2009/47: Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009

United Kingdom: Financial Services Authority
Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of:
   (1) the powers and related provisions in 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 157(1) (Guidance); (d) section 213 (The compensation scheme); (e) section 214 (General); and (f) section 215 (Rights of the scheme in relevant person’s 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 referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force as follows:
   (1) Part 1 of Annex C comes into force on 1 August 2009;
   (2) Part 2 of Annex C comes into force on 1 January 2010; and
   (2) the remainder of this instrument comes into force on 31 December 2010.

Amendments to the Handbook

D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
</tr>
<tr>
<td>Fees manual (FEES)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Compensation sourcebook (COMP)</td>
<td>Annex C</td>
</tr>
</tbody>
</table>

Citation

E. This instrument may be cited as the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009.

By order of the Board
23 July 2009
Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

\textit{single customer view} a single, consistent view of an eligible claimant’s aggregate protected deposits with the relevant firm which contains the information required by COMP 17.2.4R, but excluding from that view those accounts where the eligible claimant is a beneficiary rather than the account holder or if the account is not active as defined in COMP 17.2.3R(2).
Annex B

Amendments to the Fees manual (FEES)

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

6.5 Compensation costs

...

6.5.15 R Where a participant firm can identify that a protected deposit was made by a person who is not an eligible claimant, it may exclude the amount of that deposit from the tariff base, provided that it notifies the FSCS of the amount of the deposit so excluded and provides the FSCS with such information about the deposit as the FSCS may reasonably require.

...

6 Annex 3 Financial Services Compensation Scheme – classes and sub-classes

This table belongs to FEES 6.5.7R and FEES TP 2.5.2R

<table>
<thead>
<tr>
<th>Class A</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Protected deposits as at 31 December. Except where paragraph (4) says otherwise, protected deposits must be adjusted as follows.</td>
</tr>
<tr>
<td>Tariff base</td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>Only include a protected deposit to the extent that an eligible claimant would have a claim in respect of it.</td>
</tr>
<tr>
<td>(2)</td>
<td>Exclude any amount in respect of which the FSCS would not pay compensation due to the maximum payment limits in COMP 10.2.</td>
</tr>
<tr>
<td>(3)</td>
<td>The tariff base calculation is made on the basis of the information that the firm would have to include in the single customer views it has to be able to produce under COMP 17 (Systems requirements for firms that accept deposits). The information must be of the extent and standard required if the firm was preparing the single customer views as at the valuation date for the tariff base (31 December).</td>
</tr>
<tr>
<td>(4) (a)</td>
<td>If this paragraph applies, the adjustments in (1) to (3) do not apply and the calculation is based on protected deposits.</td>
</tr>
<tr>
<td>(4) (b)</td>
<td>This paragraph applies with respect to a protected deposit to the extent that, under COMP 17, the firm does not have to identify an eligible claimant with respect to that protected deposit because the account is held by the account holder on behalf of others.</td>
</tr>
</tbody>
</table>
(3) The question of whether a person is an eligible claimant or not, or whether a contract of insurance is a protected contract or not, or whether business is compensatable business or not, must be judged at whichever of the following dates the firm chooses:

(a) (for a person who has become a new client during the period by reference to which the firm's tariff base is being calculated) the date on which the person becomes a client;

(b) (for a person who has ceased to be a client during that period) the date on which the person ceases to be a client; or

(c) (in any other case) the date to which the most recent information supplied by the firm under FEES 6.5.13R is prepared.

However this does not apply for the purpose of calculating the tariff base for class A (Deposits) so far as it relates to protected deposits.
Annex C

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 August 2009

1.1.4 G Firms will be particularly interested in FEES 6, which deals with levies and COMP 16 which deals with disclosure requirements for firms that accept deposits.

...  

1.1.8 G COMP 1 consists of guidance which is aimed at giving an overview of how this sourcebook works. The provisions of COMP 2-14 to 16 cover who is eligible, the amount of compensation and how it might be paid, and the ways in which the activities of the FSCS are to be financed disclosure requirements for firms that accept deposits.

