

Compensation

Compensation

COMP INTRO

A

INTRO 1

INTRO 1

Foreword

COMP 1

Introduction and Overview

1.1

Application, Introduction, and Purpose

1.2

The FSCS

1.3

Claimants

1.4

EEA Firms [deleted]

1.5

Application to Lloyd's

1.6

Cooperation with the FSCS

COMP 2

The FSCS

2.1

Application and Purpose

2.2

Duties of the FSCS

COMP 3

The qualifying conditions for compensation

3.1

Application and Purpose

3.2

The qualifying conditions for paying compensation

COMP 4

Eligible claimants

4.1

Application and Purpose

4.2

Who is eligible to benefit from the protection provided by the FSCS?

4.3

Exceptions: Circumstances where a person coming within COMP 4.2.2R may receive compensation

4.4

Exceptions: Relevant general insurance contracts: mesothelioma claims

COMP 5

Protected claims

5.1

Application and Purpose

5.2

What is a protected claim?

5.5

Protected investment business

5.6

Protected home finance mediation

5.7

Protected non-investment insurance mediation

5.8

Protected debt management business

COMP 6	Relevant persons and successors in default
6.1	Application and Purpose
6.2	Who is a relevant person?
6.3	When is a relevant person in default?
6.3A	When is a successor in default?
COMP 7	Assignment or subrogation of rights
7.1	Application
7.2	How does the assignment of rights work?
7.3	Automatic subrogation
7.4	Duty on FSCS to pursue recoveries
7.6	Treatment of recoveries
COMP 8	Rejection of application and withdrawal of offer
8.1	Application and Purpose
8.2	Rejection of application for compensation
8.3	Withdrawal of offer of compensation
COMP 9	Time limits on payment and postponing payment
9.1	Application and Purpose
9.2	When must compensation be paid?
COMP 10	Limits on the amount of compensation payable
10.1	Application and Purpose
10.2	Limits on compensation payable
COMP 11	Payment of compensation
11.1	Application and Purpose
11.2	Payment
COMP 12	Calculating compensation
12.1	Application and Purpose
12.2	Quantification: general
12.3	Quantification date
12.4	The compensation calculation
12.5	[deleted]
12.6	Quantification: trustees, operators of pension schemes, persons winding up pension schemes, personal representatives, agents, and joint claims

COMP 12A Special cases

- 12A.1 Trustees and pension schemes
- 12A.2 Personal representatives, agents and joint claims
- 12A.3 Collective investment schemes
- 12A.4 Foreign law
- 12A.5 Claims arising under COMP 3.2.4R

COMP 13 Funding

- 13 Ann 1 [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]

COMP 14 Participation by EEA Firms

- 14.1 Application and Purpose
- 14.2 Obtaining top-up cover
- 14.3 Co-operation between the FSCS and Home State compensation schemes
- 14.4 Ending top-up cover
- 14.5 EEA UCITS management companies

Transitional provisions and Schedules

- TP 1 Transitional Provisions
- Sch 1 Record-keeping requirements
- Sch 2 Notification requirements
- Sch 3 Fees and other required payments
- Sch 4 Powers Exercised
- Sch 5 Rights of action for damages
- Sch 6 Rules that can be waived

Chapter INTRO

INTRO 1



INTRO 1 Foreword

INTRO

(This Foreword to the Compensation sourcebook does not form part of COMP.)

The *Act* requires the *FCA* and the *PRA* to make rules establishing a scheme for compensating consumers in cases where: (i) *relevant persons* are unable, or likely to be unable, to satisfy claims against them; or (ii) persons who have assumed responsibility for liabilities arising from acts or omissions of authorised *firms* ("successors") are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions. The body established to operate and administer the compensation scheme is the *Financial Services Compensation Scheme Limited (FSCS)*. The *PRA's* compensation rules deal with claims for deposits and under contracts of insurance and the *FCA's* compensation *rules* deal with other types of claim.

By making rules that allow the *FSCS* to pay compensation to retail consumers and small businesses, and focusing protection on those who need it most, the compensation scheme rules form an important part of the toolkit the *FCA* will use to meet its statutory objectives. This module of the *FCA Handbook* contains the rules and guidance that allow the *FSCS* to pay claims for compensation when an authorised person or, where applicable, a successor, is unable or likely to be unable to meet claims against it. The rules specify who is eligible to receive compensation and in what circumstances, how much compensation can be paid to a claimant; and how the scheme will be funded. The compensation rules are of interest to consumers. The rules apply to the *FSCS*, authorised firms and successors.

INTRO

The Sourcebook is divided into the following Chapters covering all aspects of the scheme:

INTRO

Chapter 1: Introduction and Overview

This chapter provides an introduction to the *FSCS* rules and a table of question and answers that may be of interest to consumers.

INTRO

Chapter 2: The *FSCS*

This chapter gives the *FSCS* the duty to administer the compensation scheme. It also sets out the general conditions the *FSCS* must follow when administering the scheme, such as having regard to the efficient and economic use of resources, the requirement to publish an Annual Report, and the duty to ensure consumers are informed about how they can make a claim. The rules in this chapter also require the *FSCS* to have in place procedures for dealing with complaints.

INTRO	<p>Chapter 3 The qualifying conditions for paying compensation</p> <p>This chapter sets out the main qualifying conditions that must be satisfied before the FSCS can pay compensation to claimants. These are that a claimant is eligible to claim; the activity that gave rise to the loss is protected by the scheme; the firm against which the claim is being made is protected by the scheme; and that the claimant has assigned his rights to the scheme. Chapters 4 to 7 expand on the general conditions described in Chapter 3.</p>
INTRO	<p>Chapter 4 Eligible claimants</p> <p>This chapter specifies who is eligible to receive compensation provided by the FSCS.</p>
INTRO	<p>Chapter 5 What is a protected claim?</p> <p>This chapter specifies the activities that are protected by the FSCS.</p>
INTRO	<p>Chapter 6 Relevant persons and successors in default</p> <p>This chapter specifies the circumstances when a firm is in default, that is, when a firm is to be taken as being unable or likely to be unable to meet claims against it. The FSCS can only pay compensation if the circumstances specified in Chapter 6 are met.</p>
INTRO	<p>Chapter 7 Assignment of rights</p> <p>This chapter enables the FSCS to make an offer of compensation conditional on the claimant assigning to it their rights to claim against the failed firm. If the FSCS recovers from the firm a greater sum than it has paid to the claimant, it must pay the balance to the claimant.</p>
INTRO	<p>Chapter 8 Rejection of application and withdrawal of offer</p> <p>This chapter allows the FSCS to reject an application for compensation or withdraw an offer of compensation in specified circumstances.</p>
INTRO	<p>Chapter 9 Time limits on payment and postponing payment</p> <p>This chapter requires the FSCS to pay a claim for compensation within a specified time unless specified conditions apply.</p>
INTRO	<p>Chapter 10 Limits on the amount of compensation payable</p> <p>This chapter specifies the maximum amount of compensation the FSCS can pay to a claimant.</p>
INTRO	<p>Chapter 11 Payment of compensation</p> <p>This chapter specifies to whom the FSCS may pay compensation. In certain circumstances compensation may be paid to a person other than the claimant.</p>

INTRO

Chapter 12 Calculating compensation

This chapter specifies how the FSCS will calculate the amount of compensation it can pay to a claimant.

INTRO

Chapter 13 Funding

Chapter 13 relating to the funding of the FSCS has now been deleted. The funding provisions for the FSCS are now contained in FEES 6 instead and allow the FSCS to make levies on authorised firms to fund the operation of the scheme or to pay compensation. FEES 6 specifies how FSCS can make levies, how costs are to be allocated, the maximum the FSCS can levy in any particular period of time, and how sums recovered from failed firms are to be treated.

INTRO

Chapter 14 Participation by EEA firms

This chapter sets out the way the FSCS deals with incoming EEA firms who may choose to top-up into the FSCS to supplement the compensation available from their home state scheme.

Chapter 1

Introduction and Overview

1.1 Application, Introduction, and Purpose

Application

1.1.1 **G** This chapter is relevant to:

- (1) the *FSCS*;
- (2) *eligible claimants*;
- (3) *firms*; and
- (4) *successors*.

1.1.2 **G** This sourcebook is principally relevant to the *FSCS*. It sets out the circumstances in which compensation may be paid, to whom compensation may be paid, and on whom the *FSCS* can impose levies to meet the costs of paying compensation (see in particular *COMP 3, 4*, and **FEES 6**). It also describes how the *FSCS* is to calculate compensation in particular cases (see **COMP 12**).

1.1.3 **G** Claimants and their advisers will be particularly interested in the sections of this sourcebook which deal with eligibility for claiming compensation, the way that the *FSCS* calculates compensation, and how they can make a claim. For convenience, the relevant parts of this sourcebook are highlighted in a list of questions and answers in **COMP 1.3.3 G**.

1.1.4 **G** *Firms* will be particularly interested in **FEES 6**, which deals with levies, and **COMP 1.6.1R**, which requires *firms* to deal with the *FSCS* in an open, cooperative and timely way.

Introduction

1.1.5 **G** The *FSA* established the Financial Services Compensation Scheme Limited, a company limited by guarantee (*FSCS*). The *FSCS* exercises the functions that are conferred on the scheme manager by Part XV of the *Act*, dealing with compensation.

1.1.6 **G** The *FCA* and *PRA* are also required, under section 213 of the *Act* (The compensation scheme), to make *rules* establishing a compensation scheme. The *FCA's rules* are set out in the remaining chapters of this sourcebook, and are directed to the *FSCS*, claimants and potential claimants, and *firms*. The *PRA's rules* dealing with *claims for deposits* and under *contracts of insurance* are set out in the *PRA Rulebook*.

Purpose

- 1.1.7 G The FSCS will only pay *claims* if a *firm* or a *successor* is unable or likely to be unable to meet *claims* against it because of its financial circumstances. If a *firm* (or, where applicable, a *successor*) is still trading and has sufficient financial resources to satisfy a *claim*, the *firm* (or, where applicable, the *successor*) will be expected to meet the *claim* itself. This can, for example, be an amount the *firm* agrees with the claimant, or the amount of an *Ombudsman* award from the *Financial Ombudsman Service*.

- 1.1.8 G ■ COMP 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of ■ COMP 2 to ■ COMP 14 cover who is eligible, the amount of compensation and how it might be paid.

- 1.1.9 G [deleted]

- 1.1.9A G This sourcebook is one of the means by which the FCA will meet its *statutory objectives* of securing an appropriate degree of protection for *consumers* and protecting and enhancing the integrity of the *UK financial system*.

- 1.1.9B G [deleted]

- 1.1.10 G [deleted]

- 1.1.10A G By making *rules* that allow the FSCS to provide compensation at a level appropriate for the protection of retail *consumers* and *small businesses*, the FCA enables *consumers* to participate in the financial markets with the confidence that they will be protected, at least in part, should the *relevant person* with whom they are dealing, or a *successor*, be unable to satisfy *claims* against it.

- 1.1.10B G [deleted]

1.2 The FSCS

- 1.2.1** **G** While this sourcebook deals with the main powers and duties of the *FSCS*, it does not provide the complete picture. Other aspects of the operation of the *FSCS* are dealt with through the powers of the Financial Services Compensation Scheme Limited under company law (such as the power to borrow, to take on premises, etc.).
- 1.2.2** **G** (1) [deleted]
(2) [deleted]
- 1.2.2A** **G** (1) In addition, the *Act* itself confers certain powers upon the *FSCS*, such as a power under section 219 of the *Act* (Scheme Manager's powers to require information) to require *persons* to provide information. These powers are not, therefore, covered by this sourcebook.
(2) Of specific relevance to the way in which the *FSCS* fulfils its responsibilities is the relationship between the *FSCS* and the *FCA*. This is covered in a Memorandum of Understanding which can be found on the *FCA* website <http://www.fca.org.uk> .
- 1.2.2B** **G** [deleted]



1.3 Claimants

1.3.1 **G** The *FSCS* provides information to claimants and potential claimants about the way the *FSCS* works and the procedures that need to be followed when making a *claim*. The *FSCS* can be contacted at Financial Services Compensation Scheme, 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU, or by telephone or fax (Tel: 0800 678 1100 or Fax: 020 7741 4100).

1.3.2 **G** Information about the operation of the *FSCS* and how to claim is also available from the *FSCS* website (www.fscs.org.uk).

