

## **Q&A**

### **Why is the notice addressed to me?**

The accompanying notice is addressed to Interested LC&F Bondholders because they are what are known as "interested parties" in a judicial review case against Financial Services Compensation Scheme Limited ("FSCS").

As a result, bondholders are entitled to know about the action and be given an opportunity to participate in it. The Court has ordered that bondholders be notified in this way, rather than by being given notice of the Claim individually, because of the difficulties involved in individually drawing the attention of the claim to the very large number of bondholders.

### **What is the Financial Services Compensation Scheme?**

FSCS manages a scheme established by legislation to compensate investors who suffer losses on their investments that are caused by the failure of firms that are subject to financial regulation. Currently, investments of up to £85,000 are covered by the scheme.

### **What has FSCS decided about compensation for LC&F bondholders?**

In January 2020, FSCS decided to compensate approximately 150 of the roughly 11,500 bondholders in LC&F, being those who had transferred external Stocks and Shares ISAs directly to LC&F.

FSCS also indicated that certain investors who could show that they received investment advice from LC&F would be eligible for compensation.

The FSCS commenced its assessment of potential advisory claims in May 2020. The FSCS announced on 27 August 2020 that it had decided to compensate 1,295 LC&F Bondholders based on investment advice. Its assessment process is ongoing. FSCS does not expect to complete this process until the end of December 2020.

If bondholders are unable to show that they received investment advice from LC&F, they will not be compensated for their losses on this basis.

### **What is the Claim about?**

In a judicial review case, the Court examines the lawfulness of a decision of a public body and, in certain circumstances, can order that the decision be "quashed", i.e. that it be set aside.

In the present Claim against FSCS, the Court is being asked to quash the decision of FSCS that the issuance by LC&F of bonds on or after 3 January 2018 was not a regulated activity, and to require FSCS to make that decision again in the light of the Court's judgment.

If the Claim is successful, the Court's judgment would affect: (i) investments made on or after 3 January 2018; or, in the alternative, (ii) all investments in bonds labelled as eligible for Investment Savings Account (ISA) status on or after 3 January 2018.

If the Court finds in favour of FSCS then its original decision would stand.

### **What is the basis for the Claimants' Claim?**

FSCS is required to pay compensation in accordance with its rules (set out in COMP). In summary, these require (amongst other things) that the application for compensation is in respect of a civil claim in connection with a regulated activity.

FSCS has accepted that LC&F carried out the regulated activities of "advising" and "arranging" and has agreed to compensate those claims which arise in connection with these activities. The issue in this case is whether, by issuing its bonds to customers, LC&F was also carrying on the regulated activity of "dealing in investments as principal" (or "agreeing" to carry on the regulated activity of "dealing in investments as principal"). This in turn depends on whether the bonds issued by LC&F

were "transferable securities" within the meaning of the second Markets in Financial Instruments Directive (Directive 2014/65/EU, MiFID II).

The Claimants allege that they were and that, once relevant UK laws were changed on 3 January 2018 to implement MiFID II, LC&F was carrying out the regulated activities of "dealing in investments as principal", or "agreeing" to carry out the activity of "dealing in investments as principal".

FSCS says that the LC&F bonds were not "transferable securities" within the meaning of MiFID II, and that LC&F was therefore not carrying out the activity of "dealing in investments as principal" (nor was it "agreeing" to do so).

### **Which bondholders are bringing the claim?**

The Claimants in the case are Emmet Donegan, Nathan Brown, Joanne Ellis-Clarke and Alan Considine. These four persons are all the members of the creditors' committee in the administration of LC&F. They are bringing the case in their personal capacities as bondholders and not as a formal part of the creditors' committee business.

### **Which legal advisers are involved?**

The Claimants are being represented by the law firm Shearman & Sterling LLP and by three barristers from Brick Court Chambers, who are all acting on a pro bono (or no fees) basis. Shearman & Sterling is also separately advising a small number of other bondholders who have agreed to be witnesses in the case.

