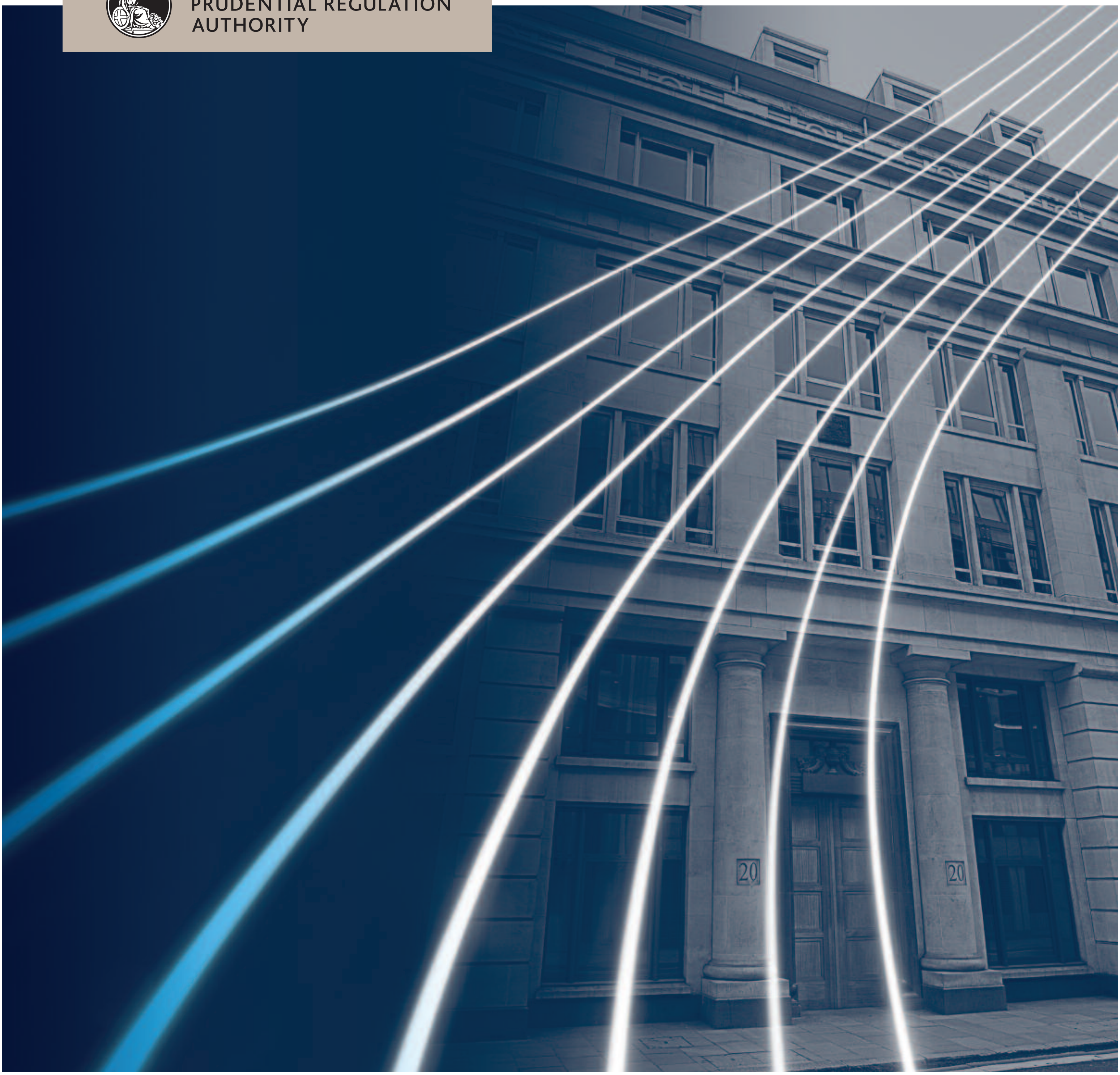
Statement of Policy

Dormant Account Scheme

April 2015

BANK OF ENGLAND
PRUDENTIAL REGULATION AUTHORITY



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1 Introduction

1 This statement is aimed at the Financial Services Compensation Scheme (FSCS) in respect of its role as scheme manager of the Dormant Account Scheme (DAS) but may also be of interest to firms and depositors.

2 The Prudential Regulation Authority (PRA) is required, under section 213 of the Financial Services and Markets Act (FSMA), to make rules establishing a scheme for compensating persons in cases where a dormant account fund operator is unable, or likely to be unable, to satisfy a repayment claim against it. These rules are set out in the Dormant Account Scheme Part of the PRA Rulebook, and apply to the FSCS and firms that are DAS members.