1.3.3 **G** **Areas of particular interest to claimants (see COMP 1.1.3G).**

This Table belongs to ■ COMP 1.1.3 G.

Q1	What do I need to do in order to receive compensation?		
A1	In order to receive compensation:		
	(-1)	If your claim is for a deposit or under a contract of insurance, see the <i>PRA's</i> Depositor Protection or Policyholder Protection rules;	
	(1)	you must be an <i>eligible claimant</i> ;	COMP 4.2
	(2)	you must have a <i>protected claim</i> ;	COMP 5.2
	(3)	you must be claiming against a <i>relevant person</i> or a <i>successor</i> ;	COMP 6.2.1 R
	(4)	where the <i>claim</i> is against a <i>relevant person</i> , the <i>relevant person</i> must be default; or where the <i>claim</i> is against a <i>successor</i> , the <i>successor</i> must be <i>in default</i> .	COMP 6.3; COMP 6.3A
	In addition, if the <i>FSCS</i> requires you to do so, you must assign your legal rights in the claim to the <i>FSCS</i> .		COMP 7.2
	And you must bring your claim to the <i>FSCS</i> within a set time (normally within six years of the date on which your claim against the <i>relevant person</i> occurred).		COMP 8.2.3 R - COMP 8.2.5 R
	It is possible, in certain circumstances, for someone else to make a <i>claim</i> on your behalf.		COMP 3.2.2 R
Q2	How much compensation will I be offered?		
	This depends on whether your <i>protected claim</i>		

A2	is:		
	(1)	[deleted]	
	(2)	[deleted]	
	(3)	a <i>claim</i> in connection with <i>protected investment business</i> ; or	COMP 5.5
	(4)	a <i>claim</i> in connection with <i>protected home finance mediation</i> ; or	COMP 5.6
	(5)	a <i>claim</i> in connection with <i>protected non-investment insurance mediation</i> .	COMP 5.7
	Different limits apply to different types of <i>claim</i> .		COMP 10.2.3 R
Q3	How will the FSCS calculate the compensation that is offered to me?		
A3	Again, this will depend on whether your <i>protected claim</i> is:		
	(1)	[deleted]	
	(2)	[deleted]	
	(3)	a <i>claim</i> in connection with <i>protected investment business</i> ; or	COMP 12.2.1 R, COMP 12.3.5 R and COMP 12.4.2 R
	(4)	a <i>claim</i> in connection with <i>protected home finance mediation</i> ; or	COMP 12.4.17 R
	(5)	a <i>claim</i> in connection with <i>protected non-investment insurance mediation</i> .	COMP 12.4.20 R
	Certain types of protected investment business claim require the FSCS to use a particular method of calculation.		COMP 12.4.5 R
Q4	[deleted]		



1.4 EEA Firms [deleted]

1.4

1.5 Application to Lloyd's

Compensation arrangements for individual members

- 1.5.7 **G** The *compensation scheme* will not compensate *members* or *former members* if *firms* are unable to satisfy claims made in connection with *regulated activities* relating to their participation in Lloyd's *syndicates*. Separate *rules* and *guidance* are therefore needed.
- 1.5.8 **R** The *Society* must maintain *byelaws* establishing appropriate and effective arrangements to compensate *individual members* and *former members* who were *individual members* if *underwriting agents* are unable, or likely to be unable, to satisfy claims by those *members* relating to *regulated activities* carried on in connection with their participation in Lloyd's *syndicates*.
- 1.5.9 **R** For the purposes of **COMP 1.5.8 R** "*individual member*" includes a *member* which is a *limited liability partnership* or a *body corporate* whose members consist only of, or of the nominees for, a single natural person or a group of connected persons.
- 1.5.10 **G** The arrangements referred to in **COMP 1.5.8 R**:
- (1) will not compensate losses arising only as a result of underwriting or investment risk to which *individual members* or *former members* who were *individual members* are or were exposed by their participation in Lloyd's *syndicates*;
 - (2) may be restricted to compensation for losses arising out of fraud, dishonesty or failure to account; and
 - (3) should cover all *regulated activities* carried on by *underwriting agents* relating to Lloyd's *syndicate* capacity and *syndicate* membership.
- 1.5.11 **G** The arrangements referred to in **COMP 1.5.8 R** should have a governance structure that is operationally independent from the *Society*, but which is nevertheless accountable to the *Society* for the proper administration of the compensation arrangements.
- 1.5.12 **R** A contravention of **COMP 1.5.8 R** does not give rise to a right of action by a *private person* under section 138D of the *Act* (Actions for damages) and that *rule* is specified under Section 138D(3) of the *Act* as a provision giving rise to no such right of action.



1.6 Cooperation with the FSCS

1.6.1 **R** A *firm* must deal with the FSCS in an open, cooperative and timely way.

Chapter 2

The FSCS

2.1 Application and Purpose

Application

- 2.1.1 **R** This chapter applies to the *FSCS*.

Purpose

- 2.1.2 **G** In order to carry out its functions and put into effect the provisions set out in *COMP 3 - COMP 14* (which deal with determining whether compensation is payable, calculating the amount of compensation that should be paid, and making levies on *firms*), the *FSCS* needs to have a variety of powers. The purpose of this chapter is to set out these powers, and the restrictions upon them.

2.2 Duties of the FSCS

Administering the compensation scheme

- 2.2.1 **R** The FSCS must administer the *compensation scheme* in accordance with the *rules* in this sourcebook and any other rules prescribed by law to ensure that the *compensation scheme* is administered in a manner that is procedurally fair and in accordance with the European Convention on Human Rights.
- 2.2.2 **G** The FSCS may:
- (1) pay compensation to *eligible claimants* when a *relevant person* (or, where applicable, a *successor*) is unable or likely to be unable to meet *claims* against it in accordance with this sourcebook; and
 - (2) make levies on *participant firms*, in accordance with **FEES 6** (Financial Services Compensation Scheme Funding), to enable it to pay compensation or meet the costs of discharging its functions under this sourcebook.

Information for claimants

- 2.2.3 **R** The FSCS must publish information for claimants and potential claimants on the operation of the *compensation scheme*.

Assistance to claimants

- 2.2.4 **R** The FSCS may agree to pay the reasonable costs of an *eligible claimant* bringing or continuing insolvency proceedings against a *relevant person* or, where applicable, a *successor* (whether those proceedings began before or after a determination of default), if the FSCS is satisfied that those proceedings would help it to discharge its functions under the requirements of this sourcebook.

Annual Report

- 2.2.5 **G** The FSCS must make and publish an annual report on the discharge of its functions (section 218 of the *Act* (Annual report)).

Finance and resources

- 2.2.6 **R** The FSCS must have regard to the need to use its resources in the most efficient and economic way in carrying out its functions under the requirements of this sourcebook.

Publication of defaults

- 2.2.7 **R** The *FSCS* must take appropriate steps to ensure that potential claimants are informed of how they can make a *claim* for compensation as soon as possible after a determination has been made that a *relevant person* (or, where applicable, a *successor*) is *in default*, whether by the *FSCS* or the *FCA*.

Complaints

- 2.2.8 **R** The *FSCS* must put in place and publish procedures which satisfy the minimum requirements of procedural fairness and comply with the European Convention on Human Rights for the handling of any complaints of maladministration relating to any aspect of the operation of the *compensation scheme*.

Informing the FSCS

- 2.2.9 **G** The *FCA* will inform the *FSCS* if it detects problems in a *firm* that is likely to give rise to the intervention of the *FSCS*.
- 2.2.10 **R** [deleted]

Chapter 3

The qualifying conditions for compensation



3.1 Application and Purpose

Application

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

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

Purpose

3.1.3 **G** The purpose of this chapter is to set out in general terms the conditions that must be satisfied before the *FSCS* can make an offer of compensation.

3.1.4 **G** The qualifying conditions for paying compensation are set out in greater detail in **COMP 4** - **COMP 7**.



3.2 The qualifying conditions for paying compensation

3.2.1 **R** The FSCS may pay compensation to an *eligible claimant*, subject to COMP 11 (Payment of compensation), if it is satisfied that:

- (1) an *eligible claimant* has made an application for compensation (or the FSCS is treating the *person* as having done so);
- (2) the claim is in respect of a *protected claim* against a *relevant person* (or, where applicable, a *successor*) who is *in default*; and
- (3) where the FSCS so requires, the claimant has assigned the whole or any part of his rights against any one or more of the *relevant person*, any third party or, where applicable, a *successor*, to the FSCS, on such terms as the FSCS thinks fit.
- (4) [deleted]

Treating a person as having claimed

3.2.1A **R** The FSCS may treat *persons* who are or may be entitled to claim compensation as if they had done so.

Claims on behalf of another person

3.2.2 **R** The FSCS may also pay compensation (and any recovery or other amount payable by the FSCS to the claimant) to a *person* who makes a *claim* on behalf of another *person* if the FSCS is satisfied that the *person* on whose behalf the *claim* is made:

- (1) is or would have been an *eligible claimant*; and
- (2) would have been paid compensation by the FSCS had he been able to make the *claim* himself, or to pursue his application for compensation further.

3.2.3 **G** Examples of the circumstances covered by **COMP 3.2.2 R** are:

- (1) when personal representatives make a *claim* on behalf of the deceased;
- (2) when trustees make a *claim* on behalf of beneficiaries (for further provisions relating to *claims* by trustees, see **COMP 12A.1.1R** to **12A.1.7R**);

- (3) when the donee of an enduring power of attorney or a lasting power of attorney makes a *claim* on behalf of the donor of the power;
- (4) when the Court of Protection makes a *claim* on behalf of a *person* incapable by reason of mental disorder of managing and administering his property and affairs;
- (5) when an *eligible claimant* makes a *claim* for compensation but dies before his *claim* is determined.

3.2.4

R

The FSCS may also pay compensation to a *firm*, who makes a claim in connection with *protected non-investment insurance mediation* on behalf of its customers, if the FSCS is satisfied that:

- (1) each *customer* has borne a *shortfall* in *client money* held by the *firm* caused by a *secondary pooling event* arising out of the *failure* of a broker or *settlement agent* which is a *relevant person* in default;
- (2) the *customers* in respect of which compensation is to be paid satisfy the conditions set out in ■ COMP 3.2.2 R (1);
- (3) the *customers* do not have a *claim* against the *relevant person* directly, nor a claim against the *firm*, in respect of the same loss;
- (4) the *customers* would have been paid compensation by FSCS if the *customers* had a *claim* for their share of the *shortfall*, and if the *firm* were the *relevant person*; and
- (5) the *firm* has agreed, on such terms as the FSCS thinks fit, to pay, or credit the accounts of, without deduction, each relevant *customer* in (1), that part of the compensation equal to the *customer's* financial loss, subject to the limits in ■ COMP 10.2.

Special cases

3.2.5

G

See ■ COMP 12A (Special cases) for how the FSCS may pay compensation in certain cases.

Chapter 4

Eligible claimants

4.1 Application and Purpose

Application

- 4.1.1 **R** This chapter applies to the *FSCS*.
- 4.1.2 **G** It is also relevant to those who may wish to bring a *claim* for compensation.

Purpose

- 4.1.3 **G** The purpose of this chapter is to set out the types of *person* who are able to claim compensation or benefit from the protection the *FSCS* is able to provide. A claimant needs to be an *eligible claimant* to satisfy *COMP* 3.2.1R(1).



4.2 Who is eligible to benefit from the protection provided by the FSCS?

4.2.1 **R** An *eligible claimant* is any person who at any material time:

- (1) did not come within **COMP 4.2.2 R**; or
- (2) did come within **COMP 4.2.2 R**, but satisfied the relevant exception in **COMP 4.3** or **COMP 4.4**.

Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

4.2.2 **R** This table belongs to COMP 4.2.1R

(1)	<i>Firms (other than a sole trader firm; a credit union; a trustee of a stakeholder pension scheme (which is not an occupational pension scheme) or personal pension scheme; a firm carrying on the regulated activity of operating, or winding up, a stakeholder pension scheme (which is not an occupational pension scheme) or personal pension scheme; or a small business; in each case, whose claim arises out of a regulated activity for which they do not have a permission)</i>
(2)	<i>Overseas financial services institutions</i>
(3)	<i>Collective investment schemes, and anyone who is the operator or depositary of such a scheme.</i>
(4)	Pension and retirement funds, and anyone who is a trustee of such a fund. However, this exclusion does not apply to:
(a)	<i>a trustee of a personal pension scheme or a stakeholder pension scheme (which is not an occupational pension scheme); or</i>
(b)	<i>a trustee of an occupational pension scheme insofar as members' benefits are money-purchase benefits; or</i>
(c)	<i>insofar as members' benefits are not money-purchase benefits, a trustee of an occupational pension scheme of an employer which is not a large company, large partnership or large mutual association.</i>
(5)	Supranational institutions, governments, and central administrative authorities
(6)	Provincial, regional, local and municipal authorities
(7)	Directors of the relevant person in default or, in respect of a claim against a successor in default, directors of any successor or directors of the relevant person. However, this exclusion does not apply if:

	(a)	(i)	the <i>relevant person in default</i> is a mutual association which is not a large mutual association and the <i>directors</i> do not receive a salary or other remuneration for services performed by them for the <i>relevant person in default</i> ; or
		(ii)	in respect of a claim against a successor in default, the <i>relevant person</i> or a successor, to whichever the directorship relates, is a mutual association which is not a large mutual association and the <i>directors</i> do not receive a salary or other remuneration for services performed by them for the <i>relevant person</i> or a successor, as applicable; or
	(b)	(i)	the <i>relevant person in default</i> is a credit union; or
		(ii)	in respect of a claim against a successor in default, the <i>relevant person</i> or a successor, to whichever the directorship relates, is a credit union.
(8)	[deleted]		
(9)	Bodies corporate in the same group as the <i>relevant person in default</i> or, in respect of a claim against a successor in default, bodies corporate in the same group as a successor or the <i>relevant person</i> , as applicable, unless that body corporate is:		
	(a)	a trustee of a <i>stakeholder pension scheme</i> (which is not an <i>occupational pension scheme</i>) or a <i>personal pension scheme</i> (but in each case if the trustee is a <i>firm</i> it will only be an <i>eligible claimant</i> if its claim arises out of a <i>regulated activity</i> for which it does not have a permission); or	
	(aa)	a trustee of:	
		(i)	an <i>occupational pension scheme</i> in relation to members' benefits which are <i>money-purchase benefits</i> ; or
		(ii)	(unless (i) applies) an <i>occupational pension scheme</i> of an employer which is not a <i>large company, large partnership or large mutual association</i> ; or
	(b)	carrying on the <i>regulated activity</i> of operating or winding up a <i>stakeholder pension scheme</i> (which is not an <i>occupational pension scheme</i>) or <i>personal pension scheme</i> .	
(10)	[deleted]		
(11)	[deleted]		

(12)	Persons who, in the opinion of the FSCS, are responsible for, or have contributed to, the relevant person's (or, where applicable, a successor's) default
(13)	<i>Large companies</i>
(14)	<i>Large partnerships</i>
(15)	Persons whose claim arises from transactions in connection with which they have been convicted of an offence of money laundering.
(16)	[deleted]
(17)	Where the <i>claim</i> is in relation to <i>protected non-investment insurance mediation, bodies corporate, partnerships, mutual associations</i> and unincorporated associations which are not <i>small businesses</i> .
(18)	<i>Alternative investment funds</i> , and anyone who is the <i>AIFM</i> or <i>depository</i> of an <i>alternative investment fund</i> .
(19)	<i>Large mutual associations</i>
(20)	Where the <i>claim</i> is in relation to <i>protected debt management business</i> , any <i>person</i> other than a natural person.

4.2.3

R [deleted]



4.3 Exceptions: Circumstances where a person coming within **COMP** 4.2.2R may receive compensation

4.3.1 **R** [deleted]

4.3.2 **R** [deleted]

4.3.3 **R** [deleted]

4.3.4 **R** [deleted]

4.3.5 **R** [deleted]

Liability subject to compulsory insurance.....

4.3.6 **R** A person who comes within **COMP** 4.2.2R is eligible to claim compensation in respect of a *liability subject to compulsory insurance* if the *claim* is in connection with *protected non-investment insurance mediation*.

Protected home finance mediation

4.3.7 **G** There are no exceptions to *COMP 4.2.2R* for *claims* made in connection with *protected home finance mediation*.

Eligibility to claim in specified circumstances

4.3.8 **R** The *FSCS* may treat a *person* who comes within category (7) or (12) of **COMP 4.2.2 R** as eligible to claim compensation where:

- (1) this is desirable to achieve the efficient performance of any of its functions, including without limitation; to achieve the efficient payment of compensation; and
- (2) treating these *persons* as eligible to claim compensation would, in the opinion of the *FSCS*, be beneficial to the generality of *eligible claimants* who will be affected by the action in (1).

Protected investment business

4.3.9 **R** A *person* is eligible to claim compensation for claims made in connection with *protected investment business* if, at the date at which the *relevant person* (or, where applicable, a *successor*) is deemed to be in default, he:

- (1) came within category (14) of **COMP 4.2.2 R** and he does not exceed the limits for a *body corporate* which qualifies as a small company under section 247 of the Companies Act 1985 or section 382 of the Companies Act 2006 as applicable; or
- (2) came within category (19) of **COMP 4.2.2 R**.



4.4 Exceptions: Relevant general insurance contracts: mesothelioma claims

Application.....

4.4.1 **R** [deleted]

Claims for contribution by responsible persons.....

4.4.2 **R** [deleted]

4.4.3 **R** [deleted]

4.4.4 **R** [deleted]

Limits to amounts payable for contribution claims.....

4.4.5 **R** [deleted]

Chapter 5

Protected claims



5.1 Application and Purpose

Application

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

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

Purpose

5.1.3 **G** The purpose of this chapter is to set out the various categories of *claim* for which compensation may be payable.

5.2 What is a protected claim?

5.2.1 **R** A *protected claim* is:

- (1) [deleted]
- (2) [deleted]
- (3) a *claim* in connection with *protected investment business* (see ■ COMP 5.5); or
- (4) a *claim* in connection with *protected home finance mediation* (see ■ COMP 5.6); or
- (5) a *claim* in connection with *protected non-investment insurance mediation* (see ■ COMP 5.7); or
- (6) a *claim* in connection with *protected debt management business* (see ■ COMP 5.8).

5.2.2 **G** () [deleted]

Claims in respect of Law Society members

5.2.3 **R** Notwithstanding ■ COMP 5.2.1 R and paragraph (1)(d) of the definition of *participant firm*, where the *relevant person* is in default:

- (1) is an *authorised professional firm* that is subject to the rules of the Law Society (England and Wales) or the Law Society of Scotland; and
- (2) with respect to its *regulated activities*, does not participate in the relevant society's compensation scheme:

a *claim* with respect to that *person* is only a *protected claim* if, when the basis for the *claim* arose, that *person* did not participate in the relevant society's compensation scheme with respect to its *regulated activities*.

Claims in respect of successors

5.2.4 **G** Where a claim for compensation is in respect of a *claim* against a *successor*, the following rules apply to the *relevant person* for whose liabilities the *successor* has assumed responsibility (or to such *relevant person's* activities, as the case may be):

- (1) ■ COMP 5.5.1R;

- (2) ■ COMP 5.5.2R;
- (3) ■ COMP 5.5.3R;
- (4) ■ COMP 5.6.1R;
- (5) ■ COMP 5.6.2R; and
- (6) ■ COMP 5.7.2R.

5.5 Protected investment business

5.5.1

R *Protected investment business is:*

- (1) *designated investment business* carried on by the *relevant person* with, or for the benefit of, the claimant (so long as that claimant has a *claim*), or as agent on the claimant's behalf;
- (2) the activities of the manager or *trustee* of an *AUT*, provided that the *claim* is made by a *holder*;
- (3) the activities of the *ACD* or *depository* of an *ICVC*, provided that the *claim* is made by a *holder*;
- (4) the activities of the *authorised contractual scheme manager* or *depository* of an *ACS*, provided that the *claim* is made by a *holder*;
- (5) the activities of the *manager* or *depository* of an *ELTIF*, provided that the *claim* is made by a *holder*;
- (5A) the activities by a *recognised investment exchange* of operating a *multilateral trading facility* or operating an *organised trading facility*;
- (6) the *intermediation of structured deposits*,

provided that the territorial scope condition in ■ COMP 5.5.2 R is satisfied and, for a *firm* acting as the manager or *depository* of a *fund*, one of the conditions in ■ COMP 5.5.3 R is satisfied.

Territorial scope condition

5.5.2

R The territorial scope condition is that the *protected investment business* was carried on from:

- (1) an establishment of the *relevant person* in the *United Kingdom*; or
- (2) a *branch* of a *UK firm* which is:
 - (a) a *MiFID investment firm* established in another *EEA State*; or
 - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than *advising on investments* or *safeguarding and administering investments*));
- (3) and the *claim* is an *ICD claim*; or

- (3) both (1) and (2); or
- (4) (a) a *UK branch* of an *EEA UCITS management company*; or
 - (b) an establishment of such an *EEA UCITS management company* in its *Home State* from which *cross border services* are being carried on;

and in either case the *management company* is providing *collective portfolio management services* for a *UCITS scheme* but only if the *claim* relates to that activity; or
- (5) an establishment of an *incoming EEA AIFM* in another *EEA State* if the claim relates to providing *AIFM management functions* on a *cross border services* basis for an *authorised AIF*.

Managers and depositaries of funds

5.5.3

R The conditions referred to in ■ COMP 5.5.1 R for a manager or *depositary* of a *fund* are:

- (1) for the activities of *managing an AIF*, *managing a UCITS* or *establishing, operating or winding up a collective investment scheme*, the *claim* is in respect of an investment in:
 - (a) an *authorised fund*; or
 - (b) any other *fund* which has its registered office or head office in the *UK* or is otherwise domiciled in the *UK* unless it is an *AIF* that is a *body corporate* and not a *collective investment scheme*;
- (2) where a *firm* is acting as *depositary* of a *fund*, the *claim* is in respect of their activities for:
 - (a) an *authorised fund*; or
 - (b) a *charity AIF* unless it is a *body corporate* that is not a *collective investment scheme*.

Advising without a personal recommendation

5.5.4

R The *FSCS* must treat a *claim* relating to advice in relation to a *designated investment* that falls outside article 53(1) of the *Regulated Activities Order* by virtue of article 53(1A) of that Order as being 'in connection with *protected investment business*' for the purposes of ■ COMP 5.2.1R(3) where the *relevant person* giving the advice, at the time the act or omission giving rise to the *claim* took place:

- (1) had, or required, *permission* to carry on; or
- (2) (in the case of an *appointed representative*) was exempt from the *general prohibition* in respect of,

an activity that was *designated investment business*.

5.6 Protected home finance mediation

- 5.6.1** **R** Protected *home finance mediation* is:
- (1) *advising on a home finance transaction; or*
 - (2) *arranging (bringing about) a home finance transaction; or*
 - (3) *making arrangements with a view to a home finance transaction; or*
 - (4) *agreeing to carry on a regulated activity in (1) to (3); or*
 - (5) *the activities of a home finance provider which would be arranging but for article 28A of the Regulated Activities Order (Arranging contracts or plans to which the arranger is a party);*
- provided that the condition in **COMP 5.6.2 R** is satisfied.
- 5.6.2** **R** **COMP 5.6.1 R** applies only if the *protected home finance mediation* was carried on by a *relevant person*:
- (1) *with a customer who was a resident in the United Kingdom; or*
 - (2) *from an establishment maintained by the relevant person (or its appointed representative) in the United Kingdom with a customer who was resident elsewhere in the EEA;*
- at the time the *protected home finance mediation* was carried on.
- 5.6.3** **R** This section does not apply in respect of a *regulated mortgage contract* which is:
- (1) *a legacy CCA mortgage contract; or*
 - (2) *a CBTL credit agreement.*

5.7 Protected non-investment insurance mediation

- 5.7.1** **R** *Protected non-investment insurance mediation is an insurance mediation activity where the investment concerned is a relevant general insurance contract or a pure protection contract but which is not a long-term care insurance contract or a reinsurance contract, provided that the conditions in ■ COMP 5.7.2 R are satisfied.*
- 5.7.2** **R** ■ COMP 5.7.1 R only applies if the conditions in (1) and (2) are satisfied:
- (1) the *protected non-investment insurance mediation* was carried on from:
 - (a) an establishment of the *relevant person* in the *United Kingdom*; or
 - (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IMD*; and
 - (2) the claimant making the *claim* (or where ■ COMP 3.2.4 R applies, the *customer* on behalf of whom a *firm* makes a *claim*) dealt initially, with a view to entering into a *relevant general insurance contract* or a *pure protection contract* but not a *long-term care insurance contract* or a *reinsurance contract*, with an intermediary that was:
 - (a) established in the *United Kingdom*; or
 - (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IMD*.
- 5.7.3** **G** The *FSCS* will not cover a *claim* against an intermediary or a *successor* of an intermediary that meets the criteria of either ■ COMP 5.7.2 R (2)(a) or ■ COMP 5.7.2 R (2)(b) where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of either ■ COMP 5.7.2 R (2)(a) or ■ COMP 5.7.2 R (2)(b).
- 5.7.4** **G** The *FSCS* will not cover a *claim* in respect of an intermediary that is not a *relevant person*, for example a retailer selling extended warranties that are *connected contracts*. However, ■ COMP 5.7.2 R has the effect that a *claim* in respect of a *relevant person* further up the chain carrying on *protected non-investment insurance mediation* in accordance with ■ COMP 5.7.2 R (1)(a) may be covered by the *FSCS* if the claimant dealt initially with a *UK* intermediary that is not a *relevant person*.

