

Handbook Notice No 86

March 2021

Contents

1	<u>Overview</u>	2
2	<u>Summary of changes</u>	4
3	<u>Consultation feedback</u>	7
4	<u>Additional information</u>	19

How to navigate this document onscreen



returns you to the contents list



1 Overview

Legislative changes

- 1.1 On 25 March 2021, the Board of the Financial Conduct Authority consented to the making of the rules for the voluntary jurisdiction and fixing and variation of the standard terms by the Financial Ombudsman Service. On 22 March 2021, the Board of the Financial Ombudsman Service made the relevant changes to the FCA Handbook in the instrument listed below, subject to the consent and approval of the FCA.

CP	Title of instrument	Instrument No	Changes effective
CP19/19	Exiting the European Union: Gibraltar (Fees) Instrument 2021	FCA 2021/8 FOS 2021/2	01/04/2021

- 1.2 On 25 March 2021, the Board of the Financial Conduct Authority made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
CP20/22	Fees (Cryptoasset Business) (Periodic Fees) Instrument 2021	FCA 2021/9	01/04/2021
CP20/22	Fees (Multilateral Trading Facilities and Organised Trading Facilities Fees Amendments) Instrument 2021	FCA 2021/10	01/04/2021
CP21/2	Financial Services Compensation Scheme (Management Expenses Levy Limit 2021/22) Instrument 2021	FCA 2021/11	01/04/2021
CP19/33	Financial Services Compensation Scheme (Appointed Representatives) Instrument 2021	FCA 2021/12	26/03/2021

Summary of changes

- 1.3 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.



Feedback on responses to consultations

- 1.4 Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

FCA Board dates for 2021

- 1.5 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
April	29	2021
May	27	2021
June	24	2021
July	22	2021
September	30	2021
October	21	2021
November	25	2021
December	16	2021



2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board and the Financial Ombudsman Service Board under their legislative and other statutory powers on 25 March 2021 and 22 March 2021 respectively. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see www.bankofengland.co.uk/pr/Pages/publications/default.aspx.

Exiting the European Union: Gibraltar (Fees) Instrument 2021

- 2.2 Following consultation in Chapter 2 of Consultation Paper (CP) [CP19/19](#), the FCA Board and the Financial Ombudsman Service Board have made changes to the FCA Handbook sections listed below:

Glossary
GEN 2.1
DISP 4.2

- 2.3 This instrument adds the following new material to the FCA Handbook:

GEN 2.3.5G
FEES 4.1, 5.1, 7A.1, 7B.1 and 13.1

- 2.4 In summary, this instrument makes changes to the Handbook to ensure that Gibraltar-based firms will continue pay to the right level of FCA, Financial Ombudsman Service, Money and Pensions Service¹, Devolved Authorities and illegal money lending fees and levies following the UK leaving the European Union on 31 January 2020 and the end of the implementation period on 31 December 2020.

- 2.5 This instrument comes into force on 1 April 2021. Feedback is published in Chapter 3 of this Notice.

Fees (Cryptoasset Business) (Periodic Fees) Instrument 2021

- 2.6 Following consultation in Chapter 3 of Consultation Paper (CP) [CP 20/22](#), the FCA Board has made changes to the FCA Handbook sections listed below:

FEES 1.1 and Appendix 3

¹ In the FCA Handbook, the Money and Pensions Service is referred to as the 'Single Financial Guidance Body'.



2.7 This instrument adds the following new section to the FCA Handbook:

FEES Appendix 4.

2.8 In summary, this instrument sets the framework for cryptoasset businesses supervised under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692, as amended) (the 'Money Laundering Regulations').

