

# PS12/15

Financial Services Authority

## Financial Services Compensation Scheme: changes to the Compensation sourcebook

September 2012



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This Policy Statement reports on the main issues arising from Consultation Paper 12/7 (*Financial Services Compensation Scheme: changes to the Compensation sourcebook*) and publishes final rules.

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# Abbreviations used in this paper

<b>CBA</b>	Cost benefit analysis
<b>CMC</b>	Claims management company
<b>COMP</b>	Compensation sourcebook (part of the FSA Handbook)
<b>CP</b>	Consultation paper
<b>EEA</b>	European Economic Area
<b>FSA</b>	Financial Services Authority
<b>FSCS</b>	Financial Services Compensation Scheme
<b>HMT</b>	HM Treasury



# 1

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## Overview

- 1.1** In this Policy Statement we summarise the feedback to CP12/7 and present our final rules.
- 1.2** CP12/7 proposed changes to some of the rules in our Compensation sourcebook (COMP) that govern the operation of the Financial Services Compensation Scheme (FSCS). As a package, the proposals aimed to give the FSCS the flexibility in certain circumstances to pay claimants more quickly and efficiently.
- 1.3** The majority of the feedback related to three proposals:
- a) giving the FSCS some additional flexibility in appropriate cases to pay full compensation where, under present rules, consumers would have to wait an excessively long time to receive compensation;
  - b) simplifying eligibility criteria; and
  - c) giving the FSCS the ability to pay compensation without a full investigation of some (or all) aspects of the claim if the costs of the investigation were disproportionate to the benefits.
- 1.4** We also planned to remove the FSCS telephone number from the disclosure that deposit takers make in statements to depositors, with effect from May 2012. In light of the feedback, we decided not to proceed with this.
- 1.5** Our response to the feedback on the consultation elements of CP12/7, the CBA and compatibility statement are covered in Chapter 2.
- 1.6** We received 33 responses, including on the discussion element of CP12/7, which will help inform any future consideration of the desirability of changing the existing approach for insurance. We cover this in Chapter 3.
- 1.7** A number of respondents raised concerns about the funding of the FSCS. We will consider these along with responses to CP12/16 on the funding of the FSCS.<sup>1</sup> Other respondents raised issues in relation to deposits and FSCS limits. We have taken note of the comments, but as they are not within the scope of the original consultation, we do not cover them in this paper.

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<sup>1</sup> CP12/16 FSCS Funding Model Review (July 2012).

## Our response

- 1.8 We are proceeding with our changes in all of the areas we consulted on, but in light of responses, we have modified our approach in two areas.
- We originally proposed to bring within the scope of our eligibility rules directors of a failed firm and persons who, in the opinion of the FSCS, are responsible for, or have contributed to, a firm's default. We appreciate that this is a particularly sensitive issue and we have dropped our initial proposal. Instead, we will provide a limited discretion for the FSCS to treat these persons as eligible claimants, if excluding them would prevent the efficient performance of the FSCS's functions – for example, the effective payment of compensation to claimants. This approach will ensure that continuing to exclude these individuals does not result in a worse outcome for eligible claimants.
  - We have clarified the disclosure that deposit takers are required to make regularly to depositors about FSCS compensation arrangements to make it clear under what circumstances they should contact the FSCS (rather than removing the FSCS's phone number from the disclosure). This approach seeks to balance both the practical difficulties faced by the FSCS and the consultation feedback.
- 1.9 We also explain why we think that some of the proposed changes giving the FSCS more flexibility to pay full compensation or to pay compensation without a full investigation should proceed, despite the concerns raised. We still believe that the changes are subject to adequate safeguards. This means they should only be used when normal processes would either clearly disadvantage consumers or would not be in the interests of firms.
- 1.10 The rules do not differ significantly from those we consulted on. The rules as amended in this Policy Statement will generally come into effect on 1 October 2012, but the disclosure change will come into effect on 1 April 2013.

## Who should read this document?

- 1.11 This Policy Statement will interest firms, consumers, consumer representative bodies and advice agencies.

### CONSUMERS

If you have a claim against a firm and it is unable to meet it, you may benefit from this package of measures. This is because the measures should enable the FSCS to pay compensation in a quicker and easier way.

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# 2

## Delivering compensation

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2.1 We proposed to change our rules to enable the FSCS to handle claims more speedily and efficiently. We also proposed a minor change to our disclosure requirements for deposit takers. The proposals concerned:

- quantification of compensation;
- simplification of eligibility criteria;
- settlement of claims; and
- other measures:
  - application forms;
  - assignment of rights;
  - compensation for client money shortfalls;
  - removing duplication of declarations of default;
  - clarification of deposits protected by the FSCS; and
  - disclosure requirements for deposit takers.

### **Quantification of compensation**

2.2 To avoid uncertainty and detriment to claimants affected by defaults where the underlying value of their investment remains uncertain, we proposed to give the FSCS some additional flexibility to pay full compensation and disregard the residual value of the investment. This will add to the existing options available to the FSCS in dealing with cases of this sort. We proposed to apply this rule change to defaults that occurred on or after the date the rule change came into effect.