Advising without a personal recommendation

5.7.5

R

The FSCS must treat a *claim* relating to advice on a *relevant general insurance contract* or a *pure protection contract* (which is not a *long-term insurance contract* or a *reinsurance contract*) that falls outside article 53(1) of the *Regulated Activities Order* by virtue of article 53(1A) of that Order as being 'in connection with *protected non-investment insurance business*' for the purposes of **COMP 5.2.1R(5)** where the *relevant person* giving the advice, at the time the act or omission giving rise to the *claim* took place:

- (1) had, or required, *permission* to carry on; or
- (2) (in the case of an *appointed representative*) was exempt from the *general prohibition* in respect of,

an activity that was *non-investment insurance business*.



5.8 Protected debt management business

5.8.1

R

Protected debt management business is debt management activity carried out by a CASS debt management firm from an establishment maintained by it in the United Kingdom, but only in so far as the claim relates to a shortfall in client money.

Chapter 6

Relevant persons and successors in default



6.1 Application and Purpose

Application

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

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

Purpose

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]

6.3 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 *relevant person's Home State regulator* 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.

6.3.4 **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.

6.3.5 **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) and (d) 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 *successor's Home State regulator* 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.

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.5

R

For the purposes of sections 219(1A)(b) and (d) 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*.

Chapter 7

Assignment or subrogation of rights



7.1 Application

Application and Purpose

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

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

Purpose

7.1.3 **G** The *FSCS* may (and in some cases must) make an offer of compensation conditional on the assignment of rights to it by a claimant. The *FSCS* may also be subrogated automatically to the claimant's rights. The purpose of this chapter is to make provision for and set out the consequences of an assignment or subrogation of the claimant's rights.



7.2 How does the assignment of rights work?

7.2.1 **R** The *FSCS* may make any payment of compensation to a claimant in respect of any *protected claim* conditional on the claimant assigning the whole or any part of his rights against any one or more of the the *relevant person*, any third party, or, where applicable, a *successor*, to the *FSCS* on such terms as the *FSCS* thinks fit.

7.2.2 **R** If a claimant assigns the whole or any part of his rights against any *person* to the *FSCS* as a condition of payment, the effect of this is that any sum payable in relation to the rights so assigned will be payable to the *FSCS* and not the claimant.

7.2.3 **R**

- (1) Before taking assignment of rights from the claimant under **COMP 7.2.1 R**, the *FSCS* must inform the claimant that if, after taking assignment of rights, the *FSCS* decides not to pursue recoveries using those rights it will, if the claimant so requests in writing, reassign the assigned rights to the claimant. The *FSCS* must comply with such a request in such circumstances (see **COMP 7.4.2 R**).
- (2) [deleted] [*Editor's Note: The text of this sub-paragraph has been moved to new **COMP 7.4.1 R**.*]
- (3) [deleted]

7.2.3A **R** [deleted]

Electronic assignment

7.2.3AA **R** Where the *FSCS* has paid compensation in respect of a *claim*, this has the effect that:

- (1) an assignment completed and signed electronically in a form prescribed by the *FSCS* will be deemed to satisfy the formalities for a valid legal assignment;
- (2) production of a hard copy of the electronically signed assignment form is conclusive evidence (or, in Scotland, sufficient evidence) that the formalities of a legal assignment have been complied with and that a legal assignment has occurred; and

(3) an assignment completed electronically in the prescribed form is to be treated as having been made by writing under the hand of the assignor for the purposes of section 136 of the Law of Property Act 1925 and any other formal requirement.

7.2.3B **R** [deleted]

7.2.3C **G** [deleted]

7.2.3D **G** [deleted]

7.2.3E **R** [deleted] *[Editor's Note: The amended text of this provision has been moved to new **COMP 7.6.1 R.**]*

7.2.4 **R** [deleted] *[Editor's Note: The amended text of this provision has been moved to new **COMP 7.6.2 R.**]*

7.2.4A **R** [deleted] *[Editor's Note: The text of this provision has been moved to new **COMP 7.6.3 R.**]*

7.2.5 **R** [deleted] *[Editor's Note: The amended text of this provision has been moved to new **COMP 7.6.4 R.**]*

7.2.6 **G** [deleted] *[Editor's Note: The text of this provision has been moved to new **COMP 7.6.5 G.**]*

Claims arising under COMP 3.2.4R

- 7.2.7 **R**
- (1) For the purposes of compensation paid under **COMP 3.2.4 R**, FSCS may require any *firm* (including, but not limited to, the claimant *firm*) to assign to FSCS any rights the *firm* may have to claim against the *relevant person* in relation to the amount of the *shortfall* in *client money* arising out of the *failure* of the *relevant person*.
 - (2) A *firm* required by FSCS to assign its rights in (1), must assign those rights as requested, unless it has a reasonable excuse for not doing so.



7.3 Automatic subrogation

7.3.1 **R** [deleted]

7.3.2 **R** The FSCS's powers in this section may be used:

- (1) separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this sourcebook; and/or
- (2) [deleted]
- (3) in relation to all or any part of a *protected claim* or class of *protected claim* made with respect to the *relevant person* (or, where applicable, a *successor*).
- (4) [deleted]

7.3.3 **R** The FSCS may determine that the exercise of any power in this section is subject to such incidental, consequential or supplemental conditions as the FSCS considers appropriate.

Determinations by the FSCS
.....

- 7.3.4 **R**
- (1) Any power conferred on the FSCS to make determinations under this section is exercisable in writing.
 - (2) An instrument by which the FSCS makes the determination must specify the provision under which it is made, the date and time from which it takes effect and the *relevant person* (or, where applicable, a *successor*) and *protected claims*, parts of *protected claims* and/or classes of *protected claims* in respect of which it applies.
 - (3) The FSCS must take appropriate steps to publish the determination as soon as possible after it is made. Such publication must be accompanied by a statement explaining the effect of **COMP 7.4.2 R**.
 - (4) Failure to comply with any requirement in this *rule* does not affect the validity of the determination.
 - (5) A determination by the FSCS under this section may be amended, remade or revoked at any time and subject to the same conditions.

Verification of determinations

7.3.5

R

- (1) The production of a copy of a determination purporting to be made by the *FSCS* under this section:
 - (a) on which is endorsed a certificate, signed by a member of the *FSCS*'s staff authorised by it for that purpose; and
 - (b) which contains the required statements;
 is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are:
 - (a) that the determination was made by the *FSCS*; and
 - (b) that the copy is a true copy of the determination.
- (3) A certificate purporting to be signed as mentioned in (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A *person* who wishes in any legal proceedings to rely on a determination may require the *FSCS* to endorse a copy of the determination with a certificate of the kind mentioned in (1).

Effect of this section on other provisions in this sourcebook etc

7.3.6

R

Other provisions in this sourcebook and **FEES 6** are modified to the extent necessary to give full effect to the powers provided for in this section.

7.3.7

R

Other than as expressly provided for, nothing in this section is to be taken as limiting or modifying the rights or obligations of or powers conferred on the *FSCS* elsewhere in this sourcebook or in **FEES 6**.

Rights and obligations against the relevant persons, successors and third parties

7.3.8

R

The *FSCS* may determine that:

- (1) the payment of compensation by the *FSCS*;

(2) [deleted]

shall have all or any of the following effects:

- (3) the *FSCS* shall immediately and automatically be subrogated, subject to such conditions as the *FSCS* determines are appropriate, to all or any part (as determined by the *FSCS*) of the rights and claims in the *United Kingdom* and elsewhere of the claimant against the *relevant person* (or, where applicable, a *successor*) and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the *relevant person* (or, where applicable, a *successor*) or third party is acting) in respect of or arising out of the *claim* in respect of which the payment of or on account of compensation was made;
- (4) the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the claimant, or in both names against the *relevant person* (or, where applicable, a *successor*) and/or any third party;
- (5) the subrogated rights and claims conferred on the *FSCS* shall be rights of recovery and claims against the *relevant person* (or, where applicable, a *successor*) and/or any third party which are equivalent (including as to amount and priority and whether or not the *relevant person* (or, where applicable, a *successor*) is insolvent) to and do not exceed the rights and claims that the claimant would have had; and/or
- (6) such rights and/or obligations (as determined by the *FSCS*) as between the *relevant person* (or, where applicable, a *successor*) and the claimant arising out of the *protected claim* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* (or, where a *successor* is not an *authorised person*, an *authorised person*) with an appropriate *permission* and the claimant provided that the *authorised person* has consented (but the transferred rights and/or obligations shall be treated as existing between the *relevant person* (or where applicable, a *successor*) and the *FSCS* to the extent of any subrogation, transfer or assignment for the purposes of (3) to (5) and ■ COMP 7.3.9 R).

7.3.9

R

The *FSCS* may alternatively or additionally make the actions in ■ COMP 7.3.8R (1) conditional on the claimant assigning or transferring the whole or any part of all such rights as he may have against the *relevant person* (or, where applicable, a *successor*) and/or any third party on such terms as the *FSCS* determines are appropriate.

7.3.10

R

- (1) The *FSCS* may determine that:
 - (a) if the claimant does not assign or transfer his rights under ■ COMP 7.3.9 R;
 - (b) if it is impractical to obtain such an assignment or transfer; and/or
 - (c) if it is otherwise necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under ■ COMP 7.3.8 R or ■ COMP 7.3.9 R;

that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom*, another *EEA State* or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

- (2) The execution of any deed or document under (1) shall be as effective as if made in writing by the claimant or by his agent lawfully authorised in writing or by will.



7.4 Duty on FSCS to pursue recoveries

- 7.4.1** **R** If the *FSCS* takes assignment or transfer of rights from the claimant or is otherwise subrogated to the rights of the claimant, it must pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue.
- 7.4.2** **R** If the *FSCS* decides not to pursue such recoveries and a claimant wishes to pursue those recoveries himself and so requests in writing, the *FSCS* must comply with that request and assign the rights back to the claimant.

7.6 Treatment of recoveries

- 7.6.1** **R** If the *FSCS* makes recoveries in relation to a *claim*, it may deduct from any recoveries paid over to the claimant under **COMP 7.6.2 R** part or all of its reasonable costs of recovery and distribution (if any).
- 7.6.2** **R** Unless compensation was paid under **COMP 9.2.3 R**, if a claimant assigns or transfers his rights to the *FSCS* or a claimant's rights and claims are otherwise subrogated to the *FSCS* and the *FSCS* subsequently makes recoveries through those rights or claims, those recoveries must be paid to the claimant:
- (1) to the extent that the amount recovered exceeds the amount of compensation (excluding interest paid under **COMP 11.2.7 R**) received by the claimant in relation to the *protected claim*; or
 - (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the *FSCS* at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see **COMP 7.6.4 R**).
- 7.6.3** **R** For the purpose of **COMP 7.6.2 R** compensation received by *eligible claimants* in relation to *contracts of insurance* written at Lloyd's may include payments made from the *Central Fund*.
- 7.6.4** **R** The *FSCS* must endeavour to ensure that a claimant will not suffer disadvantage arising solely from his prompt acceptance of the *FSCS*'s offer of compensation or from the subrogation of his rights and claims to the *FSCS* compared with what might have been the position had he delayed his acceptance or had his claims not been subrogated.
- 7.6.5** **G** As an example of the circumstances which **COMP 7.6.4 R** is designed to address, take two claimants, A and B.
- (1) Both A and B have a *protected investment business claim* of £60,000 against a *relevant person* (or, where applicable, a *successor*) in default. The *FSCS* offers both claimants £50,000 compensation (the maximum amount payable for such claims under **COMP 10.2.3 R**). A accepts immediately, and assigns his rights against the *relevant person* (or, where applicable, a *successor*) to the *FSCS*, but B delays accepting the *FSCS*'s offer of compensation.

