



House of Commons

NOTICES OF AMENDMENTS

given up to and including

Thursday 1 February 2018

New Amendments handed in are marked thus ★

☆ *Amendments which will comply with the required notice period at their next appearance*

PUBLIC BILL COMMITTEE

FINANCIAL GUIDANCE AND CLAIMS BILL [*LORDS*]

NOTE

This document includes all amendments remaining before the Committee and includes any withdrawn amendments at the end. The amendments have been arranged in accordance with the Order of the Committee [1 February 2018].

Guy Opperman

3

Clause 24, page 17, line 21, at end insert—

“() In section 1H (interpretation provisions for FCA’s objectives)—

(a) in subsection (2), at the end of paragraph (c) insert “or to engage in claims management activity”;

(b) in subsection (8), at the appropriate place insert—

““engage in claims management activity” has the meaning given in section 21;”.”

Member’s explanatory statement

The result of this amendment of the Financial Services and Markets Act 2000 would be that references in the FCA’s statutory objectives to “regulated financial services” include services provided by authorised persons in communicating, or approving the communication by others of, invitations to engage in claims management activity.

Financial Guidance and Claims Bill [Lords], continued

Guy Opperman

4

Clause 24, page 18, line 7, at end insert—

“() In section 137R (financial promotion rules)—

(a) in subsection (1), omit the “or” at the end of paragraph (a) and after that paragraph insert—

“(aa) to engage in claims management activity, or”;

(b) in subsection (6), for “has” substitute “and “engage in claims management activity” have”.”

Member’s explanatory statement

The result of this amendment of the Financial Services and Markets Act 2000 would be that the FCA may make rules about the communication, or the approval of another person’s communications, by authorised persons of invitations or inducements to engage in claims management activity.

Guy Opperman

20

Schedule 5, page 41, line 13, leave out from “to” to end of line 15 and insert “a person falling within paragraph 1A,”

Member’s explanatory statement

This amendment and amendment 22 would enable the FCA to obtain information and documents from claims management companies operating or previously operating in Scotland if the FCA considers that it needs the information or documentation in preparation for its role as the regulator of claims management companies.

Guy Opperman

21

Schedule 5, page 41, line 23, leave out from “a” to end of line 24 and insert “person falling within paragraph 1B.”

Member’s explanatory statement

This amendment and amendment 22 would enable the FCA to obtain reports from claims management companies operating in Scotland if the FCA considers that it needs the report in preparation for its role as the regulator of claims management companies.

Guy Opperman

22

Schedule 5, page 41, line 24, at end insert—

“1A A person falls within this paragraph if the person—

(a) is or at any time was authorised under section 5(1)(a) of the Compensation Act 2006 (provision of regulated claims management services), or

(b) is, or at any time was, providing services in Scotland which the person would be, or would have been, prohibited from providing in England and Wales by section 4(1) of the Compensation Act 2006 unless authorised under section 5(1)(a) of that Act.

1B A person falls within this paragraph if the person—

(a) is authorised under section 5(1)(a) of the Compensation Act 2006 (provision of regulated claims management services), or

(b) is providing services in Scotland which the person would be prohibited from providing in England and Wales by section 4(1) of the

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Compensation Act 2006 unless authorised under section 5(1)(a) of that Act.”

Member’s explanatory statement

See the explanation for amendments 20 and 21.

Guy Opperman

5

Clause 26, page 21, line 17, leave out “and 28” and insert “to (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*)”

Member’s explanatory statement

This amendment would apply the explanation of terms given in clause 26 to the new clause inserted by NC3.

Guy Opperman

6

Clause 26, page 22, line 11, at end insert “, and

- (c) so far as relevant for the purposes of section (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*), to be read as referring to any service which is a relevant claims management activity (within the meaning given by subsection (5) of that section).”

Member’s explanatory statement

This amendment would define what references to “regulated services” in clause 26 mean when relevant for the purposes of the new clause inserted by NC3.

Jack Dromey
Mike Amesbury
Vicky Foxcroft

47

☆ Clause 27, page 22, line 30, leave out subsections (1) to (4) and insert—

“(1) A regulated person—

- (a) must not charge a claimant for regulated claims management services provided in connection with the claimant’s PPI claim, unless those charges are made in accordance with section 26(4); and
 - (b) must not enter into an agreement that provides for the payment by a claimant, for regulated claims management services provided in connection with the claimant’s PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (2) All charges incurred by a regulated person in the course of providing regulated claims management services in connection with a claimant’s PPI claim must be paid by the person against whom the claimant’s successful PPI claim was made.
- (3) A regulated person—
- (a) must not charge a person for regulated claims management services provided in connection with a claimant’s PPI claim, an amount which exceeds the fee cap for the claim; and

