

COMPENSATION SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme); and
 - (5) section 214 (General).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- B. This instrument comes into force on 7 October 2008.

Amendments to the Handbook

- C. The Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Compensation Sourcebook (Amendment No 8) Instrument 2008.

By order of the Board
2 October 2008

Annex

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 7.2.1 R The *FSCS*:
- (1) must make any payment of compensation to a claimant, in respect of a *protected deposit*, conditional on the claimant, in so far as able to do so, assigning the whole of his rights; and
 - (2) may make any payment of compensation to a claimant in respect of *any other 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 ...
- 7.2.3 R (1) ...
- (2) ...
- (3) ~~If the *FSCS* makes recoveries through rights assigned under *COMP 7.2.1R*, it may deduct from any recoveries paid over to the claimant under *COMP 7.2.4R* part or all of its reasonable costs of recovery and of distribution (if any).~~ [deleted]

Specific provisions relating to claims for protected deposits

- 7.2.3A R If the *FSCS*, in relation to a *claim* for a *protected deposit*, takes an assignment of rights from the claimant under *COMP 7.2.1R* and subsequently makes recoveries through those rights, the *FSCS* must:
- (1) retain from those recoveries a sum equal to the “*FSCS* retention sum”;
and
 - (2) as soon as reasonably possible after it makes the recoveries, pay to the claimant, or as directed by the claimant, a sum equal to the “top up payment”.
- 7.2.3B R The *FSCS* must calculate “*FSCS* retention sum” and the “top up payment” as follows:
- (1) calculate the “recovery ratio” of:
 - (a) the amount recovered by the *FSCS* through rights assigned under *COMP 7.2.1R* (taking into account any deduction from

that amount the FSCS may make to cover part or all of its reasonable costs of recovery and of distribution, if any); to

(b) the claimant's overall net claim for protected deposits against the relevant person in default less any liability of a Home State deposit guarantee scheme;

(2) subtract the sum paid by the FSCS as compensation and any amount paid or payable by a Home State compensation scheme to the claimant from the total value of the claimant's overall net claim for protected deposits, to give the "compensation shortfall";

(3) apply the recovery ratio to the sum paid by the FSCS as compensation to the claimant, to give the "FSCS retention sum"; and

(4) apply the recovery ratio to the compensation shortfall, to give the "top up payment".

7.2.3C G (1) For example, if the claimant's overall net claim for protected deposits against a relevant person was for £100,000, and the FSCS paid compensation of £50,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £80,000 (after the costs of recovery and of distribution), then:

(a) the recovery ratio would be 80% (£80,000 ÷ £100,000);

(b) the compensation shortfall would be £50,000 (£100,000 - £50,000);

(c) the FSCS retention sum would be £40,000 (80% x £50,000);

(d) the top up payment would be £40,000 (80% of £50,000);

(e) the total payment to the claimant would be £90,000 (£50,000 of compensation plus £40,000 of top up payment); and

(f) the total outlay by the FSCS, net of the FSCS retention sum, would be £10,000 (20% x £50,000).

(2) In the example above, the amount recovered exceeds the amount of compensation. However, COMP 7.2.1AR also applies where the amount recovered is less than the amount of compensation. Therefore, for example, if the claimant's overall net claim for protected deposits against a relevant person was for £100,000, and the FSCS paid compensation of £50,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £20,000 (after the costs of recovery and of distribution), then:

(a) the recovery ratio would be 20% (£20,000 ÷ £100,000);

- (b) the compensation shortfall would be £50,000 (£100,000 - £50,000);
- (c) the FSCS retention sum would be £10,000 (20% x £50,000);
- (d) the top up payment would be £10,000 (20% of £50,000);
- (e) the total payment to the claimant would be £60,000 (£50,000 of compensation plus £10,000 of top up payment); and
- (f) the total outlay by the FSCS, net of the FSCS retention sum, would be £40,000 (80% x £50,000).

7.2.3D G In order to prevent a claimant suffering 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, the FSCS shall apply the rule in COMP 12.2.7R(2).

Provisions relating to other classes of protected claim

7.2.3E R If the FSCS makes recoveries through rights assigned under COMP 7.2.1R in relation to a claim that is not for a protected deposit, it may deduct from any recoveries paid over to the claimant under COMP 7.2.4R part or all of its reasonable costs of recovery and of distribution (if any).

7.2.4 R Unless compensation was paid under COMP 9.2.3R or the claim was for a *protected deposit*, 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:

...

7.2.5 R Except for a claim for a protected deposit, The 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.

...

10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected deposit</i>	100% of claim	£35,000 <u>£50,000</u>
...		

12.2.7 R ~~In calculating the claimant's overall net claim, t~~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 the FSCS or any other *person*, if that payment is connected with the *relevant person's* liability to the claimant:

- (1) in calculating the claimant's overall net *claim*; and
- (2) for a claim for a protected deposit, by reducing the amount of compensation by the FSCS retention sum that the FSCS would have retained if it had made those recoveries itself.

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...
<u>17</u>	<u>Amendments introduced by the Compensation Sourcebook (Amendment No 8) Instrument 2008</u>	<u>R</u>	<u>Provisions and definitions arising out of (2) only apply to defaults on or occurring after 7 October 2008</u>	<u>From 7 October 2008 indefinitely</u>	<u>7 October 2008</u>