- (2) In this example, the liquidator is able to recover assets from the *relevant person* (or, where applicable, a *successor*) *in default* and makes a payment of 50p in the pound to all the *relevant person's* or *successor's*, as appropriate, creditors. If the liquidator made the payment before any offer of compensation from the *FSCS* had been accepted, A and B would both receive £30,000 each from the liquidator, leaving both with a loss of £30,000 to be met by the *FSCS*. Both *claims* would be met in full.
- (3) However, if the payment were made by the liquidator after A had accepted the *FSCS's* offer of compensation and assigned his rights to the *FSCS*, but before B accepted the *FSCS* offer of compensation, A would be disadvantaged relative to B even though he has received £50,000 compensation from the *FSCS*. A would be disadvantaged relative to B because he promptly accepted the *FSCS's* offer and assigned his rights to the *FSCS*. Because A has assigned his rights to the *FSCS*, any payment from the liquidator will be made to the *FSCS* rather than A. In this case the *FSCS* has paid A more than £30,000, so the £30,000 from the liquidator that would have been payable to A will be payable in full to the *FSCS* and not to A.
- (4) B is able to exercise his rights against the liquidator because he delayed accepting the *FSCS's* offer and receives £30,000 from the liquidator. B can then make a claim for the remaining £30,000 to the *FSCS* which the *FSCS* can pay in full (see ■ COMP 10.2.2 G). B therefore suffers no loss whereas A is left with a loss of £10,000, being the difference between his claim of £60,000 and the compensation paid by the *FSCS* of £50,000.

Chapter 8

Rejection of application and withdrawal of offer



8.1 Application and Purpose

Application

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

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

Purpose

8.1.3 **G** In some circumstances, it may be appropriate for the *FSCS* to reject an application for compensation, or withdraw an offer of compensation. The purpose of this chapter is to set out when those circumstances arise.



8.2 Rejection of application for compensation

8.2.1 **R** If an application for compensation contains any material inaccuracy or omission, the *FSCS* may reject the application unless this is considered by the *FSCS* to be wholly unintentional.

8.2.2 **G** A rejection under **COMP 8.2.1 R** does not mean that the claimant cannot receive compensation. A rejected application may be resubmitted, with the appropriate amendments. An application rejected under **COMP 8.2.3 R** may be resubmitted if **COMP 8.2.5 R** applies.

8.2.3 **R** The *FSCS* must reject an application for compensation if:

- (1) the *FSCS* considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:
 - (a) the date on which the *relevant person* (or, where applicable, a *successor*) is determined to be *in default*; and
 - (b) the date on which the claimant first indicates in writing that he may have a claim against the *relevant person* (or, where applicable, a *successor*);unless **COMP 8.2.4 R** or **COMP 8.2.4A R** applies; or
- (2) the liability of the *relevant person* (or, where applicable, a *successor*) to the claimant has been extinguished by the operation of law, unless **COMP 8.2.5 R** applies.

8.2.4 **R** For *claims* made in connection with *protected investment business*, *protected home finance mediation* or *protected non-investment insurance mediation*, the *FSCS* may disregard a defence of limitation where the *FSCS* considers that it would be reasonable to do so.

8.2.4A **R** For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *FSCS* must disregard a defence of limitation which became available after the scheme was made or imposed.

8.2.5 **R** For claims made in connection with *protected investment business* or *protected non-investment insurance mediation*, if a *relevant person* (or, where applicable, a *successor*), incorporated as a *company*, has been dissolved with the result that its liability to the claimant has been

extinguished by operation of law, the *FSCS* must treat the claim, for the purposes of paying compensation, as if the *relevant person* or a *successor*, as appropriate, had not been dissolved.

8.2.6

G

■ COMP 8.2.5 R means that the *FSCS* will be able to pay compensation in cases where:

- (1) the *company* was declared in default on or after 1 December 2001; and
- (2) at the time the application for compensation is made, the *company* has been dissolved.

8.2.7

R

The *FSCS* may reject an application for compensation if:

- (1) it relates to an event or transaction which has been reviewed under the provisions of a 'deemed scheme' as defined in the Financial Services and Markets Act 2000 (Transitional Provisions) (Reviews of Pensions Business) Order 2001 (SI 2001/2512); and
- (2) as a result of the review in (1) no redress was payable, or redress was paid, in accordance with the regulatory standards for the review of such events or transactions, and the terms of any scheme order, applicable as at the date of the review.

8.2.8

G

The purpose of ■ COMP 8.2.7 R is to allow the *FSCS* to reject claims relating to pensions review cases where a review was carried out in accordance with the relevant regulatory standards applicable at the time. 'Deemed schemes' are those review schemes set up before *commencement* (that is, 30 November 2001) but which are treated as schemes for review of past business under the Act, namely the pensions review and *FSAVC* review.



8.3 Withdrawal of offer of compensation

- 8.3.1** **R** The *FSCS* may withdraw any offer of compensation made to a claimant if the offer is not accepted or if it is not disputed within 90 days of the date on which the offer is made.
- 8.3.2** **R** Where the amount of compensation offered is disputed, the *FSCS* may withdraw the offer but must consider exercising its powers to make a reduced or interim payment under **COMP 11.2.4 R** or **COMP 11.2.5 R** before doing so.
- 8.3.3** **R** The *FSCS* may repeat any offer withdrawn under **COMP 8.3.1 R** or **COMP 8.3.2 R**.
- 8.3.4** **R** The *FSCS* must withdraw any offer of compensation if it appears to the *FSCS* that no such offer should have been made.
- 8.3.5** **R** The *FSCS* must seek to recover any compensation paid to a claimant if it appears to the *FSCS* that no such payment should have been made, unless the *FSCS* believes on reasonable grounds that it would be unreasonable to do so, or that the costs of doing so would exceed any amount that could be recovered.

Chapter 9

Time limits on payment and postponing payment



9.1 Application and Purpose

Application

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

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

Purpose

9.1.3 **G** The purpose of this chapter is to ensure that compensation is paid to claimants as quickly as possible and that delays in paying compensation to claimants are kept to a minimum. The *FSCS* may postpone payment of compensation only in strictly limited circumstances.

9.2 When must compensation be paid?

9.2.1 **R** [deleted]

9.2.1A **R** [deleted]

9.2.1B **R** The FSCS must pay a *claim* as soon as reasonably possible after:

- (1) it is satisfied that the conditions in **COMP 3.2.1 R** have been met; and
- (2) it has calculated the amount of compensation due to the claimant;
and in any event within:
- (3) three months of that date, unless the FCA has granted the FSCS an extension, in which case payment must be made no later than six months from that date.

9.2.2 **R** The FSCS may postpone paying compensation if:

- (1) in the case of a *claim* against a *relevant person* who is an *appointed representative*, the FSCS considers that the claimant should make and pursue an application for compensation against the *appointed representative's relevant principal*; or
- (2) in the case of a *claim* relating to *protected investment business* which is not an *ICD claim* or a claim relating to *protected home finance mediation*, the FSCS considers that the claimant should first exhaust his rights against the *relevant person* (or, where applicable, a *successor*) or any third party, or make and pursue an application for compensation to any other *person*; or
- (3) [deleted]
- (4) the *claim* is one which falls within **COMP 12.4.5 R** or **COMP 12.4.7 R** and it is not practicable for payment to be made within the usual time limits laid out in **COMP 9.2.1 R**; or
- (5) the claimant has been charged with an offence arising out of or in relation to *money laundering*, and those proceedings have not yet been concluded.
- (6) [deleted]

9.2.3

R

Notwithstanding ■ COMP 9.2.2 R(2), the *FSCS* may pay compensation to a claimant in respect of assets held by a *relevant person* (or, where applicable, a *successor*) if an insolvency practitioner has been appointed to the *relevant person* (or, where applicable, a *successor*), and:

- (1) the *FSCS* considers it likely that the insolvency practitioner would, in due course, return the assets to the claimant;
- (2) the claimant has agreed to be compensated for the assets on the basis of the valuation provided by the *FSCS*; and
- (3) the claimant has agreed, to the satisfaction of the *FSCS*, that his rights to the assets in respect of which compensation is payable should pass to it.

Chapter 10

Limits on the amount of compensation payable

10.1 Application and Purpose

Application

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

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

Purpose

10.1.3 **G** In most cases it is appropriate for there to be a limit on the amount of compensation payable by the *FSCS* and that there should be some part of the *claim* which is not compensatable and for which the claimant must bear the loss. The purpose of this chapter is to set these limits out.

10.1.4 **G** [deleted]



10.2 Limits on compensation payable

10.2.1 **R** The limits on the maximum compensation sums payable by the FSCS for *protected claims* are set out in **COMP 10.2.3 R**.

10.2.2 **G** The limits apply to the aggregate amount of *claims* in respect of each category of *protected claim* that an *eligible claimant* has against the *relevant person* (or, where applicable, a *successor*). Consequently, a claimant who has, for example, a *claim* against a *relevant person* (or, where applicable, a *successor*) in connection with *protected investment business* of £40,000, and a further such *claim* of £20,000 , will only receive the £50,000 limit.

10.2.3 **R** **Table Limits**

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected investment business</i>	100% of claim	£50,000
<i>Protected home finance mediation</i>	100% of claim	£50,000
<i>Protected non-investment insurance mediation</i>	(1) where the claim is in respect of a liability subject to compulsory insurance: 100% of claim	Unlimited
	(2) where the <i>claim</i> is in respect of: (a) a <i>relevant omission</i> ; and (b) a professional indemnity insurance contract, or would be in respect of a professional indemnity insurance contract, if the insurance contract had been effected: 100% of claim	Unlimited
	(3) where the <i>claim</i> is: (a) in respect of a <i>relevant omission</i> ; (b) in respect of a <i>relevant general insurance contract</i> or would be in respect of a <i>relevant general insurance contract</i> if the insurance contract had been effected; and	Unlimited

Type of claim	Level of cover	Maximum payment
	(c) arises from the death or incapacity of the <i>policyholder</i> owing to injury, sickness or infirmity: 100% of <i>claim</i>	
	(4) where the <i>claim</i> is in respect of: (a) a <i>relevant omission</i> ; and (b) a <i>pure protection contract</i> , or would be in respect of a <i>pure protection contract</i> if the insurance contract had been effected: 100% of <i>claim</i>	Unlimited
	(5) In all other cases: 90% of <i>claim</i>	Unlimited
<i>Protected debt management business</i>	100% of <i>claim</i>	£50,000

10.2.4 **G** COMP 12 sets out the *rules* the FSCS will follow when calculating the amount of compensation payable.

10.2.5 **G** ■ COMP 12.4.4 R includes further limits relating to *ICD claims* against certain *incoming EEA firms*. These reflect the *Investor Compensation Directive* under which compensation may be payable by the *incoming EEA firm's Home State* compensation scheme.

Claims in cases where there is a successor

10.2.5A **R** No claimant shall be eligible to make a claim under the *compensation scheme* in respect of both the *relevant person* and a *successor* in relation to the same loss.

10.2.6 **R** [deleted]

10.2.7 **R** [deleted]

Claims against more than one member in respect of a single protected contract of insurance to be treated as a single claim

10.2.8 **R**

Claims arising under COMP 3.2.4 R

10.2.9 **R** If a *firm* has a claim under ■ COMP 3.2.4 R, the FSCS must treat the share of the *shortfall* of each *customer* as if it were a *protected claim* for the purposes of calculating the limits of compensation payable, within ■ COMP 10.2, in relation to that *customer*.

10.2.10 **R** [deleted]

10.2.11 **R** [deleted]

10.2.12 **R** [deleted]

10.2.13 **G** [deleted]

Chapter 11

Payment of compensation

11.1 Application and Purpose

Application

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

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

Purpose

11.1.3 **G** The *FSCS* will usually pay compensation direct to the claimant, but in certain circumstances it may be appropriate for the *FSCS* to pay compensation to someone other than the claimant, or to make reduced or interim payments. The purpose of this chapter is to set out when those circumstances arise.