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- (b) must not enter into an agreement that provides for the payment by a person, for regulated claims management services provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (4) A breach of subsection (1) is not actionable as a breach of statutory duty; but
 - (a) any payment made by a claimant in breach of subsection (1) is recoverable by the claimant; and
 - (b) any agreement entered into in breach of subsection (1)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (1)(a).
- (4A) A breach of subsection (3) is not actionable as a breach of statutory duty; but
 - (a) any payment made by the person against whom the claimant's successful PPI claim was made, in excess of the fee cap for a PPI claim is recoverable by the person; and
 - (b) any agreement entered into in breach of subsection (3)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (3)(a).
- (4B) In subsections (4) and (4A) "payment" means a payment of charges for regulated claims services provided in connection with the PPI claim.
- (4C) A relevant regulator—
 - (a) must ensure that it has appropriate arrangements for monitoring and enforcing compliance with subsections (1) and (3) as they apply to the regulated persons for whom it is the relevant regulator;
 - (b) may make rules for the purpose of doing so (which may include provision applying, in relation to breaches of subsections (1) and (3), functions the relevant regulator has in relation to breaches of another restriction.)"

Member's explanatory statement

This amendment and Amendment 48 would mean that firms would be required to pay CMC costs for PPI claims where the firm is found to be at fault and the consumer has used a CMC rather than claim direct. This would only apply for the interim period until the new FCA regulations come into force, or until August 2019 which is the deadline for making PPI claims, whichever is sooner.

Jack Dromey
Mike Amesbury
Vicky Foxcroft

48

☆ Clause 28, page 24, line 34, leave out subsections (2) to (4) and insert—

- “(2) The rule is that an authorised person—
- (a) must not charge a claimant, for a service which is a regulated claims management activity provided in connection with the claimant's PPI claim, unless those charges are made in accordance with section 26(4); and
 - (b) must not enter into an agreement that provides for the payment by a claimant, for a service which is a regulated claims management activity provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (3) All charges incurred by an authorised person in the course of providing regulated claims management activity in connection with a claimant's PPI claim must be paid by the person against whom that claimant's successful PPI claim was made.

Financial Guidance and Claims Bill [Lords], continued

- (4) An authorised person—
- (a) must not charge a person, for a service which is a regulated claims management activity provided in connection with the claimant’s PPI claim, an amount which exceeds the fee cap for the claim; and
 - (b) must not enter into an agreement that provides for the payment by a person, for a service which is a regulated claims management activity provided in connection with the claimant’s PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (4A) A breach of subsection (2) is not actionable as a breach of statutory duty (despite section 138D(2) of the Financial Services and Markets Act 2000) but—
- (a) any payment made by a claimant in breach of subsection (2) is recoverable by the claimant; and
 - (b) any agreement entered into in breach of subsection (2)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (2)(a).
- (4B) A breach of subsection (4) is not actionable as a breach of statutory duty (despite section 138D(2) of the Financial Services and Markets Act 2000) but—
- (a) any payment made by a person in excess of the fee cap for a PPI claim is recoverable by the person; and
 - (b) any agreement entered into in breach of subsection (4)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (4)(a).
- (4C) In subsections (4A) and (4B) “payment” means a payment of charges for regulated claims services provided in connection with the PPI claim.”

Member’s explanatory statement

This amendment and Amendment 47 would mean that firms would be required to pay CMC costs for PPI claims where the firm is found to be at fault and the consumer has used a CMC rather than claim direct. This would only apply for the interim period until the new FCA regulations come into force, or until August 2019 which is the deadline for making PPI claims, whichever is sooner.

Guy Opperman

7

Clause 29, page 25, line 32, leave out from beginning to “extends” and insert “Part 1, other than the provisions mentioned in subsections (2) to (3B),”

Member’s explanatory statement

This amendment makes a minor drafting change, restructuring the extent clause, in consequence of the changes to that clause made by Amendment 8 and the amendments relating to Part 2.

Guy Opperman

8

Clause 29, page 25, line 37, at end insert—

“(3A) In section (*Occupational pension schemes: requirements to recommend guidance etc*)—

- (a) subsections (1) to (5) extend to England and Wales and Scotland;
- (b) subsections (6) to (9) extend to Northern Ireland.

(3B) Paragraph 25 of Schedule 3 extends to England and Wales and Scotland.”

Member’s explanatory statement

New subsection (3A) updates the extent clause so that the amendments to the Pensions Schemes Act 1993 in NC2 extend only to England and Wales and Scotland and the amendments to the

Financial Guidance and Claims Bill [Lords], continued

Pension Schemes (Northern Ireland) Act 1993 extend only to Northern Ireland. New subsection (3B) contains text previously in subsection (6) in consequence of restructuring this clause.

