

Chapter 6

Financial Services Compensation Scheme Funding

6.3 The FSCS's power to impose levies

Imposing management expenses and compensation costs levies

6.3.1

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The FSCS may at any time impose a *management expenses levy* or a *compensation costs levy*, provided that the FSCS has reasonable grounds for believing that the funds available to it to meet relevant expenses are, or will be, insufficient, taking into account expenditure already incurred, actual and expected recoveries and:

- (1) in the case of a *management expenses levy*, the level of the FSCS's expected expenditure in respect of those expenses in the *financial year* of the *compensation scheme* in relation to which the levy is imposed; and
- (2) [deleted]
- (3) in the case of a *compensation costs levy*:
 - (a) the FSCS's expenditure in respect of *compensation costs* expected in the 12 *months* of the *financial year* of the *compensation scheme* in relation to which the levy is imposed; or, if greater
 - (b) one third of the FSCS's expenditure in respect of *compensation costs* expected in the 36 *months* following the 1 April in the *financial year* of the *compensation scheme* in relation to which the levy is imposed.

6.3.2

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The calculation of levies will also take into account previous levies, where funds raised in anticipation of meeting liabilities prove either more or less than the amount actually required.

6.3.2A

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The FSCS will usually levy once in each *financial year* (the *annual levy*). However, if the *compensation costs* or *specific costs* incurred, or expected to be incurred, exceed the amounts held, or reasonably expected to be held, to meet those costs, the FSCS may, at any time during the *financial year*, do one or more of the following:

- (1) impose an *interim levy*; or
- (2) utilise other sources of funding such as commercial borrowing or other borrowing including from the National Loans Fund; or
- (3) utilise money collected from firms as set out in, and subject to, ■ FEES 6.3.17 R (Management of funds).

The *FSCS* will generally impose a levy rather than borrow or utilise funds as described in (3), unless the latter options appear to it to be preferable in the specific circumstances prevailing at the relevant time; for example, to address short-term liquidity issues, or in order to deal with a significant failure without having to wait for a levy to be imposed or collected.

6.3.3 **G** The *FSCS* has committed itself in Memorandum of Understanding with the *FCA* to publish its policy in respect of levying.

6.3.4 **G** The discretion over levying in **■ FEES 6** also gives the *FSCS*, if it thinks this appropriate, the ability to use third parties as its agents in raising and collecting the levies.

Imposing a MERS levy

6.3.4A **R** The *FSCS* may at any time impose a *MERS levy* provided that the *FSCS* has reasonable grounds for believing that the funds available to it to meet relevant expenses are or will be insufficient, taking into account relevant expenses incurred or expected to be incurred in the *financial year* of the *compensation scheme* in relation to which the levy is imposed.

Limits on compensation costs and specific costs levies on classes

6.3.5 **R** The maximum aggregate amount of *compensation costs* and *specific costs* for which the *FSCS* can levy each *class* (including levies through the *retail pool*) in any one *financial year* of the *compensation scheme* is limited to the amounts set out in the table in **■ FEES 6 Annex 2 R**.

6.3.6 **R** [deleted]

6.3.7 **R** [deleted]

6.3.8 **R** [deleted]

6.3.9 **R** [deleted]

Levy for compensation costs paid in error

6.3.10 **R** The *FSCS* may include in a *compensation costs levy* the costs of compensation paid by the *FSCS* in error, provided that the payment was not made in bad faith.

Management of funds

6.3.11 **R** The *FSCS* must hold any amount collected from a *specific costs levy* or *compensation costs levy* to the credit of the *classes* in accordance with the allocation established under **■ FEES 6.4.6AR** and **■ FEES 6.5.2-AR**.

