

Special cases

Chapter 12A

Special cases

12A.1 Trustees and pension schemes

- 12A.1.1** **R** If a claimant's *claim* includes a *claim* as:
- trustee; or
 - the *operator* of, or the *person* carrying on the *regulated activity* of winding up, a stakeholder pension scheme (which is not an *occupational pension scheme*) or *personal pension scheme*,
- the *FSCS* must treat him in respect of that *claim* as if his *claim* was the *claim* of a different *person*.
- [**Note:** this and other rules in this section derive from provisions previously in **COMP 12.6**]
- 12A.1.2** **R** If a claimant has a *claim* as a bare trustee or *nominee company* for one or more beneficiaries, the *FSCS* must treat the beneficiary or beneficiaries as having the *claim*, and not the claimant.
- 12A.1.3** **R** If a claimant has a *claim*:
- (1) as the trustee of an *occupational pension scheme* or the trustee or *operator* of, or the *person* carrying on the *regulated activity* of winding up, a stakeholder pension scheme (which is not an *occupational pension scheme*) or *personal pension scheme*; and
 - (2) for one or more members of a pension scheme (or, where relevant, the beneficiary of any member) whose benefits are, or include, *money-purchase benefits*;
- the *FSCS* must treat the member or member scheme (or, where relevant, the beneficiary of any member) as having the *claim*, and not the claimant (insofar as members' benefits are *money-purchase benefits*).
- 12A.1.4** **R** If any group of *persons* has a *claim* as:
- (1) trustees; or
 - (2) *operators* of, or as *persons* carrying on the *regulated activity* of winding up, a stakeholder pension scheme (which is not an *occupational pension scheme*) or *personal pension scheme*,

(or any combination thereof), the FSCS must treat them as a single and continuing *person* distinct from the *persons* who may from time to time be the trustees, operators or persons winding up the relevant pension scheme.

12A.1.5 **R** Where the same *person* has a *claim* as:

- (1) trustee for different trusts or for different *stakeholder pension schemes* (which are not *occupational pension schemes*) or *personal pension schemes*; or
- (2) the *operator of*, or the *person carrying on the regulated activity of winding up*, different *stakeholder pension schemes* (which are not *occupational pension schemes*) or *personal pension schemes*,

COMP applies as if the *claims* relating to each of these trusts or schemes were claims of different *persons*.

12A.1.6 **R** Where the claimant is a trustee, and some of the beneficiaries of the trust are *persons* who would not be *eligible claimants* if they had a claim themselves, the FSCS must adjust the amount of the overall *claim* to eliminate the part of the claim which, in the FSCS's view, is a claim for those beneficiaries.

12A.1.7 **R** Where any of the provisions of **COMP 12A.1.1R** to **COMP 12A.1.6R** apply, the FSCS must try to ensure that any amount paid to:

- (1) the trustee; or
- (2) the *operator of*, or the *person carrying on the regulated activity of winding up*, a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*,

is, in each case:

- (3) for the benefit of members or beneficiaries who would be *eligible claimants* if they had a *claim* themselves; and
- (4) no more than the amount of the loss suffered by those members or beneficiaries.

12A.2 Personal representatives, agents and joint claims

- 12A.2.1 **R** Where a *person* numbers among his *claims* a *claim* as the personal representative of another, the *FSCS* must treat him in respect of that *claim* as if he were standing in the shoes of that other person.
- [**Note:** this and other rules in this section derive from provisions previously in **COMP 12.6**]
- 12A.2.2 **R** If a claimant has a *claim* as agent for one or more *principals*, the *FSCS* must treat the *principal* or *principals* as having the *claim*, not the claimant.
- 12A.2.3 **R** If two or more *persons* have a joint beneficial *claim*, the *claim* is to be treated as a *claim* of the partnership if they are carrying on business together in partnership. Otherwise each of those *persons* is taken to have a *claim* for his share, and in the absence of satisfactory evidence as to their respective shares, the *FSCS* must regard each *person* as entitled to an equal share.

12A.3 Collective investment schemes

12A.3.1

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- (1) If a claimant has a *claim* in its capacity as a *collective investment scheme*, or anyone who is an operator, depositary, manager or trustee of such a scheme, and the conditions in (2) are met:
 - (a) the *FSCS* must treat the *participant* or *participants* as having the *claim*, and not the claimant;
 - (b) ■ COMP 12A.1.6R and ■ COMP 12A.1.7R apply, reading “trustee” as “*collective investment scheme*, or anyone who is an operator, depositary, manager or trustee of such a scheme”, “trust” as “*collective investment scheme*” and “beneficiary” as “participant”.
- (2) The conditions referred to in (1) are:
 - (a) the *claim* is against a *relevant person*:
 - (i) acting in the capacity of *manager* or *depositary* of the *collective investment scheme*; or
 - (ii) in connection with that person's *managing investments* or *safeguarding and administering investments*; and
 - (b) as a result of the matters in (a), a participant in the *collective investment scheme* has suffered loss but the participant has no *claim* for that loss against that *relevant person*.

12A.4 Foreign law

12A.4.1

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In applying *COMP* to *claims* arising out of business done with a *branch* or *establishment* of the *relevant person* outside the *United Kingdom*, the *FSCS* must interpret references to:

- (1) *persons* entitled as personal representatives, trustees, bare trustees or agents, *operators of pension schemes* or *persons* carrying on the *regulated activity* of winding up *pension schemes*; or
- (2) *persons* having a joint beneficial *claim* or carrying on business in partnership;

as references to *persons* entitled, under the law of the relevant country or territory, in a capacity appearing to the *FSCS* to correspond as nearly as may be to that capacity.

[**Note:** this rule derives from a provision previously in ■ COMP 12.6]



12A.5 Claims arising under COMP 3.2.4R

12A.5.1

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If a *firm* has a *claim* under ■ COMP 3.2.4R, the *FSCS* must treat each *customer* of the *firm* as having the *claim* for the purposes of calculating compensation within ■ COMP 12.

[**Note:** this rule derives from a provision previously in ■ COMP 12.6]

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12A.6 Funeral plans

- 12A.6.1** **R** (1) The *FSCS* may make payments to, or on behalf of, a relevant *funeral plan provider* or to the administrator or liquidator of a *funeral plan provider*, in respect of any reasonable fees, costs, charges or other expenses incurred for the purpose of the administrator or liquidator of that *funeral plan provider* complying with a request of the *FSCS* under section 215B of the *Act*.
- (2) In paragraph (1), 'reasonable fees, costs, charges or other expenses' means those fees, costs, charges or other expenses that the *FSCS* is satisfied:
- (a) have been reasonably incurred;
 - (b) have been exclusively incurred for the purpose of an administrator or liquidator complying with a request under section 215B of the *Act*; and
 - (c) only to the extent that such fees, costs, charges or other expenses cannot otherwise be met.

- 12A.6.2** **G** Section 215B of the *Act* (Scheme manager's power to require assistance from liquidator etc. in relation to funeral plan contracts) confers a power on the *FSCS* to require the administrator or liquidator of a *funeral plan provider* to provide any assistance to the *FSCS* that the *FSCS* considers necessary to enable it to administer the compensation scheme and secure continuity of cover in relation to *funeral plan contracts*.