

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 *appropriate regulator* is also required, under section 213 of the *Act* (The compensation scheme), to make *rules* establishing a compensation scheme. These *rules* are set out in the remaining chapters of this sourcebook, and are directed to the *FSCS*, claimants and potential claimants, and *firms*.

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 17 cover who is eligible, the amount of compensation and how it might be paid, disclosure requirements for *firms* that *accept deposits* and systems and information requirements for *firms* that *accept deposits*.
- 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* also 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)	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?		
A2	This depends 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 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

- 1.4.1** **G** *Incoming EEA firms* which are conducting *regulated activities* in the *United Kingdom* under a *CRD, IMD or MiFID* passport are not required to participate in the *compensation scheme* in relation to those *passporting activities*. They may apply to obtain the cover of, or 'top-up' into, the *compensation scheme* if there is no cover provided by the *incoming EEA firm's Home State* compensation scheme or if the level or scope of the cover is less than that provided by the *compensation scheme*. This is covered by **COMP 14**.
- 1.4.2** **G** If an *incoming EEA firm* "tops-up", and then becomes insolvent, the *Home State* compensation scheme will pay compensation for *claims* 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.
- 1.4.3** **G** The *Deposit Guarantee Directive* and *Investor Compensation Directives* require the *FSCS* to make arrangements with the relevant *Home State* compensation scheme regarding the payment of compensation (**COMP 14.3.1R**).
- 1.4.4** **G** *Incoming EEA firms* which are passporting into the *UK* under the *UCITS Directive* or *AIFMD* passport, to manage a *UCITS scheme* or *authorised AIF*, are required to participate in the *compensation scheme*.
- 1.4.5** **G** *Incoming EEA firms* which are passporting into the *UK* under an *AIFMD* passport, to manage an *unauthorised AIF* or to provide the services in article 6(4) of *AIFMD*, are not required to participate in the *compensation scheme* for those activities, but may choose to 'top-up' into the *compensation scheme* if they carry on those activities from a *branch* in the *UK* and there is no cover provided by the *incoming EEA firm's Home State* compensation scheme, or if the level or scope of the cover is less than provided by the *compensation scheme*.

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.

