

Dispute Resolution: Complaints

Dispute Resolution: Complaints

DISP INTRO	Introduction
INTRO 1	Introduction
DISP 1	Treating complainants fairly
1.1	Purpose and application
1.2	Consumer awareness rules
1.3	Complaints handling rules
1.4	Complaints resolution rules
1.5	Complaints resolved by close of the next business day
1.6	Complaints time limit rules
1.7	Complaints forwarding rules
1.8	Complaints time barring rule
1.9	Complaints record rule
1.10	Complaints reporting rules
1.10A	Complaints data publication rules
1.11	The Society of Lloyd's
1 Annex 1	Complaints return form
1 Annex 1A	Recommended metrics
1 Annex 1B	Complaints publication report
1 Annex 1C	Illustration of the online reporting requirements, referred to in DISP 1.10.2AR
1 Annex 2	Application of DISP 1 to type of respondent / complaint
DISP 2	Jurisdiction of the Financial Ombudsman Service
2.1	Purpose, interpretation and application
2.2	Which complaints can be dealt with under the Financial Ombudsman Service?
2.3	To which activities does the Compulsory Jurisdiction apply?
2.4	To which activities does the Consumer Credit Jurisdiction apply?
2.5	To which activities does the Voluntary Jurisdiction apply?
2.6	What is the territorial scope of the relevant jurisdiction?
2.7	Is the complainant eligible?
2.8	Was the complaint referred to the Financial Ombudsman Service in time?
2 Annex 1	Regulated activities for the Voluntary Jurisdiction at 30 April 2011
DISP 3	Complaint handling procedures of the Financial Ombudsman Service
3.1	Purpose, interpretation and application
3.2	Jurisdiction
3.3	Dismissal without consideration of the merits and test cases
3.4	Referring a complaint to another complaints scheme
3.5	Resolution of complaints by the Ombudsman

3.6	Determination by the Ombudsman
3.7	Awards by the Ombudsman
3.8	Dealing with information
3.9	Delegation of the Ombudsman's powers
3.10	[Deleted]
DISP 4	Standard terms
4.1	Purpose and application
4.2	Standard terms
DISP 5	Funding Rules
5.1	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.2	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.3	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.4	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.5	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.6	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.7	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.8	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.9	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5.10	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]
5 Annex 1R	[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding)]
DISP App 1	Handling Mortgage Endowment Complaints
App 1.1	Introduction

App 1.2	The standard approach to redress
App 1.3	Remortgaging
App 1.4	Policy reconstruction
App 1.5	Additional considerations
App 1.6	Valuing Relevant Benefits
App 1.7	[Deleted]
App 1.8	[Deleted]
App 1.9	[Deleted]
App 1.10	[Deleted]
App 1.11	[Deleted]
App 1.12	[Deleted]
App 1.13	[Deleted]
App 1.14	[Deleted]

DISP App 2 [Deleted]

App 2.1	Introduction [Deleted]
App 2.2	[Deleted]
App 2.3	[Deleted]
App 2.4	[Deleted]
App 2.5	[Deleted]
App 2.6	[Deleted]

DISP App 3 Handling Payment Protection Insurance complaints

App 3.1	Introduction
App 3.2	The assessment of a complaint
App 3.3	The approach to considering evidence
App 3.4	Root cause analysis
App 3.5	Re-assessing rejected claims
App 3.6	Determining the effect of a breach or failing
App 3.7	Approach to redress
App 3.8	Other appropriate redress
App 3.9	Other matters concerning redress
App 3.10	Application: evidential provisions

Transitional Provisions and Schedules

TP 1	Transitional provisions
Sch 1	Record keeping requirements
Sch 2	Notification requirements
Sch 3	Fees and other required payment
Sch 4	Powers Exercised
Sch 5	Actions for damages for contravention under section 150 of the Act
Sch 6	Rules that can be waived

Chapter INTRO

Introduction

INTRO 1 Introduction

FCA

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, licensees* and *VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FCA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FCA*.

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, licensees* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

Chapter 1: Treating complainants fairly

■ **DISP 1** contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. Some of these rules also apply to certain *branches* of *firms* elsewhere in the *EEA* and certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*.

Chapters 2 - 4: The Financial Ombudsman Service

Chapters 2, 3 and 4 set out how the *Financial Ombudsman Service* (operated by *FOS Ltd*) considers unresolved *complaints*.

Chapter 2 sets out the scope of the *Financial Ombudsman Service's* three jurisdictions:

- the *Compulsory Jurisdiction*;
- the *Consumer Credit Jurisdiction*; and
- the *Voluntary Jurisdiction*.

The scope of the three jurisdictions is defined by: the type of activity to which the *complaint* relates; the place where the activity took place; the eligibility of the complainant; and the time limits for referring a *complaint* to the *Financial Ombudsman Service*.

Chapter 3 sets out the procedures of the *Financial Ombudsman Service*, including consideration and determination of *complaints* and how the *Financial Ombudsman Service* deals with information received.

Chapter 4 sets out the terms under which *VJ participants* participate in the *Voluntary Jurisdiction*.

Appendix 1: FCA's guidance on handling mortgage-endowment complaints

This appendix contains the *FCA's guidance to firms* on handling *complaints* relating to mortgage endowments.

Appendix 3: FCA's rules and guidance on handling payment protection insurance complaints

This appendix sets out the approach which *firms* should use when handling *complaints* relating to the sale of *payment protection contracts*.

Financial Ombudsman Service fees

The rules on fees charged in respect of the *Financial Ombudsman Service* are in Chapter 5 of the Fees manual.

INTRO

Chapter 1

Treating complainants fairly

1.1 Purpose and application

Purpose

1.1.1
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This chapter contains *rules* and *guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments in the *United Kingdom*, by certain *branches* of *firms* in the *EEA* or by certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*. It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

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1.1.1B
1.1.1C
1.1.1D
1.1.1E

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Background

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Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) *persons* carrying on *regulated activities (firms)* , providing *payment services (payment service providers)* or providing *electronic money issuance services (electronic money issuers)* and which are covered by the *Compulsory Jurisdiction* ;
- (2) *persons* covered by the *Consumer Credit Jurisdiction (licensees)*; and
- (3) *persons* who have opted in to the *Voluntary Jurisdiction (VJ participants)*.

Application to firms

1.1.3
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- (1) Subject to ■ DISP 1.1.5 R, this chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.
- (2) For *complaints* relating to the *MiFID business* of a *firm*, the *complaints handling rules* and the *complaints record rule*:

- (a) apply to *complaints* from *retail clients* and do not apply to *complaints* from *eligible complainants* who are not *retail clients*;
- (b) also apply in respect of activities carried on from a *branch* of a *UK firm* in another *EEA State*; and
- (c) do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom*.

(3) The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom* or activities carried on by an *EEA firm* in the *United Kingdom* under the freedom to provide *cross border services*.

1.1.4

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Where a *firm* has outsourced activities to a *third party processor*,
 ■ DISP 1.1.3 R does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities.

1.1.5

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This chapter does not apply to:

- (1) [deleted]
- (2) [deleted]
- (3) an *authorised professional firm* in respect of expressions of dissatisfaction about its *non-mainstream regulated activities* ; and
- (4) *complaints* in respect of *auction regulation bidding*.

1.1.5A

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The *complaints reporting rules* and the *complaints data publication rules* do not apply to a *credit union*.

1.1.6

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■ CREDs 9 sets out *rules* for *credit unions* in relation to reporting *complaints*.

1.1.6A

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In relation to a *credit union*, the nature, scale and complexity of the *credit union's* business should be taken into account when deciding the appropriate procedures to put in place for dealing with *complaints*.

1.1.7

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This chapter applies to the *Society*, *members* of the *Society* and *managing agents*, subject to the *Lloyd's complaint rules*.

1.1.8

FCA

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An *insurance intermediary*, that is not also an *insurer*, must have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a *person* who is not an *eligible complainant*.

[Note: article 10 of the *Insurance Mediation Directive*]

1.1.9	G	[deleted]
1.1.9A FCA	G	<p>The scope of this sourcebook does not include:</p> <ol style="list-style-type: none"> (1) a <i>complaint</i> about pre-commencement investment business which was regulated by a <i>recognised professional body</i> (those <i>complaints</i> will be handled under the arrangements of that professional body); or (2) a <i>complaint</i> about the administration of an <i>occupational pension scheme</i>, because this is not a <i>regulated activity</i> (<i>firms</i> should refer complainants to the Pensions Advisory Service rather than to the <i>Financial Ombudsman Service</i>).
1.1.10 FCA	R	<p>In relation to a <i>firm's</i> obligations under this chapter, references to a <i>complaint</i> also include an expression of dissatisfaction which is capable of becoming a <i>relevant new complaint</i> or a <i>relevant transitional complaint</i>.</p> <p>Application to payment service providers</p>
1.1.10A FCA	R	<p>This chapter (except the <i>complaints record rule</i>, the <i>complaints reporting rules</i> and the <i>complaints data publication rules</i>) applies to <i>payment service providers</i> in respect of <i>complaints</i> from <i>eligible complainants</i> concerning activities carried on from an establishment maintained by it or its <i>agent</i> in the <i>United Kingdom</i>.</p>
1.1.10B FCA	G	<ol style="list-style-type: none"> (1) In this sourcebook, the term <i>payment service provider</i> does not include <i>full credit institutions</i> (which are covered by this sourcebook as <i>firms</i>), but it does include <i>small electronic money institutions</i>. (2) Although <i>payment service providers</i> are not required to comply with the <i>complaints record rule</i>, it is in their interest to retain records of <i>complaints</i> so that these can be used to assist the <i>Financial Ombudsman Service</i> should this be necessary. <p>Application to electronic money issuers</p>
1.1.10C FCA	R	<p>This chapter (except the <i>complaints record rule</i>, the <i>complaints reporting rules</i>, and the <i>complaints data publication rules</i>) applies to <i>electronic money issuers</i> in respect of <i>complaints</i> from <i>eligible complainants</i> concerning activities carried on from an establishment maintained by it or its <i>agent</i> in the <i>United Kingdom</i>.</p>
1.1.10D FCA	G	<ol style="list-style-type: none"> (1) In this sourcebook, the term <i>electronic money issuer</i> does not include <i>credit institutions</i>, <i>credit unions</i> or municipal banks (which will be carrying on a <i>regulated activity</i> if they issue <i>electronic money</i> and will be covered by this sourcebook as <i>firms</i> in those circumstances), but it does include <i>small electronic money institutions</i> and <i>persons</i> who meet the conditions set out in regulation 75(1) or regulation 76(1) of the <i>Electronic Money Regulations</i>. (2) Although <i>electronic money institutions</i> are not required to comply with the <i>complaints record rule</i>, it is in their interest to retain records of <i>complaints</i>

so that these can be used to assist the *Financial Ombudsman Service* should this be necessary.

Application to UCITS management companies

1.1.10E

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For *complaints* related to *collective portfolio management* services of a *UK UCITS management company* for a *UCITS scheme* or an *EEA UCITS scheme*, ■ DISP 1.1.3R (1) applies, except where modified as follows:

- (1) the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *unitholders* rather than from *eligible complainants*; and
- (2) the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*, as modified in (1), also apply where the services are provided from a *branch* in another *EEA State* (and any reference to *respondent* in the *consumer awareness rules* includes such a *branch*).

1.1.10F

FCA

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For *complaints* related to *collective portfolio management* services of an *EEA UCITS management company* for a *UCITS scheme*, ■ DISP 1.1.3R (1) applies, except where modified as follows:

- (1) where the services are provided from a *branch* in the *United Kingdom*, the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *unitholders* rather than from *eligible complainants*; and
- (2) this chapter, except the *consumer awareness rules*, *complaints handling rules*, *complaints record rule* and *complaints data publication rules*, also applies to an *EEA UCITS management company* providing services in the *United Kingdom* under the freedom to provide *cross border services*.

FSAVC Review

1.1.11

FCA

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Where the subject matter of a *complaint* is subject to a review directly or indirectly under the terms of the policy statement for the review of specific categories of *FSAVC* business issued by the *FSA* on 28 February 2000, the *complaints resolution rules*, the *complaints time limit rules*, the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules* will apply only if the *complaint* is about the outcome of the review.

Consumer redress schemes

1.1.11A

FCA

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Where the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *complaints resolution rules*, the *complaints time limits rules*, the *complaints record rule* and the *complaints reporting rules* do not apply.

Exemptions for firms, payment service providers and electronic money issuers

1.1.12

FCA

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- (1) A *firm*, *payment service provider* or *electronic money issuer* falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FCA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.
- (2) Notwithstanding (1):
 - (a) the *complaints handling rules* and *complaints record rule* will continue to apply in respect of *complaints* concerning *MiFID business*; and
 - (b) the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule* will continue to apply in respect of *complaints* concerning the provision of *collective portfolio management services*.
- (3) The exemption takes effect from the date on which the written notice is received by the *FCA* and will cease to apply when the conditions relating to the exemption no longer apply.

1.1.13

FCA

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■ SUP 15.6 refers to and contains requirements regarding the steps that *firms* must take to ensure that information provided to the *FCA* is accurate and complete. Those requirements apply to information submitted to the *FCA* under this chapter.

Application to licensees and VJ participants

1.1.14

FCA

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This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to *licensees* for *complaints* from *eligible complainants*.

1.1.15

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This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to *VJ participants* for *complaints* from *eligible complainants* as part of the *standard terms*.

1.1.16

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Although *licensees* and *VJ participants* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should it be necessary.

1.1.17

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In relation to the *Consumer Credit Jurisdiction* only, FOS Ltd may dispense with, or modify, the application of the *rules* in this chapter to *licensees* where it considers it appropriate to do so and is satisfied that:

- (1) compliance by the *licensee* with the *rules* would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
- (2) it would not result in undue risk to the *persons* whose interests the *rules* were intended to protect.

1.1.18

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This power is intended to deal with exceptional circumstances, for example, where it is not possible for a *licensee* to meet the specified time limits, and any dispensation or modification is likely to be rare.

Outsourcing of complaint handling

1.1.19

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- (1) This chapter does not prevent:
 - (a) the use by a *respondent* of a third party administrator to handle or resolve *complaints* (or both); or
 - (b) two or more *respondents* arranging a one-stop shop for handling or resolving *complaints* (or both) under a service level agreement.
- (2) These arrangements do not affect *respondents'* obligations as set out in *DISP* or the provisions relating to *outsourcing* by a *firm* set out in ■ SYSC 8 and ■ SYSC 13.

1.1.20

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Further *guidance* on the application of this chapter is set out in the table in ■ DISP 1 Annex 2 G.

1.2 Consumer awareness rules

Publishing and providing summary details

1.2.1

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To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:

- (1) publish appropriate information regarding their internal procedures for the reasonable and prompt handling of *complaints*;
- (2) refer *eligible complainants* to the availability of this information:
 - (a) in relation to a *payment service*, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations 36(2)(e) (Information required prior to the conclusion of a single payment service contract) or 40 (Prior general information for framework contracts) of the *Payment Services Regulations*; or
 - (b) otherwise, in writing at, or immediately after, the point of sale; and
- (3) provide such information in writing and free of charge to *eligible complainants*:
 - (a) on request; and
 - (b) when acknowledging a *complaint*.

[Note: article 15 of the *UCITS Directive*]

1.2.1A

1.2.2

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[Deleted]

Where the activity does not involve a sale, the obligation in ■ DISP 1.2.1 R (2)(b) shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*.

Content of summary details

1.2.3

FCA

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These summary details should cover at least:

- (1) how the *respondent* fulfils its obligation to handle and seek to resolve relevant *complaints*; and
- (2) (where the *complaint* falls within the jurisdiction of the *Financial Ombudsman Service*) that, if the *complaint* is not resolved, the complainant may be entitled to refer it to the *Financial Ombudsman Service*.

1.2.4

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The summary details may be set out in a leaflet, and their availability may be referred to in contractual documentation.

Financial Ombudsman Service logo

1.2.5

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Respondents may also display or reproduce the *Financial Ombudsman Service* logo (under licence) in:

- (1) branches and sales offices to which *eligible complainants* have access; or
- (2) marketing literature or correspondence directed at *eligible complainants*;

provided it is done in a way which is not misleading.

1.2.5A

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■ DISP 1.2.5 G does not apply to a *branch* of a *UK UCITS management company* in another *EEA State*.

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1.2.22

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1.3 Complaints handling rules

1.3.1

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Effective and transparent procedures for the reasonable and prompt handling of *complaints* must be established, implemented and maintained by:

- (1) a *respondent*; and
- (2) a *branch* of a *UK firm* in another *EEA State*.

[Note: article 10 of the *MiFID implementing Directive* and article 6(1) of the *UCITS implementing Directive*]

1.3.1A

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These procedures must ensure that a *complaint* may be made free of charge.

[Note: article 6(3) of the *UCITS implementing Directive*]

Procedures for UCITS management companies

1.3.1B

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A *UK UCITS management company* must ensure that the procedures it establishes under ■ DISP 1.3.1 R for the reasonable and prompt handling of *complaints* require that:

- (1) there are no restrictions on *unitholders* exercising their rights in the event that the *UCITS* is authorised in an *EEA State* other than the *United Kingdom*; and
- (2) *unitholders* are allowed to file complaints in any of the official languages of the *Home State* of the *UCITS scheme* or *EEA UCITS scheme* or of any *EEA State* to which a notification has been transmitted by the *competent authority* of the *scheme's Home State* in accordance with article 93 of the *UCITS Directive*.

[Note: article 15 of the *UCITS Directive*]

1.3.2

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These procedures should:

- (1) allow *complaints* to be made by any reasonable means; and
- (2) recognise *complaints* as requiring resolution.

1.3.2A

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These procedures should, taking into account the nature, scale and complexity of the *respondent's* business, ensure that lessons learned as a result of determinations by the *Ombudsman* are effectively applied in future *complaint* handling, for example by:

- (1) relaying a determination by the *Ombudsman* to the individuals in the *respondent* who handled the *complaint* and using it in their training and development;
- (2) analysing any patterns in determinations by the *Ombudsman* concerning *complaints* received by the *respondent* and using this in training and development of the individuals dealing with *complaints* in the *respondent*; and
- (3) analysing guidance produced by the *FCA*, other relevant regulators and the *Financial Ombudsman Service* and communicating it to the individuals dealing with *complaints* in the *respondent*.

1.3.3

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In respect of *complaints* that do not relate to *MiFID business*, a *respondent* must put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems, for example, by:

- (1) analysing the causes of individual *complaints* so as to identify root causes common to types of *complaint*;
- (2) considering whether such root causes may also affect other processes or products, including those not directly complained of; and
- (3) correcting, where reasonable to do so, such root causes.

1.3.3A

1.3.3B

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The processes that a *firm* should have in place in order to comply with ■ DISP 1.3.3 R may include, taking into account the nature, scale and complexity of the *firm's* business including, in particular, the number of *complaints* the *firm* receives:

- (1) the collection of management information on the causes of *complaints* and the products and services *complaints* relate to, including information about *complaints* that are resolved by the *firm* by close of business on the *business day* following its receipt;
- (2) a process to identify the root causes of *complaints* (■ DISP 1.3.3 R (1));
- (3) a process to prioritise dealing with the root causes of *complaints*;
- (4) a process to consider whether the root causes identified may affect other processes or products (■ DISP 1.3.3 R (2));
- (5) a process for deciding whether root causes discovered should be corrected and how this should be done (■ DISP 1.3.3 R (3));
- (6) regular reporting to the *senior personnel* where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern; and

- (7) keeping records of analysis and decisions taken by *senior personnel* in response to management information on the root causes of *complaints*.

1.3.4

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In respect of *complaints* that relate to *MiFID business*, a *firm* should put in place appropriate management controls and take reasonable steps, in the same way as for *complaints* that do not relate to *MiFID business* (see ■ DISP 1.3.3 R and ■ DISP 1.3.3B G), in order to detect and minimise any risk of compliance failures (■ SYSC 6.1) and to comply with *Principle 6* (Customers' interests).

1.3.5

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[deleted]

1.3.6

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Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service, it should (in accordance with *Principle 6* (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

- (1) ascertain the scope and severity of the consumer detriment that might have arisen; and
- (2) consider whether it is fair and reasonable for the *firm* to undertake proactively a redress or remediation exercise, which may include contacting *customers* who have not complained.

1.3.7

FCA

R

- (1) **A *firm* must appoint an individual at the *firm*, or in the same *group* as the *firm*, to have responsibility for oversight of the *firm's* compliance with ■ DISP 1.**
- (2) **The individual appointed must be carrying out a *governing function* at the *firm* or in the same *group* as the *firm*.**

1.3.8

FCA

G

Firms are not required to notify the name of the individual to the *FCA* or the *Financial Ombudsman Service* but would be expected to do so promptly on request. There is no bar on a *firm* appointing different individuals to have the responsibility at different times where this is to accommodate part-time or flexible working.

1.4 Complaints resolution rules

1.4.1

FCA

R

Once a *complaint* has been received by a *respondent*, it must:

- (1) investigate the *complaint* competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the *complaint*;
 - (b) whether the *complaint* should be upheld;
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *respondent* may be solely or jointly responsible for the matter alleged in the *complaint*;

taking into account all relevant factors;

- (3) offer redress or remedial action when it decides this is appropriate;
- (4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the *complaint*, its decision on it, and any offer of remedial action or redress; and
- (5) comply promptly with any offer of remedial action or redress accepted by the complainant.

1.4.2

FCA

G

Factors that may be relevant in the assessment of a *complaint* under ■ DISP 1.4.1 R (2) include the following:

- (1) all the evidence available and the particular circumstances of the *complaint*;
- (2) similarities with other *complaints* received by the *respondent*;
- (3) relevant *guidance* published by the FCA, other relevant regulators, the *Financial Ombudsman Service* or *former schemes*; and

- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning similar *complaints* received by the *respondent* (procedures for which are described in ■ DISP 1.3.2A G).

1.4.3

FCA

G

The *respondent* should aim to resolve *complaints* at the earliest possible opportunity, minimising the number of unresolved *complaints* which need to be referred to the *Financial Ombudsman Service*.

1.4.3A

[Deleted]

1.4.3B

[Deleted]

1.4.4

FCA

R

Where a *complaint* against a *respondent* is referred to the *Financial Ombudsman Service*, the *respondent* must cooperate fully with the *Financial Ombudsman Service* and comply promptly with any settlements or awards made by it.

1.4.5

FCA

G

■ DISP App 1 contains *guidance* to *respondents* on the approach to assessing financial loss and appropriate redress where a *respondent* upholds a *complaint* concerning the sale of an endowment policy for the purposes of repaying a *mortgage*.

1.4.6

FCA

G

■ DISP App 3 sets out the approach which *respondents* should use in assessing *complaints* relating to the sale of *payment protection contracts* and determining appropriate redress where a *complaint* is upheld.

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1.5 Complaints resolved by close of the next business day

1.5.1

FCA

R

The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the *business day* following its receipt:

- (1) the *complaints time limit rules*;
- (2) the *complaints forwarding rules*;
- (3) the *complaints reporting rules*;
- (4) the *complaints record rule*, if the *complaint* does not relate to *MiFID business* or *collective portfolio management services* for a *UCITS scheme* or an *EEA UCITS scheme*; and
- (5) the *complaints data publication rules*.

1.5.2

FCA

G

Complaints falling within this section are still subject to the *complaint resolution rules*.

1.5.3

FCA

G

For the purposes of this section:

- (1) a *complaint* received on any day other than a *business day*, or after close of business on a *business day*, may be treated as received on the next *business day*; and
- (2) a *complaint* is resolved where the complainant has indicated acceptance of a response from the *respondent*, with neither the response nor acceptance having to be in writing

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1.6 Complaints time limit rules

Keeping the complainant informed

1.6.1

FCA

R

On receipt of a *complaint*, a *respondent* must:

- (1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the *complaint* and is dealing with it; and
- (2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the *complaint's* resolution.

Final or other response within eight weeks

1.6.2

FCA

R

The *respondent* must, by the end of eight weeks after its receipt of the *complaint*, send the complainant:

- (1) a 'final response', being a written response from the *respondent* which:
 - (a) accepts the *complaint* and, where appropriate, offers redress or remedial action; or
 - (b) offers redress or remedial action without accepting the *complaint*; or
 - (c) rejects the *complaint* and gives reasons for doing so; and which:
 - (d) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and
 - (e) informs the complainant that if he remains dissatisfied with the *respondent's* response, he may now refer his *complaint* to the *Financial Ombudsman Service* and must do so within six months; or
- (2) a written response which:
 - (a) explains why it is not in a position to make a *final response* and indicates when it expects to be able to provide one;

- (b) informs the complainant that he may now refer the *complaint* to the *Financial Ombudsman Service*; and
- (c) encloses a copy of the *Financial Ombudsman Service* standard explanatory leaflet.

1.6.3 G [deleted]

Complainant's written acceptance

1.6.4 R ■ DISP 1.6.2 R does not apply if the complainant has already indicated in writing acceptance of a response by the *respondent*, provided that the response:

FCA

- (1) informed the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied; and
- (2) referred to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *respondent's* response.

1.6.5 R [deleted]

1.6.6 R [deleted]

1.6.6A G The information regarding the *Financial Ombudsman Service* required to be provided in responses sent under the *complaints* time limit rules (■ DISP 1.6.2 R and ■ DISP 1.6.4 R) should be set out prominently within the text of those responses.

FCA

Speed and quality of response

1.6.7 G It is expected that within eight weeks of their receipt, almost all *complaints* to a *respondent* will have been substantively addressed by it through a *final response* or response as described in ■ DISP 1.6.4 R.

FCA

1.6.8 G When assessing a *respondent's* response to a *complaint*, the *FCA* may have regard to a number of factors, including, the quality of response, as against the *complaints* resolution rules, as well as the speed with which it was made.

FCA

1.7 Complaints forwarding rules

1.7.1

FCA

R

A *respondent* that has reasonable grounds to be satisfied that another *respondent* may be solely or jointly responsible for the matter alleged in a *complaint* may forward the *complaint*, or the relevant part of it, in writing to that other *respondent*, provided it:

- (1) does so promptly;
- (2) informs the complainant promptly in a *final response* of why the *complaint* has been forwarded by it to the other *respondent*, and of the other *respondent's* contact details; and
- (3) where jointly responsible for the fault alleged in the *complaint*, it complies with its own obligations under this chapter in respect of that part of the *complaint* it has not forwarded.

Dealing with a forwarded complaint

1.7.2

FCA

R

When a *respondent* receives a *complaint* that has been forwarded to it under ■ DISP 1.7.1 R, the *complaint* is treated for the purposes of *DISP* as if made directly to that *respondent*, and as if received by it when the forwarded *complaint* was received.

1.7.3

FCA

G

On receiving a forwarded *complaint*, the standard time limits will apply from the date on which the *respondent* receives the forwarded *complaint*.

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1.8 Complaints time barring rule

1.8.1

FCA

R

If a *respondent* receives a *complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see ■ DISP 2.8) it may reject the complaint without considering the merits, but must explain this to the complainant in a *final response* in accordance with ■ DISP 1.6.2 R and indicate that the *Ombudsman* may waive the time limits in exceptional circumstances.

 1.9 Complaints record rule

1.9.1

FCA

R

A *firm*, including, in the case of *MiFID business* or *collective portfolio management* services for a *UCITS scheme* or an *EEA UCITS scheme*, a *branch* of a *UK firm* in another *EEA state*, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

- (1) at least five years where the *complaint* relates to *MiFID business* or *collective portfolio management* services for a *UCITS scheme* or an *EEA UCITS scheme*; and
- (2) three years for all other *complaints*;

from the date the *complaint* was received.

[Note: article 10 of the *MiFID implementing Directive* and article 6(2) of the *UCITS implementing Directive*]

1.9.2

FCA

G

The records of the measures taken for resolution of *complaints* may be used to assist with the collection of management information pursuant to ■ DISP 1.3.3BG (1) and regular reporting to the *senior personnel* pursuant to ■ DISP 1.3.3BG (6).

1.10 Complaints reporting rules

1.10.1 **R** Twice a year a *firm* must provide the FCA with a complete report concerning *complaints* received from *eligible complainants*. The report must be set out in the format in ■ DISP 1 Annex 1 R.
FCA

Forwarded complaints

1.10.1A **R** A *firm* must not include in the report a *complaint* that has been forwarded in its entirety to another *respondent* under the complaints forwarding rules.
FCA

1.10.1B **G** Where a *firm* has forwarded to another *respondent* only part of a *complaint* or where two *respondents* may be jointly responsible for a *complaint*, then the *complaint* should be reported by both *firms*.
FCA

Joint reports

1.10.1C **R** *Firms* that are part of a *group* may submit a joint report to the FCA . The joint report must contain the information required from all *firms* concerned and clearly indicate the *firms* on whose behalf the report is submitted. The requirement to provide a report, and the responsibility for the report, remains with each *firm* in the *group*.
FCA

1.10.1D **G** Not all the *firms* in the *group* need to submit the report jointly. *Firms* should only consider submitting a joint report if it is logical to do so, for example, where the *firms* have a common central *complaints* handling team and the same *accounting reference date*.
FCA

Information requirements

1.10.2 **R** ■ DISP 1 Annex 1 R requires (for the relevant reporting period) information about:
FCA

- (1) the total number of *complaints* received by the *firm* ;
- (2) the total number of *complaints* closed by the *firm*:
 - (a) within four weeks or less of receipt;
 - (b) more than four weeks and up to eight weeks of receipt; and
 - (c) more than eight weeks after receipt;

1.10.2A

FCA

R

- (3) the total number of *complaints*:
 - (a) upheld by the *firm* in the reporting period; and
 - (b) outstanding at the beginning of the reporting period; and
 - (4) the total amount of redress paid in respect of *complaints* during the reporting period.
- (1) Twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*. The report must be set out in the format in ■ DISP 1 Annex 1C R.
 - (2) ■ DISP 1 Annex 1C R requires (for the relevant reporting period) information about:
 - (a) the total number of *complaints* received by the *firm* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*;
 - (b) the total number of *complaints* closed by the *firm* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*;
 - (c) the total number of *complaints* upheld by the *firm* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*; and
 - (d) the total amount of redress paid in respect of *complaints* upheld during the reporting period about matters relating to the *retail investment activities* carried out by its *retail investment advisers*.
 - (3) For the purpose of ■ DISP 1 Annex 1C R *retail investment adviser* information must be reported by Individual Reference Number (IRN).

1.10.3

FCA

G

For the purpose of ■ DISP 1.10.2 R and ■ DISP 1.10.2A R, when completing the return, the *firm* should take into account the following matters.

- (1) If a *complaint* could fall into more than one category, the *complaint* should be recorded in the category which the *firm* considers to form the main part of the *complaint*.
- (2) Under ■ DISP 1.10.2 R (3)(a), a *firm* should report any *complaint* to which it has given a response which upholds the *complaint*, even if any redress offered is disputed by the complainant. For this purpose, 'response' includes a response under the complainant's written acceptance rule (■ DISP 1.6.4 R) and a *final response*. Where a *complaint* is upheld in part or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint*

as upheld for reporting purposes. However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as 'rejected'.

- (3) If a *firm* reports on the amount of redress paid under ■ DISP 1.10.2 R (4) or ■ DISP 1.10.2A R, redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
- (a) amounts paid for distress and inconvenience;
 - (b) a free transfer out to another provider which transfer would normally be paid for;
 - (c) goodwill payments and goodwill gestures;
 - (d) interest on delayed settlements;
 - (e) waiver of an excess on an insurance policy; and
 - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.
- (4) If a *firm* reports on the amount of redress paid under ■ DISP 1.10.2 R (4) or ■ DISP 1.10.2A R, the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

[Note: See ■ SUP 10A.14.24 R for the ongoing duty to notify *complaints* about matters relating to the *retail investment activities* of a *retail investment adviser*].

1.10.4

FCA

R

The relevant reporting periods are:

- (1) the six *months* immediately following a *firm's* *accounting reference date*; and
- (2) the six *months* immediately preceding a *firm's* *accounting reference date*.

1.10.5

FCA

R

Reports are to be submitted to the *FCA* within 30 *business days* of the end of the relevant reporting periods through, and in the electronic format specified in, the *FCA* Complaints Reporting System or the appropriate section of the *FCA* website.

1.10.6

FCA

R

If a *firm* is unable to submit a report in electronic format because of a systems failure of any kind, the *firm* must notify the *FCA*, in writing and without delay, of that systems failure.

1.10.6A

FCA

R

- (1) If a *firm* does not submit a complete report by the date on which it is due, in accordance with ■ DISP 1.10.5 R, the *firm* must pay an administrative fee of £250.

- (2) The administrative fee in (1) does not apply if the *firm* has notified the *FCA* of a systems failure in accordance with
■ DISP 1.10.6 R.

1.10.7

FCA

R

A closed *complaint* is a *complaint* where:

- (1) the *firm* has sent a *final response*; or
- (2) the complainant has indicated in writing acceptance of the *firm's* earlier response under ■ DISP 1.6.4 R.

1.10.8

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[deleted]

Notification of contact point for complainants

1.10.9

FCA

R

For the purpose of inclusion in the public record maintained by the *FCA*, a *firm* must:

- (1) provide the *FCA*, at the time of its *authorisation*, with details of a single contact point within the *firm* for complainants; and
- (2) notify the *FCA* of any subsequent change in those details when convenient and, at the latest, in the *firm's* next report under the *complaints reporting rules*.

1.10A Complaints data publication rules

Obligation to publish summary of complaints data

1.10A.1

R

FCA

- (1) Where, in accordance with ■ DISP 1.10.1 R, a *firm* submits a report to the *FCA* reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).
- (2) Where, in accordance with ■ DISP 1.10.1C R, a *firm* submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 500 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary).

Format of publication

1.10A.2

R

FCA

The *complaints* data summary required by ■ DISP 1.10A.1 R must be published in the format set out in ■ DISP 1 Annex 1B R.

Time limits for publication

1.10A.3

R

FCA

- (1) Where the *firm's* relevant reporting period (as defined in ■ DISP 1.10.4 R) ends between 1 January and 30 June, the *firm* must publish the *complaints* data summary no later than 31 August of the same year.
- (2) Where the *firm's* relevant reporting period (as defined in ■ DISP 1.10.4 R) ends between 1 July and 31 December, the *firm* must publish the *complaints* data summary no later than 28 February of the following year.

Confirmation of publication

1.10A.4

R

FCA

A *firm* must immediately confirm to the *FCA* , in an email submitted to complaintsdatasummary@fca.org.uk , that the *complaints* data summary accurately reflects the report submitted to the *FCA* , that the summary has been published and where it has been published.

1.10A.5

FCA



Publication on behalf of the firm

A *firm* will be taken to have complied with ■ DISP 1.10A.1R (1) or ■ (2) if within the relevant time limit set out in ■ DISP 1.10A.3 R the *firm*:

- (1) ensures that another *person* publishes the *complaints* data summary on its behalf; and
- (2) publishes details of where this summary is published.

1.10A.6

FCA



Joint reports: provision of information to third party on request

Any *firm* covered by a joint report, other than the *firm* that submitted the joint report, must provide details of where the *complaints* data summary is published to any *person* who requests them.

1.10A.7

FCA



Mode and content of publication

Firms may choose how they publish the *complaints* data summary. However, the summary should be readily available. For this reason, the *FCA* recommends that *firms* should publish the summary on their websites.

1.10A.8

FCA



- (1) The *FCA* recommends that *firms* should publish additional information alongside their *complaints* data summaries in order to relate the number of complaints to the scale of the *firm's* relevant business. *Firms* are recommended to publish the relevant standard metrics set out in the table at ■ DISP 1 Annex 1A G with the summaries. Where the *complaints* data summary relates to a joint report the metrics should cover all the *firms* included in the joint report.
- (2) If the recommended metrics do not accurately reflect the scale of the *firm's* relevant business, the *FCA* recommends that the *firm* should publish metrics which best reflect the scale of its business based on the number of its customers or accounts or policies. *Firms* may also publish other metrics where they consider that these would better reflect the scale of their business.
- (3) *Firms* may also publish other information to aid understanding, for example details of their internal processes for dealing with complaints.

1.11 The Society of Lloyd's

Complaints handling procedures

1.11.1 **R** The *Society* must establish and maintain appropriate and effective procedures for handling *complaints* by *policyholders* against *members* of the *Society* which comply with this chapter.

FCA

1.11.2 **R** A *member* of the *Society* must, in complying with this chapter, ensure that the arrangements which the *member* maintains are compatible with the *Lloyd's complaint procedures*, so that, taken as a whole, the requirements of this sourcebook are met.

FCA

1.11.3 **R** The *Society* must take reasonable steps to ensure that *complaints* by *policyholders* against *members* of the *Society* are dealt with under the *Lloyd's complaint procedures* and that *members* comply with the requirements of those procedures.

FCA

Referral to the Financial Ombudsman Service

1.11.4 **R** A *complaint* by a *policyholder* against a *member* of the *Society* may not be referred to the *Financial Ombudsman Service* until after the *Lloyd's complaint procedures* have been completed or until after the end of eight weeks from receipt of the *complaint*, whichever is the earlier.

FCA

Exemptions for members

1.11.5 **R** (1) A notification claiming exemption under **■ DISP 1.1.12 R** from the *complaints reporting rules* and the *rules* relating to the funding of the *Financial Ombudsman Service* must be given to the *FCA* by the *Society* on behalf of any *member* eligible for an exemption.

FCA

(2) The *Society* must notify the *FCA* if the conditions relating to such an exemption no longer apply to a *member* who is exempt.

Complaints reporting rule

1.11.6 **R** The report to be sent to the *FCA* under the *complaints reporting rules* must be provided by the *Society* and must cover all *complaints* by *policyholders* against *members* falling within the scope of the *complaints reporting rules*.

FCA

1.11.6A

FCA

R

Obligation to publish summary of complaints data

Where, in accordance with ■ DISP 1.11.6 R, the *Society* submits a report to the *FCA* reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

1.11.6B

FCA

R

Format of publication

The *Society* must publish the *complaints* data summary in the format set out in the *complaints* publication form in ■ DISP 1 Annex 1B R omitting details as to the *firms* and brands/trading names covered by the summary.

1.11.6C

FCA

R

Time limits for publication

The deadlines for publication of the *Society's* *complaints* data summaries are:

- (1) 28 February for the summary of its report relating to the reporting period ending on 31 December of the previous year; and
- (2) 31 August for the summary of its report relating to the reporting period ending on 30 June of the same year.

1.11.6D

FCA

R

Confirmation of publication

The *Society* must immediately confirm to the *FCA*, in an email submitted to complaintsdatasummary@fca.org.uk, that the *complaints* data summary accurately reflects the report submitted to the *FCA*, that the summary has been published and where it has been published.

1.11.6E

FCA

G

Mode and content of publication

The *Society* may choose how it publishes the *complaints* data summary. However, the *complaints* data summary should be readily available. For this reason, the *FCA* recommends that the *Society* publishes the summary on its website. The *Society* may publish further information with the *complaints* data summary to aid understanding.

1.11.7

FCA

G

Application to members

Each *member* of the *Society* is individually subject to the *rules* in this chapter as a result of the *insurance market direction* given in ■ DISP 2.5.4 G under section 316 of the *Act* (Direction by Authority).

1.11.8

FCA

G

However, the *Society* operates a two-tier internal complaints handling procedure, currently set out in the "Code for Underwriting agents: UK Personal Lines Claims and Complaints Handling". Under this procedure, *complaints* by *policyholders* against *members* of the *Society* are considered by the *managing agent* and then, if necessary, by the *Society's* in-house Complaints Department. This procedure (and any procedure that may replace it) will be subject to the requirements in this chapter.

1.11.9

FCA

G

Members will individually comply with this chapter if and only if all *complaints* by *policyholders* against *members* are dealt with under the *Lloyd's complaints procedures*. Accordingly, certain of the obligations under this chapter, for example the obligation to report on *complaints* received and the obligation to pay fees under the *rules* relating to the funding of the *Financial Ombudsman Service* (■ FEES 5), must be complied with by the *Society* on behalf of *members*. *Managing agents* will not have to make a separate report to the *FCA* on *complaints* reported under the *complaints reporting rules* sent by the *Society*.

Complaints about the activities of members' advisers

1.11.10

FCA

R

A *members' adviser* must establish and maintain effective arrangements for handling any *complaint* from a *member* of the *Society* regarding advice given to the *member* in connection with the acquiring or disposing of *syndicate* participation.

1.11.11

FCA

G

Complaints from *members* of the *Society* regarding the activities of *members' advisers*, which cannot be resolved by the *members' adviser*, cannot be referred to the *Financial Ombudsman Service*.

Complaints from members or former members

1.11.12

FCA

G

The *Financial Ombudsman Service* is not able to deal with the *complaints* listed in ■ DISP 1.11.13 R and separate *rules* and *guidance* are therefore required.

1.11.13

FCA

R

The *Society* must establish and maintain appropriate and effective arrangements for handling any *complaint* from a *member* or a *former member* about:

- (1) *regulated activities* carried on by the *Society*;
- (2) the *Society's regulatory functions* carried on by the *Society*, the *Council* or those to whom the *Council* delegates authority to carry out such functions;
- (3) advice given by an *underwriting agent* to a *person* to become, continue or cease to be, a *member* of a particular *syndicate*; and
- (4) the management by a *managing agent* of the underwriting capacity of a *syndicate* on which the complainant participates or has participated.

1.11.14

FCA

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The *Society* must maintain by *byelaw* one or more appropriate effective schemes for the resolution of disputes between an *individual member* or a *former member* who was an *individual member* and:

- (1) his *underwriting agent*; or
- (2) the *Society*.

- 1.11.15** **R** For the purposes of ■ DISP 1.11.13 R "*individual member*" includes a *member* which is a *limited liability partnership* or a *body corporate* whose *members* consist only of, or of the nominees for, a single natural person or a group of *connected persons*.
FCA
- 1.11.16** **G** The schemes to which ■ DISP 1.11.13 R currently refers are the *Lloyd's Arbitration Scheme* and the *Lloyd's Members' Ombudsman* respectively, but the *Society* may maintain other independent dispute resolution schemes in addition to, or instead of, either of these schemes.
FCA
- 1.11.17** **G** The schemes referred to in ■ DISP 1.11.13 R should be operationally independent of the *Society*.
FCA
- 1.11.18** **G** An *individual member* or *former member* who was an *individual member* should not have access to the schemes referred to in ■ DISP 1.11.13 R unless the *complaints* arrangements maintained by the *Society* have failed to resolve the *complaint* to his satisfaction within eight weeks of receiving it.
FCA
- 1.11.19** **G** The *Society* should give the *FCA* adequate notice of all proposed changes to the *byelaws* relating to the schemes referred to in ■ DISP 1.11.13 R.
FCA
- 1.11.20** **G** When considering what is required to ensure the operational independence of the schemes referred to in ■ DISP 1.11.13 R, or proposed changes in such schemes, the *Society* should take account of similar arrangements operated by the *Financial Ombudsman Service*.
FCA
- 1.11.21** **R** A contravention of ■ DISP 1.11.13 R or ■ DISP 1.11.14 R does not give rise to a right of action by a *private person* under section 138D of the *Act* (Actions for damages) and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action.
FCA

Complaints return form

FCA

Complaints return form

This annex consists only of one or more forms. Forms are to be found through the following address:

Complaints return form - DISP 1 Annex 1 R

Recommended metrics

FCA

This table belongs to ■ DISP 1.10A.8 G

Type of business	Contextualised new complaint numbers	Recommended metrics
Banking and loans	<i>Complaints</i> per 1,000 accounts	The tariff base (number of accounts) at row 1, column 2 of the table in FEES 5 Annex 1 R as reported in the <i>firm's</i> most recent statement of total amount of <i>relevant business</i>
General insurance and pure protection (provision)	<i>Complaints</i> per £1m of annual gross premium income	The tariff base (annual gross premium income) at row 2, column 2 of the table in FEES 5 Annex 1 R as reported in the <i>firm's</i> most recent statement of total amount of <i>relevant business</i>
General insurance and pure protection (intermediation)	<i>Complaints</i> per £1m of annual income	The tariff base (annual income) at row 17, column 2 of the table in FEES 5 Annex 1 R reported in the <i>firm's</i> most recent statement of total amount of <i>relevant business</i>
Home finance	<i>Complaints</i> per 1,000 loans outstanding	The total number of balances outstanding (all loans) at row E.45 or E.53 of E(2) in SUP 16 Annex 19A R (Mortgage Lenders and Administrators Return) as reported in the <i>firm's</i> most recent return
Investment (provision)	<i>Complaints</i> per £1m of annual eligible income	The <i>firm's</i> annual eligible income as defined in class D1 of FEES 6 Annex 3 R
Investment (intermediation)	<i>Complaints</i> per £1m of annual eligible income	The <i>firm's</i> annual eligible income as defined in class D2 of FEES 6 Annex 3 R
Decumulation, life and pensions (provision)	<i>Complaints</i> per 1,000 policyholders	The number of the <i>firm's</i> policyholders at row 3 of Forms 51 - 54 (whichever are relevant) in IPRU(INS) Appendix 9.3R as reported in the <i>firm's</i> most recent form
Decumulation, life and pensions (intermediation)	<i>Complaints</i> per £1m of annual eligible income	The <i>firm's</i> annual eligible income as defined in class C2 of FEES 6 Annex 3 R

PAGE
1

Note 1: For the purposes of this annex the reference to *complaints* is a reference to *complaints* opened during the relevant reporting period.

Note 2: Where a *firm* undertakes both (a) general insurance and pure protection provision and (b) general insurance and pure protection intermediation, it can choose to use the metric which forms the greater part of its business.

Type of business	Contextualised new complaint numbers	Recommended metrics
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Note 3: Where a *firm* undertakes both (a) fund management and (b) investment intermediation, it can choose to use the metric which forms the greater part of its business.

Note 4: Where a *firm* undertakes both (a) decumulation, life and pensions provision and (b) decumulation, life and pensions intermediation, it can choose to use the metric which forms the greater part of its business.

Complaints publication report

FCA

This table belongs to ■ DISP 1.10A.2 R - DISP 1 Annex 1B R

Illustration of the online reporting requirements, referred to in DISP 1.10.2AR

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This annex belongs to **■ DISP 1.10.2A R - DISP 1 Annex 1C R**

Application of DISP 1 to type of respondent / complaint

FCA

1. The table below summarises the application of DISP 1. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in DISP 1.
2. In some cases the application of DISP 1 to *firms* depends on whether responsibility for the matter is reserved under an *EU* instrument to an *incoming EEA firm's Home State regulator*. Reference should be made to the detailed application provisions set out in DISP 1.