### **Can Shearman & Sterling represent me too?**

No. The Claimants have asked us to notify bondholders that neither Shearman & Sterling nor the Claimants' barristers will act for any other persons (including other bondholders) in relation to this case or LC&F generally. These lawyers are only acting for their current clients. They do not assume any responsibility or client relationship towards any person who is not currently their client.

Neither Shearman & Sterling, the involved barristers nor the members of the creditors' committee have the resources to deal with individual bondholder queries. Please do not contact these persons about the case. For further information and support for bondholders, please join one of the Facebook groups for bondholders:

(i) London Capital and Finance Bondholders  
(<https://m.facebook.com/groups/Londoncapitalandfinancebondholders/?view=group>) or

(ii) London Capital & Finance Discussion Page for Bondholders  
(<https://www.facebook.com/groups/2287487818147428>).

Note these are private groups with varying restrictions and are only available to verified bondholders or bondholders introduced by existing bondholders who are already members.

### **Am I entitled to participate in the judicial review case?**

Any Interested LC&F Bondholder who has to date not received compensation (and does not receive compensation following FSCS's assessment of 'advice' claims) is entitled to participate in the judicial review case as an interested party so long as they comply with the relevant procedural requirements and time limits.

If you are considering joining the claim, you should consider obtaining your own legal representation before doing so, although that may involve incurring costs to your legal adviser.

If you do participate, this potentially exposes you to the risk of paying the costs of FSCS (and other parties) as well. Please also see the next section as to whether there is any benefit in participating.

**Is there any benefit in participating in the case?**

If the case is successful, then FSCS will need to re-consider its decision not to pay compensation to bondholders who invested in LC&F on or after 3 January 2018. Therefore, if the case is successful, bondholders who invested on or after that date may benefit from the outcome whether or not they participate in the proceedings.

Bondholders may therefore consider it is not necessary to participate in the Claim. However, FSCS cannot advise the Interested LC&F Bondholders as to what they should do.

**What is the position on costs?**

The Claimants and FSCS have agreed to bear their own legal costs in the judicial review case. This means that FSCS will not pursue the Claimants for their legal costs if the Claim fails, and the Claimants will not pursue FSCS for their costs if they win.

The same position will apply to any appeals in the judicial review case in which FSCS is an appellant, but not to any appeals brought by the Claimants.

If another bondholder were to participate in the case, the agreement on costs between the Claimants and FSCS will not necessarily be extended to that person or be ordered by the Court.

**When will the hearing take place?**

This is not yet known. The Courts are closed during August and September. The parties expect that the Court hearing is more likely to take place after this recess, but exactly when is not clear, particularly in light of disruption to Court proceedings caused by Covid-19.

**Documents related to the case**

The documents that have been filed with the Court relating to the case are available (in redacted versions) here:

<https://shearman.sharefile.com/d-s13a21097cc041508>

Investors may request unredacted copies of these documents from FSCS.

**What is the relevance of 3 January 2018?**

The date of 3 January 2018 is relevant because the UK law on the activity of "dealing in investments as principal" (the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, article 18) was changed with effect on and from that date to implement the MiFID II directive.

**If I invested in a bond prior to 3 January 2018 and the bond expired after that date, am I still an Interested LC&F Bondholder if I 'rolled over' the expired bond by using the funds from it to purchase a new bond after 3 January 2018?**

Yes, because, on the Claimants' case, there would still be a "dealing" that took place after the relevant change of law described above took effect.

**What is the effect of a payment on claims in the administration?**

If the Claimants succeed and, after reconsidering its decision, FSCS makes a payment to you, then it will take over all or part of your debt in the administration of LC&F. FSCS would then become entitled, in your place, to receive all or a proportion of whatever amounts are paid to creditors of LC&F by the administrators, Smith & Williamson.