

Chapter 6

Relevant persons and successors in default



6.1 Application and Purpose

Application

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

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

Purpose

6.1.3 **G** The purpose of this chapter is to specify the types of *person* against whom a claimant must have a *claim* in order to be eligible for compensation, and when those *persons* are '*in default*'. Generally, this occurs when they are insolvent or unable to meet their liabilities to claimants.

6.1.4 **G** To be eligible for compensation a claimant's claim must be against a *relevant person* (or, where applicable, a *successor*) *in default*: see **COMP 3.2.1 R (2)**.



6.2 Who is a relevant person?

6.2.1 **R** A *relevant person* is a *person* who was, at the time the act or omission giving rise to the *claim* against it took place:

- (1) a *participant firm*; or
- (2) an *appointed representative* of a *participant firm*.

6.2.2 **G** [deleted]

6.3 When is a relevant person in default?

- 6.3.1** **R** A *relevant person* is *in default* if:
- (1) (except in relation to an *ICD claim*) the *FSCS* has determined it to be *in default* under **COMP 6.3.2 R**, **COMP 6.3.3 R** or **COMP 6.3.4 R**; or
 - (2) (in relation to an *ICD claim*):
 - (a) the *FCA* has determined it to be *in default* under **COMP 6.3.2 R**; or
 - (b) a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *participant firm*, if that is earlier than (a); and

if a *relevant person* is *in default* in relation to an *ICD claim* it shall be deemed to be *in default* in relation to any other type of *protected claim*.
- 6.3.1A** **G** [**Note:** article 2(2) of the *Investor Compensation Directive*]
- 6.3.2** **R** The *FSCS* (or, where **COMP 6.3.1 R(2)(a)** applies, the *FCA*) may determine a *relevant person* to be *in default* when it is, in the opinion of the *FSCS* (or the *FCA*):
- (1) unable to satisfy *protected claims* against it; or
 - (2) likely to be unable to satisfy *protected claims* against it.
- 6.3.3** **R** The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and the *relevant person* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):
- (1) the passing of a resolution for a creditors' voluntary winding up;
 - (2) a determination by the *relevant person's Home State regulator* that the *relevant person* appears unable to meet *claims* against it and has no early prospect of being able to do so;

- (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager;
- (4) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the administration of a company or partnership, or the bankruptcy of an individual;
- (5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or of an individual voluntary arrangement;
- (6) a moratorium under Part A1 of the Insolvency Act 1986 being in force.

6.3.4 **R** The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and:

- (1) the *FSCS* is satisfied that the *relevant person* cannot be contacted at its last place of business and that reasonable steps have been taken to establish a forwarding or current address, but without success; and
- (2) there appears to the *FSCS* to be no evidence that the *relevant person* will be able to meet *claims* made against it.

6.3.4A **G** For the avoidance of doubt, **COMP 6.3.3R** and **COMP 6.3.4R** do not limit **COMP 6.3.2R**.

6.3.5 **R** [deleted]

6.3.6 **R** [deleted]

6.3.7 **R** [deleted]

Claims arising under COMP 3.2.4 R

6.3.8 **R** For the purposes of **COMP 6.3** a claim made by a *firm* under **COMP 3.2.4 R** is to be treated as if it were a *protected claim* against the *relevant person*.

Scheme manager's power to require information

6.3.9 **R** For the purposes of sections 219(1A)(b) and (d) of the *Act* (Scheme manager's power to require information) whether a *relevant person* is unable or likely to be unable to satisfy claims shall be determined by reference to whether it is *in default*.

6.3A When is a successor in default?

6.3A.1 R

A successor is *in default* if:

the FSCS has determined it to be *in default* under ■ COMP 6.3A.2R, ■ COMP 6.3A.3R, or ■ COMP 6.3A.4R, unless the claim is within (b); or

(in relation to an *ICD claim* against a successor that is a *MiFID investment firm*):

the FCA has determined it to be *in default* under ■ COMP 6.3A.2R; or

a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *successor*, if that is earlier than (i).

If a successor is *in default* in relation to an *ICD claim* within (1)(b) it is to be deemed to be *in default* in relation to any other type of *protected claim*.

6.3A.2 R

The FSCS (or, where ■ COMP 6.3A.1R(1)(b)(i) applies, the FCA) may determine a successor to be *in default* when it is, in the opinion of the FSCS (or the FCA):

- (1) unable to satisfy *protected claims* against it; or
- (2) likely to be unable to satisfy *protected claims* against it.

6.3A.3 R

The FSCS may determine a successor to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a successor that is a *MiFID investment firm*), and the successor is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

- (1) the passing of a resolution for a creditors' voluntary winding up; or
- (2) a determination by the *successor's Home State regulator* that the *successor* appears unable to meet *claims* against it and has no early prospect of being able to do so; or
- (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager; or
- (4) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the

administration of a company or partnership, or the bankruptcy of an individual; or

- (5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or an individual voluntary arrangement; or
- (6) a moratorium under Part A1 of the Insolvency Act 1986 being in force.

6.3A.4 **R** The *FSCS* may determine that a *successor* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a *successor* that is an *MiFID investment firm*), and:

- (1) the *FSCS* is satisfied that the *successor* cannot be contacted at its last place of business and that reasonable steps have been taken to establish a forwarding or current address, but without success; and
- (2) there appears to the *FSCS* to be no evidence that the *successor* will be able to meet *claims* made against it.

6.3A.4A **G** For the avoidance of doubt, **COMP 6.3A.3R** and **COMP 6.3A.4R** do not limit **COMP 6.3A.2R**.

6.3A.5 **R** For the purposes of sections 219(1A)(b) and (d) of the *Act* (Scheme manager's power to require information) whether a *successor* is unable or likely to be unable to satisfy claims is to be determined by reference to whether it is *in default*.

