

**IN THE MATTER OF WEALTHTEK LLP (IN SPECIAL ADMINISTRATION)
AND IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS
2011**

WITNESS STATEMENT OF GUY THOMAS ENRIGHT

I, **GUY THOMAS ENRIGHT**, of 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU, state as follows:

- 1 I am a chartered accountant and the Recoveries Finance Manager for the Financial Services Compensation Scheme Limited (**FSCS**). I am duly authorised to make this witness statement on behalf of FSCS.
- 2 The purpose of this witness statement is to explain the role of FSCS in a special administration. It will explain the statutory functions of FSCS, how it operates, and the scope of its responsibilities when a financial institution enters into special administration. This includes how FSCS assesses and pays compensation, and how it works with others involved in the process. The contents of this witness statement are either within my own knowledge and true, or known to me from the sources to which I specifically refer in what follows and true to the best of my information and belief.

FSCS Rules

- 3 FSCS is the UK's statutory scheme of last resort for the clients of failed financial services firms and was set up by the Financial Services Authority ("**FSA**") under section 213 [**GTE1/3-8**] of the Financial Services and Markets Act 2000 ("**FSMA**"). The FSA was subsequently replaced by the Financial Conduct Authority ("**FCA**") and the Prudential Regulation Authority ("**PRA**") under the Financial Services Act 2012. The compensation scheme established under s. 213 FSMA provides cover where a firm is unable or likely to be unable to satisfy a claim made against it. This situation is known as being "in default". Relevant to WealthTek LLP ("**WealthTek**"), the scheme applies to firms that were authorised by the FCA to carry on certain regulated activities at the material time. FSCS is obliged to administer this compensation scheme pursuant to rules made by the FCA under s.213(1) of FSMA, which are

set out in the Compensation Sourcebook within the FCA Handbook ("**COMP**"). The rules regarding compensation for PRA authorised firms are separately set out in the PRA Rulebook but are not relevant here. The relevant sections of FSMA and COMP to which I refer below are included in the Exhibit bundle titled, **[GTE1]**.

- 4 COMP 3.2 **[GTE1/9-11]** sets out the qualifying conditions which must be met in order for FSCS to be able to pay compensation to a claimant. These include that FSCS must be satisfied (i) that the claim is in respect of "*a valid claim made in respect of a civil liability*"¹ in connection with a "*protected*" activity, essentially a FSMA-regulated activity with certain exceptions; (ii) which is owed to the claimant by a "*relevant person*" (or other person who has assumed responsibility for liabilities of such a relevant person); and (iii) that the relevant person is "*in default*". In order for a firm to be a "*relevant person*" for these purposes, it must have had permission from the FCA under Part 4A of FSMA **[GTE1/14-26]** to carry on one or more regulated activities at the time of the act or omission giving rise to the claim against it.²

- 5 Under COMP 12.2.1AR **[GTE1/38]**, the amount of compensation payable to the claimant is "*the amount of his overall net claim against the relevant person ... at the quantification date*". The quantification date varies depending on the type of claim as set out in COMP 12.3 **[GTE1/40-41]**. FSCS compensation is currently capped at £85,000 per claimant in relation to investment claims (COMP 10.2 **[GTE1/42-45]**). The per claimant cap applies to each category of protected claim that each claimant has against a firm in default and therefore to both the costs of transferring client assets and money as well as any shortfalls in those client assets and money. In the case of joint accounts, the £85,000 compensation is available to both account holders, so £170,000 would be available assuming there are two eligible account holders with equal rights to the account.

- 6 In order to receive compensation from FSCS, a person has to be an "eligible claimant". Under COMP 4.2.1R **[GTE1/47]**, eligible claimants are defined as any persons not listed under COMP 4.2.2R **[GTE1/47-49]**. Such listed persons include, for example, large companies (by reference to definitions in the Companies Act 1985 or the Companies Act 2006) and authorised financial services firms. Eligible claimants for FSCS compensation are typically individuals and small businesses.

- 7 In certain cases a so-called "look-through" under COMP 12A **[GTE1/50-57]** will apply to an application for compensation. The look-through is a process whereby FSCS can look through an entity to examine the underlying owners or beneficiaries of financial products held within a structure (such as a bare trust, collective investment scheme or nominee company) when

¹ COMP definition of "claim" **[GTE1/12-13]**.