2.3 The rule change means that the FSCS will still first try to pay compensation in the normal way for the loss the investor has suffered. However, if this is not possible because there are problems establishing the underlying value of the investment, the FSCS must conclude that it would not be appropriate to pay the investor less than full compensation in a final settlement of their claim or make a payment on account. It is only then that it will be able to pay compensation without taking the residual value of the investment into account.

2.4 We asked:

*Do you agree (i) with our proposal to give the FSCS more flexibility in quantifying claims, and (ii) that we should not extend the change to defaults that occur before the rule change comes into effect?*

2.5 Half the responses to this question supported the change, but just under half were against it. Of the respondents who commented on how to apply the change, most agreed that it should not apply to past defaults. The main arguments against the change were:

- consumers should seek to claim against the firm first, rather than the FSCS paying compensation at an early stage and taking an assignment of the investor's rights;
- the change will increase administrative costs and the cost of compensation and firms paying the increased cost may not be the same as the firms who benefit from any recovery;
- the FSCS administrative savings accrue to the original sub-class as a reduction in management expenses, but additional compensation will be borne by a different class where cross-subsidy has been triggered;
- the FSCS would be able to treat different classes of claimants and claims differently – claimants might seek to tailor their claim fraudulently to have it considered by the FSCS; and
- the change would bring limited benefits, as there is no reason for the FSCS to pay claims earlier than the original maturity date of a long-term investment.

2.6 Some respondents understood the rationale for the proposal and the need for flexibility, but considered the rule should be more specific about the circumstances when it could be used and should include the governance and controls that the FSCS would be expected to put in place.

### **Our response**

We still agree with the rationale for our original proposal. The rule gives the FSCS an additional option in complex cases where the value of an investment cannot be quantified in a reasonable timeframe. The FSCS will be required to use its judgement, but the rule contains safeguards that restrict the cases in which the FSCS can use it.

As we explained in paragraph 2.3, the FSCS must first consider whether it is appropriate to use one of the existing approaches where it cannot place a value on the investment. Then it can decide whether to use this new option, following the guidance we have set on its use. This includes guidance on the types of claimant and other factors, such as whether the amount of claimants' overall claims were likely to be assessed within a reasonable timeframe and the nature of the products to which the claim related. As the FSCS is operationally independent from the FSA, we do not believe it is appropriate for us to impose governance and controls on how the FSCS will use the rule.

We also note the following.

- The FSCS is required to pay claims as soon as possible and not to wait until claimants have exhausted the possibility of recovering their loss through the liquidation of the firm.
- We explained in the CP that in some cases it could be years **after** the contractual maturity date before claimants receive full compensation. This could lead to uncertainty and detriment for some types of claimants who, for example, are relying on the income or lump sum benefit from their investments.
- We do not consider that the change will increase total compensation costs. The investor will receive the same overall amount of compensation as the FSCS will take an assignment of the investment from the investor and receive whatever amount the investment realised in due course.
- There is the opportunity cost to firms of paying levies to meet compensation costs earlier than under the current rules. However the timing and amount of FSCS levies are uncertain.
- Cross subsidy is a feature of the FSCS funding model. It is not a ground to delay paying compensation where it is due. We agree that:
  - administrative savings accrue to the original sub-class as a reduction in management expenses, but if cross-subsidy is triggered, any additional compensation will be borne by a different class; and
  - as we acknowledged in the CP, the rule could bring forward compensation costs and lead to a cross-subsidy that might not otherwise occur.
- We have no evidence that the change will result in overall greater administrative costs for the FSCS. As we said in our CBA<sup>2</sup>, making one compensation payment rather than two will save administrative costs. However, the FSCS might need to administer any investments assigned to them, including making decisions on the realisation of the investments. This might involve some cost, but the amount of any cost would depend on the circumstances.

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<sup>2</sup> Paragraph 2.52.

- The rule gives the FSCS discretion to treat different classes of claimants and claims differently because we do not consider that it will be necessary or appropriate for the FSCS to use the rule in all cases. We can see no aspects of this rule that would encourage fraudulent claims or the success of a fraudulent claim.

We have carefully considered the feedback and believe that the change is subject to appropriate safeguards. We have therefore made this rule change as consulted on.

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## Simplification of eligibility criteria

2.7 We proposed to simplify the eligibility criteria for all sectors to speed up the FSCS's handling of claims, as we had done for deposits. This would mean that the FSCS would no longer need to carry out individual assessments of the eligibility status of most claimants. This would be particularly useful for transfers of insurance business, where identifying and excluding policies held by claimants who were not eligible for compensation could delay the transfer of the business. The change would extend eligibility to:

- directors and managers of the firm in default;
- close relatives of these directors and managers;
- auditors of the firm in default or of any body corporate in the same group as the firm or any actuary appointed under SUP 4 in our Supervision sourcebook by a friendly society or insurance undertaking;
- persons who, in the FSCS's opinion, are responsible for, or have contributed to, the firm's default; and
- persons holding 5% or more of the capital of the firm in default.

