FSCS Limitation Discretion Policy

COMP 8.2.3R(1):

> *"The FSCS must reject an application for compensation if:*
>
> *(1) the FSCS considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:*
>
> > *(a) the date on which the relevant person (or, where applicable, a successor) is determined to be in default; and*
> > *(b) the date on which the claimant first indicates in writing that he may have a claim against the relevant person (or, where applicable, a successor);*
>
> *unless COMP 8.2.4R or COMP 8.2.4AR[1] applies…"*

COMP 8.2.4R:

> *"For claims made in connection with protected investment business, protected home finance mediation, protected non-investment insurance distribution, protected debt management business or protected funeral plan business, the FSCS may disregard a defence of limitation where the FSCS considers that it would be reasonable to do so"[2].*

1. FSCS will only need to consider the exercise of its discretion in COMP 8.2.4R where it has determined that the claim would be defeated by the defence of limitation. In assessing whether the claim is defeated by the defence of limitation it is necessary to determine:
   a. whether the claim is brought within the applicable limitation period for the cause of action, as determined by the Limitation Act 1980 (or other applicable legislation); and
   b. when, for FSCS purposes, time will cease to run, being the earlier of:
      i. the date on which the claimant first indicates in writing that they may have a claim against the relevant person; or
      ii. the date on which the relevant person (or successor) is determined to be in default.

2. In determining whether a claimant has made a *written indication that they may have a claim* such that time will cease to run, it will be necessary to consider whether the substance of the claim being advanced is sufficiently clear to identify the underlying cause of action such that the applicable limitation period under the

[1] COMP 8.2.4AR relates to disregarding a defence of limitation in relation to claims under a *consumer redress scheme*. COMP 8.2.4AR does not provide FSCS with a discretion regarding whether or not to disregard a defence of limitation for claims that engage COMP 8.2.4AR, and is outside of the scope of this policy.

[2] In PPR 15.2 there is no discretion to disapply limitation. An application for compensation must be rejected if FSCS considers that a civil claim in respect of the liability would have been defeated by a defence of limitation.

Limitation Act 1980 can be assessed. This requires that the complaint or communication identifies, in substance, the matter of complaint and the nature of the alleged wrongdoing, even if it does not articulate the legal basis of the claim in full.

3. In civil proceedings the defence of limitation is ordinarily a complete defence. However, under COMP 8.2.3R(1), if FSCS considers that a claim falls outside the relevant limitation period and as such would be defeated by a defence of limitation FSCS may nevertheless disregard the defence of limitation and pay compensation if it considers it reasonable to do so under COMP 8.2.4R. This discretion requires FSCS to exercise judgement in all the circumstances of the case where:
   a. The claim is brought outside the relevant limitation period[; and
   b. a proper basis is made available to FSCS to identify reasons why the claim has been brought out of time.

4. There is no presumption either in favour of, or against, disregarding a limitation defence; each claim is to be assessed on its own merits

5. When considering whether it is reasonable to disregard a limitation defence, the relevance of any factor will depend on the extent to which, in all of the circumstances of the claim, it reasonably explains the claimant's failure to bring a claim within the relevant limitation period.

6. Relevant factors are likely to include, but are not limited to:

a. any steps taken by the claimant to raise or pursue concerns within the limitation period (which may include via an agent, or by raising concerns with different body), and the extent to which those steps may reasonably explain the failure to make a written indication of claim within that period;
b. any reasonable reliance by the claimant on the conduct or representations of relevant third parties, and the extent to which that reliance may have contributed to delay in bringing the claim;
c. the claimant's personal circumstances and their effect on the claimant's ability to take steps to make a written indication of claim within the relevant limitation period.

7. The weight attributed to any factor or piece of evidence will depend on the quality and reliability of the evidence, and the degree to which it supports the asserted explanation for the delay. FSCS will attribute greater weight to contemporaneous written evidence of the matters relied upon, and will attribute less weight to a recollection provided for the first time with the claim. An absence of evidence is not determinative but will be assessed in context.