

Financial Guidance and Claims Bill [HL]

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 13th July 2017, as follows –

Clause 1	Clauses 14 to 16
Schedules 1 and 2	Schedules 4 and 5
Clauses 2 to 13	Clauses 17 to 20
Schedule 3	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD MCKENZIE OF LUTON

- 1 Page 2, line 6, at end insert –
- “() As soon as is practical after the completion of the transfer schemes referred to in subsection (7), the single financial guidance body must produce a business plan which must –
- (a) outline its business plans for a minimum of three years;
 - (b) follow consultation;
 - (c) be informed by a comprehensive assessment of consumer need; and
 - (d) be updated annually.”

Schedule 1

LORD MCKENZIE OF LUTON

- 2 Page 18, line 6, after “member,” insert “and from time to time thereafter,”
- 3 Page 18, line 33, after “public,” insert “and before any transfer scheme under Schedule 2 is put into effect,”

Clause 2

BARONESS ALTMANN

4 Page 2, line 11, leave out “advice” and insert “counselling”

LORD STEVENSON OF BALMACARA

5 Page 2, line 13, at end insert—
“() the debt solutions function.”

LORD MCKENZIE OF LUTON
LORD STEVENSON OF BALMACARA

6 Page 2, line 13, at end insert—
“that must remain free at the point of use for members of the public.”

BARONESS KRAMER
LORD SHARKEY
LORD KIRKWOOD OF KIRKHOPE

7 Page 2, line 16, at end insert—
“() In relation to the strategic function, such advice to the Secretary of State may include advocating for the introduction of a period of up to 12 months during which time interest and other charges on an individual’s debts may be frozen, and enforcement action halted, in order to allow them time to seek and act upon debt advice.”

LORD STEVENSON OF BALMACARA

8 Page 2, line 19, leave out “provide” and insert “ensure provision of”

LORD MCKENZIE OF LUTON

9 Page 2, line 20, after “occupational” insert “, state”

BARONESS DRAKE

10 Page 2, line 21, at end insert “including by means of provision to the public of a pensions dashboard.”

LORD STEVENSON OF BALMACARA

11 Page 2, line 22, leave out subsection (5) and insert—
“(5) The debt advice function is to commission the provision of sufficient debt advice services, which are to be free at the point of use, to meet the needs of people in financial crisis in England.”

BARONESS ALTMANN

12 Page 2, line 23, leave out “and advice” and insert “, guidance and counselling”

Clause 2 - continued

LORD STEVENSON OF BALMACARA

13 Page 2, line 23, at end insert –

“() The single financial guidance body must commission the provision of debt advice services on the basis of consultation with relevant bodies involved in the provision of information, guidance and advice on personal debt.”

14 Page 2, line 24, leave out “provide” and insert “ensure provision of”

LORD MCKENZIE OF LUTON
LORD STEVENSON OF BALMACARA

15 Page 2, line 27, at end insert –

“() The money guidance function must include, but is not limited to –

- (a) promoting awareness of the benefits of financial planning;
- (b) promoting awareness of financial advantages and disadvantages in relation to the supply of particular kinds of goods and services;
- (c) promoting awareness of the benefits and risks associated with different kinds of financial dealings; and
- (d) publishing educational materials and carrying out educational activities.”

16 Page 2, line 27, at end insert –

“() Under this Act, providing information, guidance and advice to members of the public includes providing information to self-employed members of the public.”

THE EARL OF LISTOWEL

16A★ Page 2, line 32, after “children” insert “, care leavers”

BARONESS ALTMANN

17 Page 2, line 32, leave out “young people” and insert “adults”

BARONESS KRAMER
LORD SHARKEY

18 Page 2, line 32, at end insert “and to individuals who may be expected to be contemplating major financial commitments, such as, but not limited to, mortgages, pensions and vehicle finance plans,”

LORD MCKENZIE OF LUTON

19 Page 2, line 32, at end insert –

“() financial inclusion,”

20 Page 2, line 32, at end insert –

“() the awareness of scams and frauds relating to financial products,”

Clause 2 - continued

BARONESS ALTMANN

21 Page 2, line 32, at end insert –

- “() public understanding of how to access information and guidance,
- () public recognition of the distinctions in personal finance terms between “education”, “information”, “guidance”, “counselling” and “individualised independent financial advice”,”

LORD MCKENZIE OF LUTON

22 Page 2, line 34, at end insert –

- “() In seeking to improve financial inclusion, the single financial guidance body must, as part of a national strategy –
 - (a) produce a separate annual report on the progress of addressing financial exclusion across the United Kingdom, in conjunction with the devolved administrations;
 - (b) work with banks, financial organisations and technology companies to ensure that hard-to-reach groups are able to access financial advice, guidance and products online;
 - (c) work with banks, financial organisations, consumer groups and technology companies to ensure that customers suffering from mental ill health have more options to control their financial conduct;
 - (d) conduct an annual review of the impact of the Welfare Reform Act 2012 on financial exclusion; and
 - (e) consult as to whether responsibility for financial inclusion should be vested with Government Ministers and, if so, whether this should be done within or across departments.”