2.8 We asked:

*Do you agree with our proposal to simplify eligibility criteria?*

2.9 The majority of respondents opposed this change. The main arguments against the change were:

- those responsible for the default and others linked to the firm should not benefit from FSCS compensation because it gives rise to moral hazard and potential reputational damage for the industry, the FSCS and the FSA;

- the change results in limited benefits: reducing claims handling time is not a sufficient reason for the change as the investment claims processing time of four to six months will not be significantly extended by verifying eligibility; and
- administrative cost savings of £1m a year could be outweighed by just 80 newly eligible claimants in the case of investment business.<sup>3</sup>

### Our response

We agree it is undesirable to pay compensation to people such as directors who may have contributed to the failure of the firm. But we believe the FSCS is not the way to sanction those who have contributed to a firm's failure. We also think it is unlikely that FSCS protection will have a significant effect on the behaviour of directors and others.

We also accept that there is not the same need to speed up claims handling of investment cases compared with deposits. But we were not proposing to simplify eligibility on the premise that this alone will speed up claims handling. Simplification of eligibility is one of a package of measures that, taken together, we believe will enable the FSCS to handle claims more efficiently for the benefit of consumers.<sup>4</sup>

The change will give rise to particular benefits in the case of transfers of insurance business as it will in practice be **very** difficult for the FSCS to check the eligibility of many thousands of policyholders before a transfer can go ahead. It will also be very useful where the FSCS is paying compensation for a shortfall in client money and wishes to make a bulk payment of compensation to a firm taking over the business of a failed firm.

We agree that simplifying eligibility could lead to increased compensation costs. However, the extent of any increase will be specific to the facts of each firm in default, in particular the firm's size, and so difficult to quantify. For example, the directors of a large firm that fails are likely to be a much smaller proportion of potential claimants on the FSCS than the directors of a small firm.

We understand the concerns that those responsible for the default and others linked to the firm should not benefit from FSCS compensation. We appreciate that this is a particularly sensitive issue and we have dropped our initial proposal.

Instead, we will provide a limited discretion for the FSCS to treat directors and persons who contributed to the firm's default as eligible claimants, if excluding them would prevent the efficient performance of the FSCS's functions, for example:

<sup>3</sup> This assumes £12,575 compensation per case.

<sup>4</sup> Other measures include allowing the FSCS to pay compensation for shortfalls in client monies to a firm taking over the business, taking automatic assignment of consumers' rights and removing the need for application forms.

- the efficient payment of compensation;
- transfer of the business of the failed firm to another firm;
- securing the issue of insurance policies by another firm to eligible claimants in substitution for their existing policies; or
- the payment of life insurance benefits that fall due to be paid while the FSCS is seeking to facilitate the transfer of the business.

We believe that, under these circumstances, continuing to exclude directors and persons who contributed to the firm's default risks a worse outcome for eligible claimants. We note that the FSCS would be able to include these persons where it would be beneficial to the generality of eligible claimants under the particular scenario.

Our amended proposal will also reduce the extent to which simplifying eligibility results in increased compensation costs.

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## Settlement of claims

### Paying compensation without a full investigation

**2.10** In some cases, where the claims are small, the cost to the FSCS of making a precise assessment of them may be disproportionate to the size of the claim. We proposed to give the FSCS the ability (similar to the approach it already follows for deposits) to pay compensation without investigating one (or all) of the eligibility of the claimant, the validity of the claim and the amount of the claim, if the costs of the investigation are disproportionate to the benefits.

**2.11** We asked:

*Do you agree with our proposal to enable the FSCS, in certain cases, to pay compensation without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of the claim?*

**2.12** More than half the respondents opposed the proposal. Slightly less than half were in favour. The main arguments against the change were:

- all claims should be verified to ensure they are valid;
- the change will increase costs for firms – it could result in incorrect payments being made, or large claims being paid for which there is no legal liability;

- the change could be applied to large, complex claims where the investigation costs would be high, which would not be appropriate;
- the change will lead to the compensation rules being seen as a charter for claims management companies (CMCs) and people making spurious and fraudulent claims;
- speeding up payment of compensation is not important for investment claims in the way it is for deposit claims (for which an equivalent rule already exists) as investors do not expect to get a return on capital for five or 10 years; and
- where there is cross-subsidy between different FSCS funding classes, firms benefiting from lower FSCS management expenses levies will not be the same as the firms who suffer higher FSCS compensation costs levies.

### Our response

We have listened to the feedback but believe that the rule as proposed contains sufficient provisions to limit its use. In particular, the FSCS cannot use the rule unless it is satisfied that:

- it is reasonably in the interests of firms; and
- the costs of investigating the claim are likely to be disproportionate to the benefit of the investigation.

These conditions are very unlikely to be met in a large investment claim involving complex legal issues relating to liability and causation and/or complex facts. The conditions would not be met where using the rule would significantly increase compensation costs or would result in the FSCS meeting spurious claims created by CMCs.

