

Compensation

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 **R** 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).

5.2.2 **G** () [deleted]

Claims in respect of Law Society members

5.2.3 **R** 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 **G** 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; and
- (6) ■ COMP 5.7.2R.

5.5 Protected investment business

5.5.1 **R** 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 *ELTIF*, 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 **R** 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) a *branch* of a *UK firm* which is:
 - (a) a *MiFID investment firm* established in another *EEA State*; or
 - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than *advising on investments* or *safeguarding and administering investments*));
- (3) and the *claim* is an *ICD claim*; or

- (3) both (1) and (2); or
- (4) (a) a *UK branch* of an *EEA UCITS management company*; or
 - (b) an establishment of such an *EEA UCITS management company* in its *Home State* from which *cross border services* are being carried on;

and in either case the *management company* is providing *collective portfolio management services* for a *UCITS scheme* but only if the *claim* relates to that activity; or
- (5) an establishment of an *incoming EEA AIFM* in another *EEA State* if the claim relates to providing *AIFM management functions* on a *cross border services* basis for an *authorised AIF*.

Managers and depositaries of funds

5.5.3

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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 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

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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*:
- (1) *with a customer who was a resident in the United Kingdom; or*
 - (2) *from an establishment maintained by the relevant person (or its appointed representative) in the United Kingdom with a customer who was resident elsewhere in the EEA;*
- 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** **R** *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** **R** ■ 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:
 - (a) an establishment of the *relevant person* in the *United Kingdom*; or
 - (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IDD*; 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:
 - (a) established in the *United Kingdom*; or
 - (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IDD*.
- 5.7.3** **G** The *FSCS* will not cover a *claim* against an intermediary or a *successor* of an intermediary that meets the criteria of either ■ COMP 5.7.2 R (2)(a) or ■ COMP 5.7.2 R (2)(b) where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of either ■ COMP 5.7.2 R (2)(a) or ■ COMP 5.7.2 R (2)(b).
- 5.7.4** **G** 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 5.7.2 R (1)(a) 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

R

The FSCS must treat a *claim* relating to advice on a *relevant general insurance contract* or a *pure protection contract* (which is not a *long-term insurance contract* or a *reinsurance 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 non-investment insurance business*' for the purposes of **COMP 5.2.1R(5)** 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 *non-investment insurance business*.

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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.