2.9 This instrument comes into force on 1 April 2021. Feedback has been published in Chapter 3 of this Handbook Notice.

Fees (Multilateral Trading Facilities and Organised Trading Facilities Fees Amendments) Instrument 2021

2.10 Following consultation in Chapter 4 of Consultation Paper (CP) CP20/22, the FCA Board has made changes to the FCA Handbook sections listed below:

FEES 4.2, 4.3, 4.4, 4 Annex 1AR, 4 Annex 2AR and 4 Annex 13G

2.11 This instrument deletes the following section to the FCA Handbook:

FEES 4 Annex 10R

2.12 In summary, this instrument makes changes to the Handbook to put in place, for firms operating multilateral trading facilities and organised trading facilities, the valuation date for reported income, size threshold for determining the level below which the operating firm will pay only the minimum fee and above which the variable fee-rate is paid.

2.13 This instrument comes into force on 1 April 2021. Feedback has been published in Chapter 3 of this Handbook Notice.

Financial Services Compensation Scheme (Management Expenses Levy Limit 2021/22) Instrument 2021

2.14 Following consultation in Consultation Paper (CP) CP21/2, the FCA Board has made changes to the FCA Handbook section listed below:

FEES 6 Annex 1R

2.15 In summary, this instrument makes changes to the Handbook to ensure that the Financial Services Compensation Scheme has sufficient funds in order to operate and manage the compensation scheme. This instrument also ensures that the Financial Services Compensation Scheme has a contingency reserve to continue to operate and manage the scheme in the event of an unexpected increase in the number and value of protected claims against firms from eligible claimants which the firms are unable, or likely to be unable, to satisfy.



- 2.16 The Financial Services Compensation Scheme Limited operates and administers the Financial Services Compensation Scheme. For the purpose of this Handbook Notice, we are using the abbreviation 'FSCS' to refer to both the Financial Services Compensation Scheme and the Financial Services Compensation Scheme Limited, as appropriate.
- 2.17 This instrument comes into force on 1 April 2021. Feedback has been published in Chapter 3 of this Handbook Notice.

Financial Services Compensation Scheme (Appointed Representatives) Instrument 2021

- 2.18 Following consultation in Chapter 2 of Consultation Paper (CP) [CP19/33](#), the FCA Board has made changes to the FCA Handbook section listed below:

COMP 6.2, 8.2 and 10.2

- 2.19 In summary, this instrument makes changes to the Handbook to clarify existing policy and practice, and to ensure both our policy intention and the application of our rules are clearer.
- 2.20 This instrument comes into force on 26 March 2021. Feedback has been published in Chapter 3 of this Handbook Notice.

3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

CP19/19: Exiting the European Union: Gibraltar (Fees) Instrument 2021

Background

- 3.2 In CP19/19, we set out our proposed basis for calculating fees and levy rates for Gibraltar-based firms from 2019/20, if the UK left the European Union (EU) without an agreement and a transitional period on 31 October 2019 ('no deal Brexit'). We consulted jointly with the Financial Ombudsman Service on the proposals that relate to it. A no deal Brexit did not occur.
- 3.3 Since June 2019, the UK has left the EU on 31 January 2020 with an implementation period which ended on the 31 December 2020.
- 3.4 With the end of the implementation period the position for Gibraltar-based firms is:
- We have maintained the regulatory position on Gibraltar within our Handbook as it applied before 31 December 2020. This position is in line with the Government's commitment that Gibraltar financial services firms should have the same market access in the UK as they did before 31 December 2020.
 - For Gibraltar-based firms that are currently able to exercise passport rights, the Government's commitment means they will continue to be able to exercise such rights from 31 December 2020.
- 3.5 This overall position for Gibraltar-based firms is set out in GEN 2.3 General Provisions (GEN) section of the Handbook which came into effect on 31 December 2020 and freezes all Handbook provisions relating to Gibraltar as they would have applied before 31 December 2020, unless the contrary intention is stated.
- 3.6 This freezing of provisions in GEN gives effect to our policy intention that, from 31 December 2020, Gibraltar-based firms should pay periodic fees and levies on the same basis as they did before 31 December 2020. At a high level, this means that Gibraltar-based firms with a UK branch will pay periodic fees and receive certain discounts, and Gibraltar-based cross-border services firms will not pay periodic fees.