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>firm</i> (other than a <i>UCITS management company</i> when providing <i>collective portfolio management services</i> in respect of a <i>UCITS scheme</i> or an <i>EEA UCITS scheme</i>) in relation to <i>complaints</i> concerning <i>non-MiFID business</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (DISP 1.3.4 G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>firm</i> in relation to <i>complaints</i> concerning <i>MiFID business</i>	Applies for <i>eligible complainants</i>	Applies for <i>retail clients</i> (DISP 1.3.3 R does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>retail clients</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>UK UCITS management company</i> in relation to <i>complaints</i> concerning <i>collective portfolio management services</i> in respect of a <i>UCITS</i>	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Com-plaints handling rules	DISP 1.4 - 1.8 Com-plaints res-olution rules etc.	DISP 1.9 Com-plaints record rule	DISP 1.10 Com-plaints re-ported rules	DISP 1.10A Com-plaints da-ta publica-tion rules
<i>scheme or an EEA UCITS scheme provided under the freedom to provide cross border services</i>						
<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme</i>	Applies for unitholders	Applies for unitholders	Does not apply	Applies for unitholders	Does not apply	Does not apply
<i>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm in another EEA State in relation to complaints concerning MiFID business</i>	Does not apply	Applies for retail clients (DISP 1.3.3 R does not apply)	Does not apply	Applies for retail clients	Does not apply	Does not apply
<i>incoming branch of an EEA firm (other than an EEA UCITS manage-</i>	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Com-plaints handling rules	DISP 1.4 - 1.8 Com-plaints res-olution rules etc.	DISP 1.9 Com-plaints record rule	DISP 1.10 Com-plaints re-ported rules	DISP 1.10A Com-plaints da-ta publica-tion rules
<i>ment company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-Mi-FID business</i>						
<i>incoming branch of an EEA firm in relation to complaints concerning MiFID business</i>	Applies for <i>eligible complainants</i>	Does not apply	Applies for <i>eligible complainants</i>	Does not apply	Applies for <i>eligible complainants</i>	Does not apply
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme</i>	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Does not apply
<i>incoming EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</i>	Does not apply	Does not apply	Applies for <i>eligible complainants</i>	Does not apply	Applies for <i>eligible complainants</i>	Does not apply
<i>incoming EEA firm providing</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Com-plaints handling rules	DISP 1.4 - 1.8 Com-plaints res-olution rules etc.	DISP 1.9 Com-plaints record rule	DISP 1.10 Com-plaints re-ported rules	DISP 1.10A Com-plaints da-ta publica-tion rules
cross-border services from outside the UK						
<i>branch of an overseas firm (in relation to all complaints)</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>payment service provider in relation to complaints concerning payment services</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
<i>EEA branch of a UK payment service provider in relation to complaints concerning payment services</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming branch of an EEA authorised payment institution in relation to complaints concerning payment services</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
<i>incoming EEA authorised payment institution providing cross border payment services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>electronic money issuer in relation to complaints concerning issuance of electronic money</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
<i>EEA branch of an authorised electronic money institution or an EEA branch</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Com-plaints handling rules	DISP 1.4 - 1.8 Com-plaints res-olution rules etc.	DISP 1.9 Com-plaints record rule	DISP 1.10 Com-plaints re-ported rules	DISP 1.10A Com-plaints da-ta publica-tion rules
of any other <i>UK electronic mon-ey issuer</i> in rela-tion to <i>com-plaints</i> concern-ing issuance of <i>electronic mon-ey</i>						
incoming <i>branch</i> of an <i>EEA authorised electronic mon-ey institution</i> in relation to <i>com-plaints</i> concern-ing issuance of <i>electronic mon-ey</i>	Applies for <i>eligi-ble complainants</i>	Applies for <i>eligi-ble complainants</i>	Applies for <i>eligi-ble com-plainants</i>	Does not apply	Does not apply	Does not apply
incoming <i>EEA authorised elec-tronic money in-stitution</i> provid-ing cross border <i>electronic mon-ey</i> issuance ser-vices from out-side the <i>UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>licensee</i>	Applies for <i>eligi-ble complainants</i>	Applies for <i>eligi-ble complainants</i> (DISP 1.3.4 G to DISP 1.3.5 G do not apply)	Applies for <i>eligi-ble com-plainants</i> (DISP 1.6.8 G does not apply)	Does not apply	Does not apply	Does not apply
<i>VJ participant</i>	Applies for <i>eligi-ble complainants</i>	Applies for <i>eligi-ble complainants</i> (DISP 1.3.4 G to DISP 1.3.5 G do not apply)	Applies for <i>eligi-ble com-plainants</i> (DISP 1.6.8 G does not apply)	Does not apply	Does not apply	Does not apply
<i>complaints</i> relat-ing to <i>auction regulation bid-ding</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

Chapter 2

Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

2.1.1

FCA

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The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* three jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services* and issuance of *electronic money*, and covers:
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about); and
 - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*;
- (2) the *Consumer Credit Jurisdiction* covers certain *complaints* against *licensees* (and businesses which were *licensees* at the time of the events complained about); and
- (3) the *Voluntary Jurisdiction* covers certain *complaints* against *VJ participants*, including in relation to events before they joined the *Voluntary Jurisdiction*.

2.1.2

FCA

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Relevant complaints covered by the *Compulsory Jurisdiction* comprise:

- (1) *relevant existing complaints* referred to a *former scheme* before *commencement* and inherited by the *Financial Ombudsman Service* under the *Ombudsman Transitional Order*;
- (2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*; and
- (3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgages and General Insurance Complaints Transitional Order*.

2.1.3

FCA

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The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Interpretation

2.1.4

FCA

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In this chapter, carrying on an activity includes:

- (1) offering, providing or failing to provide a service in relation to an activity;
- (2) administering or failing to administer a service in relation to an activity; and
- (3) the manner in which a *respondent* has administered its business, provided that the business is an activity subject to the *Financial Ombudsman Service's* jurisdiction.

2.1.4A

[Deleted]

Purpose

2.1.5

FCA

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In this chapter, ancillary banking services include, for example, the provision and operation of cash machines, foreign currency exchange, safe deposit boxes and account aggregation services (services where details of accounts held with different financial service providers can be accessed by a single password).

Application

2.1.6

FCA

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This chapter applies to the *Ombudsman* and to *respondents*.

2.1.7

FCA

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Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory jurisdiction), applies to *members* of the *Society of Lloyd's* in respect of the *regulated activities* of *effecting* or *carrying out contracts of insurance* written at Lloyd's.

2.2 Which complaints can be dealt with under the Financial Ombudsman Service?

2.2.1

FCA

G

The scope of the *Financial Ombudsman Service's* three jurisdictions depends on:

- (1) the type of activity to which the *complaint* relates (see ■ DISP 2.3 , ■ DISP 2.4 and ■ DISP 2.5);
- (2) the place where the activity to which the complaint relates was carried on (see ■ DISP 2.6);
- (3) whether the complainant is eligible (see ■ DISP 2.7); and
- (4) whether the *complaint* was referred to the *Financial Ombudsman Service* in time (see ■ DISP 2.8).

2.2.2

[Deleted]

2.2.2A

[Deleted]

2.2.3

[Deleted]

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1

FCA

R

The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities* (other than *auction regulation bidding*);
- (1A) *payment services*;
- (2) *consumer credit activities*;
- (3) lending *money* secured by a charge on land;
- (4) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
- (5) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
- (6) providing ancillary banking services;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

2.3.1A

[Deleted]

Activities by firms and unauthorised persons subject to a former scheme

2.3.2

FCA

G

The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) as a result of the *Ombudsman Transitional Order*, a *relevant existing complaint* or a *relevant new complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* immediately before *commencement*; or
- (2) as a result of the *Mortgages and General Insurance Complaints Transitional Order*, a *relevant transitional complaint* that relates to an act or omission by a *firm* (or an *unauthorised person* that ceased to be a *firm* after the *relevant commencement date*) which was subject to a *former scheme* at the time of the act or omission;

provided that:

- (3) the act or omission occurred in the carrying on by that *firm* or *unauthorised person* of an activity to which that *former scheme* applied; and
- (4) the complainant is eligible and wishes to have the *complaint* dealt with by the *Ombudsman*.

Activities by payment service providers

2.3.2A
FCA

R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *payment service provider* in carrying on:

- (1) *payment services*; or
- (2) *consumer credit activities*;

or any ancillary activities, including advice, carried on by the *payment service provider* in connection with them.

Activities by electronic money issuers

2.3.2B
FCA

R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by an *electronic money issuer* in carrying on:

- (1) issuance of *electronic money*; or
- (2) *consumer credit activities*;

or any ancillary activities, including advice, carried on by the *electronic money issuer* in connection with them.

Consumer redress schemes

2.3.2C
FCA

G As a result of section 404B(11) of the *Act*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction* a *complaint* from a complainant who:

- (1) is not satisfied with a *redress determination* made by a *respondent* under a *consumer redress scheme*; or
- (2) considers that a *respondent* has failed to make a *redress determination* in accordance with a *consumer redress scheme*.

General

2.3.3
FCA

G *Complaints* about acts or omissions include those in respect of activities for which the *firm*, *payment service provider* or *electronic money issuer* is responsible (including business of any *appointed representative* or *agent* for which the *firm*, *payment institution* or *electronic money institution* has accepted responsibility).

2.3.4

FCA

R

A *complaint* about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction* of the *Financial Ombudsman Service* if it relates solely to a *non-mainstream regulated activity* and can be handled by a *designated professional body*.

2.3.5

FCA

G

The *Compulsory Jurisdiction* includes *complaints* about the *UK* end of 'one leg' *payment services* transactions, i.e. services provided from *UK* establishments that also involve a payment service provider located outside the *EEA*. The *Compulsory Jurisdiction* also includes *complaints* about *payment services* irrespective of the currency of the transaction.

2.3.6

[Deleted]



2.4 To which activities does the Consumer Credit Jurisdiction apply?

2.4.1
FCA

R

The Ombudsman can consider a *complaint* under the *Consumer Credit Jurisdiction* if:

- (1) it is not covered by the *Compulsory Jurisdiction*; and
- (2) it relates to an act or omission by a *licensee* in carrying on
 - (a) one or more *consumer credit activities*; or
 - (b) any ancillary activities, including advice, carried on by the *licensee* in connection with them.

- 2.4.2 [Deleted]
- 2.4.3 [Deleted]
- 2.4.4 [Deleted]
- 2.4.5 [Deleted]
- 2.4.6 [Deleted]
- 2.4.7 [Deleted]
- 2.4.8 [Deleted]
- 2.4.9 [Deleted]
- 2.4.10 [Deleted]
- 2.4.11 [Deleted]
- 2.4.12 [Deleted]
- 2.4.12A [Deleted]
- 2.4.13 [Deleted]
- 2.4.14 [Deleted]
- 2.4.15 [Deleted]
- 2.4.15A [Deleted]
- 2.4.15B [Deleted]
- 2.4.16 [Deleted]
- 2.4.17 [Deleted]

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1

FCA

R

The Ombudsman can consider a *complaint* under the *Voluntary Jurisdiction* if:

- (1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
 - (a) an activity carried on after 28 April 1988 which:
 - (i) was not a *regulated activity* at the time of the act or omission, but
 - (ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person*, if later);
 - (b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;
 - (c) activities which (at 30 April 2011) were *regulated activities* or would be *regulated activities* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in ■ DISP 2 Annex 1 G);
 - (d) activities which would be *consumer credit activities* if they were carried on from an establishment in the *United Kingdom*;
 - (e) lending *money* secured by a charge on land;
 - (f) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
 - (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
 - (h) providing ancillary banking services;

- (i) acting as an intermediary for a loan secured by a charge over land;
- (j) acting as an intermediary for *general insurance business* or *long-term insurance business*;
- (k) National Savings and Investments' business;
- (l) activities which (at 1 November 2009) were *payment services* or would be *payment services* if they were carried on from an establishment in the *United Kingdom*;
- (m) issuance of *electronic money*;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

2.5.2
FCA

G

The scope of the *Voluntary Jurisdiction* is wider than that of the *Compulsory Jurisdiction*, and so some activities are referred to in both jurisdictions.

2.5.3
FCA

G

■ DISP 2.5.1 R (2)(a) is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by the *Ombudsman Transitional Order* or the *Mortgage and General Insurance Complaints Transitional Order*. It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.

2.5.4
FCA

G

■ DISP 2.5.1 R (2)(b) is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman Service* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.

2.5.4A
FCA

G

■ DISP 2.5.1R (2)(l) includes *complaints* about the *EEA* end of 'one leg' *payment services* transactions, i.e. services provided from *EEA* establishments that are subject to the territorial jurisdiction of the *Voluntary Jurisdiction* (see ■ DISP 2.6.4R (2)) that also involve a payment service provider located outside the *EEA*. It also includes *complaints* about *payment services* irrespective of the currency of the transaction.

2.5.5
FCA

R

The *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, and whether the act or omission occurred before or after *commencement*, either:

- (1) if the *complaint* could have been dealt with under a *former scheme*; or
- (2) under the agreement by the *VJ participant* in the *Standard Terms*.



2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1

FCA

R

- (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*) or of an *electronic money issuer* (including *agents* of an *electronic money institution*) carried on from an establishment in the *United Kingdom*.
- (2) The *Compulsory Jurisdiction* also covers *complaints* about *collective portfolio management* services provided by an *EEA UCITS management company* managing a *UCITS scheme* from an establishment in another *EEA State* under the freedom to provide *cross border services*.
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) [deleted]

2.6.2

FCA

G

This:

- (1) includes incoming *EEA firms* , incoming *EEA authorised payment institutions*, incoming *EEA authorised electronic money institutions* and incoming *Treaty firms*; but
- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* (other than *complaints* about *collective portfolio management* services provided by an *EEA UCITS management company* in managing a *UCITS scheme*).

2.6.3

FCA

R

Consumer Credit Jurisdiction

The *Consumer Credit Jurisdiction* covers only *complaints* about the activities of a *licensee* carried on from an establishment in the *United Kingdom*.

2.6.3A

[Deleted]

Voluntary Jurisdiction

2.6.4

R

FCA

The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) elsewhere in the *EEA* if the following conditions are met:
 - (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
 - (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
 - (c) the *VJ participant* has notified appropriate regulators in its *Home State* of its intention to participate in the *Voluntary Jurisdiction*.

Location of the complainant

2.6.5

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FCA

A *complaint* can be dealt with under the *Financial Ombudsman Service* whether or not the complainant lives or is based in the *United Kingdom*.

2.6.6

[Deleted]

2.6.7

[Deleted]

2.6.8

[Deleted]

2.6.8A

[Deleted]

2.6.8B

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2.6.8C

[Deleted]

2.6.9

[Deleted]

2.6.9A

[Deleted]

2.6.9B

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2.6.9C

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2.6.10

[Deleted]

2.6.10A

[Deleted]

2.6.10B

[Deleted]

2.6.11

[Deleted]

2.6.12

[Deleted]

2.6.13

[Deleted]

2.7 Is the complainant eligible?

2.7.1 **R** A *complaint* may only be dealt with under the *Financial Ombudsman Service* if it is brought by or on behalf of an *eligible complainant*.
FCA

2.7.2 **R** A *complaint* may be brought on behalf of an *eligible complainant* (or a deceased *person* who would have been an *eligible complainant*) by a *person* authorised by the *eligible complainant* or authorised by law. It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* is himself an *eligible complainant*.
FCA

Eligible complainants

2.7.3 **R** An *eligible complainant* must be a *person* that is:
FCA

- (1) a *consumer*;
- (2) a *micro-enterprise*;
 - (a) in relation to a *complaint* relating wholly or partly to *payment services*, either at the time of the conclusion of the *payment service* contract or at the time the complainant refers the *complaint* to the *respondent*; or
 - (b) otherwise, at the time the complainant refers the *complaint* to the *respondent*;
- (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; or
- (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*.

2.7.4 **G** In determining whether an enterprise meets the tests for being a *micro-enterprise*, account should be taken of the enterprise's 'partner enterprises' or 'linked enterprises' (as those terms are defined in the *Micro-enterprise Recommendation*). For example, where a parent company holds a majority shareholding in a *complainant*, if the parent company does not meet the tests for being a *micro-enterprise* then neither will the *complainant*. [Note: Articles 1 and 3 to 7 of the Annex to the *Micro-enterprise Recommendation*].
FCA

2.7.4A

2.7.5

FCA

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[Deleted]

If a *respondent* is in doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible. If the *complaint* is referred to the *Financial Ombudsman Service*, the *Ombudsman* will determine eligibility by reference to appropriate evidence, such as audited accounts or VAT returns.

2.7.6

FCA

R

To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

- (1) the complainant is (or was) a customer, *payment service user* or electronic money holder of the *respondent*;
- (2) the complainant is (or was) a potential customer, *payment service user* or electronic money holder of the *respondent*;
- (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is the *operator* or *depository* of the *scheme*;
- (4) the complainant is a beneficiary of, or has a beneficial interest in, a *personal pension scheme* or *stakeholder pension scheme*;
- (5) the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out with or through the *respondent*;
- (6) the complainant is a *person* on whom the legal right to benefit from a claim against the *respondent* under a *contract of insurance* has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002);
- (7) the complainant relied in the course of his business on a cheque guarantee card issued by the *respondent*;
- (8) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *respondent* for someone else's account;
- (9) the complainant is the recipient of a banker's reference given by the *respondent*;
- (10) the complainant gave the *respondent* a guarantee or security for:
 - (a) a mortgage;
 - (b) a loan;

- (c) an actual or prospective *regulated consumer credit agreement*;
 - (d) an actual or prospective *regulated consumer hire agreement*;
or
 - (e) any linked transaction as defined in the Consumer Credit Act 1974 (as amended);
- (11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended);
- (12) the complainant is a *person* :
- (a) from whom the *respondent* has sought to recover payment under a *regulated consumer credit agreement* or *regulated consumer hire agreement* (whether or not the *respondent* is a party to the agreement); or
 - (b) in relation to whom the *respondent* has sought to perform duties, or exercise or enforce rights, on behalf of the creditor or owner, under a *regulated consumer credit agreement* or *regulated consumer hire agreement* in carrying on debt administration as defined by section 145(7A) of the Consumer Credit Act (1974) (as amended);
- (13) the complainant is a beneficiary under a trust or estate of which the *respondent* is trustee or personal representative;
- (14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* to the *respondent*.

2.7.7

FCA

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■ DISP 2.7.6 R (5) and ■ DISP 2.7.6R (6) include, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee.

2.7.8

FCA

G

In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order* and the *Mortgages and General Insurance Complaints Transitional Order*, where a complainant:

- (1) wishes to have a *relevant new complaint* or a *relevant transitional complaint* dealt with by the *Ombudsman*; and
- (2) is not otherwise eligible; but
- (3) would have been entitled to refer an equivalent *complaint* to the *former scheme* in question immediately before the relevant transitional order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

2.7.9

FCA

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Exceptions

The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm, payment service provider, electronic money issuer, licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:
 - (a) the *firm* itself has *permission* to carry on; or
 - (ab) the *firm, payment service provider* or *electronic money issuer* itself is entitled to carry on under the *Payment Services Regulations* or the *Electronic Money Regulations*; or
 - (b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*;

- (2) (in the *Compulsory Jurisdiction*) a complainant, other than a trustee of a *pension scheme* trust, who was:
 - (a) a *professional client*; or
 - (b) an *eligible counterparty*;

in relation to the *firm* and activity in question at the time of the act or omission which is the subject of the *complaint*; and
- (3) (in the *Consumer Credit Jurisdiction*):
 - (a) a body corporate;
 - (b) a *partnership* consisting of more than three persons;
 - (c) a *partnership* all of whose members are bodies corporate; or
 - (d) an unincorporated body which consists entirely of bodies corporate.

2.7.10

FCA

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In the *Compulsory Jurisdiction*, in relation to *relevant new complaints* under the *Ombudsman Transitional Order* and *relevant transitional complaints* under the *Mortgages and General Insurance Complaints Transitional Order*:

- (1) where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) the *relevant new complaint* does not concern aspects of a policy relating to a business or trade carried on by him;
- (2) where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:

- (a) he is an individual; and
 - (b) he is acting otherwise than solely for the purposes of his business; and
- (3) where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:
- (a) the *relevant transitional complaint* does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
 - (b) the *complaint* concerns physical injury, illness, nervous shock or their consequences; or
 - (c) the complainant is claiming a sum of money that exceeds £100,000.

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1
FCA

R

The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the complainant its *final response*; or
- (2) eight weeks have elapsed since the *respondent* received the *complaint*; or
- (3) in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*:
 - (a) the *respondent* has already sent the complainant its *redress determination* under the scheme; or
 - (b) the *respondent* has failed to send a *redress determination* in accordance with the time limits specified under the scheme.

2.8.2
FCA

R

The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

- (1) more than six *months* after the date on which the *respondent* sent the complainant its *final response* or *redress determination*; or
- (2) more than:
 - (a) six years after the event complained of; or (if later)
 - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

- (3) in the view of the *Ombudsman*, the failure to comply with the time limits in ■ DISP 2.8.2 R or ■ DISP 2.8.7 R was as a result of exceptional circumstances; or
- (4) the *Ombudsman* is required to do so by the *Ombudsman Transitional Order*; or
- (5) the *respondent* has not objected , on the grounds that the time limits in ■ DISP 2.8.2 R or ■ DISP 2.8.7 R have been exceeded, to the *Ombudsman* considering the *complaint*.

2.8.3
FCA

G The six-month time limit is only triggered by a response which is a *final response*. A *final response* must tell the complainant about the six-month time limit that the complainant has to refer a *complaint* to the *Financial Ombudsman Service*.

2.8.4
FCA

G An example of exceptional circumstances might be where the complainant has been or is incapacitated.

Reviews of past business

2.8.5
FCA

R The six-year and the three-year time limits do not apply where:

- (1) [deleted]
- (2) the *complaint* concerns a contract or policy which is the subject of a review directly or indirectly under:
 - (a) the terms of the Statement of Policy on 'Pension transfers and Opt-outs' issued by the FSA on 25 October 1994; or
 - (b) the terms of the policy statement for the review of specific categories of *FSAVC* business issued by the FSA on 28 February 2000.

Mortgage endowment complaints

2.8.6
FCA

G If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the *policy* would not, at maturity, produce a sum large enough to repay the target amount is not, itself, sufficient to cause the three year time period in ■ DISP 2.8.2 R (2) to start to run.

2.8.7
FCA

R (1) If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant receives a letter from a *firm* or a *VJ participant* warning that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount then, subject to (2), (3), (4) and (5):

- (a) time for referring a *complaint* to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and
 - (b) ends three years from that date ("the final date").
- (2) Paragraph (1)(b) applies only if the complainant also receives within the three year period mentioned in (1)(b) and at least six months before the final date an explanation that the complainant's time to refer such a *complaint* would expire at the final date.
- (3) If an explanation is given but is sent outside the period referred to in (2), time for referring a *complaint* will run until a date specified in such an explanation which must not be less than six months after the date on which the notice is sent.
- (4) A complainant will be taken to have complied with the time limits in (1) to (3) above if in any case he refers the *complaint* to the *firm* or *VJ participant* within those limits and has a written acknowledgement or some other record of the *complaint* having been received.
- (5) Paragraph (1) does not apply if the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for ■ DISP 2.8.2 R (2) to apply.

Regulated activities for the Voluntary Jurisdiction at 30 April 2011

This table belongs to ■ DISP 2.5.1 R

FCA

The activities which (at 30 April 2011) were *regulated activities* for the *Voluntary Jurisdiction* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

- (1) *accepting deposits* (article 5);
- (2) *issuing electronic money* (article 9B);
- (3) *effecting contracts of insurance* (article 10(1));
- (4) *carrying out contracts of insurance* (article 10(2));
- (5) *dealing in investments as principal* (article 14);
- (6) *dealing in investments as agent* (article 21);
- (7) *arranging (bringing about) deals in investments* (article 25(1));
- (8) *making arrangements with a view to transactions in investments* (article 25(2));
- (9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (11) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (12) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (13) *arranging (bringing about) a home purchase plan* (article 25C(1));
- (14) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (14A) *operating a multilateral trading facility* (article 25D);
- (14B) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));
- (14C) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));
- (15) *managing investments* (article 37);
- (16) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (17) *safeguarding and administering investments* (article 40);

- (18) *sending dematerialised instructions* (article 45(1));
- (19) *causing dematerialised instructions to be sent* (article 45(2));
- (20) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a));
- (21) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- (22) *acting as the depositary or sole director of an open-ended investment company* (article 51(1)(c));
- (23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));
- (24) *providing basic advice on a stakeholder product* (article 52B);
- (25) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (26) *advising on investments* (article 53);
- (27) *advising on regulated mortgage contracts* (article 53A);
- (28) *advising on a home reversion plan* (article 53B);
- (29) *advising on a home purchase plan* (article 53C);
- (29A) *advising on a regulated sale and rent back agreement* (article 53D);
- (30) *advising on syndicate participation at Lloyd's* (article 56);
- (31) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);
- (32) *arranging deals in contracts of insurance written at Lloyd's* (article 58);
- (33) *entering into a regulated mortgage contract* (article 61(1));
- (34) *administering a regulated mortgage contract* (article 61(2));
- (35) *entering into a home reversion plan* (article 63B(1));
- (36) *administering a home reversion plan* (article 63B(2));
- (37) *entering into a home purchase plan* (article 63F(1));
- (38) *administering a home purchase plan* (article 63F(2));
- (38A) *entering into a regulated sale and rent back agreement* (article 63J(1));
- (38B) *administering a regulated sale and rent back agreement* (article 63J(2));
- (39) *entering as provider into a funeral plan contract* (article 59);
- (40) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind.

Chapter 3

Complaint handling procedures of the Financial Ombudsman Service



3.1 Purpose, interpretation and application

Purpose

3.1.1
FCA

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The purpose of this chapter is to set out:

- (1) the procedures of the *Financial Ombudsman Service* for investigating and determining *complaints*;
- (2) the basis on which the *Ombudsman* makes decisions; and
- (3) the awards which the *Ombudsman* can make.

Interpretation

3.1.2
FCA

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In this chapter, 'out of jurisdiction' means outside the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction* in accordance with ■ DISP 2.

3.1.3
FCA

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Where the *respondent* is a *partnership* (or former *partnership*), it is sufficient for the *Ombudsman* to communicate with one partner (or former partner).

3.1.4
FCA

G

The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Application

3.1.5
FCA

R

This chapter applies to the *Ombudsman* and to *respondents*.

3.1.5A

[Deleted]

3.1.6

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3.1.7

[Deleted]



3.2 Jurisdiction

- 3.2.1 FCA **R** The *Ombudsman* will have regard to whether a *complaint* is out of jurisdiction.
- 3.2.2 FCA **R** Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response*, the *Ombudsman* will refer the *complaint* to the *respondent*.
- 3.2.2A FCA **R** If the subject matter of a *complaint* falls to be dealt with by the *respondent* under a *consumer redress scheme*, and the time limits specified under the scheme for doing so have not yet expired, the *Ombudsman* will refer it to the *respondent* to be dealt with under the scheme.
- 3.2.3 FCA **R** Where the *respondent* alleges that the *complaint* is out of jurisdiction, the *Ombudsman* will give both parties an opportunity to make representations before he decides.
- 3.2.4 FCA **R** Where the *Ombudsman* considers that the *complaint* may be out of jurisdiction, he will give the complainant an opportunity to make representations before he decides.
- 3.2.5 FCA **R** Where the *Ombudsman* then decides that the *complaint* is out of jurisdiction, he will give reasons for that decision to the complainant and inform the *respondent*.
- 3.2.6 FCA **R** Where the *Ombudsman* then decides that the *complaint* is not out of jurisdiction, he will inform the complainant and give reasons for that decision to the *respondent*.
- 3.2.7 [Deleted]
- 3.2.8 [Deleted]
- 3.2.9 [Deleted]
- 3.2.10 [Deleted]
- 3.2.11 [Deleted]
- 3.2.12 [Deleted]
- 3.2.13 [Deleted]
- 3.2.14 [Deleted]



3.3 Dismissal without consideration of the merits and test cases

3.3.1 **R** Where the *Ombudsman* considers that the *complaint* may be one which should be dismissed without consideration of the merits, he will give the complainant an opportunity to make representations before he decides.
FCA

3.3.1A [Deleted]

3.3.1B [Deleted]

3.3.2 **R** Where the *Ombudsman* then decides that the *complaint* should be dismissed without consideration of the merits, he will give reasons to the complainant for that decision and inform the *respondent*.
FCA

3.3.2A [Deleted]

3.3.3 **G** Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*, where the *Ombudsman* is dealing with a *relevant complaint*, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the *former scheme* in question, as it had effect immediately before the relevant transitional order came into effect.
FCA

Grounds for dismissal

3.3.4 **R** The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:
FCA

- (1) the complainant has not suffered (or is unlikely to suffer) financial loss, material distress or material inconvenience; or
- (2) the *complaint* is frivolous or vexatious; or
- (3) the *complaint* clearly does not have any reasonable prospect of success; or
- (4) the *respondent* has already made an offer of compensation (or a goodwill payment) which is:
 - (a) fair and reasonable in relation to the circumstances alleged by the complainant; and
 - (b) still open for acceptance; or

- (5) the *respondent* has reviewed the subject matter of the *complaint* in accordance with:
 - (a) the regulatory standards for the review of such transactions prevailing at the time of the review; or
 - (b) [deleted]
 - (c) any formal regulatory requirement, standard or guidance published by the *FCA* or other regulator in respect of that type of *complaint*;

(including, if appropriate, making an offer of redress to the complainant), unless he considers that they did not address the particular circumstances of the case; or
- (5A) the *respondent* has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of a *consumer redress scheme*; or
- (6) the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or
- (7) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute-resolution process; or
- (8) the subject matter of the *complaint* has been the subject of court proceedings where there has been a decision on the merits; or
- (9) the subject matter of the *complaint* is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) in order that the matter may be considered under the *Financial Ombudsman Service*; or
- (10) it would be more suitable for the subject matter of the *complaint* to be dealt with by a court, arbitration or another complaints scheme; or
- (11) it is a *complaint* about the legitimate exercise of a *respondent's* commercial judgment; or
- (12) it is a *complaint* about employment matters from an employee or employees of a *respondent*; or
- (13) it is a *complaint* about investment performance; or

- 3
- (14) it is a *complaint* about a *respondent's* decision when exercising a discretion under a will or private trust; or
 - (15) it is a *complaint* about a *respondent's* failure to consult beneficiaries before exercising a discretion under a will or private trust, where there is no legal obligation to consult; or
 - (16) it is a *complaint* which:
 - (a) involves (or might involve) more than one *eligible complainant*; and
 - (b) has been referred without the consent of the other complainant or complainants;
and the *Ombudsman* considers that it would be inappropriate to deal with the *complaint* without that consent; or
 - ~~(16)~~ it is a *complaint* about a pure landlord and tenant issue arising out of a *regulated sale and rent back agreement*; or
 - (17) there are other compelling reasons why it is inappropriate for the *complaint* to be dealt with under the *Financial Ombudsman Service*.

Test cases

3.3.5
FCA

R

The *Ombudsman* may dismiss a *complaint* without considering its merits, so that a court may consider it as a test case, if:

- (1) before he has made a determination, he has received in writing from the *respondent*:
 - (a) a detailed statement of how and why, in the *respondent's* opinion, the *complaint* raises an important or novel point of law with significant consequences; and
 - (b) an undertaking in favour of the complainant that, if the complainant or the *respondent* commences court proceedings against the other in respect of the *complaint* in any court in the *United Kingdom* within six *months* of the *complaint* being dismissed, the *respondent* will: pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *respondent*; and make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and
- (2) the *Ombudsman* considers that the *complaint*:
 - (a) raises an important or novel point of law, which has important consequences; and

(b) would more suitably be dealt with by a court as a test case.

3.3.6

FCA

G

Factors the *Ombudsman* may take into account in considering whether to dismiss a *complaint* so that it may be the subject of a test case in court include (but are not limited to):

- (1) whether the point of law is central to the outcome of the dispute;
- (2) how important or novel the point of law is in the context of the dispute;
- (3) the significance of the consequences of the dispute for the business of the *respondent* (or *respondents* in that sector) or for its (or their) customers;
- (4) the amount at stake in the dispute;
- (5) the remedies that a court could impose;
- (6) any representations made by the *respondent* or the complainant; and
- (7) the stage already reached in consideration of the dispute.

3



3.4 Referring a complaint to another complaints scheme

3.4.1

FCA

R

The *Ombudsman* may refer a *complaint* to another complaints scheme where:

- (1) he considers that it would be more suitable for the matter to be determined by that scheme; and
- (2) the complainant consents to the referral.



3.5 Resolution of complaints by the Ombudsman

3.5.1 **R** The *Ombudsman* will attempt to resolve *complaints* at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation or investigation.
FCA

3.5.2 **G** The *Ombudsman* may inform the complainant that it might be appropriate to complain against some other *respondent*.
FCA

3.5.3 **G** Where two or more *complaints* from one complainant relate to connected circumstances, the *Ombudsman* may investigate them together, but will issue separate provisional assessments and determinations in respect of each *respondent*.
FCA

3.5.4 **R** If the *Ombudsman* decides that an investigation is necessary, he will then:
FCA

- (1) ensure both parties have been given an opportunity of making representations;
- (2) send both parties a provisional assessment, setting out his reasons and a time limit within which either party must respond; and
- (3) if either party indicates disagreement with the provisional assessment within that time limit, proceed to determination.

Hearings

3.5.5 **R** If the *Ombudsman* considers that the *complaint* can be fairly determined without convening a hearing, he will determine the *complaint*. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the *Ombudsman* considers appropriate in the circumstances, including by telephone. No hearing will be held after the *Ombudsman* has determined the *complaint*.
FCA

3.5.6 **R** A party who wishes to request a hearing must do so in writing, setting out:
FCA

- (1) the issues he wishes to raise; and
- (2) (if appropriate) any reasons why he considers the hearing should be in private;

so that the *Ombudsman* may consider whether:

- (3) the issues are material;
- (4) a hearing should take place; and
- (5) any hearing should be held in public or private.

3.5.7
FCA

G

In deciding whether there should be a hearing and, if so, whether it should be in public or private, the *Ombudsman* will have regard to the provisions of the European Convention on Human Rights.

Evidence

3.5.8
FCA

R

The *Ombudsman* may give directions as to:

- (1) the issues on which evidence is required;
- (2) the extent to which evidence should be oral or written; and
- (3) the way in which evidence should be presented.

3.5.9
FCA

R

The *Ombudsman* may:

- (1) exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;
- (2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and
- (4) dismiss a *complaint* if a complainant fails to supply requested information.

3.5.10
FCA

G

Evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.

3.5.11
FCA

G

The *Ombudsman* has the power to require a party to provide evidence. Failure to comply with the request can be dealt with by the court.

3.5.12
FCA

G

The *Ombudsman* may take into account evidence from third parties, including (but not limited to) the *FCA*, other regulators, experts in industry matters and experts in consumer matters.

Procedural time limits

3.5.13

FCA

R

The *Ombudsman* may fix (and extend) time limits for any aspect of the consideration of a *complaint* by the *Financial Ombudsman Service*.

3.5.14

FCA

R

If a *respondent* fails to comply with a time limit, the *Ombudsman* may:

- (1) proceed with consideration of the *complaint*; and
- (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

3.5.15

FCA

R

If a complainant fails to comply with a time limit, the *Ombudsman* may:

- (1) proceed with consideration of the *complaint*; or
- (2) dismiss the *complaint*.



3.6 Determination by the Ombudsman

Fair and reasonable

3.6.1
FCA

R The *Ombudsman* will determine a *complaint* by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

3.6.2
FCA

G Section 228 of the *Act* sets the 'fair and reasonable' test for the *Compulsory Jurisdiction* (other than in relation to *consumer redress schemes*) and the *Consumer Credit Jurisdiction* and **■** DISP 3.6.1 **R** extends it to the *Voluntary Jurisdiction*.

3.6.3
FCA

G Where a complainant makes *complaints* against more than one *respondent* in respect of connected circumstances, the *Ombudsman* may determine that the *respondents* must contribute towards the overall award in the proportion that the *Ombudsman* considers appropriate.

3.6.4
FCA

R In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account:

- (1) relevant:
 - (a) law and regulations;
 - (b) regulators' rules, guidance and standards;
 - (c) codes of practice; and

- (2) (where appropriate) what he considers to have been good industry practice at the relevant time.

3.6.5
FCA

G Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

3.6.5A

FCA

G

Consumer redress schemes

As a result of section 404B of the *Act*, if the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *Ombudsman* will determine the *complaint* by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should be or should have been.

3.6.6

FCA

R

The Ombudsman's determination

When the *Ombudsman* has determined a *complaint*:

- (1) the *Ombudsman* will give both parties a signed written statement of the determination, giving the reasons for it;
 - (2) the statement will require the complainant to notify the *Ombudsman* , before the date specified in the statement, whether he accepts or rejects the determination;
 - (3) if the complainant notifies the *Ombudsman* that he accepts the determination within that time limit, it is final and binding on both parties;
 - (4) subject to paragraph (4A), if the complainant does not notify the *Ombudsman* that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it;
 - (4A) the complainant is not to be treated as having rejected the determination under paragraph (4) if all the following conditions are met:
 - (a) the complainant notifies the *Ombudsman* after the specified date of the complainant's acceptance of the determination;
 - (b) the complainant has not previously notified the *Ombudsman* of the complainant's rejection of the determination;
 - (c) in the view of the *Ombudsman*, the failure to comply with the time limit for acceptance was as a result of exceptional circumstances;
 - (5) the *Ombudsman* will notify the *respondent* of the outcome and, if the complainant is treated as having rejected the determination under paragraph (4), the effect of paragraph (4A).
- (1) An *Ombudsman* may correct any clerical mistake in the written statement of an *Ombudsman's* determination, whether or not the determination has already been accepted or rejected.

PAGE
13

3.6.7

FCA

R

- (2) Any failure to comply with any provisions of the procedural rules made by the *FOS Ltd* does not of itself render an *Ombudsman's* determination void.

Reports of determinations

3.6.8

FCA

G

- (1) The *FOS Ltd* will publish a report of any *Ombudsman's* determination, save that if the *Ombudsman* who made the determination informs the *FOS Ltd* that, in the *Ombudsman's* opinion, it is inappropriate to publish a report of that determination (or any part of it), the *FOS Ltd* will not publish a report of that determination (or that part, as appropriate).
- (2) Unless the complainant agrees, a report will not include the name of the complainant, or particulars which (in the opinion of the *FOS Ltd*) are likely to identify the complainant.
- (3) The *FOS Ltd* may charge a reasonable fee for providing a copy of a report.



3.7 Awards by the Ombudsman

3.7.1
FCA

R Where a *complaint* is determined in favour of the complainant, the *Ombudsman's* determination may include one or more of the following:

- (1) a money award against the *respondent*; or
- (2) an interest award against the *respondent*; or
- (3) a costs award against the *respondent*; or
- (4) a direction to the *respondent*.

Money awards

3.7.2
FCA

R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:

- (1) financial loss (including consequential or prospective loss); or
- (2) pain and suffering; or
- (3) damage to reputation; or
- (4) distress or inconvenience;

whether or not a court would award compensation.

3.7.2A
FCA

G In relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a money award is a payment of such amount as the *Ombudsman* determines that a *respondent* should make (or should have made) to a complainant under the scheme.

PAGE
15
3.7.2B
FCA

G A money award under **DISP 3.7.2A G** may specify the date by which the amount awarded is to be paid.

3.7.3
FCA

G Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint* or a *relevant transitional*

complaint, the *Ombudsman Transitional Order* and the *Mortgages and General Insurance Complaints Transitional Order* require him to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

3.7.4
FCA

R The maximum money award which the *Ombudsman* may make is £150,000.

3.7.4A
FCA

G The effect of section 404B(5) of the *Act* is that the maximum award which the *Ombudsman* may make also applies in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*.

3.7.5
FCA

G For the purpose of calculating the maximum money award, the following are excluded:

- (1) any interest awarded on the amount payable under a money award;
- (2) any costs awarded; and
- (3) any interest awarded on costs.

3.7.6
FCA

G If the *Ombudsman* considers that fair compensation requires payment of a larger amount, he may recommend that the *respondent* pays the complainant the balance. The effect of section 404B(6) of the *Act* is that this is also the case in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*.

3.7.7
FCA

R The *Ombudsman* will maintain a register of each money award.

Interest awards

3.7.8
FCA

R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, an interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

3.7.8A
FCA

G A money award under **■ DISP 3.7.2A G** may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by the date specified in the award.

Costs awards

3.7.9
FCA

R A costs award may:

- (1) be such amount as the *Ombudsman* considers to be fair, to cover some or all of the costs which were reasonably incurred by the complainant in respect of the complaint; and

- (2) include interest on that amount at a rate and as from a date specified in the award.

3.7.10

FCA

G

In most cases complainants should not need to have professional advisers to bring *complaints* to the *Financial Ombudsman Service*, so awards of costs are unlikely to be common.

Directions

3.7.11

FCA

R

Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a direction may require the *respondent* to take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken).

3.7.11A

FCA

G

In relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a direction may require the *respondent* to take such action as the *Ombudsman* determines the *respondent* should take (or should have taken) under the scheme.

Complying with awards and settlements

3.7.12

FCA

R

A *respondent* must comply promptly with:

- (1) any award or direction made by the *Ombudsman*; and
- (2) any settlement which it agrees at an earlier stage of the procedures.

3.7.13

FCA

G

Under the *Act*, a complainant can enforce through the courts a money award registered by the *Ombudsman* or a direction made by the *Ombudsman*.



3.8 Dealing with information

3.8.1

FCA

R

In dealing with information received in relation to the consideration of a *complaint*, the *Financial Ombudsman Service* will have regard to the parties' rights of privacy.

3.8.2

[Deleted]

3.8.2A

[Deleted]

3.8.2B

R

This does not prevent the *Ombudsman* disclosing information:

FCA

- (1) to the extent that he is required or authorised to do so by law;
or
- (2) to the parties to the *complaint*; or
- (3) in his determination; or
- (4) at a hearing in connection with the *complaint*.

3.8.3

FCA

R

So long as he has regard to the parties' rights of privacy, the *Ombudsman* may disclose information to the *FCA* or any other body exercising regulatory or statutory functions for the purpose of assisting that body or the *Financial Ombudsman Service* to discharge its functions.



3.9 Delegation of the Ombudsman's powers

3.9.1

[Deleted]

3.9.1A

R

The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the powers of the *Ombudsman* relating to the consideration of a *complaint* apart from the powers to:

FCA

- (1) determine a *complaint*; or
- (2) authorise the disclosure of information to the *FCA* or any other body exercising regulatory or statutory functions.

3.9.2

G

In ■ DISP 2 to ■ DISP 4 any reference to "the *Ombudsman*" includes a reference to any member of the staff of *FOS Ltd* to whom the exercise of any of the powers of the *Ombudsman* has been delegated.

FCA

3.9.3

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Chapter 4

Standard terms



4.1 Purpose and application

Purpose

4.1.1

FCA

G

The purpose of this chapter is to set out how *complaints* against *VJ participants* are dealt with under the *Voluntary Jurisdiction*.

Application

4.1.2

FCA

G

These *standard terms* apply to any business which has agreed to be a *VJ participant*.

4.2 Standard terms

4.2.1 **R** A *VJ participant* is subject to these *standard terms*, which may be amended or supplemented by the *Financial Ombudsman Service* with the approval of the *FCA*.

4.2.2 **R** By agreeing to participate, a *VJ participant* also agrees that the *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, whether the act or omission occurred before or after *commencement*.

Application of DISP 1 to DISP 3

4.2.3 **R** The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

- (1) ■ DISP 1 (Treating complainants fairly), except:
 - (a) ■ DISP 1.9 (Complaints record rule);
 - (b) ■ DISP 1.10 (Complaints reporting rules); and
 - (c) ■ DISP 1.11 (Lloyd's);
- (2) ■ DISP 2 (Jurisdiction of the Financial Ombudsman Service), except:
 - (a) ■ DISP 2.3 (Compulsory Jurisdiction); and
 - (b) ■ DISP 2.4 (Consumer Credit Jurisdiction); and
- (3) ■ DISP 3 (Complaint handling procedures of the Financial Ombudsman Service).

Determinations and awards

4.2.4 **R** The *Ombudsman* has the same powers to make determinations and awards under the *Voluntary Jurisdiction* as he has under the *Compulsory Jurisdiction* (see ■ DISP 3.7 (Awards by the Ombudsman)).

4.2.5 **R** If the complainant accepts the *Ombudsman's* determination within the time limit specified by the *Ombudsman*, the determination will be binding on the *VJ Participant* and may be enforced in court by the complainant.

4.2.6

FCA

R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':

- (1) ■ FEES 2.2.1 R (late payment) but substituting '*FOS Ltd*' for '*the FCA*';
- (2) ■ FEES 2.3.1 R and ■ 2.3.2 R (remission of fees);
- (3) ■ ■ FEES 4.2.6 R (1)(b) (periodic fees);
- (4) ■ FEES 5.3.6 R (general levy) but substituting:
 - (a) '*Voluntary Jurisdiction*' for '*Compulsory Jurisdiction*'; and
 - (b) '*FOS Ltd*' for '*the FCA*';
- (5) ■ FEES 5.3.8 R (calculation of general levy) but substituting ' ■ FEES 5 Annex 2R' for ' ■ FEES 5 Annex 1 R';
- (6) ■ FEES 5.4.1 R (information) but substituting:
 - (a) '*FOS Ltd*' for '*the FCA*'; and
 - (b) ' ■ FEES 5 Annex 2R' for ' ■ FEES 5 Annex 1 R';
- (7) ■ FEES 5.5B (case fees);
- (8) [deleted]
- (9) [deleted]
- (10) ■ FEES 5.7.1 R and ■ 5.7.4R but substituting, in ■ FEES 5.7.1 R, '*the FOS Ltd*' for ' *the FCA*' and '*annual levy specified in ■ FEES 5 Annex 2R*' for '*general levy*';
- (11) ■ FEES 5.8.1 R (joining the Financial Ombudsman Service); and
- (12) ■ FEES 5 Annex 2R and ■ FEES 5 Annex 3R.

Withdrawal from participation

4.2.7

FCA

R A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* unless:

- (1) the *VJ participant* has submitted to *FOS Ltd* a written plan for:
 - (a) notifying its existing customers of its intention to withdraw; and
 - (b) handling *complaints* against it before its withdrawal;

(2) the *VJ participant* has paid the general levy for the year in which it withdraws and any other fees payable; and

(3) *FOS Ltd* has approved in writing both the *VJ Participant's* plan and the date of withdrawal (which must be at least six months from the date of the approval of the plan).

Exemption from liability

4.2.8

FCA

R

None of the following is to be liable in damages for anything done or omitted to be done in the discharge (or purported discharge) of any functions in connection with the *Voluntary Jurisdiction*:

- (1) *FOS Ltd*;
- (2) any member of its governing body;
- (3) any member of its staff;
- (4) any person acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*;

except where:

- (5) the act or omission is shown to have been in bad faith; or
- (6) it would prevent an award of damages being made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

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Chapter 5

Funding Rules

Section 5.1 : [deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]



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Section 5.3 : [deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]



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Section 5.5 : [deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]



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Section 5.7 : [deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]



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Section 5.9 : [deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]

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DISP 5 : Funding Rules

Section 5.10 : [deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]

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Appendix 1

Handling Mortgage Endowment Complaints

1.1 Introduction

App 1.1.1 G
FCA

This appendix sets out the approach and standards which *firms* should use when investigating complaints relating to the sale of endowment *policies* for the purposes of achieving capital repayment of a mortgage. It is not intended to be comprehensive. It is primarily concerned with the assessment of whether the complainant may have suffered financial loss, and if so, how much that loss is, and therefore what amount a *firm* should consider offering by way of fair and appropriate compensation in circumstances where the *firm's* investigation of a complaint reveals:

- (1) the complainant has received negligent *advice on investments*; and
- (2) if this advice had not been negligent, either:
 - (a) the complainant would be unlikely to have acquired the endowment policy but instead would have taken out the same amount of loan on a repayment basis; or
 - (b) the complainant would have acquired an endowment mortgage for a shorter term.