Guy Opperman

9

Clause 29, page 25, line 38, leave out subsections (4) and (5) and insert—

“(4) Part 2, other than the provisions mentioned in subsections (5) and (5A), extends to England and Wales and Scotland.

(5) The following provisions extend to England and Wales—

(a) section 24(12) and Schedule 4;

(b) section 27;

(c) section (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*).

(5A) Section (*Cold calling about claims management services*) extends to England and Wales, Scotland and Northern Ireland.”

Member’s explanatory statement

This amends the extent clause, so that the new clause inserted by NC3 extends to England and Wales only, and the new clause inserted by NC6 extends to England and Wales, Scotland and Northern Ireland.

Guy Opperman

10

Clause 29, page 25, line 42, leave out subsection (6) and insert—

“() This Part extends to England and Wales, Scotland and Northern Ireland.”

Member’s explanatory statement

This amendment contains a minor drafting change consequential upon the restructuring of the extent clause.

Guy Opperman

11

Clause 30, page 26, line 13, at end insert—

“(1A) Subsections (6) to (9) of section (*Occupational pension schemes: requirements to recommend guidance etc*) come into force on a day appointed by order made by the Department for Communities in Northern Ireland.

(1B) An order under subsection (1A) may make—

(a) transitional, transitory and saving provision in connection with the coming into force of any provision in section (*Occupational pension schemes: requirements to recommend guidance etc*)(6) to (9);

(b) incidental and supplementary provision, and

(c) different provision for different purposes,

and the power to make such an order is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).”

Member’s explanatory statement

This amendment gives the power to bring into force the provisions amending the Pension Schemes (Northern Ireland) Act 1993 in the new clause inserted by NC2 to the Department for Communities in Northern Ireland.

 Financial Guidance and Claims Bill [*Lords*], *continued*

Guy Opperman

12

Clause 30, page 26, line 14, leave out “28” and insert “(*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*)”

Member’s explanatory statement

This amends the commencement clause, so that the new clause inserted by NC3 comes into force 2 months after Royal Assent.

Guy Opperman

13

Clause 30, page 26, line 21, at end insert “except section (*Occupational pension schemes: requirements to recommend guidance etc*) (6) to (9)”

Member’s explanatory statement

This amendment is consequential on amendment 11.

Guy Opperman

14

Clause 30, page 26, line 29, at end insert “, and
(ii) section (*Cold calling about claims management services*)”

Member’s explanatory statement

This amends the commencement clause to provide for NC6 about cold calling in relation to claims management services to be brought into force on a day appointed in regulations made by the Secretary of State.

Guy Opperman

15

Clause 30, page 26, line 31, at end insert “, other than section (*Cold calling about claims management services*)”

Member’s explanatory statement

This amendment is consequential on amendment 14.

Guy Opperman

16

Clause 30, page 26, line 31, at end insert—
“() The Treasury must obtain the consent of the Lord Chancellor before making regulations under subsection (3) or (5) in relation to section (*Legal services regulators’ rules: charges for claims management services*).”

Member’s explanatory statement

This amendment requires the Treasury to obtain the consent of the Lord Chancellor before making regulations for the commencement of the new clause inserted by amendment NC4.

 Guy Opperman

17

Clause 31, page 26, line 34, leave out subsection (2)

Member’s explanatory statement

This amendment removes the privilege amendment inserted by the Lords.

Financial Guidance and Claims Bill [Lords], continued

Guy Opperman

NC1

To move the following Clause—

“Personal pension schemes: requirements to recommend guidance etc

- (1) Section 137FB of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about the availability of pensions guidance) is amended as follows.
- (2) After subsection (1), insert—
 - “(1A) The FCA must also make general rules requiring the trustees or managers of a relevant pension scheme to take the steps mentioned in subsections (1B) and (1C) in relation to an application from a member or survivor—
 - (a) to transfer any rights accrued under the scheme, or
 - (b) to start receiving benefits provided by the scheme.
 - (1B) As part of the application process, the trustees or managers must ask the member or survivor whether they have received appropriate pensions guidance or appropriate independent financial advice.
 - (1C) In a case where the member or survivor indicates that they have not received appropriate pensions guidance or appropriate independent financial advice, the trustees or managers must also—
 - (a) recommend that the member or survivor seeks such guidance or advice, and
 - (b) ask the member or survivor whether—
 - (i) they wish to wait until they have received such guidance or advice before deciding whether to proceed with the application, or
 - (ii) they wish to proceed with the application without having received it.
 - (1D) The rules may—
 - (a) specify what constitutes appropriate pensions guidance and appropriate independent financial advice;
 - (b) make further provision about how the trustees or managers must comply with the duties in subsections (1B) and (1C) (such as provision about methods of communication and time limits);
 - (c) specify what the duties of the trustees or managers are in the situation where a member or survivor does not respond to a question mentioned in subsection (1B) or (1C)(b);
 - (d) provide for exceptions to the duties in subsections (1B) and (1C) in specified cases.”
- (3) In subsection (2), for “this section” substitute “subsection (1)”.
- (4) After subsection (2) insert—
 - “(2A) Before the FCA publishes a draft of any rules to be made by virtue of subsection (1A), it must consult—
 - (a) the Secretary of State, and
 - (b) the single financial guidance body.”
- (5) In subsection (3), for “the rules” substitute “rules to be made by virtue of subsection (1)”.