11.2 Payment

To whom must payment be made?

- 11.2.1 **R** [deleted]
- 11.2.1A **R** If the *FSCS* determines that compensation is payable (or any recovery or other amount is payable by the *FSCS* to the claimant), it must pay it to the claimant, or if the *FSCS* so decides, as directed by the claimant, unless **R** COMP 11.2.2 R or **R** COMP 11.2.2AR apply.
- 11.2.1B **R**
- 11.2.2 **R** Where a claimant has a *protected claim* arising out of the circumstances described in **R** COMP 12.4.5 R, the *FSCS* must pay any compensation (and any recovery or other amount payable by the *FSCS* to the claimant) to:
 - (1) the trustee of an *occupational pension scheme*; or
 - (2) a *personal pension scheme* or other *product provider*; or
 - (3) both (1) and (2);
 and not to the claimant, unless exceptional circumstances apply.
- 11.2.2A **R** Where a claimant has a *claim* that falls within **R** COMP 12A.3.1R, the *FSCS* may pay any compensation to:
 - (1) the *participants* and not to the claimant; or
 - (2) the *collective investment scheme* and (where different) not to the claimant; or
 - (3) any combination of the above.
- 11.2.2B **G** As a result of **R** COMP 12A.3.1R, the *FSCS* must try to ensure that the amount paid is no more than the amount of the loss suffered by the *participant*.
- 11.2.3 **R**

Form and method of paying compensation

11.2.3A

R

The *FSCS* may pay compensation in any form and by any method (or any combination of them) that it determines is appropriate including, without limitation:

- (1) by paying the compensation (on such terms as the *FSCS* considers appropriate) to an *authorised person* with *permission* to accept deposits which agrees to become liable to the claimant in a like sum;
- (2) by paying compensation directly into an existing deposit account of (or for the benefit of) the claimant, or as otherwise identified by (or on behalf of) the claimant, with an *authorised person* (but before doing so the *FSCS* must take such steps as it considers appropriate to verify the existence of such an account and to give notice to the claimant of its intention to exercise this power); and/or
- (3) [deleted]
- (4) by paying compensation to a *firm*, which makes a *claim* on behalf of its *clients*, if the *FSCS* is satisfied that:
 - (a) the business of a *relevant person in default* has been transferred to the *firm*;
 - (b) each *client* has a *claim* against the *relevant person in default* arising out of a *shortfall* in *client money* or *safe custody assets* held by the *relevant person in default*;
 - (c) the *clients* in respect of which compensation is to be paid satisfy the conditions set out in **COMP 3.2.2 R (1)**; and
 - (d) the *firm* has agreed, on such terms as the *FSCS* thinks fit, to pay, or credit the accounts of, without deduction, each *client*, that part of the compensation due to him.

Reduced or interim payments

11.2.4

R

If the *FSCS* is satisfied that in principle compensation is payable in connection with any *protected claim*, but considers that immediate payment in full would not be prudent because of uncertainty as to the amount of the claimant's overall *claim*, it may decide to pay an appropriate lesser sum in final settlement, or to make payment on account.

11.2.5

R

The *FSCS* may also decide to make a payment on account or to pay a lesser sum in final settlement if the claimant has any reasonable prospect for recovery in respect of the *claim* from any third party or by applying for compensation to any other *person*.

11.2.6

R

The *FSCS* may not pay a lesser sum in final settlement under **COMP 11.2.4 R** and **COMP 11.2.5 R** where the *claim* is an *ICD claim*.

11.2.6A

G

COMP 11.2.4 R applies to compensation payable in connection with any *protected claim*. It would, for example, apply to the situation where the *FSCS* considers it imprudent to make a payment in full because of uncertainty as to the value a court might attribute to a bonus provided for under a *long-term insurance contract*. In such circumstances the *FSCS* may make payment

of compensation on account to the policyholder in respect of benefits under the contract the value of which is not uncertain.

Paying interest on compensation

11.2.7 **R** The FSCS may pay interest on the compensation sum in such circumstances as it considers appropriate.

11.2.8 **R** Interest under **COMP 11.2.7 R** is not to be taken into account when applying the limits on the compensation sum payable in respect of a *claim* under **COMP 10**.

Paying full compensation in return for rights

11.2.9 **R** Where the FSCS considers that the conditions in **COMP 11.2.4R** are satisfied but, in relation to a class of *claim*, in order to provide fair compensation for the generality of such *claims* it would be appropriate to take the approach in (1) and (2) rather than pay an appropriate lesser sum in final settlement or make a payment on account, it may for that class of *claim*:

- (1) receive whether by assignment, transfer or operation of law the whole or any part of a claimant's rights against the *relevant person* (or, where applicable, a *successor*), or against any third party, or both on such terms as the FSCS thinks fit; and
- (2) disregard the value of the rights so received in determining the claimant's overall *claim*.

11.2.10 **G** Factors that the FSCS may take into account when considering taking the approach in **COMP 11.2.9R (1)** and **COMP 11.2.9R (2)** include whether the amount of claimants' overall *claims* are likely to be assessed within a reasonable time frame, the circumstances of the claimants, the circumstances of the *claims* and the nature of the products to which the *claims* relate.

Chapter 12

Calculating compensation

12.1 Application and Purpose

Application

- 12.1.1 **R** This chapter applies to the *FSCS*.
- 12.1.2 **G** This chapter is also relevant to claimants, since it sets out how a *claim* will be quantified. (For the process of paying compensation, including the limits on the amount of compensation that can be paid, see **COMP 8** - **COMP 11**).

Purpose

- 12.1.3 **G** The purpose of this chapter is to set out the different ways in which the *FSCS* is to calculate compensation.



12.2 Quantification: general

12.2.1A R The amount of compensation payable to the claimant in respect of any type of *protected claim* is the amount of his overall net *claim* against the *relevant person* (or, where applicable, a *successor*) at the *quantification date* and any reference in *COMP* to overall *claim* means "overall net *claim*".

12.2.2 R ■ COMP 12.2.1AR is, however, subject to the other provisions of *COMP*, in particular those *rules* that set limits on the amount of compensation payable for various types of *protected claim*. The limits are set out in *COMP* 10.

12.2.3 G Where a liability of a *relevant person* (or, where applicable, a *successor*) to an *eligible claimant* could fall within more than one type of claim protected by the *compensation scheme* whether under the *rules* of the *FCA* (see ■ COMP 5.2.1 R) or of the *PRA*, for example a *claim* in connection with *money* held by a *MIFID investment firm* that is also a *credit institution*, the *FSCS* should seek to ensure that the claimant does not receive any further compensation payment from the *FSCS* in cases where the claimant has already received compensation from the *FSCS* in respect of that *claim*.

Overall net claim

12.2.4 R A claimant's overall *claim* is the sum of the *protected claims* of the same category that he has against a *relevant person* (or, where applicable, a *successor*) *in default*, less the amount of any liability which the *relevant person* or *successor*, as appropriate, may set off against any of those *claims* (see ■ COMP 10.2.2 G).

12.2.5 G For the different categories of *protected claim*, see *COMP* 5 and ■ COMP 10.2.3 R.

12.2.6 G In calculating the claimant's overall *claim*, the *FSCS* may rely, to the extent that it is relevant, on any determination by:

- (1) a court of competent jurisdiction;
- (2) a trustee in bankruptcy;
- (3) a liquidator;
- (4) any other recognised insolvency practitioner;

and on the certification of any net sum due which is made in default proceedings of any exchange or clearing house.

Payments to the claimant

12.2.7A **R** The *FSCS* must take into account any payments to the claimant (including amounts recovered by the *FSCS* on behalf of the claimant) made by the *relevant person* (or, where applicable, a *successor*) or the *FSCS* or any other *person*, including any payment made by the *FSCS* under the *PRA's rules*, if that payment is connected with the *relevant person's* (or, where applicable, a *successor's*) liability to the claimant in calculating the claimant's overall *claim*.

Time for calculation of compensation due to the claimant

12.2.8 **R** The *FSCS* must calculate the amount of compensation due to the claimant as soon as reasonably possible after it is satisfied that the conditions in **COMP 3.2.1 R** have been met.

Settlement of claims

12.2.10 **R**

- (1) The *FSCS* may pay compensation without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of the *claim* notwithstanding any provision in this sourcebook or **FEES 6** to the contrary, if in the opinion of the *FSCS*:
 - (a) the costs of investigating the merits of the *claim* are reasonably likely to be disproportionate to the likely benefit of such investigation; and
 - (b) (as a result or otherwise) it is reasonably in the interests of *participant firms* to do so.
- (2) This *rule* does not apply with respect to *claims* that are excluded by article 3 of the *Investor Compensation Directive*.



12.3 Quantification date

Protected investment business

12.3.5 **R** For a *claim* made in connection with *protected investment business* which is not an *ICD claim*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of the determination of default.

12.3.6 **R** For a *claim* made in connection with *protected investment business* which is an *ICD claim*, the *quantification date* is the date the *relevant person*, or, where applicable, a *successor*, is determined to be *in default*.

Protected home finance mediation

12.3.7 **R** For a *claim* made in connection with *protected home finance mediation*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of determination of default.

Protected non-investment insurance mediation

12.3.8 **R** For a *claim* made in connection with *protected non-investment insurance mediation*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of determination of default.

Protected debt management business

12.3.9 **R** For a *claim* made in connection with *protected debt management business*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of determination of default.



12.4 The compensation calculation

Protected investment business: general

12.4.2 **R** The FSCS may pay compensation for any *claim* made in connection with *protected investment business* which is not:

- (1) a *claim* for property held; or
- (2) a *claim* arising from transactions which remain uncompleted at the *quantification date*;

only to the extent that the FSCS considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

12.4.3 **R** The FSCS must not pay compensation for any *claim* in connection with *protected investment business* to the extent that it relates to or depends on:

- (1) a failure of investment performance to match a guarantee given or representation made; or
- (2) a contractual obligation to pay or promise to pay which the FSCS considers to have been undertaken without full consideration passing to the *relevant person* or in anticipation of possible insolvency; or
- (3) the mere fluctuation in the value of an *investment*.

12.4.4 **R** If the claimant has an *ICD claim* against an *incoming EEA firm* which is a *MiFID investment firm* or, where applicable, a *successor* of such a *firm*, the FSCS must take account of the liability of the *Home State* compensation scheme in calculating the compensation payable by the FSCS.

Protected investment business: claims covered by the pensions review

12.4.5 **R** If the claimant has a *claim* in connection with *protected investment business* relating to the fact that the claimant has:

- (1) while eligible or reasonably likely to become eligible to be a member of an *occupational pension scheme*, instead become a member of a *personal pension scheme* or entered into a *retirement annuity*; or

- (2) ceased to be a member of, or to pay contributions to, an *occupational pension scheme*, and has instead become a member of a *personal pension scheme* or entered into a *retirement annuity*; or
- (3) transferred to a *personal pension scheme* accrued rights under an *occupational pension scheme* which is not a defined contribution (money purchase) scheme; or
- (4) ceased to be a member of an *occupational pension scheme* and has instead (by virtue of such a provision as is mentioned in section 591(2)(g) of the Income and Corporation Taxes Act 1988) entered into arrangements for securing relevant benefits by means of an annuity;

the *FSCS* must take the steps set out in COMP 12.4.6R.

12.4.6 **R** If COMP 12.4.5R applies, the *FSCS* must follow the Specification of Standards and Procedures issued by the *FSA* in October 1994, as supplemented and modified by subsequent guidance issued by the *FCA* (in particular, that of November 1996) (the 'Specification') in:

- (1) assessing whether a *relevant person* has complied with the relevant regulatory requirements;
- (2) assessing whether non-compliance has caused the claimant loss; and
- (3) calculating the amount of compensation due (where the *FSCS* may rely on calculations made by the *FCA* or any previous regulator of the *relevant person*);

unless the *FSCS* considers that departure from the Specification is essential in order to provide the claimant with fair compensation.

Protected investment business: FSAVC Review.....