App 1.1.2 G
FCA

There will also be cases where a *firm* will conclude after investigation that, notwithstanding its own failure to give compliant and proper advice, the complainant would nevertheless have proceeded with the endowment policy as sold, in which case no compensation will be due.

App 1.1.3 G
FCA

This appendix only addresses how *firms* should approach the assessment of loss and compensation where negligence on the part of the *firm* is established.

PAGE 1
App 1.1.4 G
FCA

This appendix is relevant both to the obligations arising under the complaints handling *rules* contained in ■ DISP 1 and to the *FCA's* approach to the supervision of *firms*.

App 1.1.5 G
FCA

This appendix is also relevant to complaints which the *Ombudsman* may investigate under the *Compulsory Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service* established under Part XVI of the *Act* (The Ombudsman Scheme).

App 1.1.6 **G**
FCA

Before proceeding to assess the extent of a complainant's financial loss, a *firm* will usually have completed the following stages:

- (1) gathering all relevant facts and information;
- (2) making a fair and objective assessment whether it has failed to comply with a relevant duty owed to the complainant; and
- (3) assessing whether any failure of duty by it was in the circumstances a material failure in the sense that if it had not occurred the complainant would have been likely to have acted differently.

App 1.1.7 **G**
FCA

If it is concluded that the complainant would have acted differently, the *firm* should proceed to assess any direct or consequential loss.

App 1.1.8 **G**
FCA

Nothing in this appendix relieves *firms* of the obligation to consider the particular facts and circumstances of each complaint and to consider whether the assessment of loss and compensation should, in the light of those facts and circumstances, be carried out on a different basis. If, however, the facts and circumstances make it appropriate to do so, the *FCA's* expectation is that *firms* will apply the approach and standards set out in this appendix, and where they do not, the *FCA* is likely to require them to demonstrate the adequacy and completeness of their alternative approach.

1.2 The standard approach to redress

App 1.2.1 **G**
FCA

If there has been a failure to give compliant and proper advice, or some other breach of the duty of care, the basic objective of redress is to put the complainant, so far as is possible, in the position he would have been in if the inappropriate advice had not been given, or the other breach had not occurred. In many cases, although it must be a matter for inquiry and assessment in each individual case, this position is likely to have resulted in the complainant taking a repayment mortgage with accompanying life cover, and this is the assumption which underpins the standard approach to redress.

App 1.2.2 **G**
FCA

Unless the contrary is demonstrated, it should be assumed that the complainant could have afforded the mortgage on a repayment basis.

App 1.2.3 **G**
FCA

The measure of any financial loss suffered by the complainant will be arrived at by:

- (1) comparing the complainant's current capital position with the position he would have been in had the loan been a standard repayment mortgage as at the date the *firm* decides to regard the complaint as justified; and
- (2) comparing the cost of the complainant's actual monthly outgoings and those he would have made had his loan been on a standard repayment basis as at the date the *firm* decides to regard the complaint as justified.

- App 1.2.4** **G**
FCA In some cases other factors may be included in the overall calculation, for example, if mortgage arrangement fees were waived by agreement on the occasion of the endowment *policy* being taken out.
- App 1.2.5** **G**
FCA If, on comparing the complainant's current endowment position with the repayment alternative, the *surrender value* of the endowment *policy* exceeds the amount of the capital which the complainant would have repaid through the repayment method, then, at the point of the assessment, the complainant has suffered no capital loss (but the complainant may suffer some compensatable consequential loss associated with changing the mortgage arrangements to the repayment basis, see ■ DISP App 1.3). Conversely, if the capital which would have been repaid on the repayment basis exceeds the *surrender value*, there is a capital loss represented by the difference between the two amounts.
- App 1.2.6** **G**
FCA If the complainant's endowment mortgage outgoings exceed the equivalent cost for the repayment method, the complainant should be compensated for the higher payments in addition to any loss on the *surrender value* and capital repaid comparison. This means, for example, that if the endowment arrangement has been more expensive, this may result in compensatable loss even though the capital repayment against surrender comparison may be favourable to the endowment.
- App 1.2.7** **G**
FCA If the total cost of the outgoings for the endowment calculation is less than that for the repayment calculation, the "savings" should be brought into account in assessing any overall loss unless it is unreasonable to do so.
- App 1.2.8** **G**
FCA It is unlikely to be reasonable to bring "savings" into account in circumstances where, at the time of the sale of the *policy*:
- (1) the complainant was advised or informed orally or in writing that he would have lower outgoings than would be the case under a repayment mortgage, whether or not the difference was quantified; and
 - (2) the complainant has dissipated those "savings" on the strength of this advice or information.
- App 1.2.9** **G**
FCA The circumstances in which it may be appropriate to take some or all of the "savings" into account are those where, subject to ■ DISP App 1.2.7 G, the complainant is of "sufficient means" so that it is reasonable for a *firm* to assume that the "savings" have contributed to those means.
- App 1.2.10** **G**
FCA Where it is otherwise reasonable for "savings" to be brought into account, determining whether or not a complainant is of sufficient means and, if so, to what extent the "savings" are to be brought into account, will have to be based on the facts of each individual case. It will be appropriate to require the complainant to provide adequate information to assist the *firm* in this task. Matters to be taken into account in this assessment may include:
- (1) the length of the remaining mortgage term;
 - (2) the complainant's current and prospective resources;
 - (3) the amount of the capital shortfall in proportion to the endowment outgoings balance.

App 1.2.11 **G**
FCA

Firms may adopt streamlined processes to assist them in individual assessments of "sufficient means", but will have to satisfy themselves that the complainant's position is nevertheless protected. *Firms* will need to ensure that the complainant is given an opportunity to make an informed choice whether to accept the streamlined process, that the process itself is transparent, and that the *firm* is satisfied that the outcome would be fair to complainants.

App 1.2.12 **G**
FCA

If a *firm* intends to make a deduction for all or any part of the lower endowment outgoings, the *firm* should explain clearly to the complainant in writing both how the 'sufficient means' test has been satisfied, including details of the information taken into account in reaching the decision, and how the deduction has been arrived at. The letter should further inform the complainant that if he is unhappy with the proposal to make a deduction, either in principle or as to the amount, he should give his reasons to the *firm*.

App 1.2.13 **G**
FCA

If a complainant puts forward a case that it would be unreasonable for a deduction to be made, the *firm* should reach a fair and objective determination on the facts of all relevant matters including those set out at ■ DISP App 1.2.8 G and ■ DISP App 1.2.9 G .

App 1.2.14 **G**
FCA

In recognition that *firms* may not wish, for practical reasons, to make individual assessments of "sufficient means", *firms* may decide not to seek to bring into account any benefit to the complainant in assessing overall compensation.

App 1.2.15 **G**
FCA

It would not be unreasonable if a *firm* providing redress in these circumstances were to frame its offer of redress on the assumption that the complainant will agree to surrender the *policy*. However, *firms* should bear in mind that there may be circumstances where it is appropriate for the complainant to retain the *policy*, for example, where it is being retained as a savings vehicle.

App 1.2.16 **G**
FCA

If a complainant becomes aware that he has taken out the endowment *policy* on the basis of unsuitable advice and inadequate information, he should if necessary, after taking appropriate advice, take reasonable steps to limit his loss, and may in any subsequent *claim* be unable to recover for losses which are avoidable. The complainant may have to show that he has not delayed unreasonably since becoming aware of his loss. The reasonable costs and expenses the complainant may have incurred in limiting his loss are to be taken into account in assessing his compensation. These costs and expenses are likely to include the complainant taking advice on whether he should convert from an endowment to a repayment mortgage and incurring expenses in doing so, see ■ DISP App 1.3.

App 1.2.17 **G**
FCA

The standard approach to redress can be illustrated by the following examples, which show how redress would be calculated in certain hypothetical but typical scenarios. (Because the examples are illustrative, round numbers have been used for 'established facts' in each example. The payments should be taken as being made monthly: *firms* should not approximate by assuming that payments are made annually. If the complainant has benefited from MIRAS, the calculations should allow for the effect of MIRAS both on the endowment mortgage and the repayment comparison.)

App 1.2.18 **G**
FCA

Table of examples of typical redress calculations

Example 1	Capital shortfall and higher endowment outgoings
Example 2	Capital shortfall partially offset by lower endowment mortgage outgoings

Example 3	Capital shortfall more than offset by lower endowment mortgage outgoings
Example 4	Capital surplus more than offset by higher endowment mortgage outgoings
Example 5	Capital surplus partially offset by higher endowment mortgage outgoings
Example 6	Capital surplus and lower endowment mortgage outgoings
Example 7	Low start endowment mortgage

App 1.2.19 **G**

FCA

Example 1

Example 1

Capital shortfall and higher endowment mortgage outgoings

Capital sum of £50,000

25 year endowment *policy*

Duration to date: 5 years

Endowment *premium* per month: £75

Endowment <i>surrender value</i> :	£3,200
Capital repaid under equivalent repayment mortgage:	£4,200
<i>Surrender value</i> less capital repaid:	(£1,000)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
Equivalent repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment <i>premium</i> + interest):	£22,250
Difference in outgoings (repayment - endowment):	(£300)

In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid and also because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. The two losses and the conversion cost are therefore added together in order to calculate the redress.

Loss from <i>surrender value</i> less capital repaid:	(£1,000)
Loss from total extra outgoings under endowment mortgage:	(£300)
Cost of converting to repayment mortgage:	(£200)
Total loss:	(£1,500)
Therefore total redress is:	£1,500

App 1.2.20 **G**

FCA

Example 2

Example 2

Capital shortfall partially offset by lower endowment mortgage outgoings

Capital sum of £50,000

25 year endowment *policy*

Example 2

Duration to date: 5 years

Endowment *premium* per month: £60

Endowment <i>surrender value</i> :	£2,500
Capital repaid under equivalent repayment mortgage	£4,200
<i>Surrender value</i> less capital repaid under equivalent repayment mortgage:	(£1,700)
Cost of converting from endowment mortgage to repayment mortgage	(£300)
Repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment <i>premium</i> + interest):	£21,350
Difference in outgoings (repayment - endowment):	£600

In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid but has gained from the lower outgoings of the endowment mortgage to date. In calculating the redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.

Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings

Loss from <i>surrender value</i> less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	£600
Cost of converting to repayment mortgage:	(£300)
Net loss:	(£1,400)

Therefore total redress is: £1,400

Redress if it is unreasonable to take account of gain from lower outgoings

Loss from <i>surrender value</i> less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	Ignored*
Cost of converting to repayment mortgage:	(£300)
Net loss taken into account:	(£2,000)

Therefore total redress is: £2,000

* In this example, and also in Examples 3, 7, 8 and 9, the complainant's circumstances are assumed to be such as to make it unreasonable to take account of any of the gain from lower outgoings.

App 1.2.21 **G**

FCA

Example 3

Example 3

Capital shortfall more than offset by lower endowment mortgage outgoings

Capital sum of £50,000

25 year endowment *policy*

Duration to date: 8 years

Endowment *premium* per month: £65

Endowment *surrender value*: £7,300

Example 3

Capital repaid under equivalent repayment mortgage:	£7,600
<i>Surrender value</i> less capital repaid:	(£300)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment <i>premium</i> + interest):	£33,990
Difference in outgoings (repayment - endowment):	£520

In this example, the complainant has suffered loss because the surrender value of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. In calculating redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.

Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings

Loss from <i>surrender value</i> less capital repaid:	(£300)
Gain from total lower outgoings under endowment mortgage:	£520
Cost of converting to repayment mortgage:	(£200)
Net gain:	£20

Therefore, there has been no loss and no redress is payable.

Redress if it is unreasonable to take account of gain from lower outgoings

Loss from <i>surrender value</i> less capital repaid:	(£300)
Gain from total lower outgoings under endowment mortgage:	Ignored
Cost of converting to repayment mortgage:	(£200)
Net loss taken into account:	(£500)

Therefore total redress is: £500

App 1.2.22 GFCA

Example 4

Example 4

Capital surplus more than offset by higher endowment mortgage outgoings

Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 8 years	
Endowment <i>premium</i> per month: £75	
Endowment <i>surrender value</i> :	£7,800
Capital repaid under equivalent repayment mortgage:	£7,600

Example 4

<i>Surrender value</i> less capital repaid:	£200
Cost of converting from endowment mortgage to repayment mortgage:	(£250)
Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment <i>premium</i> + interest):	£34,950
Difference in outgoings (repayment - endowment):	(£440)

In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage but has gained because the *surrender value* of the endowment is greater than the capital repaid. Since the sum of the loss and the conversion cost is greater than the gain, the redress is calculated as the difference between the two.

Gain from <i>surrender value</i> less capital repaid:	£200
Loss from total extra outgoings under endowment mortgage:	(£440)
Cost of converting to repayment mortgage:	(£250)
Net loss:	(£490)
Therefore total redress is:	£490

App 1.2.23 G

FCA

Example 5

Example 5

Capital surplus partially offset by higher endowment mortgage outgoings

Capital sum of ?50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium</i> per month: £75	
Endowment <i>surrender value</i> :	£11,800
Capital repaid under equivalent repayment mortgage	£9,700
<i>Surrender value</i> less capital repaid:	£2,100
Cost of converting from endowment mortgage to repayment mortgage:	(?300)
Repayment mortgage (capital + interest + DTA life cover):	?46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£47,500
Difference in outgoings (repayment - endowment):	(£700)

In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. However the sum of this and the conversion

Example 5

cost is less than the complainant's gain from the difference between the *surrender value* of the endowment and the capital repaid. Thus no redress is payable.

Gain from <i>surrender value</i> less capital repaid:	£2,100
Loss from total extra outgoings under endowment mortgage:	(£700)
Cost of converting to repayment mortgage:	(£300)
Net gain:	£1,100

Therefore, there has been no loss and no redress is payable.

App 1.2.24 G
FCA

Example 6

Example 6

Capital surplus and lower endowment mortgage outgoings

Capital sum of ?50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium</i> per month: £65	
Endowment <i>surrender value</i> :	£10,100
Capital repaid under equivalent repayment mortgage	£9,700
<i>Surrender value</i> less capital repaid:	£400
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£46,300
Difference in outgoings (repayment - endowment):	£500

In this example, the complainant has gained both because the *surrender value* of the endowment is greater than the capital repaid and because of the lower total outgoings of the endowment mortgage. These gains are larger than the cost of converting to a repayment mortgage. Thus no further action is necessary.

As there has been no loss, no redress is payable.

PAGE
9

App 1.2.25 G
FCA

Example 7

Example 7

Low start endowment mortgage

Capital sum of £50,000

Example 7

25 year endowment *policy*

Duration to date: 10 years

Endowment *premium per month*: starting at £35 in first year, increasing by 20% simple on each *policy* anniversary, reaching £70 after five years and then remaining at that level.

Endowment <i>surrender value</i> :	£8,200
Capital repaid under equivalent repayment mortgage:	£9,700
<i>Surrender value</i> less capital repaid:	(£1,500)
Cost of converting from endowment mortgage to repayment mortgage:	(£250)
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£45,640
Difference in outgoings (repayment minus endowment):	£1,160

Of this difference in outgoings, £800 arose in the five year period when the complainant was paying a low endowment *premium*.

In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. As in Example 3, in calculating redress the whole of the gain should be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to do so. However, unlike Example 3, in a low start endowment mortgage the complainant may have chosen to pay a lower than usual *premium* in the early years (this would need to be established on the facts of the case). Where it has been established that the complainant chose to make lower payments, even if it is unreasonable to take account of the whole of the gain from total outgoings, the gain from paying a lower *premium* during the low start period is normally taken into account. In such cases the redress is calculated as the capital loss plus the conversion cost minus the total amount by which repayment mortgage outgoings would have exceeded the actual low start endowment mortgage outgoings during the five year low start period.

Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings

Loss from <i>surrender value</i> less capital repaid:	(£1,500)
Gain from total lower outgoings under endowment mortgage:	£1,160
Cost of converting to repayment mortgage:	(£250)
Net loss:	(£590)
Therefore total redress is:	£590

Redress if it is unreasonable to take account of gain from lower outgoings

Loss from <i>surrender value</i> less capital repaid:	(£1,500)
Gain from total lower outgoings during low start period of endowment mortgage:	£800
Cost of converting to repayment mortgage:	(£250)
Net loss taken into account:	(£950)

Example 7

Therefore total redress is:	£950
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Interest rates

App 1.2.26 **G**

FCA

In fixing a repayment comparator, it would be appropriate to have regard to the repayment quotation actually provided at the time of sale. If more than one repayment quotation was obtained, the comparison should be with the quotation which approximates most closely to the terms of the endowment mortgage actually taken. If a repayment quotation was not provided, or is not now available, it should be assumed that the interest rate for the repayment comparison is the same as that of the mortgage endowment arrangements. *Firms* will then need to replicate interest rate changes throughout the lifetime of the comparator mortgage.

Life cover

App 1.2.27 **G**

FCA

Unless after due inquiry there is clear evidence that the complainant with a mortgage endowment had no foreseeable need for life cover at the time the endowment arrangements were concluded, in the overall comparison between a repayment mortgage and an endowment mortgage the monthly outgoings under the repayment will include the premium for the decreasing term assurance that would have been required. This adjustment for the cost of life cover is only to be made if the *firm* is undertaking a comparison of monthly outgoings. It is not appropriate to deduct the cost of life cover from the capital loss calculation, as this would constitute double counting.

App 1.2.28 **G**

FCA

If a deduction is to be attributed to the provision of life cover, the appropriate approach is to assume that the complainant took out the insurance quoted in the alternative repayment quotation provided at the time of the sale. If the quotation is not available, the deduction should be at the rates that would have been quoted at the time.

1.3

Remortgaging

App 1.3.1 **G**

FCA

As already noted, the basic objective of redress is to put the complainant, so far as is possible, in the position he would have been in if the inappropriate advice or other breach had not occurred: for their part, the complainants should take such reasonable steps as they can to limit loss once they are informed of the position they are in because of the failure of advice at the time of sale.

App 1.3.2 **G**

FCA

In practice, it is likely to be appropriate for a complainant whose complaint has been upheld to convert to a repayment mortgage, whether or not there is financial loss to date. It will normally be possible for complainants to do so without incurring unreasonable cost. Conversion will of course mean that the complainant no longer has a *policy*.

PAGE
11App 1.3.3 **G**

FCA

Firms should therefore in the case of upheld complaints inform complainants that it is likely to be appropriate and necessary for them to convert to a repayment arrangement.

App 1.3.4 **G**

FCA

Firms should make it clear that they will bear the costs of conversion if the rearrangement is made with the existing lender and to the equivalent repayment mortgage. If a complainant is

not willing to rearrange with the existing lender, then the costs to be paid by the *firm* should normally be limited to those which would have been payable had the rearrangement been made with the existing lender and to the equivalent repayment mortgage. If it is not possible to rearrange with the existing lender, for example, if the lender has a closed book, the *firm* should pay all costs which are not unreasonable in completing the rearrangement with an alternative provider. Such costs might include an administration fee for changing the existing arrangement, redemption penalty, arrangement fee for the new mortgage and the reasonable cost of further advice if necessary.

App 1.3.5 **G**
FCA

If the "new" mortgage is, in fact, arranged at a lower interest rate than the existing loan, the benefit to the complainant should usually be disregarded, as it is always open to complainants to change their underlying mortgage arrangements at any time.

App 1.3.6 **G**
FCA

If the "new" mortgage is arranged at a higher interest rate than the existing loan, the increased payment should not normally be taken into account in calculating any payment to be made to the complainant.

App 1.3.7 **G**
FCA

If the complainant takes the opportunity to increase his loan on the occasion of the remortgage, the expenses which a *firm* pays by way of compensation should be paid by reference to the capital sum due under the "old" loan.

App 1.3.8 **G**
FCA

As stated, one aspect of the conversion process is the disposal of the endowment *policy*. The standard approach to assessing loss requires *firms* to calculate loss using the *surrender value*. However, once loss is established on this basis and *firms* move to deal with redress, they may wish to consider whether there is a role for the *policy's* 'market value' within the traded endowment *policy* (TEP) market.

App 1.3.9 **G**
FCA

A *firm* may arrange the sale of the endowment *policy* on the traded endowment market, provided the full implications of such a course of action are explained to the complainant and his express consent is obtained for the firm to arrange the sale. This includes informing the investor that he will continue to be the life assured under the *policy*. The complainant should be informed that such an arrangement may reduce or eliminate the amount of redress actually borne by the *firm*, but not so as to affect the amount of redress he receives.

App 1.3.10 **G**
FCA

In the event that a complainant is willing to pursue this option, a *firm* should first have assessed the complainant's loss using the approach set out in this appendix, and the minimum amount the complainant should receive under such a sale arrangement is the sum representing the position the complainant should have been in under this appendix together with the reimbursement of remortgaging costs. In order to ensure the process does not delay the provision of redress, the *firm* must pay this minimum sum immediately the complainant agrees to the sale arrangement. To the extent that the net amount realised by the sale of the *policy* on the traded endowment market exceeds the total redress due to the complainant, this greater sum is to be paid to the complainant on completion of the sale. If the amount realised by the sale of the *policy* on the traded endowment market is less than the total redress due to the complainant, the *firm* will be responsible for the amount of the shortfall.

App 1.3.11 **G**
FCA

Example of assessment set out at 1.3.10

The following example illustrates the position:

Surrender value	£10,000	TEP value	£16,000
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The following example illustrates the position:

Loss calculated by standard approach	£5,000		
Remortgaging costs	£300		
Total			
Complainant receives ?16,000 all ultimately funded from the TEP sale.			
Surrender value	£10,000	TEP value	£13,000
Redress calculated by standard approach	£5,000		
Remortgaging costs	£300		
Total			
Complainant receives £15,300, £13,000 ultimately funded from the TEP sale and £2,300 ultimately funded from the <i>firm</i> .			

1.4 Policy reconstruction

App 1.4.1 **G**
FCA This section of this appendix is primarily concerned with circumstances where the term of the mortgage and associated endowment *policy* extend beyond the individual complainant's normal retirement age in circumstances where the *firm* regards a complaint as justified because the arrangement is not affordable in retirement; and this could have, and should have, been foreseen at the time of the advice.

App 1.4.2 **G**
FCA Two sets of circumstances are examined at ■ DISP App 1.4.3 G to ■ DISP App 1.4.13 G. Although these are considered in isolation, *firms* should, as part of their investigation of all of the factors involved in the complaint, consider whether either set of circumstances should be considered in conjunction with those factors examined at ■ DISP App 1.2.

Case 1

App 1.4.3 **G**
FCA If on enquiry it is found that no proper assessment of the complainant's post-retirement means had been undertaken at the time of *sale*, but if the likelihood had been that the complainant would have borrowed the same amount over a shorter term (up to retirement) using an endowment *policy* as a repayment vehicle, then an appropriate form of redress would be for the *policy* to be reconstructed with a shorter term.

App 1.4.4 **G**
FCA Redress should in most cases be provided by meeting the cost of rearranging the *policy*, by way of a lump sum payment into the *policy* in respect of the higher rate of *premium* due from its inception. It may be appropriate in individual cases to take account of the lower *premiums* that the complainant will have paid to date. The *guidance* in ■ DISP App 1.2, as to the circumstances in which this will be appropriate, will be relevant here.

App 1.4.5 **G**
FCA If the *policy* extends beyond retirement age and the complainant is already retired, the *policy* should be reconstructed to a maturity date as at the accepted retirement date, with the *policy*

proceeds becoming immediately payable. The costs are to be borne by the *firm*, subject to any lower outgoings adjustment.

App 1.4.6 G

FCA

Firms should consider whether the reconstruction would have tax implications for complainants (see ■ DISP App 1.5.8 G and ■ DISP App 1.5.9 G).

App 1.4.7 G

FCA

The reconstruction process deals with the situation to the date the *policy* is reconstructed. The complainant will generally be responsible for paying the increased *premiums* for the remaining term.

App 1.4.8 G

FCA

At the time the complainant is advised of the revised *premium*, he should as a matter of good practice be provided with a reprojection based on the prevailing *projection* rates, which will allow him to address any projected shortfall.

App 1.4.9 G

FCA

If it is not possible for a *firm* to reconstruct a *policy*, then it should offer the investor equivalent redress, for example, by paying a cash lump sum equivalent to the amount that would have been credited to a reconstructed *policy*.

Case 2

App 1.4.10 G

FCA

If a loan extending into retirement was on any basis not affordable, whether or not it is reconstructed to the retirement date, *firms* will need to consider whether, if proper advice had been given, the loan would have been taken out at all and, if not, consider what arrangements might now need to be made in order to reduce the amount of the complainant's borrowings.

Mismatched loans and policy terms

App 1.4.11 G

FCA

If a complaint is regarded as justified by the *firm* on the basis that the endowment *policy* maturity date extends beyond the mortgage term expiry date and the *firm* is responsible for this situation, the *policy* should be reconstructed so that it matures at the expiry of the mortgage term.

App 1.4.12 G

FCA

In these circumstances the *guidance* given elsewhere in ■ DISP App 1.4 will apply as appropriate.

Examples

App 1.4.13 G

FCA

The following examples illustrate the approach to redress as described in this section.

App 1.4.14 G

FCA

Example 8

Example 8

Term extends beyond retirement age and policy reconstruction

45 year old male non-smoker, having taken out a ?50,000 loan in 1998 for a term of 25 years. Unsuitable sale identified on the grounds of affordability and complaint raised on 12th *policy* anniversary.

It has always been the intention of the complainant to retire at State retirement age 65.

Term from date of sale to retirement is 20 years and the maturity date of the mortgage is 5 years after retirement.

Example 8

Established <i>premium</i> paid by investor on <i>policy</i> of original term (25 years):	£81.20
<i>Premium</i> that would have been payable on <i>policy</i> with term from <i>sale</i> to retirement (20 years):	?111.20
Actual <i>policy</i> value at time complaint assessed:	£12,500
Value of an equivalent 20-year <i>policy</i> at time complaint assessed:	£21,300
Difference in <i>policy</i> values at time complaint assessed:	£8,800
Difference in outgoings (20 year <i>policy</i> - 25 year <i>policy</i>):	£4,320

The *policy* is reconstructed as if it had been set up originally on a term to mature at retirement age, in this example, a term of 20 years. The difference in the current value of the *policy* actually sold to the complainant and the current value of the reconstructed *policy*, as if the *premium* on the reconstructed *policy* had been paid from outset, is calculated. The complainant has gained from lower outgoings (lower *premiums*) of the actual endowment *policy* to date. In calculating the redress, the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.

Redress generally if it is not unreasonable to take account of the whole of the gain from lower outgoings

Loss from current value of reconstructed <i>policy</i> less current value of actual <i>policy</i> :	(£8,800)
Gain from total lower outgoings under actual <i>policy</i> :	
Net loss:	(£4,480)
Therefore total redress is:	£4,480

Redress if it is unreasonable to take account of gain from lower outgoings

Loss from current value of reconstructed <i>policy</i> less current value of actual <i>policy</i> :	(£8,800)
Gain from total lower outgoings under actual <i>policy</i> :	Ignored
Therefore total redress is:	

If the *policy* is capable of reconstruction, the complainant must now fund the higher *premiums* himself for the remainder of the term of the shortened *policy* until maturity. In this example the higher *premium* could be £111.20. However the *firm* should provide the complainant with a reprojection letter based on the reconstructed *policy* such that the actual monthly payment required to achieve the target sum could be even higher, say £130. The reprojection letter should set out the range of options facing the complainant to deal with the projected shortfall, if any.

Example 9

Example 9

Term extends beyond retirement age: example of failure to explain investment risks

45 year old male non-smoker, having taken out a ?50,000 loan in 1998 for a term of 25 years. Unsuitable sale identified on the grounds of affordability and complaint raised on 12th anniversary.

Example 9

It has always been the intention of the complainant to retire at state retirement age 65.

Term from date of sale to retirement is 20 years and the maturity date of the mortgage is five years after retirement.

In addition, an endowment does not meet the complainant's attitude to investment risk and a repayment mortgage would have been taken out if properly advised.

Surrender value (on the 25 year *policy*) at time complaint assessed: £12,500

Capital repaid under repayment mortgage of term to retirement date (20 years): £21,000

Surrender value less capital repaid: (£8,500)

Difference in outgoings (repayment - endowment): £5,400

Cost of converting from endowment mortgage to repayment mortgage: £200

The *surrender value* of the (25 year term) endowment *policy* is compared to the capital that would have been repaid to date under a repayment mortgage arranged to repay the loan at retirement age, in this example, a repayment mortgage for a term of 20 years. The complainant has gained from lower outgoings of the endowment mortgage to date. In calculating the redress, the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain. The conversion costs are also taken into account in calculating the redress.

Loss from *surrender value* less capital repaid: (£8,500)

Gain from total lower outgoings under endowment mortgage: ?5,400

Cost of converting to a repayment mortgage:

Net loss: (£3,300)

Therefore total redress is:

Redress if it is unreasonable to take account of gain from lower outgoings

Loss from *surrender value* less capital repaid: (£8,500)

Gain from total lower outgoings under endowment mortgage: Ignored

Cost of converting to a repayment mortgage: (£8,700)

Therefore total redress is:

1.5 Additional considerations

Introduction

App 1.5.1 **G**

FCA

This section addresses issues which may be relevant to the standard redress for unsuitability cases, as well as some post-retirement cases upheld on the grounds of affordability.

Continuing life cover and other policy benefits

App 1.5.2 **G**

FCA

Firms will need to consider the importance for many complainants of having life assurance in place to ensure a mortgage is paid off in the event of death.

App 1.5.3 **G**
FCA

If a complaint is upheld and the *policy* is to be surrendered as part of the settlement, the *firm* should remind the complainant in writing that the life cover within the endowment will be terminated and that it may therefore be appropriate to take advice about the merits or otherwise of taking out a stand-alone *life policy* in substitution.

App 1.5.4 **G**
FCA

If a need for life assurance at inception has been established so that a deduction representing its cost has been made from the redress payable under ■ DISP App 1.2.4 G, the *firm* should advise the complainant that the *firm* would be responsible for paying any *premium* for an appropriate replacement *policy* which exceeds that used for calculating the deduction or alternatively will, where possible, provide the cover itself at that cost. If it is not possible for the *firm* to provide the cover itself at the original cost, it may choose to discharge that obligation by the payment of an appropriate lump sum. Any such amount should enable the complainant to effect the cover at the original cost, with no additional cost in respect of increased age or deterioration in health. This option may be particularly relevant if the *firm* against which the complaint has been made is an independent intermediary which cannot itself provide the cover, although it may be possible for such a *firm* to arrange for the product provider to offer cover to the complainant at the original *premium* on payment by the independent intermediary of an appropriate lump sum to meet any increased cost.

App 1.5.5 **G**
FCA

Firms will not be responsible for any increased costs resulting from the complainant choosing another *product provider* or for increased *premiums* charged by another provider chosen by the complainant in respect of the risk now presented, for example, higher *premiums* charged by the other provider due to deterioration in health, unless the original *product provider* no longer writes new business and is unable to offer revised life cover on a decreasing term assurance basis.

App 1.5.6 **G**
FCA

There can be exceptional circumstances where, in order to retain suitable life cover, the endowment *policy* has to be retained and any additional costs will be the responsibility of the *firm* that sold the endowment *policy*.

App 1.5.7 **G**
FCA

The same considerations will apply to the establishment of the need for other *policy* benefits including critical illness cover, disability cover and waiver of *premium*.

Taxation

App 1.5.8 **G**
FCA

Firms will need to consider the likely taxation implications for complainants if *policies* are surrendered or reconstructed, or any form of underpinning or guarantee is given.

App 1.5.9 **G**
FCA

If there is potential tax liability for the complainant, it will be appropriate for *firms* to undertake in writing to the complainant to reimburse any tax payable, or which becomes payable, and make payment on production of appropriate evidence of the liability and payment having been made.

"Underpinning"

App 1.5.10 **G**
FCA

Firms proposing to offer arrangements involving some form of minimum underpinning or 'guarantee' should discuss their proposals with the FCA and HM Revenue and Customs at the earliest possible opportunity (see ■ DISP App 1.5.8 G). The FCA will need to be satisfied that these proposals provide complainants with redress which is at least commensurate with the standard approaches contained in this appendix.

Reference to the guidance in firms' complaints settlement letters

App 1.5.11 **G**
FCA

One of the reasons for introducing the *guidance* in this appendix is to seek a reduction in the number of complaints which are referred to the *Financial Ombudsman Service*. If a *firm* writes to the complainant proposing terms for settlement which are in accordance with this appendix, the letter may include a statement that the calculation of loss and redress accords with the *FCA guidance*, but should not imply that this extends to the assessment of whether or not the complaint should be upheld. *Firms* should point out that if the complainant remains dissatisfied, he may refer the complaint to the *Financial Ombudsman Service*.

App 1.5.12 **G**
FCA

A statement under **■ DISP App 1.5.11 G** should not give the impression that the proposed terms of settlement have been expressly endorsed by either the *FCA* or the *Financial Ombudsman Service*.

Identification of windfall benefits

App 1.5.13 **G**
FCA

Windfall benefits should be determined in accordance with the principle in Needler Financial Services and Taber ('Needler'). The basic legal principle in Needler is that a windfall benefit is not to be taken into account in determining the amount of an investor's recoverable loss. The following paragraphs explain our views as to how *firms* may act in accordance with that principle.

App 1.5.14 **G**
FCA

A windfall benefit arises where:

- (1) there has been a demutualisation, distribution or reattribution of the inherited estate, or other extraordinary corporate event in a *long-term insurer*; and

the event gave rise to 'relevant benefits', as defined in **■ DISP App 1.5.15 G** (below).

App 1.5.15 **G**
FCA

'Relevant benefits' are those benefits that fall outside what is required in order that *policyholders'* reasonable expectations at that point of sale can be fulfilled. (The phrase '*policyholders'* reasonable expectations' has technically been superseded. However, the concept now resides within the obligations imposed upon *firms* by *FCA* Principle 6 ('...a firm must pay due regard to the interests of its *customers* and treat them fairly...') Additionally, most of these benefits would have been paid prior to *commencement*, when *policyholders'* reasonable expectations would have been a consideration for a *long-term insurer*.)

App 1.5.16 **G**
FCA

The issue of free *shares* or cash on a demutualisation, and additional bonuses and *policy* enhancements given by way of incentive to approve a reattribution or distribution of an inherited estate should, unless there is evidence to the contrary, be treated as relevant benefits for the purposes of **■ DISP App 1.5.15 G**. Whether additional bonuses and *policy* enhancements on a demutualisation are relevant benefits should be determined by applying the test in **■ DISP App 1.5.15 G** to each benefit.

App 1.5.17 **G**
FCA

Firms should review the terms on which proposals were put to *policyholders* and the reasons given for a corporate event when determining whether a benefit should be treated as a relevant benefit.

App 1.5.18 **G**
FCA

Firms should not normally bring windfall benefits which are relevant benefits (as defined in **■ DISP App 1.5.14 G**) to account when assessing financial loss and redress. Where a windfall benefit is in the form of a *policy* augmentation the benefit should be deducted from the overall value of the *policy* when making this assessment.

App 1.5.19 **G**
FCA

A relevant benefit derived from a corporate event may only be brought to account if the *firm* is able to demonstrate, with written records created at the time of the advice, that:

- (1) The *firm* foresaw the prospect of the event and the benefit;
- (2) The *firm's* advice included a statement recommending the particular policy because of the possibility of the benefit in question; and
- (3) The statement was a material factor in the context of the advice and the decision to invest.

App 1.5.20 **G**
FCA

If a *firm* considers that it can meet this requirement, the *firm* should by letter explain clearly to the complainant the reasons why it proposes that the benefit should not be treated as a windfall and should be taken into account. The *firm* should provide the complainant with copies of the relevant documents.

App 1.5.21 **G**
FCA

The letter should also explain how the proposed value of the benefit has been calculated and should inform the complainant that if he does not accept the proposal to take the benefit into account he may tell the *firm*, with reasons. The letter should also say that, if he remains dissatisfied with the *firm's* response, he may refer the matter to the *Financial Ombudsman Service*.

1.6 Valuing Relevant Benefits

App 1.6.1 **G**
FCA

If, exceptionally under the *guidance* at ■ DISP App 1.5.13 G to ■ DISP App 1.5.21 G, cash or *shares* derived from a corporate event are to be taken into account when assessing loss and redress, cash should be valued at the amount actually received and *shares* should be valued at their issue price. In both cases there should be no addition for interest.

App 1.6.2 **G**
FCA

When valuing windfall augmentation benefits for the purposes of calculating loss and redress the objective is to exclude all changes arising from the windfall event. The amount of redress payable will then be equal to the amount that would have been payable if the windfall event had never occurred.

App 1.6.3 **G**
FCA

A *product provider* should ensure that the method it adopts for valuing augmentation benefits is consistent with the statements made in the documentation published about the windfall event. Relevant documentation for the purpose of valuing such benefits will include (but is not limited to):

- (1) Any description of increases in benefits in any circular to *policyholders* (and any other public information relating to the event);
- (2) Any principles of financial management established for the management of the fund after the event;
- (3) statements in any report produced by an *actuary* appointed under ■ SUP 4 (Actuaries) for the event;

- (4) statements in any independent *actuary* report produced for the event; and
- (5) subsequent statements relating to bonus practice, calculation *surrender values*, or both.

App 1.6.4 **G**
FCA The method of valuation adopted should treat the complainant fairly overall.

App 1.6.5 **G**
FCA Where an accurate calculation of the value of an augmentation benefit either cannot be made, or would result in disproportionate expense or delay, *product providers* may adopt a simplified approach or a proxy method for calculating its value.

App 1.6.6 **G**
FCA A simplified approach should treat the complainants fairly overall.

App 1.6.7 **G**
FCA An *actuary*, appointed by a *product provider* under ■ SUP 4 (Actuaries) should certify that the method adopted by the *product provider* for calculating the value of an augmentation benefit is in accordance with the *guidance* in ■ DISP App 1.6.1 G to ■ DISP App 1.6.6 G.

Implementation

App 1.6.8 **G**
FCA The principles set out above (in ■ DISP App 1.6.1 G to ■ DISP App 1.6.7 G) should be applied directly to mortgage endowment complaints where the capital loss is calculated by comparing the *surrender value* of the endowment *policy* with the capital which would have been repaid using a repayment mortgage.

App 1.6.9 **G**
FCA In most cases where there is a loss, the endowment *policy* will be surrendered and put towards the cost of setting up a suitable repayment mortgage. Where this is the case, that part of the *surrender value* relating to the windfall augmentation should be paid as a cash lump sum to the investor or to the investor's order as part of the redress package. Only that part of the *surrender value* which does not relate to the windfall augmentation should be put towards the cost of setting up a suitable repayment mortgage.

App 1.6.10 **G**
FCA There may be some circumstances in which the *policy* will not be surrendered (see ■ DISP App 1.2.15 G). In these cases, there is no requirement to pay the value of the windfall augmentation as a cash lump sum since the value of the augmentation will become payable when the *policy* matures. However, any fund value used in the calculation of redress payable should exclude the value of the windfall augmentation.

App 1.6.11 **G**
FCA *Firms* are entitled to mitigate losses by making use of the Traded Endowment Policy (TEP) market (see ■ DISP App 1.3.8 G to ■ DISP App 1.3.10 G). This allows *firms* to *sell* policies on the TEP market to meet the costs of redress, rather than using the *surrender value*. Where this method is adopted, *firms* should pay to the investor, as part of the redress package, a cash lump sum representing that proportion of the *policy* realised which would have related to the windfall augmentation.

App 1.6.12 **G**
FCA As this windfall amount should be excluded from the fund value used in the calculation of loss and redress it would also be appropriate for this extra payment to be ignored when assessing whether, "the net amount realised by the sale of the *policy* on the traded endowment market exceeds the total redress due to the complainant..." (■ DISP App 1.3.10 G).

App 1.6.13 G

FCA

There may be circumstances in which a *policy* needs to be reconstructed (see ■ DISP App 1.4). In carrying out the required reconstruction, the windfall augmentation should be ignored in both the existing and the revised *policy*. However, the *policyholder's* revised *policy* should be credited with any windfall augmentation which would have applied if the *policy* had been set up with the revised terms from the original date of advice. This enhancement can be taken into account in assessing a suitable level for future premiums, in line with ■ DISP App 1.4.8 G.

App 1.6.14 G

FCA

■ DISP App 1.5.10 G provides *firms* with the opinion of underpinning benefits. *Firms* should satisfy the FCA that their proposals provide complainants with a level of redress that is at least commensurate with the standard approaches and, to ensure consistency, windfall augmentations should be excluded when considering whether an underpin will apply. The FCA will take this into account when considering proposals put forward by *firms*.

App 1.6.15 G

FCA

Product providers with windfall benefits in the form of *policy* augmentations should tell:

- (1) their own relevant *customers* (mortgage endowment complainants); and
- (2) other *firms* with such *customers* (and any other interested parties);

that they have excluded windfall augmentation benefits from values used or to be used for loss and redress. *Firms* should provide this information to the *Financial Services Compensation Scheme* when providing them with a value to be used for loss or redress. Should their own relevant *customers*, other *firms* with such *customers* (and any other interested parties) and the *Financial Services Compensation Scheme* request it, the *firm* should provide the value of these benefits and a description of the method used to exclude them.

1.7 [Deleted]

1.8 [Deleted]

1.9 [Deleted]

1.10 [Deleted]

1.11 [Deleted]

1.12 [Deleted]

1.13 [Deleted]

1.14 [Deleted]

Appendix 2 [Deleted]

2.1 Introduction [Deleted]

2.2 [Deleted]

2.3 [Deleted]

2.4 [Deleted]

2.5 [Deleted]

2.6 [Deleted]

Appendix 3

Handling Payment Protection Insurance complaints

3.1 Introduction

App 3.1.1 G FCA

- (1) This appendix sets out how a *firm* should handle *complaints* relating to the sale of a *payment protection contract* by the *firm* which express dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling).
- (2) It relates to the sale of any *payment protection contract* whenever the sale took place and irrespective of whether it was on an advised or non-advised basis; conducted through any sales channel; in connection with any type of loan or credit product, or none; and for a regular premium or single premium payment. It applies whether the *policy* is currently in force, was cancelled during the *policy* term or ran its full term.

App 3.1.2 G FCA

The aspects of *complaint* handling dealt with in this appendix are how the *firm* should:

- (1) assess a *complaint* in order to establish whether the *firm's* conduct of the sale failed to comply with the *rules*, or was otherwise in breach of the duty of care or any other requirement of the general law (taking into account relevant materials published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* and *former schemes*). In this appendix this is referred to as a "breach or failing" by the *firm*;
- (2) determine the way the complainant would have acted if a breach or failing by the *firm* had not occurred; and
- (3) determine appropriate redress (if any) to offer to a complainant.

PAGE
1

App 3.1.3 G FCA

Where the *firm* determines that there was a breach or failing, the *firm* should consider whether the complainant would have bought the *payment protection contract* in the absence of that breach or failing. This appendix establishes presumptions for the *firm* to apply about how the complainant would have acted if there had instead been no breach or failing by the *firm*. The presumptions are:

- (1) for some breaches or failings (see ■ DISP App 3.6.2 E), the *firm* should presume that the complainant would not have bought the *payment protection contract* he bought; and
- (2) for certain of those breaches or failings (see ■ DISP App 3.7.7 E), where the complainant bought a single premium *payment protection contract*, the *firm* may presume that the complainant would have bought a regular premium *payment protection contract* instead of the *payment protection contract* he bought.

App 3.1.4 G
FCA

There may also be instances where a *firm* concludes after investigation that, notwithstanding breaches or failings by the *firm*, the complainant would nevertheless still have proceeded to buy the *payment protection contract* he bought.

App 3.1.5 G
FCA

In this appendix:

- (1) "historic interest" means the interest the complainant paid to the *firm* because a single premium *payment protection contract* was added to a loan or credit product;
- (2) "simple interest" means a non-compound rate of 8% per annum; and
- (3) "claim" means a claim by a complainant seeking to rely upon the *policy* under the *payment protection contract* that is the subject of the *complaint*.

3.2 The assessment of a complaint

App 3.2.1 G
FCA

The *firm* should consider, in the light of all the information provided by the complainant and otherwise already held by or available to the *firm*, whether there was a breach or failing by the *firm*.

App 3.2.2 G
FCA

The *firm* should seek to establish the true substance of the *complaint*, rather than taking a narrow interpretation of the issues raised, and should not focus solely on the specific expression of the *complaint*. This is likely to require an approach to *complaint* handling that seeks to clarify the nature of the *complaint*.

App 3.2.3 G
FCA

A *firm* may need to contact a complainant directly to understand fully the issues raised, even where the *firm* received the *complaint* from a third party acting on the complainant's behalf. The *firm* should not use this contact to delay the assessment of the *complaint*.

App 3.2.4 G
FCA

Where a *complaint* raises (expressly or otherwise) issues that may relate to the original sale or a subsequently rejected claim then, irrespective of the main focus of the *complaint*, the *firm* should pro-actively consider whether the issues relate to both the sale and the claim, and assess the *complaint* and determine redress accordingly.

App 3.2.5 G
FCA

If, during the assessment of the *complaint*, the *firm* uncovers evidence of a breach or failing not raised in the *complaint*, the *firm* should consider those other aspects as if they were part of the *complaint*.

App 3.2.6 **G**
FCA The *firm* should take into account any information it already holds about the sale and consider other issues that may be relevant to the sale identified by the *firm* through other means, for example, the root cause analysis described in ■ DISP App 3.4.

App 3.2.7 **G**
FCA The *firm* should consider all of its sales of *payment protection contracts* to the complainant in respect of re-financed loans that were rolled up into the loan covered by the *payment protection contract* that is the subject of the *complaint*. The *firm* should consider the cumulative financial impact on the complainant of any previous breaches or failings in those sales.

3.3 The approach to considering evidence

App 3.3.1 **G**
FCA Where a *complaint* is made, the *firm* should assess the *complaint* fairly, giving appropriate weight and balanced consideration to all available evidence, including what the complainant says and other information about the sale that the *firm* identifies. The *firm* is not expected automatically to assume that there has been a breach or failing.

App 3.3.2 **G**
FCA The *firm* should not rely solely on the detail within the wording of a *policy's* terms and conditions to reject what a complainant recalls was said during the sale.

App 3.3.3 **G**
FCA The *firm* should recognise that oral evidence may be sufficient evidence and not dismiss evidence from the complainant solely because it is not supported by documentary proof. The *firm* should take account of a complainant's limited ability fully to articulate his *complaint* or to explain his actions or decisions made at the time of the sale.