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- (6) After subsection (3) insert—
- “(3A) In determining what provision to include in rules to be made by virtue of subsection (1A), the FCA must have regard to any regulations that are for the time being in force under section 113B of the Pension Schemes Act 1993 (occupational pension schemes: requirements to recommend guidance etc).”
- (7) In subsection (4), for the definition of “pensions guidance” substitute—
- ““pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 5 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes);”.

Member’s explanatory statement

This new clause requires the FCA to make rules requiring trustees or managers of personal and stakeholder pension schemes to check whether members have either received guidance or advice or have opted out of receiving it before accessing or transferring their pension assets. It also makes consequential amendments to FSMA 2000. It would be inserted after clause 18.

Guy Opperman

NC2

To move the following Clause—

“Occupational pension schemes: requirements to recommend guidance etc

- (1) The Pension Schemes Act 1993 is amended as set out in subsections (2) to (5).
- (2) After section 113A insert—

“113B Occupational pension schemes: requirements to recommend guidance etc

- (1) The Secretary of State must make regulations requiring the trustees or managers of an occupational pension scheme to take the steps mentioned in subsections (2) and (3) in relation to an application from a relevant beneficiary—
- (a) to transfer any rights accrued under the scheme, or
 - (b) to start receiving benefits provided by the scheme.
- (2) As part of the application process, the trustees or managers must ask the beneficiary whether they have received appropriate pensions guidance or appropriate independent financial advice.
- (3) In a case where the beneficiary indicates that they have not received appropriate pensions guidance or appropriate independent financial advice, the trustees or managers must also—
- (a) recommend that the beneficiary seeks such guidance or advice, and
 - (b) ask the beneficiary whether—
 - (i) they wish to wait until they have received such guidance or advice before deciding whether to proceed with the application, or
 - (ii) they wish to proceed with the application without having received it.

Financial Guidance and Claims Bill [Lords], continued

- (4) The regulations may—
- (a) specify what constitutes appropriate pensions guidance and appropriate independent financial advice;
 - (b) make further provision about how the trustees or managers must comply with the duties in subsections (2) and (3) (such as provision about methods of communication and time limits);
 - (c) specify what the duties of the trustees or managers are in the situation where a beneficiary does not respond to a question mentioned in subsection (2) or (3)(b);
 - (d) provide for exceptions to the duties in subsections (2) and (3) in specified cases;
 - (e) provide for the Secretary of State or another prescribed person to issue guidance for the purposes of this section, to which trustees or managers must have regard in complying with their duties under the regulations.
- (5) In determining what provision to include in the regulations, the Secretary of State must have regard to any rules that are for the time being in force under section 137FB(1A) of the Financial Services and Markets Act 2000.
- (6) In this section—
- “relevant beneficiary”, in relation to a pension scheme, means—
- (a) a member of the scheme, or
 - (b) another person of a prescribed description, who has a right or entitlement to flexible benefits under the scheme;
- “flexible benefits” has the meaning given by section 74 of the Pension Schemes Act 2015;
- “pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 5 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes).”
- (3) In section 115 (powers as respects failure to comply with information requirements), in subsection (1), after “113” insert “, 113B”.
- (4) In section 182(5) (power of Treasury to direct that regulation-making powers are exercisable only in conjunction with them), after “except” insert “regulations under section 113B or”.
- (5) In section 185(2) (consultations about other regulations: exceptions), after paragraph (c) insert—
- “(ca) regulations under section 113B; or”.
- (6) The Pension Schemes (Northern Ireland) Act 1993 is amended as set out in subsections (7) to (9).
- (7) After section 109A insert—
- “109B Occupational pension schemes: requirements to recommend guidance etc**
- (1) The Department must make regulations requiring the trustees or managers of an occupational pension scheme to take the steps mentioned in subsections (2) and (3) in relation to an application from a relevant beneficiary—
- (a) to transfer any rights accrued under the scheme, or

