

Chapter 12

Calculating compensation



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 a *pre-IP completion day incoming EEA firm* which is a *MiFID investment firm* or, where applicable, a *successor* of such a *firm*, and the act or omission giving rise to the *ICD claim* arose before *exit day*, the FSCS must take account of the liability of the *EEA State compensation scheme* in calculating the compensation payable by the FSCS. For the purposes of applying this rule, "*ICD claim*" and "*MiFID investment firm*" have the meaning they had immediately before *exit day*.

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

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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:

		<div><div>(1) there is evidence of contributory negligence by the claimant; or</div><div>(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 <i>investments</i> with other <i>relevant persons</i>; and</div><div>it would be inequitable for the <i>FSCS</i> not to take account of (1) or (2).</div></div>
12.4.16	R	[deleted]
		<div>Protected home finance mediation</div>
12.4.17	R	The <i>FSCS</i> may pay compensation for any <i>claim</i> made in connection with <i>protected home finance mediation</i> only to the extent that the <i>FSCS</i> considers that the payment of compensation is essential in order to provide the claimant with fair compensation.
12.4.18	R	<div>The <i>FSCS</i> must not pay compensation for any <i>claim</i> in connection with <i>protected home finance mediation</i> to the extent that it relates or depends on:</div> <div><div>(1) a failure of investment performance to match a guarantee given or representation made; or</div><div>(2) the mere fluctuation in the value of property</div></div>
12.4.19	R	The <i>FSCS</i> may decide to reduce the compensation that would otherwise be payable for a <i>claim</i> made in connection with <i>protected home finance mediation</i> if it is satisfied that there is evidence of contributory negligence by the claimant and it would be inequitable for <i>FSCS</i> not to take account of that fact.
		<div>Protected non-investment insurance distribution</div>
12.4.20	R	The <i>FSCS</i> may pay compensation for any <i>claim</i> made in connection with <i>protected non-investment insurance distribution</i> only to the extent that the <i>FSCS</i> considers that the payment of compensation is essential in order to provide the claimant with fair compensation.
12.4.21	R	<div>The <i>FSCS</i> may decide to reduce the compensation that would otherwise be payable for a <i>claim</i> made in connection with <i>protected non-investment insurance distribution</i> if it is satisfied that:</div> <div><div>(1) there is evidence of contributory negligence by the claimant; or</div><div>(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</div><div>it would be inequitable for <i>FSCS</i> not to take account of (1) or (2).</div></div>

12.4.21A	R	Protected debt management business The <i>FSCS</i> may pay compensation for any <i>claim</i> made in connection with <i>protected debt management business</i> only to the extent that the <i>FSCS</i> considers that the payment of compensation is essential to provide the claimant with fair compensation.
12.4.21B	R	Protected funeral plan business The <i>FSCS</i> may pay compensation for any <i>claim</i> made in connection with <i>protected funeral plan business</i> only to the extent that the <i>FSCS</i> considers that the payment of compensation is essential to provide the claimant with fair compensation.
12.4.22	R	Consumer redress schemes For a <i>claim</i> which falls to be dealt with (or has properly been dealt with) under a <i>consumer redress scheme</i> , the <i>FSCS</i> must apply the scheme in: <div data-bbox="443 857 1382 1209"><ul style="list-style-type: none">(1) assessing whether a <i>relevant person</i> 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 <i>FSCS</i> may rely on calculations made by the <i>FCA</i> or other competent persons acting on the <i>FCA</i>'s behalf or authorised to make them under the scheme);<p>unless the <i>FSCS</i> considers that departure from the scheme is essential in order to provide the claimant with fair compensation.</p></div>