

Chapter 5

Protected claims



5.1 Application and Purpose

Application

5.1.1 R This chapter applies to the *FSCS*.

5.1.2 G It is also relevant to claimants.

Purpose

5.1.3 G The purpose of this chapter is to set out the various categories of *claim* for which compensation may be payable.



5.2 What is a protected claim?

5.2.1

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A *protected claim* is:

- (1) [deleted]
- (2) [deleted]
- (3) a *claim* in connection with *protected investment business* (see ■ COMP 5.5); or
- (4) a *claim* in connection with *protected home finance mediation* (see ■ COMP 5.6); or
- (5) a *claim* in connection with *protected non-investment insurance distribution* (see ■ COMP 5.7); or
- (6) a *claim* in connection with *protected debt management business* (see ■ COMP 5.8); or
- (7) a *claim* in connection with *protected funeral plan business* (see ■ COMP 5.9).

5.2.2

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() [deleted]

Claims in respect of Law Society members

5.2.3

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Notwithstanding ■ COMP 5.2.1 R and paragraph (1)(d) of the definition of *participant firm*, where the *relevant person* is in default:

- (1) is an *authorised professional firm* that is subject to the rules of the Law Society (England and Wales) or the Law Society of Scotland; and
- (2) with respect to its *regulated activities*, does not participate in the relevant society's compensation scheme:

a *claim* with respect to that *person* is only a *protected claim* if, when the basis for the *claim* arose, that *person* did not participate in the relevant society's compensation scheme with respect to its *regulated activities*.

Claims in respect of successors

5.2.4

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Where a claim for compensation is in respect of a *claim* against a *successor*, the following rules apply to the *relevant person* for whose liabilities the

successor has assumed responsibility (or to such *relevant person's* activities, as the case may be):

- (1) ■ COMP 5.5.1R;
- (2) ■ COMP 5.5.2R;
- (3) ■ COMP 5.5.3R;
- (4) ■ COMP 5.6.1R;
- (5) ■ COMP 5.6.2R;
- (6) ■ COMP 5.7.2R;
- COMP 5.8.1R; and
- (8) ■ COMP 5.9.1R and ■ COMP 5.9.2R.



5.5 Protected investment business

5.5.1

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Protected investment business is:

- (1) *designated investment business* carried on by the *relevant person* with, or for the benefit of, the claimant (so long as that claimant has a *claim*), or as agent on the claimant's behalf;
- (2) the activities of the manager or *trustee* of an *AUT*, provided that the *claim* is made by a *holder*;
- (3) the activities of the *ACD* or *depository* of an *ICVC*, provided that the *claim* is made by a *holder*;
- (4) the activities of the *authorised contractual scheme manager* or *depository* of an *ACS*, provided that the *claim* is made by a *holder*;
- (5) the activities of the *manager* or *depository* of an *LTIF*, provided that the *claim* is made by a *holder*;
- (5A) the activities by a *recognised investment exchange* of operating a *multilateral trading facility* or operating an *organised trading facility*,
- (6) the *intermediation of structured deposits*,

provided that the territorial scope condition in COMP 5.5.2 R is satisfied and, for a *firm* acting as the manager or *depository* of a *fund*, one of the conditions in COMP 5.5.3 R is satisfied.

Territorial scope condition

5.5.2

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The territorial scope condition is that the *protected investment business* was carried on from:

- (1) an establishment of the *relevant person* in the *United Kingdom*; or
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) an establishment in an *EEA State* of the *relevant person*, if it is a *TP firm* (other than a *supervised run-off firm*) that is:

- (a) *managing a UK UCITS*; or
- (b) *managing an AIF that is an authorised fund*.

Managers and depositaries of funds

5.5.3 **R** The conditions referred to in **COMP 5.5.1 R** for a manager or *depositary* of a *fund* are:

- (1) for the activities of *managing an AIF, managing a UK UCITS or establishing, operating or winding up a collective investment scheme*, the *claim* is in respect of an investment in:
 - (a) *an authorised fund*; or
 - (b) any other *fund* which has its registered office or head office in the *UK* or is otherwise domiciled in the *UK* unless it is an *AIF* that is a *body corporate* and not a *collective investment scheme*;
- (2) where a *firm* is acting as *depositary* of a *fund*, the *claim* is in respect of their activities for:
 - (a) *an authorised fund*; or
 - (b) a *charity AIF* unless it is a *body corporate* that is not a *collective investment scheme*.

Advising without a personal recommendation

5.5.4 **R** The *FSCS* must treat a *claim* relating to advice in relation to a *designated investment* that falls outside article 53(1) of the *Regulated Activities Order* by virtue of article 53(1A) of that Order as being ‘in connection with *protected investment business*’ for the purposes of **COMP 5.2.1R(3)** where the *relevant person* giving the advice, at the time the act or omission giving rise to the *claim* took place:

- (1) had, or required, *permission* to carry on; or
- (2) (in the case of an *appointed representative*) was exempt from the *general prohibition* in respect of,

an activity that was *designated investment business*.