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- (b) to start receiving benefits provided by the scheme.
- (2) As part of the application process, the trustees or managers must ask the beneficiary whether they have received appropriate pensions guidance or appropriate independent financial advice.
- (3) In a case where the beneficiary indicates that they have not received appropriate pensions guidance or appropriate independent financial advice, the trustees or managers must also—
 - (a) recommend that the beneficiary seeks such guidance or advice, and
 - (b) ask the beneficiary whether—
 - (i) they wish to wait until they have received such guidance or advice before deciding whether to proceed with the application, or
 - (ii) they wish to proceed with the application without having received it.
- (4) The regulations may—
 - (a) specify what constitutes appropriate pensions guidance and appropriate independent financial advice;
 - (b) make further provision about how the trustees or managers must comply with the duties in subsections (2) and (3) (such as provision about methods of communication and time limits);
 - (c) specify what the duties of the trustees or managers are in the situation where a beneficiary does not respond to a question mentioned in subsection (2) or (3)(b);
 - (d) provide for exceptions to the duties in subsections (2) and (3) in specified cases;
 - (e) provide for the Department or another prescribed person to issue guidance for the purposes of this section, to which trustees or managers must have regard in complying with their duties under the regulations.
- (5) In determining what provision to include in the regulations, the Department must have regard to any rules that are for the time being in force under section 137FB(1A) of the Financial Services and Markets Act 2000.
- (6) In this section—
 - “relevant beneficiary”, in relation to a pension scheme, means—
 - (a) a member of the scheme, or
 - (b) another person of a prescribed description, who has a right or entitlement to flexible benefits under the scheme;
 - “flexible benefits” has the meaning given by section 74 of the Pension Schemes Act 2015;
 - “pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 5 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes).”
- (8) In section 111 (powers as respects failure to comply with information requirements), in subsection (1), after “109” insert “or 109B”.

Financial Guidance and Claims Bill [Lords], continued

- (9) In section 177(6) (power of Department of Finance to direct that regulation-making powers are exercisable only in conjunction with them), after “except” insert “regulations under section 109B or”.

Member’s explanatory statement

This new clause makes equivalent provision to that in NCI for occupational pension schemes and requires the Secretary of State and the Department for Communities to make regulations corresponding to the FCA rules mentioned in NCI. It also makes consequential amendments to the Pension Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993.

Guy Opperman

NC3

To move the following Clause—

“PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA

- (1) A legal practitioner—
 - (a) must not charge a claimant, for a service which is a relevant claims management activity provided in connection with the claimant’s PPI claim, an amount which exceeds the fee cap for the claim, and
 - (b) must not enter into an agreement that provides for the payment by a claimant, for a service which is a relevant claims management activity provided in connection with the claimant’s PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (2) Subsections (2) to (5) and (7) of section 27 apply for the purposes of the prohibitions in subsection (1) as they apply for the purposes of the prohibitions in section 27(1) but as if—
 - (a) references in those subsections to “regulated claims management services” were references to “relevant claims management activity” and references to “regulated persons” were references to “legal practitioners”, and
 - (b) the first entry in columns 1 and 2 of the table in subsection (5) were omitted.
- (3) Subsection (1) applies as follows—
 - (a) the prohibition in subsection (1)(a) applies only to charges imposed by a legal practitioner under an agreement entered into during the period—
 - (i) beginning with the first day of the second interim period (within the meaning given by section 28(6)), and
 - (ii) ending with the end date for that practitioner, and
 - (b) the prohibition in subsection (1)(b) applies only to agreements entered into by a legal practitioner during that period.
- (4) For the purposes of subsection (3), the end date is—
 - (a) for a legal practitioner for whom the relevant regulator is the Law Society of England and Wales, the day before the coming into force of the first rule made by the Law Society of England and Wales under section (*Legal services regulators’ rules: charges for claims management services*) that applies to, or to any description of, PPI claims, and
 - (b) for any other legal practitioner, 29 April 2020.
- (5) In this section “relevant claims management activity”—

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- (a) does not include any reserved legal activities of the kind mentioned in section 12(1)(a) or (b) of the Legal Services Act 2007 (exercise of a right of audience or the conduct of litigation), but
- (b) otherwise, means activity of a kind specified in an order under section 22(1B) of the Financial Services and Markets Act 2000 (regulated activities: claims management services), disregarding any exemption in that order for activities carried on by, through, or at the direction of, a legal practitioner.”

Member’s explanatory statement

This new clause requires the Law Society of England and Wales, the Bar Council and the Chartered Institute of Legal Executives, after the transfer of regulation from the Claims Management Regulator to the FCA, to enforce a fee cap in respect of charges by lawyers for certain claims management services provided in connection with a PPI claim until, in the case of the Law Society, the Society has made its own rules about charges for PPI claims, and in any other case, 29 April 2020.