...  

4.3.1 R A person is eligible to claim compensation in respect of a protected deposit 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.

...  

Part 2: Comes into force on 1 January 2010

16.1.2 G The purpose of this chapter is to set out the information about compensation these firms must disclose, how frequently that information should be disclosed and the methods of communication which should be used.

...  

After COMP 16.2 insert the following new section. The text is not underlined.

16.3 UK domestic firms, non-EEA firms and incoming EEA firms

UK domestic firms and non-EEA firms
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 (including the amounts covered and eligibility to claim) please ask at your local branch, refer to the FSCS website www.FSCS.org.uk or call [insert FSCS phone number].”

16.3.2 G A UK domestic firm that discloses the information required to be disclosed by COMP 16.3.1R to persons that hold protected deposits through an overseas branch may do so in the local language.

Incoming EEA firms that accept deposits through UK branches and have not obtained top-up cover

16.3.3 R An incoming EEA firm that accepts deposits through a UK branch and has not obtained top-up cover must disclose the following information to any protected deposit holder with that branch who is or is likely to be eligible to claim for compensation from the firm’s Home State compensation scheme.

“Important information about compensation arrangements

We are part of [insert name of firm] which is based in [insert name of Home State]. Most depositors are covered by [insert name of Home State compensation scheme] which is also based in [insert name of Home State].
This means that if our bank is unable to meet its financial obligations, our eligible UK depositors would be entitled to claim up to £ [insert Home State compensation scheme maximum payment for protected deposits] from the [insert name of Home State compensation scheme]. [State any significant conditions that compensation is subject to e.g. if paid on a per account or per depositor basis, and if set-off applies].

For further information about the [insert name of Home State compensation scheme] (including the amounts covered and eligibility to claim) please contact your branch or refer to [insert contact details of the Home State compensation scheme].”

Incoming EEA firms that accept deposits through UK branches and have obtained top-up cover

16.3.4 R An incoming EEA firm that accepts deposits through a UK branch and has obtained top-up cover 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 part of [insert name of firm] which is based in [insert name of Home State]. Most depositors are covered by [insert name of Home State compensation scheme] compensation scheme which is also based in [insert name of Home State]. In addition, for depositors with our UK branch we have joined the UK compensation scheme, the Financial Services Compensation Scheme (FSCS).

This means that if our bank is unable to meet its financial obligations, eligible depositors with our UK branch could claim up to £ [insert Home State compensation scheme maximum payment for protected deposits] from the [insert name of Home State compensation scheme] and if they have more saved with us, they could also claim for the remainder up to [insert FSCS maximum payment for protected deposits] from the FSCS.

This is because the [insert name of Home State compensation scheme] is only responsible for paying the first part of the compensation up to £ [insert Home State compensation scheme maximum payment for protected deposits] and the FSCS is only responsible for paying the second part of compensation – being above £ [insert Home State compensation scheme maximum payment for protected deposits] and up to [insert FSCS maximum payment for protected deposits].

The FSCS will also try to help depositors with our UK branch, for example, to get in touch with the [insert name of Home State compensation scheme] compensation scheme and to understand the
process involved.

For further information on how compensation would apply to you please contact:

- [insert name of firm] by dropping into one of our branches, at [insert website link] or by calling [insert phone number].

General information is also available from:

- the FSCS by calling [insert FSCS phone number] or at [insert website link].

Incoming EEA firms: conversion of home state compensation scheme limit to sterling

16.3.5 G When an incoming EEA firm inserts the Home State compensation scheme maximum payment for protected deposits in the disclosure required by this section, that amount should be converted into pounds sterling and the exchange rate noted in a footnote. The exchange rate used should be updated regularly.

Frequency of communication

16.3.6 R (1) An firm must provide the information required to be disclosed by this section on at least a 6 monthly basis.