3. The purpose of this statement is to set out the expectations of the PRA on the FSCS with regards to:

(a) the duties of the FSCS;

(b) the FSCS's role in assessing and paying compensation in respect of dormant accounts; and

(c) the FSCS's role in the funding of the DAS.

4. By providing further information to the FSCS with regards to its duties and role in paying and funding compensation of the DAS, this statement of policy aims to ensure an effective DAS and thus contribute towards the safety and soundness of a dormant account fund operator.

5. This statement of policy is intended to be read together with the rules specific to dormant accounts as set out in the Dormant Accounts Scheme Part of the PRA Rulebook, which applies to the FSCS, dormant account fund operators and firms that are DAS members. The funding section is also intended to be read with the Management Expenses Levy Limit and Base Costs Part and the Management Expenses in respect of Relevant Schemes Part of the PRA Rulebook.

2 Context

6. The FSCS exercises the functions that are conferred on the scheme manager by Part XV of FSMA.

7. In addition to the PRA's rules, other aspects of the operation of the FSCS are dealt with through the powers of the FSCS under company law (such as the power to borrow, to take on premises, etc) and through rules made by the Financial Conduct Authority (FCA).

8. Also, FSMA confers certain powers upon the FSCS, such as a power under section 219 (Scheme Manager's powers to require information) to require persons to provide information.

3 Paying compensation

Paying claimants and other compensation recipients

9. The FSCS will usually pay compensation direct to the claimant, but in certain circumstances it may be appropriate for the FSCS to pay compensation to someone other than the claimant, or to make reduced or interim payments. Dormant Account Scheme Chapter 7 of the PRA Rulebook sets out when those circumstances arise.

Claims on behalf of another person

10. Dormant Account Scheme Chapter 6 allows the FSCS to pay compensation to a person other than the claimant in certain circumstances. The PRA considers examples of the circumstances covered by these rules to be:

(a) when personal representatives make a claim on behalf of the deceased;

(b) when trustees make a claim on behalf of beneficiaries (for further provisions relating to claims by trustees, see Dormant Account Scheme 6.5–6.8);

(c) when the donee of an enduring power of attorney or a lasting power of attorney makes a claim on behalf of the donor of the power;

(d) when the Court of Protection makes a claim on behalf of a person incapable by reason of mental disorder of managing and administering their property and affairs; and

(e) when the claimant dies before receiving compensation.

Calculation of the compensation sum

11. Dormant Account Scheme Chapter 8 sets out how the FSCS should calculate a compensation sum. In calculating the depositor's overall compensation, the FSCS may rely, to the extent that it is relevant, on any determination by:

(a) a court of competent jurisdiction;

(b) a trustee in bankruptcy;

(c) a liquidator; and

(d) any other recognised insolvency practitioner.

Dormant Accounts

12. The purpose of Dormant Account Scheme 5.3 is to ensure that persons whose balances in a dormant account have been transferred to a dormant account fund operator do not have their entitlement to compensation reduced in the event of default of the dormant account fund operator. Accordingly, a holder of dormant accounts with two or more different relevant persons, the liabilities for which were transferred

to the dormant account fund operator, could still be compensated by the FSCS on the basis of accounts with two or more separate relevant persons (and so could receive up to twice or more the deposit compensation limit in compensation) rather than just one account with one relevant person.

4 Funding of the FSCS (Dormant Account Scheme)

Levying timings

13. As required by s213(3)(b) of FSMA, the PRA has made rules enabling the FSCS to impose levies on firms in order to meet FSCS expenses. These expenses include in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks.

14. The FSCS may impose two types of levy under the Dormant Account Scheme Part of the PRA Rulebook:

(a) a DAS management expenses levy (consisting of a DAS base costs levy and a DAS specific costs levy); and

(b) a DAS compensation costs levy.

15. The FSCS has discretion as to the amount and timing of the levies imposed, although DAS compensation costs levies and DAS specific cost levies are subject, together with Deposit Guarantee Scheme (DGS) compensation costs and DGS specific costs, to an annual cap. This cap is set by the PRA. There is also a cap on the annual FSCS management expenses levy, which is set jointly by the PRA and the FCA.

16. The FSCS will usually levy once in each financial year (and in respect of DAS compensation costs, for expenditure expected in the period of 12 months following 1 July in that year). However, if the DAS compensation costs or DAS specific costs incurred, or expected to be incurred, exceed the amounts held, or reasonably expected to be held, to meet those costs, the FSCS may, at any time during the financial year, do one or more of the following:

(a) impose an interim DAS compensation costs levy or DAS management expenses levy;

(b) utilise other sources of funding such as commercial borrowing or other borrowing including from the National Loans Fund; and

(c) utilise money collected from firms as set out in, and subject to, Dormant Account Scheme 16.

