

Chapter 3

The qualifying conditions



3.1 Application and Purpose

Application

3.1.1 **R** This chapter applies to the *FSCS*.

3.1.2 **G** It is also relevant to claimants.

Purpose

3.1.3 **G** The purpose of this chapter is to set out in general terms the conditions that must be satisfied before the *FSCS* can make an offer of compensation or secure continuity of *funeral plan contracts*.

3.1.4 **G** The qualifying conditions for paying compensation are set out in greater detail in **COMP 4** - **COMP 7**.



3.2 The qualifying conditions for paying compensation

3.2.1 **R** The FSCS may pay compensation to an *eligible claimant*, subject to COMP 11 (Payment of compensation), if it is satisfied that:

- (1) an *eligible claimant* has made an application for compensation (or the FSCS is treating the *person* as having done so);
- (2) the claim is in respect of a *protected claim* against a *relevant person* (or, where applicable, a *successor*) who is *in default*; and
- (3) where the FSCS so requires, the claimant has assigned the whole or any part of his rights against any one or more of the *relevant person*, any third party or, where applicable, a *successor*, to the FSCS, on such terms as the FSCS thinks fit.
- (4) [deleted]

Treating a person as having claimed

3.2.1A **R** The FSCS may treat *persons* who are or may be entitled to claim compensation as if they had done so.

Claims on behalf of another person

3.2.2 **R** The FSCS may also pay compensation (and any recovery or other amount payable by the FSCS to the claimant) to a *person* who makes a *claim* on behalf of another *person* if the FSCS is satisfied that the *person* on whose behalf the *claim* is made:

- (1) is or would have been an *eligible claimant*; and
- (2) would have been paid compensation by the FSCS had he been able to make the *claim* himself, or to pursue his application for compensation further.

3.2.3 **G** Examples of the circumstances covered by **COMP 3.2.2 R** are:

- (1) when personal representatives make a *claim* on behalf of the deceased;
- (2) when trustees make a *claim* on behalf of beneficiaries (for further provisions relating to *claims* by trustees, see **COMP 12A.1.1R** to **12A.1.7R**);

- (3) when the donee of an enduring power of attorney or a lasting power of attorney makes a *claim* on behalf of the donor of the power;
- (4) when the Court of Protection makes a *claim* on behalf of a *person* incapable by reason of mental disorder of managing and administering his property and affairs;
- (5) when an *eligible claimant* makes a *claim* for compensation but dies before his *claim* is determined.
- (6) in relation to a *funeral plan* claim which was bought by one *individual* to provide a funeral on the death of another *individual*, when the first *individual* makes a *claim*.

3.2.4

R

The *FSCS* may also pay compensation to a *firm*, who makes a claim in connection with *protected non-investment insurance distribution* on behalf of its customers, if the *FSCS* is satisfied that:

- (1) each *customer* has borne a *shortfall* in *client money* held by the *firm* caused by a *secondary pooling event* arising out of the *failure* of a broker or *settlement agent* which is a *relevant person* in default;
- (2) the *customers* in respect of which compensation is to be paid satisfy the conditions set out in ■ COMP 3.2.2 R (1);
- (3) the *customers* do not have a *claim* against the *relevant person* directly, nor a claim against the *firm*, in respect of the same loss;
- (4) the *customers* would have been paid compensation by *FSCS* if the *customers* had a *claim* for their share of the *shortfall*, and if the *firm* were the *relevant person*; and
- (5) the *firm* has agreed, on such terms as the *FSCS* thinks fit, to pay, or credit the accounts of, without deduction, each relevant *customer* in (1), that part of the compensation equal to the *customer's* financial loss, subject to the limits in ■ COMP 10.2.
- (6) in relation to a *funeral plan* claim which was bought by one *individual* to provide a funeral on the death of another *individual*, when the first *individual* makes a *claim*.

Special cases

3.2.5

G

See ■ COMP 12A (Special cases) for how the *FSCS* may pay compensation in certain cases.