(2) If a firm normally communicates with a protected deposit holder less frequently than every 6 months (1) does not apply and the firm must provide the information required to be disclosed by this section on at least an annual basis.

16.3.7 G The FSA considers monthly, quarterly or 6 monthly account statements to be a means of communication for these purposes.

Method of communication

16.3.8 R (1) If the recipient receives paper statements, the information required to be disclosed by this section must be prominently displayed in the relevant paper statement.

(2) If the recipient uses internet banking, the information required to be disclosed by this section must be communicated by electronic means in a way that brings it to the attention of the recipient.

(3) If the recipient does not receive paper statements or use internet banking the information required to be disclosed by this section must be communicated in a way that brings it to the attention of the recipient.
16.3.9 G The FSA considers that if information required to be disclosed by this section is communicated by letter/leaflet sent through the post, email or a pop up box on the firm’s internet website the requirement to communicate in a way that brings the information to the attention of the recipient will have been satisfied.

Trading name disclosure

16.3.10 R Where a firm operates under more than one trading name, the firm must, in any communication to a protected deposit holder who is or is likely to be eligible to claim for compensation from the compensation scheme or other Home State compensation scheme and generally in its UK branches and on its website, prominently disclose the trading names under which it operates and explain the impact this has on any protected deposit holder’s entitlement to compensation from the compensation scheme and any relevant Home State or Host State compensation scheme.

Further disclosure

16.3.11 G A firm should ensure that all communications to consumers about compensation for protected deposits are clear, fair and not misleading.

16.2.12 G A firm should also consider its obligations under the Credit Institutions (Protection of Depositors) Regulations 1995.

Part 3 Comes into force on 31 December 2010

All references in COMP (other than in COMP 12.2.1R and the heading in respect of COMP 12.2.4R) to “overall net claim” are amended to “overall claim”.

Amend the following as shown.

1.1.4 G Firms will be particularly interested in FEES 6, which deals with levies and COMP 16 which deals with disclosure requirements for firms that accept deposits and COMP 17 which deals with systems and information requirements for firms that accept deposits.

…

1.1.8 G COMP 1 consists of guidance which is aimed at giving an overview of how this sourcebook works. The provisions of COMP 2 to COMP 17 cover who is eligible, the amount of compensation and how it might be paid, and disclosure requirements for firms that accept deposits and systems and information requirements for firms that accept deposits.

…
12.2.1 R The amount of compensation payable to the claimant in respect of:

(1) any type of protected claim other than a claim for a protected deposit is the amount of his overall net claim against the relevant person at the quantification date; and

(2) any claim for a protected deposit is the amount of his overall gross claim against the relevant person at the quantification date;

and any reference in COMP to overall claim means “overall net claim” or “overall gross claim” as appropriate.

... Overall gross claim

12.2.6A R A claimant’s overall gross claim is the sum of the claims for protected deposits that he has against a relevant person in default.

Payments to the claimant

12.2.7 R ...

Time for calculation of compensation due to the claimant

12.2.8 R ...

Amounts paid by the Society

12.2.9 R ...

...

12.3.1 R (1) For a protected deposit claim, the quantification date is the date the relevant person is determined to be in default, or the date the protected deposit was due and payable, if later.

(2) If a protected deposit was not due and payable on or before the date that the relevant person was determined to be in default, the FSCS must nevertheless treat that date as the quantification date for that deposit and pay compensation comprising:

(a) the principal sum on the basis that it is due and payable on that date;

(b) interest or premium accrued to that date; and

(c) unaccrued interest or premium attributable to or arising in respect of the period to that date.

...

15 Special situations Deposit payout
15.1 Accelerated compensation for depositors

15.1.1 G When a relevant person is in default with claims against it for protected deposits it may be desirable for the FSCS to make accelerated payments of compensation, for the protection of consumers and to maintain market confidence.

