, for example in the way it decides allocations to cover funeral costs for each of its funeral directors. This would be a particular danger in the case of a vertically integrated provider.

24. A further option for consideration by the FCA could be to disclose information based on the assets a trust holds per plan, although this would be impacted from differences arising from location and funeral type.

Competition

25. If smaller providers contemplate merging with larger providers or leave the market due to new requirements, we are concerned that this could lead to price increases. Some aspects of the proposals may not give sufficient weight to the needs of smaller providers - an example is the requirement for 15 hours of training and development annually (3.13). The cost to smaller providers of producing the SAR is also relevant in this respect.

Commission

26. We would suggest that some of the current proposals may be confused in terms of flows between the assets underlying plans and providers. There appear to be restrictions on trust models in terms of payments for the provider's expenses but no restrictions on insurance-based models.

27. We note that there is no restriction on commission being paid from insurers to providers. This could allow circumvention of the ban on commission to intermediaries, for example if a current intermediary became an FCA-regulated provider, adopted an insurance model, and then took commission from the insurer as their income.

28. There may be an inconsistency on the treatment of commission from funeral plans and 'Over 50' plans, where commission payments continue to be permitted. This seems to lead to an inevitable drift to Over 50 plans, which are not funeral plans because the benefit is a cash sum and not a funeral, unless the policy has been assigned to the funeral director.

Remediation

29. The consultation states (4.34) that the provider must obtain the trust actuary's sign off for a remediation plan.

30. Actuaries involved in this work would find additional guidance or criteria on making this assessment useful and we would welcome working with the FCA further on this.

31. The consultation paper sets out a 12-month period for remediation if a trust has fallen into deficit. We are unsure how this will be monitored given volatility during the year. A 12-month timeframe may be too short and we would suggest that a longer period such as three years would be more appropriate. This would allow the actuary sufficient time to identify the root cause of the shortfall and agree suitable terms with the plan provider, taking account of its financial position and ultimately protecting the consumers.

32. Under 4.35 of the proposals, the provider must pay into the trust if it remains in deficit after that 12 months. The FCA may not be in a position to compel providers that are limited companies to inject more money into the trust. This could create a demand to carry out provider covenant

assessments, and providers with weak covenants could be required to strengthen assumptions from a best estimate to a prudent basis.

Religious and other not for profit funeral plans

33. We have mentioned in previous consultation responses and meetings with the FCA that there are a range of religious organisations in Jewish, Muslim and Christian communities - and other secular associations or similar - that provide funeral plans on a not-for-profit basis. We would welcome clarity on whether they are exempt generally from FCA regulation.

34. We note that religious burial arrangements are not operated on a commercial basis. Funerals are one element of benefits provided by communities overall – as part of religious duty. The membership fully understand that and know that funerals always take place, because of the imperative to bury the dead. Consumer protection issues therefore do not arise.

35. The consultation states (2.37) that religious and not-for-profit organisations that help people plan funerals may be exempt from FCA regulation. Such bodies must determine whether they are engaged in regulated funeral plan activity 'within scope of Article 59 of the RAO by way of business', and the document refers them to the Perimeter Guidance Manual 2.3. As the interpretation of these is not simple, we suggest that the FCA could produce guidance that will enable organisations to determine their own exemption status, or should direct them to a source of trusted – and consistent – advice.

36. If some such organisations do come within the scope of FCA regulation, we suggest that where these organisations have charitable status, then this should be reflected in the discount rate to be used in valuations.