17. The PRA expects that the FSCS should generally impose a levy rather than borrow or utilise funds as described in (b) and (c), unless these options appear to it to be preferable in the specific circumstances prevailing at the relevant time; for example, to address short-term liquidity issues, or in order to deal with a significant failure without having to wait for a levy to be imposed or collected.

DAS management expenses levy

18. The PRA's rules on the Management Expenses Levy and Management Expenses in respect of Relevant Schemes are set out in the Management Expenses Levy Limit and Base Costs Rulebook Part and Management Expenses in respect of Relevant Schemes Rulebook Part of the PRA Rulebook.

19. A DAS management expenses levy may consist of two elements. The first is a DAS base costs levy, for the base costs of running the FSCS in a financial year, ie costs which are not attributable to any specific class. Included in this category are items such as the salary of the members of the board of the FSCS, the costs of the premises which the FSCS occupies, and its audit fees. It would also likely include the cost of any insurance cover secured by the FSCS against the risk of it paying claims out in circumstances where the levy limit of the particular class to which the claim would otherwise be attributable has exceeded its levy limit for the year, as the insurance cover is likely to benefit all classes which may have costs allocated to them if the levy limit of another class is breached. The amount that a dormant account fund operator pays towards a DAS base costs levy is calculated by reference to the regulatory costs paid by the firm as a proportion of total regulatory costs of all participant firms.

20. The second element of a management expenses levy is a DAS specific costs levy for the 'specific costs' of running the dormant account scheme in a financial year. These costs are attributable to the dormant account class, and include the salary costs of certain staff of the FSCS, claims handling and legal and other professional fees. It also may include the cost of any insurance cover that FSCS secures against the risk of FSCS paying out compensation above a given level in the dormant account class (but below the levy limit for that class for the year). The specific costs are attributed to the class which is responsible for those costs. When the FSCS imposes a DAS specific costs levy, the levy is allocated to the dormant account class up to the relevant levy limits.

21. The FSCS may include in a DAS specific costs levy the DAS specific costs that the FSCS expects to incur (including in respect of defaults not yet declared at the date of the levy) during the financial year of the DAS. The amount that each DAS member pays towards the DAS specific costs levy is calculated by reference to the amount of business conducted by the firm in the deposit class. The dormant account class has a 'tariff base' for this purpose, set out in PRA rules.

22. The PRA and the FCA typically consult on the limit on the FSCS's management expenses attributable to the forthcoming financial year of the FSCS in January each year.

Fees refund

23. Dormant Account Scheme 18.2 sets out when the FSCS may adjust the calculation of a DAS member's share of any levy. Dormant Account Scheme 18.3 sets out that the FSCS may not adjust the calculation of a DAS member's levy under Dormant Account Scheme 18.2 on the grounds that it would be inequitable for that firm to pay that share or part of it (or on the grounds that it would be inequitable for the FSCS to retain that share or part of it). The reason for this rule is that any such claim should be dealt with under Dormant Account Scheme Chapter 25 in the PRA Rulebook.

Valuation period

24. For DAS members, the valuation date for the class J tariff base for second year levies is as at 31 December in the relevant year (but for Dormant Account Scheme 21.6). For example, for the FSCS levy year ending in March 2015, the valuation date is as at 31 December 2014 (but for Dormant Account Scheme 21.6).

25. The above example can also be applied to the calculation of the tariff bases under Dormant Account Scheme 22.6 of the PRA Rulebook.

Recovery of Fees

26. Paragraphs 23(8) and 27 of Schedule 1ZA and paragraphs 31(7) and 35 of Schedule 1ZB of FSMA permit the PRA to recover fees, and section 213(6) permits the FSCS to recover shares of the FSCS levy payable, as a debt owed to the PRA and the FSCS respectively. The PRA and the FSCS, as relevant, will consider taking action for recovery (including interest) through the civil courts.

27. The PRA may also take regulatory action in relation to the non-payment of a share of a DAS levy, after reference of the matter to the PRA by the FSCS. Action taken by the PRA will be decided upon in the light of the particular circumstances of the case.

Remission of Fees and levies

28. Dormant Account Scheme Chapter 25 sets out the circumstances in which the PRA or the FSCS may reduce or remit FSCS levies. A poor estimate or forecast by a DAS member, when providing information relevant to the class J tariff base, is unlikely, of itself, to amount to fall within Dormant Account Scheme 25.1. By contrast, a mistake of fact or law by a fee or levy payer may give rise to such a claim.