3.7 However, the overall freezing of Gibraltar-related Handbook provisions would also mean that the rules that specify the fees and levy rates payable by Gibraltar-based firms would also be frozen at the levels that applied before the 31 December 2020. This is not the policy intent, as it will mean that Gibraltar-based firms do not pay the right fees and levies from 31 December 2020.

3.8 The current arrangements for Gibraltar-based firms are transitional pending the introduction of the Gibraltar Authorisation Regime (GAR). The Financial Services Bill includes provision to establish the GAR. This will be a new permanent financial services market access regime for approved activities where HM Treasury confirms by statutory instrument that there is alignment of law and practice between the UK and Gibraltar. This new framework will allow Gibraltar-based firms to become 'authorised persons' under the Financial Services and Markets Act 2000 (FSMA), without having to apply for authorisation from the FCA or PRA to undertake GAR-approved activities in the UK.

Summary of proposals

3.9 In CP19/19, we proposed revised GEN guidance and FEES rules to ensure that Gibraltar-based firms fees and levy rates will not be frozen at the level they were before the 31 December 2020. These proposals apply from the 2021/22 fee-year and cover:

- FCA periodic fees;
- Financial Ombudsman Service fees and levies;
- Money and Pensions Service² money guidance, pensions guidance and debt advice levies;
- Devolved Authorities debt advice levy; and
- Illegal money lending levy.

3.10 We asked:

- Do you have any comments on the proposed modifications to the general provision and fees and levy rules in relation to Gibraltar based firms for 2019/20? [see paragraph 3.2]

² In the Handbook, the Money and Pensions Service is referred to as the 'Single Financial Guidance Body'.



Feedback

3.11 We received no responses that commented on the proposals.

Cost benefit analysis and compatibility statement

3.12 Under section 138I of FSMA, the FCA is exempt from the requirement to carry out and publish a cost benefit analysis regarding proposals for rules regarding FCA fees, and levies for the Financial Ombudsman Service, the Money and Pensions Service, the Devolved Authorities and the illegal money lending levy. The compatibility statement we published in Chapter 2 of CP19/19 remains unchanged.

Equality and diversity issues

3.13 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

3.14 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP20/22: Chapter 3 – Regulatory fees and levies: policy proposals for 2021/22

Background

3.15 In Chapter 3 of CP20/22, we consulted on the structure of periodic fees for cryptoasset businesses. Since January 2020, we have been responsible for supervising cryptoasset exchange providers and custodian wallet providers (cryptoasset businesses) under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR). Our remit is limited to registering and supervising them under the MLR regime. We are not responsible for regulating how they conduct their business with consumers.

3.16 We proposed to put all cryptoasset businesses supervised under the MLR into a single fee-block (fee-block G.23) and base their fees on income from the cryptoasset activities that we supervise under the MLR (ie income from the provision of cryptoasset exchanges and custodian wallet services only). In line with most of the fees we charge under FSMA, businesses with up to £100,000 of income would pay a minimum fee only, and we proposed a minimum charge of £2,000. Businesses with incomes above £100,000 would pay the minimum charge plus a variable rate.

3.17 We asked:

- Do you have any comments on our proposals for the fees paid by cryptoasset businesses?



Feedback

- 3.18 We received 3 responses.
- 3.19 One commented that the £2,000 minimum periodic fee was too high for smaller businesses. It would discourage innovation and was disproportionate to our limited supervisory function. It should be £1,000 as suggested in the original chapter on our approach to periodic fees in October 2019 or closer to the standard FSMA fee of £1,151. One commented that we should provide clarity about new areas of cryptoasset business that were likely to come within our scope in the future, such as stablecoins.
- 3.20 One suggested that there should be concessions on fees for businesses that were making a loss, and that we should set the periodic fee at a percentage of the profit rather than setting a fixed rate per £1,000.
- 3.21 There were some queries about the interpretation of our definition of income in the FEES Manual:
- One respondent asked how businesses with operations and clients in multiple jurisdictions would report their UK income. Some businesses might have only a few clients in the UK, with many in overseas jurisdictions, so their income from UK clients would be relatively small in comparison to the scale of their total revenue. Other businesses might be registered both in the UK and in overseas jurisdictions. They might report millions of pounds of income to the overseas regulators, but only a few hundred thousand to the FCA.
 - Businesses should be allowed to deduct business expenses such as salaries and overheads from their reported income.