The rule allows the FSCS to disapply parts of the conditions for payment of compensation. So if there is a particular concern, for example due to the activities of some CMCs, the FSCS can tailor its approach.

Examples where the FSCS might use the rule are the widespread mis-selling of low-value products and cases where the cost to the FSCS of a precise assessment (particularly calculating the compensation owed) may exceed the compensation due.

We accept that speeding up the payment of compensation is not as important for investment claims as it is for deposits. However, the objective of the rule change was not only to speed up the payment of compensation, but also a more efficient use of FSCS resources.

We have therefore made this rule change as consulted on.

## Application of the new rule

2.13 We also proposed that the new rule should apply to claims arising out of firms' acts or omissions and defaults before or after the rule change took effect.

2.14 We asked:

*Do you agree with our proposal for the rule to apply to acts or omissions and defaults before or after the rule change comes into effect?*

2.15 Almost half the respondents were in favour of the change and just over half were against. The main arguments against the change were:

- the benefits and the impact of the proposal are not clear;
- as a matter of principle, changes should not have a retrospective effect, so the rule should not apply to past defaults, without at least quantifying its impact on levies and defining when a claim is 'small';
- it would exacerbate the trend for people to make false and fraudulent claims; and
- where there is cross-subsidy between different FSCS funding classes, firms benefiting from lower FSCS management expenses levies will not be the same as the firms who meet the additional FSCS compensation costs levies.

## Our response

We believe the change has benefits for the FSCS' handling of claims, so it seems appropriate for the FSCS to be able to use the rule for past as well as future defaults.

There is a legal convention against applying legal changes 'retrospectively' (i.e. to actions that occurred before the rule change is made). The rationale is that it would be unfair to expose individuals and businesses to the risk of burdensome changes on actions they have already taken on the basis of the existing legal position.

However, the rule does not apply in relation to past actions, but to the FSCS' future handling of claims against firms that have been declared in default. If applying the rule change in a particular case would impose material cost burdens on the industry, it would not meet the tests for the use of the rule. As the amount and timing of FSCS compensation payments is uncertain, we do not think that the rule will affect matters about which firms currently have clear expectations.

We have therefore made this rule change as consulted on.

## Other measures

### Application forms

**2.16** We proposed to change the rules so that the FSCS may pay compensation without having received an application form – our rules already allow this for deposits. Our objective is to remove the burden on the FSCS of dealing with applications forms where they serve no useful purpose.

**2.17** We asked:

*Do you agree with our proposal to remove the requirement for the FSCS to obtain an application form?*

**2.18** Over half the respondents supported the proposal while under a third opposed it. The main arguments against the change were:

- a relaxed application process would increase the compensation cost burden to the investment sector and encourage fraudulent claims, thereby increasing the investigation costs which the FSCS would need to incur to identify these claims;
- the benefit of paying compensation as quickly as possible to depositors is far greater than in other sectors;
- the validity of the claim of an investor in an investment scheme depends on many more factors than in the case of a deposit or a claim for loss of client money – in particular, there are complex factors surrounding assessments of the suitability of advice that necessitate an application form to be submitted;
- if the intention is that this relaxation will apply in a small number of limited circumstances – for example, where client money is concerned, the rules should specify these circumstances;
- the FSCS was set up as a compensation scheme of last resort, not a scheme to pay compensation to all potentially eligible claimants whether they want to claim or not;
- some investors may wish to pursue claims against third parties in preference to claiming compensation from the FSCS;
- if the FSCS continues its policy of suing firms to recover the compensation it has paid to claimants, it is not acceptable that this could involve acting on behalf of investors who have not themselves made a claim on the FSCS; and
- a proposal to replace an application form with a declaration by the claimant that their claim was accurate is more appropriate and would reduce the risk of frivolous claims being made to the FSCS.

## Our response

The rule change merely allows the FSCS to pay compensation without the need to have obtained an application form. For example, there may be occasions when an application form, or a declaration from the claimant about the accuracy of their claim, serves no useful purpose because the FSCS has already obtained information from an insolvency practitioner about the shortfall in client money suffered by each client of a failed firm. The rule change will not benefit cases where the FSCS needs to obtain detailed information from individual claimants to assess their claim.

Removing the requirement to obtain an application form from claimants in all cases does not lessen the FSCS' duty to assess claims on the basis of a civil liability that the firm in default owes the claimant.<sup>5</sup>

To reduce the costs of compensation to levy payers, we place a duty on the FSCS to pursue recoveries against the failed firm, or against any third parties, where it has taken an assignment of the claimants' rights and it is cost effective to do so. We do not believe the ability to dispense with application forms affects this duty.

We do not have information on the type of cases where investors may wish to sue third parties rather than obtain compensation from the FSCS. However, even if a form is not required, an investor remains free to decline compensation from the FSCS and so would continue to have rights against the firm and any third party.

We have therefore made this rule change as consulted on.