5.6 Protected home finance mediation

- 5.6.1** **R** Protected *home finance mediation* is:
- (1) *advising on a home finance transaction; or*
 - (2) *arranging (bringing about) a home finance transaction; or*
 - (3) *making arrangements with a view to a home finance transaction; or*
 - (4) *agreeing to carry on a regulated activity in (1) to (3); or*
 - (5) *the activities of a home finance provider which would be arranging but for article 28A of the Regulated Activities Order (Arranging contracts or plans to which the arranger is a party);*
- provided that the condition in **COMP 5.6.2 R** is satisfied.
- 5.6.2** **R** **COMP 5.6.1 R** applies only if the *protected home finance mediation* was carried on by a *relevant person* with a customer who was a resident in the *United Kingdom* at the time the *protected home finance mediation* was carried on.
- 5.6.3** **R** This section does not apply in respect of a *regulated mortgage contract* which is:
- (1) *a legacy CCA mortgage contract; or*
 - (2) *a CBTL credit agreement.*



5.7 Protected non-investment insurance distribution

- 5.7.1

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Protected non-investment insurance distribution is an insurance distribution activity where the investment concerned is a relevant general insurance contract or a pure protection contract but which is not a long-term care insurance contract or a reinsurance contract, provided that the conditions in COMP 5.7.2 R are satisfied.
- 5.7.2

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COMP 5.7.1 R only applies if the conditions in (1) and (2) are satisfied:

(1) the protected non-investment insurance distribution was carried on from an establishment of the relevant person in the United Kingdom; and

(2) the claimant making the claim (or where COMP 3.2.4 R applies, the customer on behalf of whom a firm makes a claim) dealt initially, with a view to entering into a relevant general insurance contract or a pure protection contract but not a long-term care insurance contract or a reinsurance contract, with an intermediary that was established in the United Kingdom.
- 5.7.3

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The FSCS will not cover a claim against an intermediary or a successor of an intermediary that meets the criteria of COMP 5.7.2R(2) where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of COMP 5.7.2R(2).
- 5.7.4

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The FSCS will not cover a claim in respect of an intermediary that is not a relevant person, for example a retailer selling extended warranties that are connected contracts. However, COMP 5.7.2 R has the effect that a claim in respect of a relevant person further up the chain carrying on protected non-investment insurance distribution in accordance with COMP 5.7.2R(1) may be covered by the FSCS if the claimant dealt initially with a UK intermediary that is not a relevant person.

Advising without a personal recommendation	
5.7.5	<div><div>R</div><div><p>The FSCS must treat a <i>claim</i> relating to advice on a <i>relevant general insurance contract</i> or a <i>pure protection contract</i> (which is not a <i>long-term insurance contract</i> or a <i>reinsurance contract</i>) that falls outside article 53(1) of the <i>Regulated Activities Order</i> by virtue of article 53(1A) of that Order as being ‘in connection with <i>protected non-investment insurance business</i>’ for the purposes of COMP 5.2.1R(5) where the <i>relevant person</i> giving the advice, at the time the act or omission giving rise to the <i>claim</i> took place:</p><div><div>(1) had, or required, <i>permission</i> to carry on; or</div><div>(2) (in the case of an <i>appointed representative</i>) was exempt from the <i>general prohibition</i> in respect of,</div></div><p>an activity that was <i>non-investment insurance business</i>.</p></div></div>



5.8 Protected debt management business

5.8.1

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Protected debt management business is debt management activity carried out by a CASS debt management firm from an establishment maintained by it in the United Kingdom, but only in so far as the claim relates to a shortfall in client money.



5.9 Protected funeral plan business

5.9.1 **R** *Protected funeral plan business is a regulated funeral plan activity carried on by a relevant person from an establishment maintained by the relevant person (or its appointed representative) in the United Kingdom.*

5.9.2 **R** ■ COMP 5.9.1R does not apply in relation to a *claim* against an intermediary (or where applicable, their *successor*) where the *eligible claimant* did not deal initially with an intermediary that was established in the *United Kingdom*.

Advising without a personal recommendation

5.9.3 **R** The FSCS must treat a *claim* relating to advice in relation to a *funeral plan contract* that falls outside article 53(1) of the *Regulated Activities Order* by virtue of article 53(1A) of that Order as being ‘in connection with *protected funeral plan business*’ for the purposes of ■ COMP 5.2.1R(7) where the *relevant person* giving the advice, at the time the act or omission giving rise to the *claim* took place:

- (1) had, or required, *permission* to carry on; or
- (2) (in the case of an *appointed representative*) was exempt from the *general prohibition* in respect of,

an activity that was *protected funeral plan business*.

