

**COMPENSATION SOURCEBOOK INSTRUMENT 2001**

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the powers listed in Schedule 4 to the Annex to this instrument (Powers exercised).
- B. The instrument comes into force as follows:
- (1) COMP 14 (EEA firms) and A to E on this page come into force immediately;
  - (2) the remainder of this instrument comes into force at the beginning of the day on which section 19 of the Act (the general prohibition) of the Financial Services and Markets Act 2000 (“the Act”) comes into force.
- C. The provisions of the Act relevant to making rules and listed in Schedule 4 to the Annex to this instrument (Powers exercised) are specified for the purpose of section 153(2) of the Act (Rule-making instruments).
- D. This instrument may be cited as the Compensation Sourcebook Instrument 2001.
- E. This Annex to this instrument (including its Schedules) may be cited as the Compensation sourcebook (or COMP).

By order of the Board

15 November 2001

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# Compensation

## Transitional Provisions

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(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional provision: dates in force	(6) Handbook Provisions coming into force
1	COMP 5	R	<p><b><u>Protected claims</u></b></p> <p>(1) <i>A claim for a protected deposit or under a protected contract of insurance includes a claim in respect of an article 9 default, subject to (2)</i></p> <p>(2) <i>A claim must be treated as a claim in relation to a protected contract of insurance under COMP 5.4.5R if the conditions in article 10((1)(a)–(d) of the compensation transitionals order are satisfied.</i></p> <p>(3) <i>A claim in connection with protected investment business includes a claim in respect of a pending application.</i></p> <p>(4) <i>Where the claim is in respect of an article 9 default or a pending application, the FSCS must apply the rules of the relevant former scheme, as they applied to the default before commencement, unless (2) applies.</i></p>	Indefinitely	<i>Commencement</i>

- (5) The rules of each *investment business compensation scheme* are amended so that references to the person managing the scheme are replaced by references to the *FSCS*.
- (6) The rules of the Friendly Societies Protection Scheme are amended so that:
- (a) references to the person managing the scheme are replaced by references to the *FSCS*; and
  - (b) References to functions conferred upon the Friendly Societies Protection Scheme Board are replaced by references to functions conferred upon the *FSCS*.
- (7) Where the default occurs after *commencement*, a *claim* for a *protected deposit* includes a *claim* that arose before *commencement* in respect of:
- (a) a deposit within the meaning of the Banking Act 1987; and
  - (b) a *claim* in respect of a protected investment within the meaning of section 27 of the Building Societies Act 1986.
- (8) Where the default occurs after *commencement*, a *claim* in connection with *protected investment business* includes a *claim* that could have been entertained under an *investment business compensation scheme* (provided that the person making the claim has not also made a *pending application* arising out of the same set of facts).



2	COMP 13.5R and COMP 13.6R	R	<p><b>Funding</b></p> <p>(1) The FSCS must give a <i>participant firm</i> which is a <i>professional firm</i> the following discount on the <i>specific costs levy</i> or <i>compensation costs levy</i> that it would otherwise have to pay:</p> <p>(a) 75%, if the levy is made between 1 December 2001 and 31 March 2002;</p> <p>(b) 25%, if the levy is made between 1 April 2002 and 31 March 2003;</p> <p>(c) 10%, if the levy is made between 1 April 2003 and 31 March 2004.</p> <p>(2) The FSCS must reallocate the amount of any discount to the other members of the relevant <i>contribution group</i>, in accordance with the relevant tariff basis in COMP 13.6.7R.</p>	Commencement – 31 March 2004	Commencement
3	COMP 134.6R and COMP 13.6.77	R	<p><b>Calculation of levies</b></p> <p>(1) Until 31 March 2002, the FSCS must calculate a <i>participant firm's</i> share of a <i>compensation costs levy</i> allocated to the insurance business <i>sub-scheme</i> in accordance with the provisions of the Policyholders Protection Act 1975 (including the provisions relating to net premium income).</p>	Commencement – 31 March 2002	Commencement

4	COMP 13.5.8R	R	<p>(2) In making the calculation under transitional provision 3R(1), the <i>FSCS</i> may assess a <i>participant firm</i> for its share of a <i>compensation costs levy</i> on any reasonable basis, if the <i>participant firm</i> has not provided the information required under the Policyholders Protection Act 1975, making such adjustments as seem appropriate in subsequent levies once the true figures are known.</p> <p>Grandfathered Firms</p> <p>COMP 13.5.8R (New participant firms) does not apply to a <i>firm</i> that becomes <i>authorised</i> at <i>commencement</i> under the Financial Services and Markets Act 2000 (Transitional Provisions) (authorised Persons etc.) Order 2001.</p>	Commence- ment – 31 March 2002	Commence- ment
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## **Forward to the Compensation Sourcebook**

**(This Forward to the Compensation Sourcebook does not form part of COMP.)**

### **Forward**

The Act requires the FSA to make rules establishing a scheme for compensating consumers when authorised firms are unable, or likely to be unable, to satisfy claims against them. The body established to operate and administer the compensation scheme is the Financial Services Compensation Scheme Limited (FSCS). By making rules that allow the FSCS to pay compensation to retail consumers and small businesses, focusing protection on those who need it most, the compensation scheme rules form an important part of the toolkit the FSA will use to meet its statutory objectives.

This module of the FSA Handbook contains the rules and guidance that allow the Financial Services Compensation Scheme Limited to pay claims for compensation or secure continuity of insurance when an authorised person is unable or likely to be unable to meet claims against it. The rules specify who is eligible to receive compensation and in what circumstances, how much compensation can be paid to a claimant; and how the scheme will be funded. The compensation rules, although of interest to consumers and authorised firms, do not in fact apply to either. The rules only apply to the FSCS.

The Sourcebook is divided into 14 Chapters covering all aspects of the scheme:

#### **Chapter 1: Introduction and Overview**

This chapter provides an introduction to the FSCS rules and a table of question and answers that may be of interest to consumers.

#### **Chapter 2: The FSCS**

This chapter gives the FSCS the duty to administer the compensation scheme. It also sets out the general conditions the FSCS must follow when administering the scheme such as having regard to the efficient and economic use of resources, the requirement to publish an Annual Report, and the duty to ensure consumers are informed about how they can make a claim. The rules in this chapter also require the FSCS to have in place procedures for dealing with complaints.

#### **Chapters 3 The qualifying conditions for paying compensation**

This chapter sets out the main qualifying conditions that must be satisfied before the FSCS can pay compensation to claimants or take steps to secure continuity of insurance. These are that a claimant is eligible to claim; the activity that gave rise to the loss is protected by the scheme; the firm against which the claim is being made is protected by the scheme; and that the claimant has assigned his rights to the scheme. Chapters 4-7 expand on the general conditions described in Chapter 3.

**Chapter 4 Eligible claimants**

This chapter specifies who is eligible to receive compensation or benefit from the continuity of insurance provided by the FSCS.

**Chapter 5 What is a protected claim?**

This chapter specifies the activities that are protected by the FSCS.

**Chapter 6 Relevant persons in default**

This chapter specifies the circumstances when a firm is in default, that is, when a firm is to be taken as being unable or likely to be unable to meet claims against it. The FSCS can only pay compensation, take steps to secure continuity of insurance, or provide assistance to an insurer in financial difficulties if the circumstances specified in Chapter 6 are met.

**Chapter 7 Assignment of rights**

This chapter enables the FSCS to make an offer of compensation conditional on the claimant assigning to it their rights to claim against the failed firm. If the FSCS recovers from the firm a greater sum than it has paid to the claimant, it must pay the balance to the claimant.

**Chapter 8 Rejection of application and withdrawal of offer**

This chapter allows the FSCS to reject an application for compensation or withdraw an offer of compensation in specified circumstances.

**Chapter 9 Time limits on payment and postponing payment**

This chapter requires the FSCS to pay a claim for compensation within a specified time unless specified conditions apply.

**Chapter 10 Limits on the amount of compensation payable**

This chapter specifies the maximum amount of compensation the FSCS can pay to a claimant, and the limits on the FSCS's duty to secure continuity of insurance for policyholders. Different limits apply depending on whether the claim is for a deposit, a claim on an insurance policy, or a claim in connection with an investment.

**Chapter 11 Payment of compensation**

This chapter specifies to whom the FSCS may pay compensation. In certain circumstances compensation may be paid to a person other than the claimant.

**Chapter 12 Calculating compensation**

This chapter specifies how the FSCS will calculate the amount of compensation it can pay to a claimant.

### **Chapter 13 Funding**

This chapter allows the FSCS to make levies on authorised firms to fund the operation of the scheme, to pay compensation or secure continuity of insurance. It specifies how FSCS can make levies, how costs are to be allocated, the maximum the FSCS can levy in any particular period of time, and how sums recovered from failed firms are to be treated.

### **Chapter 14 Participation by EEA firms**

This chapter sets out the way the FSCS deals with incoming EEA firms who may choose to top-up into the FSCS to supplement the compensation available from their home state scheme.

# Chapter 1

## Introduction and Overview




## 1.1 Application, Introduction, and Purpose

### Application


**1.1.1**  This chapter is relevant to:

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- (1) the *FSCS*;
- (2) *eligible claimants*; and
- (3) *firms*.

**1.1.2**  This sourcebook is principally relevant to the *FSCS*. It sets out the circumstances in which compensation may be paid, to whom compensation may be paid, and on whom the *FSCS* can impose levies to meet the costs of paying compensation (see in particular *COMP 3, 4, and 13*). It also describes how the *FSCS* is to calculate compensation in particular cases (see *COMP 12*).

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**1.1.3**  Claimants and their advisers will be particularly interested in the sections of this sourcebook which deal with eligibility for claiming compensation, the way that the *FSCS* calculates compensation, and how they can make a claim. For convenience, the relevant parts of this sourcebook are highlighted in a list of questions and answers in *COMP 1.3.3G*.

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**1.1.4**  *Firms* will be particularly interested in *COMP 13*, which deals with levies.

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### Introduction


**1.1.5**  Under section 212 of the *Act* (The scheme manager), the *FSA* must establish a body corporate to exercise the functions that are conferred on that body corporate by Part XV of the *Act*, dealing with compensation. This body is the Financial Services Compensation Scheme Limited, a company limited by guarantee (*FSCS*).

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**1.1.6**  The *FSA* is also required, under section 213 of the *Act* (The compensation scheme), to make *rules* establishing a compensation scheme. These *rules* are set out in the remaining chapters of this sourcebook, and are directed to the *FSCS*, claimants and potential claimants, and *firms*.

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### Purpose

**1.1.7**  The *FSCS* will only pay *claims* if a *firm* is unable or likely to be unable to meet *claims* against it because of its financial circumstances. If a *firm* is still trading and

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has sufficient financial resources to satisfy a *claim*, the *firm* will be expected to meet the *claim* itself. This can, for example, be an amount the *firm* agrees with the claimant, or the amount of an *Ombudsman* award from the *Financial Ombudsman Service*.

1.1.8



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COMP 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of COMP 2-14 cover who is eligible, the amount of compensation and how it might be paid, and the ways in which the activities of the FSCS are to be financed.

1.1.9



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This sourcebook is one of the means by which the FSA will meet its *regulatory objectives* of securing the appropriate degree of protection for *consumers* and maintaining confidence in the *financial system*.

1.1.10



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By setting up the FSCS and making *rules* that allow the FSCS to provide compensation at a level appropriate for the protection of retail *consumers* and *small businesses*, the FSA enables *consumers* to participate in the financial markets with the confidence that they will be protected, at least in part, should the *relevant person* with whom they are dealing be unable to satisfy *claims* against it.



## 1.2 The FSCS

### 1.2.1



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While this sourcebook deals with the main powers and duties of the *FSCS*, it does not provide the complete picture. Other aspects of the operation of the *FSCS* are dealt with through the powers of the Financial Services Compensation Scheme Limited under company law (such as the power to borrow, to take on premises, etc.).

### 1.2.2



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- (1) In addition, the *Act* itself confers certain powers upon the *FSCS*, such as a power under section 219 of the *Act* (Scheme Manager's powers to require information) to require *persons* to provide information. These powers are not, therefore, covered by this sourcebook.
- (2) Of specific relevance to the way in which the *FSCS* fulfils its responsibilities is the relationship between the *FSCS* and the *FSA*. This is covered in a Memorandum of Understanding which can be found on the *FSA* website [www.fsa.gov.uk](http://www.fsa.gov.uk).



## 1.3 Claimants

### 1.3.1



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The *FSCS* also provides information to claimants and potential claimants about the way the *FSCS* works and the procedures that need to be followed when making a *claim*. The *FSCS* can be contacted at 7th Floor, Lloyds Chambers, 1 Portsoken Street, London E1 8BN, or by telephone or fax (Tel: 020 7892 7300 or Fax: 020 7892 7301), or by e-mail (enquiries@fscs.org.uk).

### 1.3.2



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Information about the operation of the *FSCS* and how to claim is also available from the *FSCS* website (www.fscs.org.uk).

### 1.3.3



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Table Areas of particular interest to claimants (see COMP 1.1.3G). This Table belongs to COMP 1.3.3.