## Assignment of rights

**2.19** We proposed that the FSCS should have the option of taking an automatic assignment of the claimant's rights against the failed firm and against any third parties for all sectors other than insurance. We had already made this change for deposits.

**2.20** We asked:

*Do you agree with our proposal for FSCS to have the option of taking an automatic assignment of rights?*

**2.21** The vast majority of respondents supported this change. The only argument against the change was that claimants should only forego their rights to their investment from a position of informed consent. The respondent considered that automatic assignment was not appropriate and would not result in any genuine improvement to the scheme or its operation. One respondent who supported the change considered that the FSCS should

<sup>5</sup> This is the case for the generality of claims. In some cases the FSCS may use the claims settlement rule (paragraphs 2.10 – 2.15) and not investigate claims fully.

contact all claimants when seeking an automatic assignment to ensure they understood what this meant in practice and give them the opportunity to opt out.

### **Our response**

The process of obtaining deeds of assignment from each claimant can slow up the settlement of claims and requires significant administrative work. We appreciate the concern that some claimants may not want an automatic assignment of their rights. However, the FSCS generally makes payment of compensation conditional on the claimant assigning their rights to the FSCS. The FSCS would make the effect of payment triggering the automatic assignment clear to claimants as part of the payment communication. Claimants who do not wish to assign their rights, whether on an individual basis or automatically under the new rule, can decline to accept compensation from the FSCS. We have therefore made the rule change as consulted on.

## **Compensation for client money shortfalls**

- 2.22** We proposed to amend our rules so that in cases involving a client money shortfall, the FSCS has the ability to pay compensation to a firm taking over the business rather than to individual clients. This was provided the firm was willing to accept the payment and the FSCS could be satisfied that this would not result in the FSCS paying out more compensation than it would otherwise.
- 2.23** We asked:
- Do you agree with our proposal regarding compensation for shortfalls in client money?*
- 2.24** The vast majority of respondents supported the proposal, but a minority opposed it. The main arguments against the change were:
- 2.25** A firm could be set up ostensibly to take over the business of the failed firm, take the compensation payments and then close down without accounting to its clients for the money it had received from the FSCS. The respondent acknowledged that this was a theoretical risk, but recommended that safeguards were put in place to mitigate it.
- 2.26** A consumer has the right to determine to whom compensation is paid for their claim. There may be good reasons why they would prefer to receive the compensation directly, rather than for the FSCS to pay it to the firm taking over their business.
- 2.27** The proposal could only work if the payment for all claims was being made at the same time, which is rarely the case at present.

## Our response

If a firm is in default and there is a possibility of its business being transferred to another firm, we will generally be involved and will consider whether the transfer is appropriate and will be in the interests of the clients of the failed firm. The FSCS will also wish to satisfy itself about the firm taking over the failed firm's business. The rule allows the FSCS to impose such terms on the firm as it sees fit in relation to the compensation for a client money shortfall being paid to the firm. We therefore consider that there are sufficient safeguards in place to mitigate the risk that the firm will misappropriate the client money.

If a consumer does not wish the money to remain with the firm that has taken over the failed firm's business, they can ask the firm to repay the money to them.

We do not agree that the proposal could only work in practice if payment for all claims was made at the same time. The rule allows the FSCS to use it for some, but not all, eligible claimants in relation to a particular firm. The FSCS might need to do this for disputed amounts or where the client has died.

We have therefore made the rule change as consulted on.<sup>6</sup>

## Removing duplication of declarations of default

2.28 We proposed to amend our rules so that the FSCS does not need to determine the firm in default if we have already determined it in default or the court has triggered the default.

2.29 We asked:

*Do you agree with our proposal to remove duplication in relation to declarations of default?*

2.30 Most respondents supported the proposal. One of the two respondents who opposed it explained that they were not able to agree to the proposal because there was insufficient information for the respondent to see what, if any, differences there were in the different tests for a firm being in default.

<sup>6</sup> In CP 12/20 Review of the client money rules for insurance intermediaries and CP12/22 EMIR, Multiple Pools and Wider Review we consulted on changes to the client assets regime for firms that carry on insurance mediation or investment business. When formulating final rules we will take into account this change to COMP.

### Our response

We agree that if there were different tests applied by different parties, this may affect the desirability of this change. However, there is no difference in practice whether the FSA or the FSCS declared the default. The overall consideration is whether the firm is unable or likely to be unable to satisfy protected claims against it.

We have therefore made the rule change as consulted on.

### Clarification of deposits protected by the FSCS

**2.31** The FSCS can protect a deposit if it was made with an establishment of a firm in the UK or a branch of a UK firm that is a credit institution established in another EEA Member State. We proposed to clarify the rules so that it was clear that this included a deposit that had been transferred to another firm under a transfer of banking business after the failure of the firm with which the deposit had originally been made.