Guy Opperman

NC4

To move the following Clause—

“Legal services regulators’ rules: charges for claims management services

- (1) The Law Society of England and Wales, the General Council of the Bar and the Chartered Institute of Legal Executives may make rules prohibiting regulated persons from—
 - (a) entering into a specified relevant claims management agreement that provides for the payment by a person of specified charges, and
 - (b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a specified relevant claims management activity.
- (2) The Law Society of England and Wales must exercise that power to make rules in relation to all relevant claims management agreements, and all relevant claims management activities, which concern claims in relation to financial products or services.
- (3) The Law Society of Scotland may make rules prohibiting regulated persons from—
 - (a) entering into a relevant claims management agreement concerning a claim in relation to a financial product or service that provides for the payment by a person of specified charges, and
 - (b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a relevant claims management activity concerning a claim in relation to a financial product or service.
- (4) Rules under this section may make provision securing that for the purposes of the prohibition referred to in subsection (1)(a) or (3)(a) charges payable under a relevant claims management agreement are to be treated as including charges payable under an agreement treated by the rules as being connected with the relevant claims management agreement.
- (5) In this section “regulated persons” means—
 - (a) in relation to the Law Society of England and Wales—

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- (i) persons who, or licensable bodies which, are authorised by the Law Society to carry on a reserved legal activity,
 - (ii) European lawyers registered with the Law Society under the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119), and
 - (iii) foreign lawyers registered with the Law Society under section 89 of the Courts and Legal Services Act 1990;
 - (b) in relation to the Law Society of Scotland, Scottish legal practitioners;
 - (c) in relation to the General Council of the Bar—
 - (i) persons who, or licensable bodies which, are authorised by the General Council to carry on a reserved legal activity, and
 - (ii) European lawyers registered with the General Council under the European Communities (Lawyer's Practice) Regulations 2000;
 - (d) in relation to the Chartered Institute of Legal Executives, persons authorised by the Institute to carry on a reserved legal activity.
- (6) The rules must be made with a view to securing an appropriate degree of protection against excessive charges for the provision of a service which is, or which is provided in connection with, a relevant claims management activity.
- (7) The rules may specify charges by reference to charges of a specified class or description, or by reference to charges which exceed, or are capable of exceeding, a specified amount.
- (8) The rules may not specify—
- (a) charges for a reserved legal activity within the meaning of the Legal Services Act 2007 (see section 12 of that Act);
 - (b) charges imposed in respect of—
 - (i) the exercise of a right of audience by a Scottish legal practitioner;
 - (ii) the conduct of litigation by a Scottish legal practitioner.
- (9) In subsection (8)(b)—
- “conduct of litigation” means—
- (a) the bringing of proceedings before any court in Scotland;
 - (b) the commencement, prosecution and defence of such proceedings;
 - (c) the performance of any ancillary functions in relation to such proceedings;
- “right of audience” means the right to appear before and address a court in Scotland, including the right to call and examine witnesses.
- (10) In relation to an agreement entered into, or charge imposed, in contravention of the rules, the rules may (amongst other things)—
- (a) provide for the agreement, or obligation to pay the charge, to be unenforceable or unenforceable to a specified extent;
 - (b) provide for the recovery of amounts paid under the agreement or obligation;
 - (c) provide for the payment of compensation for any losses incurred as a result of paying amounts under the agreement or obligation.
- (11) For the purposes of this section—
- “relevant claims management activity” means activity of a kind specified in an order under section 22(1B) of the Financial Services and Markets Act 2000 (regulated activities: claims management services), disregarding any exemption in that order for activities carried on by, through, or at the direction of, a legal practitioner;

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“relevant claims management agreement” means an agreement, the entering into or performance of which by either party is a relevant claims management activity;

“Scottish legal practitioner” means—

- (a) a person qualified to practise as a solicitor in accordance with section 4 of the Solicitors (Scotland) Act 1980;
- (b) European lawyers registered with the Law Society of Scotland under the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121);
- (c) foreign lawyers registered with the Law Society of Scotland under section 60A of the Solicitors (Scotland) Act 1980;
- (d) an incorporated practice within the meaning given by section 34(1A)(c) of the Solicitors (Scotland) Act 1980;
- (e) a licensed legal services provider within the meaning of Part 2 of the Legal Services (Scotland) Act 2010 (see section 47 of that Act) that provides, or offers to provide, legal services under a licence issued by the Law Society of Scotland;

“specified” means specified in the rules, but “specified amount” means an amount specified in or determined in accordance with the rules.

- (12) This section does not limit any power of the Law Society of England and Wales, the Law Society of Scotland, the General Council of the Bar or the Chartered Institute of Legal Executives existing apart from this section to make rules.”