<b>Q1</b>	<b>What do I need to do in order to receive compensation?</b>	
<b>A1</b>	In order to receive compensation:	
	(1) you must be an <i>eligible claimant</i> ;	COMP 4.2–3
	(2) you must have a <i>protected claim</i> ;	COMP 5.2–5
	(3) you must be claiming against a <i>relevant person</i> ;	COMP 6.2.1R
	(4) the <i>relevant person</i> must be <i>in default</i> .	COMP 6.3
	In addition, if the <i>FSCS</i> requires you to do so, you must assign your legal rights in the claim to the <i>FSCS</i> .	COMP 7.2
	And you must bring your claim to the <i>FSCS</i> within a set time (normally within six years of the date on which your claim against the <i>relevant person</i> occurred).	COMP 8.2.3R–8.2.4R
	It is possible, in certain circumstances, for someone else to make a <i>claim</i> on your behalf.	COMP 3.2.2R
<b>Q2</b>	<b>How much compensation will I be offered?</b>	
<b>A2</b>	This depends on whether your <i>protected claim</i> is:	
	(1) a <i>claim</i> for a <i>protected deposit</i> , or	COMP 5.3
	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	COMP 5.4
	(3) a <i>claim</i> in connection with <i>protected investment business</i> .	COMP 5.5
	Different limits apply to different types of <i>claim</i> .	COMP 10.2.3R
<b>Q3</b>	<b>How will the <i>FSCS</i> calculate the compensation that is offered to me?</b>	
<b>A3</b>	Again, this will depend on whether your <i>protected claim</i> is a:	
	(1) a <i>claim</i> for a <i>protected deposit</i> , or	COMP 12.2.1R, 12.3.1R, and 12.4.1R

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	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	COMP 12.2.1R, 12.3.2–4R, and 12.4.9R–12.5.2R
	(3) a <i>claim</i> in connection with <i>protected investment business</i> .	COMP 12.2.1R, 12.3.5–6R, and 12.4.2–8R
	Certain types of <i>protected investment business claim</i> require the <i>FSCS</i> to use a particular method of calculation.	
<b>Q4</b>	What happens if an insurance undertaking is insolvent?	
<b>A4</b>	If you have a <i>long term insurance contract</i> with an insolvent <i>insurance undertaking</i> , the <i>FSCS</i> will first try to secure continuity of insurance for you.	COMP 3.3, 11.2.3R, and 12.4.11R
	If the <i>FSCS</i> achieves this, you will not necessarily receive any cash, but you will continue to be insured (though possibly with lower benefits than before).	COMP 3.3R, 10.2.6R, 11.2.2R, and 12.5.1R
	You will receive cash compensation only if the <i>FSCS</i> cannot secure continuity of insurance cover or the cost of doing so would be unreasonable.	COMP 3.3.1–2R, and 11.2.1R
	If you have a <i>relevant general insurance contract</i> with an insolvent <i>insurance undertaking</i> , the <i>FSCS</i> will pay you cash compensation if it is unable to secure continuity of insurance cover or the cost of doing so would be unreasonable.	COMP 3.2.1–2R and 11.2.3R
	If the <i>insurance undertaking</i> is in "financial difficulties", the <i>FSCS</i> may try to arrange for another <i>insurance undertaking</i> to take over the <i>business</i> , or provide the <i>insurance undertaking</i> with financial assistance to carry on business. If this occurs, you will not receive cash compensation, but your policy will continue (though possibly with lower benefits than before).	COMP 3.3.3–6R, 10.2.6–7R, and 11.2.3R



## 1.4 EEA Firms

### 1.4.1

**G**  
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*Incoming EEA firms* which are conducting *regulated activities* in the *United Kingdom* under a *BCD* or *ISD* passport are not required to participate in the *compensation scheme* in relation to those *passport activities*. They may apply to "top-up" into the *compensation scheme* if the level or scope of cover provided by the *incoming EEA firm's Home State* compensation scheme is less than that provided by the *compensation scheme*. This is covered by *COMP 14*.

### 1.4.2

**G**  
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If an *incoming EEA firm* "tops-up", and then becomes insolvent, the *Home State* compensation scheme will pay compensation for *claims* up to the limit and scope of the *Home State* compensation scheme, with the *FSCS* paying compensation for the additional amount in accordance with the provisions in this sourcebook.

### 1.4.3

**G**  
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The *DGD* and *ICD* require the *FSCS* to make arrangements with the relevant *Home State* compensation scheme regarding the payment of compensation (*COMP 14.3.1R*).



Compensation

# Chapter 2

2

## The FSCS

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## 2.1 Application and Purpose

### Application

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**2.1.1** **R** This chapter applies to the *FSCS*.  
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### Purpose

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**2.1.2** **G** In order to carry out its functions and put into effect the provisions set out in *COMP 3 - COMP 14* (which deal with determining whether compensation is payable, calculating the amount of compensation that should be paid, and making levies on *firms*), the *FSCS* needs to have a variety of powers. The purpose of this chapter is to set out these powers, and the restrictions upon them.

## 2.2 Duties of the FSCS

### Administering the compensation scheme

**2.2.1** **R** The FSCS must administer the *compensation scheme* in accordance with the *rules* in this sourcebook and any other rules prescribed by law to ensure that the *compensation scheme* is administered in a manner that is procedurally fair and in accordance with the European Convention on Human Rights.

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**2.2.2** **G** The FSCS may:

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- (1) pay compensation to *eligible claimants* or secure continuity of insurance for *eligible claimants* when a *relevant person* is unable or likely to be unable to meet *claims* against it in accordance with the sourcebook; and
- (2) make levies on *participant firms*, in accordance with COMP 13 (Funding), to enable it to pay compensation, secure continuity of insurance, or meet the costs of discharging its functions under this sourcebook.

### Information for claimants

**2.2.3** **R** The FSCS must publish information for claimants and potential claimants on the operation of the *compensation scheme*.

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### Assistance to claimants

**2.2.4** **R** The FSCS may agree to pay the reasonable costs of an *eligible claimant* bringing or continuing insolvency proceedings against a *relevant person* (whether those proceedings began before or after a determination of default), if the FSCS is satisfied that those proceedings would help it to discharge its functions under the requirements of this sourcebook.

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### Annual Report

**2.2.5** **G** The FSCS must make and publish an annual report to the FSA on the discharge of its functions (section 218 of the *Act* (Annual report)).

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### Finance and resources

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2.2.6

**R**

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The *FSCS* must have regard to the need to use its resources in the most efficient and economic way in carrying out its functions under the requirements of this sourcebook.

### Publication of defaults

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2.2.7

**R**

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The *FSCS* must take appropriate steps to ensure that potential claimants are informed of how they can make a *claim* for compensation as soon as possible after a determination has been made that a *relevant person* is *in default*, whether by the *FSCS* or the *FSA*.

### Complaints

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2.2.8

**R**

01.12.01/001

The *FSCS* must put in place and publish procedures which satisfy the minimum requirements of procedural fairness and comply with the European Convention on Human Rights for the handling of any complaints of maladministration relating to any aspect of the operation of the *compensation scheme*.

## Chapter 3

# The qualifying conditions for compensation

3



## 3.1 Application and Purpose

### Application

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

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

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### Purpose

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**3.1.3** **G** The purpose of this chapter is to set out in general terms the conditions that must be satisfied before the *FSCS* can make an offer of compensation, or secure continuity of insurance cover, or provide assistance to an *insurance undertaking* to enable it to continue *insurance business*.

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**3.1.4** **G** The qualifying conditions for paying compensation are set out in greater detail in *COMP 4 – COMP 7*.

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## 3.2 The qualifying conditions for paying compensation

### 3.2.1

**R**

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The FSCS may pay compensation to an *eligible claimant*, subject to COMP 11 (Payment of Compensation), if it is satisfied that:

- (1) an *eligible claimant* has, for *claims* other than *claims* under a *protected contract of insurance*, made an application for compensation;
- (2) the claim is in respect of a *protected claim* against a *relevant person* who is *in default*;
- (3) where the FSCS so requires, the claimant has assigned the whole or any part of his rights against the *relevant person* or against any third party to the FSCS, on such terms as the FSCS thinks fit; and
- (4) in the case of a *claim* under a *protected contract of insurance*:
  - (a) it is not reasonably practicable or appropriate to take steps to secure continuity of insurance under COMP 3.3.1R and COMP 3.3.4R(1); or
  - (b) it would not be appropriate to take the measures specified in COMP 3.3.4R(2) to provide assistance to an *insurance undertaking* in financial difficulties.

### 3.2.2

**R**

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The FSCS may also pay compensation to a *person* who makes a *claim* on behalf of another *person* if the FSCS is satisfied that the *person* on whose behalf the *claim* is made:

- (1) is or would have been an *eligible claimant*; and
- (2) would have been paid compensation by the FSCS had he been able to make the *claim* himself, or to pursue his application for compensation further.

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### 3.2.3

**G**

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Examples of the circumstances covered by COMP 3.2.2R are:

- (1) when personal representatives make a *claim* on behalf of the deceased;
- (2) when trustees make a *claim* on behalf of beneficiaries (for further provisions relating to *claims* by trustees, see COMP 12.6.1 to COMP 12.6.7R);

- (3) when the donee of an enduring power of attorney makes a *claim* on behalf of the donor of the power;
- (4) when the Master of the Court of Protection makes a *claim* on behalf of a *person* incapable by reason of mental disorder of managing and administering his property and affairs;
- (5) when an *eligible claimant* makes a *claim* for compensation but dies before his *claim* is determined.



### 3.3 Insurance

#### Securing continuity of insurance cover

3.3.1 **R**  
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The FSCS must make arrangements to secure continuity of insurance for an *eligible claimant* under a *protected contract of insurance* which is a *long term insurance contract* with a *relevant person*, if:

- (1) the *relevant person* is the subject of any of the proceedings listed in COMP 6.3.3R(1)-(5); and
- (2) it is reasonably practicable to do so.

3.3.2 **R**  
01.12.01/001

The arrangements contemplated by COMP 3.3.1R include arrangements to:

- (1) secure or facilitate the transfer of the *long-term insurance business* of the *relevant person in default* or any part of that business, to another *firm*; and
- (2) secure the issue of policies by another *firm* to *eligible claimants* in substitution for their existing policies.

#### Insurance undertakings in financial difficulties

3.3.3 **R**  
01.12.01/001

Where a *relevant person* is an *insurance undertaking* in financial difficulties (see COMP 3.3.6R), the FSCS must take such measures for the purpose of safeguarding *eligible claimants* on such terms (including terms reducing or deferring payment of any liabilities or benefits provided under any *protected contract of insurance*) as it considers appropriate if, in the opinion of the FSCS at the time it proposes to take the measures, the cost is likely to be less than the cost of paying compensation under COMP 3.2.

PAGE  
5

3.3.4 **R**  
01.12.01/001

The measures contemplated in COMP 3.3.3R include measures to:

- (1) secure or facilitate the transfer of the business of the *relevant person* which consists of *carrying out contracts of insurance*, or any part of the business, to another *firm*; and

- (2) give assistance to the *relevant person* to enable it to continue to effect or carry out contracts of insurance.

3.3.5

**R**

01.12.01/001

Before the FSCS takes the measures described in COMP 3.3.3R for the purpose of safeguarding an *eligible claimant* in respect of a *protected contract of insurance* that is a long term insurance contract, it must:

- (1) reduce the *eligible claimant's* interest in the *protected contract of insurance* to 90% of the amount which would otherwise have been payable under the terms of the contract; and
- (2) reduce all *premiums* under the contract which have not fallen due before the time when the reduction is to take effect to 90% of the amount which would otherwise have been payable.

3.3.6

**R**

01.12.01/001

For the purpose of COMP 3.3.3R, a *relevant person* who is an *insurance undertaking* is in financial difficulties if:

- (1) it is in provisional liquidation; or
- (2) it has been proved, in any proceedings on a petition for the winding up of the *relevant person* under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 for the voluntary winding up of the *relevant person* (or in any analogous proceedings pursuant to the law of any other jurisdiction), to be unable to pay its debts; or
- (3) an application has been made to the court under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986 for the sanctioning of a compromise or arrangement proposed between the *relevant person* and its creditors or any class of them and the terms of the compromise or arrangement provide for reducing, or deferring payment of, the liabilities or the benefits provided for under any of the *relevant person's* policies; or
- (4) the FSA determines that the *relevant person* who is an *insurance undertaking* is likely to be unable to satisfy *protected claims* against it.

# Chapter 4

## Eligible claimants

4

PAGE  
1







## 4.1 Application and Purpose

### Application

4.1.1 **R**  
01.12.01/001

This chapter applies to the *FSCS*.

4.1.2 **G**  
01.12.01/001

It is also relevant to those who may wish to bring a *claim* for compensation.

### Purpose

4.1.3 **G**  
01.12.01/001

The purpose of this chapter is to set out the types of *person* who are able to claim compensation or benefit from the protection the *FSCS* is able to provide. A claimant needs to be an *eligible claimant* to satisfy *COMP 3.2.1R(1)*.

## 4.2 Who is eligible to benefit from the protection provided by the FSCS?

### 4.2.1

**R**

01.12.01/001

Unless COMP 4.2.3R applies, an *eligible claimant* is any *person* who at any material time:

- (1) did not come within COMP 4.2.2R; or
- (2) did come within COMP 4.2.2R, but satisfied the relevant exception in COMP 4.3.

### 4.2.2

**R**

01.12.01/001

Table Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R).  
This table belongs to COMP 4.2.1R

- (1) **Firms (other than a sole trader firm or a small business whose claim arises out of a regulated activity for which they do not have a permission)**
- (2) **Overseas financial services institutions**
- (3) **Collective investment schemes, and anyone who is the operator or trustee of such a scheme**
- (4) **Pension and retirement funds, and anyone who is a trustee of such a fund (except a trustee of a small self-administered scheme or an occupational pension scheme of an employer which is not a large company, large partnership, or large mutual association)**
- (5) **Supranational institutions, governments, and central administrative authorities**
- (6) **Provincial, regional, local and municipal authorities**
- (7) **Directors and managers of the relevant person in default.**  
However, this exclusion does not apply if:
  - (a) the *relevant person in default* is a *mutual association* which is not a *large mutual association*; and
  - (b) the *directors* and *managers* do not receive a salary or other remuneration for services performed by them for the *relevant person in default*.
- (8) **Close relatives of persons excluded by (7) above**
- (9) **Bodies corporate in the same group as the relevant person in default**
- (10) **Persons holding 5% or more of the capital of the relevant person in default, or of any body corporate in the same group**
- (11) **The auditors of the relevant person in default, or of any body corporate in the same group as the relevant person in default, or the appointed actuary of a friendly society or insurance undertaking in default**

- (12) *Persons who in the opinion of the FSCS are responsible for, or have contributed to, the relevant person's default*
- (13) *Large companies or large mutual associations*
- (14) *Large partnerships*
- (15) *Persons whose claim arises from transactions in connection with which they have been convicted of an offence of money laundering.*
- (16) *Persons whose claim arises under the Third Parties (Rights against Insurers) Act 1930*

4.2.3

**R**

01.12.01/001

A person who is a *small business* is an *eligible claimant* in respect of a *relevant general insurance contract* entered into before *commencement* only if the *person* is a *partnership*.