- 6.3.12** **R** Any funds received by the *FSCS* by way of levy or otherwise for the purposes of the *compensation scheme* are to be managed as the *FSCS* considers appropriate, and in doing this the *FSCS* must act prudently.
- 6.3.13** **R** Interest earned by the *FSCS* in the management of funds held to the credit of a *class* must be credited to that *class*, and must be set off against the *management expenses* or *compensation costs* allocated to that *class*.
- 6.3.14** **R** The *FSCS* must keep accounts which include:
- (1) the funds held to the credit of each *class*; and
 - (2) the liabilities of that *class*.
- 6.3.15** **R** [deleted]
- 6.3.15A** **G** [deleted]
- 6.3.16** **G** [deleted]
- 6.3.17** **R**
- (1) The *FSCS* may use any money held to the credit of one *class*(the *creditor class*) to pay *compensation costs* or *specific costs* attributable or allocated by way of levy to another *class* (the *debtor class*) if the *FSCS* has reasonable grounds to believe that this would be more economical than borrowing funds from a third party or raising a levy.
 - (2) Where the *FSCS* acts in accordance with (1), it must ensure that:
 - (a) the *creditor class* is reimbursed by the *debtor class* as soon as possible;
 - (b) the *debtor class* pays interest at a rate equivalent to the Bank of England's repo rate from time to time in force; and
 - (c) the amount lent by the *creditor class* to the *debtor class* is taken into account by the *FSCS* when considering whether to impose a *compensation costs levy* on the *creditor class* under **■ FEES 6.3.1 R**.
- 6.3.18** **G** **■ FEES 6.3.17 R** deals with how *FSCS* may use money available to it and does not affect the *rules* on levy allocation in **■ FEES 6.4**, **■ 6.5** and **■ 6.5A**.
- 6.3.19** **R** Unless **■ FEES 6.3.20 R** applies, any recoveries made by the *FSCS* in relation to *protected claims* must be credited to the *classes* to which the related *compensation costs* was attributable.
- 6.3.20** **R**
- (1) Where the *FSCS* makes recoveries in relation to *protected claims* where a related *compensation costs levy* would have been allocated to a *class* (class A) had the *levy limit* for class A not been reached and has been allocated to another *class* or *classes* in the *retail pool*, the recoveries must be applied:

(a) first, to the *classes* to which the costs levied were allocated in accordance with ■ FEES 6.5A in the same proportion as those *classes* contributed, up to the total amount of that allocation plus interest at a rate equivalent to the Bank of England's Official Bank Rate from time to time in force; and

(b) thereafter, to class A.

(2) This *rule* applies even though the recovery is made in a subsequent financial year.

(3) [deleted]

6.3.20A **G** Recoveries under ■ FEES 6.3.20 R are net of the costs of recovery.

6.3.21 **R** If the *FSCS* has more funds (whether from levies, recoveries or otherwise) to the credit of a *class* than the *FSCS* believes will be required to meet levies on that *class* for the next 12 months, it may refund the surplus to members or former members of the *class* on any reasonable basis.

Adjustments to calculation of levy shares

6.3.22 **R** The *FSCS* may adjust the calculation of a *participant firm's* share of any levy to take proper account of:

(1) any excess, not already taken into account, between previous levies of that type imposed in relation to previous periods and the relevant costs actually incurred in that period; or

(2) *participant firms* that are exempt from the levy under ■ FEES 6.2; or

(3) amounts that the *FSCS* has not been able to recover from *participant firms* as a result of ■ FEES 6.3.5 R ; or

(4) amounts that the *FSCS* has not been able to recover from *participant firms* after having taken reasonable steps; or

(5) ■ FEES 2.3 (Relieving Provisions), ■ FEES 6.5.9 R (New participant firms) or ■ FEES 6.3.23 R (Remission of levy or additional administrative fee); or

(6) anything else that the *FSCS* believes on reasonable grounds should be taken into account.

6.3.22A **R** The *FSCS* may not adjust the calculation of a *participant firm's* share of any levy under ■ FEES 6.3.22 R on the grounds that it would be inequitable for that *firm* to pay that share or part of it or on the grounds that it would be inequitable for the *FSCS* to retain that share or part of it.

