

Chapter 7

Assignment, subrogation,
variation or creation of rights

7.6 Treatment of recoveries

- 7.6.1 **R** If the *FSCS* makes recoveries in relation to a *claim*, it may deduct from any recoveries paid over to the claimant under **COMP 7.6.2 R** part or all of its reasonable costs of recovery and distribution (if any).
- 7.6.2 **R** Unless compensation was paid under **COMP 9.2.3 R**, if a claimant assigns or transfers their rights to the *FSCS* or a claimant's rights and claims are otherwise subrogated to the *FSCS* and the *FSCS* subsequently makes recoveries through those rights or claims, those recoveries must be paid to the claimant:
- (1) to the extent that the amount recovered exceeds the amount of compensation (excluding interest paid under **COMP 11.2.7 R**) received by the claimant in relation to the *protected claim*; or
 - (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the *FSCS* at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see **COMP 7.6.4 R**); or
 - (3) where the *FSCS* has secured continuity of a *funeral plan contract*, to the extent that the amount recovered exceeds the cost of securing that continuity as estimated on a reasonable basis by the *FSCS*.
- 7.6.3 **R** For the purpose of **COMP 7.6.2 R** compensation received by *eligible claimants* in relation to *contracts of insurance* written at Lloyd's may include payments made from the *Central Fund*.
- 7.6.4 **R** The *FSCS* must endeavour to ensure that a claimant will not suffer disadvantage arising solely from his prompt acceptance of the *FSCS*'s offer of compensation or from the subrogation of his rights and claims to the *FSCS* compared with what might have been the position had he delayed his acceptance or had his claims not been subrogated.
- 7.6.5 **G** As an example of the circumstances which **COMP 7.6.4 R** is designed to address, take two claimants, A and B.
- (1) Both A and B have a *protected investment business claim* of £120,000 against a *relevant person* (or, where applicable, a *successor*) in

default. The FSCS offers both claimants £85,000 compensation (the maximum amount payable for such claims under ■ COMP 10.2.3 R). A accepts immediately, and assigns his rights against the *relevant person* (or, where applicable, a *successor*) to the FSCS, but B delays accepting the FSCS's offer of compensation.

- (2) In this example, the liquidator is able to recover assets from the *relevant person* (or, where applicable, a *successor*) *in default* and makes a payment of 50p in the pound to all the *relevant person's* or *successor's*, as appropriate, creditors. If the liquidator made the payment before any offer of compensation from the FSCS had been accepted, A and B would both receive £60,000 each from the liquidator, leaving both with a loss of £60,000 to be met by the FSCS. Both *claims* would be met in full.
- (3) However, if the payment were made by the liquidator after A had accepted the FSCS's offer of compensation and assigned his rights to the FSCS, but before B accepted the FSCS offer of compensation, A would be disadvantaged relative to B even though he has received £85,000 compensation from the FSCS. A would be disadvantaged relative to B because he promptly accepted the FSCS's offer and assigned his rights to the FSCS. Because A has assigned his rights to the FSCS, any payment from the liquidator will be made to the FSCS rather than A. In this case the FSCS has paid A more than £60,000, so the £60,000 from the liquidator that would have been payable to A will be payable in full to the FSCS and not to A.
- (4) B is able to exercise his rights against the liquidator because he delayed accepting the FSCS's offer and receives £60,000 from the liquidator. B can then make a claim for the remaining £60,000 to the FSCS which the FSCS can pay in full (see ■ COMP 10.2.2 G). B therefore suffers no loss whereas A is left with a loss of £35,000, being the difference between his claim of £120,000 and the compensation paid by the FSCS of £85,000.