LORD SHARKEY
BARONESS KRAMER**23** Page 2, line 34, at end insert –

- “() The single financial guidance body must, to support the development of a national strategy under subsection (7), assess the extent to which consumer detriment is caused by, or contributed to by –
 - (a) unsolicited approaches to members of the public by debt management services or pension providers or advisors; and
 - (b) the lack of a moratorium period for debt recovery from individuals.
- () This assessment must be made and published annually, with the first such assessment being published within the period of six months beginning with the day on which this section comes into force.”

Clause 2 - continuedBARONESS DRAKE
THE EARL OF LISTOWEL

24 Page 2, line 34, at end insert –

- “() The single financial guidance body must produce a report advising the Secretary of State on how government departments might best assess the impact on financial inclusion, financial capability and household debt of any proposals for a change to public expenditure, administration or policy.
- () The report must be published within the period of 12 months beginning with the day on which this Act is passed.”

LORD MCKENZIE OF LUTON

25 Page 2, line 34, at end insert –

- “() In seeking to improve the provision of financial education to children and young people, the single financial guidance body may advise the Secretary of State that –
- (a) Ofsted should take into account the financial education provided by schools when carrying out inspections; and
- (b) financial education should be added to the primary school education curriculum.”

26 Page 2, line 34, at end insert –

- “() As part of undertaking its strategic function to improve the financial capability of members of the public, the single financial guidance body must carry out research on a periodic basis, in collaboration with other bodies with an interest in debt issues, to determine –
- (a) the level of unmanageable debt across England, Wales, Scotland and Northern Ireland,
- (b) the causes of unmanageable debt, and
- (c) ways to prevent unmanageable debt.

BARONESS DRAKE

27 Page 2, line 38, at end insert –

- “() to improve the ability of members of the public to plan for and address sudden variations in income,”

28 Page 2, line 39, after “of” insert “independent and impartial”

29 Page 2, line 39, leave out “in areas where it is lacking”

30 Page 2, line 41, after “that” insert “independent and impartial”

LORD STEVENSON OF BALMACARA

31 Page 2, line 44, after “organisations” insert “and prioritising the allocation of resources to front line advice and guidance delivery”

Clause 2 - continued

BARONESS DRAKE

32 Page 3, line 1, after “that” insert “independent and impartial”

LORD MCKENZIE OF LUTON
LORD STEVENSON OF BALMACARA

33 Page 3, line 5, at end insert –

“() The single financial guidance body should seek to ensure that all communications with individual members of the public about their services are clear as to whether they are receiving advice or guidance, as defined in this section.”

34 Page 3, line 5, at end insert –

“() The single financial guidance body must ensure that members of the public who approach them seeking advice, guidance or information relating to more than one function of the body are signposted appropriately to each function and are not left in need of other appropriate financial advice, guidance or information as may be required.”

35 Page 3, line 5, at end insert –

“() The single financial guidance body must ensure that sufficient funds are allocated towards the discharging of its debt advice function to meet the reasonable needs of the public in England.”

36 Page 3, line 5, at end insert –

“() In order to support working across the money guidance, pensions guidance and debt advice sectors, the single financial guidance body must work collaboratively with—

- (a) the financial services industry;
- (b) the charitable sector; and
- (c) the voluntary sector.”

37 Page 3, line 5, at end insert –

“() The Secretary of State must undertake periodic reviews in conjunction with the Scottish Ministers and the Department for Communities in Northern Ireland to determine the effectiveness of the single financial guidance body in Scotland and Northern Ireland.”

38 Page 3, line 9, at end insert –

“() In this section—

“advice” means an activity regulated by the FCA and involves personalised recommendations and an action plan tailored to an individual’s needs;

“guidance” means the provision of generic information about the various financial options open to an individual.”