² See the following: (i) COMP rule 6.2.1 **[GTE1/28]**; and (ii) the COMP definitions of "*relevant person*" **[GTE1/30]**, "*participant firm*" **[GTE1/31-32]**, "*firm*" **[GTE1/33-34]** and "*authorised person*" **[GTE1/35-36]**.

determining eligibility. To use the bare trust as an example, the look-through will allow FSCS to treat each beneficiary of the trust as though they each have a protected claim against the firm in default as opposed to the trustee having a single claim on behalf of all the beneficiaries collectively. This helps to ensure that all eligible underlying beneficiaries are compensated, rather than stopping at the surface level of the entity holding the investment and resulting in only a single compensation payment capped at £85,000.

- 8 Where a claimant accepts compensation from FSCS, they are required to assign their rights in connection with the claim against the firm in default and other third parties to FSCS under COMP 7.3 [GTE1/58-61]. This is to give FSCS the option to pursue recoveries against the firm in default. Under COMP 7.6.4 [GTE1/63], where FSCS makes recoveries, it is required to pass them back to claimants so that they are not disadvantaged by making an early claim. The practical effect of this is that FSCS will pay recoveries made in respect of any compensation claim to the claimant, up to the point that the claimant is fully compensated, regardless of the size of their underlying claim. There are worked examples of this on pages 28 to 30 of the Explanatory Statement to the WealthTek Distribution Plan (the "**Explanatory Statement**"),³ which I also reviewed and commented on.

Investment bank special administrations

- 9 I act as FSCS's representative on the WealthTek clients' and creditors' committee. I also acted as FSCS's representative on the creditors' committees of Beaufort Asset Clearing Services Limited and SVS Securities plc, both of which have now been dissolved. I continue to act as FSCS's representative on the creditors' committees of Reyker Securities plc and IBP Markets plc (the latter of which has yet to put forward a distribution plan, but I expect it to do so in due course). One of my colleagues represents FSCS on the Blankstone Sington Ltd creditors' committee and I have also been closely involved in FSCS' response to that case, including reading and commenting on the distribution plan and associated documents.
- 10 FSCS's role in a special administration is to pay compensation for any shortfalls that eligible claimants have suffered in the value of their client money and assets held by the firm in default, including the costs in relation to transferring the client money and assets (which can be deducted from the client asset and money pools under the Investment Bank Special Administration (England and Wales) Rules 2011 and the Client Assets Sourcebook within the FCA Handbook (**CASS**)⁴ subject to the provisions of COMP as outlined above. In settling these costs and shortfalls directly with the joint special administrators, FSCS seeks to ensure that clients are made whole where possible. There is also a material administrative benefit for both clients and FSCS in that the clients are not required to complete individual FSCS

³ <https://www.bdo.co.uk/getmedia/f7932b91-05ea-4dbe-98b3-b1d21dcf306c/WealthTek-Explanatory-Statement.pdf>.

⁴ This is explained in sections 9 (assets) and 13 (money) of the Explanatory Statement.

applications for compensation and can instead opt-in for compensation as part of agreeing their client asset and client money claims with joint special administrators. The joint special administrators of WealthTek are Shane Crooks, Mark Shaw and Emma Sayers of BDO LLP ("the **Joint Administrators**").

- 11 The quantification date for FSCS compensation in special administrations is the date of the firm's entry into special administration⁵, in WealthTek's case 6 April 2023.
- 12 The method of allocating the costs of transferring client money to specific claimants is specified under CASS. As to the costs of transferring client assets, the proposed allocation methodology is determined by the joint special administrators rather than FSCS. FSCS is asked to comment on that methodology but provided FSCS does not consider that the proposal in any special administration is unreasonable or inconsistent with previous special administrations, FSCS is unlikely to raise objections to it; FSCS gains comfort from the fact that the joint special administrators' proposed allocation methodology will be outlined in the distribution plan, which is subject to consideration and approval by the Court. It is not for FSCS to determine the allocation methodology and once approved by the Court, FSCS will cover the costs whatever methodology is used. However, I note that for each of the special administrations I have been involved in previously, referred to in paragraph 9 above, I have observed joint special administrators adopting an approach whereby each client is required to pay (or have FSCS pay on their behalf) a set amount subject to a cap that represents the overall value of their assets. This cap means there is an adjustment to the costs a client is required to pay such that their costs contribution does not exceed the value of their assets. That is the approach that has also been proposed in the WealthTek distribution plan which I have reviewed and commented on as part of the clients' and creditors' committee and on FSCS's behalf. This approach is simple to understand and avoids the risk of disputes which may arise with other methods of allocation. It is also consistent with the basis adopted in other recent special administrations in which FSCS has been involved.

