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newsletter

FSA[®]

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This newsletter provides a summary of CP05/15. Please see 'Who should read this paper?' below to see if CP05/15 is relevant to you.

Financial Services Authority & Financial Ombudsman Service

Review of Compensation Scheme and Ombudsman Service limits and miscellaneous amendments to the Compensation sourcebook

Why are we issuing this Consultation Paper?

The FSA is seeking views on the outcome of the FSA's review of the compensation and eligibility limits for the Financial Services Compensation Scheme (FSCS) and the compulsory jurisdiction of the Financial Ombudsman Service (FOS). The FOS is seeking views on this outcome to the extent that it relates to its voluntary jurisdiction.

In the FSA's view, our findings do not provide evidence of significant and widespread consumer detriment, or distortions to consumer behaviour, either now or in the immediate future, that would justify recommending changing the limits. Nevertheless, the FSA is consulting on some specific issues as its discussions with stakeholders have revealed a wide range of views.

The case for increasing the maximum limit for FOS awards from the current £100,000 to £200,000 is discussed. Data from respondents to this CP on whether the existing limit reduces the number of claims referred to the FOS would be helpful in analysing whether this limit should be increased.

Who should read the full paper?

This Consultation Paper will be of interest to firms, participants in the FOS' s voluntary jurisdiction, consumers, consumer representative bodies, advice agencies and small businesses.

What is the background to this?

The FSCS and the FOS were both set up under the Financial Services and Markets Act 2000 (FSMA), which came into force on 1 December 2001 (N2).

The FSCS is the UK' s statutory fund of last resort for customers of authorised financial services firms. This means that the FSCS can pay compensation if a firm is unable, or likely to be unable, to pay claims against it. Under FSMA, the FSA makes rules about who can apply to FSCS and the level of compensation it can pay. The FSCS is funded through levies on the industry.

The FOS provides consumers with a free, independent service for resolving disputes with financial firms. The FOS has a compulsory jurisdiction (CJ), which covers authorised firms for specified activities, and also a voluntary jurisdiction (VJ), which covers other activities and firms.

Both the industry and consumers will be affected by the limits on compensation, awards and small business eligibility. The FSA is coordinating its work on limits with its review of FSCS funding. While this review will focus mainly on the FSCS, it may have consequential changes to the FSA and FOS arrangements.

What is the structure of this paper?

The FSA has sought preliminary views on the FSCS and FOS limits from industry and consumer stakeholders and is now reporting the outcome of its review of these limits, described in Annexes 1-5. These are:

- a review of the background and rationale for limits (Annex 1);
- a comparative analysis of EU limits (Annex 2);
- a review of experience since N2 (Annex 3);
- a review of supplemental industry data (Annex 4); and
- a review of stakeholder input (Annex 5).

The FSA also seeks comments on specific proposals relating to:

- FSCS compensation limits under the individual sub-schemes established at N2, including the co-insurance structure¹ (Chapters 2 to 4);
- FOS award limits including the decision not to have separate limits for distress and inconvenience, but for the ombudsman to maintain existing arrangements ensuring that such awards are made on a consistent basis (Chapter 5);

¹ Following consultation, the FSCS was structured at N2 as a single organisation with three sub-schemes covering deposits, investments and insurance. Two new sub-schemes were added when mortgage and general insurance advice and arranging became regulated activities in October 2004 and January 2005 respectively. So the FSA has not focused on separate changes to these sub-schemes as part of the review.

- small business eligibility limits for the FSCS² and the FOS, including the FOS limits for charities and trusts (Chapter 6);
- transitional arrangements and future limits reviews (Chapters 7 and 8); and
- certain technical changes relating to the FSCS. These are not specifically related to limits but they address points that the FSCS has raised and the FSA considers are appropriate for consultation alongside the proposals on limits (Chapter 9). They concern: failure of a firm – distribution of recoveries; incoming EEA firms ceasing to top-up; failure of an insurer – policy assigned to an overseas resident; failure of a life insurer – continuity of cover; and insurers in financial difficulties.

Chapters 10 and 11 contain the FSA's cost benefit analysis and compatibility statement. Annex 6 contains the list of questions and Annex 7 proposed Handbook text relating to the technical changes.

What are the next steps?

As a result of implementation of the Markets in Financial Instruments Directive (MiFID), the FSA will be carrying out a review of how MiFID may affect the FOS, including which consumers are eligible to complain to the FOS. The FSA will be consulting on MiFID implementation in 2006.

Comments on this paper should reach the FSA by 31 March 2006. It plans to issue a Policy Statement giving feedback on the consultation in the second quarter of 2006.

Given the links with the funding review, the FSA and the FOS are not proposing to introduce any changes to the limits before 2007/08. The Policy Statement will include the final rules for any technical changes. The FSA proposes that these changes will take effect from 1 April 2007.

Consumers

This Consultation Paper will be of interest to consumers who may in the future need to bring a claim against a firm to the FSCS or refer a complaint to the FOS. It will similarly be of interest to small businesses which may, because of their size, qualify as potential applicants to the FSCS or the FOS. It will also be of interest to consumer groups and advice agencies who may be advising consumers on their rights to bring such claims.

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach the FSA by 31 March 2006.

The Consultation Paper is issued jointly by the FSA and the Financial Ombudsman Service (FOS) so far as it relates to its voluntary jurisdiction and both the Financial Services Compensation Scheme and the FOS will receive copies of all responses.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/pubs/cp/cp05_15_response.html). Where possible, we would appreciate responses using the e-mail address: cp05_15@fsa.gov.uk

Alternatively, please send comments in writing to:

Bridget Moss, FOS/FSCS Liaison Team,
The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS
Telephone: 020 7066 5428 Fax: 020 7066 9718 E-mail: cp05_15@fsa.gov.uk

It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.

How can I get the full paper?

You can download the full Consultation Paper from:

www.fsa.gov.uk/pages/Library/Policy/CP/2005/05_15.shtml

Or you can order hard copies of the paper:

Phone our helpline on 0845 608 2372, quoting reference CP05/15

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