Member’s explanatory statement

This new clause makes provision about rules prohibiting charges for claims management services which may be made by the Law Society of England and Wales, the General Council of the Bar, the Chartered Institute of Legal Executives and (where the claim concerns financial products or services) the Law Society of Scotland, and imposes a duty on the Law Society of England and Wales to make such rules in relation to claims concerning financial products or services.

Guy Opperman

NC5

To move the following Clause—

“Extension of power of the Law Society of Scotland to make rules

- (1) The Treasury may by regulations amend section (*Legal services regulators’ rules: charges for claims management services*) for the purpose of extending the power in subsection (3) of that section so as to apply to—
 - (a) all relevant claims management agreements;
 - (b) all relevant claims management activity;
 - (c) any description of relevant claims management agreement;
 - (d) any description of relevant claims management activity.
- (2) The Treasury must obtain the consent of the Scottish Ministers before making regulations under subsection (1).
- (3) Regulations under this section—
 - (a) are to be made by statutory instrument;
 - (b) may make incidental, supplemental or consequential provision.

Financial Guidance and Claims Bill [Lords], continued

- (4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Member's explanatory statement

This new clause would permit the Treasury, with the consent of the Scottish Ministers, to make regulations which extend the power given to the Law Society of Scotland to make rules by NC4.

Guy Opperman

NC6

To move the following Clause—

“Cold calling about claims management services

- (1) The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426) are amended as follows.
- (2) In regulation 21 (calls for direct marketing purposes), after paragraph (5) insert—
- “(6) Paragraph (1) does not apply to a case falling within regulation 21A.”
- (3) After regulation 21 insert—

“21A Calls for direct marketing of claims management services

- (1) A person must not use, or instigate the use of, a public electronic communications service to make unsolicited calls for the purposes of direct marketing in relation to claims management services except in the circumstances referred to in paragraph (2).
- (2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being the subscriber consents to such calls being made by, or at the instigation of, the caller on that line.
- (3) A subscriber must not permit the subscriber's line to be used in contravention of paragraph (1).
- (4) In this regulation, “claims management services” means the following services in relation to the making of a claim—
- (a) advice;
 - (b) financial services or assistance;
 - (c) acting on behalf of, or representing, a person;
 - (d) the referral or introduction of one person to another;
 - (e) the making of inquiries.
- (5) In paragraph (4), “claim” means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made—
- (a) by way of legal proceedings,
 - (b) in accordance with a scheme of regulation (whether voluntary or compulsory), or
 - (c) in pursuance of a voluntary undertaking.”
- (4) In regulation 24 (information to be provided for the purposes of regulations 19 to 21)—
- (a) in the heading, for “, 20 and 21” substitute “to 21A”;

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(b) in paragraph (1)(b), after “21” insert “or 21A”.

Member’s explanatory statement

This amendment inserts a provision into the Privacy and Electronic Communications (EC Directive) Regulations which prohibits live unsolicited telephone calls for the purposes of direct marketing in relation to claims management services except where the person called has given prior consent to receiving such calls.

Jack Dromey
Mike Amesbury
Vicky Foxcroft

NC7

To move the following Clause—

“Regulatory principles to be applied in respect of claims management services

- (1) In relation to the regulation of claims management services, the FCA must act according to the principles that—
 - (a) authorised persons should act honestly, fairly and professionally in accordance with the best interests of consumers who are their clients; and
 - (b) authorised persons should manage conflicts of interest fairly, both between themselves and their clients, and between clients.
- (2) In this section, “authorised person” has the same meaning as in the Financial Services and Markets Act 2000, and “authorised persons” shall be construed accordingly.”

Member’s explanatory statement

This new clause would introduce a duty of care which would require claims management services to act with the best interests of the customers in mind.

Jack Dromey
Mike Amesbury
Vicky Foxcroft

NC8

To move the following Clause—

“Transfer to FCA of regulation of introducers

- (1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) is amended as follows.
- (2) In article 25, after paragraph (2), insert—
 - “(3) Arrangements under which persons (“clients”) will be introduced to another person with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate is also a regulated activity.”

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(3) Omit Article 33.”

Member’s explanatory statement

This new clause brings “introducers” under the regulatory remit of the FCA.

Jack Dromey
Mike Amesbury
Vicky Foxcroft

NC9

To move the following Clause—

“Ban on unsolicited real-time direct approaches by, on behalf of, or for the benefit of companies carrying out claims management services and a ban on the use by claims management companies of data obtained by such methods

- (1) The FCA must, within the period of six months beginning with the day on which this Act comes into force, introduce bans on—
 - (a) unsolicited real-time direct approaches to members of the public carried out by whatever means, digital or otherwise, by, on behalf of, or for the benefit of companies carrying out claims management services or their agents or representatives,
 - (b) the use for any purpose of any data by companies carrying out claims management services, their agents or representatives where they cannot demonstrate to the satisfaction of the FCA that this data does not arise from any unsolicited real-time direct approach to members of the public carried out by whatever means, digital or otherwise.
- (2) The FCA must fix the appropriate penalties for breaches of subsection (1)(a) and (b) above.”