Clause 2 - continued

LORD MCKENZIE OF LUTON

39 Page 3, line 9, at end insert –

“() In this section –

“financial inclusion” refers to the ability to manage day-to-day financial transactions, meet expenses (both predictable and unpredictable), manage a loss of earned income, avoid or reduce problem debt, and access financial advice, guidance and services;

“financial exclusion” refers to an inability, difficulty or reluctance to access mainstream financial advice, guidance or services.”

40 Page 3, line 9, at end insert –

“() In this section, “unmanageable debt” means when an individual is –

- (a) making minimum repayments on outstanding credit commitments for three months or more;
- (b) falling behind on paying essential bills;
- (c) using credit to pay for essential bills;
- (d) using new credit to service existing credit commitments;
- (e) using credit to make essential day-to-day payments until payday; or
- (f) incurring overdraft or late payment charges on a regular basis.”

After Clause 2

LORD STEVENSON OF BALMACARA
THE EARL OF LISTOWEL
THE LORD BISHOP OF NEWCASTLE

41 Insert the following new Clause –

“Review into the creation of a breathing space scheme

- (1) As part of its strategic function, the single financial guidance body must conduct a review into the desirability of creating a scheme which makes provision for financial respite for members of the public in debt (“a breathing space scheme”) and may make recommendations to the Secretary of State.
- (2) In undertaking its review, the single financial guidance body must consider –
 - (a) the eligibility criteria for members of the public to join such a scheme;
 - (b) the protections from creditors afforded by such a scheme;
 - (c) the requirements on members to comply with a debt repayment plan;
 - (d) the role of debt advisers in administering such a scheme;
 - (e) what would happen in the event that members did not comply with a debt repayment plan or were no longer eligible to remain members of such a scheme;
 - (f) how appeals and challenges to such a scheme would be handled;
 - (g) how different types of debt would be handled by such a scheme; and
 - (h) the appropriate length of time for which a person may claim protection under such a scheme.

After Clause 2 - continued

- (3) The single financial guidance body must publish its review and make any recommendations to the Secretary of State by the end of the period of six months beginning with the day on which this section comes into force.
- (4) The single financial guidance body must provide information and guidance to members of the public about any future breathing space scheme if it, or a similar scheme, were to be created.”

LORD STEVENSON OF BALMACARA

42 Insert the following new Clause—

“Review into insolvency regimes

- (1) As part of its strategic function, the single financial guidance body must review current insolvency regimes for members of the public in debt in England (“the regimes”) and may make recommendations to the Secretary of State.
- (2) In undertaking its review, the single finance guidance body must consider—
 - (a) the eligibility criteria for members of the public to participate in insolvency regimes;
 - (b) the cost of the regimes;
 - (c) the protections offered by the regimes from creditors;
 - (d) the role of debt advisers in administering the regimes and the costs they bear;
 - (e) the treatment of different types of debt by the regimes; and
 - (f) the appropriate length of time for which a person may claim protection under different regimes.
- (3) The single financial guidance body must publish its review and make any recommendations to the Secretary of State by the end of the period of six months beginning with the day on which this section comes into force.
- (4) The single financial guidance body must provide information and guidance to members of the public about any insolvency regimes it considers appropriate.”

Clause 4

LORD STEVENSON OF BALMACARA

43 Page 3, line 45, leave out paragraph (b)

BARONESS ALTMANN

44 Page 3, line 45, leave out “advice” and insert “counselling”

LORD MCKENZIE OF LUTON
LORD STEVENSON OF BALMACARA

45 Page 3, line 46, at end insert—

- “() When arranging with a primary SGFB delivery partner to carry out on its behalf the debt advice function, the single financial guidance body may contract only with organisations and companies which are established for charitable or not-for-profit purposes.”

Clause 4 - continued

LORD MCKENZIE OF LUTON

46 Page 4, line 13, at end insert –

“() SFGB delivery partners must refer members of the public to the single financial guidance body if they are unable to deliver the information, guidance or advice that they need.”

47 Page 4, line 13, at end insert –

“() The Secretary of State, the FCA and the single financial guidance body must agree an appropriate governance arrangement and level of accountability for SFGB delivery partners.”