App 3.3.4 **G**
FCA Where the complainant's account of events conflicts with the *firm's* own records or leaves doubt, the *firm* should assess the reliability of the complainant's account fairly and in good faith. The *firm* should make all reasonable efforts (including by contact with the complainant where necessary) to clarify ambiguous issues or conflicts of evidence before making any finding against the complainant.

App 3.3.5 **G**
FCA The *firm* should not reject a complainant's account of events solely on the basis that the complainant signed documentation relevant to the purchase of the *policy*.

App 3.3.6 **G**
FCA The *firm* should not reject a *complaint* because the complainant failed to exercise the right to cancel the *policy*.

App 3.3.7 **G**
FCA The *firm* should not consider that a successful claim by the complainant is, in itself, sufficient evidence that the complainant had a need for the *policy* or had understood its terms or would have bought it regardless of any breach or failing by the *firm*.

App 3.3.8 **G**
FCA The *firm* should not draw a negative inference from a complainant not having kept documentation relating to the purchase of the *policy* for any particular period of time.

App 3.3.9 **G**
FCA

In determining a particular *complaint*, the *firm* should (unless there are reasons not to because of the quality and plausibility of the respective evidence) give more weight to any specific evidence of what happened during the sale (including any relevant documentation and oral testimony) than to general evidence of selling practices at the time (such as training, instructions or sales scripts or relevant audit or compliance reports on those practices).

App 3.3.10 **G**
FCA

The *firm* should not assume that because it was not authorised to give advice (or because it intended to sell without making a recommendation) it did not in fact give advice in a particular sale. The *firm* should consider the available evidence and assess whether or not it gave advice or made a recommendation (explicitly or implicitly) to the complainant.

App 3.3.11 **G**
FCA

The *firm* should consider in all situations whether it communicated information to the complainant in a way that was fair, clear and not misleading and with due regard to the complainant's information needs.

App 3.3.12 **G**
FCA

In considering the information communicated to the complainant and the complainant's information needs, the evidence to which a *firm* should have regard includes:

- (1) the complainant's individual circumstances at the time of the sale (for example, the *firm* should take into account any evidence of limited financial capability or understanding on the part of the complainant);
- (2) the complainant's objectives and intentions at the time of the sale;
- (3) whether, from a reasonable *customer's* perspective, the documentation provided to the complainant was sufficiently clear, concise and presented fairly (for example, was the documentation in plain and intelligible language?);
- (4) in a sale that was primarily conducted orally, whether sufficient information was communicated during the sale discussion for the *customer* to make an informed decision (for example, did the *firm* give an oral explanation of the main characteristics of the *policy* or specifically draw the complainant's attention to that information on a computer screen or in a document and give the complainant time to read and consider it?);
- (5) any evidence about the tone and pace of oral communication (for example, was documentation read out too quickly for the complainant to have understood it?); and
- (6) any extra explanation or information given by the *firm* in response to questions raised (or information disclosed) by the complainant.

App 3.3.13 **G**
FCA

The *firm* should not reject a *complaint* solely because the complainant had held a *payment protection contract* previously.

3.4 Root cause analysis

App 3.4.1 **G**

FCA

■ DISP 1.3.3 R requires the *firm* to put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems. If a *firm* receives *complaints* about its sales of *payment protection contracts* it should analyse the root causes of those *complaints* including, but not limited to, the consideration of:

- (1) the concerns raised by complainants (both at the time of the sale and subsequently);
- (2) the reasons for both rejected claims and *complaints*;
- (3) the *firm's* stated sales practice(s) at the relevant time(s);
- (4) evidence available to the *firm* about the actual sales practice(s) at the relevant time(s) (this might include recollections of staff and complainants, compliance records, and other material produced at the time about specific transactions, for example call recordings and incentives given to *advisers*);
- (5) relevant regulatory findings; and
- (6) relevant decisions by the *Financial Ombudsman Service*.

App 3.4.2 **G**

FCA

Where consideration of the root causes of *complaints* suggests recurring or systemic problems in the *firm's* sales practices for *payment protection contracts*, the *firm* should, in assessing an individual *complaint*, consider whether the problems were likely to have contributed to a breach or failing in the individual case, even if those problems were not referred to specifically by the complainant.

App 3.4.3 **G**

FCA

Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its sales practices for a particular type of *payment protection contract*, either for its sales in general or for those from a particular location or sales channel, it should (in accordance with *Principle 6* (Customers' interests) and to the extent that it applies), consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

- (1) ascertain the scope and severity of the consumer detriment that might have arisen; and
- (2) consider whether it is fair and reasonable for the *firm* to undertake proactively a redress or remediation exercise, which may include contacting *customers* who have not complained.

3.5 Re-assessing rejected claims

App 3.5.1 FCA

Where a *complaint* is about the sale of a *policy*, the *firm* should, as part of its investigation of the *complaint*, determine whether any claim on that *policy* was rejected, and if so, whether the complainant may have reasonably expected that the claim would have been paid.

App 3.5.2 FCA

For example, the complainant may have reasonably expected that the claim would have been paid where the *firm* failed to disclose appropriately an exclusion or limitation later relied on by the *insurer* to reject the claim and it should have been clear to the *firm* that that exclusion or limitation was relevant to the complainant.

3.6 Determining the effect of a breach or failing

App 3.6.1 FCA

Where the *firm* determines that there was a breach or failing, the *firm* should consider whether the complainant would have bought the *payment protection contract* in the absence of that breach or failing.

App 3.6.2 FCA

In the absence of evidence to the contrary, the *firm* should presume that the complainant would not have bought the *payment protection contract* he bought if the sale was substantially flawed, for example where the *firm*:

- (1) pressured the complainant into purchasing the *payment protection contract*; or
- (2) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, that the *policy* was optional; or
- (3) made the sale without the complainant's explicit agreement to purchase the *policy*; or
- (4) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the significant exclusions and limitations, i.e. those that would tend to affect the decisions of *customers* generally to buy the *policy*; or
- (5) did not, for an advised sale (including where the *firm* gave advice in a non-advised sales process) take reasonable care to ensure that the *policy* was suitable for the complainant's demands and needs taking into account all relevant factors, including level of cover, cost, and relevant exclusions, excesses, limitations and conditions; or

- (6) did not take reasonable steps to ensure the complainant only bought a *policy* for which he was eligible to claim benefits; or
- (7) found, while arranging the *policy*, that parts of the cover did not apply but did not disclose this to the *customer*, in good time before the sale was concluded, and in a way that was fair, clear and not misleading; or
- (8) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the total (not just monthly) cost of the *policy* separately from any other prices (or the basis for calculating it so that the complainant could verify it); or
- (9) recommended a single premium *payment protection contract* without taking reasonable steps, where the *policy* did not have a pro-rata refund, to establish whether there was a prospect that the complainant would repay or refinance the loan before the end of the term; or
- (10) provided misleading or inaccurate information about the *policy* to the complainant; or
- (11) sold the complainant a *policy* where the total cost of the *policy* (including any interest paid on the premium) would exceed the benefits payable under the *policy* (other than benefits payable under life cover); or
- (12) in a sale of a single premium *payment protection contract*, failed to disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading:
 - (a) that the premium would be added to the amount provided under the credit agreement, that interest would be payable on the premium and the amount of that interest; or
 - (b) (if applicable) that the term of the cover was shorter than the term of the credit agreement and the consequences of that mismatch; or
 - (c) (if applicable) that the complainant would not receive a pro-rata refund if the complainant were to repay or refinance the loan or otherwise cancel the single premium *policy* after the cooling-off period.

App 3.6.3 ▲

FCA

Relevant evidence might include the complainant's demands, needs and intentions at the time of the sale and any other relevant evidence, including any testimony by the complainant about his reasons at the time of the sale for purchasing the *payment protection contract*.

3.7 Approach to redress

General approach to redress: all contract types

App 3.7.1

FCA

Where the *firm* concludes in accordance with ■ DISP App 3.6 that the complainant would still have bought the *payment protection contract* he bought, no redress will be due to the complainant in respect of the identified breach or failing, subject to ■ DISP App 3.7.6 E.

App 3.7.2

FCA

Where the *firm* concludes that the complainant would not have bought the *payment protection contract* he bought, and the *firm* is not using the alternative approach to redress (set out in ■ DISP App 3.7.7 E to ■ 3.7.15 E) or other appropriate redress (see ■ DISP App 3.8), the *firm* should, as far as practicable, put the complainant in the position he would have been if he had not bought any *payment protection contract*.

App 3.7.3

FCA

In such cases the *firm* should pay to the complainant a sum equal to the total amount paid by the complainant in respect of the *payment protection contract* including historic interest where relevant (plus simple interest on that amount). If the complainant has received any rebate, for example if the *customer* cancelled a single premium *payment protection contract* before it ran full term and received a refund, the *firm* may deduct the value of this rebate from the amount otherwise payable to the complainant.

App 3.7.4

FCA

Additionally, where a single premium was added to a loan:

- (1) for live *policies*:
 - (a) subject to ■ DISP App 3.7.5 E, where there remains an outstanding loan balance, the *firm* should, where possible, arrange for the loan to be restructured (without charge to the complainant but using any applicable cancellation value) with the effect of:
 - (i) removing amounts relating to the *payment protection contract* (including any interest and charges); and
 - (ii) ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the complainant had taken the loan without the *payment protection contract*; or
 - (b) where the *firm* is not able to arrange for the loan to be restructured (e.g. because the loan is provided by a separate *firm*), it should pay the complainant an amount equal to the difference between the actual loan balance and what the loan balance would have been if the *payment protection contract* (including any interest and charges) had not been added, deducting the current cancellation value. The

firm should offer to pay any charges incurred if the complainant uses this amount to reduce his loan balance; and

- (2) for cancelled *policies*, the *firm* should pay the complainant the difference between the actual loan balance at the point of cancellation and what the loan balance would have been if no premium had been added (plus simple interest) minus any applicable cancellation value.

App 3.7.5 
FCA

Where a claim was previously paid on the *policy*, the *firm* may deduct this from redress paid in accordance with ■ DISP App 3.7.3 E. If the claim is higher than the amount to be paid under ■ DISP App 3.7.3 E then the *firm* may also deduct the excess from the amount to be paid under ■ DISP App 3.7.4 E.

App 3.7.6 
FCA

Where the *firm* concludes that the complainant may have reasonably expected that a rejected claim would have been paid (see ■ DISP App 3.5) then:

- (1) if the value of the claim exceeds the amount of the redress otherwise payable to the complainant for a breach or failing identified in accordance with this appendix, the *firm* should pay to the complainant only the value of the claim (and simple interest on it as appropriate); and
- (2) if the value of the claim is less than the amount of the redress otherwise payable to the complainant for a breach or failing identified in accordance with this appendix, the *firm* should pay to the complainant the value of that redress.

Alternative approach to redress: single premium policies

App 3.7.7 
FCA

Where the only breach or failing was within ■ DISP App 3.6.2 E (9) and/or ■ DISP App 3.6.2 E (12), and in the absence of evidence to the contrary, the *firm* may presume that instead of buying the single premium *payment protection contract* he bought, the complainant would have bought a regular premium *payment protection contract*.

App 3.7.8 
FCA

If a *firm* chooses to make this presumption, then it should do so fairly and for all relevant complainants in a relevant category of sale. It should not, for example, only use the approach for those complainants it views as being a lower underwriting risk or those complainants who have cancelled their *policies*.

App 3.7.9 
FCA

Where the *firm* presumes that the complainant would have purchased a regular premium *payment protection contract*, the *firm* should offer redress that puts the complainant in the position he would have been if he had bought an alternative regular premium *payment protection contract*.

App 3.7.10 
FCA

The *firm* should pay to the complainant a sum equal to the amount in ■ DISP App 3.7.3 E less the amount the complainant would have paid for the alternative regular premium *payment protection contract*.

App 3.7.11 
FCA

The *firm* should consider whether it is appropriate to deduct the value of any paid claims from the redress.

App 3.7.12 
FCA

Additionally, where a single premium was added to a loan, ■ DISP App 3.7.4 E applies except that in respect of ■ DISP App 3.7.4 E (1)(a) the cancellation value should only be used if the complainant expressly wishes to cancel the *policy*.

App 3.7.13 
FCA

The *firm* should, for the purposes of redressing the *complaint*, use the value of £9 per £100 of benefits payable as the monthly price of the alternative regular premium *payment protection contract*. For example, if the monthly repayment amount in relation to the loan only is to be £200, the price of the alternative regular premium *payment protection contract* will be £18.

App 3.7.14 
FCA

Where the *firm* presumes that the complainant would have purchased a regular premium *payment protection contract* and if the complainant expressly wishes it, the existing cover should continue until the end of the existing *policy* term. The complainant should pay the price of the alternative regular premium *payment protection contract* (at ■ DISP App 3.7.13 E) and should be able to cancel at any time. This pricing does not apply where ■ DISP App 3.7.4 E (1)(b) applies.

App 3.7.15 
FCA

So that the complainant can make the decision on the continuation of cover from an informed position, the *firm* should:

- (1) offer to provide details of the existing *payment protection contract*;
- (2) inform the complainant that he may be able to find similar cover more cheaply from another provider in the event that he chooses to cancel the *policy* and take an alternative but remind the complainant that if his circumstances (for example, his health or employment prospects) have changed since the original sale, he may not be eligible for cover under any new *policy* he buys;
- (3) make the complainant aware of the changes to the cancellation arrangements if cover continues;
- (4) explain how the future premium will be collected and the cost of the future cover; and
- (5) refer the complainant to www.moneyadvice.service.org.uk as a source of information about a range of alternative *payment protection contracts*.

3.8 Other appropriate redress

App 3.8.1 
FCA

The remedies in ■ DISP App 3.7 are not exhaustive.

App 3.8.2  **FCA** When applying a remedy other than those set out in **DISP App 3.7**, the *firm* should satisfy itself that the remedy is appropriate to the matter complained of and is appropriate and fair in the individual circumstances.

3.9 Other matters concerning redress

App 3.9.1 **G** **FCA** Where the complainant's loan or credit card is in arrears the *firm* may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit card balance, if the complainant accepts the *firm's* offer of redress. The *firm* should act fairly and reasonably in deciding whether to make such a payment.

App 3.9.2 **G** **FCA** In assessing redress, the *firm* should consider whether there are any other further losses that flow from its breach or failing that were reasonably foreseeable as a consequence of the *firm's* breach or failing, for example, where the *payment protection contract's* cost or rejected claims contributed to affordability issues for the associated loan or credit which led to arrears charges, default interest, penal interest rates or other penalties levied by the lender.

App 3.9.3 **G** **FCA** Where, for single premium *policies*, there were previous breaches or failings (see **DISP App 3.2.7 G**) the redress to the complainant should address the cumulative financial impact.

App 3.9.4 **G** **FCA** The *firm* should make any offer of redress to the complainant in a fair and balanced way. In particular, the *firm* should explain clearly to the complainant the basis for the redress offered including how any compensation is calculated and, where relevant, the rescheduling of the loan, and the consequences of accepting the offer of redress.

3.10 Application: evidential provisions

App 3.10.1  **FCA** The *evidential provisions* in this appendix apply in relation to *complaints* about sales that took place on or after 14 January 2005.

App 3.10.2 **G** **FCA** For *complaints* about sales that took place prior to 14 January 2005, a *firm* should take account of the *evidential provisions* in this appendix as if they were *guidance*.

App 3.10.3  **FCA** Contravention of an *evidential provision* in this appendix may be relied upon as tending to establish contravention of **DISP 1.4.1 R**.

Dispute Resolution: Complaints

DISP TP 1 Transitional provisions

FCA

1 Transitional Provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Hand book provision: coming into force
1	DISP1.2.15G	R	Expired		
1A	DISP 1	R	A <i>complaint</i> received by a <i>respondent</i> on or before 31 October 2007 should be handled, resolved, recorded and reported in accordance with the requirements of <i>DISP</i> as they stood at the date the <i>complaint</i> was received.	From 1 November 2007	1 November 2007
1B	DISP 2.7.9	R	In relation to a <i>complaint</i> concerning an act or omission before 1 November 2007, in DISP 2.7.9R (2) substitute "an <i>intermediate customer</i> or <i>market counterparty</i> " for "(a) a <i>professional client</i> or (b) <i>eligible counterparty</i> ".	From 1 November 2007	1 November 2007
2	DISP 1.5.4 R - DISP 1.5.7 R	R	Expired		
3	DISP 1.5.4 R - DISP 1.5.7 R	G	Expired		
6	DISP 2, DISP 3 and FEES 5	R	In DISP 2, DISP 3 and FEES 5 references to a " <i>firm</i> " or " <i>firms</i> " include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> in accordance with the <i>Ombudsman Transitional Order</i> .	From <i>commencement</i>	<i>Commencement</i>

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7	DISP 2, DISP 3 and FEES 5	G	Under the <i>Ombudsman Transitional Order</i> , a <i>relevant complaint</i> is subject to the <i>Compulsory Jurisdiction</i> whether or not it is about a <i>firm</i> or an <i>unauthorised person</i> . <i>Unauthorised persons</i> are not subject to DISP 1, but references to " <i>firm</i> " in DISP 2, DISP 3 and FEES 5 include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> , where applicable.	From commencement	Commencement
7A	DISP 2.8.7 R	R	Nothing in DISP 2.8.7 R affects the position of a <i>complaint</i> which, on 31 May 2004, could not have been considered by the <i>Ombudsman</i> under DISP 2.8.2 R (2); or DISP 2.8.7R (1)(b) as it then stood (as DISP 2.3.6 R (1)(b)).	From 1 June 2004	Amended with effect from 1 June 2004
7B	DISP 2.8.7 R	R	In the case of a complainant falling within DISP 2.8.7 R, (and whose time for referring a <i>complaint</i> under the <i>rules</i> as they stood before 1 June 2004 has not expired), time will expire in accordance with DISP 2.8.7 R save that if the final date would otherwise be before 30 November 2004 an explanation of the final date will be in conformity with DISP 2.8.7R (2), provided it stipulates a final date which is not less than two months from the date on which the explanation is likely to be received by the complainant.	From 1 June 2004	Amended with effect from 1 June 2004
8	DISP 1 DISP 2 DISP 3 DISP 4 and FEES 5	R	In relation to <i>relevant complaints</i> , references in DISP 1, DISP 2, DISP 3, DISP 4 and FEES 5 to an " <i>eligible complainant</i> " include a person who is to be treated as an <i>eligible complainant</i> in accordance with the <i>Ombudsman Transitional Order</i> and references to a <i>complaint</i> shall be construed accordingly.	From commencement	Commencement
9	DISP 5.5.1 R	R	Expired		
10	DISP 1.10.1 R and DISP 1.10.2 R	R	Expired		

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
11	DISP1.10.1R and DISP1.10.2R	R	Expired		
12	DISP1.10.1R and DISP1.10.2R	R	Expired		
13	DISP 1	R	Deleted		
14		G	Expired		
15	FEES 5.4.1R	R	Expired		
16	FEES 5.4.1R	G	Expired		
17	DISP 1.3.12R - DISP 1.3.17R	R	Deleted		
18	DISP1.10.1R and DISP1.10.2R, DISP1.10.4R and DISP1.Amex1R	R	Expired		
19	DISP1.10.1CR and DISP1.10.1DG	R	Expired		
20	DISP 1.6.4R	R	Expired		

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
21	DISP2.7.3R	R	<p>A <i>person</i> is also an <i>eligible complainant</i> if:</p> <p>(a) it is a business with a group annual turnover of less than £1 million at the time it refers the <i>complaint</i> to the <i>respondent</i>;</p> <p>(b) the <i>complaint</i> relates to a contract or <i>policy</i> entered into by or for the benefit of the complainant before 1 November 2009; and</p> <p>(c) if the <i>complaint</i> had been made immediately before 1 November 2009 the <i>respondent</i> was subject to, or participated in, the <i>Ombudsman's</i> jurisdiction in respect of the activity to which the <i>complaint</i> relates.</p>	From 1 November 2009	1 November 2009
22	DISP2.7.3R	G	<p>Transitional provision 21R applies together with the other <i>eligibility rules</i> in DISP 2.7. So, for example, a <i>person</i> who is an <i>eligible complainant</i> under the transitional provision, will not be an <i>eligible complainant</i> if the <i>complaint</i> does not arise from matters relevant to one of the relationships set out in DISP 2.7.6 R.</p>	From 1 November 2009	1 November 2009
23	DISP1.10A.1R	R	<p>No <i>firm</i> is required to publish a <i>complaints</i> data summary in accordance with DISP 1.10A.1 R (1) or DISP 1.10A.1 R (2) if that summary would relate to a reporting period ending on or before 31 December 2009.</p>	6 April 2010 to 31 August 2010	6 April 2010
24	DISP1.10A.1R	R	<p>Where a <i>firm</i>, which has a reporting period ending on or after 1 January 2010, submits its report to the <i>FCA</i> in accordance with the <i>complaints reporting rule</i> between 1 January 2010 and 5 April 2010, the <i>firm</i> must publish a <i>complaints</i> data summary in accordance with DISP 1.10A.1 R no later than 31 August 2010.</p>	6 April 2010 to 31 August 2010	6 April 2010
25	DISP1.11.6AR	R	<p>The <i>Society</i> is not required to publish a <i>complaints</i> data summary in accordance with DISP 1.11.6A R if that summary</p>	6 April 2010 to 31 Au-	6 April 2010

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Hand-book provision: coming into force
			would relate to a reporting period ending on or before 31 December 2009.	August 2010	
26	DISP 2.8.2 R	R	In relation to <i>complaints</i> about the sale of <i>payment protection contracts</i> where the <i>respondent</i> has sent the complainant a <i>final response</i> between 28 November 2009 and 28 April 2010 inclusive, time for the purposes of DISP 2.8.2 R (1) is to be treated as not running whilst this transitional provision is in force.	From 28 May 2010 to 27 October 2010	6 November 2008
27	DISP 1.10.5 R	R	In respect of complaints which relate to a <i>firm's</i> activities in respect of <i>regulated sale and rent back agreements</i> DISP 1.10.5 R is disapplied and is replaced by the following: "Reports are to be submitted to the <i>FCA</i> within 30 <i>business days</i> of the end of the relevant reporting periods either in hard copy form or by email, to regulatory.returns@fca.org.uk . ."	From 30 June 2010 to 29 June 2011	30 June 2010
27A	Amendments to <i>DISP</i> made in the Consumer Redress Schemes Instrument 2011		The amendments do not apply in relation to any <i>consumer redress scheme</i> imposed before the instrument came into force on a particular <i>firm</i> , or on a particular <i>payment service provider</i> or <i>electronic money issuer</i> , as envisaged by section 404F(7) of the <i>Act</i> .	From 1 August 2011 indefinitely	1 August 2011
28	DISP 3.7.4 R	R	For a <i>complaint</i> referred to the <i>Financial Ombudsman Service</i> before 1 January 2012 the maximum money award which the <i>Ombudsman</i> may make is £100,000.	From 1 January 2012	1 January 2012
28A	The amendments to DISP 2.7.6 R(12)	R	The amendments referred to in column (2) do not affect who is an <i>eligible complainant</i> for the purpose of DISP 2.7.6 R (12)(a) in respect of complaints that relate to acts or omissions that occurred before 1 January 2012.	From 1 January 2012	1 January 2012

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			effected by the Dispute Resolution: Complaints (Amendment No 4) Instrument 2011		
29	DISP 1.10.2R R and DISP 1 Annex 1 R		Where a <i>firm</i> reports information on any <i>complaints</i> closed under a two-stage procedure before 1 July 2012, the <i>rules</i> and <i>guidance</i> in DISP 1.6.6 R, DISP 1.10.3 G (2), DISP 1.10.7 R (3), and DISP 1.10.8 G and DISP 1 Annex 1 R apply as they stood on 30 June 2012.	1 July 2012 to 31 December 2012	1 August 2009
30	DISP 1.10.2A R R		Where a <i>firm</i> , which has a reporting period ending on or before 30 June 2013 submits its report to the <i>FCA</i> in accordance with the <i>complaints reporting rule</i> at DISP 1.10.2A R the number of <i>complaints</i> must be calculated for the period from the 31 December 2012 to the end of the <i>firm's</i> relevant reporting period.	31 December 2012 to 30 June 2013.	31 December 2012
31	DISP 1.10.6A R R		(1) A <i>firm</i> is not liable to pay the administrative fee in DISP 1.10.6A R in respect of a failure to submit a report in accordance with DISP 1.10.5 R for a relevant reporting period ending before 1 March 2012. (2) Relevant reporting period in (1) has the meaning in DISP 1.10.4 R.	From 1 March 2012	1 March 2012

FCA

PAGE
6

2 Table Fee tariffs for industry blocks [deleted]

FCA

3 [deleted]

FCA

4 Payment Services Regulations 2009 transitioning payment institutions

- 1 R This TP applies in relation to a *person* who falls within regulation 122(1) (Transitional provisions: requirement to be authorised as a payment institution) or regulation 123(1) (Transitional provisions: requirement to be registered as a small payment institution) of the *Payment Services Regulations* (a "transitioning payment institution").
- 2 R This TP applies from 1 November 2009 until 30 April 2011.
- 3 R DISP 1 (Treating complainants fairly) applies in relation to a transitioning payment institution as if the transitioning payment institution were a *payment institution*.
- 4 R The *Ombudsman* can consider a *complaint* that relates to an act or omission by a transitioning payment institution under the *Compulsory Jurisdiction* if:
 - (1) it could consider that *complaint* under the *Compulsory Jurisdiction* if it related to a *payment institution*; and
 - (2) (where the transitioning payment institution is a *licensee*) the complaint relates to an act or omission in providing *payment services*.
- 5 G The effect of this transitional provision is to:
 - (1) apply to transitioning payment institutions as though they were *payment institutions* the complaints-handling requirements in DISP 1.1 to DISP 1.8; and
 - (2) to bring them within the scope of the *Compulsory Jurisdiction* to the same extent as *payment institutions*.
- 6 G *Complaints* relating to *payment services*, *consumer credit activities* or a combination of both can be considered under the *Compulsory Jurisdiction*. However, transitioning payment institutions that are *licensees* will remain subject to the *Consumer Credit Jurisdiction* for *complaints* that relate only to *consumer credit activities*.
- 7 R The rules and guidance in FEES 5.5.1R, 5.5.6 R, FEES 5.5.7 R, 5.5.15 R, 5.7.2 R, 5.9.1 R and 5.9.2 G shall apply to transitioning payment institutions and *persons* that cease to be transitioning institutions in the same way as they apply to *firms* and *firms* that cease to be authorised.

Dispute Resolution: Complaints

Schedule 1 Record keeping requirements

Sch 1.1 G

FCA

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2 G

FCA

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
DISP 1.9.1 R	<i>Complaints</i> subject to DISP 1.3 - DISP 1.8 (other than DISP 1.5) .	Each <i>complaint</i> received and the measures taken for its resolution	On receipt	5 years for <i>complaints</i> relating to <i>MiFID business</i> or <i>collective portfolio management</i> services and 3 years for all other <i>complaints</i>

Dispute Resolution: Complaints

Schedule 2 Notification requirements

Sch 2.1 G

FCA

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.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.1 G

FCA

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
DISP 1.1.12 R	<i>Firm</i> qualifies for exemption	Confirmation that a <i>firm</i> does not do business with <i>eligible complainants</i> and has no reasonable likelihood of doing so	Conditions in DISP 1.1.12 R apply	N/A
DISP 1.10.1 R	Complaints report	Details	- 6 months preceding the <i>accounting reference date</i> - <i>accounting reference date</i>	30 <i>business days</i>
DISP 1.10.8 G	Single contact point	Details	At the time of authorisation or on subsequent change	Not specified
DISP 1.10A.4 R	Publication of <i>complaints</i> data summary	Email confirmation of publication, containing also a statement that the data summary accurately reflects the report submitted to the <i>FCA</i> and stating where the summary has been published	Upon publication of <i>complaints</i> data summary	Immediately
DISP 1.11.5 R (1)	<i>Member</i> of Lloyd's qualifies for exemption	Confirmation by the <i>Society</i> of Lloyd's that a specified <i>member</i> of Lloyd's does not do business with <i>eligible complainants</i> and	[As above]	N/A

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
DISP 1.11.5 R (2)	End of exemption for <i>member</i> of Lloyd's	Confirmation by the <i>Society</i> of Lloyd's that the condition in DISP 1.1.7 no longer apply to a specified <i>member</i> of Lloyd's	Conditions in DISP 1.1.7 no longer apply	Not specified
DISP 1.11.6 R	Complaints report by <i>Society</i> of Lloyd's	Details	- 30 September - 31 March each year	One <i>month</i>
DISP 1.11.6D R	Publication of <i>complaints</i> data summary	Email confirmation of publication, containing also a statement that the data summary accurately reflects the report submitted to the <i>FCA</i> and stating where the summary has been published	Upon publication of <i>complaints</i> data summary	Immediate-ly

Dispute Resolution: Complaints

Schedule 3 Fees and other required payment

Sch 3.1 G

FCA

There are no requirements for fees or other payments in *DISP*.

Sch 3.2 G

[deleted]

Dispute Resolution: Complaints

Schedule 4 Powers Exercised

Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *DISP*:

- Section 138 (General rule-making power)
- Section 139(4) (Miscellaneous ancillary matters)
- Section 149 (Evidential provisions)
- Section 150(2) (Actions for damages)
- Section 156 (General supplementary powers)
- Section 226 (Compulsory jurisdiction) (including as applied by regulation 125 of the *Payment Services Regulations*)
- Section 226A(7) (Consumer credit jurisdiction)
- Section 229 (Awards)
- Section 234 (Industry funding)
- Section 316(1) (Direction by Authority)
- Paragraphs 13 (Authority's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme)
- Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the *Ombudsman Transitional Order*
- Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the *Mortgage and General Insurance Complaints Transitional Order*

Sch 4.2 G

The following power in the *Act* has been exercised by the *FSA* to give the *guidance* in *DISP*:

- Section 157(1) (Guidance)

Sch 4.3 G

The following additional powers and related provisions have been exercised by the *FSA* to make the *guidance* in *DISP*:

- Regulation 93 (Guidance) of the *Payment Services Regulations*

Sch 4.4 G

The following powers and related provisions in the *Act* have been exercised by the *FOS Ltd* to make the rules in *DISP*:

Section 226A (Consumer Credit Jurisdiction)

Section 227 (Voluntary Jurisdiction)

Section 229 (Awards)

Section 230 (Costs)

Paragraphs 8 (Guidance), 14 (The scheme operator's rules), 15 (Fees), 16B (Consumer Credit Jurisdiction: Procedure for complaints etc) and 18 (Terms of reference to the scheme) of Schedule 17 (The Ombudsman Scheme)

Sch 4.5 G

The powers to make rules relating to the Ombudsman Scheme are shared between the *FSA* and the *FOS Ltd*. The *FOS Ltd's* rules are subject to *FSA* consent or approval. The rules made exclusively by the *FOS Ltd* are:

DISP 2	DISP 2.4.1 R
	DISP 2.5.1 R
	DISP 2.5.5 R
	DISP 2.6.3 R
	DISP 2.6.4 R
	DISP 2.7.9R (3)
DISP 3	All the rules in this chapter, except for DISP 3.7.4 R (which is made by the <i>FSA</i>) and DISP 3.7.12 R (which is made by the <i>FSA</i> and the <i>FOS Ltd</i>).
DISP 4	All rules
FEES 5	FEES 5.5B (all rules)
	FEES 5 Annex 2R
	FEES 5 Annex 3R

Dispute Resolution: Complaints

Schedule 5 Actions for damages for contravention under section 150 of the Act

Sch 5.1 G

FCA

- 1 The table below sets out the *rules* in *DISP* contravention of which by an *authorised person* may be actionable under section 138D 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 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
- 3 The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.2 G

FCA

Chapter/Appendix	Section/Annex	Paragraph	Right of Action under s138D		
			For private person?	Removed?	For other person?
1 Complaints handling arrangements for <i>firms</i>	All rules apart from DISP 1.11.13 R and DISP 1.11.14 R	-	Yes	-	-
1	7	14 and 15	No	Yes - DISP 1.11.21 R	No
2 Jurisdiction rules	-	-	Yes	-	-
3 Complaints handling procedures of the <i>Financial Ombudsman Service</i>	-	-	Yes	-	-
4 The <i>standard terms</i>	-	-	N/A	-	-

Dispute Resolution: Complaints

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives or European Regulations, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives or Regulations.

Consumer Redress Schemes sourcebook

Consumer Redress Schemes sourcebook

CONRED 1	General
1.1	
CONRED 2	Arch cru Consumer Redress Scheme
2.1	Application and subject matter of the scheme
2.2	Summary of the scheme
2.3	Notifications and reports to the FCA
2.4	Consumer redress scheme: identifying scheme cases and inviting consumers to request a review
2.5	Consumer redress scheme: case review
2.6	Consumer redress scheme: paying redress
2.7	Supervision and delegation of scheme process by firms
2.8	Provisions relating to communications with consumers
2.9	Consumer redress scheme: information requirements
2.10	Record-keeping requirements
2 Annex 1	Redress determination for customers outside subject matter of Arch cru consumer redress scheme
2 Annex 2	Letter to consumers confirming existence of review and inviting request to opt-in
2 Annex 3	First reminder letter to consumers inviting request for review
2 Annex 4	Second reminder letter to consumers inviting request for review
2 Annex 5	Final letter to consumers who have not sent a request for review
2 Annex 6	Redress determination where firm considers opt-in ineffective
2 Annex 7	Letter to consumers confirming their case will be reviewed
2 Annex 8	Initial letter requesting information/enclosing questionnaire
2 Annex 9	Reminder letter
2 Annex 10	Redress determination where consumer has not provided requested information
2 Annex 11	Redress determination letter for scheme cases
2 Annex 12	Arch cru product advice suitability assessment template
2 Annex 13	CF Arch cru funds template instructions
2 Annex 14	Investment benchmarks
2 Annex 15	Risks and features of Arch cru funds
CONRED App 1	Key definitions
App 1.1	Key definitions
	Transitional Provisions and Schedules
Sch 1	Record keeping requirements
Sch 2	Notification requirements

CONRED Contents

Sch 3	Fees and other required payments
Sch 4	Powers exercised
Sch 5	Rights of action for damages
Sch 6	Rules that can be waived

Chapter 1

General

1



1.1

FCA

[To follow]

Chapter 2

Arch cru Consumer Redress Scheme

2.1 Application and subject matter of the scheme

Application to firms which made personal recommendations

2.1.1
FCA

R

- (1) The whole of this chapter applies to a *firm* which made a *personal recommendation* in relation to an Arch cru fund, after which a *consumer* made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in ■ CONRED 2 Annex 13) applied.
- (2) The Arch cru funds referred to in CONRED are any of the following sub-funds of the CF Arch cru Investment Funds and CF Arch cru Diversified Funds:
 - (a) CF Arch cru Investment Portfolio;
 - (b) CF Arch cru Specialist Portfolio;
 - (c) CF Arch cru Income Fund;
 - (d) CF Arch cru Balanced Fund;
 - (e) CF Arch cru Global Growth Fund; or
 - (f) CF Arch cru Finance Fund.

Application to persons who have assumed a firm's liabilities

2.1.2
FCA

R

- (1) The whole of this chapter also applies to a *person* who has assumed a liability (including a contingent one) in respect of a failure by a *firm* to whom this chapter applies.
- (2) A *person* in (1) must either:
 - (a) perform such of the obligations as the *firm* is required to perform under this chapter; or
 - (b) ensure that those obligations are performed by the *firm*;

and must notify the FCA, by 29 April 2013, by email to ArchCruProject@fca.org.uk, as to whether that *person* or the *firm*, or both, will be performing those obligations.

- (3) References in this chapter to a *firm* are to be interpreted as referring to a *person* in (1) where the context so requires.

Wider application of certain provisions

2.1.3

FCA

R

■ CONRED 2.2, ■ CONRED 2.4.1R (1), ■ CONRED 2.8.1 R, ■ CONRED 2.8.2 R, ■ CONRED 2.8.3 R and ■ CONRED 2.8.4 G also apply to any *firm* which has carried out any of the following *regulated activities* for a *customer* in relation to an Arch cru fund:

- (1) *advising on investments*; or
- (2) *arranging (bringing about) deals in investments*; or
- (3) *making arrangements with a view to transactions in investments*; or
- (4) *managing investments*;

except for a *firm* which, at the relevant time, was a platform service provider; meaning it:

- (5) provided a service which involved *arranging and safeguarding and administering assets*;
- (6) distributed *retail investment products* which were offered to *retail clients* by more than one product provider; and
- (7) did not carry on the *regulated activities* of *advising on investments* or *managing investments*.

Duration of the scheme

2.1.4

FCA

R

The consumer redress scheme created by this chapter comes into force on 1 April 2013 and has no end date.

Subject matter of the scheme

2.1.5

FCA

R

The subject matter of the scheme is whether a *firm* complied with the suitability requirements (specified in paragraph 5.1R of ■ CONRED 2 Annex 13 R) in cases where the conditions in ■ CONRED 2.4.2 R are satisfied (these are referred to in this chapter as "scheme cases").

2.1.6

FCA

R

A scheme case ceases to be within the subject matter of the scheme if the *firm*:

- (1) did not have sufficient information to determine the scheme case and has taken the required steps to obtain further information from the *consumer* but still does not have sufficient information (as more fully described in ■ CONRED 2.5.9 R); or

- (2) has not received an opt-in from the *consumer* by 22 July 2013 (or later, where the provision in ■ CONRED 2.5.1R (2) in relation to exceptional circumstances applies); or
- (3) is unable to contact a *consumer* (as more fully described in ■ CONRED 2.8.3R (2)).

2.1.7
FCA

G

Where the *firm* has not received, by 22 July 2013, a response from the *consumer* to the letter required by ■ CONRED 2.4.4 R or (where applicable) to the letter required by ■ CONRED 2.4.5R (1) or ■ (2), the *firm* should handle any complaint received from a *consumer* after this date in relation to the sale of Arch cru funds in accordance with the *complaint handling rules* in *DISP*, unless ■ CONRED 2.5.1R (2) (in relation to exceptional circumstances) applies.

2.1.8
FCA

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Defined terms
.....

Certain words and phrases specific to *CONRED* are defined in ■ CONRED App 1 and the *Glossary*. All words in italics are defined in the *Glossary*.



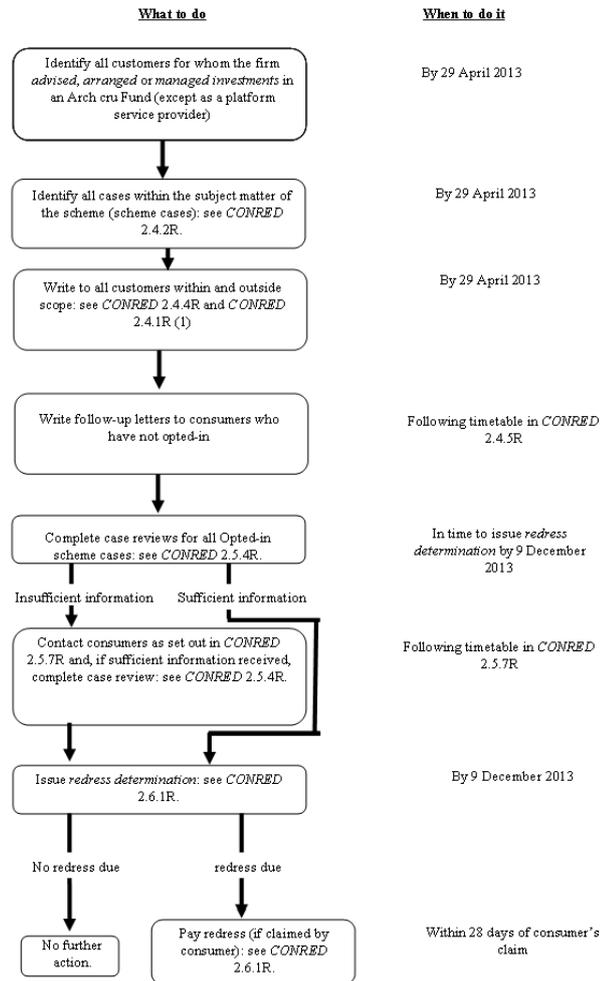
2.2

Summary of the scheme

2.2.1
FCA

G

2





2.3 Notifications and reports to the FCA

2.3.1

FCA

R

Notifications and other reports required by these *rules* to the *FCA* must be sent to the email address specified.

2.3.2

FCA

G

If the *firm* is to send an encrypted email to the *FCA* it will need to download the public PGP key from the *FCA* website and import the key into its email client software.

2.4 Consumer redress scheme: identifying scheme cases and inviting consumers to request a review

Deadlines to complete the steps in this section

2.4.1
FCA

R

- (1) By 29 April 2013, a *firm* must take the first and second steps set out in this section and send a *redress determination* in the form set out in ■ CONRED 2 Annex 1 R to any *customer* in ■ CONRED 2.1.3 R who falls outside the subject matter of the scheme.
- (2) A *firm* must, by the deadlines set out in ■ CONRED 2.4.5 R, take the third step set out in this section.

First step: identify cases within subject matter of scheme

2.4.2
FCA

R

The first step is to identify all cases within the subject matter of the scheme; ie, where each of the following conditions is satisfied ("scheme cases")

- (1) the *firm* made a *personal recommendation* to a *consumer* to invest in an *Arch cru fund* specified above at ■ CONRED 2.1.1R (2) and after that recommendation the *consumer* did so invest;
- (2) the suitability requirements (specified at paragraph 5.1R of ■ CONRED 2 Annex 13 R) applied to the recommendation;
- (3) the law applicable to the obligations of the *firm* arising in connection with the *personal recommendation* is that of a UK territory (that is, England, Wales, Scotland or Northern Ireland) (see ■ CONRED 2.4.7 R);
- (4) if the applicable law in (3) is that of England, Wales or Northern Ireland, the *consumer's* investment in Arch cru funds was on or after 13 December 2006;
- (5) if the applicable law in (3) is that of Scotland:
 - (a) the *consumer's* investment in the Arch cru fund was on or after 13 December 2007; or

(b) where the *consumer's* investment in the Arch cru fund was before 13 December 2007, the *consumer* did not know, and could not with reasonable diligence have known, before 13 December 2007, that he had suffered loss;

(6) the *consumer* has not, prior to 1 April 2013, accepted an offer of redress from the *firm* or other *person* in full and final settlement of all potential claims arising out of the recommendation in (1); and

(7) the *consumer* has not, prior to 1 April 2013, asked the *Financial Ombudsman Service* to deal with a complaint against the *firm* arising out of the recommendation in (1).

2.4.3
FCA

▲ The adoption by a *firm* of any date earlier than the date of suspension (13 March 2009) as the date when the *consumer* knew, or could with reasonable diligence have known, that he had suffered loss, may be relied upon as tending to show contravention of ■ CONRED 2.4.2 R.

Second step: send initial letters to consumers

2.4.4
FCA

R The second step is, for all scheme cases, to send to the *consumer* a letter in the form set out in ■ CONRED 2 Annex 2 R inviting the *consumer* to opt-in to the scheme.

Third step: send follow-up letters to consumers

2.4.5
FCA

R The third step is to do the following:

(1) for all scheme cases where the *firm* has not received an opt-in, by 27 May 2013, the *firm* should send the *consumer* an opt-in reminder (in the form set out in ■ CONRED 2 Annex 3 R) by 3 June 2013 (unless the *firm* has received an opt-in in the interim);

(2) for all scheme cases where the *firm* has not received, by 24 June 2013, an opt-in or (where applicable) by (1), the *firm* should send the *consumer* an opt-in reminder letter (in the form set out in ■ CONRED 2 Annex 4 R) by 1 July 2013 (unless the *firm* has received an opt-in in the interim); and

(3) for all scheme cases where the *firm* has not received, by 22 July 2013 an opt-in or, where applicable by (1) or (2), the *firm* should send the *consumer* a letter in the form set out in ■ CONRED 2 Annex 5 R by 29 July 2013 (unless the *firm* has received an opt-in in the interim when it must follow the steps in ■ CONRED 2.5.1R (2)).

2.4.6

FCA

R For the purpose of ■ CONRED 2.4.5 R:

- (1) an 'opt-in' is an indication from, or on behalf of, a *consumer* that he wishes the *firm* to carry out a case review (as detailed in ■ CONRED 2.5); and
- (2) if a *firm* receives a *complaint* relating to the subject matter of the scheme from a *consumer* on or after 1 April 2013 and before 23 July 2013 it must treat the *complaint* as an 'opt in' to the scheme.

Applicable law

2.4.7

FCA

R For the purposes of ■ CONRED 2.4.2R (3), the applicable law is:

- (1) where, in connection with the *personal recommendation*:
 - (a) the *consumer* has agreed to the *firm's terms of business*; and
 - (b) these include a clause providing for the application of the law of a particular UK territory (that is, England, Wales, Scotland or Northern Ireland);

that UK territory; or

- (2) if (1) does not apply: where the *firm* and the *consumer* are habitually resident in the same UK territory, and the *personal recommendation* is made there, that UK territory; or
- (3) if neither (1) nor (2) applies: where the conditions in ■ CONRED 2.4.8 R apply, the UK territory in which the *consumer* is habitually resident; or
- (4) if none of (1), (2) or (3) applies: the UK territory in which the *firm* made the *personal recommendation*.

2.4.8

FCA

R The conditions referred to in ■ CONRED 2.4.7R (3) are that:

- (1) in the UK territory in which the *consumer* has his habitual residence, either:
 - (a) the contract under which the *personal recommendation* was provided was preceded by a specific invitation addressed to the *consumer*, or by advertising, and the consumer took all the steps necessary to engage the *firm*; or
 - (b) the *firm* or its agent received the *consumer's* order; and
- (2) the *personal recommendation* was provided at least in part in that UK territory.

2.4.9

FCA

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Reporting requirement: opted-in scheme cases

By 29 July 2013, a *firm* must report to the FCA by email to archcrureview@fca.org.uk ; or (if the email is encrypted) archcrureviewpgp@fca.org.uk with the following information:

- (1) the total number of scheme cases (cases falling within ■ CONRED 2.4.2 R);
- (2) the total number of investments in Arch cru funds resulting from the *regulated activities* for a *customer* in ■ CONRED 2.1.3 R which fall outside the subject matter of the scheme (see ■ CONRED 2.1.5 R and ■ CONRED 2.4.2 R), with a summary explanation of the reason why in each case; and
- (3) the total number of opted-in scheme cases.

[Note: for details of how to obtain an encryption key see *guidance* above at ■ CONRED 2.3.2 G]

2



2.5 Consumer redress scheme: case review

Deadline to complete the steps in this section

2.5.1

FCA

R

A *firm*:

- (1) in respect of any scheme case where the *firm* has received an opt-in by 22 July 2013, must take the steps set out in this section by 9 December 2013; and
- (2) in respect of any scheme case where the *firm* has received an opt-in later than 22 July 2013, must take the steps set out in this section if the *consumer's* failure to comply with that time limit was caused by exceptional circumstances; in such a case, the deadline in (1) is extended according to the length of the delay caused by the *consumer's* failure to comply with the time limit.

