

## 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

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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:

		<p>(1) there is evidence of contributory negligence by the claimant; or</p> <p>(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</p> <p>it would be inequitable for the <i>FSCS</i> not to take account of (1) or (2).</p>
12.4.16	R	[deleted]
		<b>Protected home finance mediation</b> .....
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	<p>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:</p> <p>(1) a failure of investment performance to match a guarantee given or representation made; or</p> <p>(2) the mere fluctuation in the value of property</p>
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.
		<b>Protected non-investment insurance distribution</b> .....
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	<p>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:</p> <p>(1) there is evidence of contributory negligence by the claimant; or</p> <p>(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</p> <p>it would be inequitable for <i>FSCS</i> not to take account of (1) or (2).</p>

12.4.21A	<b>R</b>	<b>Protected debt management business</b> ..... 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	<b>R</b>	<b>Protected funeral plan business</b> ..... 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	<b>R</b>	<b>Consumer redress schemes</b> ..... 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"><li>(1) assessing whether a <i>relevant person</i> has complied with the relevant regulatory requirements;</li><li>(2) assessing whether non-compliance has caused the claimant loss; and</li><li>(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);</li></ul><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>