**2.32** We asked:

*Do you agree with our proposal to clarify the deposits that the FSCS can protect?*

**2.33** The majority of respondents supported the proposal.

**2.34** We have therefore made the rule change as consulted on.

### Disclosure requirements for deposit takers

**2.35** Currently, we require deposit takers to regularly disclose information relating to the FSCS to eligible depositors, including the basic protection offered and FSCS contact details, using prescribed wording.<sup>7</sup> In CP12/7 we consulted on removing the FSCS' telephone number from the prescribed disclosures and replacing it with the firm's phone number because there is confusion among many consumers who call the FSCS to request information about their deposit accounts, mistakenly believing it is their bank, building society or credit union.

**2.36** We asked:

*Do you agree with the proposed clarification to the COMP 16 disclosures?*

<sup>7</sup> COMP 16.3.

- 2.37 Five of the nine respondents to this question opposed the proposal. Reasons cited by those opposed included:
- the proposal seems contrary to the FSCS' public awareness commitment;
  - the FSCS could consider introducing a filtering system which could screen callers who have mistakenly called them; and
  - the FSCS' phone number is essential for those consumers whose only way of contacting the FSCS is by telephone.
- 2.38 Three of the four respondents who agreed with the proposal stated that their agreement is subject to a minimum six months transitional implementation period. Reasons included printing lead times that require firms to finalise wording well in advance of the bank statement mailing period and the need to use up current stocks to prevent wastage/high costs.

### Our response

In light of the feedback received, we have instead clarified the wording prescribed (rather than removing the FSCS phone number) as follows:

For further information about the **compensation provided by the FSCS** 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 / ask at your local branch, refer to the FSCS website [www.FSCS.org.uk](http://www.FSCS.org.uk) or call **the FSCS on** [insert *FSCS* phone number]. **Please note only compensation related queries should be directed to the FSCS.**

We believe this approach takes into account both the practical difficulties faced by the FSCS and the consultation feedback. Following concerns raised over the implementation period, we have decided to give firms six months to implement this change (after this Policy Statement is published).

## Cost benefit analysis and compatibility statement

- 2.39 A number of respondents commented on the CBA. We do not think there will be any material increase in costs arising from the new rules, over and above those stated in CP12/7. Therefore, the original CBA continues to apply. We have covered some specific points raised by respondents on the CBA in this chapter.

- 2.40** There have been no significant changes to the rules proposed in CP12/7, or to the CBA. We have reviewed the compatibility statement in light of the changes we have made and we believe that the proposals will enable the FSCS to handle claims more speedily without any material increase in costs to firms.

# 3

## Insurance protection

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**3.1** In Chapter 3 of CP12/07 we discussed a number of issues relevant to insurance. Rather than proposing new rules or guidance, we sought feedback that will inform any future consideration of the desirability of changing the existing approach.

**3.2** We asked:

*What might be the strengths and weaknesses of increasing FSCS protection for benefits attributable to premiums paid after the appointment of a liquidator or administrator?*

*Do you have any comments on maintaining the current FSCS protection for life insurance?*

*Do you have any comments on any other possibilities we could consider for FSCS protection for life insurance?*

*What might be the strengths and weaknesses of enabling the FSCS to pay income benefits at 100% until systems can be changed?*

*Do you have any comments on other possible approaches we should consider for income benefits?*

*What might be the strengths and weaknesses of giving the FSCS some flexibility in verifying that a life insurance contract falls within the FSCS's scope?*

*What might be the strengths and weaknesses of automatically transferring or assigning rights to the FSCS?*

*What might be the strengths and weaknesses of maintaining the current position on recoveries but clarifying our rules?*

*Do you have any comments on our high-level CBA relating to the ideas on insurance in this Chapter?*

*Could you provide any additional data to help our cost benefit analysis as we would like to gather more information to help our consideration of the issues discussed?*

- 3.3** We received a range of useful feedback. We thank respondents for their input, which will be helpful in informing future policy developments.
- 3.4** The regulatory landscape continues to evolve in this area, and when developing any future policy changes we will need to consider wider programmes of financial sector reform under way at European and global level as well as domestically, including:
- The European Commission has committed to publishing a consultation paper on arrangements for resolving failing non-bank institutions including insurers, later in 2012.
  - The Treasury are considering whether<sup>8</sup>, in addition to strengthened insolvency procedures, the UK authorities should introduce a resolution regime for insurance firms, including a set of stabilisation powers to permit the orderly resolution of any insurance firms that could be systemically significant if it fails.
- 3.5** We will consider whether we should make any changes once we are clearer on the direction of these changes.