2.5.2

FCA

G

The *guidance* on exceptional circumstances at ■ CONRED 2.6.3 G is relevant to ■ CONRED 2.5.1R (2).

2.5.3

FCA

R

- (1) For any scheme case where the *firm* has received an opt-in, but the *firm*, does not consider ■ CONRED 2.5.1R (2) requires it to take the steps set out in this section, and does not intend to do so, the *firm* must send the *consumer* a *redress determination* in the form set out in ■ CONRED 2 Annex 6 R within 14 days of receiving the opt-in.
- (2) For any opted-in scheme case, the *firm* must send the *consumer*, within 14 days of receiving the opt-in, a letter in the form set out in ■ CONRED 2 Annex 7 R.

First step: case review of each opted-in scheme case

2.5.4

FCA

R

The first step is to carry out a review (a case review) of each opted-in scheme case, by completing the template at ■ CONRED 2 Annex 12 R, in accordance with the *rules* set out in the instructions at ■ CONRED 2 Annex 13 .

2.5.5 **FCA** **A** Non-compliance with any of the *evidential provisions* set out in the instructions at **■ CONRED 2 Annex 13** may be relied upon as tending to show contravention of **■ CONRED 2.5.4 R**.

2.5.6 **FCA** **G** In complying with **■ CONRED 2.5.4 R**, *firms* should have regard to the *guidance* set out in the instructions at **■ CONRED 2 Annex 13**.

Second step: cases of insufficient information

2.5.7 **FCA** **R** (1) The second step applies only in respect of an opted-in scheme case where a *firm* has attempted to comply with the first step (**■ CONRED 2.5.4 R**) but does not have sufficient information to determine all of the following matters:

- (a) whether it has failed to comply with any of the suitability requirements specified at paragraph 5.1R of **■ CONRED 2 Annex 13** ;
- (b) if so, whether that failure has caused loss or damage to the *consumer*; and
- (c) if so, what the redress should be in respect of its failure.

(2) The second step is to:

- (a) send the *consumer* a letter in the form set out in **■ CONRED 2 Annex 8 R**;
- (b) if no reply is received by the *firm* within four weeks of a letter in (a) being dispatched, the *firm* must send a letter to the *consumer*, within one further week, in the form set out in **■ CONRED 2 Annex 9 R**, and take all reasonable steps to contact the consumer by other means; and
- (c) if a reply is received from a *consumer* but the information it contains is insufficient to determine all the matters in (1), the *firm* should take all reasonable steps to obtain further information from the *consumer*.

[Note: see also **■ CONRED 2.8.7 R**.]

2.5.8 **FCA** **R** A *firm* which, having carried out the second step, has acquired sufficient information to determine all of the outstanding matters must then complete the first step (**■ CONRED 2.5.4 R**).

2.5.9 **FCA** **R** Where a *firm* has carried out the second step in relation to an opted-in scheme case (falling within **■ CONRED 2.4.2 R**) but still does not have sufficient information to determine all of the outstanding matters, the opted-in scheme case no longer falls within the subject matter of the consumer redress scheme created by this chapter. The *firm* must send the

2.5.10
FCA

G

consumer a letter in the form set out in ■ CONRED 2 Annex 10 R promptly on completion of the second step.

Opted-in scheme cases to which the second step (■ CONRED 2.5.7 R) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FCA rules* (notably *SYSC*).

Third step: redress determination

2.5.11
FCA

R

The third step is to send the *consumer* a *redress determination* in the form of the letter set out in ■ CONRED 2 Annex 11 R in respect of each opted-in scheme case.

Taking steps by or on behalf of FCA

2.5.12
FCA

R

The *FCA* may (on giving notice to the *firm*) take any of the steps in ■ CONRED 2.3 to ■ CONRED 2.5, instead of the *firm*, or may appoint one or more competent persons to do so on behalf of the *FCA*, if there is a material failure by the *firm* to take any of the actions required under this chapter, including where the *firm* informs the *FCA* that it is unable or unwilling to take any of those actions because to do so would be in breach of a condition of its professional indemnity insurance. In such a case, the *firm* must:

- (1) not carry out (or, as the case may be, continue) any of the steps to be taken by the *FCA* or competent person, unless so directed by them; and
- (2) render all reasonable assistance to the *FCA* or competent person (but any assistance, the rendering of which would invalidate the *firm's* professional indemnity insurance, is not reasonable for the purposes of this *rule*).

2.5.13
FCA

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The *FCA* would expect a *firm* to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps, in line with its obligations under *Principle 11* (Relations with regulators).

2.5.14
FCA

R

If, where the *FCA* or a competent person takes any steps under ■ CONRED 2.5.12 R, the *FCA* proposes to make any determination of:

- (1) whether a failure by a *firm* has caused loss to a *consumer*; or
- (2) what the redress should be in respect of the failure;

the *FCA* must give the *firm* a *warning notice* specifying the proposed determination.

2.5.15
FCA

R

- (1) If the *FCA* decides to make a determination of the matters in ■ CONRED 2.5.14 R, the *FCA* must give the *firm* a *decision notice* specifying the determination.

(2) If the *FCA* decides to make such a determination, the *firm* may refer the matter to the *Tribunal*.

2.5.16

FCA

R

Part 26 of the *Act* (including the provisions as to final notices) applies in respect of notices given under ■ CONRED 2.5.14 R and ■ CONRED 2.5.15 R.

2.5.17

FCA

G

Where, under ■ CONRED 2.5.12 R, the *FCA* (or a competent person) communicates with a *customer* (or *consumer*) instead of the *firm*, it will do so in its own name, making clear (in the case of a competent person) its authority from the *FCA* to do so.

2.5.18

FCA

G

Where the *FCA* (or a competent person), instead of the *firm*, carries out the third step in ■ CONRED 2.5.11 R, it will do so no earlier than seven *days* after the issue of a final notice in respect of the *FCA*'s decision to make a determination of the matters in ■ CONRED 2.5.14 R, and will send the *firm* a copy of the *consumer*'s response to the *redress determination*.

2.5.19

FCA

G

A fee is payable by the *firm* (or *person* falling within ■ CONRED 2.1.2R (1)) in any case where the *FCA* exercises its powers under ■ CONRED 2.5.12 R: see the table at ■ FEES 3.2.7 R.

2.5.20

FCA

G

The completion of the steps in ■ CONRED 2.3 to ■ CONRED 2.5 by, or on behalf of, the *FCA*, as provided in ■ CONRED 2.5.12 R, does not affect the ability of the *Ombudsman* to consider a *complaint*, in particular where the *firm* has not sent a *redress determination* in accordance with the time limits specified under the scheme.

2.6 Consumer redress scheme: paying redress

2.6.1
FCA

R

A *firm* must pay the redress determined to be payable to a *consumer*, calculated in accordance with the requirement in section 10 of the instructions at ■ CONRED 2 Annex 13 :

- (1) within 28 *days* of receiving a claim from the *consumer* for the redress determined to be payable, following the issue of the *redress determination*; and
- (2) in accordance with the instructions set out by the *consumer* in his response to the *redress determination* in which he makes the claim

but a *firm* need not pay redress where the *consumer* did not send a claim for it within six months of the date of the *redress determination*, unless the *consumer's* failure to comply with that time limit was as a result of exceptional circumstances, except where the *consumer* refers a *complaint* in respect of the *redress determination* to the *Financial Ombudsman Service* within the time limits provided in ■ DISP 2.8.2 R (or ■ DISP 2.8.2R (3) applies).

2.6.2
FCA

R

- (1) Simple interest is payable on the redress determined to be payable from the end of the 28-*day* period referred to in ■ CONRED 2.6.1R (1) until the date of payment, at a rate of 8% per annum.
- (2) After the expiry of 28 *days* following the *consumer's* claim for the redress, the redress, including interest, may be recovered as a debt due to the *consumer* and, in particular, may:
 - (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; or
 - (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981; or

- (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

[Note: This *rule* is imposed by the *FCA* using the powers granted to it under section 404A(1)(m) of the *Act* to make *rules* providing for the enforcement of any redress under a consumer redress scheme.]

2.6.3
FCA

G

- (1) An example of exceptional circumstances in ■ CONRED 2.6.1 R might be where the *consumer* has been or is incapacitated.
- (2) In considering whether circumstances are exceptional, *firms* may wish to have regard to the guidance on exceptional circumstances justifying the extension of the time limits, in the online technical resource titled "the six-month time limit" on the website of the *Financial Ombudsman Service*.

2



2.7 Supervision and delegation of scheme process by firms

2.7.1

FCA

R

A *firm* must ensure that the steps required by this chapter are undertaken or supervised by the individual appointed by the *firm* under ■ DISP 1.3.7 R where that *rule* applies. In any other case, those steps must be taken or supervised by a person of appropriate experience and seniority.

2.7.2

FCA

G

- (1) Any *firm* intending to outsource any of the obligations imposed on it under this chapter should have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in SYSC.
- (2) A *firm* which outsources any of the obligations imposed on it under this chapter in respect of communications with *consumers* should ensure that those communications are clear as to the identity of the *firm*.



2.8 Provisions relating to communications with consumers

2.8.1 **R** Whenever a *firm* is required by a provision of this chapter to send a letter in a form set out in an Annex, it must do so enclosing any documents referred to, following the instructions in the standard form set out in the relevant Annex, complying with any instructions in that Annex to insert, delete, select or complete text.

FCA

2.8.2 **R** All letters to *consumers* required under this chapter must be printed on the letterhead of the *firm* and dispatched by recorded delivery mail.

FCA

2.8.3 **R** (1) Where a *firm* becomes aware that the contact details it holds for a *customer* (or *consumer*) are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, resend any letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter.

FCA

(2) If, having complied with (1), a *firm* is unable to contact a *customer* (or *consumer*), it need not take any further action pursuant to this chapter in relation to that *customer* (or *consumer*) unless (3) applies.

(3) If, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for that *customer* (or *consumer*), the *firm* must, where appropriate, resend any letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter. Each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).

2.8.4 **G** The reasonable steps in **■** CONRED 2.1.3R (1) might include checking public sources of information, but without incurring excessive cost.

FCA

2.8.5 **G** The reasonable steps in **■** CONRED 2.5.7R (2)(b) might include attempting to contact the *consumer* by telephone (at a reasonable hour when the *consumer* is likely to be available to receive the call) or by email.

FCA

2.8.6
FCA

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A *firm* must not make any communication to a *consumer* which seeks to influence, for the benefit of the *firm*, the outcome of the processes undertaken pursuant to this chapter, either by seeking to influence the content of information provided by the *consumer* in response to the *firm's* requests made under ■ CONRED 2.5.7 R or otherwise.

2.8.7
FCA

R

A *firm* must tailor the questionnaire at ■ CONRED 2 Annex 8 R so that it does not request more information than is sufficient for it to determine all of the outstanding matters.



2.9 Consumer redress scheme: information requirements

Requests for information by the FCA

2.9.1
FCA

R

In relation to any matter concerning or related to the consumer redress scheme created by this chapter, section 165 (Regulator's power to require information: authorised persons etc) of the *Act* and any provision of Part 11 (Information Gathering and Investigations) of the *Act* which relates to that section, apply to any *firm* (or person in ■ CONRED 2.1.2 R) which is not an *authorised person* as if it were an *authorised person*.

Reporting requirement: by 9 December 2013

2.9.2
FCA

R

A *firm* must, by 9 December 2013, a *firm* must report to the FCA, by email to archcrureview@fca.org.uk or (if the email is encrypted) archcrureviewpgp@fca.org.uk , the following information:

- (1) the total number of opted-in scheme cases (cases falling within ■ CONRED 2.5.1 R);
- (2) the total number of completed templates;
- (3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;
- (4) the total number of redress cases;
- (5) the total number of *redress determinations* sent to *consumers*;
- (6) the total number of *consumers* that have been paid redress to date;
- (7) the total amount of redress paid to date; and
- (8) the total amount of redress unpaid to date.

[Note: for details of how to obtain an encryption key see guidance above at ■ CONRED 2.3.2 G]

2.10 Record-keeping requirements

2.10.1

FCA

R

- (1) A *firm* must keep the following records:
 - (a) the certificate of posting for each letter sent in accordance with this chapter;
 - (b) a copy of each letter sent in accordance with this chapter;
 - (c) a record of any attempts to contact the *consumer*, or obtain further information, in accordance with ■ CONRED 2.5.7R (2)(b) or ■ (c);
 - (d) the completed template (■ CONRED 2 Annex 12 R) for each opted-in scheme case; and
 - (e) all information on the *consumer* file and any information received from a *consumer*.
- (2) A *firm* must keep the records required by (1) for a minimum of five years from the date of their creation or (for the records in (1)(e)) the date when the information is located on the *consumer* file or obtained.

Redress determination for customers outside subject matter of Arch cru consumer redress scheme

FCA

Redress determination for customers outside subject matter of Arch cru consumer redress scheme
- CONRED 2 Annex 1 R

Letter to consumers confirming existence of review and inviting request to opt-in

2

FCA

*Letter to consumers confirming existence of review and inviting request to opt-in - CONRED
2 Annex 2 R*

First reminder letter to consumers inviting request for review

FCA

First reminder letter to consumers inviting request for review - CONRED 2 Annex 3 R

Second reminder letter to consumers inviting request for review

2

FCA

Second reminder letter to consumers inviting request for review - CONRED 2 Annex 4 R

Final letter to consumers who have not sent a request for review

2

FCA

Final letter to consumers who have not sent a request for review - CONRED 2 Annex 5 R

Redress determination where firm considers opt-in ineffective

2

FCA

Redress determination where firm considers opt-in ineffective - CONRED 2 Annex 6 R

Letter to consumers confirming their case will be reviewed

FCA

Letter to consumers confirming their case will be reviewed - CONRED 2 Annex 7 R

Initial letter requesting information/enclosing questionnaire

2

FCA

Initial letter requesting information/enclosing questionnaire - CONRED 2 Annex 8 R

Reminder letter

FCA

Reminder letter - CONRED 2 Annex 9 R

Redress determination where consumer has not provided requested information

2

FCA

*Redress determination where consumer has not provided requested information - CONRED 2
Annex 10 R*

Redress determination letter for scheme cases

FCA

Redress determination letter for scheme cases - CONRED 2 Annex 11 R

Arch cru product advice suitability assessment template

2

FCA

Arch cru product advice suitability assessment template - CONRED 2 Annex 12 R

CF Arch cru funds template instructions

FCA

- 1 Limitations on use of template and instructions**
 - 1.1 G** The Arch cru advice suitability assessment template reproduced at [CONRED 2 Annex 12 R](#) (referred to in these instructions as the "template") and the instructions in this Annex are only to be used for the purpose of complying with the requirements under [CONRED 2](#) to assess sales of the Arch cru funds identified at [CONRED 2.1.1R \(2\)](#). They should not be used for any other purpose.
- 2 Using the template**
 - 2.1 G** The template contains factors to take into account to determine whether there has been a failure to comply with the suitability requirements (specified at 5.1R, below) in an opted-in scheme case.
 - 2.2 R** The template is divided into sections which must be completed in full, except where indicated in these instructions.
 - 2.3 R** Before completing the template you must familiarise yourself with the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in [CONRED 2 Annex 15 R](#).
 - 2.4 R** Answer the questions in the template and complete your assessment by reference to the available evidence (information on the *consumer* file and any information received from a *consumer*), and the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in [CONRED 2 Annex 15 R](#).
- 3 Admission of failure to comply with suitability requirements**
 - 3.1 R** Where you admit that the *firm* has failed to comply with a suitability requirement (specified at 5.1R, below) in an opted-in scheme case complete the following sections of the template:
 - (1) *firm* and case details;
 - (2) *consumer* details;
 - (3) transaction input;
 - (4) admission of failure in an opted-in scheme case;
 - (5) causation; and
 - (6) redress.
- 4 Completing the template**
 - 4.1 R** Fill in the following sections of the template as follows:

- (1) **Firm and case details:** enter the *firm*-specific information as it appears on the *Financial Services Register*.
- (2) **Consumer details:** enter the *consumer* details and the date of the advice to the *consumer*. Advice was given on a joint basis if it was given to two people where the *personal recommendation* relates to a "joint" portfolio. This includes cases where the advice is directed at a couple but where the investment is in one spouse's name for tax purposes.
- (3) **Transaction input:** take the following steps:
 - (a) Select the date of investment in the "transaction date" box. If you cannot identify the date of investment from the *consumer* file, insert the date of advice as the approximate date of the investment.
 - (b) Select the Arch cru fund(s) invested in.
 - (c) Select the transaction type from the drop-down menu. The transaction types to select from are:
 - **Investment:** an investment into an Arch cru fund. Enter the amount invested, the share class, and the wrapper (if applicable).
 - **Partial withdrawal:** the sale of part of the *consumer's* share capital in the *consumer's* investment, excluding interim hardship withdrawals.
 - **Final withdrawal:** the sale of all of the *consumer's* share capital in the *consumer's* investment, excluding final hardship withdrawals.
 - **Income distribution:** any income distribution received by the *consumer* in respect of their shares in the *consumer's* investment prior to the date of suspension of the Arch cru funds.
 - **Capital distribution:** any capital distribution received by the *consumer* in respect of their shares in the *consumer's* investment after the date of the suspension.
 - **Capita offer:** the amount offered to the *consumer* under the *CF Arch cru payment scheme*.
 - **Interim hardship withdrawal:** interim distributions received by the *consumer* from the Capita Hardship Scheme (ie, the hardship scheme for investors in Arch cru funds as set out by Capita Financial Managers Ltd in a letter to investors of 7 December 2009) after the date of the suspension.
 - **Final hardship withdrawal:** the amount received by the *consumer* for any full surrender of the investment from the Capita Hardship Scheme (as described above) after the date of the suspension.
 - (d) Input the amount corresponding to the transaction type.

- (4) Admission of failure to comply with a suitability requirement in the opted-in scheme case: Select "yes" or "no" and proceed with the steps outlined at 3.1R, above.
- (5) Consumer investment objectives: take the following steps:
 - (a) Identify and select whether any of the objectives listed on the template is recorded (yes/no) and override the "yes" with "priority" if the *consumer* says, or the firm recorded that, this objective was a priority.
 - (b) If a *consumer* was investing a lump sum to obtain an income, identify and record what level of annual income the *consumer* wanted from the recommended Arch cru fund.
 - (c) The objective 'Realignment of portfolio' must be used when the *consumer's* circumstances or overall investment objective has changed.
 - (d) If the *consumer* had other investment objectives not identified in the list above, record these objectives in the box provided and identify whether they were a priority.
 - (e) Complete the "Comments on consumer investment objectives" box where you have further comments on the *consumer's* investment objectives relevant to your assessment.
- (6) Consumer attitude to risk ("ATR"): take the following steps:
 - (a) In the "Consumer's attitude to risk" box record the *firm's* short description of the *consumer's* ATR, using the headline description used on their risk scale (eg, "balanced", "medium", "5/10").
 - (b) In the "Firm's description of the consumer's ATR" box record the *firm's* description of the *consumer's* ATR, using the *firm's* own wording (eg, "balanced means the *consumer* will invest in x, y types of assets and wants to take x risk with their capital").
 - (c) In the "Comments on the firm's assessment of the consumer's ATR" box record any comments you have on the *firm's* assessment of the *consumer's* attitude to risk and whether the firm's assessment was, in your view, a reasonable representation of the *consumer's* ATR. You should also include any information about the *consumer's* ATR in relation to this particular investment.
 - (d) This section does not record information on the *consumer's* capacity for loss (which is different to a *consumer's* ATR). This information must be noted in the "Comments on the consumer's capacity for loss" box in the "Consumer's financial situation" section of the template.
 - (e) Where there is evidence that the *consumer's* ATR was wrongly assessed by the *firm*, complete the suitability section based on your assessment of the *consumer's* ATR.
- (7) Consumer financial situation: take the following steps:
 - (a) Record information on the *consumer's* savings and investments portfolio before and after the *consumer's* investment in the Arch cru funds in the boxes provided.

(b) The template provides the following categories:

- Cash (including cash ISAs)
- Investments
- Arch cru funds (this is a drop-down menu).

(c) When completing the table of the *consumer's* investments, take into account the following:

- Where advice is being provided on a "joint" basis (see 4.1R(2), above), record the combined total of, for example, a married couple's investments. Where advice is on a 'single' basis but the *consumer* is married or in a relationship include the value of the proportion of investments owned by the *consumer* (these will usually be in the *consumer's* name). Where the *consumer's* share of investments is unclear from the file you can assume the proportion owned by the *consumer* is 50%.
- Only include pension policy values where the fund is held in a pension wrapper (eg a self-invested personal pension (*SIPP*) or a small self-administered scheme (*SASS*)).
- Where the source of funds is existing investments, use the surrender value of the investments.

(d) In the "Comments on portfolio before and after sale" box record your observations about the level of diversification within the portfolio and how the advice to invest in the selected Arch cru fund has met the *consumer's* investment objectives for their portfolio.

Your comments must include whether the evidence supports an assessment that the risk profile of the *consumer's* overall portfolio was suitable given the *consumer's* personal and financial circumstances and objectives before and after the advice to invest in an Arch cru fund. This information will be relevant later in the template.

(e) In the "Comments on consumer's capacity for loss" box, record the *firm's* comments on the *consumer's* capacity for loss (also referred to as the level of risk the *consumer* is able to take). This is different to the level of risk that the *consumer* was willing or would have preferred to take. In doing so, consider whether, in the light of the available evidence:

- the *consumer* was able to take any risk with the *consumer's* capital or income;
- there would have been an impact on the *consumer* of a total or partial loss of capital;

- the *consumer* could, considering his personal and financial circumstances, afford to take this level of risk.

- (8) Suitability requirements: take the steps set out at 5.1 to 5.4, below.
- (9) Causation: take the steps set out at 9.1 to 9.5, below.
- (10) Redress: take the steps set out at 10.1 to 10.15, below.

5 Suitability requirements

5.1 R The following requirements are specified:

- (1) for a *personal recommendation* made on or before 31 October 2007, COB 5.3.5 R (1);
- (2) for a *personal recommendation* made on or after 1 November 2007, COBS 9.2.1 R (1);
- (3) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on investments.

5.2 G The contract between the *firm* and the *consumer* may have included a specific term providing that the *firm* would exercise reasonable skill and care in advising the *consumer* on investments. If it did not do so, such a duty is likely to have been implied into the contract.

5.3 G The standard of care under the *FCA rules* and the common law is that of a reasonably competent *firm* carrying on a similar business to that of the *firm* assessed.

5.4 G COB 5.2 and COBS 9.2.1 R (2), COBS 9.2.2 R and COBS 9.2.3 R indicate particular matters of which you should take account when assessing whether the *firm* failed to comply with the suitability requirements at 5.1R, above. In summary, these are the *consumer's*:

- (1) investment objectives;
- (2) financial situation; and
- (3) experience and knowledge of investments similar to the recommended Arch cru fund.

6 Assessing opted-in scheme cases

General

6.1 G The "Suitability section" in the template and associated additional provisions in these instructions contain examples which tend to show failure to comply or compliance with the suitability requirements ("example").

6.2 G The suitability requirements arise from *FCA rules* and the common law. For the requirements specified, the standards required of the *firm* are broadly the same whether their origin is a *rule* or the common law.

6.3 R You must in each opted-in scheme case falling within CONRED 2.4.2 R:

- (1) fairly consider and give appropriate weight to all information on the *consumer* file and any information received from a *consumer* of the *firm's* compliance or non-compliance with applicable suitability requirements at 5.1R, above; and

- (2) decide, with reference to the examples in the suitability requirements section of the template, whether it is more likely than not that the *firm* failed to comply with the suitability requirements specified at 5.1R, above.

6.4 R In considering the information on the *consumer* file and any information received from a *consumer*, you must:

- (1) not assume that a *firm* complied with a suitability requirement (specified at 5.1R, above) solely on the basis that:
 - (a) the *consumer* signed documentation that records his understanding or agreement to matters set out in that documentation;
 - (b) the *personal recommendation* was given to a *consumer* who had already invested in an Arch cru fund or a predecessor of that fund;
- (2) give more weight to evidence of the particular circumstances of a *personal recommendation* than to general evidence of the selling practices of the *firm* or its advisers at the relevant time;
- (3) determine that an example in the suitability requirements section of the template is present on the "balance of probabilities" when it is more likely than not to have occurred.

Reliance on others

6.5 R You must take into account that:

- (1) the duty of a *firm* to advise on the suitability of investments cannot be delegated to, or discharged by reliance on, another;
- (2) where the *firm* made a *personal recommendation* in reliance on the advice or opinions of *persons* other than the *firm*, a *firm* must not be regarded as complying with the suitability requirements at 5.1R, above, because of that reliance; and
- (3) the suitability requirements at 5.1R, above, require a *firm* in all cases to form its own view of the suitability of the recommended Arch cru fund for the particular *consumer*, based on the information that the *firm* had, or ought reasonably to have obtained, regarding that Arch cru fund and its suitability for the *consumer's* circumstances.

6.6 R If, in relation to any rating, before coming to a view that the *firm* came to a reasonable, albeit erroneous, conclusion on the risks of the recommended Arch cru fund and sold the Arch cru fund on this basis, you must take into account:

- (1) that the *FCA's* guidance on the Responsibilities of Providers and Distributors for the Fair Treatment of Consumers (*RPPD*) says that a *firm* distributing products:
 - (a) should consider, when passing provider materials to *consumers*, whether it understands the information provided;
 - (b) should ask the provider to supply additional information or training where that seems necessary to understand the product or service adequately; and
 - (c) should not distribute the product or service if it does not understand it sufficiently, especially if it intends to provide advice;

- (2) any due diligence: a *firm* providing a *personal recommendation* should have formed its own view on the risks of investing in an Arch cru fund, based on the information that it had or ought to have gathered about the fund;
- (3) that the reliance on other *rules* (COB 2.3.3 R and COBS 2.4.6 R) enable a *firm* to place reasonable reliance for some purposes on factual (ie, not opinion-based) information provided by an unconnected *authorised person*; but that these *rules* do not absolve a *firm* from forming its own view on the risks of investing in an Arch cru fund;
- (4) the features and risks of the recommended Arch cru fund set out in CONRED 2 Annex 15 R; and
- (5) that COBS 2.4.8 G states that "it will generally be reasonable... for a firm to rely on information provided to it in writing by an unconnected *authorised person* ... unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information". In the absence of those grounds, it will generally have been reasonable for a *firm* to have relied on factual statements provided by Arch or Cru on the Arch cru funds, such as information about the funds' underlying assets.

7 Assessing compliance with the suitability requirements

7.1 R When assessing whether a *firm* complied with the suitability requirements specified at 5.1R, above, you must take into account the following:

- (1) the *consumer's* investment objectives, including his willingness to bear the risks associated with the recommended Arch cru fund;
- (2) the *consumer's* financial situation, including his financial ability to bear the risks associated with the recommended Arch cru fund consistent with his investment objectives;
- (3) the *consumer's* ability, in the light of the following, to understand the risks associated with the recommended Arch cru fund:
 - (a) the experience and knowledge of the *consumer* relevant to an investment in the recommended Arch cru fund; and
 - (b) any correspondence between the *firm* and the *consumer* (which may include references to promotional materials, such as fund factsheets or offer documents or prospectuses) regarding the recommended Arch cru fund.

7.2 R When assessing the reasonableness of a *firm's* conduct in relation to a *personal recommendation*, you must:

- (1) assess the *firm's* conduct against what was reasonable at the time when the *firm* made the *personal recommendation*; and
- (2) conclude that the conduct of the *firm* assessed was reasonable only where that *firm* displayed the degree of skill, care and diligence that would at that time have been exercised in the ordinary and proper course of a similar business to that of the *firm*.

Consumer instructions

- 7.3 R In all cases, you must take into account any specific instructions the *consumer* gave the *firm* about the sale.
- 7.4 G Specific instructions include, for example, where the *consumer* asked the *firm* to advise only on the sum to be invested and not on the *consumer's* pension arrangements.
- 7.5 G As the Arch cru funds are high-risk investments, the *firm* should have asked for further information about the *consumer's* wider portfolio, and have taken this into account when making its *personal recommendation* to the *consumer* to invest in an Arch cru fund.
- 7.6 G If there is clear evidence on file that the *consumer* has given specific instructions that the *firm* is not to review the *consumer's* entire portfolio, but to advise on this investment only, the suitability assessment could involve a narrower review, focusing on the *consumer's* objectives in relation to the specific amount to be invested. However, any *personal recommendation* should still have taken into account how the specific investment would fit within the *consumer's* overall savings and investments portfolio.
- 8 Suitability section
- Filling in the suitability requirements section
- 8.1 G The suitability requirements section is used to record your assessment of whether or not the *firm* complied with the suitability requirements specified at 5.1R, above.
- 8.2 R To complete the suitability requirements section you must take the following steps for an opted-in case falling within CONRED 2.5.1 R (an "opted-in scheme case"):
- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the data section of the template ("the available evidence");
 - (2) determine whether the available evidence shows overall that any or all of examples (1) to (7) is present or not;
 - (3) indicate whether any or all of examples (1) to (7) is present, or not, by selecting "yes" or "no";
 - (4) conclude, taking into account the available evidence, whether the *firm* complied with the suitability requirements specified at 5.1R, above; and
 - (5) insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in CONRED 2 Annex 15 R.
- 8.3 G If an example is present, this will tend to show the *firm's* compliance or non-compliance with the suitability requirements. The presence of the example is not definitive as to whether a *firm* has complied with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements at 5.1R, above.
- 8.4 G The template sale rating will automatically default to "Compliant" or "Non-compliant" depending on your answer to the example questions in the template. The

"Non-compliant" rating indicates that the *personal recommendation* does not comply with the suitability requirements at 5.1R, above.

8.5 G This table contains *rules, evidential provisions, and guidance* for determining whether the available evidence shows overall that an example is present, or not:

(1) The consumer was willing to take a high degree of risk with the sum invested

R Compare:

(1) the information on the *consumer* file, and any information received from the *consumer* and, in particular, the information recorded in the template on the *firm's* assessment of the *consumer's* attitude to risk (ATR), focusing on the degree of risk the *consumer* was willing to take with this investment (not, for the purposes of this question, the degree of risk the *consumer* was able to take); with

(2) the high degree of risk a *consumer* must have been willing to take for a *personal recommendation* to invest in an Arch cru fund to be suitable.

E Answer "no" to this question where:

(1) the *consumer* was not willing to take a high degree of risk with the sum invested (by reference to the risk scale used by the *firm*); or

(2) the *consumer* was not willing to put his capital at risk for the potential of a higher return and had expressed a preference for lower-risk investments.

G This question relates to the level of risk a client is willing to take with the sum invested.

(2) The risk profile of the consumer's overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives

R Take the following steps:

(1) refer to the information recorded on the *consumer's* stated attitude to risk in the template;

(2) with reference to the firm's risk scale, identify the risk level in the *consumer's* portfolio after the sale; and

(3) compare the level of risk in the *consumer's* overall portfolio after the sale with the level of risk the *consumer* was willing to take to meet his investment objectives.

E Answer "no" where the risk profile of the *consumer's* portfolio was higher than the level of risk he was willing to take to meet his investment objectives.

G This question relates to how the investment fits into the client's portfolio of investments.

(3) The consumer's portfolio was sufficiently diversified after the sale to meet his investment objectives

R Take the following steps:

- (1) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the *consumer's* investment objectives section of the template;
- (2) identify the concentration of Arch cru funds in the *consumer's* portfolio after the sale; and
- (3) taking into account in particular:
 - (a) the concentration of Arch cru funds;
 - (b) the liquidity in the *consumer's* portfolio;
 - (c) the exposure to different asset classes; and
 - (d) the level of stability of returns or security of invested capital in the portfolio;

determine whether the *consumer's* portfolio was sufficiently diversified to meet his investment objectives.

- E (1) Answer "no" where the *consumer* has a large portfolio of savings and investments but his preferences regarding risk-taking indicate that he would prefer to diversify and invest in a wide range of assets and he has invested a high concentration of his assets in Arch cru funds and the risk of this investment is not offset by the potential return offered by the Arch cru funds.
- (2) Answer "yes" where the *consumer* wanted a significant portion of his capital to be invested in higher-risk or alternative investments and has a low proportion of Arch cru funds. This may be recorded in specific instructions the *consumer* gave the *firm*.

(4) The consumer was reliant on income from this investment

- E (1) Answer "yes" where a *consumer* needed a minimum level of income from this fund (for example, to pay household bills and expenses).
- (2) Answer "no" where a *consumer* did not need a specific level of income from the fund, for example, because it was not essential to maintain his standard of living.

- G (1) Whether a *consumer* had a need for income from this investment may be reflected in the information on the *consumer* file and any information received from a *consumer* about the *consumer's* household income and whether the income from this investment was necessary for household expenses and personal outlays or whether it was "disposable income" (which is money left over after bills and household expenses are paid).
- (2) The Arch cru funds that offered income shares are the Investment Portfolio, Specialist Portfolio and Income Fund. These funds aimed to pay income on a half-yearly basis but did not provide a set level of income.

(5) The consumer had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch cru fund

- R (1) Take the following steps:

- (a) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the *consumer's* financial situation in the data section of the template;
- (b) identify the concentration of Arch cru funds in the *consumer* portfolio after the sale; and
- (c) taking into account in particular:
 - (i) the concentration of Arch cru funds;
 - (ii) the source and extent of the *consumer's* assets;
 - (iii) the liquidity in the *consumer's* portfolio;
 - (iv) the exposure to different asset classes;
 - (v) the level of stability of returns or security of invested capital in the portfolio; and
 - (vi) the impact the loss of the capital invested would have on his standard of living overall;

determine whether the concentration of Arch cru funds in the *consumer's* portfolio was suitable for his financial situation.

- E (1) Answer "no" where any loss of the investment would have had a materially detrimental effect on the *consumer's* standard of living.
- (2) Answer "yes" where the investment was speculative: the consumer had no need for the capital and would not be using it to maintain his standard of living.

(6) The firm took reasonable steps to ensure the consumer had the necessary experience and knowledge to invest in the selected Arch cru fund

R Take the following steps:

- (1) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the template;
- (2) identify the *consumer's* level of investment experience and knowledge of investments both:
 - (a) in relation to investments similar to Arch cru funds; and
 - (b) generally;
- (3) identify the steps that the *firm* took to establish that the *consumer* could appreciate the nature of the risks they were taking with his investment in the Arch cru fund;
- (4) taking into account, in particular:
 - (a) information about the *consumer's* existing portfolio and the nature, volume, and frequency of the *consumer's* transactions in investments;
 - (b) how long the *consumer* had been an investor;

- (c) the *consumer's* experience with, and knowledge of, high-risk investments similar to Arch cru funds;
- (d) the *consumer's* profession (if any);
- (e) insofar as it was clear, fair and not misleading, information the *firm* gave the *consumer* over and above any Capita Financial Managers Limited, Arch Financial Products LLP or Cru Investment Managers Limited produced documentation (if that was provided);
- (f) how the *firm* communicated the risks of investing and the underlying assets in the selected Arch cru fund listed in CONRED 2 Annex 15 R; and
- (g) the overall impression that the *consumer* would reasonably have had of those features and risks, particularly in the light of:

(i) the entirety of the communications referred to in (1);

(ii) the extent to which such communications were consistent in their presentation of those features and risks; and

(iii) the *consumer's* relevant experience and knowledge;

conclude whether the *firm* had a reasonable basis for believing that the *consumer* had the necessary experience and knowledge to understand the risks involved in investing in Arch cru funds.

E Answer "no" where:

- (1) the *firm* did not communicate in substance the risks and features of the selected Arch cru fund listed in CONRED 2 Annex 15 R; and
- (2) one or more of the following is present:
 - (a) prior to the *personal recommendation*, the *consumer* had experience and knowledge of investing in capital protected products only;
 - (b) prior to the *personal recommendation*, the *consumer* had no experience and knowledge of investments in bonds or shares traded on public markets;
 - (c) prior to the *personal recommendation*, the *consumer* had no experience and knowledge of investing in high-risk investments.

G A *firm* may rely on the simplified prospectus to disclose the risks in CONRED 2 Annex 15 R, but disclosure will not be "clear" if, in particular:

- (1) the information was contradicted by the *firm* in correspondence between the firm and the consumer (which may include references to promotional materials, such as monthly reports, fund factsheets or offer documents or prospectuses); or
- (2) given the *consumer's* experience and knowledge, it is unlikely that the *consumer* would have understood the risks as disclosed in the prospectus without further explanation from the *firm*.

(7) The recommendation is not suitable for the consumer's investment objectives or financial situation for some other reason

R Take the following steps:

- (1) refer to the information on the *consumer* file, any information received from a *consumer* and the information recorded on the *consumer's* financial situation in the template;
- (2) refer to the risks and features of the Arch cru funds in CONRED 2 Annex 15 R; and
- (3) consider whether there is any reason, other than the reasons at questions (1) to (6) why the *personal recommendation* to invest in an Arch cru fund was unsuitable for the *consumer's* investment objectives or financial situation.

E Answer "yes" where:

- (1) the *consumer's* financial situation was likely to change in the near future so that he would not be able to bear the risks of this investment; or
- (2) the *consumer* had existing debts which it would have been in his best interests to repay before making this investment; or
- (3) following the *personal recommendation*, the *consumer* did not have an adequate emergency fund and cash reserve; or
- (4) the *consumer* would need the money invested within five years of investment in the fund; or
- (5) any of the risks or features of the Arch cru fund set out in CONRED 2 Annex 15 R were unsuitable for the *consumer's* financial situation; or
- (6) an existing product in the *consumer's* portfolio could have been changed to meet the *consumer's* investment objective with less cost or less risk.

G (1) The features and risks of the Arch cru fund may have been unsuitable for the *consumer's* investment objectives if any of the following applies:

- (a) the *consumer* did not want to invest through an offshore vehicle or in non-UK assets;
- (b) the *consumer* did not want an investment that did not have a transparent secondary market for its underlying assets;
- (c) the *consumer* did not want to invest through *collective investment schemes*;
- (d) the *consumer* was not prepared to put capital at risk in stock markets;
- (e) the *consumer* did not want to be exposed to risks associated with *commodities* or *derivatives*;
- (f) the *consumer* did not want an investment that invested in *illiquid assets*;
- (g) the *consumer* did not want an investment that was exposed to non-traditional asset classes;
- (h) the *consumer* did not want an investment where the investment manager employed investment techniques such as gearing, that would not normally have been used in more commonly encountered *UCITS*.

- (2) In relation to whether the *consumer's* financial situation was likely to change in the near future so that the *consumer* would not be able to bear the risks of this investment, consider whether the *consumer* was expecting a change in his personal circumstances, such as the birth of a child, redundancy or retirement and the impact this was likely to have on his financial situation.
- (3) In relation to whether the *consumer* had existing debts which it would have been in his best interests to repay before making this investment, consider the particular circumstances of the debt, including:
 - (a) the size of the debt (excluding mortgage debt);
 - (b) whether the debt had an early repayment penalty or fixed repayment schedule;
 - (c) the interest rate on the debt in relation to what they could reasonably expect in relation to the performance of the investment.
- (4) An adequate emergency fund should be at least three times monthly outgoings but, depending on the *consumer's* circumstances, this could be more. The *consumer* should also have held sufficient 'cash reserves' to meet known or reasonably anticipated future expenses, such as the payment of care fees, or spending on home improvements, or a new car or dependents.

Outcome: overall assessment on suitability requirements

- 8.6 R Take the following steps to determine whether the *firm* complied with the suitability requirements:
 - (1) review the information on the *consumer* file, any information received from a *consumer* and the features and risks of the Arch cru fund in [CONRED 2 Annex 15 R](#);
 - (2) determine whether the *firm* took reasonable steps to ensure that the *personal recommendation* was suitable, and select the appropriate outcome in the Firm sale rating box "Compliant" or "Non-Compliant"; and
 - (3) in all cases, insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in [CONRED 2 Annex 15 R](#).
- 8.7 E For the purposes of 8.2R(2) above, in any case where you have answered:
 - (1) "no" to any of the questions in sub-paragraphs (1), (2), (3), (5) or (6) of paragraph 8.5; and/or
 - (2) "yes" to either of the questions in sub-paragraphs (4) and (7) of paragraph 8.5;

this will tend to indicate that the *personal recommendation* was "Non-Compliant".
- 8.8 G The presence of an example in the suitability section of the template is not determinative as to whether a *firm* has complied with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements.
- 8.9 G Where the *personal recommendation* is to invest in more than one Arch cru fund and one investment is suitable but the other is not suitable, the *firm* should conclude

overall that the *personal recommendation* does not comply with the suitability requirements. The template will take into account the suitable part of the investment in the redress section.

9 Causation section

9.1 G The causation section is used to record your assessment of whether or not the *consumer's* loss was caused by the *firm's* failure to comply with the suitability requirements specified at 5.1R, above. The causation section proceeds on an assumption that the *consumer* suffered a loss. Whether or not there was actually a loss is dealt with in the redress section.

9.2 G Complete the causation section where you have concluded that the *firm* has failed to comply with the suitability requirements specified at 5.1R, above.

9.3 R To fill in the causation section you must:

- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the template ("available evidence");
- (2) determine whether the *firm's* failure to comply with the suitability requirements caused the *consumer's* loss; and
- (3) explain your conclusion on causation with reference to the available evidence.

9.4 R In assessing the available evidence, you must have regard to:

- (1) the impact of the *firm* failure(s) on the *consumer's* decision to invest in the Arch cru fund(s) in all the circumstances of the *consumer's* case;
- (2) the position at law that, irrespective of the actions of third parties, the *firm* is responsible for all losses that flow from its failure to comply with the suitability requirements; and
- (3) the position at law that no actions of Capita Financial Managers Limited; Arch Financial Products LLP; cru Investment Management Limited; HSBC Bank plc and BNY Mellon Trust and Depository (UK) Limited break the chain of causation, so that the *firm* is still responsible for all losses that flow from its failure to comply with the suitability requirements.

9.5 E You should conclude "yes" (that the *firm's* failure caused the *consumer's* loss) unless you are satisfied on the basis of the available evidence that the *consumer* did not rely on the *personal recommendation* in making the decision to invest.

10 Redress Section

10.1 R Complete the redress section in each opted-in scheme case where you have determined that the *consumer's* loss was caused by the *firm's* failure to comply with any of the suitability requirements at 5.1R, above.

10.2 G The redress section is used to identify and record an investment benchmark to compare the position the *consumer* is in with the position they would have been in if the *firm* had complied with the suitability requirements.

10.3 R For a redress case where a *personal recommendation* resulted in more than one investment in one or more Arch cru funds, complete the redress section for each of the *consumer's* investments in Arch cru funds.

- 10.4 R** Take the following steps in each redress case:
- (1) select the Arch cru fund that the consumer invested in;
 - (2) having regard to what investment the *consumer* would have invested if the *firm* had complied with the suitability requirements at 5.1R above, and other requirements applicable to it at the time (referred to in this chapter as a "suitable investment"), either:
 - (a) select investment benchmark "1", "2", or "3"; or
 - (b) select investment benchmark "4" (suitable investment); or
 - (c) select investment benchmark "5" (other);
 - (3) where investment benchmark 4 or 5 is selected:
 - (a) determine what would have been a suitable investment in accordance with the instructions at (for investment benchmark 4) 10.6R, below, and (for investment benchmark 5) 10.7R and 10.8R, below; and
 - (b) record the suitable investment identified and the reasons for selecting it in the 'SI selection justification' box (for investment benchmark 4, this will be the selected Arch cru fund); and
 - (4) submit a redress calculation request to the *FCA* following the instructions at 10.13R, above.
- 10.5 E** For the purposes of paragraph 10.4R(2), above:
- (1) have regard to the investment benchmarks in CONRED 2 Annex 14 R;
 - (2) consider which investment benchmark best reflects the risks and features of a suitable investment;
 - (3) subject to 10.7R, above, select that investment benchmark; and
 - (4) record your reasons for the selection of that investment benchmark in the Comments box.
- 10.6 R** You may select investment 4 (suitable investment) only if you are satisfied on the basis of the information on the *consumer* file, and information received from the *consumer*, that the *consumer* would have made an investment in the Arch cru fund if the *firm* had complied with the suitability requirements.
- 10.7 R** You may select investment benchmark 5 (other) only where you are able to identify a specific investment:
- (1) which would have been a suitable investment; and
 - (2) in which a *consumer* could have made an investment at all times from the date on which the *consumer's* investment was made to the date of calculation.
- 10.8 G** For the purposes of 10.7R, above, a *firm* might be able to identify a specific investment in circumstances where:
- (1) at the time when the *firm* made the *personal recommendation* to the *consumer* to invest in Arch cru funds, the *firm* also recommended other specific investments which would have been suitable for the *consumer*; or
 - (2) the *firm* recommended that a *consumer* disinvest from a specific investment, which was suitable for the Consumer, in order to invest in Arch cru funds.

- 10.9 R In cases where you have selected investment benchmark 5 (other) you must, following the instructions at 10.12R, below, and determine and record the value which sums initially invested by the *consumer* in the *consumer's* investment would have had at the date of calculation if such sums had been invested in investment benchmark 5.
- 10.10 R In a redress case where the *consumer* retained any shares in the *consumer's* investment at the date of suspension, redress is equal to the sum of A - B - C - D where:
- (1) "A" is the value of sums initially invested by the *consumer* at the date of calculation if they had been invested in a suitable investment;
 - (2) "B" is the net asset value of the *consumer's* investment in the Arch cru fund at the date of calculation;
 - (3) "C" is the value of income distributions received by the *consumer* by the date of suspension; and
 - (4) "D" is the value of sums under the *CF Arch cru payment scheme* that the *consumer* is, or was, eligible to receive (whether or not it has been received) where the *consumer* has retained shares in the *consumer's* investment.
- 10.11 R In a redress case where the *consumer* has sold all of the shares in the *consumer's* investment prior to the date of suspension, redress is equal to the sum of A - C - E + I where:
- (1) "A" is the value of sums initially invested by the *consumer* at the date of the sale of the *consumer's* share capital if they had been invested in a suitable investment;
 - (2) "C" is the value of income distributions received by the *consumer* prior to the date of sale;
 - (3) "E" is the capital realised on the sale of the *consumer's* share capital; and
 - (4) "I" is simple interest on the result of A - C - E at the Bank of England base rate prevailing from time to time over the relevant period + 1%/365 for each day between the date of the sale of the *consumer's* share capital and the date of the *redress determination*.
- 10.12 R When calculating the value of "A", "D" and "E" to take into account the net effect of any partial sale of the *consumer's* share capital during the term of the *consumer's* investment:
- (1) deduct the amount of any sale of shares or distribution (including interim or final hardship withdrawals) in respect of the *consumer's* investment at the date that the sale or capital distribution is made; and
 - (2) for each sale or capital distribution, account for:
 - (a) the growth rate from the time of the original investment, or previous sale or capital distribution, until the time of sale or capital distribution;
 - (b) the value of the residual investment after any sale or capital distribution; and
 - (c) the growth rate from the time of sale or capital distribution up to the date of calculation.