**4.3 Exceptions: Circumstances where a person coming within COMP 4.2.2R may receive compensation**

**Deposits**

**4.3.1** **R**  
01.12.01/001

A *person* is eligible to claim compensation in respect of a *protected deposit* if, at the date on which the *relevant person* is determined to be *in default*:

- (1) he came within category (14) of COMP 4.2.2R; or
- (2) he came within any of categories (1)-(3) of COMP 4.2.2R, and was not a *large company, large mutual association, or a credit institution*.

**Long term insurance**

**4.3.2** **R**  
01.12.01/001

A *person* other than one which comes within any of categories (7)-(12) and (15) of COMP 4.2.2R is eligible to claim compensation in respect of a *long term insurance* contract.

**Relevant general insurance contracts**

**4.3.3** **R**  
01.12.01/001

- (1) A *person* falling within categories (1)-(4) of COMP 4.2.2R is eligible to claim compensation in respect of a *relevant general insurance contract* if, at the date the contract commenced he was a *small business*.
- (2) Where the contract has been renewed, the last renewal date shall be taken as the commencement date.

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5

**4.3.4** **R**  
01.12.01/001

A *person* coming within category 14 of COMP 4.2.2R is eligible to claim compensation in respect of a *relevant general insurance contract* entered into before *commencement*.

**4.3.5** **R**  
01.12.01/001

A *person* who comes within category (16) of COMP 4.2.2R (a '*category 16 person*') is eligible to claim compensation if:

- (1) the *person* insured would have been an *eligible claimant* at the time that his rights against the insurer were transferred to and vested in the category 16 *person*; or
- (2) the liability of the *person* insured in respect of the category 16 *person* was a liability under a contract of employer's liability insurance which would have been a *liability subject to compulsory insurance* had the contract been entered into after 1 January 1972 or (for contracts in Northern Ireland) 29 December 1975; or
- (3) the extent of the liability of the *person* insured in respect of the category 16 *person* had been agreed in writing by the insurer, or determined by a court or arbitrator, before the date on which the insurer is determined to be *in default*.

#### Liability subject to compulsory insurance

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4.3.6

**R**

01.12.01/001

A *person* who comes within COMP 4.2.2R is eligible to claim compensation in respect of a *liability subject to compulsory insurance*.

#### Protected investment business

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4.3.7

**G**

01.12.01/001

There are no exceptions to COMP 4.2.2R for *claims* made in connection with *protected investment business*.

Compensation

## Chapter 5

# Protected claims

5

PAGE  
1





## 5.1 Application and Purpose

### Application

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

01.12.01/001

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

01.12.01/001

### Purpose

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

01.12.01/001

## 5.2 What is a protected claim?

### 5.2.1

**R**

01.12.01/001

A *protected claim* is:

- (1) a *claim* for a *protected deposit* (see COMP 5.3); or
- (2) a *claim* under a *protected contract of insurance* (see COMP 5.4);  
or
- (3) a *claim* in connection with *protected investment business* (see COMP 5.5).

### 5.2.2

**G**

01.12.01/001

Where a *claim* is against a *relevant person* which is:

- (1) an *incoming EEA firm* which is a *credit institution* or *ISD investment firm*; or
- (2) an *appointed representative* of (1);

the categories of *claim* that are *protected claims* are modified in COMP 14.5. This is because the *DGD* and *ICD* provide that compensation may be available under the *firm's Home State* compensation scheme.



## 5.3 Protected deposits

### 5.3.1

**R**

01.12.01/001

A *deposit* is a *protected deposit* only if:

- (1) the *deposit* was made with:
  - (a) an establishment of a *relevant person* in the *United Kingdom*; or
  - (b) a *branch* of a *UK firm* which is a *credit institution* established in another *EEA State* under an *EEA right*; and
- (2) the *deposit* is not:
  - (a) a bond issued by a *credit institution* which is part of the institution's capital, as set out in the Consolidated Banking Directive (Directive 2000/12/EC); or
  - (b) a *secured deposit*; or
  - (c) a *deferred share* issued by a *building society*; or
  - (d) a *non-nominative deposit* (that is, a *deposit* made without disclosing the depositor's identity).

## 5.4 Protected contracts of insurance

### 5.4.1

**R**

01.12.01/001

A *protected contract of insurance* is:

- (1) (if issued after *commencement*) a *contract of insurance* within COMP 5.4.2R (Contracts of insurance issued after commencement)
- (2) (if issued before *commencement*) a *contract of insurance* within COMP 5.4.5R (Contracts of insurance issued before commencement)

### Contracts of insurance issued after commencement

### 5.4.2

**R**

01.12.01/001

A *contract of insurance* issued after *commencement* which:

- (1) relates to a protected risk or commitment as described in COMP 5.4.3R;
- (2) is issued by the *relevant person* through an establishment in;
  - (a) the *United Kingdom*; or
  - (b) another *EEA State*; or
  - (c) the Channel Islands or the Isle of Man; and
- (3) is a *long-term insurance contract* or a *relevant general insurance contract*;

is a *protected contract of insurance*.

### 5.4.3

**R**

01.12.01/001

A risk or commitment is a protected risk or commitment for the purpose of COMP 5.4.2R(1) if:

- (1) in the case of a *contract of insurance* falling within COMP 5.4.2R(2)(a), it is situated in an *EEA State*, the Channel Islands or the Isle of Man;
- (2) in the case of a *contract of insurance* falling within COMP 5.4.2R(2)(b), it is situated in the *United Kingdom*;

## 5.4.4

**R**

01.12.01/001

(3) in the case of a *contract of insurance* falling within COMP 5.4.2R(2)(c), it is situated in the *United Kingdom*, the Channel Islands or the Isle of Man.

For the purpose of COMP 5.4.3R and COMP 5.4.5R(1)(b), the situation of a risk or commitment is determined as follows:

- (1) for a *contract of insurance* relating to a building or a building and its contents (in so far as the contents are covered by the same *contract of insurance*), the risk or commitment is situated where the building is situated;
- (2) for a *contract of insurance* relating to vehicles of any type, the risk or commitment is situated where the vehicle is registered;
- (3) for a *contract of insurance* lasting four months or less covering travel or holiday risks (whatever the class concerned), the risk or commitment is situated where the policyholder took out the *contract of insurance*; and
- (4) in cases not covered by (1) to (3):
  - (a) where the policyholder is an individual, the risk or commitment is situated where he has his habitual residence at the date when the *contract of insurance* commenced;
  - (b) where the policyholder is not an individual, the risk or commitment is situated where the establishment to which the risk or commitment relates is situated at the date when the *contract of insurance* commenced.

#### Contracts of insurance issued before commencement

## 5.4.5

**R**

01.12.01/001

(1) If the default of the *relevant person* occurs after *commencement*, a *contract of insurance* issued by a *relevant person* before *commencement* which is within COMP 5.4.5R(2) is a *protected contract of insurance*, provided that:

- (a) (unless it comes within (b)) it was a "United Kingdom policy at the beginning of the liquidation" for the purposes of the Policyholders Protection Act 1975;
- (b) if the *contract of insurance* is a contract of employers' liability insurance entered into before 1 January 1972 or (for contracts in Northern Ireland) 29 December 1975, and the *claim* was agreed after the default of the *insurer*, the risk or commitment was situated in the *United Kingdom* (as set out in COMP 5.4.4R).

(2) The *contracts of insurance* referred to in COMP 5.4.5R(1) are:

- (a) a *relevant general insurance contract*;
- (b) a *contract of insurance* within the *credit* class; and
- (c) a *long-term insurance contract*.

#### Contracts not evidenced by a policy

5.4.6

**R**

01.12.01/001

If it appears to the FSCS that a *person* is insured under a contract with an *insurance undertaking* which is not evidenced by a policy, and it is satisfied that if a policy evidencing the contract had been issued, the *person* in question would have had a *protected contract of insurance*, the FSCS must treat the contract as a *protected contract of insurance*.

#### Liabilities giving rise to claims under a protected contract of insurance

5.4.7

**R**

01.12.01/001

The FSCS must treat liabilities of an *insurance undertaking* which is *in default*, in respect of the following items, as giving rise to *claims* under a *protected contract of insurance*:

- (1) (if the contract has not commenced) *premiums* paid to the *insurance undertaking*; or
- (2) proceeds of a *long-term insurance contract* that has matured or been surrendered but have not yet been passed to the claimant; or
- (3) the unexpired portion of any *premium* in relation to *relevant general insurance contracts*; or
- (4) *claims* by *persons* entitled to the benefit of a judgement under section 151 of the Road Traffic Act 1988 or Article 98 of the Road Traffic (Northern Ireland) Order 1981.



## 5.5 Protected investment business

### 5.5.1

**R**

01.12.01/001

*Protected investment business* is:

- (1) *designated investment business* carried on by the *relevant person* with the claimant or as *agent* on his 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*;

provided that the condition in *COMP 5.5.2R* is satisfied.

### 5.5.2

**R**

01.12.01/001

*COMP 5.5.1R* only applies if 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 an *ISD investment firm* (including a *credit institution* which is an *ISD investment firm*) established in another *EEA State*, and the *claim* is an *ICD claim*; or
- (3) both (1) and (2).

## Chapter 6

# Relevant persons in default

6

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1





## 6.1 Application and Purpose

### Application

---

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

01.12.01/001

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

01.12.01/001

### Purpose

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**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.

01.12.01/001

**6.1.4** **G** To be eligible for compensation a claimant’s claim must be against a *relevant person in default*: see *COMP 3.2.1R(2)*.

01.12.01/001



## 6.2 Who is a relevant person?

### 6.2.1

**R**

01.12.01/001

*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**

01.12.01/001

*An incoming EEA firm, which is a credit institution or an ISD investment firm, and its appointed representatives are not relevant persons in relation to the firm's passported activities, unless it has top-up cover. (See definition of "participant firm").*

6





## 6.3 When is a relevant person in default?

6.3.1 **R**  
01.12.01/001

A *relevant person* is *in default* if:

- (1) (except in relation to an *ICD claim* or *DGD claim*) the *FSCS* has determined it to be *in default* under *COMP 6.3.2R*, *COMP 6.3.3R*, *COMP 6.3.4R* or *COMP 6.3.5R*; or
- (2) (in relation to an *ICD claim* or *DGD claim*):
  - (a) the *FSA* has determined it to be *in default* under *COMP 6.3.2R*; 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).

6.3.2 **R**  
01.12.01/001

Subject to *COMP 3.3.3R* to *COMP 3.3.6R*, the *FSCS* (or, where *COMP 6.3.1R(2)(a)* applies, the *FSA*) may determine a *relevant person* to be *in default* when it is, in the opinion of the *FSCS* or the *FSA*:

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

6.3.3 **R**  
01.12.01/001

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* or *DGD 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.

6.3.4

**R**

01.12.01/001

For *claims* arising in connection with *protected investment business*, the FSCS has the additional power to determine that a *relevant person is in default* if it is satisfied that a *protected claim* exists, 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.

6.3.5

**R**

01.12.01/001

For *claims* arising in connection with *protected contracts of insurance*, the FSCS must treat any term in an *insurance undertaking's* constitution or in its *contracts of insurance*, limiting the undertaking's liabilities under a *long-term insurance contract* to the amount of its assets, as limiting the undertaking's liabilities to any claimant to an amount which is not less than the gross assets of the undertaking.

6



## Chapter 7

# Assignment of rights





## 7.1 Application

### Application and Purpose

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

01.12.01/001

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

01.12.01/001

### Purpose

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**7.1.3** **G** The *FSCS* may make an offer of compensation conditional on the assignment of rights to it by a claimant. The purpose of this chapter is to make provision for and set out the consequences of an assignment of the claimant's rights.

01.12.01/001

## 7.2 How does the assignment of rights work?

- 7.2.1** **R** 01.12.01/001 The *FSCS* may make any payment of compensation to a claimant in respect of a *protected claim* conditional on the claimant assigning the whole or any part of his rights against the *relevant person*, or against any third party, or both, to the *FSCS* on such terms as the *FSCS* thinks fit.
- 7.2.2** **R** 01.12.01/001 If a claimant assigns the whole or any part of his rights against any *person* to the *FSCS* as a condition of payment, the effect of this is that any sum payable in relation to the rights so assigned will be payable to the *FSCS* and not the claimant.
- 7.2.3** **R** 01.12.01/001 The *FSCS* must make such recoveries as it reasonably can through the rights so assigned.
- 7.2.4** **R** 01.12.01/001 Unless compensation was paid under *COMP 9.2.3R*, if a claimant agrees to assign his rights to the *FSCS* and the *FSCS* subsequently makes recoveries through those rights, 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 11.2.7R*) 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 a failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation at a disadvantage relative to a claimant who had delayed accepting an offer of compensation (see *COMP 7.2.5R*).
- 7.2.5** **R** 01.12.01/001 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 compared with what might have been the position had he delayed his acceptance.
- 7.2.6** **G** 01.12.01/001 As an example of the circumstances which *COMP 7.2.5R* is designed to address, take two claimants, A and B.
- (1) Both A and B have a *protected investment business claim* of £60,000 against a *relevant person in default*. The *FSCS* offers both claimants £48,000 compensation (the maximum amount payable for such claims (*COMP*

10.2.3R). A accepts immediately, and assigns his rights against the *relevant person* 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 in default* and makes a payment of 50p in the pound to all the *relevant person's* creditors. If the liquidator made the payment before any offer of compensation from the FSCS had been accepted, A and B would both receive £30,000 each from the liquidator, leaving both with a loss of £30,000 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's offer of compensation, A would be disadvantaged relative to B even though he has received £48,000 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 £30,000 so the £30,000 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 £30,000 from the liquidator. B can then make a *claim* for the remaining £30,000 to the FSCS which the FSCS can pay in full (see COMP 10.2.2R). B therefore suffers no loss whereas A is left with a loss of £12,000, being the difference between his *claim* of £60,000 and the compensation paid by the FSCS of £48,000.