---

<sup>8</sup> HMT recently consulted on this in their consultation document 'Financial sector resolution: broadening the regime'. Consultation closed on 24 September 2012. [www.hm-treasury.gov.uk/d/condoc\\_financial\\_sector\\_resolution\\_broadening\\_regime.pdf](http://www.hm-treasury.gov.uk/d/condoc_financial_sector_resolution_broadening_regime.pdf)



## Annex 1

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# List of non-confidential respondents

4 Square Advice Limited

ABI (Association of British Insurers)

AFM (Association of Mutual Funds)

AIFA (Association of Independent Financial Advisers)

APCIMS (Association of Private Client Investment Managers and Stockbrokers)

Aviva Life Services UK Ltd

Barclays

BBA (British Bankers' Association)

Beckford James Chartered Financial Planners

BNY Mellon

Clydesdale Bank PLC

Consilium Asset Management Ltd

Entire Wealth Management Ltd

Financial Escape Ltd

Financial Services Consumer Panel

FOA (Futures and Options Association)

Hargreaves Lansdown Asset Management Ltd

Harley Financial Services Ltd

IFA Centre

IMA (Investment Management Association)

National Counties Building Society

Positive Solutions (Financial Services) Ltd

Richard Ansell

Simply Biz

Smaller Businesses Practitioner Panel

St. James's Place Wealth Management

Yorkshire Building Society

## Appendix 1

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# Made rules (legal instrument)

## COMPENSATION SOURCEBOOK (AMENDMENT NO 9) INSTRUMENT 2012

### Powers exercised

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

### Commencement

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

### Amendments to the Handbook

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

### Citation

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

By order of the Board  
27 September 2012

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

*client money*

...

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

**Annex B**

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

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

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

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

- (1) an *eligible claimant* has, ~~for claims other than claims under a protected contract of insurance~~, made an application for compensation (but see *COMP* 3.2.1AR);

...

Treating a person as having claimed

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

...

Claims on behalf of another person

3.2.2 R ...

...

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

This table belongs to COMP 4.2.1R

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

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

...

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

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

Long term insurance

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

...

Eligibility to claim in specified circumstances

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

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

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

...

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

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

...

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

- (1) ...
- (2) (in relation to an *ICD claim* or *DGD claim*):
  - (a) the *FSA* has determined it to be *in default* under *COMP* 6.3.2R; or
  - (b) a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *participant firm*, if that is earlier than (a); and

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

...

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

...

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

...

**7.2.1 R** The *FSCS*:

- (1) must or if the *FSCS* is subrogated automatically to the claimant's rights may make any payment of compensation to a claimant, in respect of a *protected deposit*, conditional on the claimant, in so far as able to do so, assigning the whole of his rights; and

...

...

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

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

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

Provisions relating to other classes of protected claim

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

...

After *COMP 7.2* insert the following new sections.

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

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

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

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

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

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

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

#### Determinations by the FSCS

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

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

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

#### Verification of determinations

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

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

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

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

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

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

shall have all or any of the following effects:

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

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

such terms as the *FSCS* determines are appropriate.

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

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

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

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

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

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

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

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

- (1) retain from those recoveries a sum equal to the "FSCS retention sum"; and

- (2) as soon as reasonably possible after it makes the recoveries, pay to the claimant, or as directed by the claimant, a sum equal to the "top up payment".

~~7.2.3B~~  
7.5.2

R The *FSCS* must calculate "FSCS retention sum" and the "top up payment" as follows:

- (1) calculate the "recovery ratio" of:
- (a) the amount recovered by the *FSCS* through rights assigned or transferred under ~~COMP 7.2.1R~~ or otherwise subrogated (taking into account any deduction from that amount the *FSCS* may make to cover part or all of its reasonable costs of recovery and of distribution, if any); to
  - (b) the claimant's overall *claim* for *protected deposits* against the *relevant person in default* less any liability of a *Home State* deposit guarantee scheme;
- (2) subtract the sum paid by the *FSCS* as compensation and any amount paid or payable by a *Home State* compensation scheme to the claimant from the total value of the claimant's overall *claim* for *protected deposits*, to give the "compensation shortfall";
- (3) apply the recovery ratio to the sum paid by the *FSCS* as compensation to the claimant, to give the "FSCS retention sum"; and
- (4) apply the recovery ratio to the compensation shortfall, to give the "top up payment".

~~7.2.3C~~  
7.5.3

- G (1) For example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £96,000 (after the costs of recovery and of distribution), then:
- (a) the recovery ratio would be 80% ( $£96,000 \div £120,000$ );
  - (b) the compensation shortfall would be £35,000 ( $£120,000 - £85,000$ );
  - (c) the FSCS retention sum would be £68,000 ( $80\% \times £85,000$ );
  - (d) the top up payment would be £28,000 (80% of £35,000);
  - (e) the total payment to the claimant would be £113,000 (£85,000 of compensation plus £28,000 of top up payment); and
  - (f) the total outlay by the *FSCS*, net of the FSCS retention sum,

would be £17,000 (20% x £85,000).

(2) In the example above, the amount recovered exceeds the amount of compensation. However, ~~COMP 7.2.4R~~ 7.5.1R also applies where the amount recovered is less than the amount of compensation. Therefore, for example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £24,000 (after the costs of recovery and of distribution), then:

- (a) the recovery ratio would be 20% (£24,000 ÷ £120,000);
- (b) the compensation shortfall would be £35,000 (£120,000 - £85,000);
- (c) the *FSCS* retention sum would be £17,000 (20% x £85,000);
- (d) the top up payment would be £7,000 (20% of £35,000);
- (e) the total payment to the claimant would be £92,000 (£85,000 of compensation plus £7,000 of top up payment); and
- (f) the total outlay by the *FSCS*, net of the *FSCS* retention sum, would be £68,000 (80% x £85,000).