- 10.13 R** To submit a redress calculation request, send a completed copy of the template to the *FCA* by email to archcrureview@fca.org.uk or (if the email is encrypted) archcrureviewpgp@fca.org.uk .
- 10.14 G** If the *firm* is to send an encrypted email to the *FCA* it will need to download the public PGP key from the *FCA* website and import the key into its email client software.
- 10.15 G** Following receipt of the redress calculation request the *FCA* will send the firm a summary detailing the redress payable for each *consumer's* investment and the total redress payable to the *consumer* in the redress case.

Investment benchmarks

FCA

The following investment benchmarks apply:

Comparator 1:

this comparator is a return equal to the Bank of England official Bank Rate (the 'base rate').

Comparator 2:

this comparator is a return equal to a 50/50 combination of the APCIMS Conservative Index and the IMA Mixed Investment 20-60% Shares sector. This comparator has a listed equity exposure of 20-60% (IMA) and 32.5% (APCIMS).

Comparator 3:

this comparator is a return equal to a 50/50 combination of the APCIMS Balanced Index and the IMA Mixed Investment 40-85% Shares sector. This comparator has a listed equity exposure of 40-85% (IMA) and 67.5% (APCIMS).

FCA

Further details of the sectors and indices referred to in the *rule* above can be found at the websites of the relevant organisations:

<http://www.apcims.co.uk/private-investor-indices/about-the-indices/>

<http://www.investmentfunds.org.uk/fund-sectors/sector-definitions/>

Risks and features of Arch cru funds

FCA

- 1 The Arch cru funds consist of two open-ended investment companies, the CF Arch cru Diversified Funds and the CF Arch cru Investment Funds, and their respective sub-funds, sold to consumers during the following periods:**
 - Investment funds**
 - Investment Portfolio: July 2006 to March 2009**
 - Specialist Portfolio July 2006 to March 2009**
 - Diversified funds**
 - Balanced Fund September 2007 to March 2009**
 - Global Growth Fund: September 2007 to March 2009**
 - Income Fund: September 2007 to March 2009**
 - Finance Fund: October 2008 to March 2009**
- 2 Dealings in the Arch cru funds were suspended by the *authorised corporate director*, Capita Financial Managers Ltd ("Capita"), on 13 March 2009.**
- 3 The Arch cru funds aimed to achieve their objectives by investing in a broad range of mainstream and non-mainstream assets.**
- 4 The Arch cru funds, through transferable securities, ultimately invested in the following asset classes, in various combinations:**
 - (a) unlisted equity;**
 - (b) unlisted debt instruments;**
 - (c) non-UK investments;**
 - (d) venture capital or project finance investments;**
 - (e) private markets, private equity, private finance;**
 - (f) private and structured finance;**
 - (g) asset-backed lending;**
 - (h) investments in developing countries;**
 - (i) collateralised debt and collateralised cash flow financings;**
 - (j) life settlements; and**

(k) commodities.

5 Information about each Arch cru fund and its sub-funds is set out below.

CF Arch cru Diversified Fund

6 The Diversified Fund was incorporated in June 2002 and originally named "Insinger de Beaufort Manager Selection ICVC".

7 The Diversified Fund was re-named the CF Arch cru Diversified Funds in mid-2007. The firms involved in the diversified fund were:

Authorised corporate director (ACD): Capita

Investment manager: Arch

Depository: HSBC Bank PLC

Marketing and distribution: Cru Investment Management Limited, Arch Financial Products LLP

Income fund

Promotions

8 The Income Fund was promoted to advisers as an investment in the IMA "Cautious Managed" sector and "a strong alternative to cash based investments and bond based investments".

Features

9 The features of the Income Fund as described to advisers are:

- (a) its objective is long-term capital and income growth.
- (b) it offers both net income and net accumulation shares. For income shareholders, net income was to be distributed half-yearly. For net accumulation shareholders, net income was retained and accumulated for the benefit of shareholders and reflected in the price of the shares;
- (c) from October 2007, its aims were to provide returns of cash + 3% per annum from a diversified pool of assets;
- (d) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
- (e) from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
- (f) Transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund.

Risks

- 10 It is the *FCA's* view that an investment in the income fund is likely to be high risk and, as such, investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
 - (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
 - (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
 - (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
 - (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Balanced fund

Promotions

- 11 The balanced fund was promoted to advisers as investment in the IMA "Balanced Managed" sector and:
- (a) may be suitable for investors with a low-level risk appetite;
 - (b) may be a strong alternative to cash based investments and bond based investments.

Features

- 12 The features of the Balanced Fund, as described to advisers, are:
- (a) its objective is long-term capital growth;
 - (b) it offers net accumulation shares;
 - (c) from May 2008, its aims were to provide returns of cash + 4% per annum particularly over the medium term;
 - (d) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
 - (e) it will have a UK overweight portfolio;
 - (f) transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund.

Risks

- 13 It is the *FCA's* view that an investment in the balanced fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:

- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
- (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
- (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Global Growth fund

Promotions

14 The Global Growth Fund was promoted to advisers as an investment in the IMA "Global Growth" sector and:

- (a) may be suitable for investors with a low-level risk appetite;
- (b) to deliver decent absolute returns through a broad exposure to the major asset classes;
- (c) investing in equity and bond funds and also other assets.

Features

15 The features of the Global Growth Fund, as described to advisers, are:

- (a) its objective is long-term capital growth;
- (b) it offers net accumulation shares;
- (c) from May 2008, its aims were to provide returns of 6% per annum more than cash returns;
- (d) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
- (e) from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
- (f) transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund.

Risks

16 It is the *FCA's* view that an investment in the Global Growth Fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:

- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
- (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
- (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Finance Fund

Promotions

17 The Finance Fund was promoted to advisers as an investment in the IMA "Cautious Managed" sector and:

- (a) providing "steady returns, low risk";
- (b) aiming to beat both cash and bond returns;
- (c) as a superior investment to cash deposits and bonds.

Features

18 The features of the finance fund, as described to advisers, are:

- (a) its objective is steady capital appreciation over the medium to long-term through exposure to a diversified portfolio of private finance-related instruments;
- (b) it offers net accumulation shares;
- (c) from November 2008, its aims were to provide returns of cash + 3% per annum;
- (d) from November 2008, the investment category is defined as private finance, including bridging finance and term lending;
- (e) it can invest in a range of assets including:
 - (i) *collective investment schemes* (which invest principally in equities), *transferable securities*, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
- (f) transactions in *derivatives* will only be used for the purposes of hedging and will not affect the risk profile of the fund;
- (g) it will have a UK overweight portfolio.

Risks

- 19 It is the *FCA's* view that an investment in the Finance Fund is likely to be high risk, and investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
 - (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
 - (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
 - (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
 - (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

CF Arch cru investment fund

20 The investment fund was incorporated on 29 June 2006. It has two sub-funds: the investment portfolio and specialist portfolio.

21 The firms involved in the investment fund were:

Authorised corporate director (ACD): Capita Financial Managers Limited

Investment manager: Arch Financial Products LLP

Depository: Bank of New York Mellon Trust and Depository (UK) Ltd

Marketing and distribution: Cru Investment Management Limited, Arch Financial Products LLP

Investment Portfolio

Promotions

22 The Investment Portfolio was promoted to advisers as an investment in the IMA "Cautious Managed" sector and "an excellent replacement for cash based and bond based investments."

Features

23 The features of the Investment Portfolio as described to advisers are:

- (a) its objective is to generate consistent returns to provide wealth preservation and capital appreciation;
- (b) it offers net accumulation and net income shares;
- (c) in March 2007, its aims were to provide consistent returns of LIBOR + 4% with a significant focus on risk management, this was revised to cash + 4% in August 2007;

(d) from March 2007, investment classes are stated as being public market securities and private investments. In September 2007 it is stated that the premise since inception of the fund was that public markets did not represent sufficient future reward for the fund.

Risks

24 It is the *FCA's* view that an investment in the Investment Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:

- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
- (b) exchange rate risk - some of the assets are located overseas, and would therefore be affected by exchange rate movements;
- (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Specialist Portfolio

Promotions

25 The Specialist Portfolio was promoted to advisers as an investment in the IMA "Active Managed" sector and "an excellent replacement for cash based and bond based investments."

Features

26 The features of the Specialist Portfolio as described to advisers are:

- (a) its objective is "to seek capital growth from an aggressively managed portfolio which may take high cash weightings at times when the investment manager lacks confidence in the outlook for equities, bonds and other asset classes. There is a moderate risk to capital";
- (b) it offers net accumulation and net income shares;
- (c) in March 2007, its aims were to provide consistent returns of LIBOR + 6% with a significant focus on risk management; this was revised to cash + 6% in August 2007;
- (d) from March 2007, investment classes are stated as being public market securities and private investments which are leveraged up to 25%. In September 2007, the fund is described as having a low correlation with traditional public investments such as bonds and equities.

Risks

- 27 It is the *FCA's* view that an investment in the Specialist Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general - the risk that the investment may fall in value;
 - (b) exchange rate risk - some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
 - (c) credit risk - the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk - where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
 - (e) liquidity risk - the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
 - (f) valuation risk - assets not traded on a recognised market can be difficult to value accurately.

Appendix 1

Key definitions

1.1 Key definitions

[Note: the following definitions relevant to *CONRED* are extracted from the *Glossary*.]

FCA

<i>CF Arch cru payment scheme</i>	the requirements included in the <i>permissions</i> of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under what was then (but is no longer) section 44 of the <i>Act</i> on 31 August 2011.
<i>consumer</i>	<p>(a) where the <i>personal recommendation</i> was made on or before 31 October 2007, a <i>private customer</i> for the purposes of COB 2 and COB 5, as defined by the version of the <i>Handbook</i> then in force; or</p> <p>(b) where the <i>personal recommendation</i> was made on or after 1 November 2007, a <i>retail client</i> in accordance with COBS 3.4.1 R.</p>
<i>firm</i>	<p>(a) an <i>authorised person</i>; or</p> <p>(b) a <i>person</i> who was an <i>authorised person</i> when the relevant activity took place but has since ceased to be one.</p>
<i>personal recommendation</i>	<p>a recommendation which is <i>advice on investments</i> and:</p> <p>(a) where given on or before 31 October 2007, was given to a specific <i>person</i>; or</p> <p>(b) where given on or after 1 November 2007, was presented as suitable for the <i>person</i> to whom the recommendation was made, or was based on a consideration of the circumstances of that <i>person</i>, other than a recommendation issued exclusively through distribution channels or to the public.</p>

Consumer Redress Schemes sourcebook

Schedule 1 Record keeping requirements

Sch 1.1 G

FCA

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record-keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2 G

FCA

Hand-book reference	Subject of record	Contents of record	When record must be made	Retention period
CONRED 2.10.1R(1)(a)	Arch cru consumer redress scheme	Certificate of posting for each letter sent	When letter sent	Five years
CONRED 2.10.1R(1)(b)	Arch cru consumer redress scheme	Copy of each letter sent	When letter sent	Five years
CONRED 2.10.1R(1)(c)	Arch cru consumer redress scheme	Record of attempts to contact consumer or obtain further information	When attempts made	Five years
CONRED 2.10.1R(1)(d)	Arch cru consumer redress scheme	Completed template for each opted-in scheme case	When template completed	Five years
CONRED 2.10.1R(1)(e)	Arch cru consumer redress scheme	All information on the consumer file and information received from the consumer	When located on consumer file or obtained	Five years

Consumer Redress Schemes sourcebook

Schedule 2 Notification requirements

Sch 2.1 G

FCA

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
CONRED 2.4.9R	Information on the total number of scheme cases; opted-in scheme cases, and investments in Arch cru funds	<p>(1) total number of scheme cases;</p> <p>(2) The number of such investments resulting from the <i>regulated activities</i> for a <i>customer</i> in CONRED 2.1.3R; and the number of such investments falling outside the scheme with an explanation of the reason why, in each case;</p> <p>(3) the total number of opted-in scheme cases.</p>	None: notification required in all cases	Until 29 July 2013
CONRED 2.9.2R	Information on the number of opted-in scheme cases; completed and incomplete templates and the results of such; the total number of redress cases; the total number of <i>redress determinations</i> sent to <i>consumers</i> ; the total number of <i>consumers</i> paid	<p>(1) the total number of opted-in scheme cases;</p> <p>(2) the total number of completed templates;</p> <p>(3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;</p> <p>(4) the total number of redress cases;</p>	None: notification required in all cases	Until 9 December 2013

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
	redress and the amount of such; and the total amount of redress unpaid to date.	<p>(5) the total number of redress determinations sent to <i>consumers</i>;</p> <p>(6) the total number of <i>consumers</i> paid redress to date;</p> <p>(7) the total amount of redress paid to date; and</p> <p>(8) the total amount of redress unpaid to date.</p>		

Consumer Redress Schemes sourcebook

Schedule 3 Fees and other required payments

FCA

There are no provisions for fees in *CONRED*. As noted in *CONRED 2.5.19G*, a fee is payable in any case where the *FCA* exercises its powers under *CONRED 2.5.12R* to take steps instead of a firm, or appoint one or more competent persons to do so. This fee is as specified in the table at *FEES 3.2.7 R*.

Consumer Redress Schemes sourcebook

Schedule 4 Powers exercised

Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *CONRED*:

- Section 138 (General rule-making power)
- Section 149 (Evidential provisions)
- Section 156 (General supplementary powers)
- Section 395(5) (The Authority's procedures)
- Section 404(3) (Consumer redress schemes)
- Section 404A (Rules under s404: supplementary)
- Paragraph 17 (1) (Fees) of Schedule 1 (The Financial Services Authority)

Sch 4.2 G

FCA

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to give the *guidance* in *CONRED*:

- Section 157(1) (Guidance)

Consumer Redress Schemes sourcebook

Schedule 5 Rights of action for damages

Sch 5.1 G

FCA

The table below sets out the *rules* in CONRED contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

FCA

If a "Yes" appears in the column headed "For private person?", the rule may be actionable by a *private person* under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

FCA

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

FCA

Rule	Right of action under section 138D		
	For private person?	Removed?	For other person?
All <i>rules</i> in CONRED with the status letter 'E'	No	No	No
All other <i>rules</i> in CONRED	Yes	No	No

Consumer Redress Schemes sourcebook

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the *FCA* has power to waive all its *rules*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Compensation

Compensation

COMP INTRO [Deleted]

INTRO 1 [Deleted]

COMP INTRO A Introduction 1A

INTRO 1A Foreword

COMP INTRO B Introduction 1B

INTRO 1B Foreword

COMP 1 Introduction and Overview

1.1 Application, Introduction, and Purpose
1.2 The FSCS
1.3 Claimants
1.4 EEA Firms
1.5 Application to Lloyd's

COMP 2 The FSCS

2.1 Application and Purpose
2.2 Duties of the FSCS

COMP 3 The qualifying conditions for compensation

3.1 Application and Purpose
3.2 The qualifying conditions for paying compensation
3.3 Insurance

COMP 4 Eligible claimants

4.1 Application and Purpose
4.2 Who is eligible to benefit from the protection provided by the FSCS?
4.3 Exceptions: Circumstances where a person coming within COMP 4.2.2R may receive compensation

4.4	Exceptions: Relevant general insurance contracts: mesothelioma claims
COMP 5	Protected claims
5.1	Application and Purpose
5.2	What is a protected claim?
5.3	Protected deposits and protected dormant accounts
5.4	Protected contracts of insurance
5.5	Protected investment business
5.6	Protected home finance mediation
5.7	Protected non-investment insurance mediation
COMP 6	Relevant persons in default
6.1	Application and Purpose
6.2	Who is a relevant person?
6.3	When is a relevant person in default?
COMP 7	Assignment or subrogation of rights
7.1	Application
7.2	How does the assignment of rights work?
7.3	Automatic subrogation
7.4	Duty on FSCS to pursue recoveries
7.5	Recoveries: protected deposits
7.6	Recoveries: claims other than for protected deposits
COMP 8	Rejection of application and withdrawal of offer
8.1	Application and Purpose
8.2	Rejection of application for compensation
8.3	Withdrawal of offer of compensation
COMP 9	Time limits on payment and postponing payment
9.1	Application and Purpose
9.2	When must compensation be paid?
COMP 10	Limits on the amount of compensation payable
10.1	Application and Purpose
10.2	Limits on compensation payable

COMP 11	Payment of compensation
11.1	Application and Purpose
11.2	Payment
COMP 12	Calculating compensation
12.1	Application and Purpose
12.2	Quantification: general
12.3	Quantification date
12.4	The compensation calculation
12.5	[deleted]
12.6	Quantification: trustees, operators of pension schemes, persons winding up pension schemes, personal representatives, agents, and joint claims
COMP 13	Funding
13.1	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.2	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.3	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.4	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.5	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.6	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.6A	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.7	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13.8	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
13 Ann 1	[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]
COMP 14	Participation by EEA Firms

14.1	Application and Purpose
14.2	Obtaining top-up cover
14.3	Co-operation between the FSCS and Home State compensation schemes
14.4	Ending top-up cover
14.5	EEA UCITS management companies
COMP 15	Protected deposits: Payments from other schemes
15.1	Payments from other schemes
COMP 16	Disclosure requirements for firms that accept deposits
16.1	Application and purpose
16.2	Informing depositors of limitations to coverage
16.3	UK domestic firms, non-EEA firms and incoming EEA firms
16.4	Compensation information: branches and websites
16 Annex 1R	Content of compensation sticker and poster
COMP 17	Systems and information requirements for firms that accept deposits
17.1	Application and purpose
17.2	Core systems and information requirements
17.3	Single customer view reporting
	Transitional Provisions and Schedules
TP 1	Transitional Provisions
Sch 1	Record-keeping requirements
Sch 2	Notification requirements
Sch 3	Fees and other required payments
Sch 4	Powers Exercised
Sch 5	Rights of action for damages
Sch 6	Rules that can be waived

Chapter INTRO

[Deleted]

INTRO



[Chapter Deleted]

Chapter INTRO A

Introduction 1A

**INTRO** **Foreword**
1A**FCA**

(This Foreword to the Compensation sourcebook does not form part of COMP.)

The *Act* requires the *FCA* to make rules establishing a scheme for compensating consumers in cases where: (i) authorised *firms* are unable, or likely to be unable, to satisfy claims against them; or (ii) persons who have assumed responsibility for liabilities arising from acts or omissions of authorised *firms* ("successors") are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions. 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, and focusing protection on those who need it most, the compensation scheme rules form an important part of the toolkit the *FCA* will use to meet its statutory objectives. This module of the *FCA Handbook* contains the rules and guidance that allow the *Financial Services Compensation Scheme Limited* to pay claims for compensation 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 are of interest to consumers. The rules apply to the *FSCS* and to authorised firms.

FCA

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

FCA**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.

FCA**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.

FCA

Chapter 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. 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 to 7 expand on the general conditions described in Chapter 3.

FCA

Chapter 4 Eligible claimants

This chapter specifies who is eligible to receive compensation provided by the FSCS.

FCA

Chapter 5 What is a protected claim?

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

FCA

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 if the circumstances specified in Chapter 6 are met.

FCA

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.

FCA

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.

FCA

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.

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

This chapter specifies the maximum amount of compensation the FSCS can pay to a claimant.

FCA**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.

FCA**Chapter 12 Calculating compensation**

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

FCA**Chapter 13 Funding**

Chapter 13 relating to the funding of the FSCS has now been deleted. The funding provisions for the FSCS are now contained in FEES 6 instead and allow the FSCS to make levies on authorised firms to fund the operation of the scheme or to pay compensation. FEES 6 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.

FCA**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 INTRO B

Introduction 1B

**INTRO** **Foreword**
1B**PRA**

(This Foreword to the Compensation sourcebook does not form part of COMP.)

The *Act* requires the *PRA* to make rules establishing a scheme for compensating consumers in cases where: (i) authorised *firms* are unable, or likely to be unable, to satisfy claims against them; or (ii) persons who have assumed responsibility for liabilities arising from acts or omissions of authorised *firms* ("successors") are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions. 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 *PRA* will use to meet its statutory objectives. This module of the *PRA 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 are of interest to consumers. The rules apply to the *FSCS* and to authorised firms.

PRA

The Sourcebook is divided into 17 Chapters covering all aspects of the scheme:

PRA**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.

PRA**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.

PRA

Chapter 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 to 7 expand on the general conditions described in Chapter 3.

PRA

Chapter 4 Eligible claimants

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

PRA

Chapter 5 What is a protected claim?

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

PRA

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.

PRA

Chapter 7 Assignment or subrogation 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.

PRA

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.

PRA

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.

PRA**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 a claim is for a deposit, a claim on an insurance policy, or a claim in connection with an investment.

PRA**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.

PRA**Chapter 12 Calculating compensation**

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

PRA**Chapter 13 Funding**

Chapter 13 relating to the funding of the FSCS has now been deleted. The funding provisions for the FSCS are now contained in FEES 6 instead and allow the FSCS to make levies on authorised firms to fund the operation of the scheme, to pay compensation or secure continuity of insurance. FEES 6 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.

PRA**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.

PRA**Chapter 15 Protected deposits: Payments from other schemes**

This chapter provides for the FSCS to have the power to pay compensation on behalf of another compensation scheme or government and to recover the sums paid.

PRA**Chapter 16 Disclosure requirements for firms that accept deposits**

This chapter sets out the format, frequency and method of communication that deposit-taking firms must use in informing eligible customers that their deposits are covered by the FSCS. It also requires deposit-taking firms to inform their customers if their deposits are not covered by the FSCS.

PRA

Chapter 17 Systems and information requirements for firms that accept deposits

This chapter sets out the information required by the FSCS to make deposit compensation payments to eligible depositors. This chapter also sets out the electronic requirements connected to the information contained within each Single Customer View, including the requirement to flag eligible depositor accounts, aggregate accounts held by each eligible depositor to provide a consistent view of each eligible depositor, perform a limit check on each aggregated Single Customer View and enable the electronic submission of the Single Customer View to the FSCS. This chapter also outlines a threshold below which the electronic requirements connected to the Single Customer View are not mandatory.

INTRO

Chapter 1

Introduction and Overview

1.1 Application, Introduction, and Purpose

Application

1.1.1

FCA PRA

G

This chapter is relevant to:

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

1.1.2

FCA PRA

G

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 ■ FEES 6). It also describes how the *FSCS* is to calculate compensation in particular cases (see ■ *COMP* 12).

1.1.3

FCA PRA

G

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* 1.3.3 G.

1.1.4

FCA PRA

G

Firms will be particularly interested in ■ FEES 6 , which deals with levies , ■ *COMP* 16 which deals with disclosure requirements for *firms* that *accept deposits* and ■ *COMP* 17 which deals with systems and information requirements for *firms* that *accept deposits*.

Introduction

1.1.5

FCA PRA

G

The *FSA* established the Financial Services Compensation Scheme Limited, a company limited by guarantee (*FSCS*). The *FSCS* exercises the functions that are conferred on the scheme manager by Part XV of the *Act*, dealing with compensation.

1.1.6

FCA PRA

G

The *appropriate regulator* 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*.

Purpose

- 1.1.7** **FCA** **PRA** **G** 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 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** **FCA** **PRA** **G** ■ COMP 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of ■ COMP 2 to ■ COMP 17 cover who is eligible, the amount of compensation and how it might be paid, disclosure requirements for *firms* that *accept deposits* and systems and information requirements for *firms* that *accept deposits*.
- 1.1.9** **G** [deleted]
- 1.1.9A** **FCA** **G** This sourcebook is one of the means by which the FCA will meet its *statutory objectives* of securing an appropriate degree of protection for *consumers* and protecting and enhancing the integrity of the *UK financial system*.
- 1.1.9B** **PRA** **G** This sourcebook is one of the means by which the PRA will meet its *statutory objectives* of promoting the safety and soundness of *PRA-authorised persons* (by seeking to minimise the adverse effect that the failure of a *PRA-authorised person* could be expected to have on the stability of the *UK financial system*) and contributing to the securing of an appropriate degree of protection for those who are policyholders.
- 1.1.10** **G** [deleted]
- 1.1.10A** **FCA** **G** By making *rules* that allow the FSCS to provide compensation at a level appropriate for the protection of retail *consumers* and *small businesses*, the FCA 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.
- 1.1.10B** **PRA** **G** By making *rules* that allow the FSCS to provide compensation at a level appropriate for the protection of retail *consumers* and *small businesses*, the PRA minimises the adverse effect that the failure of a *PRA-authorised person* could be expected to have on the stability of the *UK financial system* and 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** FCA PRA G 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** G (1) [deleted]
(2) [deleted]
- 1.2.2A** FCA G (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 *FCA*. This is covered in a Memorandum of Understanding which can be found on the *FCA* website <http://www.fca.org.uk>.
- 1.2.2B** PRA G (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 *PRA*. This is covered in a Memorandum of Understanding which can be found on the *PRA* website [www.fsa.gov.uk ? TBC].



1.3 Claimants

1.3.1

FCA PRA

G

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 Portsocken 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

FCA PRA

G

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

FCA PRA

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Table Areas of particular interest to claimants (see *COMP* 1.1.3G).

This Table belongs to ■ *COMP* 1.1.3 G .

Q1 What do I need to do in order to receive compensation?

A1 In order to receive compensation:

- (1) you must be an *eligible claimant*; COMP 4.2
- (2) you must have a *protected claim*; COMP 5.2
- (3) you must be claiming against a *relevant person*; COMP 6.2.1 R
- (4) the *relevant person* must be *in default*. COMP 6.3

In addition, if the *FSCS* requires you to do so, you must assign your legal rights in the claim to the *FSCS*. COMP 7.2

And you must bring your claim to the *FSCS* within a set time (normally within six years of the date on which your claim against the *relevant person* occurred). COMP 8.2.3 R - COMP 8.2.5 R

It is possible, in certain circumstances, for someone else to make a *claim* on your behalf. COMP 3.2.2 R

Q2 How much compensation will I be offered?

A2 This depends on whether your *protected claim* is:

- (1) a *claim* for a *protected deposit* or a *protected dormant account*; or COMP 5.3
- (2) a *claim* under a *protected contract of insurance*; or COMP 5.4
- (3) a *claim* in connection with *protected investment business*; or COMP 5.5
- (4) a *claim* in connection with *protected home finance mediation*; or COMP 5.6

	(5) a <i>claim</i> in connection with <i>protected non-investment insurance mediation</i> .	COMP 5.7
	Different limits apply to different types of <i>claim</i> .	COMP 10.2.3 R
Q3	How will the FSCS calculate the compensation that is offered to me?	
A3	Again, this will depend on whether your <i>protected claim</i> is :	
	(1) a <i>claim</i> for a <i>protected deposit</i> or a <i>protected dormant account</i> ; or	COMP 12.2.1 R, COMP 12.3.1 R and COMP 12.4.1 R
	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	COMP 12.2.1 R, COMP 12.3.2 R and COMP 12.4.9 R
	(3) a <i>claim</i> in connection with <i>protected investment business</i> ; or	COMP 12.2.1 R, COMP 12.3.5 R and COMP 12.4.2 R
	(4) a <i>claim</i> in connection with <i>protected home finance mediation</i> ; or	COMP 12.4.17 R
	(5) a <i>claim</i> in connection with <i>protected non-investment insurance mediation</i> .	COMP 12.4.20 R
	Certain types of protected investment business claim require the <i>FSCS</i> to use a particular method of calculation.	COMP 12.4.5 R
Q4	What happens if an insurance undertaking is insolvent?	
A4	If you have a <i>long-term insurance contract</i> which is not a <i>reinsurance 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, COMP 11.2.3 R and COMP 12.4.11 R
	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 3.3 and COMP 11.2.3 R.
	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 R and COMP 11.2.1 R
	If you have a <i>relevant general insurance contract</i> which is not a <i>reinsurance 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 R and COMP 11.2.3 R
	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 business, 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 R and COMP 11.2.3 R

1.4 EEA Firms

1.4.1

FCA PRA

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Incoming EEA firms which are conducting *regulated activities* in the *United Kingdom* under a *BCD*, *IMD*, *MiFID* or *UCITS Directive* passport are not required to participate in the *compensation scheme* in relation to those *passport activities*. They may apply to obtain the cover of, or 'top-up' into, the *compensation scheme* if there is no cover provided by the *incoming EEA firm's Home State* compensation scheme or if the level or scope of the cover is less than that provided by the *compensation scheme*. This is covered by

■ COMP 14.

1.4.2

FCA PRA

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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

FCA PRA

G

The *Deposit Guarantee Directive* and *Investor Compensation Directives* require the *FSCS* to make arrangements with the relevant *Home State* compensation scheme regarding the payment of compensation (COMP 14.3.1R).

1.5 Application to Lloyd's

1.5.1

PRA

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The PRA has exercised its power under section 316 of the *Act* (Direction by Authority) to direct in ■ COMP 1.5.4 G - ■ COMP 1.5.6 G that certain *core provisions* in the *Act* should apply to *members* of the *Society* of Lloyd's (an "*insurance market direction*"). The effect of the direction is that the PRA may, in relation to *members*, and in respect of *insurance market activities* carried on by them, exercise any of the statutory powers conferred by the provisions which are applied by the direction. Those include the powers in Part 9A to make general *rules* and give *guidance* and also the powers in Part XV to make *rules* for the establishment and operation of a compensation scheme. Accordingly this sourcebook makes provision for the payment of compensation by the FSCS in certain cases arising from *insurance business* carried on by *members*, and for raising levies on the *Society*.

1.5.2

PRA

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Notwithstanding anything to the contrary in this sourcebook, in relation to the *Society*, *members* and *Lloyd's policies* FSCS must act, so far as is reasonably practicable, to ensure that:

- (1) *Eligible claimants* have protection under this sourcebook in relation to *Lloyd's policies* equivalent to that otherwise afforded to *eligible claimants* by the FSCS;
- (2) FSCS does not meet *claims* in relation to *Lloyd's policies* unless the *Central Fund* is unlikely to be able to meet them;
- (3) *Claims* against *members* under the *compensation scheme* which arise from the same loss under the same *Lloyd's policy* must be treated as a single *claim*;
- (4) any recovery resulting from the exercise of any rights assigned to the FSCS in connection with the payment of compensation to an *eligible claimant*, is treated by the FSCS in accordance with ■ COMP 7.2.4 R, and any such recovery which is not paid to the claimant in accordance with that rule, is used for the benefit of FSCS in priority to any interest that the *Society* may have.

1.5.3

PRA

G

The effect of ■ COMP 1.5.2 R(4) and ■ COMP 7.2.4A R, and subject to ■ COMP 7.2.4 R(2), is that any recovery obtained by FSCS is retained by FSCS up to an amount equal to the cost to FSCS of paying compensation. To the extent that the *Society* is entitled to

any part of the recovery (for example by agreement with FSCS) it is only paid out of any excess up to a maximum amount equal to that paid out of the *Central Fund*. Any recovery in excess of the compensation (including payment from the *Central Fund*) received by the policyholder is paid to the claimant in accordance with ■ COMP 7.2.4 R regardless of whether the *Society* receives the full amount paid from the *Central Fund*.

Compensation arrangements for policyholders

1.5.4
PRA

G The *insurance market direction* in ■ COMP 1.5.5 D is intended to protect the interests of *policyholders* and potential *policyholders* by:

- (1) providing for the application of the *compensation scheme* in respect of *contracts of insurance* issued by *members*; and
- (2) providing for the application of such other provisions of the *Act* as will enable the application of the *compensation scheme* to be effective in relation to *insurance market activities* carried on by *members*.

1.5.5
PRA

D With effect from 15 October 2003 the following *core provisions* of the *Act* apply to the carrying on of *insurance market activities* by *members*:

- (1) Part 9A (Rules and guidance) for the purpose of applying the *rules* in COMP and relevant interpretative provisions; and
- (2) Part XV (Financial Services Compensation Scheme).

1.5.6
PRA

G Section 317(2) of the *Act* (The core provisions) provides that references in an applied *core provision* to an *authorised person* are to be read as references to a *person* in the class to which the *insurance market direction* applies. In particular, with effect from 15 October 2003, references to a *relevant person* in Part XV of the *Act* include a *person* who was a *member* at the time the act or omission giving rise to the claim against him took place.

Compensation arrangements for individual members

1.5.7
FCA PRA

G The *compensation scheme* will not compensate *members* or *former members* if *firms* are unable to satisfy claims made in connection with *regulated activities* relating to their participation in Lloyd's *syndicates*. Separate *rules* and *guidance* are therefore needed.

1.5.8
FCA PRA

R The *Society* must maintain *byelaws* establishing appropriate and effective arrangements to compensate *individual members* and *former members* who were *individual members* if *underwriting agents* are unable, or likely to be unable, to satisfy claims by those *members* relating to *regulated activities* carried on in connection with their participation in Lloyd's *syndicates*.

PAGE 9
FCA PRA

R For the purposes of ■ COMP 1.5.8 R "*individual member*" includes a *member* which is a *limited liability partnership* or a *body corporate* whose members consist only of, or of the nominees for, a single natural person or a group of connected persons.

1.5.10

FCA PRA

G

The arrangements referred to in ■ COMP 1.5.8 R:

- (1) will not compensate losses arising only as a result of underwriting or investment risk to which *individual members* or *former members* who were *individual members* are or were exposed by their participation in Lloyd's *syndicates*;
- (2) may be restricted to compensation for losses arising out of fraud, dishonesty or failure to account; and
- (3) should cover all *regulated activities* carried on by *underwriting agents* relating to Lloyd's *syndicate* capacity and *syndicate* membership.

1.5.11

FCA PRA

G

The arrangements referred to in ■ COMP 1.5.8 R should have a governance structure that is operationally independent from the *Society*, but which is nevertheless accountable to the *Society* for the proper administration of the compensation arrangements.

1.5.12

FCA PRA

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A contravention of ■ COMP 1.5.8 R does not give rise to a right of action by a *private person* under section 138D of the *Act* (Actions for damages) and that *rule* is specified under Section 138D(3) of the *Act* as a provision giving rise to no such right of action.

Compensation

Chapter 2

The FSCS



2.1 Application and Purpose

Application

2.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

Purpose

2.1.2

FCA PRA

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

FCA PRA

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.

2.2.2

FCA PRA

G

The FSCS may:

- (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 ■ FEES 6 (Financial Services Compensation Scheme 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

FCA PRA

R

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

Assistance to claimants

2.2.4

FCA PRA

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.

Annual Report

2.2.5

FCA PRA

G

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

2.2.6

FCA PRA

R

Finance and resources

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.

2.2.7

FCA PRA

R

Publication of defaults

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 *appropriate regulator*.

2.2.8

FCA PRA

R

Complaints

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*.

2.2.9

FCA PRA

G

Informing the FSCS

The *appropriate regulator* will inform the *FSCS* if it detects problems in a *firm* that is likely to give rise to the intervention of the *FSCS*.

[Note: article 10(1), part of last sub-paragraph of the *Deposit Guarantee Directive*]

2.2.10

PRA

R

Systems

The *FSCS* must perform regular tests of its systems relating to the payment of compensation with respect to *claims for protected deposits*.

[Note: article 10(1), part of last sub-paragraph of the *Deposit Guarantee Directive*]

Chapter 3

The qualifying conditions for compensation



3.1 Application and Purpose

Application

3.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

3.1.2

FCA PRA

G

It is also relevant to claimants.

3.1.3

FCA PRA

G

Purpose

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*.

3.1.4

FCA PRA

G

The qualifying conditions for paying compensation are set out in greater detail in ■ COMP 4 - ■ COMP 7.



3.2 The qualifying conditions for paying compensation

3.2.1

FCA PRA

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 made an application for compensation (but see ■ COMP 3.2.1A R) ;
- (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 make, or continue to make, arrangements to secure continuity of insurance under ■ COMP 3.3.1 R; or
 - (b) it would not be appropriate to take, or continue to take, measures under ■ COMP 3.3.3 R to safeguard policyholders of an *insurance undertaking* in financial difficulties.

Treating a person as having claimed

3.2.1A

FCA PRA

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

FCA PRA

R

The FSCS may also pay compensation (and any recovery or other amount payable by the FSCS to the claimant) 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.

3.2.3

FCA PRA

G

Examples of the circumstances covered by ■ COMP 3.2.2 R 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 R to ■ COMP 12.6.7 R);
- (3) when the donee of an enduring power of attorney or a lasting power of attorney makes a *claim* on behalf of the donor of the power;
- (4) when 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.

3.2.4

FCA

R

The FSCS may also pay compensation to a *firm*, who makes a claim in connection with *protected non-investment insurance mediation* on behalf of its customers, if the FSCS is satisfied that:

- (1) each *customer* has borne a *shortfall* in *client money* held by the *firm* caused by a *secondary pooling event* arising out of the *failure* of a broker or *settlement agent* which is a *relevant person* in default;
- (2) the *customers* in respect of which compensation is to be paid satisfy the conditions set out in ■ COMP 3.2.2 R (1) ;
- (3) the *customers* do not have a *claim* against the *relevant person* directly, nor a claim against the *firm*, in respect of the same loss;
- (4) the *customers* would have been paid compensation by FSCS if the *customers* had a *claim* for their share of the *shortfall*, and if the *firm* were the *relevant person*; and
- (5) the *firm* has agreed, on such terms as the FSCS thinks fit, to pay, or credit the accounts of, without deduction, each relevant *customer* in (1), that part of the compensation equal to the *customer's* financial loss, subject to the limits in ■ COMP 10.2.



3.3 Insurance

Securing continuity of long term insurance cover

3.3.1
PRA

R

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 6.3.3 R(1)-(5);
- (2) it is reasonably practicable to do so;
- (3) in the opinion of the FSCS at the time it proposes to make the arrangements, it would be beneficial to the generality of *eligible claimants* covered by the proposed arrangements, and, in situations where the cost of securing continuity of insurance might exceed the cost of paying compensation under ■ COMP 3.2, any additional cost is likely to be justified by the benefits ; and
- (4) where the *relevant person* is a *member*, the FSCS is satisfied that the amounts which the *Society* is able to provide from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level of protection which would otherwise be available under this sourcebook.

3.3.2
PRA

R

In order to secure continuity of insurance under ■ COMP 3.3.1 R the FSCS may take such measures as it considers appropriate to:

- (1) secure or facilitate the transfer of the business of the *relevant person* in default which consists of carrying out *long-term insurance contracts* 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.

PAGE
5

3.3.2A
PRA

R

The FSCS's duty under ■ COMP 3.3.1 R and ■ COMP 3.3.3 R in respect of a long term *insurance contract* is limited to ensuring that the claimant will receive at least 90% of any 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*.

3.3.2B

PRA

R

If the FSCS secures less than 100% of any benefit of a claimant under a contract, then FSCS must ensure that any future *premiums* that the claimant is committed to paying under the contract will be reduced by an equivalent amount.

3.3.2C

PRA

R

(1) In any period when the FSCS is seeking to secure continuity of insurance under ■ COMP 3.3.1 R, it must secure that 90% of any benefit under a long term insurance contract which:

(a) falls due, or would have fallen due, to be paid to any *eligible claimant*; or

(b) had already fallen due to be paid to any *eligible claimant* before the beginning of that period and has not yet been paid;

is paid to the *eligible claimant* in question as soon as reasonably practicable after the time when the benefit in question fell due, or would have fallen due, under contract.

(2) Any payment under (1) is made subject to and in accordance with any other terms which apply or would have applied under the contract.

(3) A payment made under (1) is not subject to the FSCS deciding that the cost of the making the payment would be likely to be no more than the cost of paying compensation under ■ COMP 3.2

(4) Where a payment is due under (1), FSCS may:

(a) 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 (1)); or

(b) secure that payments (subject to (1)) are made to or on behalf of any such eligible claimants by the liquidator, administrator or provisional liquidator by giving him an indemnity covering any such payments or any class or description of such payments.

3.3.2D

PRA

R

For the purposes of ■ COMP 3.3.2A R to ■ COMP 3.3.2C R , "benefit" does not include:

(1) any bonus provided for under the contract unless it was declared and vested before the *insurance undertaking* became the subject

of one or more of the proceedings listed in ■ COMP 6.3.3 R (1) to (5); or

- (2) any reduction which the *FSCS* has determined, or any benefit which the *FSCS* has decided to disregard under ■ COMP 12.4.14 R, to the extent that the *FSCS* has decided so to treat it.

3.3.2E
PRA

R

Unless the *FSCS* has decided to treat the liability of the *relevant person* under the contract as reduced or (as the case may be) disregarded under ■ COMP 12.4.14 R, it must not treat as a reason for failing to secure, or for delaying the securing of, payments under ■ COMP 3.3.2C R at the level prescribed in that *rule* the fact that:

- (1) it considers that any benefit referred to in ■ COMP 3.3.2C R is or may be excessive in any respect; or
- (2) it has referred the contract in question to an independent actuary under ■ COMP 12.4.13 R; or
- (3) it considers that it may at some later date decide to treat the liability of the *relevant person* under a contract as reduced or disregarded under ■ COMP 12.4.14 R;

save where the *FSCS* decides to exclude certain benefits to the extent that they arise out of the exercise of any option under the policy and for this purpose the option includes, but is not restricted to, a right to surrender the policy.

3.3.2F
PRA

R

In making arrangements to secure continuity of insurance the *FSCS* must use its reasonable endeavours to seek the most cost-effective arrangements available.

Insurance undertakings in financial difficulties

3.3.3
PRA

R

- (1) The *FSCS* may take such measures as it considers appropriate for the purpose of safeguarding the rights of *eligible claimants* under *protected contracts of insurance* which are:
 - (a) *general insurance contracts* with a *relevant person* which is an *insurance undertaking* in financial difficulties (see ■ COMP 3.3.6 R); or
 - (b) *long-term insurance contracts* with a *relevant person* which is an *insurance undertaking* in financial difficulties (see ■ COMP 3.3.6 R) but in respect of which the *FSCS* is not securing continuity of insurance within ■ COMP 3.3.1 R;

if, in the opinion of the *FSCS* at the time it proposes to make the measures, it would be beneficial to the generality of *eligible claimants* covered by the proposed measures, and, in situations where the cost of taking those measures might exceed the cost of

paying compensation under ■ COMP 3.2, any additional cost is likely to be justified by the benefits .

- (2) Measures under (1) may be taken on such terms (including terms reducing or deferring payment of any liabilities or benefits provided under any *protected contract of insurance*) as the FSCS considers appropriate.

3.3.4
PRA

R The measures contemplated in ■ COMP 3.3.3 R include measures to:

- (1) secure or facilitate the transfer of the *insurance business* of the *relevant person*, or any part of the business, to another *firm*;
- (2) give assistance to the *relevant person* to enable it to continue to effect *contracts of insurance* or *carry out contracts of insurance*; and
- (3) secure the issue of policies by another *firm* to *eligible claimants* in substitution for their existing policies.

3.3.4A
PRA

R If it thinks appropriate, the PRA may in relation to any *insurance undertaking* which is in financial difficulties:

- (1) give the FSCS assistance in determining what measures under ■ COMP 3.3.3 R are practicable or desirable;
- (2) impose constraints on the measures which may be taken by the FSCS under ■ COMP 3.3.3 R ;
- (3) require the FSCS to provide it with information about any measures which it is proposing to take under ■ COMP 3.3.3 R .

3.3.5

R [deleted]

- (1) [deleted]
- (2) [deleted]

3.3.6
PRA

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

- (1) a liquidator, administrator, provisional liquidator, administrative receiver or interim manager is appointed to the *relevant person*, or a receiver is appointed by the court to manage the *relevant person's* affairs; or
- (2) there is a finding by a court of competent jurisdiction that the *relevant person* is unable to pay its debts; or

- (3) a resolution is passed for winding up of the *relevant person*, unless a declaration of solvency has been made in accordance with section 89 of the Insolvency Act 1986; or
- (4) the *PRA* determines that the *relevant person* who is an *insurance undertaking* is likely to be unable to satisfy *protected claims* against it; or
- (5) approval is given to any company voluntary arrangement made by the *relevant person*; or
- (6) the *relevant person* makes a composition or arrangement with any one or more of its creditors providing for the reduction of, or deferral of payment of, the liabilities or benefits provided for under any of the *relevant person's* policies; or
- (7) the *relevant person* is dissolved or struck off from the Register of Companies; or
- (8) a receiver is appointed over particular property of the *relevant person*; or
- (9) any of (1) to (8) or anything equivalent occurs in respect of the *relevant person* in a jurisdiction outside England and Wales; or
- (10) in the case of an *insurance undertaking* which is a *member*, the *FSCS* is satisfied that any of sub-paragraphs (1) to (9) apply to the *member*, and the amounts which the *Society* is able to provide from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level or protection which would otherwise be available under this sourcebook.

Assessing the costs of paying compensation

3.3.7

PRA

R

For the purposes of ■ COMP 3.3.1 R (3) and ■ COMP 3.3.3 R (1), when assessing the cost of paying compensation under ■ COMP 3.2 *FSCS* may have regard to the likely total cost of paying compensation arising out of the default, not just the compensation amounts likely to be payable to particular *eligible claimants* covered by the proposed arrangements for continuity.

Chapter 4

Eligible claimants



4.1 Application and Purpose

Application

4.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

4.1.2

FCA PRA

G

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

4.1.3

FCA PRA

G

Purpose

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

FCA PRA

R

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

- (1) did not come within ■ COMP 4.2.2 R; or
- (2) did come within ■ COMP 4.2.2 R, but satisfied the relevant exception in ■ COMP 4.3 or ■ COMP 4.4.

4.2.2

FCA PRA

R

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 ; a credit union; a trustee of a stakeholder pension scheme (which is not an occupational pension scheme) or personal pension scheme; a firm carrying on the regulated activity of operating, or winding up, a stakeholder pension scheme (which is not an occupational pension scheme) or personal pension scheme; or a small business ; in each case, 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. However, this exclusion does not apply to:*
 - (a) *a trustee of a personal pension scheme or a stakeholder pension scheme (which is not an occupational pension scheme); or*
 - (b) *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 of the relevant person in default.** However, this exclusion does not apply if:
- (a) both of the following apply:
 - (i) the *relevant person in default* is a mutual association which is not a *large mutual association*; and
 - (ii) the *directors* do not receive a salary or other remuneration for services performed by them for the *relevant person in default*, or
 - (b) the *relevant person in default* is a *credit union*.
- (8) [deleted]
- (9) **Bodies corporate in the same group as the relevant person in default unless that body corporate is:**
- (a) a trustee of:
 - (i) a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or a *personal pension scheme* (but in each case if the trustee is a *firm* it will only be an *eligible claimant* if its *claim* arises out of a *regulated activity* for which it does not have a permission);
 - (ii) (if the *claim* is with respect to a *long-term insurance contract*) a *small self-administered scheme* or an *occupational pension scheme*; or
 - (iii) (if the *claim* is not with respect to a *long-term insurance contract*) 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*; or
 - (b) carrying on the *regulated activity* of *operating or winding up a stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*.
- (10) [deleted]
- (11) [deleted]
- (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**

(17) Where the *claim* is in relation to a *protected contract of insurance* or *protected non-investment insurance mediation, body corporate, partnerships, mutual associations and unincorporated associations* which are not *small businesses*.