## Chapter 8

# Rejection of application and withdrawal of offer

8

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1







## 8.1 Application and Purpose

### Application

---

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

01.12.01/001

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

01.12.01/001

### Purpose

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**8.1.3** **G** In some circumstances, it may be appropriate for the *FSCS* to reject an application for compensation, or withdraw an offer of compensation. The purpose of this chapter is to set out when those circumstances arise.

01.12.01/001



## 8.2 Rejection of application for compensation

8.2.1 **R**  
01.12.01/001

If an application for compensation contains any material inaccuracy or omission, the FSCS may reject the application unless this is considered by the FSCS to be wholly unintentional.

8.2.2 **G**  
01.12.01/001

A rejection under COMP 8.2.1R does not mean that the claimant cannot receive compensation. A rejected application may be resubmitted, with the appropriate amendments.

8.2.3 **R**  
01.12.01/001

Unless COMP 8.2.4R applies, the FSCS must reject an application for compensation if the liability of the *relevant person* to the claimant has been extinguished by the operation of law, or the FSCS considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:

- (1) the date the *relevant person* is determined to be *in default*; or
- (2) the date the claimant first indicates in writing that he may have a claim against the *relevant person*.

8.2.4 **R**  
01.12.01/001

For *claims* made in connection with *protected investment business*, the FSCS may disregard a defence of limitation where the FSCS considers that it would be reasonable to do so.



### 8.3 Withdrawal of offer of compensation

**8.3.1** **R** The *FSCS* may withdraw any offer of compensation made to a claimant if the offer is not accepted or if it is not disputed within 90 days of the date on which the offer is made.

01.12.01/001

**8.3.2** **R** Where the amount of compensation offered is disputed, the *FSCS* may withdraw the offer but must consider exercising its powers to make a reduced or interim payment under *COMP 11.2.4R* or *COMP 11.2.5R* before doing so.

01.12.01/001

**8.3.3** **R** The *FSCS* may repeat any offer withdrawn under *COMP 8.3.1R* or *COMP 8.3.2R*.

01.12.01/001

**8.3.4** **R** The *FSCS* must withdraw any offer of compensation if it appears to the *FSCS* that no such offer should have been made.

01.12.01/001

**8.3.5** **R** The *FSCS* must seek to recover any compensation paid to a claimant if it appears to the *FSCS* that no such payment should have been made, unless the *FSCS* believes on reasonable grounds that it would be unreasonable to do so, or that the costs of doing so would exceed any amount that could be recovered.

01.12.01/001

## Chapter 9

# Time limits on payment and postponing payment





## 9.1 Application and Purpose

### Application

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

01.12.01/001

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

01.12.01/001

### Purpose

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**9.1.3** **G** The purpose of this chapter is to ensure that compensation is paid to claimants as quickly as possible and that delays in paying compensation to claimants are kept to a minimum. The *FSCS* may postpone payment of compensation only in strictly limited circumstances.

01.12.01/001

## 9.2 When must compensation be paid?

### 9.2.1

**R**

01.12.01/001

The FSCS must pay a *claim* as soon as reasonably possible after:

- (1) it is satisfied that the conditions in COMP 3.2.1R have been met; and
- (2) it has calculated the amount of compensation due to the claimant;

and in any event within three months of that date, unless the FSA has granted the FSCS an extension, in which case payment must be made no later than six months from that date.

### 9.2.2

**R**

01.12.01/001

The FSCS may postpone paying compensation if:

- (1) in the case of a *claim* against a *relevant person* who is an *appointed representative*, the FSCS considers that the claimant should make and pursue an application for compensation against the *appointed representative's principal*; or
- (2) in the case of a *claim* relating to *protected investment business* which is not an *ICD claim*, the FSCS considers that the claimant should first exhaust his rights against the *relevant person* or any third party, or make and pursue an application for compensation to any other *person*; or
- (3) in the case of a *claim* relating to a *protected contracts of insurance*, the FSCS considers that the liability to which the *claim* relates or any part of the liability is covered by another *contract of insurance* with a solvent *insurance undertaking*, or where it appears that a *person*, other than the liquidator, may make payments or take such action to secure the continuity of cover as the FSCS would undertake; or
- (4) the *claim* is one which falls within COMP 12.4.5R or COMP 12.4.7R and it is not practicable for payment to be made within the usual time limits laid out in COMP 9.2.1R; or
- (5) the claimant has been charged with an offence arising out of or in relation to money laundering, and those proceedings have not yet been concluded.

9.2.3

**R**

01.12.01/001

Notwithstanding COMP 9.2.2R(2), the *FSCS* may pay compensation to a claimant in respect of assets held by a *relevant person* if an insolvency practitioner has been appointed to the *relevant person*, and:

- (1) the *FSCS* considers it likely that the insolvency practitioner would, in due course, return the assets to the claimant;
- (2) the claimant has agreed to be compensated for the assets on the basis of the valuation provided by the *FSCS*; and
- (3) the claimant has agreed, to the satisfaction of the *FSCS*, that his rights to the assets in respect of which compensation is payable should pass to it.

## Chapter 10

# Limits on the amount of compensation payable

10

PAGE  
1







## 10.1 Application and Purpose

### Application

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

01.12.01/001

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

01.12.01/001

### Purpose

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**10.1.3** **G** In most cases it is appropriate for there to be a limit on the amount of compensation payable by the *FSCS* and that there should be some part of the *claim* which is not compensatable and for which the claimant must bear the loss. The purpose of this chapter is to set these limits out.

01.12.01/001

**10.1.4** **G** The chapter also sets out the limit on the level of protection the *FSCS* must seek to secure when the *FSCS* is ensuring that there is continuity of insurance cover.

01.12.01/001

## 10.2 Limits on compensation payable

**10.2.1** R The limits on the maximum compensation sums payable by the FSCS for *protected claims* are set out in COMP 10.2.3R.

01.12.01/001

**10.2.2** G The limits apply to the aggregate amount of *claims* in respect of each category of *protected claim* that an *eligible claimant* has against the *relevant person*. Consequently, a claimant who has, for example, a *claim* against a *relevant person* for a *deposit* of £2,000, and for a further *deposit* of £1,500, will not receive 100% compensation on both *deposits*; instead he will receive £3,350 (100% of the first £2,000 and 90% of the next £1,500). Similarly, if a claimant receives more than one payment in respect of a claim on a *protected contract of insurance*, the claimant will only receive 100% of the first £2,000 of the total paid, and not 100% of the first £2,000 of each payment.

01.12.01/001

**10.2.3** R Table □ Limits  
This table belongs to COMP 10.2.1R

01.12.01/001

Type of claim	Level of cover	Maximum payment
<b>Protected deposits</b>	100% x first £2,000 90% x next £33,000	£31,700
<b>Protected contract of insurance when the contract is a relevant general insurance contract</b>	(1) Where the <i>claim</i> is in respect of a <i>liability subject to compulsory insurance</i> : 100% of <i>claim</i> .	Unlimited
	(2) Where the <i>claim</i> arises under the Third Party (Rights against Insurers) Act 1930, is in respect of a liability within COMP 5.4.5R(1)(b), and is in connection with an <i>Article 9 default</i> : 90% of the <i>claim</i> .	Unlimited
<b>Protected contract of insurance when the contract is a long-term insurance contract</b>	(3) In all other cases: 100% x first £2,000 90% of remainder of the <i>claim</i> .	Unlimited
	100% x first £2,000 At least 90% of the remaining value of the policy (including <i>future benefits</i> declared before the date the <i>relevant person</i> is determined to be <i>in default</i> ).	Unlimited
<b>Protected investment business</b>	100% x first £30,000 90% x next £20,000	£48,000

10

**10.2.4** G COMP 12 sets out the *rules* the FSCS will follow when calculating the amount of compensation payable.

01.12.01/001

10.2.5

**G**

01.12.01/001

COMP 12.4.1R and COMP 12.4.4R include further limits relating to *DGD claims* and *ICD claims* against certain *incoming EEA firms*. These reflect the *DGD* and *ICD*, under which compensation may be payable by the *incoming EEA firm's Home State* compensation scheme.

**Continuity of insurance cover**

10.2.6

**R**

01.12.01/001

The *FSCS's* duty to ensure continuity of cover for any *protected contract of insurance* which is a *long term insurance contract* extends only to ensuring that the claimant will receive 100% of the first £2000 and 90% of the remainder of any *future benefit* under his *contract of insurance*, subject to and in accordance with terms corresponding (so far as it appears to the *FSCS* to be reasonable in the circumstances) to those which have applied under the *contract of insurance*.

10.2.7

**R**

01.12.01/001

Any future *premiums* that the claimant is committed to paying under the policy will be reduced by an equivalent amount.

Compensation

## Chapter 11

# Payment of compensation

11

PAGE  
1





## 11.1 Application and Purpose

### Application

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

01.12.01/001

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

01.12.01/001

### Purpose

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**11.1.3** **G** The *FSCS* will usually pay compensation direct to the claimant, but in certain circumstances it may be appropriate for the *FSCS* to pay compensation to someone other than the claimant, or to make reduced or interim payments. The purpose of this chapter is to set out when those circumstances arise.

01.12.01/001



## 11.2 Payment

### To whom must payment be made?

11.2.1 **R**  
01.12.01/001

If the *FSCS* determines that compensation is payable, it must pay it to the claimant, or as directed by the claimant, unless:

- (1) arrangements have or are being made to secure continuity of insurance under *COMP 3.3.1R* and *COMP 3.3.2R* or the *FSCS* is taking measures it considers appropriate under *COMP 3.3.3R* to *COMP 3.3.6R*; or
- (2) *COMP 11.2.2R* or *COMP 11.2.3R* applies.

11.2.2 **R**  
01.12.01/001

Where a claimant has a *protected claim* arising out of the circumstances described in *COMP 12.4.5R*, the *FSCS* must pay any compensation to:

- (1) the trustee of an *occupational pension scheme*; or
- (2) a *personal pension scheme* or other *product provider*; or
- (3) both (1) and (2);

and not to the claimant, unless exceptional circumstances apply.

11.2.3 **R**  
01.12.01/001

Where an *eligible claimant* has a *claim* under a *protected contract of insurance* against a *relevant person* that is in provisional liquidation or liquidation, the *FSCS* may, unless arrangements have or are being made to secure continuity of insurance under *COMP 3.3.1R* and *COMP 3.3.2R* or the *FSCS* is taking measures it considers appropriate under *COMP 3.3.3R* to *COMP 3.3.6R*:

- (1) make payments to or on behalf of *eligible claimants* on such terms (including any terms requiring repayment in whole or in part) and on such conditions as it thinks fit (subject to *COMP 10*); or
- (2) secure that payments (subject to *COMP 10*) are made to or on behalf of any such *eligible claimants* by the liquidator or

provisional liquidator by giving him an indemnity covering any such payments or any class or description of such payments.

**Reduced or interim payments**

**11.2.4** **R** If the *FSCS* is satisfied that in principle compensation is payable, but considers that immediate payment in full would not be prudent because of uncertainty as to the amount of the claimant's overall net *claim*, it may decide to pay an appropriate lesser sum in final settlement, or to make payment on account.

01.12.01/001

**11.2.5** **R** The *FSCS* may also decide to make a payment on account or to pay a lesser sum in final settlement if the claimant has any reasonable prospect for recovery in respect of the *claim* from any third party or by applying for compensation to any other *person*.

01.12.01/001

**11.2.6** **R** The *FSCS* may not pay a lesser sum in final settlement under *COMP 11.2.4R* and *COMP 11.2.5R* where the *claim* is a *DGD claim* or *ICD claim*.

01.12.01/001

**Paying interest on compensation**

**11.2.7** **R** The *FSCS* may pay interest on the compensation sum in such circumstances as it considers appropriate.

01.12.01/001

**11.2.8** **R** Interest under *COMP 11.2.7R* is not to be taken into account when applying the limits on the compensation sum payable in respect of a *claim* under *COMP 10*.

01.12.01/001

Compensation

## Chapter 12

# Calculating compensation

12

PAGE  
1







## 12.1 Application and Purpose

### Application

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**12.1.1** **R**  
01.12.01/001

This chapter applies to the *FSCS*.

**12.1.2** **G**  
01.12.01/001

This chapter is also relevant to claimants, since it sets out how a *claim* will be quantified. (For the process of paying compensation, including the limits on the amount of compensation that can be paid, see *COMP 8 – COMP 11*).

### Purpose

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**12.1.3** **G**  
01.12.01/001

The purpose of this chapter is to set out the different ways in which the *FSCS* is to calculate compensation.



## 12.2 Quantification: general

12.2.1 **R**  
01.12.01/001

The amount of compensation payable to the claimant in respect of any type of *protected claim* is the amount of his overall net *claim* against the *relevant person* at the *quantification date*.

12.2.2 **R**  
01.12.01/001

COMP 12.2.1R is, however, subject to the other provisions of COMP, in particular those *rules* that set limits on the amount of compensation payable for various types of *protected claim*. The limits are set out in COMP 10.