15.1.2 G To facilitate an accelerated payment of compensation, 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, to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government and/or, to be subrogated automatically to the claimant’s rights against the relevant party and/or any third party, and/or to settle claims.

... 

15.1.4 R Before using any power in this section, the FSCS must determine that using that power:

(1) would be beneficial to the generality of eligible claimants with protected deposits with a relevant person in default in respect of whom the power is to be used; and

(2) is unlikely to result in any additional cost to the FSCS which would require the imposition of increased levies on participant firms, over and above those required if the power was not exercised, or any additional cost is likely to be justified by the benefits. [deleted]

... 

15.1.12 R If a protected deposit was not due and payable on or before the date that the relevant person was determined to be in default, the FSCS may nevertheless treat that date as the quantification date for that deposit and pay compensation on the basis that the principal sum (including any interest attributable up to that date) is due and payable on that date either (as determined by the FSCS):

(1) with the consent of the eligible claimant (express or implied, including by conduct); or

(2) without that consent, but in this case the amount that the eligible claimant is entitled to claim from the FSCS is the lesser of:

(a) the amount which the FSCS quantifies as being the value of that claim as at the quantification date; and

(b) the amount that would have been payable at the date the deposit was due and payable.
and COMP 12.3.1R is modified accordingly. [deleted]

... Settlement of claims

15.1.21 R (1) The FSCS may pay compensation without fully or at all investigating the eligibility and/or amount of that 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; and

(b) 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.

...

After COMP 16 insert the following new chapter. The text is all new and is not underlined.

17 Systems and information requirements for firms that accept deposits

17.1 Application and purpose

17.1.1 R (1) This chapter applies to:

(a) a UK domestic firm that accepts deposits;

(b) a non-EEA firm that accepts deposits in the United Kingdom; and

(c) an incoming EEA firm that accepts deposits through a UK branch and has obtained top-up cover.

(2) Notwithstanding (1), this chapter does not apply to a firm which does not conduct business that could give rise to a claim for a protected deposit by an eligible claimant and has no reasonable likelihood of doing so.

17.1.2 G The purpose of this chapter is to set out the core systems and information requirements these firms must have in place to facilitate a fast compensation payout to eligible claimants holding protected deposits with them.

17.2 Core systems and information requirements

17.2.1 R (1) A firm must be able to identify which accounts are held by eligible claimants and which accounts (including client accounts and trust accounts) are held on behalf of beneficiaries who are or who may be
eligible claimants.

(2) The information required by (1) must be electronically stored.

17.2.2 R Where eligibility of a customer to bring a claim for compensation from the compensation scheme is likely to change from time to time, a firm must at least annually take reasonable steps to check whether or not the customer is eligible.

17.2.3 R (1) A firm must be able to provide to the FSCS a single customer view for each eligible claimant, except where the eligible claimant is the beneficiary of an account held on his behalf by another person or if the account is not active, within 72 hours of a request by the FSCS.

(2) An account is not active if it:

(a) is a dormant account as defined in the Dormant Bank and Building Society Accounts Act 2008; or

(b) is an account for which the firm has received formal notice of a legal dispute or competing claims to the proceeds of the account; or

(c) appears on the ‘Consolidated list of financial sanctions targets in the United Kingdom’ that is maintained by HM Treasury.

(3) A firm must be able to provide the information required by (1) by electronic transmission and in a format which is readily transferable to and compatible with the FSCS’s system.

17.2.4 R A firm must ensure that each single customer view contains all the information set out in COMP 17.2.7R.

17.2.5 R A firm must ensure that in relation to accounts which are held by eligible claimants, the system which produces the single customer view must:

(1) be capable of automatically identifying the amount of compensation payable to each eligible claimant; and

(2) include a check facility which allows the firm to identify if any portion of an eligible claimant’s deposit is over the maximum payment for a protected deposit set out in COMP 10.2.3R.

17.2.6 R A firm must take reasonable steps to ensure the accuracy of the data it holds in order to satisfy the requirements of this section.

