

## Chapter 6

# Relevant persons and successors in default



## 6.1 Application and Purpose

### Application

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6.1.1 **R** This chapter applies to the *FSCS*.

6.1.2 **G** It is also relevant to claimants.

### Purpose

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6.1.3 **G** The purpose of this chapter is to specify the types of *person* against whom a claimant must have a *claim* in order to be eligible for compensation, and when those *persons* are '*in default*'. Generally, this occurs when they are insolvent or unable to meet their liabilities to claimants.

6.1.4 **G** To be eligible for compensation a claimant's claim must be against a *relevant person* (or, where applicable, a *successor*) *in default*: see **COMP 3.2.1 R (2)**.



## 6.2 Who is a relevant person?

**6.2.1** **R** A *relevant person* is a person who was, at the time the act or omission giving rise to the *claim* against it took place:

- (1) a *participant firm*; or
- (2) an *appointed representative* of a *participant firm*.

**6.2.2** **G** [deleted]

**6.2.2A** **R** The *FSCS* may pay compensation in respect of the activities of a *relevant person*:

- (1) (if it was a *firm*) whether or not it was acting within the scope of its *permission*;
- (2) (if it was an *appointed representative*) whether or not it was acting within the scope of the business for which its *principal* had accepted responsibility;
- (3) (if it was a *recognised investment exchange*) whether or not it was acting in accordance with any *recognition requirements* resulting from section 286 of the *Act* and relating to the *regulated activity* of operating a *multilateral trading facility* or operating an *organised trading facility*.

[**Note:** sections 39(3) and 213(3)(a) of the *Act*]

**6.2.3** **G** A *pre-IP completion day incoming EEA firm* may be a *participant firm* in respect of acts or omissions before *IP completion day* that give rise to a *claim* against it.

**6.2.4** **G** A *TP firm* to which regulation 8 or 11 of the *EU Exit Passport Regulations* applies, that is not to be regarded as a *relevant person* under section 213(9A) of the *Act* (as inserted by regulation 24 of the *EU Exit Passport Regulations*) is not a *participant firm*. A *TP firm* to which regulation 28 or 34 of the *EU Exit Passport Regulations* applies, that is not to be regarded as a *relevant person* under section 213(9A) of the *Act* (as inserted by regulation 70 of the *EU Exit Passport Regulations*) is not a *participant firm*. For the purposes of the *FCA's compensation rules*, this means that most (but not all) *TP firms* operating in the *UK* without an *establishment* are not *participant firms*.

### 6.2.5

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Schedule 6A to the *Act* sets out a procedure to enable the *FCA* to cancel or vary the *Part 4A permission* of a *person* who, it appears to the *FCA*, is not carrying on the *regulated activity* to which the *Part 4A permission* relates. In some cases, this may result in the *person* no longer being a *relevant person* following cancellation of all their *Part 4A permissions*. Paragraph 5 of Schedule 6A to the *Act* sets out a procedure for the subsequent annulment of the decision to cancel or vary the *person's Part 4A permission* in specified circumstances where the *FCA* is satisfied that it is just and reasonable to do so. Where the *FCA* grants an application for annulment, either with conditions or unconditionally, paragraph 6 of Schedule 6A to the *Act* sets out its effect, which includes that the cancellation or variation of the *Part 4A permission* is treated as if it had never taken place. As a result of the effect of the annulment, the *person* may therefore be a *relevant person* for the purposes of any *claims* which arise during the period in which the *person's Part 4A permission* was cancelled or varied.



### 6.3 When is a relevant person in default?

- 6.3.1** **R** A *relevant person* is *in default* if:
- (1) (except in relation to an *ICD claim*) the *FSCS* has determined it to be *in default* under ■ COMP 6.3.2 R, ■ COMP 6.3.3 R or ■ COMP 6.3.4 R; or
  - (2) (in relation to an *ICD claim*):
    - (a) the *FCA* has determined it to be *in default* under ■ COMP 6.3.2 R; or
    - (b) a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *participant firm*, if that is earlier than (a); and
- if a *relevant person* is *in default* in relation to an *ICD claim* it shall be deemed to be *in default* in relation to any other type of *protected claim*.
- 6.3.1A** **G** [**Note:** article 2(2) of the *Investor Compensation Directive*]
- 6.3.2** **R** The *FSCS* (or, where ■ COMP 6.3.1 R(2)(a) applies, the *FCA*) may determine a *relevant person* to be *in default* when it is, in the opinion of the *FSCS* (or the *FCA*):
- (1) unable to satisfy *protected claims* against it; or
  - (2) likely to be unable to satisfy *protected claims* against it.
- 6.3.3** **R** The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and the *relevant person* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):
- (1) the passing of a resolution for a creditors' voluntary winding up;
  - (2) a determination by the *FCA* or the *PRA* that the *relevant person* appears unable to meet *claims* against it and has no early prospect of being able to do so;
  - (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager;