12.2.3 **G**  
01.12.01/001

Where a liability of a *relevant person* to an *eligible claimant* could fall within more than one type of *protected claim* (see COMP 5.2.1R), for example a *claim* in connection with *money* held by an *ISD investment firm* that is also a *credit institution*, the FSCS should seek to ensure that the claimant does not receive any further compensation payment from the FSCS in cases where the claimant has already received compensation from the FSCS in respect of that *claim*.

### Overall net claim

12.2.4 **R**  
01.12.01/001

A claimant's overall net *claim* is the sum of the *protected claims* of the same category that he has against a *relevant person in default*, less the amount of any liability which the *relevant person* may set off against any of those *claims* (see COMP 10.2.2G).

12.2.5 **G**  
01.12.01/001

For the different categories of *protected claim*, see COMP 5 and COMP 10.2.3G.

12.2.6 **G**  
01.12.01/001

In calculating the claimant's overall net *claim*, the FSCS may rely, to the extent that it is relevant, on any determination by:

- (1) a court of competent jurisdiction;
- (2) a trustee in bankruptcy;
- (3) a liquidator;
- (4) any other recognised insolvency practitioner;

and on the certification of any net sum due which is made in default proceedings of any exchange or clearing house.

12.2.7 **R**  
01.12.01/001

In calculating the claimant's overall net *claim*, the FSCS must take into account any payments to the claimant (including amounts recovered by the FSCS on behalf of the claimant) made by the

*relevant person* or any other *person*, if that payment is connected with the *relevant person's* liability to the claimant.



## 12.3 Quantification date

### Protected deposits

- 12.3.1** R For a *protected deposit claim*, the *quantification date* is the date the *relevant person* is determined to be *in default*, or the date the *protected deposit* was due and payable, if later.

01.12.01/001

### Protected contracts of insurance

- 12.3.2** R For a *claim* under a *protected contract of insurance* that is a *long-term insurance contract*, the FSCS must determine as the *quantification date* a specific date by reference to which the liability of the *relevant person* to the *eligible claimant* is to be determined.
- 12.3.3** R For a claim under a *protected contract of insurance* that is a *relevant general insurance contract*, the FSCS must determine as the *quantification date* a specific date by reference to which the liability of the *relevant person* to the *eligible claimant* is to be determined.
- 12.3.4** R For a *claim* in respect of the unexpired *premiums* under a *protected contract of insurance* that is a *relevant general insurance contract* (see COMP 5.4.7R(3)), the *quantification date*, being the date by which the liability of the *relevant person* to the *eligible claimant* is to be determined, is the date the policy was terminated or cancelled.

01.12.01/001

01.12.01/001

01.12.01/001

### Protected investment business

- 12.3.5** R For a *claim* made in connection with *protected investment business* which is not an *ICD claim*, the FSCS must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of the determination of default.
- 12.3.6** R For a *claim* made in connection with *protected investment business* which is an *ICD claim*, the *quantification date* is the date the *relevant person* is determined to be *in default*.

01.12.01/001

01.12.01/001



## 12.4 The compensation calculation

### Protected deposit with incoming EEA firm

12.4.1

**R**

01.12.01/001

If the claimant has a *DGD claim* against an *incoming EEA firm* which is a *credit institution*, the *FSCS* must take account of the liability of the *Home State* deposit-guarantee scheme in calculating the compensation payable by the *FSCS*.

### Protected investment business: general

12.4.2

**R**

01.12.01/001

The *FSCS* may pay compensation for any *claim* made in connection with *protected investment business* which is not:

- (1) a *claim* for property held; or
- (2) a *claim* arising from transactions which remain uncompleted at the *quantification date*;

only to the extent that the *FSCS* considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

12.4.3

**R**

01.12.01/001

The *FSCS* must not pay compensation for any *claim* in connection with *protected investment business* to the extent that it relates to or depends on:

- (1) a failure of investment performance to match a guarantee given or representation made; or
- (2) a contractual obligation to pay or promise to pay which the *FSCS* considers to have been undertaken without full consideration passing to the *relevant person* or in anticipation of possible insolvency; or
- (3) the mere fluctuation in the value of an *investment*.

12.4.4

**R**

01.12.01/001

If the claimant has an *ICD claim* against an *incoming EEA firm* which is an *ISD investment firm* (including a *credit institution* which is an *ISD investment firm*), the *FSCS* must take account of the

liability of the *Home State* compensation scheme in calculating the compensation payable by the *FSCS*.

**Protected investment business: claims covered by the pensions review**

12.4.5 **R**  
01.12.01/001

If the claimant has a *claim* in connection with *protected investment business* relating to the fact that the claimant has:

- (1) while eligible or reasonably likely to become eligible to be a member of an *occupational pension scheme*, instead become a member of a *personal pension scheme* or entered into a *retirement annuity*; or
- (2) ceased to be a member of, or to pay contributions to, an *occupational pension scheme*, and has instead become a member of a *personal pension scheme* or entered into a *retirement annuity*; or
- (3) transferred to a *personal pension scheme* accrued rights under an *occupational pension scheme* which is not a defined contribution (money purchase) scheme; or
- (4) ceased to be a member of an *occupational pension scheme* and has instead (by virtue of such a provision as is mentioned in section 591(2)(g) of the Income and Corporation Taxes Act 1988) entered into arrangements for securing relevant benefits by means of an annuity;

the *FSCS* must take the steps set out in *COMP 12.4.6R*.

12.4.6 **R**  
01.12.01/001

If *COMP 12.4.5R* applies, the *FSCS* must follow the Specification of Standards and Procedures issued by the *FSA* in October 1994, as supplemented and modified by subsequent guidance issued by the *FSA* (in particular, that of November 1996) (the ‘Specification’) in:

- (1) assessing whether a *relevant person* has complied with the relevant regulatory requirements;
- (2) assessing whether non-compliance has caused the claimant loss; and
- (3) calculating the amount of compensation due (where the *FSCS* may rely on calculations made by the *FSA* or any previous regulator of the *relevant person*);

unless the *FSCS* considers that departure from the Specification is essential in order to provide the claimant with fair compensation.

**Protected investment business: FSAVC Review**

12.4.7

**R**

01.12.01/001

Where a *claim* made in connection with *protected investment business* relates to an Additional Voluntary Contribution policy advised on or arranged by a *relevant person*, the FSCS must follow the FSAVC Review Model Guidance issued by the FSA in May 2000 (the "Guidance") in:

- (1) assessing whether the *relevant person* has complied with the relevant regulatory requirements;
- (2) assessing whether non-compliance has caused the claimant loss; and
- (3) calculating the compensation due (where the FSCS may rely on calculations made by the FSA or any previous regulator of the *relevant person*);

unless the FSCS considers that departure from the Guidance is essential in order to provide the claimant with fair compensation.

**Protected investment business: excessive benefits**

12.4.8

**R**

01.12.01/001

The FSCS may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with *protected investment business* that is not an *ICD claim*, if it is satisfied that:

- (1) there is evidence of contributory negligence by the claimant; or
- (2) payment of the full amount would provide a greater benefit than the claimant might reasonably have expected or than the benefit available on similar *investments* with other *relevant persons*; and

it would be inequitable for the FSCS not to take account of (1) or (2).

**Protected contracts of insurance: liabilities subject to compulsory insurance**

12.4.9

**R**

01.12.01/001

The FSCS must pay a sum equal to 100% of any liability of a *relevant person* who is an *insurance undertaking* in respect of a *liability subject to compulsory insurance* to the claimant as soon as reasonably practicable after it has determined the *relevant person* to be *in default*.

**Protected contracts of insurance: general insurance**

12.4.10

**R**

01.12.01/001

The FSCS must calculate the liability of a *relevant person* to the claimant under a *relevant general insurance contract* in accordance

with the terms of the contract, and (subject to any limits in COMP 10.2.3R) pay that amount to the claimant.

**Protected contracts of insurance: long-term insurance**

12.4.11 **R**  
01.12.01/001

Unless the FSCS is making arrangements to secure continuity of insurance cover under COMP 3.3.1R and COMP 3.3.2R, the FSCS must calculate the liability of a *relevant person* to the claimant under a *long-term insurance contract* in accordance with the terms of the contract as valued in a liquidation of the *relevant person*, or (in the absence of such relevant terms) in accordance with such reasonable valuation techniques as the FSCS considers appropriate, and (subject to any limits in COMP 10.2.3R and to COMP 12.4.12R to COMP 12.4.14R) pay that amount to the claimant.

12.4.12 **R**  
01.12.01/001

The FSCS must not treat any bonus provided under a *long term insurance contract* as part of the claimant’s claim unless it was declared before the beginning of the liquidation.

12.4.13 **R**  
01.12.01/001

If the FSCS considers that the benefits or *future benefits* provided for under a protected *long term insurance contract* issued by a *relevant person* are or may be excessive in any respect, having regard to the *premiums* paid or payable and to any other terms of the contract, the FSCS must refer the contract to an actuary who is independent of the claimant and of the *relevant person in default*.

12.4.14 **R**  
01.12.01/001

If the FSCS is satisfied, following the actuary’s written recommendation, that any of the benefits provided for under the contract are or may be excessive, it may treat the liability of the *relevant person* under the contract as reduced or (as the case may be) disregarded.

12.4.15 **R**  
01.12.01/001

The FSCS may rely on the value attributed to the contract by the actuary when calculating the compensation payable to the claimant, or when securing continuity of cover.

12.4.16 **R**  
01.12.01/001

For *claims* arising in connection with *protected contracts of insurance*, the FSCS must treat any term in an *insurance undertaking’s* constitution or in its *contracts of insurance*, limiting the undertaking’s liabilities under a *long-term insurance contract* to the amount of its assets, as limiting the undertaking’s liabilities to any claimant to an amount which is not less than the gross assets of the undertaking.





## 12.5 Quantification when the FSCS is seeking to secure continuity of insurance cover

### 12.5.1

**R**

01.12.01/001

In any period when the FSCS is seeking to secure continuity of cover for any policyholder of a *relevant person*, the FSCS must secure that 100% of the first £2,000 and 90% of the remainder of any *future benefit* under a *long term insurance contract* which would have fallen due to be paid to any policyholder during that period, is paid to the policyholder in question as soon as reasonably practicable after the time when the benefit in question would have fallen due under the contract (but subject to and in accordance with any other terms which would have applied under the contract).

### 12.5.2

**R**

01.12.01/001

A bonus provided under a *contract of insurance* is not a *future benefit* for the purposes of COMP 12.5.1R unless it was declared before the beginning of the liquidation.



## 12.6 Quantification: trustees, personal representatives, agents, and joint claims

### Trustees

- 12.6.1** **R** 01.12.01/001 If a claimant’s *claim* includes a *claim* as trustee, the FSCS must treat him in respect of that *claim* as if his *claim* as trustee were a *claim* of a different *person*.
- 12.6.2** **R** 01.12.01/001 If a claimant has a *claim* as a bare trustee for one or more beneficiaries, the FSCS must treat the beneficiary or beneficiaries as having the *claim*, and not the claimant.
- 12.6.3** **R** 01.12.01/001 If any group of *persons* has a *claim* as trustees, the FSCS must treat them as a single and continuing *person* distinct from the *persons* who may from time to time be the trustees.
- 12.6.4** **R** 01.12.01/001 Where the same *person* has a *claim* as trustee for different trusts, COMP applies as if the *claims* relating to each of these trusts were *claims* of different *persons*.
- 12.6.5** **R** 01.12.01/001 Where the claimant is a trustee, and some of the beneficiaries of the trust are *persons* who would not be *eligible claimants* if they had a claim themselves, the FSCS must adjust the amount of the overall net *claim* to eliminate the part of the claim which, in the FSCS’s view, is a claim for those beneficiaries.
- 12.6.6** **R** 01.12.01/001 Where COMP 12.6.1R to COMP 12.6.5R apply, the FSCS must try to ensure that any compensation paid to the trustee:
- (1) is for the benefit of beneficiaries who would be *eligible claimants* if they had a *claim* themselves; and
  - (2) does not exceed the amount of the loss suffered by those beneficiaries.
- 12.6.7** **R** 01.12.01/001 Where a *person A* is entitled (whether as trustee or otherwise) to a *deposit* made out of a clients’ or other similar account containing money to which one or more *persons* are entitled, the FSCS must treat each of those other persons, and not A, as entitled to the part of

the *deposit* that corresponds to the proportion of the money in the account to which the other person is entitled.

**Personal representative**

- 12.6.8** **R** Where a *person* numbers among his *claims* a *claim* as the personal representative of another, the *FSCS* must treat him in respect of that *claim* as if he were standing in the shoes of that other *person*.  
01.12.01/001

**Agents**

- 12.6.9** **R** If a claimant has a *claim* as agent for one or more *principals*, the *FSCS* must treat the *principal* or *principals* as having the *claim*, not the claimant.  
01.12.01/001

**Joint claims**

- 12.6.10** **R** If two or more *persons* have a joint beneficial *claim*, the *claim* is to be treated as a *claim* of the partnership if they are carrying on business together in partnership. Otherwise each of those *persons* is taken to have a *claim* for his share, and in the absence of satisfactory evidence as to their respective shares, the *FSCS* must regard each *person* as entitled to an equal share.  
01.12.01/001

**Foreign law**

- 12.6.11** **R** In applying *COMP* to *claims* arising out of business done with a *branch* or establishment of the *relevant person* outside the *United Kingdom*, the *FSCS* must interpret references to *persons* entitled as personal representatives, trustees, bare trustees or agents, or references to *persons* having a joint beneficial *claim* or carrying on business in partnership, as references to *persons* entitled, under the law of the relevant country or territory, in a capacity appearing to the *FSCS* to correspond as nearly as may be to that capacity.  
01.12.01/001

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## COMP 13 Ann 1R: Management Expenses Levy Limit

1 This table belongs to *COMP* 13.5.2R

2 **Table**

Period	Limit on total of all management expenses levies attributable to that period
1 December 2001 to 1 April 2002	£4,209,000



Compensation

# Chapter 13

## Funding





## 13.1 Application and Purpose

### Application

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**13.1.1** R  
01.12.01/001

This chapter applies to:

- (1) every *participant firm*; and
- (2) the *FSCS*.

