

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 distribution

12.3.8 **R** For a *claim* made in connection with *protected non-investment insurance distribution*, 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 *FSA* (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 distribution

12.4.20 **R** The *FSCS* may pay compensation for any *claim* made in connection with *protected non-investment insurance distribution* 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 distribution* 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]