6.3.22B **G** The reason for ■ FEES 6.3.22A R is that any such claim should be dealt with under ■ FEES 2.3 (Relieving Provisions).

Firms acquiring businesses from other firms

- 6.3.22C **R** (1) This *rule* applies to the calculation of the levies of a *firm* (A) if:
- (a) either:
 - (i) A acquires all or a part of the business of another *firm* (B), whether by merger, acquisition of goodwill or otherwise; or
 - (ii) A became authorised as a result of B's simple change of legal status (as defined in **■ FEES 3 Annex 1R Part 6**);
 - (b) B is no longer liable to pay a levy; and
 - (c) that acquisition or change takes place after the date to which, or as of which, A's most recent statement of business under **■ FEES 6.5.13 R** is drawn up so far as concerns the *classes* covered by B's business.
- (2) A must pay an additional amount equal to the levy that would have been payable by B in relation to the relevant business and relevant *classes* if the acquisition or change in status had not taken place and B had remained liable to pay levies. The amount is based on the most recent information supplied by B under **■ FEES 6.5.13 R**. A is included in the *classes* applicable to the relevant business.
- (3) This *rule* only applies with respect to those *financial years* of the *compensation scheme* for which A's levies are calculated on the basis of a statement of business under **■ FEES 6.5.13 R** drawn up to a date, or as of a date, before the acquisition or change in legal status took place.

Remission of levy or additional administrative fee

- 6.3.23 **R** If a *participant firm's* share of a levy or an additional administrative fee under **■ FEES 6.7.4 R** would be so small that, in the opinion of the *FSCS*, the costs of collection would be disproportionate to the amount payable, the *FSCS* may treat the *participant firm* as if its share of the levy or additional administrative fee amounted to zero.

Levies on the Society of Lloyd's

- 6.3.24 **R** The *FSCS* may impose a levy on the *Society* to be calculated as the aggregate of the levies that would be imposed on each *member* if this chapter applied to *members*, as follows:
- (1) a share of the *base costs levy* for each *financial year*; and
 - (2) a share of a *specific costs levy* or a *compensation costs levy* allocated to the insurers – life contribution *class* or insurers – general contribution *class* in the *retail pool* in accordance with this chapter.

- 6.3.25 **D** The following *core provisions* of the *Act* apply to the carrying on of *insurance market activities* by *members*:
- (1) Part 9A (Rules and guidance) for the purpose of applying the *rules* in **■ FEES 6** and relevant interpretative provisions;

(2) Part XV (Financial Services Compensation Scheme).

[Note: section 316 of the Act]

6.3.26 **G** The *insurance market direction* in ■ FEES 6.3.25D is intended to advance the FCA's consumer protection objective in section 1C of the Act by assisting the FSCS to impose a levy on the *Society*, calculated as the aggregate of the levies that would be imposed on *members*, in accordance with ■ FEES 6.3.24R. As a result of section 317(2) of the Act, references to an *authorised person* in Part XV of the Act include a *member*.

Effect of annulment of cancellation or variation of permission under Schedule 6A on levies

6.3.27 **G** Schedule 6A to the Act sets out a procedure to enable the FCA to cancel or vary the *Part 4A permission* of a *person* who it appears to the FCA is not carrying on a *regulated activity*. Paragraph 5 of that schedule sets out a procedure for annulment of cancellation or variation of *Part 4A permission* in specified circumstances. Where the FCA grants an application for annulment, paragraph 6 of Schedule 6A sets out its effect. In particular, the cancellation or variation of *Part 4A permission* is treated as if it had never taken place. As a result of the effect of annulment under Schedule 6A, any levy provided for under this chapter applicable to the *person*, in relation to the period during which the *person's Part 4A permission* was cancelled or varied, applies to the *person*, unless the exemption in ■ FEES 6.2.1AR applies.