

## COMPENSATION SOURCEBOOK (AMENDMENT NO 9) INSTRUMENT 2012

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 156 (General supplementary powers);
    - (c) section 213 (The compensation scheme);
    - (d) section 214 (General); and
    - (e) section 215 (Rights of the scheme in insolvency); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook .
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force as set out below:
- (1) Annex A and Part 1 of Annex B come into force on 1 October 2012;
  - (2) Part 2 of Annex B comes into force on 1 April 2013.

### Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Compensation sourcebook (COMP) is amended in accordance with Annex B to this instrument.

### Citation

- F. This instrument may be cited as the Compensation Sourcebook (Amendment No 9) Instrument 2012.

By order of the Board  
27 September 2012

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

*client money*

...

- (4) (in *UPRU* and *COMP*) client money for the purposes of the relevant *client money rules*.

**Annex B**

**Amendments to the Compensation sourcebook (COMP)**

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

**Part 1: Comes into force on 1 October 2012**

3.2.1 R 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 (but see *COMP* 3.2.1AR);

...

Treating a person as having claimed

3.2.1A R The *FSCS* may treat *persons* who are or may be entitled to claim compensation as if they had done so.

...

Claims on behalf of another person

3.2.2 R ...

...

4.2.2 R 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

...	
(7)	<i>Directors</i> <del>and managers</del> of the <i>relevant person in default</i> . However, this exclusion does not apply if:
	(a) both of the following apply:
	(i) the <i>relevant person in default</i> is a mutual association which is not a <i>large mutual association</i> ; and
	(ii) the <i>directors</i> <del>and managers</del> do not receive a salary or other remuneration of services performed by them for the <i>relevant person in default</i> , or
	(b) the <i>relevant person in default</i> is a <i>credit union</i> .

(8)	<i>Close relatives of persons excluded by (7) above [deleted]</i>
(9)	...
(10)	<i>Persons holding 5% or more of the capital of the relevant person in default, or of any body corporate in the same group [deleted]</i>
(11)	<i>The auditors of the relevant person in default, or of any body corporate in the same group as the relevant person in default, or any actuary appointed under SUP 4 (Actuaries) by a friendly society or insurance undertaking in default [deleted]</i>
...	

...

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

- (1) he came within category ~~(8)~~ or (14) of *COMP* 4.2.2R; or
- (2) he came within any of categories (1)-(3), (7) or ~~(10)~~-(12) of *COMP* 4.2.2R, and was not a *large company*, *large mutual association*, or a *credit institution*.
- (3) ...

Long term insurance

4.3.2 R A person other than one which comes within any of categories ~~(7)~~-(12) and (7), (9), (12) or (15) of *COMP* 4.2.2R is eligible to claim compensation in respect of a *long term insurance* contract.

...

Eligibility to claim in specified circumstances

4.3.8 R The FSCS may treat a person who comes within category (7) or (12) of COMP 4.2.2R as eligible to claim compensation where:

- (1) this is desirable to achieve the efficient performance of any of its functions, including without limitation, to facilitate a transfer of business or any part thereof, to secure the issue of policies by another firm to eligible claimants in substitution for their existing policies, to achieve the efficient payment of compensation, to secure under COMP 3.3.2CR the payment of benefits under a long term insurance contract; and
- (2) treating these persons as eligible to claim compensation would, in the opinion of the FSCS, be beneficial to the generality of eligible

claimants who will be affected by the action in (1).

...

**5.3.1A R** A protected deposit continues to be a protected deposit if, under a transfer of banking business, it is transferred to:

- (1) an establishment of a relevant person in the United Kingdom; or
- (2) a branch of a UK firm which is a credit institution established in another EEA State under an EEA right.

...

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

- (1) ...
- (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); and

if a relevant person is in default in relation to an *ICD claim* or a *DGD claim* it shall be deemed to be in default in relation to any other type of protected claim.

...

## **7 Assignment or subrogation of rights**

...

**7.1.3 G** The *FSCS* may (and in some cases must) make an offer of compensation conditional on the assignment of rights to it by a claimant. The *FSCS* may also be subrogated automatically to the claimant's rights. The purpose of this chapter is to make provision for and set out the consequences of an assignment or subrogation of the claimant's rights.

...