4.2.3

FCA PRA

R

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

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

Deposits (and balances in dormant accounts)

4.3.1

PRA

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

Long term insurance

4.3.2

FCA PRA

R

A *person* other than one which comes within any of categories (7), (9), (12) or (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

FCA PRA

R

- (1) A *person* falling within categories (1)-(4) of ■ COMP 4.2.2 R 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.

4.3.4

FCA PRA

R

A *partnership* which falls within category 14, or category 17, or both 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

PRA

R 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

4.3.6

FCA PRA

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

- (1) a *claim* under a *protected contract of insurance*; or
- (2) a *claim* in connection with *protected non-investment insurance mediation*.

Protected investment business and protected home finance mediation

4.3.7

FCA

G There are no exceptions to COMP 4.2.2R for *claims* made in connection with *protected investment business* or *protected home finance mediation*.

Eligibility to claim in specified circumstances

4.3.8

FCA PRA

R The FSCS may treat a *person* who comes within category (7) or (12) of ■ COMP 4.2.2 R 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 3.3.2C R 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).

4.4 Exceptions: Relevant general insurance contracts: mesothelioma claims

Application

4.4.1
PRA

R This section applies in respect of any claim for a contribution by a *responsible person* made on or after 25 July 2006 in relation to a *mesothelioma victim's* claim which is determined by agreement in writing, a court or an arbitrator on or after 3 May 2006.

Claims for contribution by responsible persons

4.4.2
PRA

R The *rules* in this sourcebook shall have effect as modified to the extent necessary to enable the *FSCS* to receive, assess, determine and make payments in respect of applications for compensation from *responsible persons* in accordance with article 9A of the *compensation transitionals order* and regulation 3 of the *mesothelioma regulations*.

4.4.3
PRA

R In particular:

- (1) a *responsible person* is eligible to claim in accordance with the provisions of this section;
- (2) the *FSCS* may pay compensation to a *responsible person* where it is satisfied that an *eligible claimant* has a claim under a *protected contract of insurance* issued by an *insurer in default*, which, but for satisfaction of that claim by the *responsible person*, the *FSCS* would have paid;
- (3) a *responsible person* in (2) may claim compensation only if, having satisfied a claim in relation to a *mesothelioma victim*, he could claim contribution from an *insurer in default*;
- (4) the *FSCS* may pay compensation in respect of any contribution for which an *insurer in default* is liable by agreement in writing, or by a determination of a court or arbitrator; and
- (5) in this section, references to an *insurer* include an *authorised insurance company*, and references to *in default* include an *article 9 default*.

4.4.4

PRA

G

The provisions in this section establish a scheme for contribution claims by *responsible persons*. The requirement in ■ COMP 12.2.7 R to take into account payments to the claimant do not therefore require the FSCS, in paying compensation in respect of such a *claim*, to take into account any payments referred to in that *rule* made by a *responsible person* in calculating the claimant's overall *claim*.

Limits to amounts payable for contribution claims

4.4.5

PRA

R

The amount payable by the FSCS in respect of a claim in accordance with the provisions of this section may not exceed the amount that it would have paid if the *mesothelioma victim* (or a *responsible person* other than an *insurer* of such a *person*) to whom the contribution claim relates had made that claim directly against FSCS.

4

Chapter 5

Protected claims



5.1 Application and Purpose

Application

5.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

5.1.2

FCA PRA

G

It is also relevant to claimants.

5.1.3

FCA PRA

G

Purpose

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

5.2 What is a protected claim?

5.2.1

FCA PRA

R

A *protected claim* is:

- (1) a *claim* for a *protected deposit* or a *protected dormant account* (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); or
- (4) a *claim* in connection with *protected home finance mediation* (see ■ COMP 5.6); or
- (5) a *claim* in connection with *protected non-investment insurance mediation* (see ■ COMP 5.7).

5.2.2

G

[deleted]

5.2.3

FCA

R

Notwithstanding ■ COMP 5.2.1 R, where the *relevant person in default*:

- (1) is an *authorised professional firm* that is subject to the rules of the Law Society (England and Wales) or the Law Society of Scotland; and
- (2) with respect to its *regulated activities*, does not participate in the relevant society's compensation scheme:

a *claim* with respect to that *person* is only a *protected claim* if, when the basis for the *claim* arose, that *person* did not participate in the relevant society's compensation scheme with respect to its *regulated activities*.

5.3 Protected deposits and protected dormant accounts

5.3.1

PRA

R

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
 - (aa) subordinated debt issued by a *credit union* meeting the requirements set out at ■ CREDS 5.2.1 R (4); or
 - (b) a secured *deposit*; or
 - (c) a deferred share issued by a *building society*; or
 - (cA) a *deferred share* issued by a *credit union*; or
 - (d) a non-nominative *deposit* (that is, a *deposit* made without disclosing the depositor's identity).

5.3.1A

FCA PRA

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*.

5.3.2

PRA

R

If not a *protected deposit*, a *dormant account* is a *protected dormant account* only if, immediately prior to transfer, it consisted of a *protected*

deposit, the liability for which has been transferred to a *dormant account fund operator*.

5.4 Protected contracts of insurance

5.4.1

PRA

R A *protected contract of insurance* is:

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

Contracts of insurance issued after commencement

5.4.2

PRA

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

- (1) relates to a protected risk or commitment as described in
 - COMP 5.4.3 R;
- (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;
- (3) is a *long-term insurance contract* or a *relevant general insurance contract*;
- (4) is not a *reinsurance contract*; and
- (5) if it is a *contract of insurance* entered into by a *member*, was entered into on or after 1 January 2004

is a *protected contract of insurance*.

5.4.3

PRA

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

- (1) in the case of a *contract of insurance* falling within ■ COMP 5.4.2 R(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 5.4.2 R(2)(b), it is situated in an *EEA State* except that where the *relevant person* is a *firm* which is not a *UK firm* issuing a *contract of insurance* through an establishment in an *EEA State* (other than the *United Kingdom*), the risk or commitment must be situated in the *United Kingdom*;
- (3) in the case of a *contract of insurance* falling within ■ COMP 5.4.2 R(2)(c), it is situated in the *United Kingdom*, the Channel Islands or the Isle of Man.

5.4.4

PRA

R For the purpose of ■ COMP 5.4.3 R and ■ COMP 5.4.5 R(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 who first took out the *contract of insurance* 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 who first took out the *contract of insurance* 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

PRA

R

- (1) If after *commencement*, a *relevant person* is subject to one or more of the proceedings listed in ■ COMP 6.3.3 R or is declared *in default*, then a *contract of insurance* issued by that *relevant person* before *commencement* which is within ■ COMP 5.4.5 R(2) is a *protected contract of insurance*, provided that the *relevant person* was not a *member* at the time the *contract of insurance* was issued, and:
- (a) (unless it comes within (b)) at the earlier of the events in (1) it was a "United Kingdom policy" 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 5.4.4 R).
- (2) The *contracts of insurance* referred to in ■ COMP 5.4.5 R(1) are:
- (a) a *relevant general insurance contract*;
 - (b) a *contract of insurance* within the *credit* class; and
 - (c) a *long-term insurance contract*
- which in each case is not a *reinsurance contract*.

Contracts not evidenced by a policy

5.4.6

PRA

R

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

PRA

R

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 is not a *reinsurance contract* and has not commenced) *premiums* paid to the *insurance undertaking*; or
- (2) proceeds of a *long-term insurance contract* that is not a *reinsurance contract* and that has matured or been surrendered which have not yet been passed to the claimant; or

-
- (3) the unexpired portion of any *premium* in relation to *relevant general insurance contracts* which are not *reinsurance 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

FCA

R

Protected investment business is:

- (1) *designated investment business* carried on by the *relevant person* with , or for the benefit of, the claimant (so long as that claimant has a *claim*), or as agent on the claimant's 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 5.5.2 R is satisfied.

5.5.2

FCA

R

■ COMP 5.5.1 R 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:
 - (a) a *MiFID investment firm* established in another *EEA State*;
or
 - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*);

and the *claim* is an *ICD claim*; or

- (3) both (1) and (2); or
- (4) (a) a *UK branch* of an *EEA UCITS management company*; or

- (b) an establishment of such an *EEA UCITS management company* in its *Home State* from which *cross border services* are being carried on;

and in either case the *management company* is providing *collective portfolio management* services for a *UCITS scheme* but only if the *claim* relates to that activity.

 5.6 Protected home finance mediation

5.6.1

FCA

R

Protected *home finance mediation* is:

- (1) *advising on a home finance transaction; or*
- (2) *arranging (bringing about) a home finance transaction; or*
- (3) *making arrangements with a view to a home finance transaction; or*
- (4) *agreeing to carry on a regulated activity in (1) to (3); or*
- (5) *the activities of a home finance provider which would be arranging but for article 28A of the Regulated Activities Order (Arranging contracts or plans to which the arranger is a party);*

provided that the condition in ■ COMP 5.6.2 R is satisfied.

5.6.2

FCA

R

■ COMP 5.6.1 R applies only if the *protected home finance mediation* was carried on by a *relevant person*:

- (1) *with a customer who was a resident in the United Kingdom; or*
- (2) *from an establishment maintained by the relevant person (or its appointed representative) in the United Kingdom with a customer who was resident elsewhere in the EEA;*

at the time the *protected home finance mediation* was carried on.



5.7 Protected non-investment insurance mediation

5.7.1
FCA

R *Protected non-investment insurance mediation* is an *insurance mediation activity* where the *investment* concerned is a *relevant general insurance contract* or a *pure protection contract* but which is not a *long-term care insurance contract* or a *reinsurance contract*, provided that the conditions in **COMP 5.7.2 R** are satisfied.

5.7.2
FCA

R **COMP 5.7.1 R** only applies if the conditions in (1) and (2) are satisfied:

- (1) the *protected non-investment insurance mediation* was carried on from:
 - (a) an establishment of the *relevant person* in the *United Kingdom*; or
 - (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IMD*; and
- (2) the claimant making the *claim* (or where **COMP 3.2.4 R** applies, the *customer* on behalf of whom a *firm* makes a *claim*) dealt initially, with a view to entering into a *relevant general insurance contract* or a *pure protection contract* but not a *long-term care insurance contract* or a *reinsurance contract*, with an intermediary that was:
 - (a) established in the *United Kingdom*; or
 - (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IMD*.

5.7.3
FCA

G The *FSCS* will not cover a *claim* against an intermediary that meets the criteria of either **COMP 5.7.2 R (2)(a)** or **COMP 5.7.2 R (2)(b)** where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of either **COMP 5.7.2 R (2)(a)** or **COMP 5.7.2 R (2)(b)**.

5.7.4
FCA

G The *FSCS* will not cover a *claim* in respect of an intermediary that is not a *relevant person*, for example a retailer selling extended warranties that are *connected contracts*. However, **COMP 5.7.2 R** has the effect that a *claim* in respect of a *relevant person* further up the chain carrying on *protected non-investment insurance mediation* in accordance with

■ COMP 5.7.2 R (1)(a) may be covered by the FSCS if the claimant dealt initially with a UK intermediary that is not a *relevant person*.

Chapter 6

Relevant persons in default



6.1 Application and Purpose

Application

6.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

6.1.2

FCA PRA

G

It is also relevant to claimants.

Purpose

6.1.3

FCA PRA

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.

6.1.4

FCA PRA

G

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

6.2 Who is a relevant person?

6.2.1

FCA PRA

R

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

FCA PRA

G

- (1) An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary* or a *MiFID investment firm*, and its *appointed representatives* are not *relevant persons* in relation to the *firms's passported activities*, unless it has *top-up cover*. (See definition of "*participant firm*").
- (2) An *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, is a *relevant person* to the extent that it carries on those services.
- (3) An *EEA UCITS management company* carrying on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*, is not a *relevant person* in relation to those activities, unless it has *top-up cover*.

6.3 When is a relevant person in default?

6.3.1

FCA PRA

R

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

6.3.1A

PRA

G

The *PRA* will make the determination in ■ COMP 6.3.1 R (2)(a) in relation to a *DGD claim* as soon as possible and in any event no later than five *working days* after being satisfied that either of the conditions in ■ COMP 6.3.2 R has been met.

[Note: article 1(3)(i) of the *Deposit Guarantee Directive*]

6.3.2

FCA PRA

R

Subject to ■ COMP 3.3.3 R to ■ COMP 3.3.6 R and ■ COMP 6.3.6 R, the *FSCS* (or, where ■ COMP 6.3.1 R (2)(a) applies, the *appropriate regulator*) may determine a *relevant person* to be *in default* when it is, in the opinion of the *FSCS* or the *appropriate regulator*:

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

6.3.3

FCA PRA

R

Subject to ■ COMP 6.3.6 R 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

FCA

R

For *claims* arising in connection with *protected investment business*, *protected home finance mediation* or *protected non-investment insurance mediation*, 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

PRA

R

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.

Members in default and the Central Fund of the Society

6.3.6

PRA

R

The FSCS may not declare a *member* to be in default unless it is satisfied that the amounts which the *Society* may provide from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level of protection which would otherwise be available under this sourcebook.

6.3.7

PRA

G

If a *member* is unable fully to meet *protected claims* against it then in the first instance any shortfall will be avoided by payments by the *Society* from the assets of the *Central Fund*. The FSCS will not consider *claims* for compensation unless it is satisfied that the

amounts which the *Society* will make available from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level of protection which would otherwise be available under this sourcebook. The amount which the *FSCS* may pay in respect of any such *claim* will be limited to the difference between the amount which the claimant will receive, or is expected to receive, from the *member* and the *Society* together and the maximum amount of compensation payable in accordance with *COMP 10* and *COMP 12*.

Claims arising under COMP 3.2.4 R

6.3.8

FCA

R

For the purposes of ■ COMP 6.3 a claim made by a *firm* under ■ COMP 3.2.4 R is to be treated as if it were a *protected claim* against the *relevant person*.

Scheme manager's power to require information

6.3.9

FCA PRA

R

For the purposes of sections 219(1A)(b) and (d) of the *Act* (Scheme manager's power to require information) whether a *relevant person* is unable or likely to be unable to satisfy claims shall be determined by reference to whether it is *in default*.

Chapter 7

Assignment or subrogation of rights



7.1 Application

Application and Purpose

7.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

7.1.2

FCA PRA

G

It is also relevant to claimants.

7.1.3

FCA PRA

G

Purpose

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 How does the assignment of rights work?

7.2.1

FCA PRA

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
- (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

FCA PRA

R

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

FCA PRA

R

- (1) Before taking assignment of rights from the claimant under ■ COMP 7.2.1 R, 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 7.4.2 R).
- (2) [deleted] [*Editor's Note: The text of this sub-paragraph has been moved to new* ■ COMP 7.4.1 R .]
- (3) [deleted]

PAGE 3

7.2.3A

R

[deleted] [*Editor's Note: The text of this provision has been moved to new* ■ COMP 7.5.1 R .]

7.2.3B

R

[deleted] [*Editor's Note: The amended text of this provision has been moved to new* ■ COMP 7.5.2 R .]

7.2.3C **G** [deleted] [Editor's Note: The text of this provision has been moved to new ■ COMP 7.5.3 G .]

7.2.3D **G** [deleted] [Editor's Note: The text of this provision has been moved to new ■ COMP 7.5.4 G .]

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 7.6.1 R.]

7.2.4 **R** [deleted] [Editor's Note: The amended text of this provision has been moved to new ■ COMP 7.6.2 R .]

7.2.4A **R** [deleted] [Editor's Note: The text of this provision has been moved to new ■ COMP 7.6.3 R .]

7.2.5 **R** [deleted] [Editor's Note: The amended text of this provision has been moved to new ■ COMP 7.6.4 R .]

7.2.6 **G** [deleted] [Editor's Note: The text of this provision has been moved to new ■ COMP 7.6.5 G .]

7.2.7 **R** (1) For the purposes of compensation paid under ■ COMP 3.2.4 R, FSCS may require any *firm* (including, but not limited to, the claimant *firm*) to assign to FSCS any rights the *firm* may have to claim against the *relevant person* in relation to the amount of the *shortfall* in *client money* arising out of the *failure* of the *relevant person*.

FCA

(2) A *firm* required by FSCS to assign its rights in (1), must assign those rights as requested, unless it has a reasonable excuse for not doing so.



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*.
FCA PRA

7.3.2 **R** The *FSCS*'s powers in this section may be used:
FCA PRA

- (1) separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this sourcebook;
- (2) [deleted]
- (3) in relation to all or any part of a *protected claim* or class of *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 15.1.14 R)) 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 15.1.14 R).

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.
FCA PRA

Determinations by the FSCS

- 7.3.4 **R**
- (1) Any power conferred on the *FSCS* to make determinations under this section is exercisable in writing.
FCA PRA
 - (2) An instrument by which the *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 claims*, parts of *protected claims* and/or classes of *protected 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 7.4.2 R.
- (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

7.3.5

FCA PRA

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

7.3.6

FCA PRA

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.

7.3.7

FCA PRA

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.

7.3.8

FCA PRA

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Rights and obligations against the relevant persons and third parties

The FSCS may determine that:

- (1) the payment of compensation by the FSCS; and/or
- (2) the following actions by the FSCS (under ■ COMP 15.1.14 R):
 - (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 claim* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* with 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 7.3.9 R).

7

7.3.9

FCA PRA

R

The *FSCS* may alternatively or additionally make the actions in ■ COMP 7.3.8R (1) and ■ (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.

7.3.10

FCA PRA

R

(1) The *FSCS* may determine that:

- (a) if the claimant does not assign or transfer his rights under ■ COMP 7.3.9 R;
- (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 7.3.8 R or ■ COMP 7.3.9 R or ■ COMP 15.1.19 R;

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

7.4.1

FCA PRA

R

If the *FSCS* takes assignment or transfer of rights from the claimant 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.

7.4.2

FCA PRA

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

7.5.1
PRA

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".

7.5.2
PRA

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 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".

7.5.3

PRA

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 ($20\% \times £85,000$).
- (2) In the example above, the amount recovered exceeds the amount of compensation. However, ■ COMP 7.5.1 R 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% ($£24,000 \div £120,000$);
 - (b) the compensation shortfall would be £35,000 ($£120,000 - £85,000$);
 - (c) the FSCS retention sum would be £17,000 ($20\% \times £85,000$);
 - (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 ($80\% \times £85,000$).

7.5.4

PRA

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 12.2.7 R (2).



7.6 Recoveries: claims other than for protected deposits

7.6.1
FCA PRA

R

If the FSCS makes recoveries 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 7.6.2 R part or all of its reasonable costs of recovery and distribution (if any).

7.6.2
FCA PRA

R

Unless compensation was paid under ■ COMP 9.2.3 R or the *claim* was for a *protected deposit*, if a claimant 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 11.2.7 R) received by the claimant in relation to the *protected claim*; or
- (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the FSCS at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see ■ COMP 7.6.4 R).

7.6.3
FCA PRA

R

For the purpose of ■ COMP 7.6.2 R compensation received by *eligible claimants* in relation to *Lloyd's policies* may include payments made from the *Central Fund*.

7.6.4
FCA PRA

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.

7.6.5

FCA PRA

G

As an example of the circumstances which ■ COMP 7.6.4 R is designed to address, take two claimants, A and B.

- (1) Both A and B have a *protected investment business claim* of £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 10.2.3 R). 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 10.2.2 G). 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.

Chapter 8

Rejection of application and withdrawal of offer



8.1 Application and Purpose

Application

8.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

8.1.2

FCA PRA

G

It is also relevant to claimants.

8.1.3

FCA PRA

G

Purpose

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.



8.2 Rejection of application for compensation

8.2.1 **R** 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.

FCA **PRA**

8.2.2 **G** A rejection under **COMP 8.2.1 R** does not mean that the claimant cannot receive compensation. A rejected application may be resubmitted, with the appropriate amendments. An application rejected under **COMP 8.2.3 R** may be resubmitted if **COMP 8.2.5 R** applies.

FCA **PRA**

8.2.3 **R** The *FSCS* must reject an application for compensation if:

FCA **PRA**

- (1) 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:
 - (a) the date on which the *relevant person* is determined to be *in default*; and
 - (b) the date on which the claimant first indicates in writing that he may have a claim against the *relevant person*;
 unless **COMP 8.2.4 R** or **COMP 8.2.4A R** applies; or
- (2) the liability of the *relevant person* to the claimant has been extinguished by the operation of law, unless **COMP 8.2.5 R** applies.

8.2.4 **R** For *claims* made in connection with *protected investment business*, *protected home finance mediation* or *protected non-investment insurance mediation*, the *FSCS* may disregard a defence of limitation where the *FSCS* considers that it would be reasonable to do so.

FCA

8.2.4A **R** For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *FSCS* must disregard a defence of limitation which became available after the scheme was made or imposed.

FCA **PRA**

8.2.5 **R** For claims made in connection with *protected investment business* or *protected non-investment insurance mediation*, if a *relevant person*, incorporated as a *company*, has been dissolved with the result that its

FCA

liability to the claimant has been extinguished by operation of law, the *FSCS* must treat the claim, for the purposes of paying compensation, as if the *relevant person* had not been dissolved.

8.2.6

FCA

G

■ COMP 8.2.5 R means that the *FSCS* will be able to pay compensation in cases where:

- (1) the *company* was declared in default on or after 1 December 2001; and
- (2) at the time the application for compensation is made, the *company* has been dissolved.

8.2.7

FCA

R

The *FSCS* may reject an application for compensation if:

- (1) it relates to an event or transaction which has been reviewed under the provisions of a 'deemed scheme' as defined in the Financial Services and Markets Act 2000 (Transitional Provisions) (Reviews of Pensions Business) Order 2001 (SI 2001/2512); and
- (2) as a result of the review in (1) no redress was payable, or redress was paid, in accordance with the regulatory standards for the review of such events or transactions, and the terms of any scheme order, applicable as at the date of the review.

8.2.8

FCA

G

The purpose of ■ COMP 8.2.7 R is to allow the *FSCS* to reject claims relating to pensions review cases where a review was carried out in accordance with the relevant regulatory standards applicable at the time. 'Deemed schemes' are those review schemes set up before *commencement* (that is, 30 November 2001) but which are treated as schemes for review of past business under the *Act*, namely the pensions review and *FSAVC* review.



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.

FCA **PRA**
- 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 11.2.4 R** or **COMP 11.2.5 R** before doing so.

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

FCA **PRA**
- 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.

FCA **PRA**
- 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.

FCA **PRA**

Chapter 9

Time limits on payment and postponing payment



9.1 Application and Purpose

Application

9.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

9.1.2

FCA PRA

G

It is also relevant to claimants.

9.1.3

FCA PRA

G

Purpose

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.

9.2 When must compensation be paid?

9.2.1

PRA

R

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

(1) it is satisfied that the conditions in ■ COMP 3.2.1 R have been met; and

(2) it has calculated the amount of compensation due to the claimant;

and in any event within :

(3) in relation to a *claim* for a *protected deposit*, 20 *working days* of that date unless the PRA has granted the FSCS an extension, in which case payment must be made no later than 30 *working days* from that date; or

[Note: article 10(1), first and second sub-paragraphs of the *Deposit Guarantee Directive*]

(4) in relation to any other *claim*, three months of that date, unless the PRA has granted the FSCS an extension, in which case payment must be made no later than six months from that date.

9.2.1A

PRA

R

The time limits in ■ COMP 9.2.1 R (3) include the collection and transmission of accurate data on depositors and *protected deposits* which is necessary for the verification of claims.

9.2.1B

FCA

R

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

(1) it is satisfied that the conditions in ■ COMP 3.2.1 R have been met; and

(2) it has calculated the amount of compensation due to the claimant;

and in any event within:

- (3) three months of that date, unless the *FCA* has granted the *FSCS* an extension, in which case payment must be made no later than six months from that date.

9.2.2

FCA PRA

R

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* relevant *principal*; or
- (2) in the case of a *claim* relating to *protected investment business* which is not an *ICD claim* or a claim relating to *protected home finance mediation*, 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 12.4.5 R or ■ COMP 12.4.7 R and it is not practicable for payment to be made within the usual time limits laid out in ■ COMP 9.2.1 R; 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; or
- (6) the *claim* relates solely to a bonus provided for under a *protected contract of insurance* the value of which the *FSCS* considers to be of such uncertainty that immediate payment of compensation in respect of that bonus would not be prudent and a court has yet to attribute a value to such bonus.

9.2.3

FCA PRA

R

Notwithstanding ■ COMP 9.2.2 R(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



10.1 Application and Purpose

Application

10.1.1

R

This chapter applies to the *FSCS*.

FCA PRA

10.1.2

G

It is also relevant to claimants.

FCA PRA

Purpose

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.

FCA PRA

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.

PRA



10.2 Limits on compensation payable

10.2.1

FCA PRA

R

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

10.2.2

FCA PRA

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* in connection with *protected investment business* of £40,000 , and a further such *claim* of £20,000 , will only receive the £50,000 limit.

10.2.3

FCA PRA

R

Table Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected deposit or protected dormant account</i>	100% of <i>claim</i>	£85,000 [Note: articles 7(1a) and 7(1b) of the <i>Deposit Guarantee Directive</i>]
<i>Protected contract of insurance when the contract is a relevant general insurance contract</i>	(1) Where the <i>claim</i> is in respect of a <i>liability subject to compulsory insurance</i> : 100% of <i>claim</i> (2) In all other cases: 90% of <i>claim</i>	Unlimited
<i>Protected contract of insurance when the contract is a long-term insurance contract</i>	At least 90% of <i>claim</i> as determined in accordance with <i>COMP 12</i>	Unlimited

Type of claim	Level of cover	Maximum payment
<i>Protected investment business</i>	100% of claim	£50,000
<i>Protected home finance mediation</i>	100% of claim	£50,000
<i>Protected non-investment insurance mediation</i>	(1) where the <i>claim</i> is in respect of a liability subject to compulsory insurance: 100% of claim	Unlimited
	(2) In all other cases: 90% of claim	Unlimited

10.2.4
FCA PRA

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

10.2.5
FCA PRA

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

Continuity of insurance cover

10.2.6 R

[deleted]

10.2.7 R

[deleted]

Claims against more than one member in respect of a single protected contract of insurance to be treated as a single claim

10.2.8 R
PRA

In applying the financial limits in ■ COMP 10.2, and in calculating the amount of a *claim* in respect of a *protected contract of insurance* arising from the default of one or more *members*, a *policyholder* is to be treated as having a single *claim* for the aggregate of all such amounts as may be payable on the *claim* in respect of the *protected contract of insurance*.

Claims arising under COMP 3.2.4 R

10.2.9 R
FCA

If a *firm* has a claim under ■ COMP 3.2.4 R, the FSCS must treat the share of the *shortfall* of each *customer* as if it were a *protected claim* for the purposes of calculating the limits of compensation payable, within ■ COMP 10.2, in relation to that *customer*.

10.2.10 R

[deleted]

10.2.11 R

[deleted]

Claims in respect of protected dormant accounts

10.2.12

PRA

R

In the event of a default of a *dormant account fund operator*, the FSCS will pay compensation in accordance with ■ COMP 10.2.3 R on the basis of the *authorisation* of the *relevant person* who was liable for the *protected deposit* immediately prior to the liability being transferred to the *dormant account fund operator* (and the relevant *authorisation* of the *relevant person* is the *authorisation* that was in place at the time that the liability was transferred).

10.2.13

PRA

G

The purpose of ■ COMP 10.2.12 R is to ensure that *persons* whose *balances* in a *dormant account* have been transferred to a *dormant account fund operator* do not have their entitlement to compensation reduced in the event of default of the *dormant account fund operator*. So, a *person* who held *dormant accounts* with two different *relevant persons*, the liability for which were then automatically transferred to the *dormant account fund operator*, could still be compensated by the FSCS on the basis of accounts with two separate *relevant persons* (and so could receive up to 2 x £50,000 in compensation) rather than just one account with one *relevant person*.

Chapter 11

Payment of compensation



11.1 Application and Purpose

Application

11.1.1

R

This chapter applies to the *FSCS*.

FCA **PRA**

11.1.2

G

It is also relevant to claimants.

FCA **PRA**

Purpose

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.

FCA **PRA**



11.2 Payment

To whom must payment be made?

11.2.1

R

[deleted]

11.2.1A

FCA

R

If the *FSCS* determines that compensation is payable (or any recovery or other amount is payable by the *FSCS* to the claimant), it must pay it to the claimant, or as directed by the claimant, unless **COMP 11.2.2 R** applies.

11.2.1B

PRA

R

If the *FSCS* determines that compensation is payable (or any recovery or other amount is payable by the *FSCS* to the claimant), 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 3.3.1 R** to **COMP 3.3.2E R** or the *FSCS* is taking measures it considers appropriate to safeguard *eligible claimants* under **COMP 3.3.3 R** to **COMP 3.3.6 R**; or
- (2) **COMP 11.2.3 R** applies.

11.2.2

FCA

R

Where a claimant has a *protected claim* arising out of the circumstances described in **COMP 12.4.5 R**, the *FSCS* must pay any compensation (and any recovery or other amount payable by the *FSCS* to the claimant) 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

PRA

R

Where an *eligible claimant* has a *claim* under a *protected contract of insurance* against a *relevant person* that is in administration, provisional liquidation, or liquidation, the *FSCS* may:

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

Form and method of paying compensation

11.2.3A

FCA PRA

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);
- (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 3.2.2 R (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.

Reduced or interim payments

11.2.4

FCA PRA

R

If the FSCS is satisfied that in principle compensation is payable in connection with any *protected claim*, but considers that immediate

payment in full would not be prudent because of uncertainty as to the amount of the claimant's overall *claim*, it may decide to pay an appropriate lesser sum in final settlement, or to make payment on account.

11.2.5

FCA PRA

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*.

11.2.6

FCA PRA

R

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

11.2.6A

FCA PRA

G

■ COMP 11.2.4 R applies to compensation payable in connection with any *protected claim*. It would, for example, apply to the situation where the *FSCS* considers it imprudent to make a payment in full because of uncertainty as to the value a court might attribute to a bonus provided for under a *long-term insurance contract*. In such circumstances the *FSCS* may make payment of compensation on account to the policyholder in respect of benefits under the contract the value of which is not uncertain.

Paying interest on compensation

11.2.7

FCA PRA

R

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

11.2.8

FCA PRA

R

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

Paying full compensation in return for rights

11.2.9

FCA PRA

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

FCA PRA

G

Factors that the *FSCS* may take into account when considering taking the approach in ■ COMP 11.2.9R (1) and ■ COMP 11.2.9R (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.

Chapter 12

Calculating compensation



12.1 Application and Purpose

Application

12.1.1

FCA PRA

R

This chapter applies to the *FSCS*.

12.1.2

FCA PRA

G

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).

12.1.3

FCA PRA

G

Purpose

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

PRA

R

The amount of compensation payable to the claimant in respect of:

- (1) any type of *protected claim* other than a claim for a *protected deposit* is the amount of his overall net *claim* against the *relevant person* at the *quantification date*; and
- (2) any *claim* for a *protected deposit* is the amount of his overall gross *claim* against the *relevant person* at the *quantification date*;

and any reference in *COMP* to overall *claim* means "overall net *claim*" or "overall gross *claim*" as appropriate.

12.2.1A

FCA

R

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* and any reference in *COMP* to overall *claim* means "overall net *claim*" or "overall gross *claim*" as appropriate.

12.2.2

FCA PRA

R

■ COMP 12.2.1 R 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

FCA PRA

G

Where a liability of a *relevant person* to an *eligible claimant* could fall within more than one type of *protected claim* (see ■ COMP 5.2.1 R), for example a *claim* in connection with *money* held by an *MiFID 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

FCA PRA

R

A claimant's overall *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 10.2.2 G).

12.2.5

FCA PRA

G

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

12.2.6

FCA PRA

G

In calculating the claimant's overall *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.

Overall gross claim

12.2.6A

PRA

R

A claimant's overall gross *claim* is the sum of the claims for *protected deposits* that he has against a *relevant person in default*.

Payments to the claimant

12.2.7

PRA

R

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 *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.

12.2.7A

FCA

R

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 in calculating the claimant's overall *claim*.

Time for calculation of compensation due to the claimant

12.2.8

FCA PRA

R

The FSCS must calculate the amount of compensation due to the claimant as soon as reasonably possible after it is satisfied that the conditions in ■ COMP 3.2.1 R have been met.

Amounts paid by the Society

12.2.9

PRA

R

In calculating the claimant's overall *claim* the FSCS must take into account the amounts paid by, or expected to be paid by, the *Society* from the *Central Fund* to meet a *member's* liabilities under the contract which gives rise to the *claim*.

12.2.10

FCA PRA

R

Settlement of claims

- (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 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 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* that are excluded by Article 2 of the *Deposit Guarantee Directive* or by Article 3 of the *Investor Compensation Directive*.

12.3 Quantification date

Protected deposits

12.3.1

PRA

R

- (1) For a *protected deposit claim*, the *quantification date* is the date the *relevant person* is determined to be *in default*.
- (2) If a *protected deposit* was not due and payable on or before the date that the *relevant person* was determined to be *in default*, the FSCS must nevertheless treat that date as the *quantification date* for that *deposit* and pay compensation comprising:
 - (a) the principal sum on the basis that it is due and payable on that date;
 - (b) interest or premium accrued to that date; and
 - (c) unaccrued interest or premium attributable to or arising in respect of the period to that date.

Protected contracts of insurance

12.3.2

PRA

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

PRA

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

PRA

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 5.4.7 R (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.

Protected investment business

12.3.5

FCA

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

FCA

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*.

Protected home finance mediation

12.3.7

FCA

R

For a *claim* made in connection with *protected home finance mediation*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of determination of default.

Protected non-investment insurance mediation

12.3.8

FCA

R

For a *claim* made in connection with *protected non-investment insurance mediation*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of determination of default.

12.4 The compensation calculation

12.4.1

PRA

R

Protected deposit with incoming EEA firm

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*.

12.4.2

FCA

R

Protected investment business: general

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

FCA

R

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

FCA

R

If the claimant has an *ICD claim* against an *incoming EEA firm* which is an *MiFID investment firm* (including a *credit institution* which is an *MiFID 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

FCA

R

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

FCA

R

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 *FCA* (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 *FCA* 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

FCA

R

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 *FCA* 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

FCA

R 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

PRA

R 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

PRA

R 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

PRA

R Unless the *FSCS* is making arrangements to secure continuity of insurance cover under *COMP 3.3.1R* to *COMP 3.3.2ER*, 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.

12.4.11A

R

PRA

- (1) Unless the *FSCS* is seeking to secure continuity of cover for a *relevant person* under ■ COMP 3.3.1 R to ■ COMP 3.3.2E R, it must:
 - (a) pay compensation in accordance with ■ COMP 12.4.11 R for any benefit provided for under a protected *long-term insurance contract* which has fallen due or would have fallen due under the contract to be paid to any *eligible claimant* and has not already been paid; and
 - (b) do as soon as reasonably practicable after the time when the benefit in question fell due or would have fallen due under the contract (but subject to and in accordance with any other terms which apply or would have applied under the contract).
- (2) If the *FSCS* decides to treat the liability of the *relevant person* under the contract as reduced or (as the case may be) disregarded under ■ COMP 12.4.14 R then, for the purposes of (1), the value of benefits falling due after the date of that decision must be treated as reduced or disregarded to that extent.
- (3) Unless it has decided to treat the liability of the *relevant person* under the contract as reduced or disregarded under ■ COMP 12.4.14 R the *FSCS* must not treat as a reason for failing to pay, or for delaying the payment of compensation in accordance with (1), the fact that:
 - (a) it considers that any benefit referred to in (1) is or may be excessive in any respect; or
 - (b) it has referred the contract in question to an independent actuary under ■ COMP 12.4.13 R ; or
 - (c) it considers that it may at some later date decide to treat the liability of the *relevant person* under a contract as reduced or (as the case may be) disregarded under ■ COMP 12.4.14 R;

save where the *FSCS* decides to exclude certain benefits to the extent that they arise out of the exercise of any option under the policy (for this purpose option includes, but is not restricted to, a right to surrender the policy).

12.4.12

R

PRA

The *FSCS* must not treat any bonus provided for under a *long-term insurance contract* as part of the claimant's claim except to the extent that:

- (1) a value has been attributed to it by a court in accordance with the Insurers (Winding Up) Rules 2001 or any equivalent rules or legislative provision in force from time to time; or

12.4.13

PRA

R

(2) the *FSCS* considers that a court would be likely to attribute a value to the bonus if it were to apply the method set out in those rules.

(1) If the *FSCS* is:

(a) seeking to secure continuity of cover under ■ COMP 3.3.1 R to ■ COMP 3.3.2E R or to calculate the liability owed to an *eligible claimant* under ■ COMP 12.4.11 R; and

(b) considers that the benefits provided for under a protected *long-term insurance contract* are or may be excessive in any respect,

it must refer the contract to an actuary who is independent of the *eligible claimant* and of the *relevant person*.

(2) In this *rule* and in ■ COMP 12.4.14 R, a benefit is only "excessive" if, at the time when the *relevant person* decided to confer or to offer to confer that benefit, no reasonable and prudent *insurer* in the position of the *relevant person* would have so decided given the *premiums* payable and other contractual terms.

12.4.14

PRA

R

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 for the purpose of any payment made after the date of that decision.

12.4.15

PRA

R

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.

Protected non-investment insurance mediation

12.4.16

FCA PRA

R

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.

Protected home finance mediation

12.4.17

FCA

R

The *FSCS* may pay compensation for any *claim* made in connection with *protected home finance mediation* only to the extent that the *FSCS* considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

12.4.18 **R** The FSCS must not pay compensation for any *claim* in connection with *protected home finance mediation* to the extent that it relates or depends on:

FCA

- (1) a failure of investment performance to match a guarantee given or representation made; or
- (2) the mere fluctuation in the value of property

12.4.19 **R** The FSCS may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with *protected home finance mediation* if it is satisfied that there is evidence of contributory negligence by the claimant and it would be inequitable for FSCS not to take account of that fact.

FCA

Protected non-investment insurance mediation

12.4.20 **R** The FSCS may pay compensation for any *claim* made in connection with *protected non-investment insurance mediation* only to the extent that the FSCS considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

FCA

12.4.21 **R** The FSCS may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with *protected non-investment insurance mediation* if it is satisfied that:

FCA

- (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 contracts with other relevant persons; and

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

Consumer redress schemes

12.4.22 **R** For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the FSCS must apply the scheme in:

FCA PRA

- (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 compensation due (where the FSCS may rely on calculations made by the FCA or other competent persons acting on the FCA's behalf or authorised to make them under the scheme);

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



12.5 [deleted]

12.5.1 **R** [deleted]

12.5.2 **R** [deleted]



12.6 Quantification: trustees, operators of pension schemes, persons winding up pension schemes, personal representatives, agents, and joint claims

Trustees, operators of pension schemes and persons winding up pension schemes

12.6.1

FCA PRA

R

If a claimant's *claim* includes a *claim* as :

- (1) trustee; or
- (2) the *operator* of, or the *person* carrying on the *regulated activity of winding up, a stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*,

the *FSCS* must treat him in respect of that *claim* as if his *claim* was the *claim* of a different *person*.

12.6.2

FCA PRA

R

If a claimant has a *claim* as a bare trustee or *nominee company* for one or more beneficiaries, the *FSCS* must treat the beneficiary or beneficiaries as having the *claim*, and not the claimant.

12.6.2A

FCA PRA

R

If a claimant has a *claim* :

- (1) as the 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* or the trustee or *operator* of, or the *person* carrying on the *regulated activity of winding up, a stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme* ;
- (2) for one or more members of a pension scheme (or, where relevant, the beneficiary of any member) whose benefits are *money-purchase benefits* ;

the *FSCS* must treat the member or members (or, where relevant, the beneficiary of any member) as having the *claim*, and not the claimant.

12.6.3

FCA PRA

R

If any group of *persons* has a *claim* as:

- (1) trustees; or

(2) *operators* of, or as *persons* carrying on the *regulated activity of winding up, a stakeholder pension scheme* (which is not an *occupational pension scheme*) or a *personal pension scheme*, (or any combination thereof), the FSCS must treat them as a single and continuing *person* distinct from the *persons* who may from time to time be the trustees, *operators* or *persons* winding up the relevant pension scheme.

12.6.4
FCA PRA

R Where the same *person* has a *claim* as:

- (1) trustee for different trusts or for different *stakeholder pension schemes* (which are not *occupational pension schemes*) or *personal pension schemes*; or
- (2) the *operator* of, or the *person* carrying on the *regulated activity of winding up, different stakeholder pension schemes* (which are not *occupational pension schemes*) or *personal pension schemes*,

COMP applies as if the *claims* relating to each of these trusts or schemes were claims of different *persons*.

12.6.5
FCA PRA

R 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 *claim* to eliminate the part of the claim which, in the FSCS's view, is a claim for those beneficiaries.

12.6.6
FCA PRA

R Where any of the provisions of ■ COMP 12.6.1 R to ■ COMP 12.6.5 R apply, the FSCS must try to ensure that any amount paid to:

- (1) the trustee; or
- (2) the *operator* of, or the *person* carrying on the *regulated activity of winding up, a stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*

is, in each case:

- (3) for the benefit of members or beneficiaries who would be *eligible claimants* if they had a *claim* themselves; and
- (4) no more than the amount of the loss suffered by those members or beneficiaries.

12.6.7
PRA

R 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

FCA PRA

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*.

Agents

12.6.9

FCA PRA

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.

Joint claims

12.6.10

FCA PRA

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.

Foreign law

12.6.11

FCA PRA

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 :

- (1) persons entitled as personal representatives, trustees, bare trustees or agents, *operators* of *pension schemes* or *persons* carrying on the *regulated activity* of winding up *pension schemes*; or
- (2) *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.

Claims arising under ■ COMP 3.2.4 R

12.6.12

FCA

R

If a *firm* has a claim under ■ COMP 3.2.4 R, the *FSCS* must treat each *customer* of the *firm* as having the claim for the purposes of calculating compensation within ■ COMP 12 .

Chapter 13

Funding

Section 13.1 : [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]



13.1

[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]

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13.1.2

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13.1.2A

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13.2

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Section 13.3 : [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]



13.3

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13.4 [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]

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Section 13.5 : [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]



13.5 [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]

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13.6

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Section 13.6A : [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]



13.6A [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]

13.6A.1

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Section 13.7 : [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]



13.7

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13.7.1

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Section 13.8 : [deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in FEES 6 (Financial Services Compensation Scheme Funding)]



13.8

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- 13.8.5 [Deleted]
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Chapter 14

Participation by EEA Firms

14.1 Application and Purpose

Application

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

FCA **PRA**

14.1.2 **R** This chapter also applies to an *incoming EEA firm* which is a *credit institution*, or an *MiFID investment firm* (or both), an *IMD insurance intermediary* or a *UCITS management company*.

FCA **PRA**

Purpose

14.1.3 **G** This chapter provides supplementary *rules and guidance* for an *incoming EEA firm* which is a *credit institution*, an *IMD insurance intermediary*, an *MiFID investment firm* or *UCITS management company*. It reflects in part the implementation of the *Deposit Guarantee Directive*, *Investors Compensation Directive*, and *UCITS 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*, the *Investors Compensation Directive* or the *UCITS Directive*.

FCA **PRA**

14.1.4 **G** (1) An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary* or an *MiFID 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-passported 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.

FCA **PRA**

(2) Whether an *incoming EEA firm* which is an *EEA UCITS management company* is a *participant firm* in relation to its *passport activities* depends on the nature of its activities. In so far as it carries on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*, it is not a *participant firm* unless it "tops-up" into the *compensation scheme*. To the extent that such a *firm* provides *collective portfolio management services* for a *UCITS scheme* from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, it is a *participant firm* in respect of those services.

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

FCA **PRA**

the scope of the *Deposit Guarantee Directive*, *Investors Compensation Directive* and article 6(3) of the *UCITS Directive*, whether that business is carried on from a *UK branch* or on a *cross border services* basis. (For an *EEA UCITS management company*, this is only for certain *passport activities*, namely *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*.) *Insurance mediation activity* relating to *non-investment insurance contracts* is not within the scope of the *Deposit Guarantee Directive* and the *Investor Compensation Directive*.

14.1.6

FCA PRA

G

If there is no cover provided by the *incoming EEA firm's Home State* or the scope and/or level of cover is less than that provided by the *compensation scheme*, this chapter enables the *firm* to obtain cover or '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 the additional amount in accordance with the provisions in this sourcebook (■ COMP 12.4.1 R and ■ COMP 12.4.4 R).

14.2 Obtaining top-up cover

14.2.1

FCA PRA

R

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

FCA PRA

R

An election under ■ COMP 14.2.1 R takes effect on the date when the FSCS notifies the *incoming EEA firm* that its election has been accepted.

14.2.3

FCA PRA

G

A notice under ■ COMP 14.2.1 R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

- (1) the *firm* must be:
 - (a) a *credit institution*; or
 - (b) an *IMD insurance intermediary*; or
 - (c) a *MiFID investment firm*; or
 - (d) a *UCITS management company* that carries on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*;
- (2) the *firm* must have established a *branch* in the *United Kingdom* in the exercise of an *EEA right*; and
- (3) the scope and/or 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

FCA PRA

R

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

FCA PRA

R

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

FCA PRA

R

Where an *incoming EEA firm* obtains *top-up cover* under ■ COMP 14.2, the FSCS must co-operate with that *firm's Home State* compensation scheme. In particular, 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 *Deposit Guarantee Directive* or Annex II of the *Investor Compensation Directive*, as appropriate.

[Note: article 4(5) of the *Deposit Guarantee Directive*]

14.4 Ending top-up cover

FSCS terminating top-up cover

- 14.4.1** **R** The FSCS must terminate an *incoming EEA firm's top-up cover* where it has ascertained that the conditions in **COMP 14.2.1 R** are no longer satisfied.
FCA PRA
- 14.4.2** **R** 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 *appropriate regulator* and the *incoming EEA firm's Home State regulator*.
FCA PRA
- 14.4.3** **R** In cases where **COMP 14.4.2 R** 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.
FCA PRA
- 14.4.4** **R** [deleted]
- 14.4.4A** **R** If the *incoming EEA firm* fails to meet its obligations for a period of twelve months following the notice, the FSCS may, subject to obtaining the consent of the *incoming EEA firm's Home State regulator*, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for *protected investment business* transacted before that termination.
FCA
- 14.4.4B** **R** If the *incoming EEA firm* fails to meet its obligations for a period of twelve months following the notice, the FSCS may, subject to obtaining the consent of the *incoming EEA firm's Home State regulator*, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for *protected deposits* which are not repayable on demand without penalty.
PRA
- Resignation of an EEA firm from the compensation scheme**
- 14.4.5** **R** An *incoming EEA firm* which has *top-up cover* may terminate that *top-up cover* by giving six months' notice in writing to the FSCS.
FCA PRA

Notice to customers and the FSCS

14.4.6

FCA PRA

R

When an incoming *EEA firm's top-up cover* comes to an end under

■ COMP 14.4.1 R, ■ COMP 14.4.4 R or ■ COMP 14.4.5 R, it must :

- (1) 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 (or, if appropriate, of the more limited protection provided) by the *compensation scheme*, and of the level of compensation which is then available to them; and
- (2) within two months, notify the *FSCS* whether it has done so.

