

## 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 *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]