**7.2.1 R** The *FSCS*:

- (1) must or if the *FSCS* is subrogated automatically to the claimant's rights may 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

...

...

- 7.2.3 R (1) Before taking assignment of rights from the claimant under *COMP 7.2.1R*, the *FSCS* must inform the claimant that if, after taking assignment of rights, the *FSCS* decides not to pursue recoveries using those rights it will, if the claimant so requests in writing, reassign the assigned rights to the claimant. The *FSCS* must comply with such a request in such circumstances (see *COMP 7.4.2R*).
- (2) [deleted] [Editor's Note: The text of this sub-paragraph has been moved to new *COMP 7.4.1R*.]
- (3) [deleted]

~~Specific provisions relating to claims for protected deposits~~

- 7.2.3A R [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.5.1R*.]
- 7.2.3B R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.5.2R*.]
- 7.2.3C G [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.5.3G*.]
- 7.2.3D G [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.5.4G*.]

Provisions relating to other classes of protected claim

- 7.2.3E R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.6.1R*.]
- 7.2.4 R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.6.2R*.]
- 7.2.4A R [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.6.3R*.]
- 7.2.5 R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.6.4R*.]
- 7.2.6 G [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.6.5G*.]

...

After *COMP 7.2* insert the following new sections.

*[Editor's Note: Some of the text of the new sections has been moved, with or without*

*amendment, from existing COMP provisions; where this is the case, the previous provision number is shown for the information of readers of this instrument above the new number, and underlining indicates new text added to, and striking through indicates deletions from, the text of the previous provision. New provisions and headings are shown underlined.]*

### **7.3**      **Automatic subrogation**

7.3.1      R      The FSCS's powers in this section apply to all *claims* except those under *protected contracts of insurance*.

~~15.1.5~~  
7.3.2      R      The FSCS's powers in this section may be used:

- (1)      separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this sourcebook;
- (2)      ~~in respect of a *relevant person in default* irrespective of when the default occurred;~~ [deleted]
- (3)      in relation to all or any part of a ~~*protected deposit*~~ or class of *protected deposits* ~~or class of *protected claim*~~ protected claim made with respect to the *relevant person*; and/or
- (4)      (where the FSCS uses its powers to administer the payment of compensation on behalf of, or to pay compensation or make a payment on account or an advance and recover from, a Non-UK Scheme or Other Funder (see COMP 15.1.14R)) in respect of all or part of any *protected deposit* which is compensatable by and/or recoverable from the Non-UK Scheme or Other Funder, and the FSCS may make different provision for those parts of a *protected deposit* (and references to paying compensation shall be treated as referring to making a payment, making a payment on account or making an advance as appropriate) (for the purposes of this section the terms "Non-UK Scheme" and "Other Funder" have the same meaning as in COMP 15.1.14R).

~~15.1.6~~  
7.3.3      R      The FSCS may determine that the exercise of any power in this section is subject to such incidental, consequential or supplemental conditions as the FSCS considers appropriate.

#### Determinations by the FSCS

~~15.1.7~~  
7.3.4      R      (1)      Any power conferred on the FSCS to make determinations under this section is exercisable in writing.

- (2)      An instrument by which the ~~FSCS~~ FSCS makes the determination must specify the provision under which it is made, the date and time from which it takes effect and the *relevant person* and *protected deposits claims*, parts of *protected deposits claims* and/or classes of *protected deposits claims* in respect of which it applies.

- (3) The *FSCS* must take appropriate steps to publish the determination as soon as possible after it is made. Such publication must be accompanied by a statement explaining the effect of *COMP 7.4.2R*.
- (4) Failure to comply with any requirement in this *rule* does not affect the validity of the determination.
- (5) A determination by the *FSCS* under this section may be amended, remade or revoked at any time and subject to the same conditions.

#### Verification of determinations

- ~~15.1.8~~  
7.3.5
- R (1) The production of a copy of a determination purporting to be made by the *FSCS* under this section:
- (a) on which is endorsed a certificate, signed by a member of the *FSCS's* staff authorised by it for that purpose; and
  - (b) which contains the required statements;
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are:
- (a) that the determination was made by the *FSCS*; and
  - (b) that the copy is a true copy of the determination.
- (3) A certificate purporting to be signed as mentioned in (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A *person* who wishes in any legal proceedings to rely on a determination may require the *FSCS* to endorse a copy of the determination with a certificate of the kind mentioned in (1).