14.4.7

FCA PRA

R

If an *incoming EEA firm* fails to comply with ■ COMP 14.4.6 R (1), the *FSCS* must inform the *firm's Home State regulator* of that fact.

14.4.8

FCA PRA

R

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.



14.5 EEA UCITS management companies

14.5.1

FCA

R

Where an *EEA UCITS management company* provides *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, the *FSCS* must allocate the *firm* to the *class* or *classes* which seems to the *FSCS* to be most appropriate, taking into account the nature of the *firm's* business activities.

Chapter 15

Protected deposits: Payments from other schemes



15.1 Payments from other schemes

Purpose

- 15.1.1 **G** [deleted]
- 15.1.2 **G** This section provides 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. This section operates separately from Part XVA of the Act.
- PRA**

Application

- 15.1.3 **R** This section applies in respect of compensation for *claims for protected deposits*.
- PRA**
- 15.1.4 **R** [deleted]
- (1) [deleted]
- (2) [deleted]
- 15.1.5 **R** [deleted] [*Editor's Note: The amended text of this provision has been moved to new* ■ COMP 7.3.2 R.]
- 15.1.6 **R** [deleted] [*Editor's Note: The text of this provision has been moved to new* ■ COMP 7.3.3 R.]
- 15.1.7 **R** [deleted] [*Editor's Note: The amended text of this provision has been moved to new* ■ COMP 7.3.4 R.]
- 15.1.8 **R** [deleted] [*Editor's Note: The text of this provision has been moved to new* ■ COMP 7.3.5 R.]
- 15.1.9 **R** [deleted] [*Editor's Note: The text of this provision has been moved to new* ■ COMP 7.3.6 R.]
- 15.1.10 **R** [deleted] [*Editor's Note: The text of this provision has been moved to new* ■ COMP 7.3.7 R.]

15.1.11 **R** [deleted]

15.1.12 **R** [deleted]

(1) [deleted]

(2) [deleted]

(a) [deleted]

(b) [deleted]

15.1.13 **R** [deleted] [*Editor's Note: The text of this provision has been moved to new*
■ COMP 11.2.3A R.]

**Payment of compensation to which claimant is entitled from another scheme
etc**

15.1.14 **R** If the *FSCS* is satisfied that:

PRA

(1) a claimant is or is likely at some future date to become entitled to receive a payment of compensation in respect of his actual, contingent or future rights against a *relevant person in default*:

(a) under a scheme which is maintained by an *EEA State* or any other state or *person* comparable to the *compensation scheme* (in this section, a "Non-UK Scheme"); and/or

(b) as a result of a guarantee given or arrangements made by the Government of the *United Kingdom*, an *EEA State*, any other government or any other authority (in this section, an "Other Funder"); and

(2) the *FSCS* has received prior funding in respect of, or is satisfied that it will be able to recover, the amount of that payment from the Non-UK Scheme or Other Funder;

the *FSCS* may, irrespective of whether or not the *relevant person* is in default under the laws or regulations of any other *EEA State* or any other state or law-country:

(3) make a payment in respect of all or part of that compensation (whether or not yet due or payable) from the Non-UK Scheme or Other Funder, with or without the Non-UK Scheme or Other Funder's prior agreement;

(4) make a payment on account of, or advance to the claimant, the whole or part of the amount in (3) on such terms as the *FSCS* considers appropriate;

(5) (having been satisfied as to the total amount to be paid or advanced to the claimant) ascertain the proportion of any such payment or

advance attributable to the Non-UK Scheme or Other Funder at any time, whether before or after making the payment or advance;

- (6) (to the extent that prior funding has not been provided by the Non-UK Scheme or Other Funder) recover from the Non-UK Scheme or Other Funder the whole or any part of the amount of compensation paid or monies paid on account or advanced in respect of potential compensation which is or is likely to be payable to a claimant by the Non-UK Scheme or Other Funder, in accordance with ■ COMP 15.1.17 R to ■ COMP 15.1.20 R; and/or
- (7) take such other steps in connection with such payment or advance by the FSCS or to facilitate the payment of compensation that is due or may become due from the Non-UK Scheme or Other Funder as the FSCS considers appropriate;

and references to payment of compensation, payment on account or advance to the claimant include taking such action for the claimant's benefit or on the claimant's behalf.

15.1.15

PRA

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In determining the proportion of any such payment or advance attributable to the FSCS, a Non-UK Scheme or Other Funder, the FSCS may use any methodology or approach it considers appropriate if (and to the extent that) it considers that the cost of ascertaining the proportion by reference to each claimant would exceed or be disproportionate to the benefit of doing so.

15.1.16

PRA

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 7.5.1 R 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 7.3.8 R.*]

15.1.18

R

[deleted] [*Editor's Note: The text of this provision has been moved to new ■ COMP 7.3.9 R.*]

15.1.19

PRA

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The FSCS may determine in accordance with ■ COMP 7.3.4 R that the making of an advance by the FSCS to the claimant (under ■ COMP 15.1.14 R (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 7.3.8 R (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 7.3.10 R.]
- 15.1.21 **R** [deleted] [*Editor's Note: The amended text of this provision has been*
moved to new ■ COMP 12.2.10 R.]

Chapter 16

Disclosure requirements for firms that accept deposits



16.1 Application and purpose

16.1.1
PRA

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This chapter applies to:

- (1) *a UK domestic firm that accepts deposits;*
- (2) *a non-EEA firm that accepts deposits in the United Kingdom;*
and
- (3) *an incoming EEA firm that accepts deposits through a UK branch.*

16.1.2
PRA

G

The purpose of this chapter is to set out the information about compensation that these *firms* must disclose, how frequently that information should be disclosed and the methods of communication which should be used.



16.2 Informing depositors of limitations to coverage

16.2.1

PRA

R

- (1) If a *protected deposit* is not protected by the *compensation scheme*, the *firm* must inform the depositor accordingly.
- (2) A *firm* must make the information required by (1) available in a readily comprehensible manner.

[Note: article 9(1) of the *Deposit Guarantee Directive*]

16.2.2

PRA

R

When providing the information required by ■ COMP 16.2.1 R , a *firm* must use the communication channels it normally uses when communicating with its depositors.



16.3 UK domestic firms, non-EEA firms and incoming EEA firms

UK domestic firms and non-EEA firms

16.3.1
PRA

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 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 or call the FSCS on [insert FSCS phone number]. Please note *only* compensation related queries should be directed to the FSCS."

16.3.2
PRA

G

A *UK domestic firm* that discloses the information required to be disclosed by ■ COMP 16.3.1 R to *persons* that hold *protected deposits* through an overseas *branch* may do so in the local language.

16.3.3

PRA

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Incoming EEA firms that accept deposits through UK branches

An *incoming EEA firm* that *accepts deposits* through a *UK branch* must disclose the following information to any *deposit* holder with that *branch* who is or is likely to be eligible to claim for compensation from the *firm's Home State* compensation scheme.

"Important information about compensation arrangements

We are part of [insert name of *firm*] which is based in [insert name of *Home State*]. Most depositors are covered by [insert name of *Home State* compensation scheme] which is also based in [insert name of *Home State*].

This means that if our bank is unable to meet its financial obligations, our eligible UK depositors would be entitled to claim up to £ [insert *Home State* compensation scheme maximum payment for *deposits*] from the [insert name of *Home State* compensation scheme]. [State any significant conditions that compensation is subject to e.g. if paid on a per account or per depositor basis, and if set-off applies].

For further information about the [insert name of *Home State* compensation scheme] (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 / contact your branch or refer to [insert contact details of the *Home State* compensation scheme]."

16.3.4

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[deleted]

Incoming EEA firms: conversion of home state compensation scheme limit to sterling

16.3.5

PRA

G

When an *incoming EEA firm* inserts the *Home State* compensation scheme maximum payment for *deposits* in the disclosure required by this section, that amount should be converted into pounds sterling and the exchange rate noted in a footnote. The exchange rate used should be updated regularly.

Frequency of communication

16.3.6

PRA

R

- (1) A *firm* must provide the information required to be disclosed by this section on at least a 6 monthly basis.
- (2) If a *firm* normally communicates with a *protected deposit* holder or a *deposit* holder protected by the *incoming EEA firm's Home State* compensation scheme less frequently than every 6 months (1) does not apply and the *firm* must provide the information required to be disclosed by this section on at least an annual basis.

PAGE
5

16.3.7

PRA

G

The *PRA* considers monthly, quarterly or 6 monthly account statements to be a means of communication for these purposes.

16.3.8
PRA

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Method of communication

- (1) If the recipient receives paper statements, the information required to be disclosed by this section must be prominently displayed in the relevant paper statement.
- (2) If the recipient uses internet banking, the information required to be disclosed by this section must be communicated by electronic means in a way that brings it to the attention of the recipient.
- (3) If the recipient does not receive paper statements or use internet banking the information required to be disclosed by this section must be communicated in a way that brings it to the attention of the recipient.

16.3.9
PRA

G

The PRA considers that if information required to be disclosed by this section is communicated by letter/leaflet sent through the post, email or a pop up box on the *firm's* internet website the requirement to communicate in a way that brings the information to the attention of the recipient will have been satisfied.

16.3.10
PRA

R

Trading name disclosure

Where a *firm* operates under more than one trading name, the *firm* must, in any communication required by this section to a *deposit* holder who is or is likely to be eligible to claim for compensation from the *compensation scheme* or other *Home State* compensation scheme and generally in its *UK branches* and on its website, prominently disclose the trading names under which it operates and explain the impact this has on any *deposit* holder's entitlement to compensation from the *compensation scheme* and any relevant *Home State* or *Host State* compensation scheme.

16.3.11
PRA

G

Further disclosure

A *firm* should ensure that all communications to consumers about compensation for *protected deposits* and *deposits* protected by an *incoming EEA firm's Home State* compensation scheme are clear, fair and not misleading.

16.3.12
PRA

G

A *firm* should also consider its obligations under the Credit Institutions (Protection of Depositors) Regulations 1995.



16.4 Compensation information: branches and websites

Application

16.4.1

PRA

R

- (1) This section applies to:
 - (a) a *UK domestic firm* in relation to each *branch* in the *EEA* at which it *accepts deposits*;
 - (b) an *EEA firm* or a *non-EEA firm* in relation to each *branch* in the *UK* at which it *accepts deposits*;
- (2) In this section, references to "compensation sticker" and "compensation poster" are references to the relevant sticker and poster set out in ■ COMP 16 Annex 1 R.
- (3) In this section, references to "compensation leaflet" are:
 - (a) in the case of a *UK domestic firm*, references to the *FSCS's* standard leaflet with respect to its protection of *deposits*;
 - (b) in the case of an *EEA firm*, references to a leaflet with respect to the protection of *deposits* by the compensation scheme of its *Home State* where such a leaflet is provided electronically and in English by the relevant scheme or, where a leaflet is not available, a link to the *Home State* scheme's website.

Branches

16.4.2

PRA

R

A *firm* that *accepts deposits* under a single brand or trading name must prominently display the compensation sticker and compensation poster in each *branch* in the following ways:

- (1) displaying the compensation sticker or compensation poster in the *branch* window; and
- (2) displaying:
 - (a) the compensation sticker at each cashier window or desk; and
 - (b) the compensation poster inside the *branch*.

16.4.3
PRA

R

A *firm* that *accepts deposits* under multiple brands or trading names must prominently display the compensation sticker and compensation poster in each *branch* in the following ways:

- (1) displaying the compensation poster in the *branch* window; and
- (2) displaying:
 - (a) the compensation sticker at each cashier window or desk; and
 - (b) the compensation poster insider the *branch*.

16.4.4
PRA

R

Where the physical design of the *branch* means that it is not possible to comply with any of the requirements of **COMP 16.4.2 R** and **COMP 16.4.3 R**, a *firm* must display the compensation sticker or the compensation poster in an alternative place in the *branch* that has equal prominence.

Websites

16.4.5
PRA

R

A *firm* that *accepts deposits* under a single brand or trading name must, in a way that best brings the information to depositors' attention:

- (1) display prominently (in electronic form) the compensation sticker; and
- (2) provide from the sticker an electronic link to the compensation leaflet.

16.4.6
PRA

R

A *firm* that *accepts deposits* under multiple brands or trading names must, in a way that best brings the information to depositors' attention:

- (1) display prominently (in electronic form) the compensation poster; and
- (2) provide from the poster an electronic link to the compensation leaflet.

16.4.7
PRA

G

The *PRA* considers that if information required to be disclosed under **COMP 16.4.5 R** and **COMP 16.4.6 R** is displayed prominently on the front page of the *firm's* website or a pop-up box upon logging on to the website, the requirement to communicate in a way that best brings the information to depositors' attention will have been satisfied.

16.4.8
PRA

G

The *PRA* considers that a *UK domestic firm* will comply with **COMP 16.4.2 R**, **COMP 16.4.3 R**, **COMP 16.4.4 R**, **COMP 16.4.5 R** or **COMP 16.4.6 R** if it displays the relevant compensation sticker and/or compensation poster produced by the *FSCS* in accordance with the requirements of those *rules*.

Request for further information

16.4.9

PRA

R

A *firm* must immediately provide the compensation leaflet to any *person* that requests further information about deposit protection.

Language

16.4.10

PRA

R

A *UK domestic firm* that accepts *protected deposits* through an overseas *branch* may provide the information required by this section in the local language (which may be either the compensation sticker, poster or leaflet in that language or the *firm's* own translation of that sticker, poster or leaflet).

Content of compensation sticker and poster

PRA

1 The compensation stickers must contain the following statements only:

UK domestic firms and non-EEA firms

- (1) "Your eligible deposits with [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk ."

As an alternative, for *credit unions* that *accept deposits* under a single brand or trading name:

"Your eligible deposits are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk "

Incoming EEA firms

- (2) "Your eligible deposits with [insert name of firm] are protected up to a total of 100,000 euro by [insert name of compensation scheme] the [insert home state of compensation scheme] deposit protection scheme and are not protected by the UK Financial Services Compensation Scheme. Any deposits you hold above the 100,000 euro limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme]."

2 The compensation posters must contain the following statements only:

UK domestic firms and non-EEA firms

(1) Firms that *accept deposits* under a single brand or trading name

"Your eligible deposits with [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk"

As an alternative, for *credit unions* that *accept deposits* under a single brand or trading name:

"Your eligible deposits are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk"

(2) Firms that *accept deposits* under multiple brands or trading names

"Your eligible deposits with [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. This limit is applied to the total of any deposits you have with the following: [insert names of brands as appropriate]. Any total deposits you hold above the £85,000 limit between these brands are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk"

Incoming EEA firms

(3) *Incoming EEA firms* that *accept deposits* under a single brand or trading name

"Your eligible deposits with [insert name of firm] are protected up to a total of 100,000 euro by [insert name of compensation scheme] the [insert home state of compensation scheme] deposit protection scheme and are not protected by the UK Financial Services Compensation Scheme. Any deposits you hold above the 100,000 euro limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme]."

(4) *Incoming EEA firms* that *accept deposits* under multiple brands or trading names

"Your eligible deposits with [insert name of firm] are protected up to a total of 100,000 euro by [insert name of compensation scheme] the [insert home state of compensation scheme] deposit protection scheme and are not protected by the UK Financial Services Compensation Scheme. This limit is applied to the total of any deposits you have with the following: [insert names of brands as appropriate]. Any total deposits above the 100,000 euro limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme]."

- 3 Each of the statements in 1 and 2 must appear as written with the first and second statements on separate lines. The second statement must appear in smaller font.**

Chapter 17

Systems and information requirements for firms that accept deposits

17.1 Application and purpose

17.1.1

PRA

R

(1) This chapter applies to:

- (a) a *UK domestic firm that accepts deposits*;
- (b) a *non-EEA firm that accepts deposits in the United Kingdom*; and
- (c) an *incoming EEA firm that accepts deposits through a UK branch and has obtained top-up cover*.

(2) Notwithstanding (1), this chapter does not apply to a *firm which does not conduct business that could give rise to a claim for a protected deposit by an eligible claimant and has no reasonable likelihood of doing so*.

17.1.2

PRA

G

The purpose of this chapter is to set out the core systems and information requirements these *firms* must have in place to facilitate a fast compensation payout to *eligible claimants* holding *protected deposits* with them.

17.2 Core systems and information requirements

17.2.1

PRA

R

(1) A *firm* must be able to identify which accounts are held by *eligible claimants* and which accounts (including client accounts and trust accounts) are held on behalf of beneficiaries who are or who may be *eligible claimants*.

(2) The information required by (1) must be electronically stored.

17.2.2

PRA

R

Where eligibility of a customer to bring a *claim* for compensation from the *compensation scheme* is likely to change from time to time, a *firm* must at least annually take reasonable steps to check whether or not the customer is eligible.

17.2.3

PRA

R

(1) A *firm* must be able to provide to the *FSCS* a *single customer view* for each *eligible claimant*, except to the extent that the *eligible claimant* is the beneficiary of an account held on his behalf by another *person* or if the account is not active, within 72 hours of a request by the *FSCS*.

(2) An account is not active if it:

(a) is a dormant account as defined in the Dormant Bank and Building Society Accounts Act 2008; or

(b) is an account for which the *firm* has received formal notice of a legal dispute or competing claims to the proceeds of the account; or

(c) appears on the 'Consolidated list of financial sanctions targets in the United Kingdom' that is maintained by HM Treasury.

(3) A *firm* must be able to provide the information required by (1) by electronic transmission and in a format which is readily transferable to and compatible with the *FSCS*'s system.

17.2.4

PRA

R

A *firm* must ensure that each *single customer view* contains all the information set out in ■ COMP 17.2.8 R .

17.2.5
PRA

R A *firm* must ensure that in relation to accounts which are held by *eligible claimants*, the system which produces the *single customer view* must:

- (1) be capable of automatically identifying the amount of compensation payable to each *eligible claimant*; and
- (2) include a check facility which allows the *firm* to identify if any portion of an *eligible claimant's deposit* is over the maximum payment for a *protected deposit* set out in ■ COMP 10.2.3 R.

17.2.6
PRA

R A *firm* must take reasonable steps to ensure the accuracy of the data it holds in order to satisfy the requirements of this section.

17.2.7
PRA

R (1) If a *firm* operates less than 5,000 accounts held by *eligible claimants*, it may elect that the *electronic SCV rules* do not apply.

(1A) An election within (1) can be revoked.

(1B) A *firm* must give the *PRA* notice of an election under (1) or a revocation under (1A).

(1C) An election within (1) or a revocation within (1A) does not take effect until the *firm* has notified the *PRA* in writing of the election or revocation.

(2) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive years as at 31 December of each year, the *firm* must immediately give the *PRA* notice of that event.

(3) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive accounts years as at 31 December of each year, the *electronic SCV rules* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.

(4) If a *firm* operates 5,000 or more accounts held by *eligible claimants* on 31 December 2009 the *electronic SCV rules* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.

Table - Minimum information firms must include in each single customer view

17.2.8
PRA

R This table belongs to ■ COMP 17.2.4 R

Field identifier	Field descriptor
Customer details	

Field identifier	Field descriptor
Single customer view record number	Unique customer identifier
Title	Title [if applicable and where held by the <i>firm</i>]
Customer 1st Forename	1st Forename [if applicable]
Customer 2nd Forename	2nd Forename [if applicable and where held by the <i>firm</i>]
Customer 3rd Forename	3rd Forename [if applicable and where held by the <i>firm</i>]
Customer Surname [or company name or name of account holder]	Surname [or company name or name of account holder]
Previous Name	Any former name of account holder [where held by the <i>firm</i>]
National Insurance number	National Insurance number, where held by the <i>firm</i>
Contact details	
EITHER Format A	
Single customer view record number	Unique customer identifier
House number	House number/Premise name
Street	Street
Locality	Locality [where held by the <i>firm</i>]
County	County [where held by the <i>firm</i>]
Postcode	Postcode [where used by a country]
Country	Country [for countries outside the <i>UK</i>]
OR Format B	
Single customer view record number	Unique customer identifier
ADDRESS LINE 1	As required
ADDRESS LINE 2	As required
ADDRESS LINE 3	As required
ADDRESS LINE 4	As required
ADDRESS LINE 5	As required
ADDRESS LINE 6	As required
Postcode	Postcode [where used by a country]
Country	Country [for countries outside the <i>UK</i>]
Details of account(s)	

Field identifier	Field descriptor
Single customer view record number	Unique customer identifier
Account title	Surname, first name, any other initials or middle name identifier or company name or name of account holder
Account number	Unique number for this account
Product type	Type of product or service - instant access/term
Account holder indicator	This field applies to joint or multiple accounts. It must identify whether the customer is the primary account holder or secondary account holder (or other such status).
Account status code	Active accounts only to be included
Account balance	At end of business on date of request from <i>FSCS</i>
Aggregate balance	
Single customer view record number	Unique customer identifier
Aggregate balance across all accounts	At end of business on date of request from <i>FSCS</i>
Compensatable amount	At end of business on date of request from <i>FSCS</i> which shows the amount to be compensated subject to the limit check that must be performed by the <i>firm</i> pursuant to COMP 17.2.5 R (this could be lower than the aggregate balance across all accounts if this exceeds the maximum payment for a <i>protected deposit</i> set out in COMP 10.2.3 R).

17.2.9
PRA

R

Where an *eligible claimant* holds more than one account, the section of the *single customer view* which sets out "Details of account(s)" must be replicated for each account held.

17.2.10
PRA

G

The amount(s) inserted into each *single customer view* as the account balance(s) and aggregate balances across all accounts should be the total of principal plus any interest or premium attributable up to the *quantification date*.

17.3 Single customer view reporting

SCV implementation report and SCV report

17.3.1
PRA

R

A firm must provide the PRA with an SCV implementation report and an SCV report within three months of receiving permission to accept deposits or, in the case of an incoming EEA firm, obtaining top-up cover.

17.3.2
PRA

R

A firm must provide the PRA with an SCV implementation report and an SCV report within three months of a material change in the firm's SCV system.

17.3.3
PRA

G

The PRA considers that a material change would include any changes that have a material impact on the firm's SCV system. For example, there is likely to be a material change in a firm's SCV system upon a merger or upon the acquisition of a deposit book, or the introduction of a new IT system that relates to the firm's SCV system.

17.3.4
PRA

R

A firm must provide the PRA with an SCV report every four years (starting from 31 December 2010 or the date of receiving permission to accept deposits or, in the case of an incoming EEA firm, the date of obtaining top-up cover, whichever is later).

17.3.5
PRA

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The PRA may request an SCV report at any time as part of its ongoing supervision of the firm.

17.3.6
PRA

R

- (1) An SCV implementation report provided by a firm subject to the electronic SCV rules must contain a description of the following:
 - (a) the firm's SCV system and how it has been implemented;
 - (b) how the firm proposes to transfer to the FSCS a single customer view for each eligible claimant including specifying the transfer method and format;
 - (c) the testing undertaken with respect to the firm's SCV system;
 - (d) the number of single customer views in the firm's SCV system;
 - (e) the firm's plan for the ongoing maintenance of the firm's SCV system;

- (f) how the *firm's* board of directors will ensure that they remain satisfied that the *firm's* SCV system continues to satisfy the PRA's SCV requirements;
- (g) how the check facility required by ■ COMP 17.2.5 R (2) is applied; and
- (h) any other factors relevant to the design of the *firm's* SCV system or to an assessment of whether the *firm's* SCV system satisfies the PRA's SCV requirements.

(2) An SCV implementation report provided by a *firm* not subject to the *electronic* SCV rules must contain the following:

- (a) a statement confirming that the information required by ■ COMP 17.2.3 R (1) is available and can be provided to the FSCS within 72 hours of a request by the FSCS;
- (b) a description of how the information required by ■ COMP 17.2.3 R (1) is held by the *firm*; and
- (c) a description of how the *firm* proposes to transfer to the FSCS the information required by ■ COMP 17.2.3 R (1) .

17.3.7
PRA

R

A description of a *firm's* SCV system and how it has been implemented must include an explanation of any code or keys used internally by the *firm* so that the FSCS can easily identify which accounts are held by *eligible claimants* and which accounts are held on behalf of beneficiaries who are or may be *eligible claimants*.

17.3.8
PRA

G

- (1) For the purposes of ■ COMP 17.3.6 R (2)(b) , an example of a description of how the information required by ■ COMP 17.2.3 R (2)(b) is held by the *firm* is a statement advising that the information is held on paper, electronically or a mix of the two whichever is applicable.
- (2) For the purposes of ■ COMP 17.3.6 R (2)(c) , an example of a description of how the *firm* proposes to transfer to the FSCS the information required by ■ COMP 17.2.3 R (1) is a statement advising that the transfer will be via paper or electronic process whichever is applicable.

17.3.9
PRA

R

(1) An SCV report provided by a *firm* subject to the *electronic* SCV rules must contain:

- (a) a statement signed on behalf of the relevant *firm's* board of directors confirming that the *firm's* SCV system satisfies the PRA's SCV requirements;
- (b) the date when the *firm's* SCV system last produced a *single customer view* for each of the *firm's* customers that are *eligible claimants*;

- (c) the date when the *firm's SCV system* last produced sample *single customer views* and the sample size;
 - (d) the number of *single customer views* in the *firm's SCV system*;
 - (e) a statement of whether the *firm's SCV* has been reviewed by external auditors, and if so stating the findings of that review; and
 - (f) a statement of whether there has been a material change to the *firm's SCV system* since the date of the *firm's* previous *SCV report*.
- (2) An *SCV report* provided by a *firm* not subject to the *electronic SCV rules* must contain:
- (a) a statement signed on behalf of the relevant *firm's* board of directors confirming that the *firm's SCV system* satisfies the *PRA's* *SCV* requirements;
 - (b) the number of *single customer views* in the *firm's SCV system*; and
 - (c) the number of accounts operated by the *firm* held by *eligible claimants*.

FSCS sign off

17.3.10

PRA

R

A *firm* subject to the *electronic SCV rules* must provide the *FSCS* with a representative sample of 10% of its *single customer views* or 10,000 of its *single customer views* (whichever is the smaller number) within:

- (1) three *months* of receiving *permission to accept deposits* or, in the case of an *incoming EEA firm*, obtaining *top-up cover*; and
- (2) three *months* of a material change in the *firm's SCV system*.

17.3.11

PRA

G

A representative sample should include all types of account held with the *firm* by all types of *eligible claimant* and where the *firm* operates under more than one trading name the sample should include all types of account held with the *firm* by all types of *eligible claimant* for each trading name.

17.3.12

PRA

R

The *FSCS* must advise the *PRA* whether the information provided by a *firm's SCV system* is capable of being submitted to the *FSCS* and whether it is compatible with the *FSCS's* systems, within six *months* of receiving the information required by ■ COMP 17.3.10 R.

Compensation

COMP TP 1 Transitional Provisions

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 in-to force
1 [PRA]	COMP 5	R	<i>Protected claims</i>	Indefinitely	<i>Commencement</i>
			<p>(1) 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)</p>		
			<p>(2) A claim must be treated as a claim in relation to a protected contract of insurance under COMP 5.4.5 R if the conditions in article 9A or 10(1)(a)-(d) of the compensation transitionals order are satisfied.</p>		
			<p>(3) A claim in connection with protected investment business includes a claim in respect of a pending application.</p>		
			<p>(4) Where the claim is in respect of an article 9 default or a pending application, the FSCS must apply the rules of the relevant for-</p>		

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming in-to force

mer scheme, as they applied to the default before commencement, unless (2) applies.

(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.

(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
			<p>(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).</p>		
2	COMP 13.5 and COMP 13.6	R	Expired		
3	COMP 13.4.6 and COMP 13.6.7R	R R	Expired		
4	COMP 13.5.8 R	R R	Expired		
5	COMP 6.2.1 R	R		Indefinitely	Commencement
[PRA]			<p>In relation to a claim or potential claim referred to in (1) or (2), a relevant person is also any credit union which:</p> <p>(1) becomes unable, or is likely to become unable, to satisfy claims against it which relate to deposits which were accepted before 2 July 2002; or</p> <p>(2) (a) has ceased to have Part 4A permission by virtue of article 3(4) of the Financial Services and Markets Act 2000 (Permission and Applica-</p>		

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming in-to force

tions) (Credit Unions etc.) Order 2002 (SI 2002/704) (failure to comply with a direction to re-apply for Part 4A permission); and

(b) thereafter, becomes unable, or is likely to become unable, to satisfy *claims* against it which relate to *deposits* which were accepted on or after 2 July 2002 but before the date on which it ceased to have *Part 4A permission*.

6 COMP 6.2.1 R G In consequence of transitional provision 5R, compensation can be provided:
[PRA]

(a) in respect of a credit union which is unable, or likely to become unable, to satisfy *claims for protected deposits* accepted before 2 July 2002; and

(b) where a credit union has ceased to hold a *Part 4A permission* (because of failure to comply with a direction to re-apply for the *Part 4A permission*), for *protected deposits* accepted on or after 2 July 2002 but before the date at which it ceased to have the *Part 4A permission*.

7 COMP 6.2.1 R G In consequence of transitional provision 5R(1), a credit union becomes
[PRA]

(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
a relevant person in respect of deposits accepted before 2 July 2002.					
8 [PRA]	Amendments introduced by the Compensation Sourcebook (Amendment No.2) Instrument 2003.	R	Provisions and definitions arising out of (2) only apply to defaults, or circumstances giving rise to arrangements made under COMP 3.3.1 R or to measures taken under COMP or to measures taken under COMP 3.3.3 R, occurring after the date in (6)	Indefinitely	1 December 2003
9	COMP 13.6.8 R	R	Expired		
10	COMP 5.7.1 R, COMP 13.4.7 R and COMP 13.6.9 R	R	Rules not in effect.	31 October 2004 to 13 January 2005	31 October 2004
11	FEES 6.3.1 R, FEES 6.3.22 R, FEES 6.4.8 R, FEES 6.4.6 R, FEES 6.5.1 R and FEES 6.5.6 R	R	With regard to <i>contribution group A.18</i> Mortgage lenders, advisers and arrangers, the <i>management expenses levy</i> and <i>compensation costs levy</i> for 2005/2006 may also take account of expenditure in the period 31 October 2004 to 31 March 2005.	31 October 2004 to 31 March 2006	31 October 2004
12	FEES 6.5.7 R(4), FEES 6.3.22 R, FEES 6.4.6 R, FEES 6.4.8 R, FEES 6.5.1 R, and FEES 6.5.6 R	R	With regard to <i>contribution group A.19</i> General insurance mediation, the <i>management expenses levy</i> and <i>compensation costs levy</i> for 2005/2006 may also take account of expenditure in the period 14 January 2005 to 31 March 2005.	14 January 2005 to 31 March 2006	31 October 2004
13	FEES 6.5.7 R(4), FEES 6.5.10 R, and FEES 6.5.13 R(2)	R	For the period 31 October 2004 to 31 March 2006 the tariff base will be the annual income (relating to the relevant <i>contribution group</i>) reported in accordance with note 3 to AUTH 4 Annex 2 R or, if the <i>firm</i> prefers, that amount of its annual income which is attributable to	31 October 2004 to 31 March 2006	31 October 2004

(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
			business conducted with <i>eligible claimants</i> but only if the <i>firm</i> notifies FSCS of the amount by 28 February 2005.		
14	FEES 6.5.7 R (5), FEES 6.5.11 R, and FEES 6.5.13 R (2)		For the period 14 January 2005 to 31 March 2006 the tariff base will be the annual income (relating to the relevant <i>contribution group</i>) reported in accordance with note 3 to AUTH 4 Annex 2 R or, if the <i>firm</i> prefers, that amount of its annual income which is attributable to business conducted with <i>eligible claimants</i> but only if the <i>firm</i> notifies FSCS of the amount by 28 February 2005.	14 January 2005 to 31 March 2006	31 October 2004
15	COMP 5.4.4 R (4)(a) R and [PRA] COMP 5.4.4 R (4)(b)		The changes to COMP 5.4.4 R (4) made in the Compensation Sourcebook (Amendment No 7) Instrument 2006 do not apply in relation to defaults declared before 6 June 2006.	Indefinitely	6 June 2006
16	COMP 10.2.3 R R [PRA]		The change to the limit for <i>protected deposits</i> made by the Compensation Sourcebook (Protected Deposits Limit) Instrument 2007 does not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 1 October 2007.	From 1 October 2007 indefinitely	Amended with effect from 1 October 2007
17	Amendments R introduced by [FCA] the Compensation [PRA] Sourcebook (Amendment No 8) Instru- ment 2008		Provisions and definitions arising out of (2) only apply to defaults on or occurring after 7 October 2008	From 7 October 2008 indefinitely	7 October 2008

(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
18 [PRA]	COMP 10.2.3 R	R	The change to the limit for <i>protected deposits</i> made by the Compensation Sourcebook (Deposit Guarantee Schemes Directive Amendments) Instrument 2009 does not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 30 June 2009.	From 30 June 2009 indefinitely	30 June 2009
19 [FCA] [PRA]	Amendments to COMP 10.2.3 R introduced by the Financial Services Compensation Scheme (Limits Amendment) Instrument 2009	R	Provisions and definitions arising out of (2) only apply to defaults on or occurring after 1 January 2010.	From 1 January 2010 indefinitely	1 January 2010
20 [PRA]	COMP 4.3.1 R	R	The change to the eligibility requirements for claimants for <i>protected deposits</i> made by the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009 does not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 1 August 2009.	From 1 August 2009 indefinitely	1 August 2009
21	COMP 17.3 and COMP 17.2.7 R	R	(1) This transitional provision applies to a <i>firm</i> to which COMP 17 will apply. (2) If a <i>firm</i> operates less than 5,000 accounts held by <i>eligible claimants</i> , it may make or revoke an election (under COMP 17.2.7 R) that the <i>electronic SCV rules</i> do not apply. (3) A <i>firm</i> that made a valid election under (2) must provide the <i>FSA</i> with an SCV pre-implementation report by 31	From 6 December 2009 until 30 December 2010	31 December 2010

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming in-to force

July 2010 based on the *firm's* progress as at 30 June 2010 which must:

(a) state the number of accounts held by *eligible claimants* as at 30 June 2010;

(b) confirm that the *firm* is making the election in (2); and

(c) state whether the *firm's* board of directors believes the *firm* will comply with the *FSA's SCV requirements* by 31 December 2010 and if not why not.

(4) A *firm* that has not made a valid election under (2) must provide the *FSA* with an SCV pre-implementation report by 30 July 2010 based on the *firm's* progress as at 30 June 2010 which must state:

(a) whether the *firm* has a plan for implementing the *FSA's SCV requirements*;

(b) how the *firm* proposes to transfer to the *FSCS* a *single customer view* for each *eligible claimant* including specifying the transfer method and format;

(c) the dates the *firm* started implementation and plans to end implementation and whether implementation is on time;

(d) whether the *firm's* board of directors believes implementation will be completed by 31 December 2010 and if not why not; and

(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
(e) any issues that may impact on the firm's ability to implement by 31 December 2010.					
22	COMP 17.3	R	A firm to which COMP 17 applies must provide the FSA with an <i>SCV implementation report</i> and a <i>SCV report</i> by 31 January 2011.	From 31 December 2010 until 31 January 2011	31 December 2010
23	COMP 17.3.10 R and COMP 17.3.12 R	R	(1) A firm subject to the <i>electronic SCV rules</i> must provide the FSCS with a representative sample of 10% of its single customer views or 10,000 of its single customer views (whichever is the smaller number) by 31 January 2011. (2) The FSCS must advise the FSA whether the information provided by a firm's <i>SCV system</i> is capable of being submitted to the FSCS and whether it is compatible with the FSCS's systems within six <i>Months</i> of receiving the information required by (1).	From 31 December 2010 until 31 July 2011	31 December 2010
24	COMP 10.2.3 R	R	The change to the limit for <i>protected deposits</i> made by the Compensation Sourcebook (Deposit Guarantee Schemes Directive Amendments) (No 2) Instrument 2010 does not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 31 December 2010.	From 31 December 2010 indefinitely	31 December 2010
[PRA]					
25	COMP 12.2.1 R and COMP 12.2.6A R and the amendment of all references in COMP (other than in	R	The changes referred to in (2) made by the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009 do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 31 December 2010.	From 31 December 2010 indefinitely	From 31 December 2010
[FCA]					
[PRA]					

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming in-to force
	COMP 12.2.1 R and the heading in respect of COMP 12.2.4 R) to "overall net <i>claim</i> " to "overall <i>claim</i> "				
26 [PRA]	COMP 12.3.1 R and COMP 15.1.12 R	R	The changes referred to in (2) made by the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009 do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 31 December 2010.	From 31 December 2010 indefinitely	From 31 December 2010
27 [FCA] [PRA]	COMP 4.2.2 R(9)	R	The changes referred to in (2), made by the Compensation Sourcebook (Occupational Pension Scheme Trustees) Instrument 2011 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 2011.	From 1 October 2011 indefinitely	From 1 October 2011
28 [PRA]	COMP 16.3	R	A <i>Northern Ireland credit union</i> need not comply with COMP 16.3 until 30 September 2013.	From 31 March 2012 until 30 September 2013	For <i>Northern Ireland credit unions</i> 31 March 2012
29	COMP 17	R	COMP 17 does not apply to a <i>Northern Ireland credit union</i> until 30 September 2012.	From 31 March 2012 until 30 September 2012	For <i>Northern Ireland credit unions</i> 31 March 2012

(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
30	COMP 17.3 and COMP 17.2.7 R	R	<p>(1) This transitional provision applies to <i>Northern Ireland credit unions</i>.</p> <p>(2) If a <i>Northern Ireland credit union</i> operates less than 5,000 accounts held by <i>eligible claimants</i>, it may make or revoke an election (under COMP 17.2.7 R) that the <i>electronic SCV rules</i> do not apply.</p> <p>(3) A <i>Northern Ireland credit union</i> that has made a valid election under (2) must provide the <i>FSA</i> with an SCV pre-implementation report by 30 June 2012 based on the <i>Northern Ireland credit union's</i> progress as at 30 June 2012 which must:</p> <p>(a) state the number of accounts held by <i>eligible claimants</i> as at 30 June 2012;</p> <p>(b) confirm that the <i>Northern Ireland credit union</i> is making the election in (2); and</p> <p>(c) state whether the <i>Northern Ireland credit union's</i> board of directors believes the <i>Northern Ireland credit union</i> will comply with the <i>FSA's SCV requirements</i> by 30 September 2012 and if not why not.</p> <p>(4) A <i>Northern Ireland credit union</i> that has not made a valid election under (2) must provide the <i>FSA</i> with an SCV pre-implementation report by 30 June 2012 based on the <i>Northern Ireland credit union's</i> progress as at 30 June 2012 which must state:</p>	From 31 March 2012 until 30 September 2012	For <i>Northern Ireland credit unions</i> 31 March 2012

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming in-to force
			<p>(a) whether the <i>Northern Ireland credit union</i> has a plan for implementing the <i>FSA's SCV requirements</i>;</p> <p>(b) how the <i>Northern Ireland credit union</i> proposes to transfer to the <i>FSCS</i> a <i>single customer view</i> for each <i>eligible claimant</i> including specifying the transfer method and format;</p> <p>(c) the dates the <i>Northern Ireland credit union</i> started implementation and plans to end implementation and whether implementation is on time;</p> <p>(d) whether the <i>Northern Ireland credit union's</i> board of directors believes implementation will be completed by 30 September 2012 and if not why not; and</p> <p>(e) any issues that may impact on the <i>Northern Ireland credit union's</i> ability to implement by 30 September 2012.</p>		
31	COMP 17.3	R	A <i>Northern Ireland credit union</i> to which COMP 17 applies must provide the <i>FSA</i> with an <i>SCV implementation report</i> and an <i>SCV report</i> by 30 September 2012.	From 31 March 2012 until 30 September 2012	For <i>Northern Ireland credit unions</i> 31 March 2012
32	COMP 17.3.10 R and COMP 17.3.12 R	R	(1) A <i>Northern Ireland credit union</i> subject to the <i>electronic SCV rules</i> must provide the <i>FSCS</i> with a representative sample of 10% of its single customer views or 10,000 of its single customer views (whichever is the smaller number) by 30 September 2012.	From 31 March 2012 until 30 September 2012	For <i>Northern Ireland credit unions</i> 31 March 2012

(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 [FCA] [PRA]	Amendments introduced by Annex A and Part 1 of Annex B of the Compensation Sourcebook (Amendment No 9) Instrument 2012.	R	<p>(2) The <i>FSCS</i> must advise the <i>FSA</i> whether the information provided by a <i>Northern Ireland credit union's SCV system</i> is capable of being submitted to the <i>FSCS</i> and whether it is compatible with the <i>FSCS's</i> systems within six <i>months</i> of receiving the information required by (1).</p> <p>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:</p> <p>(a) to the extent that the provisions changed apply to <i>protected deposits</i>, all the changes in (2); and</p> <p>(b) the changes to COMP 12.2.10 R;</p> <p>apply irrespective of when the default occurred.</p>	From 1 October 2012 indefinitely	From 1 October 2012

Compensation

Schedule 1 Record-keeping requirements

Sch 1.1 G

FCA **PRA**

1. 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).
2. It is not a complete statement of those requirements and should not be relied upon as it were.

Sch 1.2 G

FCA **PRA**

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
FEES 6.3.14 R	FSCS funding	Full details of the movement of funds within sub-schemes.	Ongoing requirement.	N/A
COMP 10.2.10 R(3)	Potential claimants for whom the separate limit under COMP 10.2.10 R(2) applies	Sufficient details to enable the identification of claimants for whom the separate limit under COMP 10.2.10 R(2) applies	As implicit from the <i>rules</i> in COMP	As implicit from the <i>rules</i> in COMP
COMP 10.2.11 R	Potential claimants for whom the separate limit under COMP 10.2.11 R (2) applies	Sufficient details to enable the identification of claimants for whom the separate limit under COMP 10.2.11 R (2) applies	As implicit from the <i>rules</i> in COMP	As implicit from the <i>rules</i> in COMP

Compensation

Schedule 2 Notification requirements

Sch 2.1 G

FCA **PRA**

1. 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 Chapters 13, 14 and 17 and the Transitional Provisions, the notification rules in *COMP* apply only to the FSCS (the scheme manager).
2. It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2 G

FCA **PRA**

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COMP 2.2.5G	Annual Report	Not specified in COMP - see Memorandum of Understanding (MoU) between each regulator 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
FEES 6.2.1 R	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	If it does not, or if it ceases to, conduct business with persons eligible to claim on FSCS, unless it has already given such notice	None specified though exemption generally only takes effect from the date of receipt of notice by FSCS
FEES 6.2.4 R	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 reasonably practicable

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
FEES 6.5.13 R	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
FEES 6.7	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 obtain top-up cover 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 obtain top-up cover 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
COMP TP 29R(2) and COMP 17.2.7 R	Election or revocation of election that the <i>electronic SCV rules</i> do not apply.	See Matter to be notified	See Matter to be notified	Immediately
COMP 17.2.7 R (1)	Election that the <i>electronic SCV rules</i> do not apply.	See Matter to be notified	See Matter to be notified	Immediately
COMP 17.2.7 R (1A)	Revocation of election that the <i>electronic SCV rules</i> do not apply.	See Matter to be notified	See Matter to be notified	Immediately
COMP 17.2.7 R (2)	The firm has operated 5,000 or more accounts held by <i>eligible claimants</i> for two consecutive years, having	See Matter to be notified	See Matter to be notified	Immediately

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COMP 17.3.1 R	previously operated less than 5,000 A firm must provide the PRA with an SCV implementation report and SCV report	See COMP 17.3.6 R (1) or COMP 17.3.6 R (2) as applicable and COMP 17.3.9 R (1) or COMP 17.3.9 R (2) as applicable.	Receipt of <i>permission to accept deposits</i> or obtaining <i>top-up cover</i> as applicable	Three months
COMP 17.3.2 R	A firm must provide the PRA with an SCV implementation report and SCV report	See COMP 17.3.6 R (1) or COMP 17.3.6 R (2) as applicable and COMP 17.3.9 R (1) or COMP 17.3.9 R (2) as applicable.	A material change in the firm's SCV system	Three months
COMP 17.3.4 R	A firm must provide the PRA with an SCV report	COMP 17.3.9 R (1) or COMP 17.3.9 R (2) as applicable.	Every four years (starting from 31 December 2010 or the date of receiving <i>permission to accept deposits</i> or in the case of an <i>incoming EEA firm</i> the date of obtaining <i>top-up cover</i> , whichever is later)	See Trigger Event
COMP TP 30 R (2) and COMP 17.2.7 R	Election or revocation of election that the <i>electronic SCV rules</i> do not apply	See Matter to be notified	See Matter to be notified	Immediately

Compensation

Schedule 3 Fees and other required payments

Sch 3.1 G

FCA **PRA**

The *rules* in FEES 6 give FSCS (the scheme manager) the power to raise levies on participant *firms* in order to meet its expenses. The *rules* in FEES 6 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

Schedule 4 Powers Exercised

Sch 4.1 G

The following powers and related provisions in or under the *Act* and the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001 ("the *compensation transitionals order*") have been exercised by the *FSA* to make the rules in *COMP*:

Section 138 (General rule-making power)

Section 156 (General supplementary powers)

Section 213 (The compensation scheme)

Section 214 (General)

Section 215 (Rights of the scheme in insolvency)

Section 216 (Continuity of long-term insurance policies)

Section 217 (Insurers in financial difficulties)

Section 218 (Annual report)

Section 218A (Authority's power to require information)

Section 219 (Scheme manager's power to require information)

Section 316(1) (Direction by Authority)

Article 4 (Pending Applications) of the *compensation transitionals order*

Article 6 (Post-commencement applications) of the *compensation transitionals order*

Article 9 (Article 9 defaults occurring before commencement) of the *compensation transitionals order*

Article 9A (Contributions in relation to mesothelioma claims) of the *compensation transitionals order*.

Article 10 (Applications in respect of compulsory liability insurance) of the *compensation transitionals order*

Article 12 (Applications under the new scheme) of the *compensation transitionals order*

Sch 4.2 G

The following additional powers have been exercised by the *FSA* to make the *rules* in *COMP*:

Articles 3 (Further power for Authority to make rules concerning mesothelioma claims) and 4 (Modification of FSMA in relation to FSA rules for mesothelioma claims) of the *mesothelioma regulations*.

Section 123 (Role of FSCS) of the Banking Act 2009

Sch 4.3 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *COMP*:

Section 157(1) (Guidance)

Compensation

Schedule 5 Rights of action for damages

Sch 5.1 G

FCA

1. The table below sets out the rules in *COMP*, contravention of which by an *authorised person* may be actionable under section 138D 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 138D unless a "yes" appears in the column headed "Removed". A "yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under Section 138D(3) 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 138D for breach of these rules, as the *FSCS* is not an *authorised person*.

Sch 5.2 G

FCA

Chapter/Appendix	Section/Annex	Paragraph	For private person?	Removed	For other person?
COMP 1	5	8	No	Yes - COMP 1.5.11 G	No
COMP 14.4.6R			Yes	No	No

Compensation

Schedule 6 Rules that can be waived

Sch 6.1 G

[deleted]

Sch 6.1A G

FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Sch 6.1B G

PRA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *PRA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *PRA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