Our response

- 3.22 The number of businesses successfully meeting the minimum threshold standard for registration is small. Our assessments have revealed a wide range of different and often complex business models and it has become clear that many businesses have not been set up to comply with the regulations. Only a few firms have managed to achieve registration and a number of businesses have withdrawn their applications.
- 3.23 Currently, insufficient fee-payers have successfully registered to support material cost recovery during 2021/22. We have therefore had to defer introduction of periodic fees until 2022/23. This means we will have to carry forward all of our costs to next year. Our experience of processing applications indicates that this is going to be a costly sector to supervise. As a result of the complex assessments we have had to carry out, our project costs have risen to £7.7m. Our annual supervisory costs will be clearer once we have assessed all applications. These costs will have to be recovered from a supervised population



which may be smaller than we originally anticipated. Since no periodic fees will be levied in 2021/22, we will consult on the rates, including the minimum fee, in April 2022, taking into account the views expressed in this consultation.

3.24 HM Treasury are consulting on a regulatory regime for stablecoins used for payment and may consider a broader regime for cryptoasset activity in the future. We will consider the implications of any proposals set by the Treasury, including possible consultations if appropriate.

3.25 The technical questions that were raised were helpful because, while we do not believe we need to make any changes to the rules, it is an opportunity to provide some clarification.

- Businesses do not have a choice about whether to report income from their supervised UK activity to the FCA or any overseas regulator. They must report all UK revenues to the FCA. The definition of income in FEES Appendix 4, Annex 3 Part 1 (1) is:

The gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the cryptoasset business's accounts during the reporting year in respect of, or in relation to, the provision in the United Kingdom of the activities for which it is registered as a cryptoasset business under the Money Laundering Regulations.

The definition rests upon the provision of the activity in the UK and does not take into account the location of the client. The client may be based overseas or in the UK but if the activity is provided in the UK, the revenue must be reported to us. This also applies where a client approaches a firm in an overseas jurisdiction and that firm passes the work to a UK subsidiary or partner. The UK business must report to us the income it received from the overseas firm for providing the activity.

- We recover a fixed amount through our fees and the income measure is designed to distribute cost recovery fairly between the fee-payers according to their market share. If we allowed them to report profit rather than revenue or to deduct their business expenses, that would not reduce their fees. The total income reported by them would be smaller and so the fee-rate would be correspondingly higher. Our experience is that minimising the permitted deductions reduces the scope for interpretation, and so reduces the risk of inconsistent reporting. Because we are recovering a fixed amount, we set a fixed rate for periodic fees rather than applying a percentage of income. If we relied on a percentage, we might recover more or less than our target.



- Even if a business makes a loss, it still undertakes activity which we have to supervise, and it is not reasonable to require its competitors to subsidise it through their fees. Where a business reports no income or a loss, it pays the minimum fee as a contribution towards our costs.

Cost benefit analysis and compatibility statement

- 3.26 Although the cryptoasset levy is not charged under the FSMA regime, we must make sure our proposals are compatible with the FCA's wider statutory duties. Section 138I of FSMA exempts the FCA from the requirement to carry out and publish a cost benefit analysis regarding proposals for rules regarding FCA fees and levies. The compatibility statement we published in [CP20/22](#) remains unchanged.