#### Effect of this section on other provisions in this sourcebook etc

- ~~15.1.9~~  
7.3.6
- R Other provisions in this sourcebook and *FEES 6* are modified to the extent necessary to give full effect to the powers provided for in this section.
- ~~15.1.10~~  
7.3.7
- R Other than as expressly provided for, nothing in this section is to be taken as limiting or modifying the rights or obligations of or powers conferred on the *FSCS* elsewhere in this sourcebook or in *FEES 6*.

#### Rights and obligations against the relevant persons and third parties

- ~~15.1.17~~  
7.3.8
- R The *FSCS* may determine that:
- (1) the payment of compensation by the *FSCS*; and/or



- (2) the following actions by the *FSCS* (under *COMP 15.1.14R*):
- (a) administering the payment of compensation on behalf of;  
and/or
  - (b) paying and/or making a payment on account of compensation  
from;
- a Non-UK Scheme or Other Funder;

shall have all or any of the following effects:

- (3) the *FSCS* shall immediately and automatically be subrogated, subject to such conditions as the *FSCS* determines are appropriate, to all or any part (as determined by the *FSCS*) of the rights and claims in the *United Kingdom* and elsewhere of the claimant against the *relevant person* and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the *relevant person* or third party is acting) in respect of or arising out of the *claim* in respect of which the payment of or on account of compensation was made;
- (4) the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the claimant or in both names against the *relevant person* and/or any third party;
- (5) the subrogated rights and claims conferred on the *FSCS* shall be rights of recovery and claims against the *relevant person* and/or any third party which are equivalent (including as to amount and priority and whether or not the *relevant person* is insolvent) to and not exceed the rights and claims that the claimant would have had;  
and/or
- (6) such rights and/or obligations (as determined by the *FSCS*) as between the *relevant person* and the claimant arising out of the *protected deposit claim* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* with ~~permission to accept deposits~~ an appropriate permission and the claimant provided that the *authorised person* has consented (but the transferred rights and/or obligations shall be treated as existing between the *relevant person* and the *FSCS* to the extent of any subrogation, transfer or assignment for the purposes of (3) to (5) and *COMP 15.1.18R 7.3.9R*).

15.1.18 R The *FSCS* may alternatively or additionally make the actions in *COMP*  
7.3.9 ~~15.1.17R(1) 7.3.8R(1) and *COMP 15.1.17R(2) (2)*~~ conditional on the claimant assigning or transferring the whole or any part of all such rights as he may have against the *relevant person* and/or any third party (including, for the avoidance of any doubt, any Non-UK Scheme or Other Funder) on

such terms as the *FSCS* determines are appropriate.

- ~~15.1.20~~ R (1) The *FSCS* may determine that:
- 7.3.10
- (a) if the claimant does not assign or transfer his rights under ~~COMP 15.1.18R~~ 7.3.9R;
  - (b) if it is impractical to obtain such an assignment or transfer; and/or
  - (c) if it is otherwise necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under ~~COMP 15.1.17R~~ ~~to~~ COMP 7.3.8R or COMP 7.3.9R or COMP 15.1.19R;

that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom*, another *EEA State* or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

- (2) The execution of any deed or document under (1) shall be as effective as if made in writing by the claimant or by his agent lawfully authorised in writing or by will.

#### **7.4 Duty on FSCS to pursue recoveries**

- ~~7.2.3R(2)~~ R If the *FSCS* takes assignment or transfer of rights from the claimant ~~under~~ ~~COMP 7.2.1R~~ or is otherwise subrogated to the rights of the claimant, it must pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue.

- 7.4.1
- 7.4.2 R If the *FSCS* decides not to pursue such recoveries and a claimant wishes to pursue those recoveries himself and so requests in writing, the *FSCS* must comply with that request and assign the rights back to the claimant.

