

## 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 COMP 11.2.2 R, COMP 11.2.2AR or COMP 11.2.2CR apply.

11.2.1B R

Certain protected investment business claims

11.2.2 R Where a claimant has a protected claim arising out of the circumstances described in 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.

Collective investment scheme claims

11.2.2A R Where a claimant has a claim that falls within 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 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.

**Protected funeral plan business claims**

11.2.2C **R** Where a claimant has a *protected funeral plan business claim* the *FSCS* may pay compensation (and any recovery or other amount payable by the *FSCS* to the claimant) to any other *person* on such terms and on such conditions as it thinks fit.

11.2.2D **G** ■ COMP 3.2.2R permits the *FSCS* to pay compensation to a *person* who makes a *claim* on behalf of another *person* where certain conditions are satisfied. This includes payment to the personal representatives who make a *claim* on behalf of the deceased (see ■ COMP 3.2.3G(1)). ■ COMP 11.2.2CR permits the *FSCS* to pay compensation to any other *person* who it considers should receive the compensation. For example, this may be to a funeral services provider directly where the funeral services provider has incurred expenses in providing funeral services under the *funeral plan contract* and is yet to be reimbursed.

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.