**13.1.2** G  
01.12.01/001

*Firms* which are not *participant firms* (such as certain types of *incoming EEA firms*, *service companies* and *ICVCs*) are not required to contribute towards the funding of the *compensation scheme*.

### Purpose

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**13.1.3** G  
01.12.01/001

The purpose of this chapter is to set out the requirements on *participant firms* to pay levies imposed by the *FSCS* to provide funding for its functions.

## 13.2 General structure

- 13.2.1** G Section 213(3)(b) of the *Act* requires the *FSA* to make rules to enable the *FSCS* to impose levies on *authorised persons* in order to meet its expenses. These expenses include in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks.  
01.12.01/001
- 13.2.2** G The *FSCS* may impose two types of levy: a *management expenses levy*, and a *compensation costs levy*. In the first three full years of the operation of the *compensation scheme*, the *FSCS* may impose an *establishment costs levy* as part of a *management expenses levy*. The *FSCS* has discretion as to the timing of the levies imposed.  
01.12.01/001
- 13.2.3** G In calculating a *compensation costs levy*, the *FSCS* may include anticipated *compensation costs* for defaults expected to be determined in the 12 month period following the date of the levy. The total of all *management expenses levies* attributable to a financial year will be restricted to the amount set out on an annual basis in COMP 13 Ann 1R.  
01.12.01/001
- 13.2.4** G In order to allocate a share of the amount to be funded by an individual *participant firm*, the funding arrangements are split into three *sub-schemes*: the accepting deposits *sub-scheme*, the insurance business *sub-scheme*, and the designated investment business *sub-scheme*. The business carried on by a *participant firm* determines into which *sub-scheme*, or *sub-schemes*, it falls.  
01.12.01/001
- 13.2.5** G Within each *sub-scheme* there are one or more *contribution groups*. These relate to different types of activity carried on by *participant firms* within each *sub-scheme*. Within a *sub-scheme*, individual *participant firms* are allocated for funding purposes to one or more *contribution groups*, depending on their business activities. This meets a requirement of section 213(5) of the *Act* that the *FSA*, in making rules to enable the *FSCS* to impose levies, must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of *authorised person* reflects, so far as practicable, the amount of claims made, or likely to be made, in respect of that class of person.  
01.12.01/001
- 13.2.6** G Section 223 of the *Act* (Management expenses) prevents the *FSCS* from recovering, through a levy, any *management expenses* attributable to a particular period in excess of the limit set in *COMP* as applicable to that period. ‘Management expenses’ are defined in section 223(3) to mean expenses incurred or expected to be incurred by the *FSCS* in connection with its functions under the *Act*, except:

- (1) expenses incurred in paying compensation; and



- (2) expenses incurred as a result of the FSCS making the arrangements to secure continuity of insurance set out in COMP 3.3.1R and COMP 3.3.2R or taking the measures set out in COMP 3.3.3R and COMP 3.3.4 when a *relevant person* is an *insurer* in financial difficulties..

**13.2.7**

01.12.01/001

A *management expenses levy* under COMP may consist of three elements. The first is a *base costs levy* for the ‘base costs’ of running the *compensation scheme* in a financial year – that is, costs which are not dependent upon the level of activity of the *compensation scheme* and which therefore are not referable to any specific default. Included in this category are items such as the salary of the members of the board of the FSCS, the costs of the premises which the FSCS occupies, and its audit fees. The amount that each *participant firm* pays towards a *base costs levy* is calculated by reference to the *regulatory costs* paid by the *firm*. All *participant firms* are liable to contribute towards a *base costs levy*.

**13.2.8**

01.12.01/001

The second element of a *management expenses levy* is a *specific costs levy* for the ‘specific costs’ of running the *compensation scheme* in a financial year. These costs depend on the number of claims and types of default, and include the salaries of the staff of the FSCS and legal and other professional fees paid in respect of particular defaults. The specific costs are allocated to the *contribution group* or groups of which the *relevant person in default* was a member, or which is responsible for those costs under COMP, on the basis of the *protected claims* against that *person*. The FSCS may include in a *specific costs levy* the specific costs that the FSCS expects to incur (including in respect of defaults not yet declared at the date of the levy) during the financial year of the *compensation scheme* to which the levy relates. The amount that each *participant firm* pays towards the *specific costs levy* is calculated by reference to the amount of business conducted by the *firm* in each of the *contribution groups* to which the FSCS has allocated specific costs. Each *contribution group* has a separate ‘tariff base’ for this purpose, set out in COMP 13.6.7R. *Participant firms* may be exempt from contributing to the *specific costs levy*.

**13.2.9**

01.12.01/001

The third element of a *management expenses levy* is the costs of establishing the FSCS. The FSCS may impose an *establishment costs levy* only until the end of the third full financial year of operation of the *compensation scheme*. The amount that each *participant firm* pays towards the *establishment costs levy* is calculated on the same basis as the *base costs levy*, and all *participant firms* are liable to contribute.

**13.2.10**

01.12.01/001

The FSA intends to consult in January each year on the amount which it will set as the limit on the *management expenses* attributable to the forthcoming financial year of the FSCS.

### The compensation costs levy

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**13.2.11**

01.12.01/001

The *compensation costs levy* is made up of the *compensation costs* which the FSCS has incurred and has not yet recovered from *participant firms* (less any recoveries it has made using the rights that have been assigned to it), together with those *compensation costs* it expects to incur (including in respect of defaults yet to be declared) over the 12 months following the date of the levy.

**13.2.12**

01.12.01/001

*Compensation costs* are the costs incurred in paying compensation, securing continuity of long-term insurance and safeguarding eligible claimants when insurers are in financial difficulties. For funding purposes, these costs are allocated by the FSCS, and met by *participant firms*, in the same way as specific costs: see COMP 13.6.6R.

**13.2.13** G  
01.12.01/001

If a *participant firm* is a member of more than one *contribution group*, the total *compensation costs levy* and *specific costs levy* for that firm will be the aggregate of the individual levies calculated for the firm in respect of each of the *contribution groups*.

#### Incoming EEA firms

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**13.2.14** G  
01.12.01/001

*Incoming EEA firms* which top up under the provisions of COMP 14 are *firms* whose *Home State* scheme provides compensation cover in the event that they are determined to be in default. Under COMP 13.7, the FSCS is required to consider whether *incoming EEA firms* should receive a discount on the amount that they would otherwise pay as their share of the levy, to take account of the availability of their *Home State* cover. The amount of any discount is recoverable from the other members of the *incoming EEA firm's contribution group*.

## 13.3 Exemption

- 13.3.1** **R** 01.12.01/001 A *participant firm* which does not conduct business that could give rise to a *protected claim* by an *eligible claimant* and has no reasonable likelihood of doing so is exempt from a *specific costs levy*, or a *compensation costs levy*, or both, provided that it notifies the FSCS of this fact and the notice remains current.
- 13.3.2** **R** 01.12.01/001 A notice under COMP 13.3.1R must be given:
- (1) by 28 February 2002, in which case it will remain current until 31 March 2003; or
  - (2) as soon as practicable after the time of its authorisation by the FSA, in which case it will remain current until the end of the financial year of the *compensation scheme* in which it is given; or
  - (3) as soon as practicable after it ceases to conduct business that could give rise to a *protected claim* by an *eligible claimant*, in which case it will remain current until the end of the financial year of the *compensation scheme* in which it is given; or
  - (4) unless (1) applies, in February of each financial year of the *compensation scheme*, in which case the notice will remain current until the end of the next financial year.
- 13.3.3** **G** 01.12.01/001
- (1) A notice under COMP 13.3.1R will be renewable every 12 months.
  - (2) The financial year of the *compensation scheme* is the twelve months ending on 31 March.
- 13.3.4** **R** 01.12.01/001 A *participant firm* which is exempt under COMP 13.3.1R must notify the FSCS as soon as reasonably practicable if the conditions in COMP 13.3.1R no longer apply.
- 13.3.5** **G** 01.12.01/001 A *participant firm* to which the conditions in COMP 13.3.1R no longer apply will then become subject to COMP 13.4, 13.6, and 13.8
- 13.3.6** **R** 01.12.01/001 If, during the course of a financial year of the *compensation scheme*, a *participant firm* ceases to conduct business that could give rise to a *protected claim* by an *eligible claimant* and notifies the FSCS of this under COMP 13.3.2R(3), it will be treated as a *participant firm* to which COMP 13.8.7R applies until the end of the financial year.

## 13.4 The FSCS's power to impose levies

### General limits on levies

- 13.4.1** **R** 01.12.01/001 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:
- (1) in the case of a *management expenses levy*, the level of the FSCS's anticipated expenditure in respect of those expenses in the financial year of the *compensation scheme* in relation to which the levy is imposed; and
  - (2) in the case of a *compensation costs levy*, the level of the FSCS's anticipated expenditure in respect of *compensation costs* in the 12 months following the levy.
- 13.4.2** **G** 01.12.01/001 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.
- 13.4.3** **G** 01.12.01/001 The FSCS may impose one or more levies in a financial year to meet either its *management expenses* or its *compensation costs*. The FSCS may also impose interim levies, as part of its overall levy commitment. This flexibility allows the FSCS to phase its financing over the course of a financial year and thus avoid collecting levies from firms before the money is actually needed. The FSCS has committed itself in the Memorandum of Understanding with the FSA (the text of which can be found on the FSA website [www.fsa.gov.uk](http://www.fsa.gov.uk)) to publish regularly an indicative timetable for its levy procedures
- 13.4.4** **G** 01.12.01/001 The discretion over levying in COMP also gives the FSCS, if it thinks this appropriate, the ability to use third parties as its agents in raising and collecting the levies.

### Limits on compensation costs levies on sub-schemes

- 13.4.5** **R** 01.12.01/001 The FSCS must not require a *participant firm* in the accepting deposits *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* to the extent that:

- (1) the share in question; plus
- (2) all previous amounts paid by the firm either as its share of levies allocated to that *sub-scheme*, or under the *Deposit Protection Scheme* (deducting from those amounts any amount refunded under COMP 13.4.17R - COMP 13.4.18R or by the *Deposit Protection Scheme*);

amounts to more than 0.3% of the firm's *protected deposits*.

13.4.6

R

01.12.01/001

The FSCS must not require a *participant firm* in the insurance business *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* in any financial year of the *compensation scheme*, to the extent that the share in question, together with all previous amounts paid by the *firm* as its share of *compensation costs levies* allocated to that *sub-scheme* in that financial year, amounts to more than 0.8% of the *participant firm's relevant net premium income*.

13.4.7

R

01.12.01/001

The maximum amount of *compensation costs* for which the FSCS can levy the designated investment business *sub-scheme* in any one financial year of the *compensation scheme* is limited to £400 million.

#### Levy for compensation costs paid in error

13.4.8

R

01.12.01/001

The FSCS may include in a *compensation costs levy* the costs of compensation paid by the FSCS in error, provided that the payment was made in good faith.

#### Management of funds

13.4.9

R

01.12.01/001

The FSCS must hold any amount collected from a *specific costs levy* or *compensation costs levy* to the credit of the *sub-schemes* and relevant *contribution groups*, in accordance with the allocation established under COMP 13.5.6R and COMP 13.6.2R.

13.4.10

R

01.12.01/001

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.

13.4.11

R

01.12.01/001

Interest earned by the FSCS in the management of funds held to the credit of a *contribution group* must be credited to that *contribution group*, and must be set off against the *management expenses* allocated to that *contribution group*.

13.4.12

R

01.12.01/001

The FSCS must keep accounts which show:

- (1) the funds held to the credit of each *sub-scheme* and relevant *contribution group*; and
- (2) the liabilities of that *sub-scheme* and relevant *contribution group*.

13.4.13 **R**  
01.12.01/001

The FSCS may use the money collected from firms within one *sub-scheme* to pay *compensation costs* in respect of any *contribution group* within that *sub-scheme*, so long as it ensures that this is done without prejudice to the *participant firms* from whom the money has been collected.

13.4.14 **G**  
01.12.01/001

COMP 13.4.13R means that, for example:

- (1) when crediting interest under COMP 13.4.11R, the FSCS should regard any money collected from one *contribution group* which has been used to pay the *compensation costs* of another *contribution group* within the same *sub-scheme* as standing to the credit of the first *contribution group*; and
- (2) the FSCS should not raise a levy under COMP 13.4.1R on a *contribution group* solely because, as a result of the FSCS's action under COMP 13.4.13R, there appear to be insufficient funds available to the credit of the *contribution group* to meet its expenses.

13.4.15 **R**  
01.12.01/001

- (1) The FSCS may use any money held to the credit of one *sub-scheme* (the 'creditor *sub-scheme*') to pay compensation costs in respect of another *sub-scheme* (the 'debtor *sub-scheme*') 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 *sub-scheme* is reimbursed by the debtor *sub-scheme* as soon as possible;
  - (b) the debtor *sub-scheme* 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 *sub-scheme* to the debtor *sub-scheme* is taken into account by the FSCS when considering whether to impose a *compensation costs levy* on the creditor *sub-scheme* under COMP 13.4.1R.

13.4.16 **R**  
01.12.01/001

Unless COMP 13.4.17R applies, any recoveries made by the FSCS in relation to *protected claims* must be credited to the *contribution groups* to which the related *compensation costs* were allocated.