Member’s explanatory statement

This new clause would require the FCA to ban cold calling for claims management companies. Critically, it would also ban the use by these companies of any data obtained by cold calling. Together, these provisions would make cold calling for CMCs illegal and cut off the revenue stream to cold callers, by preventing CMCs using their data. The new clause would also allow the FCA to set the appropriate penalties for any breach of either of these bans. The bans would come into effect with the passing of this Bill.

Neil Coyle

NC10

To move the following Clause—

“Insurance products and terrorism

- (1) In exercising its functions the single financial guidance body must have regard to the adequacy of insurance products in protecting businesses from the financial impact of terrorism, and the effects of any inadequacy on consumer protection.
- (2) The single financial guidance body shall specifically have regard to—
 - (a) Whether the Reinsurance (Acts of Terrorism) Act 1993 provides sufficient clarity to insurers and members of the public regarding the application of that Act to the financial effect acts of terrorism have had

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- an impact on businesses without necessarily causing physical damage to property, and
- (b) Whether any such lack of clarity has led, or may lead, to consumer detriment.
- (3) If the single financial guidance body considers there has been, or may come to be, consumer detriment due to any lack of clarity in the Reinsurance (Acts of Terrorism) Act 1993 in relation to the application of that Act to acts of terrorism that have had a financial impact on businesses without necessarily causing physical damage to property, it must advise the Secretary of State to amend that Act.
- (4) On receipt of advice from the single financial guidance body under subsection (3), the Secretary of State may by regulations made by statutory instrument amend section 2 of the Reinsurance (Acts of Terrorism) Act 1993 in order to provide greater clarity on the application of that Act to acts of terrorism that have had a financial impact on businesses without necessarily causing physical damage to property.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section “acts of terrorism” has the same meaning as in the Reinsurance (Acts of Terrorism) Act 1993.”

Member’s explanatory statement

This new clause requires the single financial guidance body to have regard to whether insurance products adequately protect businesses from the financial impact of terrorism, particularly in regard to the application of the Reinsurance (Acts of Terrorism) Act 1993 in relation to acts of terrorism that have a financial impact on businesses without causing physical damage to property. It also gives the Secretary of State the power to amend that Act if advised to do so by the single financial guidance body.

Yvonne Fovargue

NC12

To move the following Clause—

“Provision of advice on consumer credit matters by legal advice clinics

- (1) In exercising its functions, the single financial guidance body must have regard to the availability of consumer access to advice on consumer credit matters.
- (2) The single financial guidance body must specifically consider the impact on consumers of Part XX (Provision of financial services by members of the professions) Financial Services and Markets Act 2000 preventing pro bono legal clinics from providing advice on consumer credit matters.
- (3) If the single financial guidance body considers that allowing members of the professions to provide advice on consumer credit matters would be conducive to its functions it must advise the Secretary of State to amend the Financial Services and Markets Act 2000.
- (4) On receipt of advice from the single financial guidance body under subsection (4), the Secretary of State may by regulations made by statutory instrument amend Part XX of the Financial Services and Markets Act 2000.

Financial Guidance and Claims Bill [Lords], continued

- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Member's explanatory statement

This new clause would require the single financial guidance body to consider the effect on consumers of the prohibition on probono legal clinics giving legal advice and if it considers necessary recommend that the Secretary of State amend the Financial Services and Markets Act 2000 to allow probono legal clinics to provide this service.

ORDER OF THE HOUSE [22 JANUARY 2018]

That the following provisions shall apply to the Financial Guidance and Claims Bill [Lords]:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Tuesday 6 February 2018.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and up to and including Third Reading

4. Proceedings on Consideration and any proceedings in legislative grand committee shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on consideration and Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.
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ORDER OF THE COMMITTEE [1 FEBRUARY 2018]

That—

- (1) the Committee shall (in addition to its first meeting at 11.30 am on Thursday 1 February) meet—
 - (a) at 2.00 pm on Thursday 1 February;
 - (b) at 9.25 am and 2.00 pm on Tuesday 6 February;
- (2) the proceedings shall be taken in the following order: Clause 1; Schedules 1 and 2; Clauses 2 to 20; Schedule 3; Clauses 21 to 24; Schedules 4 and 5; Clauses 25 to 31; new Clauses; new Schedules; remaining proceedings on the Bill;

Financial Guidance and Claims Bill [*Lords*], *continued*

- (3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 6 February.

NOTICES WITHDRAWN

The following Notices were withdrawn on 30 January:

NC11
