

FSCS DETERMINATION INSTRUMENT 2018 Essex Savers net Credit Union Limited

1. Using its powers in the Financial Services and Markets Act 2000 ("FSMA"), the Prudential Regulation Authority ("PRA") made compensation rules in the Depositor Protection part of the PRA Rulebook (the "Depositor Protection rules") providing the Financial Services Compensation Scheme Limited ("FSCS") with specific rights and obligations against firms in default and third parties.
2. On 14 February 2018, the court made an administration order against Essex Savers net Credit Union Limited ("the credit union") and, as a result, the credit union is in default for the purposes of the Depositor Protection rules from that date.
3. FSCS is making this determination instrument under Rules 28.1 to 28.5 of the Depositor Protection rules.
4. This instrument is made and takes effect on 14 February 2018 and is in respect of the credit union and all eligible depositors with the credit union as at 14 February 2018.
5. FSCS determines that payment of compensation by it shall have the following effects:
 - i. Pursuant to Rule 28.2(1) of the Depositor Protection rules, FSCS shall immediately and automatically be subrogated to all of the rights and claims in the UK and elsewhere of the compensation recipient against the credit union and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the credit union or third party is acting) in respect of or arising out of the compensation recipient's deposits being unavailable;
 - ii. Pursuant to Rule 28.2(2) of the Depositor Protection rules, FSCS may claim and take legal or any other proceedings or steps in the United Kingdom or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the compensation recipient or in both names against the credit union and/or any third party; and
 - iii. Pursuant to Rule 28.2(3) of the Depositor Protection rules, the subrogated rights and claims conferred on FSCS shall be rights of recovery and claims against the credit union and/or any third party which are equivalent (including as to amount and priority and whether or not the relevant DGS member is insolvent) to and not exceed the rights and claims that the compensation recipient would have had.
6. The payment of compensation by FSCS will be subject to the FSCS's Deposit Payment Terms, which are available online at <http://www.fscs.org.uk/deposit-payment-terms> and on request from FSCS.
7. FSCS reserves the right to amend, remake, or revoke these determinations at any time as permitted by Rule 28.4(5) of the Depositor Protection rules.

8. Unless defined in this determination, all expressions used which are also defined terms in the PRA Rulebook Glossary shall have the same meaning as given to them in that glossary.

The Executive is authorised by FSCS's Board to decide whether, and to what extent, FSCS should use the powers under Chapter 28 of the Depositor Protection rules in respect of credit union defaults arising on or after 1 January 2011.

This Determination agreed on behalf of the Executive by:

  

Signature, Date & Time

Statement in accordance with Rule 28.4(3) of the Depositor Protection rules

The FSCS has made a determination under Chapter 28 of the Depositor Protection rules in respect of Essex Savers net Credit Union Limited. The relevant determination instrument is available to view on the FSCS website.

The determination exercises FSCS's power under Rule 28.2 of the Depositor Protection rules so that when FSCS pays compensation to a depositor it will 'automatically subrogate' to all the rights of the depositor against the credit union and any third parties. Automatic subrogation is a way in which legal rights can pass from one party (e.g. a depositor) to another (e.g. FSCS) without either party having to actively do anything – the transfer happens 'automatically' by law.

The transfer of rights to the FSCS will happen only if a depositor decides to cash their compensation cheque. Depositors are free to reject the offer of compensation from FSCS and to return the cheque to us, in which case they will retain all of their rights in respect of their eligible deposit.

If a claimant does cash their compensation cheque, all of their rights in respect of their eligible deposit will transfer to FSCS. This is the case even if the amount of compensation is less than the amount of the depositor's aggregated deposits with the credit union. So if the depositor had aggregated deposits of £100,000 and accepts the compensation, all £100,000 worth of rights will transfer from the depositor to the FSCS, even though the depositor can only receive a maximum of £85,000 in compensation.

The effect of the rights transferring to the FSCS is that the depositor will not be able to make any legal claim in respect of those rights, either against the credit union or any other person or business. For example, the depositor will not be able to receive recoveries made by the liquidator in the insolvency of the credit union. Those recoveries will instead be paid to FSCS.

FSCS will keep any recoveries it receives in relation to a depositor's rights up to the amount of compensation it has paid to the depositor. Any recoveries FSCS receives in excess of that amount, it will pay over to the depositor, subject to allowance for costs.

FSCS cannot give you legal advice as to you whether you should accept our offer of compensation or not – if you are unsure, you should seek independent legal advice at your own expense. However, if you have any questions about the automatic subrogation or the operation of Rule 28.2, please contact us on 0800 678 1100 or 0207 741 4100.