Equality and diversity issues

- 3.27 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

CP20/22: Chapter 4 – Fees (Multilateral Trading Facilities and Organised Trading Facilities Fees Amendments) Instrument 2021

Background

- 3.28 Following consultation, that started in November 2016, we have changed the way we calculate periodic fees for Recognised Investment Exchanges (RIEs) and Regulated Benchmark Administrators (RBAs) to one based on the income they derive from these activities. We have also standardised the way we use income to calculate periodic fees for Service Companies (SCs) in line with RIEs and RBAs.
- 3.29 RIEs, RBAs and SCs are sub-sets of the B fee-block (market infrastructure providers) together with operators of multilateral trading facilities (MTFs) and organised trading facilities (OTFs). Chapter 4 in [CP20/22](#) was our third-stage consultation to move MTFs and OTFs to using income to calculate their periodic fees.
- 3.30 In 2020/21, £8.2m of our total £589.9m annual funding requirement (AFR) was allocated to the B fee-block. We further allocate this to the various market infrastructure providers as sub-sets of the B fee-block. The proportion allocated to the MTF and OTF sub-set fee-block was £1.8m and is currently recovered from individual fee-payers within this sub-set through flat periodic fees. Flat periodic fees do not take account of the scale of the regulated business they undertake.

3.31 We believe using income as a measure of size (tariff base) increases transparency for feepayers and represents an effective proxy for the impact risk they pose to our objectives. Income as a measure ensures an equitable distribution of cost recovery between fee-payers in the same fee-block, provided all are reporting on the same basis.

3.32 The first stage and second-stage consultations established the definition of annual income tariff data. The second-stage consultation also put in place a requirement for firms operating MTFs and OTFs to submit their income (tariff data) ahead of the third-stage consultation. This enabled us to include indicative fee-rates so firms could assess the impact of the proposals on their individual fees. Details of the previous consultations were included in CP20/22.

Third-stage consultation proposals

3.33 Using the total annual income tariff data reported by firms operating MTFs and OTFs, we proposed:

- a £100,000 threshold for determining the level of MTF and OTF annual income below which the operating firm will only pay the MTF/OTF minimum fee;
- a minimum fee aligned to the minimum used for the 'A' fee-blocks, £1,151 in 2020/21;
- firms reporting MTF and OTF annual income above £100,000 will pay a variable fee-rate for every £1,000 or part £1,000 of reported annual income above £100,000; and
- a valuation date based on the annual income for the financial year ended in the calendar year ending 31 December before the following fee year to which the fees relate. For example, in the case of MTF/OTF fees for 2021/22, reference to 31 December would mean annual income for their financial year ending in calendar year ending 31 December 2020.

3.34 We asked:

- Do you have any comments on our proposed basis for calculating fees for firms operating MTFs and OTFs from 2021/22?

Feedback

3.35 We received 3 responses which in general supported the proposals. One respondent reiterated their previous comment that we should also use a qualitative measure. One questioned the level of the minimum fee as they believed that even firms below the size threshold would require a reasonable amount of regulatory oversight. One respondent commented in the context of EU Withdrawal that, because we use historic income data, there was a lagged effect which results in regulatory fees in



2021/22 increasing at the same time income has declined due to the one-off impact of EU withdrawal has had on European trade flows.

Our response

- 3.36 We reiterate our previous feedback that the allocation of our AFR to MTFs/OTFs takes account of the total resources applied to them as a sub-set of the B fee-block. Objective measures of size applied consistently is the basis for distributing the recovery of that AFR proportionately across individual firms. We use size as a proxy for the relative impact risk of firms should they fail. Measures of the probability of failure (qualitative) are subjective and would give rise to challenges from firms if applied to the calculation of their fees.
- 3.37 The minimum size threshold and minimum fee level are set to ensure that periodic fees paid by smaller firms, as well as larger firms, are proportionate to the size of the regulated activities they undertake.
- 3.38 We acknowledge the lag between income reported for calendar year 2020 and the calculation of 2021/22 fees. However, the variable fee-rate consulted on in the April 2021 consultation paper (CP) will reflect the total income reported by all MTFs/OTFs and the amount of 2021/22 AFR allocated to them as a sub-set of the B fee-block. Whatever the level of that variable fee-rate is set at, MTFs and OTFs will still contribute to the recovery of the allocated AFR that is proportionate to their size.
- 3.39 We are implementing the proposals as consulted and will proceed with the fourth-stage consultation in our annual fees-rates CP scheduled to be published April 2021. This CP will consult on the fee-rates for all fee-payers for 2021/22 including those for MTFs/OTFs under the new structure.