12.4.7 **R** Where a *claim* made in connection with *protected investment business* relates to an Additional Voluntary Contribution policy advised on or arranged by a *relevant person*, the *FSCS* must follow the FSAVC Review Model Guidance issued by the *FSA* in May 2000 (the "Guidance") in:

- (1) assessing whether the *relevant person* has complied with the relevant regulatory requirements;
- (2) assessing whether non-compliance has caused the claimant loss; and
- (3) calculating the compensation due (where the *FSCS* may rely on calculations made by the *FCA* or any previous regulator of the *relevant person*);

unless the *FSCS* considers that departure from the Guidance is essential in order to provide the claimant with fair compensation.

Protected investment business: excessive benefits.....

12.4.8 **R** The *FSCS* may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with *protected investment business* that is not an *ICD claim*, if it is satisfied that:

- (1) there is evidence of contributory negligence by the claimant; or
 - (2) payment of the full amount would provide a greater benefit than the claimant might reasonably have expected or than the benefit available on similar *investments* with other *relevant persons*; and
- it would be inequitable for the *FSCS* not to take account of (1) or (2).

12.4.16 **R** [deleted]

Protected home finance mediation

12.4.17 **R** The *FSCS* may pay compensation for any *claim* made in connection with *protected home finance mediation* only to the extent that the *FSCS* considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

12.4.18 **R** The *FSCS* must not pay compensation for any *claim* in connection with *protected home finance mediation* to the extent that it relates or depends on:

- (1) a failure of investment performance to match a guarantee given or representation made; or
- (2) the mere fluctuation in the value of property

12.4.19 **R** The *FSCS* may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with *protected home finance mediation* if it is satisfied that there is evidence of contributory negligence by the claimant and it would be inequitable for *FSCS* not to take account of that fact.

Protected non-investment insurance mediation

12.4.20 **R** The *FSCS* may pay compensation for any *claim* made in connection with *protected non-investment insurance mediation* only to the extent that the *FSCS* considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

12.4.21 **R** The *FSCS* may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with *protected non-investment insurance mediation* if it is satisfied that:

- (1) there is evidence of contributory negligence by the claimant; or

- (2) payment of the full amount would provide a greater benefit than the claimant might reasonably have expected or than the benefit available on similar contracts with other relevant persons; and

it would be inequitable for *FSCS* not to take account of (1) or (2).

Protected debt management business

- 12.4.21A **R** The *FSCS* may pay compensation for any *claim* made in connection with *protected debt management business* only to the extent that the *FSCS* considers that the payment of compensation is essential to provide the claimant with fair compensation.

Consumer redress schemes

- 12.4.22 **R** For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *FSCS* must apply the scheme in:

- (1) assessing whether a *relevant person* has complied with the relevant regulatory requirements;
- (2) assessing whether non-compliance has caused the claimant loss; and
- (3) calculating the compensation due (where the *FSCS* may rely on calculations made by the *FCA* or other competent persons acting on the *FCA*'s behalf or authorised to make them under the scheme);

unless the *FSCS* considers that departure from the scheme is essential in order to provide the claimant with fair compensation.



12.5 [deleted]

12.5.1 **R** [deleted]

12.5.2 **R** [deleted]



12.6 Quantification: trustees, operators of pension schemes, persons winding up pension schemes, personal representatives, agents, and joint claims

- [Note: ■ COMP 12.6.1R now appears at ■ COMP 12A.1.1R]
- [Note: ■ COMP 12.6.2R now appears at ■ COMP 12A.1.2R]
- [Note: ■ COMP 12.6.2AR now appears at ■ COMP 12A.1.3R]
- [Note: ■ COMP 12.6.3R now appears at ■ COMP 12A.1.4R]
- [Note: ■ COMP 12.6.4R now appears at ■ COMP 12A.1.5R]
- [Note: ■ COMP 12.6.5R now appears at ■ COMP 12A.1.6R]
- [Note: ■ COMP 12.6.6R now appears at ■ COMP 12A.1.7R]
- [Note: ■ COMP 12.6.8R now appears at ■ COMP 12A.2.1R]
- [Note: ■ COMP 12.6.9R now appears at ■ COMP 12A.2.2R]
- [Note: ■ COMP 12.6.10R now appears at ■ COMP 12A.2.3R]
- [Note: ■ COMP 12.6.11R now appears at ■ COMP 12A.4.1R]
- [Note: ■ COMP 12.6.12R now appears at ■ COMP 12A.5.1R]

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

R

- (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

R

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

R

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]

Chapter 13

Funding

[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]

Chapter 14

Participation by EEA Firms

14.1 Application and Purpose

Application

- 14.1.1 **R** This chapter applies to the *FSCS*.
- 14.1.2 **R** This chapter also applies to an *incoming EEA firm* which is a *MiFID investment firm*, an *IMD insurance intermediary*, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*.

Purpose

- 14.1.3 **G** This chapter provides supplementary *rules and guidance*, and contains a broad summary, in *guidance*, of *FSCS* cover, for an *incoming EEA firm* which is an *IMD insurance intermediary*, a *MiFID investment firm*, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*. It reflects in part the implementation of the *Investor Compensation Directive* and *UCITS Directive*.
- 14.1.4 **G**
- (1) An *incoming EEA firm*, which is an *IMD insurance intermediary*, an *MCD mortgage credit intermediary* or a *MiFID investment firm* is not a *participant firm* in relation to its *passport activities* unless it "tops-up" into the *compensation scheme*. This reflects section 213(10) of the Act (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an *incoming EEA firm* also carries on non-*passport activities* for which the *compensation scheme* provides cover, it will be a *participant firm* in relation to those activities and will be covered by the *compensation scheme* for those activities in the usual way.
 - (2) Whether an *incoming EEA firm* which is an *EEA UCITS management company* is a *participant firm* in relation to its *passport activities* depends on the nature of its activities. In so far as it carries on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*, it is not a *participant firm* unless it "tops-up" into the *compensation scheme* and it may only obtain *top-up* cover if it carries on those activities from a *branch* in the *United Kingdom*. To the extent that such a *firm* provides *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom* or under the freedom to

provide *cross border services*, it is a *participant firm* in respect of those services.

- 14.1.4A** **R** For an *incoming EEA firm* which is an *AIFM*, the question of whether it is a *participant firm* for its *passported activities* depends on the type of activities it carries on under that passport. If it manages an *authorised AIF* from a *branch* in the *UK* or under the freedom to provide *cross-border services*, it is a *participant firm* for that activity. If it manages an *unauthorised AIF*, or provides the services in article 6(4) of *AIFMD* from a *branch* in the *UK* or on a *cross-border services* basis, it is not a *participant firm* for that activity; however, it may choose to obtain *top-up cover* for those activities if carried on from a *branch* in the *UK*.
- 14.1.5** **G** In relation to an *incoming EEA firm's passported activities*, its *Home State* compensation scheme must provide compensation cover in respect of business within the scope of the *Investor Compensation Directive*, article 6(3) of the *UCITS Directive* and article 6(4) of *AIFMD*, whether that business is carried on from a *UK branch* or on a *cross border services* basis. *Insurance mediation activity* is not within the scope of the *Investor Compensation Directive*.
- 14.1.6** **G** If there is no cover provided by the *incoming EEA firm's Home State* or the scope and/or level of cover is less than that provided by the *compensation scheme*, this chapter enables the *firm* to obtain cover or 'top-up' cover from the *compensation scheme* for its *passported activities* carried on from a *UK branch*, up to the *compensation scheme's* limits (set out in **COMP 10**). This reflects section 214(5) of the *Act (General)* and regulation 3 of the *Electing Participants Regulations (Persons who may elect to participate)*. If the *firm* 'tops up' and then becomes insolvent, the *Home State* compensation scheme will pay compensation up to the limit and scope of the *Home State* compensation scheme, with the *FSCS* paying compensation for the additional amount in accordance with the provisions in this sourcebook (**COMP 12.4.1 R** and **COMP 12.4.4 R**).

14.2 Obtaining top-up cover

- 14.2.1** **R** An *incoming EEA firm* may, by notice in writing to the *FSCS*, elect to receive *top-up cover* from the *compensation scheme* if it falls within one of the categories prescribed in regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate).
- 14.2.2** **R** An election under **COMP 14.2.1 R** takes effect on the date when the *FSCS* notifies the *incoming EEA firm* that its election has been accepted.
- 14.2.3** **G** A notice under **COMP 14.2.1 R** should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:
- (1) the *firm* must be:
 - (a) [deleted]
 - (b) an *IMD insurance intermediary*; or
 - (c) a *MiFID investment firm*; or
 - (d) a *UCITS management company* that carries on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*;
 - (e) an *AIFM* that carries on *AIFM management functions* for an *unauthorised AIF*; or
 - (f) an *AIFM* that provides the services in article 6(4) of *AIFMD*;
 - (g) an *MCD mortgage credit intermediary*
 - (2) the *firm* must have established a *branch* in the *United Kingdom* in the exercise of an *EEA right*; and
 - (3) the scope and/or level of cover provided by the *firm's Home State compensation scheme* must be less than that provided by the *compensation scheme*.
- 14.2.4** **R** When the *FSCS* accepts an application, it must allocate the *incoming EEA firm* to the *contribution group* (or groups) which seems to the *FSCS* to be most appropriate, taking into account the nature of the business for which the *incoming EEA firm* is seeking cover from the *compensation scheme*.

- 14.2.5 **R** The *FSCS* must put in place and publish procedures to enable an appeal by an *incoming EEA firm* against a rejection by the *FSCS* of an election to receive *top-up cover* or a decision to allocate an *incoming EEA firm*, once the *firm's* election has been accepted, to a particular *contribution group*. Such procedures must satisfy the minimum requirements of procedural fairness and comply with the European Convention on Human Rights.

14.3 Co-operation between the FSCS and Home State compensation schemes

14.3.1

R

Where an *incoming EEA firm* obtains *top-up cover* under ■ COMP 14.2, the FSCS must co-operate with that *firm's Home State* compensation scheme. In particular, the FSCS must seek to establish with that *firm's Home State* compensation scheme appropriate procedures for the payment of compensation to claimants, following the principles set out in Annex II of the *Investor Compensation Directive*.



14.4 Ending top-up cover

FSCS terminating top-up cover

- 14.4.1 **R** The FSCS must terminate an *incoming EEA firm's top-up cover* where it has ascertained that the conditions in **COMP 14.2.1 R** are no longer satisfied.
- 14.4.2 **R** If an *incoming EEA firm* which has *top-up cover* fails to observe any of the *rules* in this sourcebook which apply to *participant firms*, the FSCS must notify the FCA and the *incoming EEA firm's Home State regulator*.
- 14.4.3 **R** In cases where **COMP 14.4.2 R** applies, the FSCS must co-operate with the *incoming EEA firm's Home State regulator* so that appropriate measures can be taken to ensure that the *incoming EEA firm* meets its obligations under this sourcebook.
- 14.4.4 **R** [deleted]
- 14.4.4A **R** If the *incoming EEA firm* fails to meet its obligations for a period of twelve months following the notice, the FSCS may, subject to obtaining the consent of the *incoming EEA firm's Home State regulator*, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for *protected investment business* transacted before that termination.

14.4.4B **R**

Resignation of an EEA firm from the compensation scheme

- 14.4.5 **R** An *incoming EEA firm* which has *top-up cover* may terminate that *top-up cover* by giving six months' notice in writing to the FSCS.

Notice to customers and the FSCS

- 14.4.6 **R** When an *incoming EEA firm's top-up cover* comes to an end under **COMP 14.4.1 R**, **COMP 14.4.4 R** or **COMP 14.4.5 R**, it must:
 - (1) inform all the clients of its *UK branch* no later than six weeks after the date that its participation ends that they are no longer protected (or, if appropriate, of the more limited protection provided) by the

compensation scheme, and of the level of compensation which is then available to them; and

(2) within two months, notify the *FSCS* whether it has done so.

14.4.7 **R** If an *incoming EEA firm* fails to comply with **COMP 14.4.6R (1)**, the *FSCS* must inform the *firm's Home State regulator* of that fact.

14.4.8 **R** The *FSCS* must bring the ending of an *incoming EEA firm's top-up cover* to the attention of the *incoming EEA firm's clients* by means of a public notice.



14.5 EEA UCITS management companies

14.5.1

R

Where an *EEA UCITS management company* provides *collective portfolio management services* for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, the *FSCS* must allocate the *firm* to the *class* or *classes* which seems to the *FSCS* to be most appropriate, taking into account the nature of the *firm's* business activities.