PAGE  
9

13.4.17 **R**  
01.12.01/001

If the FSCS makes recoveries in relation to *protected claims* where the related *compensation costs* were allocated to the accepting deposits *sub-scheme*, or in relation to compensation paid out of a special contribution under the *Deposit Protection Scheme*, and if the FSCS refunds the recoveries under COMP 13.4.18R, it must ensure that, as far as possible, the recoveries are refunded to the *firms* that

contributed to the relevant *compensation costs levy* or special contribution (whether or not the *firms* are *participant firms* at the time that the recoveries are made).

13.4.18 **R**  
01.12.01/001

If the *FSCS* has more funds to the credit of a *contribution group* than the *FSCS* believes will be required to meet levies on that *contribution group* for the next 12 months, it may refund the surplus to members or former members of the *contribution group* on any reasonable basis.

#### Adjustments to calculation of levy shares

13.4.19 **R**  
01.12.01/001

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 COMP 13.3; or
- (3) amounts that the *FSCS* has not been able to recover from *participant firms* as a result of COMP 13.4.5R or COMP 13.4.6R; or
- (4) amounts that the *FSCS* has not been able to recover from *participant firms* after having taken reasonable steps; or
- (5) COMP 13.5.8R (New *participant firms*), COMP 13.4.20R (Remission of levy) or COMP 13.7 (*Incoming EEA firms*); or
- (6) anything else that the *FSCS* believes on reasonable grounds should be taken into account.

#### Remission of levy

13.4.20 **R**  
01.12.01/001

If a *participant firm's* share of a levy would be an amount so small that, in the opinion of the *FSCS*, the costs of collection would be disproportionate to the amount received, the *FSCS* may treat the *participant firm* as if the share amounted to zero.

## 13.5 Management expenses

### Obligation on participant firm to pay

- 13.5.1** **R** *A participant firm must pay to the FSCS a share of each management expenses levy.*

01.12.01/001

### Limit on management expenses

- 13.5.2** **R** *The total of all management expenses levies attributable to a particular period of the compensation scheme may not exceed the limit applicable to that period set out in COMP 13 Ann 1R.*

01.12.01/001

### Participant firm's share

- 13.5.3** **R** *A participant firm's share of a management expenses levy consists of one or more of:*

01.12.01/001

- (1) a share of a *base costs levy*; and
- (2) a share of a *specific costs levy*; and
- (3) a share of an *establishment costs levy*.

- 13.5.4** **R** *The FSCS must ensure that each participant firm's share of a management expenses levy separately identifies the firm's share of the base costs levy, specific costs levy and establishment costs levy.*

01.12.01/001

### Base costs levy

- 13.5.5** **R** *Unless COMP 13.4.19R applies, the FSCS must calculate a participant firm's share of a base costs levy by:*

01.12.01/001

- (1) identifying the *base costs* which the FSCS has incurred, or expects to incur, in the relevant financial year of the *compensation scheme*, but has not yet levied;



- (2) calculating the amount of the *participant firm's regulatory costs* as a proportion of the total *regulatory costs* relating to all *participant firms* for the relevant financial year; and
- (3) applying the proportion calculated in (2) to the figure in (1).

#### Specific costs levy

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13.5.6 **R**  
01.12.01/001

The FSCS must allocate any *specific costs levy* amongst the *sub-schemes* and relevant *contribution groups* in proportion to the volume of relevant costs arising from, or expected to arise from, claims in respect of the different activities represented by those *contribution groups*.

13.5.7 **R**  
01.12.01/001

The FSCS must calculate a *participant firm's* share of a *specific costs levy* (subject to COMP 13.4.19R) by:

- (1) identifying each of the *sub-schemes* and relevant *contribution groups* within those *sub-schemes* to which the *participant firm* belongs, using the statement of business most recently supplied under COMP 13.6.11R;
- (2) identifying the *management expenses* other than *base costs* or *establishment costs* which the FSCS has incurred, or expects to incur, in the relevant financial year of the *compensation scheme*, allocated to the *contribution groups* identified in (1), but not yet levied;
- (3) calculating, in relation to each relevant *contribution group*, the *participant firm's* tariff base as a proportion of the total tariff base of all *participant firms* in the *contribution group*, using the statement of business most recently supplied under COMP 13.6.11R;
- (4) applying the proportion calculated in (3) to the figure in (2); and
- (5) if more than one *sub-scheme* or *contribution group* is relevant, adding together the figure in (4) for each *contribution group*.

#### New participant firms

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13.5.8 **R**  
01.12.01/001

A *firm* which becomes a *participant firm* part way through a financial year of the *compensation scheme* will not be liable to pay a share of a *specific costs levy* made in that year.

13.5.9 **G**  
01.12.01/001

New *participant firms* will normally have relevant tariff bases of nil as at 31 December in the financial year preceding that in which they join, so that they will not be required to pay a share of a *specific costs levy* (or a *compensation costs levy*

because of COMP 13.6.6). COMP 13.5.8 means that that the FSCS does not have to estimate the tariff base of a new *participant firm*.

**13.5.10****G**

01.12.01/001

Since a *firm* that becomes a *participant firm* in the course of a financial year of the *compensation scheme* will already be obtaining a discount in relation to the *base costs levy* and the *establishment costs levy* through the modified fee provisions of SUP 20.4.3, no rule is necessary in COMP for discounts on the *base costs levy* or the *establishment costs levy*.

**Establishment costs levy**

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**13.5.11****R**

01.12.01/001

The FSCS must calculate a *participant firm's* share of an *establishment costs levy* on the same basis as a *base costs levy* under COMP 13.5.5R.

**13.5.12****R**

01.12.01/001

The FSCS may not impose an *establishment costs levy* after the end of the third full financial year of operation of the *compensation scheme*.

## 13.6 Compensation costs

- 13.6.1** **R** 01.12.01/001 The *compensation costs levy* is made up of *compensation costs* incurred by the *FSCS*, together with any *compensation costs* which can reasonably be anticipated as arising in the 12 months following the levy date, and which in each case have not already been subject to a levy.
- 13.6.2** **R** 01.12.01/001 The *FSCS* must allocate any *compensation costs levy* to the individual *sub-schemes* and relevant *contribution groups* in proportion to the volume of *compensation costs* arising from, or expected to arise from, claims in respect of the different activities represented by those *contribution groups*.
- 13.6.3** **R** 01.12.01/001 If a *participant firm* which is *in default* has carried on a *regulated activity* other than in accordance with a *permission*, the *FSCS* must allocate any *compensation costs* or *specific costs* arising out of that activity to the relevant *contribution group* which covers that activity.
- 13.6.4** **R** 01.12.01/001 If the *relevant person in default* is an *appointed representative*, the *FSCS* must allocate any *compensation costs* or *specific costs* arising out of a *regulated activity* for which his *principal* has not accepted responsibility to the relevant *contribution group* for that activity.
- 13.6.5** **R** 01.12.01/001 A *participant firm* (except one exempt under COMP 13.3) must pay to the *FSCS* a share of each *compensation costs levy*.
- 13.6.6** **R** 01.12.01/001 The *FSCS* must calculate a *participant firm's* share of a *compensation costs levy* on the same basis as a *specific costs levy* under COMP 13.5.6R, COMP 13.5.7R and COMP 13.5.8R.
- 13.6.7** **R** 01.12.01/001 When calculating a *participant firm's* share of a *compensation costs levy* or *specific costs levy* allocated to:
- (1) the accepting deposits *sub-scheme* or the insurance business *sub-scheme*, the *FSCS* must use the *contribution groups* and tariff bases as set out in the table in COMP 13.6.8R.;
  - (2) the investment business *sub-scheme*, the *FSCS* must use as the *contribution groups* and tariff bases the correspondingly numbered *activity groups* and tariff bases set out in part 7 of SUP 20 Ann 1R;

13.6.8 **R**  
01.12.01/001

**Table** Table: Contribution Groups for the Accepting Deposits Sub-scheme and the Insurance Business Sub-scheme for the Financial Services Compensation Scheme (see COMP 13.6.7R (1))

SUB-SCHEME	CONTRIBUTION GROUP (REFERENCES TO A1, A2 ETC ARE TO THE FSA FEE BLOCKS)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i> )	TARIFF BASE
Accepting deposits	A1 – deposit takers	<i>Accepting deposits</i> (article 5)	<i>Protected deposits</i> (see COMP 13.6.13R)
Insurance business	A3 – Insurance activities – General insurance	<i>Effecting contracts of insurance and/or carrying out contracts of insurance</i> (article 9) that are <i>general insurance contracts</i>	<i>Relevant net premium income</i>
Insurance business	A4 – insurance activities – Life Insurance	<i>Effecting contracts of insurance and/or carrying out contracts of insurance</i> (article 9) that are <i>long-term insurance contracts</i>	<i>Relevant net premium income</i>

13.6.9 **G**  
01.12.01/001

**Table** Table: A summary of the relevant contribution groups and tariff bases for the investment business sub-scheme (see COMP 13.6.7R (2)).

SUB-SCHEME	CONTRIBUTION GROUP (REFERENCES TO A1, A2 ETC ARE TO THE FSA FEE BLOCKS)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i> )	TARIFF BASE
Designated investment business	A7 – fund managers holding client money and/or assets	<i>Managing investments</i> (article 33), and either: (a) holding <i>client money</i> ; or (b) <i>safeguarding and administering investments</i> (article 36)	Funds under management
Designated investment business	A8 – fund managers not holding either client money and/or assets	<i>Managing investments</i> (article 33), but not: (a) holding <i>client money</i> ; or (b) <i>safeguarding and administering investments</i> (article 36)	Funds under management
Designated investment business	A9 – managers of an <i>AUT</i> , <i>ACDs</i> and <i>depositories</i>	Any of the following: (a) <i>establishing, operating or winding up a collective investment scheme</i> ; (b) <i>acting as a trustee of an authorised unit trust scheme</i> ; (c) <i>acting as a depository, or sole director of an open-ended investment company</i> (article 48)	Gross income

Designated investment business	A10 – dealing as principal	<i>Dealing in investments as principal</i> (article 12), but not: (a) dealing as principal in investments if the investments are <i>life policies</i> ; or (b) acting as a matched principal broker	Number of traders
Designated investment business	A11 – execution only brokers	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) <i>arranging (bringing about) deals in investments</i> (article 21(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 22(2)); (d) dealing as principal in investments where the investments are <i>life policies</i> (article 12); (e) acting as a matched principal broker; but without <i>permission to advise on investments</i> (article 52)	Commission income
Designated investment business	A12 – brokers (excluding execution-only brokers and corporate finance advisers) – holding either client money or assets	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) <i>arranging (bringing about) deals in investments</i> (article 21(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 22(2)); with <i>permission</i> to: (i) <i>advise on investments</i> (article 49); (ii) hold <i>client money</i> , and (iii) <i>safeguard and administer investments</i> (article 36)	Number of approved persons
Designated investment business	A13 – brokers (excluding execution only brokers and corporate finance advisers) – not holding either client money or assets	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) <i>arranging (bringing about) deals in investments</i> (article 21(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 22(2)); with <i>permission to advise on investments</i> (article 49); but not to (i) hold <i>client money</i> , and (ii) <i>safeguard and administer investments</i> (article 36).	Number of approved persons
Designated investment business	A14 – corporate finance advisory firms	<i>Permission</i> includes a requirement that the <i>firm</i> must not conduct <i>designated investment business</i> other than <i>corporate finance business</i>	Number of approved persons

Designated investment business	A15 – advisory only	<i>Advising on investments</i> (article 49), but not within A11 to A14	Number of <i>approved persons</i>
Designated investment business	A16 – pensions review	The <i>firm</i> was liable to pay the Pensions Review Levy to the <i>PIA</i> in 2001/ 2002	Percentage share of <i>PIA's</i> 2001/ 2002 Pensions Review Levy

**13.6.10** G  
01.12.01/001

A *participant firm* may belong to more than one *sub-scheme*, and more than one *contribution group* within the same *sub-scheme*.

**13.6.11** R  
01.12.01/001

Unless exempt under **COMP 13.3.1R**, a *participant firm* must provide the *FSCS* by the end of February each year with a statement of:

- (1) the *contribution groups* to which it belongs; and
- (2) the total amount of business (measured in accordance with the appropriate tariff base or bases) which it conducted, as at 31 December of the previous year, in relation to each of those *contribution groups*.

**13.6.12** R  
01.12.01/001

If the information in **COMP 13.6.11R** has been provided to the *FSA* under other rule obligations, a *participant firm* will be deemed to have complied with **COMP 13.6.11R**.

**13.6.13** R  
01.12.01/001

Where a *participant firm* can identify that a *protected deposit* was made by a *person* who is not an *eligible claimant*, it may exclude the amount of that deposit from the tariff base, provided that it notifies the *FSCS* of the amount of the deposit so excluded and provides the *FSCS* with such information about the deposit as the *FSCS* may reasonably require.

**13.6.14** R  
01.12.01/001

Where a *participant firm* does not provide the statement required by **COMP 13.6.11R**, the *FSCS* may assess the firm for its share of the *compensation costs levy* or the *specific costs levy* on any reasonable basis (including on the basis of the statement for the previous year), making such adjustments as seem appropriate in subsequent levies once the true figures are known.

## 13.7 Incoming EEA firms

### Levies for specific costs and compensation costs relating to the pension transfers and opt-outs review

13.7.1

**R**

01.12.01/001

If an *incoming EEA firm*, which is a *BCD credit institution* or *ISD investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the firm's *Home State* scheme.

## 13.8 Payment of levies

**13.8.1** **R** *A participant firm must pay its share of any levy made by the FSCS:*

01.12.01/001

- (1) in one payment; or
- (2) where the FSCS agrees, quarterly, at the beginning of each quarter, by direct debit agreement.

**13.8.2** **G** The amount paid under a direct debit arrangement will be adjusted on a continuous basis to take account of interim levies and other adjustments made during the course of the financial year.