WealthTek

- 13 WealthTek LLP was an FCA authorised wealth management firm. The firm provided discretionary, advisory and execution only services to retail clients before it was placed into investment bank special administration on 6 April 2023. The FCA is conducting a regulatory and criminal investigation into both WealthTek and its principal member, Mr John Dance, which includes potential regulatory breaches relating to client money and client assets, and criminal offences of fraud and money laundering.

⁵ COMP 12.3 [GTE1/40-41]

- 14 I understand that there are considerable shortfalls in client money and client assets in the WealthTek default and that the Joint Administrators have estimated the total shortfall will be in the region of £80.6m: this is comprised of a shortfall in client assets of approximately £70.6m, and a shortfall in client money of approximately £10m.
- 15 The Joint Administrators have set each claimant's costs contribution at £23,000. I understand they have also retained 2% of the client money balances to cover the client money costs under CASS. This is based on their expected costs of returning client money and assets i.e. the Objective 1 costs. While this cost is higher than the claimant costs contribution set in previous special administrations that I have been involved in, there are unusual circumstances in WealthTek to which I refer further below, and I understand that the figure is higher in this case to ensure that the Joint Administrators have sufficient funds to complete their pursuit of Objective 1 and that it takes into account a reserve for the costs of potential litigation to recover some of the significant shortfalls that exist in the WealthTek default for the benefit of the client asset estate. WealthTek also has considerably fewer clients than each of Beaufort, SVS and Reyker, so the costs need to be allocated across a smaller base. I note that the recent distribution plan for Blankstone Sington set aside a costs reserve of around £17.4 million for a similarly sized client base to WealthTek.
- 16 The costs contribution is a reserve and there is provision for it to be reduced at a later date. To the extent the final figure is less than £23,000, FSCS expects to make 'top-up' payments to clients with uncompensated losses in due course. For now, the costs contribution means, in effect, that £62,000 of FSCS's £85,000 compensation limit per eligible client is available to meet claims for shortfalls in client assets or money that WealthTek should have been holding for them. If the final figure is reduced, a larger amount of the £85,000 limit will be available to meet claims for shortfalls.
- 17 I also note at paragraph 9.2 of the Explanatory Statement that the aggregate cost reserve is £18.4 million. Paragraph 9.3 goes on to explain that around 40% of that amount is allocated to potential litigation, which I calculate to be in excess of £7 million. Depending on the nature and extent of any litigation that may be required, not all of this reserve may be needed, although I note it is for the Joint Administrators to determine their approach to any litigation rather than FSCS. This means that should the Objective 1 costs, such as litigation expenses, be lower than anticipated, this could reduce the compensation amount paid by FSCS and/or may reduce the extent of any losses incurred by the claimants that cannot be compensated due to the £85,000 limit.
- 18 In a limited number of cases, FSCS may make hardship payments to particular eligible claimants. Hardship payments essentially take the form of a pre-payment of all or part of the compensation that a claimant will be paid in due course. These payments are designed to offer temporary support to those in urgent need while their compensation claims are being

processed. FSCS typically makes hardship payments when it has been determined that a claimant cannot meet essential living expenses or is facing other critical financial hardships as a direct result of not having access to their funds due to the collapse of a financial firm.