#### **7.5 Recoveries: protected deposits**

- ~~7.2.3A~~ R If the *FSCS*, in relation to a *claim* for a *protected deposit*, makes recoveries from the *relevant person* or any third party in respect of that *protected deposit* 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~~  
7.5.2

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 or transferred under ~~COMP 7.2.1R~~ or otherwise subrogated (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 *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 *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~~  
7.5.3

G (1) For example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £96,000 (after the costs of recovery and of distribution), then:

- (a) the recovery ratio would be 80% ( $£96,000 \div £120,000$ );
- (b) the compensation shortfall would be £35,000 ( $£120,000 - £85,000$ );
- (c) the FSCS retention sum would be £68,000 ( $80\% \times £85,000$ );
- (d) the top up payment would be £28,000 (80% of £35,000);
- (e) the total payment to the claimant would be £113,000 (£85,000 of compensation plus £28,000 of top up payment); and
- (f) the total outlay by the *FSCS*, net of the FSCS retention sum,

would be £17,000 (20% x £85,000).

- (2) In the example above, the amount recovered exceeds the amount of compensation. However, ~~COMP 7.2.4R~~ 7.5.1R also applies where the amount recovered is less than the amount of compensation. Therefore, for example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £24,000 (after the costs of recovery and of distribution), then:
- (a) the recovery ratio would be 20% (£24,000 ÷ £120,000);
  - (b) the compensation shortfall would be £35,000 (£120,000 - £85,000);
  - (c) the *FSCS* retention sum would be £17,000 (20% x £85,000);
  - (d) the top up payment would be £7,000 (20% of £35,000);
  - (e) the total payment to the claimant would be £92,000 (£85,000 of compensation plus £7,000 of top up payment); and
  - (f) the total outlay by the *FSCS*, net of the *FSCS* retention sum, would be £68,000 (80% x £85,000).

~~7.2.3D~~ 7.5.4 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).

## **7.6 Recoveries: claims other than for protected deposits**

~~7.2.3E~~ 7.6.1 R If the *FSCS* makes recoveries ~~through rights assigned under *COMP* 7.2.4R~~ 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~~ 7.6.2R part or all of its reasonable costs of recovery and distribution (if any).

~~7.2.4~~ 7.6.2 R Unless compensation was paid under *COMP* 9.2.3R or the *claim* was for a *protected deposit*, if a claimant ~~agrees to assign~~ assigns or transfers his rights to the *FSCS* or a claimant's rights and claims are otherwise subrogated to the *FSCS* and the *FSCS* subsequently makes recoveries through those rights or claims, those recoveries must be paid to the claimant:

- (1) to the extent that the amount recovered exceeds the amount of compensation (excluding interest paid under *COMP* 11.2.7R) 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 failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the FSCS at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see ~~COMP 7.2.5R~~ 7.6.4R).
- ~~7.2.4A~~ 7.6.3 R For the purpose of ~~COMP 7.2.4R~~ 7.6.2R compensation received by *eligible claimants* in relation to *Lloyd's policies* may include payments made from the *Central Fund*.
- ~~7.2.5~~ 7.6.4 R Except for a *claim* for a *protected deposit*, the *FSCS* must endeavour to ensure that a claimant will not suffer disadvantage arising solely from his prompt acceptance of the *FSCS's* offer of compensation or from the subrogation of his rights and claims to the FSCS compared with what might have been the position had he delayed his acceptance or had his claims not been subrogated.
- ~~7.2.6~~ 7.6.5 G As an example of the circumstances which ~~COMP 7.2.5R~~ COMP 7.6.4R 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 £50,000 compensation (the maximum amount payable for such claims under 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* offer of compensation, A would be disadvantaged relative to B even though he has received £50,000 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* 10.2.2G). B therefore suffers no loss whereas A is left with a loss of £10,000, being the difference between his *claim* of £60,000 and the compensation paid by the *FSCS* of £50,000.

Amend the following as shown.