~~7.2.3D~~ 7.5.4 G In order to prevent a claimant suffering disadvantage arising solely from his prompt acceptance of the *FSCS*'s offer of compensation compared with what might have been the position had he delayed his acceptance, the *FSCS* shall apply the rule in *COMP* 12.2.7R(2).

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

~~7.2.3E~~ 7.6.1 R If the *FSCS* makes recoveries ~~through rights assigned under *COMP* 7.2.4R~~ in relation to a *claim* that is not for a *protected deposit*, it may deduct from any recoveries paid over to the claimant under ~~*COMP* 7.2.4R~~ 7.6.2R part or all of its reasonable costs of recovery and distribution (if any).

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

- (1) to the extent that the amount recovered exceeds the amount of compensation (excluding interest paid under *COMP* 11.2.7R) received by the claimant in relation to the *protected claim*; or

- (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the FSCS at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see ~~COMP 7.2.5R~~ 7.6.4R).
- ~~7.2.4A~~ 7.6.3 R For the purpose of ~~COMP 7.2.4R~~ 7.6.2R compensation received by *eligible claimants* in relation to *Lloyd's policies* may include payments made from the *Central Fund*.
- ~~7.2.5~~ 7.6.4 R Except for a *claim* for a *protected deposit*, the *FSCS* must endeavour to ensure that a claimant will not suffer disadvantage arising solely from his prompt acceptance of the *FSCS's* offer of compensation or from the subrogation of his rights and claims to the FSCS compared with what might have been the position had he delayed his acceptance or had his claims not been subrogated.
- ~~7.2.6~~ 7.6.5 G As an example of the circumstances which ~~COMP 7.2.5R~~ COMP 7.6.4R is designed to address, take two claimants, A and B.
- (1) Both A and B have a *protected investment business claim* of £60,000 against a *relevant person in default*. The *FSCS* offers both claimants £50,000 compensation (the maximum amount payable for such claims under *COMP* 10.2.3R). A accepts immediately, and assigns his rights against the *relevant person* to the *FSCS*, but B delays accepting the *FSCS's* offer of compensation.
- (2) In this example, the liquidator is able to recover assets from the *relevant person in default* and makes a payment of 50p in the pound to all the *relevant person's* creditors. If the liquidator made the payment before any offer of compensation from the *FSCS* had been accepted, A and B would both receive £30,000 each from the liquidator, leaving both with a loss of £30,000 to be met by the *FSCS*. Both *claims* would be met in full.
- (3) However, if the payment were made by the liquidator after A had accepted the *FSCS's* offer of compensation and assigned his rights to the *FSCS*, but before B accepted the *FSCS* offer of compensation, A would be disadvantaged relative to B even though he has received £50,000 compensation from the *FSCS*. A would be disadvantaged relative to B because he promptly accepted the *FSCS's* offer and assigned his rights to the *FSCS*. Because A has assigned his rights to the *FSCS*, any payment from the liquidator will be made to the *FSCS* rather than A. In this case the *FSCS* has paid A more than £30,000, so the £30,000 from the liquidator that would have been payable to A will be payable in full to the *FSCS* and not to A.
- (4) B is able to exercise his rights against the liquidator because he delayed accepting the *FSCS's* offer and receives £30,000 from the

liquidator. B can then make a *claim* for the remaining £30,000 to the *FSCS* which the *FSCS* can pay in full (see *COMP* 10.2.2G). B therefore suffers no loss whereas A is left with a loss of £10,000, being the difference between his *claim* of £60,000 and the compensation paid by the *FSCS* of £50,000.

Amend the following as shown.

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

Form and method of paying compensation

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

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

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

...

Paying full compensation in return for rights

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

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

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

...

Settlement of claims

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

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

...

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

...

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

...

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

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

...

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

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

**Determinations by the FSCS**

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

**Verification of determinations**

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

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

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

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

Payment of compensation without an application

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

Early compensation for term or notice accounts

- 15.1.12 R [deleted]

Form and method of paying compensation

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

...

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

Rights and obligations against the relevant person and third parties

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

Settlement of claims

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

moved to new COMP 12.2.10R.]

...

....

TP1.1 Transitional Provisions Table

...

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...					
33	<u>Amendments introduced by Annex A and Part 1 of Annex B of the Compensation Sourcebook (Amendment No 9) Instrument 2012.</u>	R	<p><u>The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 1 October 2012. Notwithstanding the above:</u></p> <p><u>(a) to the extent that the provisions changed apply to <i>protected deposits</i>, all the changes in (2); and</u></p> <p><u>(b) the changes to COMP 12.2.10R; apply irrespective of when the default occurred.</u></p>	From 1 October 2012 indefinitely	From 1 October 2012

...

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

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

**“Important information about compensation arrangements**

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

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

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

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