- 19 To date, FSCS has made 22 hardship payments in connection with the default of WealthTek. FSCS' total payment in respect of these hardship claims has been approximately £949,000.
- 20 Based on information provided by the Joint Administrators, 928 clients have been confirmed as of 4 July 2024 as eligible to receive FSCS compensation. All of these clients have accounts in their individual name (or accounts held jointly by two individuals).
- 21 I understand that there may be some clients who held more than one account with WealthTek. In that circumstance, they would only be entitled to one compensation claim across all of their accounts, capped at £85,000. My colleagues are currently working with the Joint Administrators to identify where this situation applies. I note from paragraph 23 of Mr Crooks' second witness statement that there are around 1,320 clients holding around 1,400 accounts. As shown below, the latest information FSCS has from the Joint Administrators shows 1,323 separate clients. Certain of these clients hold accounts jointly such that any joint holdings would be counted towards any compensation awarded individually (e.g. where a client may hold an account in their own name and one jointly with a spouse). However, most will still end up in a position where £85,000 compensation is still sufficient to make them whole.
- 22 Based on the Joint Administrators' proposed methodology for determining client entitlements, of the individual accounts identified to date, approximately:
- (a) 79% of clients have shortfalls less than £62,000 (and will therefore be compensated in full);
 - (b) 4% of clients have shortfalls between £62,000-£85,000; and
 - (c) 17% of clients have shortfalls greater than £85,000;
- 23 395 clients have not yet been confirmed as eligible to receive FSCS compensation, consisting of:

Entity type	Number
Deceased estate	163
Pension	79
Self-Invested Personal Pension (SIPP)	53
Trust / Will trust	24
Account in nominee name	14
Junior ISA	10
Companies	9

Charities	5
Other	38
"Non-individual" clients ⁶	<u>395</u>
Individual clients ⁶	928
Total clients	<u>1,323</u>
Impact of clients with more than one account each (or accounts held jointly) ⁶	81
Total accounts	<u>1,404</u>

- 24 Of these clients who have not yet been confirmed as eligible to receive compensation, on the basis of the information currently available, it is expected that the great majority are likely to be determined as eligible once FSCS has reviewed the relevant documentation to confirm they do not fall within an excluded class of claimant and that, if relevant, the look-through applies, as explained in paragraph 7 above. To take the largest group above, FSCS will need to establish the beneficiaries entitled to receive the proceeds of the deceased estates. For the pension and SIPP claims, FSCS is in the process of reviewing these claims to establish the nature of the scheme and check whether the look-through will apply.
- 25 In total, FSCS anticipates, based on the information provided to date by the Joint Administrators, that it will cover 100% of the costs of transferring client money and assets for eligible claimants (assuming all of these clients opt-in for compensation), and will pay compensation of approximately £22 million to cover client asset and client money shortfalls. As referred to above, the transfer costs are reserved at £18.4 million, so based on the information provided to date, FSCS's total commitment is likely to be in the region of £40 million.
- 26 Clients of WealthTek who do not wish to receive FSCS compensation may elect not to opt-in. I understand from the Joint Administrators that 19 clients have made an election in this way.⁷ It is open to those clients to change their mind at a later date and opt back in to FSCS compensation should they choose.
- 27 Particularly given the substantial amount of compensation payable in connection with this default, it is in FSCS's interests, and indeed is part of its role on the clients' and creditors'

⁶ Note that the FSCS (with the assistance of the Joint Administrators) is continuing to gather information in relation to how certain of the non-individual accounts are held (for example gathering trust deeds and confirming SIPP and ISA status). Therefore, classifications of account/client type may change. However, I do not anticipate that such classifications will materially impact the amounts presented above.

⁷ A further 72 clients have opted out of FSCS Compensation but have no claim to either Client Assets or Client Money and therefore would not require FSCS Compensation. A further 58 clients have yet to make an election.

committee, to monitor the costs being incurred by the Joint Administrators in pursuit of Objective 1. In the 79% of cases where a claimant's cost contribution plus shortfall does not exceed £85,000, monitoring the costs incurred by the Joint Administrators to ensure they do not reach £23,000 per claimant will reduce the overall amount of compensation that FSCS will be required to pay to those claimants. In turn, this will result in a reduced overall compensation commitment on FSCS's part and free up the resources allocated to WealthTek to be used elsewhere. The remaining clients with uncompensated losses are also likely to benefit from this monitoring as, depending on the success of any recoveries action, they may still have uncompensated losses at the end of the case and be entitled to a top-up.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

A handwritten signature in black ink, appearing to read 'Guy Thomas Enright', written over a light grey rectangular background.

Guy Thomas Enright

Dated this 16 day of July 2024