



Dear Representatives,

This newsletter is devoted entirely to the subject of Emerging Issues, in the form of an FAQ.

## What is an Emerging Issue (EI)?

An EI is a group of claims that FSCS determines cannot be assessed under existing processes. In most cases, the EI team investigate a new firm failure. However, an EI investigation may also be established for a specific issue or product that involves claims against several different firms.

There may be a specific issue FSCS has not seen before, or specific legal considerations that must be investigated to determine if there are valid claims (called 'protected claims') under our rules, which are set for us by the Financial Conduct Authority (FCA). These rules are called the "COMP" rules, and contained in the [FCA handbook](#).

There are some firms that will be referred to the EI team for investigation at the outset, such as SIPP operators.

The EI team investigate the Firm or issue and then develop a new process, or amend an existing process, in order that individual claims can be assessed.

Individual claims are then assessed on their own merits in line with the new process after the EI investigation is complete.

## **When does work on an Emerging Issue start?**

When it is known an EI investigation is required, work on the EI will start as soon as FSCS becomes aware of a potential firm failure or issue. This may begin before a firm fails. The EI team engage with the FCA and insolvency practitioners to obtain information about a firm's practices and reasons for insolvency at an early stage.

## **What happens to claims when there is an Emerging Issues investigation?**

As soon as a potential Emerging Issue is identified, claims relating to that firm or issue are placed on hold, because they cannot be progressed until the EI investigation is completed.

## **What do the EI Team investigate?**

The EI team investigate the background to the firm or issue which has led to the EI. They look at the firm to understand how it operated, the nature of its business and what permissions it held.

Information is gathered and analysed to determine whether there are 'protected claims' under the COMP Rules which govern the circumstances in which we can pay compensation.

The qualifying conditions are:

- The claimant is eligible under our rules (COMP 4.2R and COMP 4.3R)
- The claim must be a valid claim made in respect of a civil liability owed by a 'relevant person' (an authorised firm) to the claimant.
- The claim must be in respect of a 'protected claim' i.e. a claim which is covered by FSCS (COMP 5 and specifically COMP 5.5 for protected investment business)
- The claim must be against a 'relevant person' who is in 'default'

## **What if there is an EI investigation ongoing but FSCS has not opened to claims?**

There are some circumstances where the EI investigation will begin,

but customers may not be able to submit a claim to FSCS. Typically, FSCS will require more information to determine whether there are valid claims.

It is also important to note that if FSCS opens to claims it does not mean there will definitely be valid claims. There are many circumstances where, after extensive investigation, FSCS is unable to pay compensation.

## **What happens when a claim moves to the EI team?**

While claims are on hold, the EI team will investigate the firm or issue that's the subject of the EI. Evidence is gathered and assessed to determine if the firm owed a civil liability to their customers.

Once this is concluded, a new process is drafted for claims handlers. A sample of individual claims are then tested against the process with a review to releasing claims once any outstanding issues are resolved and it is confirmed individual claims can be assessed.

## **How long does an EI investigation take to complete?**

The time taken to complete an Emerging Issue cannot easily be predicted. There are typically a number of other parties involved, which can impact on the timescale. The third parties the EI team most commonly liaise with include insolvency practitioners, the Financial Ombudsman Service (FOS) and the FCA.

Depending on the nature of the investigation the EI team may also need to liaise with the Police, other regulators, firms in EEA jurisdictions and product providers.

The EI team establish working relationships with third parties to obtain the information required to progress the EI investigation as quickly as possible. The investigation stage of the Emerging Issue can take months and in rare cases years for the most complex EIs.

It can take a considerable amount of time to locate and secure access to the information FSCS requires. There are often specific challenges with obtaining the information FSCS requires after a firm has failed. Key personnel may no longer work for the company and documentation may have been deleted or held on archive systems that cannot be accessed easily. The third parties that we rely on to provide us with access to relevant information often have competing priorities.

## **What if a complaint has been made to FOS and FOS has**

## **issued a final decision?**

FSCS is operationally separate from FOS and the eligibility criteria we are required to apply under the COMP Rules are different from the eligibility criteria that ombudsman at the FOS apply under the DISP Rules.

FSCS needs to be satisfied that the firm owed a civil liability in respect of protected business.

Conversely an ombudsman, when determining a complaint, does so by reference to what is fair and reasonable in the circumstances of the claim.

If a complaint has been upheld by an ombudsman, it does not automatically follow that the same facts give rise to a protected claim under FSCS' rules.

The EI team has a cooperative working relationship with FOS. If FOS has investigated the same Firm or issue the EI team will liaise with FOS to obtain relevant information to assist with the EI investigation.

## **When is the Firm declared in default?**

The failure of a firm does not automatically mean the firm is in default.

A default declaration can be made only by FCA or FSCS.

FSCS may declare a firm in default once it is satisfied there is a valid claim. If information is received from a third party indicating a firm is in default, this information can be verified on the FSCS website.

## **What updates are provided during an EI investigation?**

If the EI team are investigating a firm, updates are published on a dedicated web page for the firm concerned. The firm's web page can be searched for here:

<https://www.fscs.org.uk/making-a-claim/failed-firms/>

When there is a development in the EI investigation, FSCS will post an update on the firm's web page. Due to the confidential nature of the EI investigation, the information FSCS is able to provide during an ongoing investigation is limited. But we will provide as much information as we are able to as the EI investigation progresses.

## What updates can Representatives expect to receive going forward?

FSCS plans to pilot mailings to representatives on a more frequent basis very shortly – helping you to keep your customers updated. An update will be sent to the Representative and Customer at least every 2 months on each individual claim while the EI investigation is ongoing. Letters will also be sent if there is an EI update published on the firm's web page.

## What can Representatives do to help?

Check the firm's web page for updates and be mindful that an EI investigation is likely to take months rather than weeks.

Please be assured we will provide updates when there is a development in the investigation. Therefore, don't ask us for updates on these claims, as these requests are responded to by the EI team, which ultimately takes resource away from the EI investigation.

Where you are acting as the representative for a customer you have an important role to play in managing your customer's expectations. Please make customers aware of the content of the failed firm's web page, the process that an EI follows and that once an EI is concluded claims are then assessed on a case by case basis.

Please ensure the customer's personal email is provided rather than the email address for the representative. This will enable FSCS to provide updates to customers promptly.

FSCS is the UK's statutory fund of last resort. As such FSCS will not assess a claim in circumstances where there is a claim that can be pursued against a live firm. Please check whether or not there are any claims against a live firm before submitting a claim to FSCS. If there is the potential for a claim against a live firm, that must be exhausted before submitting a claim to FSCS.

When claims are submitted to FSCS, ensure all **relevant** supporting documentation is provided. Whilst the EI team do not review individual claims, they may undertake analysis of a sample of claims. Quality claim submission containing point of sale documentation can greatly support the EI investigation and ultimately the claim assessment once the EI investigation is complete.

We hope you've found this useful,

Regards,

The Relationship Management Team

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