*[Editor's Note: Some of the text of the new provisions shown below has been moved, with or without amendment, from existing COMP provisions; where this is the case, the previous provision number is shown for the information of readers of this instrument above the new number, and underlining indicates new text added to, and striking through indicates deletions from, the text of the previous provision. New provisions and headings are shown underlined.]*

Form and method of paying compensation

- ~~15.1.13~~ 11.2.3A R The *FSCS* may pay compensation in any form and by any method (or any combination of them) that it determines is appropriate including, without limitation:
- (1) by paying the compensation (on such terms as the *FSCS* considers appropriate) to an *authorised person* with *permission to accept deposits* which agrees to become liable to the claimant in a like sum;
  - (2) by paying compensation directly into an existing deposit account of (or for the benefit of) the claimant, or as otherwise identified by (or on behalf of) the claimant, with an *authorised person* (but before doing so the *FSCS* must take such steps as it considers appropriate to verify the existence of such an account and to give notice to the claimant of its intention to exercise this power); ~~and/or~~
  - (3) (where two or more *persons* have a joint beneficial *claim*) by accepting communications from and/or paying compensation to any one of those *persons* where this is in accordance with the terms and conditions for communications and withdrawals of the *protected deposit*; ~~and/or~~
  - (4) by paying compensation to a *firm*, which makes a *claim* on behalf of its *clients*, if the *FSCS* is satisfied that:
    - (a) the business of a *relevant person in default* has been transferred to the *firm*;
    - (b) each *client* has a *claim* against the *relevant person in default* arising out of a *shortfall in client money* held by the *relevant person in default*;
    - (c) the *clients* in respect of which compensation is to be paid

satisfy the conditions set out in *COMP 3.2.2R(1)*; and

- (d) the firm has agreed, on such terms as the FSCS thinks fit, to pay, or credit the accounts of, without deduction, each client, that part of the compensation due to him.

...

Paying full compensation in return for rights

11.2.9 R Where the FSCS considers that the conditions in COMP 11.2.4R are satisfied but, in relation to a class of claim, in order to provide fair compensation for the generality of such claims it would be appropriate to take the approach in (1) and (2) rather than pay an appropriate lesser sum in final settlement or make a payment on account, it may for that class of claim:

- (1) receive whether by assignment, transfer or operation of law the whole or any part of a claimant's rights against the relevant person, or against any third party, or both on such terms as the FSCS thinks fit; and
- (2) disregard the value of the rights so received in determining the claimant's overall claim.

11.2.10 G Factors that the FSCS may take into account when considering taking the approach in COMP 11.2.9R(1) and (2) include whether the amount of claimants' overall claims are likely to be assessed within a reasonable time frame, the circumstances of the claimants, the circumstances of the claims and the nature of the products to which the claims relate.

...

Settlement of claims

~~15.1.21~~ 12.2.10 R (1) The FSCS may pay compensation without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of ~~that~~ the claim notwithstanding any provision in this sourcebook or FEES 6 to the contrary, if in the opinion of the FSCS:

- (a) the costs of investigating the merits of the claim are reasonably likely to exceed the amount of the claim be disproportionate to the likely benefit of such investigation; and
- (b) (as a result or otherwise) it is reasonably in the interests of participant firms to do so.

...

- (2) This rule does not apply with respect to claims for protected deposits that are excluded by Article 2 of the Deposit Guarantee Directive or by Article 3 of the Investor Compensation Directive.

...

**15** **Deposit payout Protected deposits: Payments from other schemes****15.1** **~~Accelerated compensation for depositors~~ Payments from other schemes**

...

15.1.1 G ~~When a *relevant person* is *in default* with claims against it for *protected deposits*, it is likely to be desirable for the *FSCS* to make accelerated payments of compensation, for the protection of consumers, to contribute to financial stability and to maintain market confidence. [deleted]~~

15.1.2 G ~~To facilitate an accelerated payment of compensation, this~~ This section provides additional and alternative powers for the *FSCS*. These powers include the ability for the *FSCS* to pay compensation to *eligible claimants* without an application, to provide compensation by a variety of means and subject to conditions including by making a payment directly into an account maintained by another *authorised person*, the *FSCS* with the power to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government, to be subrogated automatically to the claimant's rights against the *relevant person* and/or any third party, and/or to settle claims. This section operates separately from Part XVA of the *Act*.

...

15.1.5 R ~~[deleted]~~ [Editor's Note: The amended text of this provision has been moved to new COMP 7.3.2R.]

15.1.6 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.3R.]

**Determinations by the FSCS**

15.1.7 R ~~[deleted]~~ [Editor's Note: The amended text of this provision has been moved to new COMP 7.3.4R.]

**Verification of determinations**

15.1.8 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.5R.]