17.2.7 R (1) If a firm operates less than 5,000 accounts held by eligible claimants, COMP 17.2.1R(2), COMP 17.2.3(2) and COMP 17.2.5R do not apply.

(2) If a firm hitherto within (1) operates 5,000 or more accounts held by eligible claimants for two consecutive years as at 31 December of each year, the firm must immediately give the FSA notice of that
If a firm hitherto within (1) operates 5,000 or more accounts held by eligible claimants for two consecutive accounts years as at 31 December of each year, COMP 17.2.1R(2), COMP 17.2.3R(2) and COMP 17.2.5R apply and continue to apply even if the firm operates less than 5,000 accounts held by eligible claimants at a future date.

If a firm operates 5,000 or more accounts held by eligible claimants on 31 December 2009 COMP 17.2.1R(2), COMP 17.2.3R(2) and COMP 17.2.5R apply and continue to apply even if the firm operates less than 5,000 accounts held by eligible claimants at a future date.

Table - Minimum information firms must include in each single customer view

<table>
<thead>
<tr>
<th>17.2.8 R</th>
<th>This table belongs to COMP 17.2.4R</th>
</tr>
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<tbody>
<tr>
<td>Field identifier</td>
<td>Field descriptor</td>
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<tr>
<td>Customer details</td>
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</tr>
<tr>
<td>Single customer view record number</td>
<td>Unique customer identifier</td>
</tr>
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<td>Title</td>
<td>Title</td>
</tr>
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<td>Customer 1st Forename</td>
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<td>Customer 2nd Forename</td>
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<tr>
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<tr>
<td>Customer Surname</td>
<td>Surname</td>
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<td>Previous Name</td>
<td>Any former name of account holder</td>
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<td>Contact details</td>
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<td>Unique customer identifier</td>
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<td>-----------------------------------</td>
<td>---------------------------</td>
</tr>
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<td>Account title</td>
<td>Surname or company name, first name, any other account initials or middle name identifier</td>
</tr>
<tr>
<td>Account number</td>
<td>Unique number for this account</td>
</tr>
<tr>
<td>Product type</td>
<td>Type of product or service – instant access/term</td>
</tr>
<tr>
<td>Account holder indicator</td>
<td>This field applies to joint or multiple accounts. It must identify whether the customer is the primary account holder or secondary account holder (or other such status).</td>
</tr>
<tr>
<td>Account status code</td>
<td>Active accounts only to be included</td>
</tr>
<tr>
<td>Account balance</td>
<td>At end of business on date of request from FSCS</td>
</tr>
</tbody>
</table>

**Aggregate balance**

<table>
<thead>
<tr>
<th>Single customer view record number</th>
<th>Unique customer identifier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate balance across all accounts</td>
<td>At end of business on date of request from FSCS</td>
</tr>
<tr>
<td>Compensatable amount</td>
<td>At end of business on date of request from FSCS which shows the amount to be compensated subject to the limit check that must be performed by the firm pursuant to COMP 17.2.5R (this could be lower than the aggregate balance across all accounts if this exceeds the maximum payment for a protected deposit set out in COMP 10.2.3R).</td>
</tr>
</tbody>
</table>

17.2.9 **R** Where an eligible claimant holds more than one account, the section of the single customer view which sets out “Details of account(s)” must be replicated for each account held.

17.2.10 **G** The amount(s) inserted into each single customer view as the account balance(s) and aggregate balances across all accounts should be the total of principal plus any interest or premium attributable up to the quantification date.

**Sch 2 Notification requirements**

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
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<tbody>
<tr>
<td>COMP</td>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.4.6R</td>
<td>COMP 17.2.7R(2)</td>
<td>The firm has operated 5,000 or more accounts held by eligible claimants for two consecutive years, having previously operated less than 5,000</td>
<td>See Matter to be notified</td>
<td>See Matter to be notified</td>
</tr>
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