3.3 Continuity of funeral plan contracts

Ability to secure continuity of funeral plan contracts

3.3.1

R

The FSCS may make arrangements to secure continuity of a *funeral plan contract* for an *eligible claimant* who has a *funeral plan contract* if:

- (1) the contract is with a *relevant person* (or, where applicable, a *successor*) that is *in default*;
- (2) it is reasonably practicable to do so;
- (3) in the opinion of the FSCS at the time it proposes to make the arrangements, it would be beneficial to the generality of *eligible claimants* covered by the proposed arrangements; and
- (4) in situations where the cost of securing continuity of *funeral plan contracts* might exceed the cost of paying compensation, any additional cost is likely to be justified by the benefits.

3.3.2

R

When assessing the cost of paying compensation, the FSCS may have regard to the likely total cost of paying compensation arising out of the *default*, net of recoveries, not just the compensation amounts likely to be payable to particular *eligible claimants* covered by the proposed arrangements for continuity.

Quality of funeral under new arrangements

3.3.3

R

In securing continuity of a *funeral plan contract*:

- (1) the FSCS must seek to secure the provision of a funeral for the *eligible claimant* under the new or continuing *funeral plan contract* on terms corresponding in all material respects (so far as it appears to the FSCS to be reasonable in the circumstances) to those which have applied under the *funeral plan contract*;
- (2) if the FSCS secures continuity of a *funeral plan contract* other than as in (1), then the FSCS must:
 - (a) give the *eligible claimant* the option of receiving compensation instead; and
 - (b) (if the claimant does not elect to receive compensation) ensure that any future premiums that the claimant is committed to paying under the contract will be reduced by an amount (if any) that the FSCS considers reasonable to reflect the change in terms.

Measures to be taken

- 3.3.4 **R** In order to secure continuity of *funeral plan contracts*, the *FSCS* may take such measures as it considers appropriate to:
 - (1) secure or facilitate the transfer of the business of the *relevant person* or *successor* that is *in default* and which consists of carrying out *funeral plan contracts* or any part of that business to another *firm*; and/or
 - (2) secure the issue of *funeral plan contracts* by another *firm* to *eligible claimants* in substitution for their existing contracts.

- 3.3.5 **R** In making arrangements to secure continuity of *funeral plan contracts*, the *FSCS* must use its reasonable endeavours to seek the most cost-effective arrangements available.

- 3.3.6 **G** For *trust arrangements* and *contracts of insurance* relating to *funeral plan contracts*, **COMP 7.7** gives the *FSCS* powers to vary existing rights or obligations, and create new rights in favour of, or obligations to, the *FSCS*. These powers may be exercised to assist in securing continuity of *funeral plan contracts*.

Provision of funerals while seeking continuity

- 3.3.7 **R**
 - (1) While the *FSCS* is seeking to secure continuity of *funeral plan contracts*, it may secure the provision of a funeral, which is due to be provided under any protected *funeral plan contract* of the *relevant person* (or, where applicable, a *successor*), on terms corresponding in all material respects (so far as it appears to the *FSCS* to be reasonable in the circumstances) to that contract.
 - (2) The provision of a funeral is required regardless of whether the cost of securing its provision is more or less than the cost of paying compensation.
 - (3) To secure the provision of a funeral, the *FSCS* may:
 - (a) make a payment to or on behalf of the estate of an *eligible claimant*, or to any other person in connection with the provision of a funeral, on such terms (including any terms requiring repayment in whole or in part) and on such conditions as it thinks fit; or
 - (b) secure that a payment is made to or on behalf of the estate of the *eligible claimant*, or to any other person in connection with the provision of a funeral, by the liquidator, administrator or provisional liquidator of the *relevant person* (or, where applicable, a *successor*), or by the trustees of any *trust arrangement* or *insurer* of any *contract of insurance* relating to the *funeral plan contract*, by giving them an indemnity covering any such payment or any class or description of such payments.