Cost benefit analysis and compatibility statement

- 3.40 Under section 138I of FSMA, the FCA is exempt from the requirement to carry out and publish a cost benefit analysis regarding proposals for rules covering FCA fees. The compatibility statement we published in Annex 2 of CP20/22 remains unchanged.

Equality and diversity issues

- 3.41 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.
- 3.42 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP21/2: Financial Services Compensation Scheme (Management Expenses Levy Limit 2021/22) Instrument 2021

Background

- 3.43 In CP21/2, we consulted on the management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS). The MELL is the maximum amount which the FSCS may levy for its management expenses in a year and is proposed to be £105,524,319 for 2021/22. This includes a management expenses budget of £90.5m and an unlevied contingency reserve of £15m. The proposed MELL limit of £105,524,319 would apply from 1 April 2021 to 31 March 2022. The FCA and PRA can decide to increase the MELL but, to do so, a further formal consultation would be required.
- 3.44 The proposed management expenses of £90.5m covers the FSCS's ongoing operating expenses and includes the FSCS's IT, outsourcing, legal and claims handling costs. This is an increase of 16% (£12.4m) over the 2020/21 budget of £78.2m.
- 3.45 The proposed unlevied reserve for 2021/22 is £15m, an increase of £10m over last year. The unlevied reserve is an important part of the FSCS's contingency planning and ensures that, in the event of increasing claims volumes, the FSCS can continue to meet its statutory obligations.
- 3.46 Due to the current economic climate, the FSCS expects that there may be a large increase in the number of claims it receives because of a potential increase in the number of firms which are expected to default in the 2021/22 financial year. But it is difficult to predict with a high degree of certainty the numbers of claims it may have to handle. Because of this heightened uncertainty, an unlevied reserve of £15m is proposed to give the FSCS the flexibility required to handle the potential rise in claims, should it materialise. The unlevied reserve can be levied without further formal consultation by the FCA and the PRA.

Feedback

- 3.47 There were 11 responses to the consultation but only 6 touched either on the MELL itself or on FSCS levies in general. Issues raised were the increase in the MELL and the unlevied reserve, the disparity in the increase in costs between funding classes as outlined in Appendix 4 of the consultation paper, an increase in FSCS staff headcount, the unpredictability and lack of notice of interim levies, and suggestions that a 'polluter pays' and risk based levy system would be fairer in the calculation of levies.
- 3.48 In respect of the increase in the MELL, while 2 respondents recognised the arguments for the increase, 1 of these was disappointed to see a rise given the present economic climate and the impact this was having



on firms, 1 other thought the rise was unacceptable. The increase in costs between funding classes, as outlined in Appendix 4 of the consultation paper, are linked to increases in claims volumes in those classes. Our consultation paper pointed out that 88% of the proposed rise in the MELL is down to the volume and complexity of claims the FSCS expects to handle during 2021/22.

- 3.49 On the increase and use of the unlevied reserve, 1 respondent expressed support for the changes so long as these changes only applied to the FSCS's financial year beginning on 1 April 2021 and 1 thought that, with the uncertainty of increased failures, firms would more than likely have to make additional contributions whether it was unlevied or not.
- 3.50 One response questioned why a rise in the FSCS's headcount was necessary given the FSCS outsourced the claims handling. Our consultation paper explained that an increase in staff was required to handle additional work expected as a result of the projected increase in claims as well as support beyond claims handling.
- 3.51 Another responder welcomed the work that is being undertaken under the 'prevent' pillar of the FSCS's strategy and wanted to see more work being undertaken in this area by the FSCS, FCA and Financial Ombudsman Service. The FCA is committed to continue working with the regulatory family in this area.
- 3.52 One response complained of general unpredictability of interim levies and the lack of notice of interim levies before they are imposed. The FSCS sets out its forecasts in its November Outlook publication on the expected interim levies and confirms these in its plan and budget in January with firms being invoiced in February.
- 3.53 Three responses suggested a 'polluter pays' and risk-based levy system for the calculation of fees. We are considering the responses we received to our Call for Input (CfI) which looked at areas where the consumer investment market is not working well for consumers. The CfI sought stakeholders' views on what changes could be made to improve protections and outcomes to benefit both consumers and firms more generally including in relation to FSCS cover. We will use the responses from the CfI to look at preventative action and work towards a system where firms which cause redress liabilities end up paying more of the bill.
- Our response**
- 3.54 We have considered the responses in accordance with our statutory obligations and taken these into account but there was nothing in the responses that would cause us to amend the level of the MELL. We are therefore taking forward our proposals as consulted on.