- (4) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the administration of a company or partnership, or the bankruptcy of an individual;
- (5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or of an individual voluntary arrangement;
- (6) a moratorium under Part A1 of the Insolvency Act 1986 being in force.

**6.3.4** **R** The FSCS may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and:

- (1) the FSCS is satisfied that the *relevant person* cannot be contacted at its last place of business and that reasonable steps have been taken to establish a forwarding or current address, but without success; and
- (2) there appears to the FSCS to be no evidence that the *relevant person* will be able to meet *claims* made against it.

**6.3.4A** **G** For the avoidance of doubt, **COMP 6.3.3R** and **COMP 6.3.4R** do not limit **COMP 6.3.2R**.

**6.3.5** **R** [deleted]

**6.3.6** **R** [deleted]

**6.3.7** **R** [deleted]

**Claims arising under COMP 3.2.4 R**

**6.3.8** **R** For the purposes of **COMP 6.3** a claim made by a *firm* under **COMP 3.2.4 R** is to be treated as if it were a *protected claim* against the *relevant person*.

**Scheme manager's power to require information**

**6.3.9** **R** For the purposes of sections 219(1A)(b) , (d) and (f) of the *Act* (Scheme manager's power to require information) whether a *relevant person* is unable or likely to be unable to satisfy *claims* shall be determined by reference to whether it is *in default*.

## 6.3A When is a successor in default?

- 6.3A.1** **R** A successor is *in default* if:
- the FSCS has determined it to be *in default* under ■ COMP 6.3A.2R, ■ COMP 6.3A.3R, or ■ COMP 6.3A.4R, unless the claim is within (b); or
  - (in relation to an *ICD claim* against a successor that is a *MiFID investment firm*):
    - the FCA has determined it to be *in default* under ■ COMP 6.3A.2R; or
    - a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the successor, if that is earlier than (i).
- If a successor is *in default* in relation to an *ICD claim* within (1)(b) it is to be deemed to be *in default* in relation to any other type of *protected claim*.
- 6.3A.2** **R** The FSCS (or, where ■ COMP 6.3A.1R(1)(b)(i) applies, the FCA) may determine a successor to be *in default* when it is, in the opinion of the FSCS (or the FCA):
- (1) unable to satisfy *protected claims* against it; or
  - (2) likely to be unable to satisfy *protected claims* against it.
- 6.3A.3** **R** The FSCS may determine a successor to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a successor that is a *MiFID investment firm*), and the successor is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):
- (1) the passing of a resolution for a creditors' voluntary winding up; or
  - (2) a determination by the FCA or the PRA that the successor appears unable to meet *claims* against it and has no early prospect of being able to do so; or
  - (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager; or
  - (4) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the

administration of a company or partnership, or the bankruptcy of an individual; or

- (5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or an individual voluntary arrangement; or
- (6) a moratorium under Part A1 of the Insolvency Act 1986 being in force.

**6.3A.4** **R** The *FSCS* may determine that a *successor* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a *successor* that is an *MIFID investment firm*), and:

- (1) the *FSCS* is satisfied that the *successor* cannot be contacted at its last place of business and that reasonable steps have been taken to establish a forwarding or current address, but without success; and
- (2) there appears to the *FSCS* to be no evidence that the *successor* will be able to meet *claims* made against it.

**6.3A.4A** **G** For the avoidance of doubt, **COMP 6.3A.3R** and **COMP 6.3A.4R** do not limit **COMP 6.3A.2R**.

**6.3A.5** **R** For the purposes of sections 219(1A)(b) , (d) and (f) of the *Act* (Scheme manager's power to require information) whether a *successor* is unable or likely to be unable to satisfy *claims* is to be determined by reference to whether it is *in default*.