01.12.01/001

**13.8.3** **R** *A participant firm's share of a levy to which COMP 13.8.1R(1) applies is due on, and payable within 30 days of, the date when the invoice is issued.*

01.12.01/001

**13.8.4** **R** *If a participant firm does not pay its share of a levy as required by COMP 13.8.3R, it must thereafter pay additional administrative fees based on the amount outstanding at a rate of 5% over the Bank of England's repo rate from time to time in force accruing on a daily basis from the date on which the payment was due.*

01.12.01/001

**13.8.5** **R** *If a participant firm does not pay its share of a levy subject to a direct debit agreement as required by COMP 13.8.1R(2), the entire amount of the levy becomes due and payable to the FSCS, and additional administrative fees are payable at the rate set out in COMP 13.8.4R.*

01.12.01/001

**13.8.6** **R** *If a participant firm fails to make payment under COMP 13, the FSCS may:*

01.12.01/001

- (1) take steps to recover any money owed; or
- (2) refer the matter to the FSA so that the FSA may take whatever disciplinary action it considers necessary; or
- (3) do both (1) and (2).

**13.8.7** **R** *If a firm ceases to be a participant firm part way through a financial year of the compensation scheme:*

01.12.01/001

- (1) it will remain liable for any unpaid levies which the FSCS has already made on the firm; and



- (2) the FSCS may make a levy upon it (which may be before or after the firm has ceased to be a *participant firm*, but must be before it ceases to be an *authorised person*) for the costs which it would have been liable to pay had the FSCS made a levy on all *participant firms* at the time of the levy on the *firm*.

Compensation

## Chapter 14

# Participation by EEA Firms

PAGE  
1



14

## 14.1 Application and Purpose

### Application

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

15.11.01/001

**14.1.2** **R** This chapter also applies to an *incoming EEA firm* which is a *credit institution* or an *ISD investment firm* (or both).

15.11.01/001

### Purpose

**14.1.3** **G** This chapter provides supplementary *rules* and *guidance* for an *incoming EEA firm* which is a *credit institution* or an *ISD investment firm*. It reflects the implementation of the *Deposit Guarantee Directive* and *Investors Compensation Directive*. This sourcebook applies in the usual way to an *incoming EEA firm* which is exercising *EEA rights* under the *Insurance Directives*. Such a *firm* is not affected by the *Deposit Guarantee Directive* or the *Investors Compensation Directive*.

15.11.01/001

**14.1.4** **G** An *incoming EEA firm*, which is a *credit institution* or an *ISD investment firm*, is not a "*participant firm*" in relation to its *passport activities* unless it "*tops-up*" into the *compensation scheme*. This reflects section 213(10) of the *Act* (The *compensation scheme*) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an *incoming EEA firm* also carries on non-*passport activities* for which the *compensation scheme* provides cover, it will be a *participant firm* in relation to those activities and will be covered by the *compensation scheme* for those activities in the usual way.

15.11.01/001

**14.1.5** **G** In relation to an *incoming EEA firm's passport activities*, its *Home State* compensation scheme must provide compensation cover in respect of business within the scope of the *Deposit Guarantee Directive* and *Investors Compensation Directive*, whether that business is carried on from a *UK branch* or on a *cross border services* basis.

15.11.01/001

**14.1.6** **G** If the scope or level of cover provided by the *incoming EEA firm's Home State* compensation scheme is less than that provided by the *compensation scheme*, this chapter enables the *firm* to obtain *top-up cover* from the *compensation scheme* for its *passport activities* carried on from a *UK branch*, up to the *compensation scheme's* limits (set out in *COMP 10*). This reflects section 214(5) of the *Act* (General) and regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate). If the *firm* "*tops-up*" and then becomes insolvent, the *Home State* compensation scheme will pay compensation up to the limit and scope of the *Home State* compensation scheme, with the *FSCS* paying compensation for

15.11.01/001

the additional amount in accordance with the provisions in this sourcebook (*COMP* 12.4.1R and *COMP* 12.4.4R).

## 14.2 Obtaining top-up cover

- 14.2.1** **R** 15.11.01/001 An *incoming EEA firm* may, by notice in writing to the FSCS, elect to receive *top-up cover* from the *compensation scheme* if it falls within one of the categories prescribed in regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate).
- 14.2.2** **R** 15.11.01/001 An election under COMP 14.2.1R takes effect on the date when the FSCS notifies the *incoming EEA firm* that its election has been accepted.
- 14.2.3** **G** 15.11.01/001 A notice under COMP 14.2.1R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:
- (1) the *firm* must be a *credit institution* or an *ISD investment firm*;
  - (2) the *firm* must have established a *branch* in the *United Kingdom* in the exercise of an *EEA right*; and
  - (3) the scope and level of cover provided by the *firm's Home State* compensation scheme must be less than that provided by the *compensation scheme*.
- 14.2.4** **R** 15.11.01/001 When the FSCS accepts an application, it must allocate the *incoming EEA firm* to the *contribution group* (or groups) which seems to the FSCS to be most appropriate, taking into account the nature of the business for which the *incoming EEA firm* is seeking cover from the *compensation scheme*.
- 14.2.5** **R** 15.11.01/001 The FSCS must put in place and publish procedures to enable an appeal by an *incoming EEA firm* against a rejection by the FSCS of an election to receive *top-up cover* or a decision to allocate an *incoming EEA firm*, once the *firm's* election has been accepted, to a particular *contribution group*. Such procedures must satisfy the minimum requirements of procedural fairness and comply with the European Convention on Human Rights.



## 14.3 Co-operation between the FSCS and Home State compensation schemes

### 14.3.1



15.11.01/001

Where an *incoming EEA firm* obtains *top-up cover* under COMP 14.2, the FSCS must seek to establish with that *firm's Home State* compensation scheme appropriate procedures for the payment of compensation to claimants, following the principles set out in Annex II of the *DGD* or Annex II of the *ICD*, as appropriate.

## 14.4 Ending top-up cover

### FSCS terminating top-up cover

- 14.4.1** **R** 15.11.01/001 The FSCS must terminate an *incoming EEA firm's top-up cover* where it is advised by the *firm's Home State regulator* or compensation scheme that the conditions in COMP 14.2.1R are no longer satisfied.
- 14.4.2** **R** 15.11.01/001 If an *incoming EEA firm* which has *top-up cover* fails to observe any of the *rules* in this sourcebook which apply to *participant firms*, the FSCS must notify the FSA and the *incoming EEA firm's Home State regulator*.
- 14.4.3** **R** 15.11.01/001 In cases where COMP 14.4.2R applies, the FSCS must co-operate with the *incoming EEA firm's Home State regulator* so that appropriate measures can be taken to ensure that the *incoming EEA firm* meets its obligations under this sourcebook.
- 14.4.4** **R** 15.11.01/001 If the *incoming EEA firm* fails to meet its obligations for a period of twelve months, the FSCS may terminate its *top-up cover*.

### Resignation of an EEA firm from the compensation scheme

- 14.4.5** **R** 15.11.01/001 An *incoming EEA firm* which has *top-up cover* may terminate that *top-up cover* by giving six month's notice in writing to the FSCS.

### Notice to customers

- 14.4.6** **R** 15.11.01/001 When an *incoming EEA firm's top-up cover* comes to an end under COMP 14.4.1R, COMP 14.4.4R or COMP 14.4.5R, it must inform all the clients of its *UK branch* no later than six weeks after the date that its participation ends that they are no longer protected by the *compensation scheme*, and of the level of compensation which is then available to them.
- 14.4.7** **R** 15.11.01/001 If an *incoming EEA firm* fails to comply with COMP 14.4.6R, the FSCS must inform the *firm's Home State regulator* of that fact.

14.4.8

**R**

15.11.01/001

The *FSCS* must bring the ending of an *incoming EEA firm's top-up cover* to the attention of the *incoming EEA firm's* clients by means of a public notice.



# Schedules



## Compensation

### Schedule1 Record-keeping requirements

1 Table

<p><b>G</b></p> <ol style="list-style-type: none"> <li>The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements. The Rules listed below apply only to FSCS (the scheme manager).</li> <li>It is not a complete statement of those requirements and should not be relied upon as it were.</li> </ol>
--

2 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COMP 13.4.12R	FSCS funding	Full details of the movement of funds within sub-schemes.	Ongoing requirement.	N/A

## Compensation

### Schedule2 Notification requirements

1 Table

<p>G</p> <ol style="list-style-type: none"> <li>The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting. In all cases, other than those concerning Chapter 13 and Chapter 14, the notification rules in COMP apply only to FSCS (the scheme manager).</li> <li>It is not a complete statement of those requirements and should not be relied on as if it were.</li> </ol>
---

2 Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COMP 2.2.5R	Annual Report	Not specified in COMP – see Memorandum of Understanding (MoU) between FSA and FSCS	End of Financial Year	Not specified in COMP (see MoU)
COMP 2.2.7R	Default of relevant person	Not specified – although FSCS must take appropriate steps to ensure claimants are informed about how they can claim compensation	default of a relevant person	Not specified – but as soon as practicable after determining default
COMP13.3.2R	Right to exemption for specific costs and compensation costs levy	Notice that firm does not conduct business that could give rise to a claim on the FSCS and has no reasonable likelihood of doing so	In February each year or on the occasion of the firm’s authorisation or when it ceases conducting business with person eligible to claim on FSCS	As soon as practicable

COMP 13.3.4R	Loss of right to seek exemption from specific costs & compensation costs levy	Statement that firm no longer qualifies for exemption because it carries on business with persons eligible to claim on FSCS	Firm loses the right to claim the exemption.	As soon as practicable
COMP 13.6.11R	Levy base for participant firm	The contribution groups to which the participant firm belongs.  The total amount of business (measured in accordance with the appropriate tariff bases, which it conducted as at 31 December of the previous year	The end of the calendar year (the occasion of 31 December every year beginning with 31 December 2001).	By end February
COMP 13.8	Participant firms compensation levy for the financial year	Amount of levy payable by the participant firm	The decision by the FSCS that it must impose a levy	30 days before the levy is payable
COMP 14.2.1R	Application by eligible inward passporting EEA firm to top-up into compensation scheme	That firm is qualifying incoming EEA firm.  The sub-scheme(s) the firm wishes to participate in.  Confirmation that the level or scope of cover offered by its home state scheme(s) is less than that available in the UK.	The firm's decision that it wishes to top-up into the UK scheme.	N/A

COMP 14.4.5R	Termination of top-up cover	Statement that incoming EEA firm is terminating top-up cover	Decision by firm to resign from FSCS	6 months notice
COMP 14.4.6R	Termination of inward passporting EEA firm's top-up cover into compensation scheme	The firm's resignation from the compensation scheme and the level of compensation available to clients of the firm's UK branch following its decision to resign from FSCS	Termination of firm's top-up cover	No later than six weeks after the end of the firm's participation in compensation scheme

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## Compensation

### Schedule3 Fees and other required payments

1 Table

G

1. The rules in COMP 13 give FSCS (the scheme manager) the power to raise levies on participant firms in order to meet its expenses. The rules in COMP 13 do not specify the amount of any levy but do specify how a participant firm's share of a levy is to be calculated and any limit on the amount leviable by the FSCS is a particular period.

## Compensation

### Schedule4 Powers Exercised

#### 1 Table

G	
1	<p>The following powers and related provisions in the Act and the Compensation Transitionals Order have been exercised by the FSA to make the rules in COMP:</p> <ol style="list-style-type: none"><li>(1) Section 138 (General rule making powers)</li><li>(2) Section 156 (General supplementary powers)</li><li>(3) Section 214 (General)</li><li>(4) Section 215 (Rights of the Scheme in relevant persons insolvency)</li><li>(5) Section 216 (Continuity of long term insurance policies)</li><li>(6) Section 217 (Insurers in financial difficulties)</li><li>(7) Section 223 (Management Expenses)</li><li>(8) Article 4 (Pending Applications) of the Compensation Transitional's Order</li><li>(9) Article 6 (Post-commencement applications) of the Compensation Transitional's Order</li><li>(10) Article 9 (Article 9 defaults occurring before commencement) of the Compensation Transitional's Order</li><li>(11) Article 10 (Applications in respect of compulsory liability insurance) of the Compensation Transitional's Order</li><li>(12) Article 12 (Applications under the new scheme) of the Compensation Transitional's Order</li></ol>
2	<p>The following powers in the Act have been exercised by the FSA to give the guidance in COMP:</p> <ol style="list-style-type: none"><li>(1) Section 157(1) (Guidance)</li></ol>

## Compensation

### Schedule5 Rights of action for damages

#### 1 Table

1. The table below sets out the *rules* in *COMP* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
2. If a “yes” appears in the column headed “For private person?”, the *rule* may be actionable by a “*private person*” under section 150 unless a “yes” appears in the column headed “Removed”. A “yes” in the column headed “Removed” indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. In accordance with the Financial Services and Markets Act 2000(Rights of Action) Regulations 2001 (SI 2001/2256) a “private person” is:
  - i any individual, except when acting in the course of carrying on a *regulated activity*; and
  - ii any *person* who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, local authority or an international organisation.
4. The column headed “For other person?” indicates whether the rule is actionable by a *person* other than a *private person*, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.
5. The vast majority of *rules* in *COMP* are *rules* to which the *FSCS* is subject. No right of action arises under section 150 for breach of these *rules*, as the *FSCS* is not an *authorised person*.

#### 2 Table Table title (Omit row for untitled tables) row-graphic-table



Chapter/ Appendix	Section/ Annex	Paragraph	For pri- vate per- son?	Removed	For other per- son?
COMP 13	Funding (all rules)		<b>Yes</b>	<b>No</b>	<b>No</b>
COMP 14.4.6 R			<b>Yes</b>	<b>No</b>	<b>No</b>

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## Compensation

### Schedule6 Rules that can be waived

1 Table

G

The *rules* in *COMP* cannot be *waived* by the *FSA*, except:

- (1) COMP 13.6.11R;
- (2) COMP 14.4.6R.