Cost benefit analysis and compatibility statement

- 3.55 We have considered the cost benefit analysis and compatibility statements as set out in CP21/2 in the light of the responses received. We consider that this remains valid and no changes are needed.

Equality and diversity issues

- 3.56 The equality and diversity statement in CP21/2 remain valid and unchanged.
- 3.57 We have made the change to FEES 6 Annex 1R as consulted on. The final instrument does not differ in any material way from that consulted on and the changes made by this instrument are listed in Chapter 2 of this Notice.

CP19/33: Chapter 2 – Financial Services Compensation Scheme (Appointed Representatives) Instrument 2021

Background

- 3.58 In CP19/33, we consulted on amendments to the Compensation sourcebook (COMP) to make the current application of our rules clearer. The rule changes clarify existing policy and practice.
- 3.59 Our amendments clarify that the FSCS can only consider one protected claim against either an appointed representative (AR) or its principal, up to the relevant limit. Our amendments also clarify that FSCS claims can be made by an eligible claimant against a relevant person who has acted outside the scope of its permissions, including an AR acting outside the scope of the agreement with its principal.

Single protected claim against an appointed representative or an authorised firm

- 3.60 A redress claim can be made against a firm (acting as principal) or its AR. However, it is not possible to make a claim against a firm *and* its AR. Paying two claims, both against the AR and the principal, would give an unfair advantage to those who have transacted with ARs in comparison to those who have transacted with an authorised firm. We therefore amended COMP to clarify this existing position that no claimant can make a claim in respect of both a principal and the AR. We also clarified using more precise wording in another rule, to replace 'the same loss' in COMP 10.2.5AR. It will continue to be possible to make a claim against either an AR *or* its principal.

Claims in cases where a relevant person acts outside the scope of permitted activities

- 3.61 Section 213(3)(a)(i) FSMA states that claims against an authorised person or AR should apply regardless of whether they are carrying out their activities with permission. For an authorised person, this means



whether or not it has the relevant permissions under FSMA; for an AR, this means whether or not it was acting within the scope of business for which its principal accepts responsibility under section 39 FSMA. Our changes to COMP make the application of our existing rules clearer.

Feedback

3.62 We received no feedback issues in response to our consultation.

Our response

3.63 We are implementing the proposals as consulted.

Cost benefit analysis and compatibility statement

3.64 The Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.

3.65 We do not consider that the clarificatory amendments that we are making will increase costs for firms that pay FSCS levies because they will not change current policy intent behind the rules nor the approach that FSCS will take to claims. There will be a qualitative benefit to having greater clarity in the rules.

3.66 The cost benefit analysis and compatibility statement from Chapter 2 of CP19/33 has not changed.

Equality and diversity issues

3.67 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

4 Additional information

Making corrections

- 4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2 This Notice is published on the FCA website and is available in hardcopy.
- 4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

Obligation to publish feedback

- 4.7 This Notice, and the feedback to which paragraph 1.4 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a



statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookproduction@fca.org.uk (or see contact details at the front of this Notice).

Handbook Notice 86

This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 25 March 2021.

It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

Ayesha Dayaji

Tel: 020 7066 0575

Email: Ayesha.Dayaji@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre

Financial Conduct Authority

12 Endeavour Square

London E20 1JN

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 0790 or email publications_graphics@fca.org.uk or write to Editorial and Digital Department, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.