**Effect of this section on other provisions in this sourcebook etc**

15.1.9 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.6R.]

15.1.10 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.7R.]



Payment of compensation without an application

- 15.1.11 R ~~The FSCS may treat an *eligible claimant* as if the *eligible claimant* had made a *claim* under the *compensation scheme* and pay compensation to an *eligible claimant* without having received an application and/or an assignment of the whole or any part of the claimant's rights against the *relevant person* and/or any third party (and *COMP 3.2.1R(1)* and *COMP 7.2.1R* are modified accordingly). [deleted]~~

Early compensation for term or notice accounts

- 15.1.12 R ~~[deleted]~~

Form and method of paying compensation

- 15.1.13 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 11.2.3AR.]

...

- 15.1.16 R If the FSCS has made a payment or advance attributable to a Non-UK Scheme or Other Funder, and has acquired a right of recovery against the *relevant person* or any third party in respect of that amount, the FSCS may determine that the whole or any part of any recoveries which it makes shall be held by it for the benefit of and/or shared amongst the FSCS, that Non-UK Scheme, that Other Funder and/or any other *person* which has provided prior funding in respect of a payment or advance attributable to any such body (and ~~COMP 7.2.3AR~~ 7.5.1R is modified accordingly).

Rights and obligations against the relevant person and third parties

- 15.1.17 R ~~[deleted]~~ [Editor's Note: The amended text of this provision has been moved to new COMP 7.3.8R.]
- 15.1.18 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.9R.]
- 15.1.19 R The FSCS may determine in accordance with COMP 7.3.4R that the making of an advance by the FSCS to the claimant (under *COMP 15.1.14R(4)*) shall have the effect that the FSCS may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce the rights and claims of the claimant referred to in ~~COMP 15.1.17R(3)~~ 7.3.8R(3) in the name of, and on behalf of, the claimant against the *relevant person* and/or any third party.
- 15.1.20 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.10R.]

Settlement of claims

- 15.1.21 R ~~[deleted]~~ [Editor's Note: The amended text of this provision has been

moved to new COMP 12.2.10R.]

...

....

TP1.1 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
...					
33	<u>Amendments introduced by Annex A and Part 1 of Annex B of the Compensation Sourcebook (Amendment No 9) Instrument 2012.</u>	R	<p><u>The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 1 October 2012. Notwithstanding the above:</u></p> <p><u>(a) to the extent that the provisions changed apply to <i>protected deposits</i>, all the changes in (2); and</u></p> <p><u>(b) the changes to COMP 12.2.10R;</u></p> <p><u>apply irrespective of when the default occurred.</u></p>	From 1 October 2012 indefinitely	From 1 October 2012

...

**Part 2: Comes into force on 1 April 2013**

- 16.3.1 R A *firm* that is a *UK domestic firm* or a *non-EEA firm* must disclose the following information to any *protected deposit* holder with that *firm* who is or is likely to be an *eligible claimant*.

**“Important information about compensation arrangements**

We are covered by the Financial Services Compensation Scheme (FSCS). The FSCS can pay compensation to depositors if a [bank/building society/credit union - delete as appropriate] is unable to meet its financial obligations. Most depositors - including most individuals and small businesses - are covered by the scheme.

In respect of deposits, an eligible depositor is entitled to claim up to [insert *FSCS* maximum payment for *protected deposits*]. For joint accounts each account holder is treated as having a claim in respect of their share so, for a joint account held by two eligible depositors, the maximum amount that could be claimed would be [insert *FSCS* maximum payment for *protected deposits*] each (making a total of [insert *FSCS* maximum payment for *protected deposits* x 2]). The [insert *FSCS* maximum payment for *protected deposits*] limit relates to the **combined** amount in all the eligible depositor’s accounts with the [bank/building society/credit union - delete as appropriate], including their share of any joint account, and not to each separate account.

For further information about the scheme compensation provided by the FSCS (including the amounts covered and eligibility to claim) please [insert as appropriate one or more of the following:] call us on [insert *firm’s* phone number] / contact your firm representative / ask at your local branch, refer to the FSCS website [www.FSCS.org.uk](http://www.FSCS.org.uk) or call the FSCS on [insert *FSCS* phone number]. Please note *only* compensation related queries should be directed to the FSCS.”