Compensation

COMP TP 1 Transitional Provisions

(1)	(2)	(3)	(4)		(5)	(6)
	Material to which the transitional provision applies		Transitional Provision		Transitional provision: dates in force	Handbook Provisions: coming into force
1	COMP 5	R	<i>Protected claims</i>		Indefinitely	<i>Com- mencement</i>
			(1)	[deleted]		
			(2)	[deleted]		
			(3)	A claim in connection with protected investment business includes a claim in respect of a pending application.		
			(4)	Where the claim is in respect of a pending application, the FSCS must apply the rules of the relevant former scheme, as they applied to the default before commencement.		
			(5)	The rules of each investment business compensation scheme are amended so that references to the person managing the scheme are replaced by references to the FSCS.		
			(6)	[deleted]		
			(7)	[deleted]		
			(8)	Where the default occurs after commencement, a claim in connection with protected investment business includes a claim that could have been entertained under an investment business compensation scheme (provided that the person making the claim has not also made a pending		

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
			<i>application arising out of the same set of facts).</i>		
2	COMP 13.5 and COMP 13.6	R	Expired		
3	COMP 13.4.6 R and COMP 13.6.7 R	R	Expired		
4	COMP 13.5.8 R	R	Expired		
5	COMP 6.2.1 R	R	[deleted]		
6	COMP 6.2.1 R	G	[deleted]		
7	COMP 6.2.1 R	G	[deleted]		
8	Amendments introduced by the Compensation Sourcebook (Amendment No.2) Instrument 2003.	R	[deleted]		
9	COMP 13.6.8 R	R	Expired		
10	COMP 5.7.1 R, COMP 13.4.7 R and COMP 13.6.9 R	R	[deleted]		
11	FEES 6.3.1 R, FEES 6.3.22 R, FEES 6.4.8 R, FEES 6.4.6 R, FEES 6.5.1 R and FEES 6.5.6 R	R	[deleted]		
12	FEES 6.5.7 R (4), FEES 6.3.22 R, FEES 6.4.6 R, FEES 6.4.8 R, FEES 6.5.1 R, and FEES 6.5.6 R	R	[deleted]		
13	FEES 6.5.7 R (4), FEES 6.5.10 R, and	R	[deleted]		

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
	FEES 6.5.13 R (2)				
14	FEES 6.5.7 R (5), FEES 6.5.11 R, and FEES 6.5.13 R (2)		[deleted]		
15	COMP 5.4.4 R (4)(a) and COMP 5.4.4 R (4)(b)	R	[deleted]		
16	COMP 10.2.3 R	R	[deleted]		
17	Amendments introduced by the Compensation Sourcebook (Amendment No 8) Instrument 2008	R	Provisions and definitions arising out of (2) only apply to defaults on or occurring after 7 October 2008	From 7 October 2008 indefinitely	7 October 2008
18	COMP 10.2.3 R	R	[deleted]		
19	Amendments to COMP 10.2.3 R introduced by the Financial Services Compensation Scheme (Limits Amendment) Instrument 2009	R	Provisions and definitions arising out of (2) only apply to defaults on or occurring after 1 January 2010.	From 1 January 2010 indefinitely	1 January 2010
20	COMP 4.3.1 R	R	[deleted]		
21	COMP 17.3 and COMP 17.2.7 R	R	[deleted]		
22	COMP 17.3	R	[deleted]		
23	COMP 17.3.10 R and COMP 17.3.12 R	R	[deleted]		
24	COMP 10.2.3 R	R	[deleted]		

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
25	The amendment of all references in <i>COMP</i> (other than in the heading in respect of <i>COMP</i> 12.2.4 R) to "overall net <i>claim</i> " to "overall <i>claim</i> "	R	The changes referred to in (2) made by the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009 do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 31 December 2010.	From 31 December 2010 indefinitely	From 31 December 2010
26	<i>COMP</i> 12.3.1 R and <i>COMP</i> 15.1.12 R	R	[deleted]		
27	<i>COMP</i> 4.2.2 R(9)	R	The changes referred to in (2), made by the Compensation Sourcebook (Occupational Pension Scheme Trustees) Instrument 2011 do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 1 October 2011.	From 1 October 2011 indefinitely	From 1 October 2011
28	<i>COMP</i> 16.3	R	[deleted]		
29	<i>COMP</i> 17	R	[deleted]		
30	<i>COMP</i> 17.3 and <i>COMP</i> 17.2.7 R	R	[deleted]		
31	<i>COMP</i> 17.3	R	[deleted]		
32	<i>COMP</i> 17.3.10 R and <i>COMP</i> 17.3.12 R	R	[deleted]		
33	Amendments introduced by Annex A and Part 1 of Annex B of the Compensation Sourcebook (Amendment No 9) Instrument 2012.	R	The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 1 October 2012. Notwithstanding the above the changes to <i>COMP</i> 12.2.10 R apply irrespective of when the default occurred.	From 1 October 2012 indefinitely	From 1 October 2012
34	Amendments introduced by the Compensation	R	The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 13 December 2013.	From 13 December 2013 indefinitely	From 13 December 2013

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
	Sourcebook (Investments by Large Unincorporated Associations and Certain Large Partnerships) Instrument 2013				
35	All the <i>rules</i> and <i>guidance</i> in <i>COMP</i> applicable to <i>protected home finance mediation</i> .	R	The <i>compensation scheme</i> does not provide cover for <i>claims</i> in respect of any mortgage mediation activity relating to a <i>second charge regulated mortgage contract</i> if: (1) the <i>relevant person</i> was in <i>default</i> before 21 March 2016; or (2) the basis for the <i>claim</i> arose before 21 March 2016.	From 21 March 2016 indefinitely	Not applicable
35	Amendments introduced by the Compensation Sourcebook (Large unincorporated associations) Instrument 2013	R	[deleted]		
36	COMP 17.2.1 R and COMP 17.2.3 R	R	[deleted]		
37	COMP 10.2.3R(2), (3) and (4)	R	The rules referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> , or against a <i>successor</i> , that was <i>in default</i> before 29 April 2016. Instead, COMP 10.2.3R(5) will continue to apply to such <i>claims</i> .	From 29 April 2016 indefinitely	29 April 2016
38	COMP 4.2.2R(4), COMP 4.2.2R(9) and COMP 12.6.2AR	R	The changes referred to in (2) do not apply to a <i>claim</i> against a <i>relevant person</i> , or against a <i>successor</i> , that was <i>in default</i> before 29 April 2016.	From 29 April 2016 indefinitely	29 April 2016

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
39	Amendments introduced by the Compensation Sourcebook (Amendment No 10) Instrument 2016	R	Where a <i>claim</i> is against a <i>successor</i> that is not an <i>authorised person</i> , provisions and definitions arising out of (2) only apply if the default occurs on or after 29 April 2016 and the transfer, under which the <i>successor</i> assumed responsibility for liabilities arising from acts or omissions of the <i>relevant person</i> , occurred on or after 1 April 2013.	From 29 April 2016 indefinitely	29 April 2016
39A	Amendments introduced by the Financial Services Compensation Scheme (Extension of Scope to Recognised Investment Exchanges) Instrument 2017	R	The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>recognised investment exchange</i> , or against a <i>successor</i> , arising from acts or omissions before 3 January 2018.	From 3 January 2018 indefinitely	3 January 2018
40	Amendments introduced by the Financial Services Compensation Scheme (Funding and Scope) Instrument 2017	R	The changes referred to in column (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> , or against a <i>successor</i> , that was in <i>default</i> before 1 April 2018.	From 1 April 2018 indefinitely	1 April 2018

Compensation

Schedule 1 Record-keeping requirements

Sch 1.1 G

1. The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements. The Rules listed below apply only to FSCS (the scheme manager).
2. It is not a complete statement of those requirements and should not be relied upon as it were.

Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
FEES 6.3.14 R	FSCS funding	Full details of the movement of funds within sub-schemes.	Ongoing requirement.	N/A
[deleted]				
[deleted]				

Compensation

Schedule 2 Notification requirements

Sch 2.1 G

1. The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting. In all cases, other than those concerning Chapter 14 and the Transitional Provisions, the notification rules in *COMP* apply only to the *FSCS* (the scheme manager).
2. It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COMP 2.2.5G	Annual Report	Not specified in <i>COMP</i> - see Memorandum of Understanding (MoU) between the <i>FCA</i> and the <i>FSCS</i>	End of Financial Year	Not specified in <i>COMP</i> (see MoU)
COMP 2.2.7R	Default of <i>relevant person</i> or <i>successor</i>	Not specified - although the <i>FSCS</i> must take appropriate steps to ensure claimants are informed about how they can claim compensation	default of a <i>relevant person</i> or <i>successor</i>	Not specified - but as soon as practicable after determining default
FEES 6.2.1AR	Right to exemption for specific costs and compensation costs levy	Notice that firm does not conduct business that could give rise to a claim on the <i>FSCS</i> and has no reasonable likelihood of doing so	If it does not, or if it ceases to, conduct business with persons eligible to claim on the <i>FSCS</i> , unless it has already given such notice	None specified though exemption generally only takes effect from the date of receipt of notice by the <i>FSCS</i>
FEES 6.2.4 R	Loss of right to seek exemption from specific costs & com-	Statement that firm no longer qualifies for exemption because	Firm loses the right to claim the exemption.	As soon as reasonably practicable

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	pensation costs levy	it carries on business with persons eligible to claim on FSCS		
FEES 6.5.13 R	Levy base for participant firm	The contribution groups to which the participant firm belongs. The total amount of business (measured in accordance with the appropriate tariff bases, which it conducted as at 31 December of the previous year)	The end of the calendar year (the occasion of 31 December every year beginning with 31 December 2001)	By end February or the date requested by the FCA where the <i>firm</i> becomes a <i>participant firm</i> part way through the <i>financial year</i>
FEES 6.7	Participant firms compensation levy for the financial year	Amount of levy payable by the participant firm	The decision by the FSCS that it must impose a levy	30 days before the levy is payable
COMP 14.2.1R	Application by eligible inward passporting <i>EEA firm</i> to obtain <i>top-up cover</i> into <i>compensation scheme</i>	That firm is qualifying incoming <i>EEA firm</i> . The sub-scheme(s) the firm wishes to participate in. Confirmation that the level or scope of cover offered by its home state scheme(s) is less than that available in the UK.	The <i>firm's</i> decision that it wishes to obtain <i>top-up cover</i> into the UK scheme.	N/A
COMP 14.4.5R	Termination of top-up cover	Statement that incoming <i>EEA firm</i> is terminating top-up cover	Decision by firm to resign from FSCS	6 months notice
COMP 14.4.6R	Termination of inward passporting <i>EEA firm's</i> top-up cover into compensation scheme	The firm's resignation from the compensation scheme and the level of compensation available to clients of the firm's UK branch following its decision to resign from FSCS	Termination of firm's top-up cover	No later than six weeks after the end of the firm's participation in compensation scheme

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed

Compensation

Schedule 3 Fees and other required payments

Sch 3.1 G

The *rules* in FEES 6 give FSCS (the scheme manager) the power to raise levies on participant *firms* in order to meet its expenses. The *rules* in FEES 6 do not specify the amount of any levy but do specify how a participant *firm's* share of a levy is to be calculated and any limit on the amount leviable by the FSCS is a particular period.

Compensation

Schedule 4 Powers Exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Sch 4.3 G
[deleted]

Compensation

Schedule 5 Rights of action for damages

Sch 5.1 G

1. The table below sets out the rules in *COMP*, contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
2. If a "yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under Section 138D unless a "yes" appears in the column headed "Removed". A "yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under Section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. In accordance with the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256) a "private person" is:
 - i any individual, except when acting in the course of carrying on a *regulated activity*; and
 - ii any *person* who is not an individual, except when acting in the course of carrying on business of any kind;
 but does not include a government, local authority or an international organisation.
4. The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person*, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.
5. The vast majority of rules in *COMP* are rules to which the *FSCS* is subject. No right of action arises under section 138D for breach of these rules, as the *FSCS* is not an *authorised person*.

Sch 5.2 G

Chapter/Appendix		Section/ Annex	Paragraph	For private person?	Removed	For other person?
COMP 1		5	8	No	Yes - COMP 1.5.12R	No
COMP 14.4.6R				Yes	No	No

Compensation

Schedule 6 Rules that can be waived

Sch 6.1 G [deleted]

Sch 6.1A G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