Clause 5

LORD MCKENZIE OF LUTON

48 Page 4, line 17, after “directions” insert “and guidance”

Clause 6

LORD STEVENSON OF BALMACARA

49 Page 4, line 23, leave out from “must” to end of line 24 and insert “create and a publish a commissioning framework based on the competencies of the provider, against which it will satisfy itself when it commissions and procures services from –”

LORD MCKENZIE OF LUTON

50 Page 4, line 23, after second “time” insert “, after consultation,”

BARONESS ALTMANN

51 Page 4, line 27, leave out “advice” and insert “counselling”

52 Page 4, line 28, leave out “advice” and insert “counselling”

LORD MCKENZIE OF LUTON

53 Page 4, line 30, at end insert –

“and such standards must include measures of outcomes for members of the public as well as measures of outputs for persons providing information, guidance and advice in pursuance of the functions of the body.”

LORD STEVENSON OF BALMACARA

54 Page 4, line 31, leave out subsection (2) and insert –

“(2) Before finalising the commissioning framework, the single financial guidance body must consult relevant bodies involved in the provision of information, guidance and advice, and obtain the approval of the FCA.”

Clause 6 - continued

- 55 Page 4, line 31, after “must” insert “consult the financial services industry, the devolved authorities, consumer representatives and the public and voluntary sectors, and”

THE EARL OF KINNOULL

- 56 Page 4, line 33, at end insert “and provide reasonable assistance in the interpretation of those standards to SFGB delivery partners.”

Clause 7

LORD STEVENSON OF BALMACARA

- 57 Page 4, line 35, leave out subsection (1) and insert –
 “(1) The single financial guidance body must monitor and report on its own and SFGB delivery partners’ compliance with the commissioning framework.”

BARONESS KRAMER
 LORD SHARKEY

- 58 Page 4, line 36, at end insert “and must produce and place in the public domain an annual report of its assessment of such compliance.”

LORD STEVENSON OF BALMACARA

- 59 Page 4, line 38, leave out paragraphs (a) and (b) and insert –
 (a) whether the commissioning framework continues to be appropriate, and
 (b) how the single financial guidance body is monitoring the commissioning framework.”

BARONESS KRAMER
 LORD SHARKEY

- 60 Page 5, line 4, at end insert –
 “() Parliament.”

- 61 Page 5, line 6, at end insert –
 “() The single financial guidance body must publish a substantive response within three months to any recommendations made by the FCA under subsection (4).”

After Clause 7

BARONESS DRAKE

- 62 Insert the following new Clause –
“Offence of falsely claiming to be giving guidance and advice on behalf of the single financial guidance body
 (1) It is an offence for a person who is not giving pensions guidance, money guidance or debt advice on behalf of the single financial guidance body –

After Clause 7 - continued

- (a) to describe themselves (in whatever terms) as a person who is doing so, or
 - (b) to behave, or otherwise hold themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are doing so.
- (2) In proceedings for an offence under this section, it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.”

63 Insert the following new Clause—

“FCA: requirement to signpost to the single financial guidance body for pension guidance, money guidance and debt advice

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FBB insert—
 - “137FD FCA general rules: requirement to signpost to the single financial guidance body for pension guidance, money guidance and debt advice**
 - (1) The FCA must make general rules requiring information about the availability of pensions guidance, money guidance and debt advice from the single financial guidance body to be given by relevant organisations to any category of individuals who may benefit.
 - (2) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—
 - (a) the Secretary of State;
 - (b) the Treasury; and
 - (c) the single financial guidance body.”

Clause 8

LORD STEVENSON OF BALMACARA

64 Page 5, line 16, leave out from “to” to end of line 18 and insert “consultation on the single financial guidance body’s funding settlement and such arrangements with SFGB delivery partners as the Secretary of State thinks appropriate (including conditions as to any loan repayments).”

65 Page 5, line 18, at end insert—

- “() The single financial guidance body must monitor its use of financial assistance in order to inform the consultation under subsection (3).

Clause 8 - continued

- () The single financial guidance body must publish the results of its monitoring under subsection (4).”

Clause 11

LORD STEVENSON OF BALMACARA

66 Page 7, leave out lines 31 to 35 and insert –

“() The Treasury may, following consultation with relevant bodies involved in the provision of information, guidance and advice, notify the FCA of the amount of the expenses incurred, or expected to be incurred, by the devolved authorities in connection with the provision of information and advice on debt to members of the public in Scotland, Wales and Northern Ireland.”

BARONESS ALTMANN

67 Page 7, line 33, leave out “and advice” and insert “, guidance and counselling”

Schedule 3

BARONESS DRAKE

68 Page 24, line 21, leave out paragraph 12 and insert –

“12 For section 3S (the consumer financial education body) substitute –

“3S Duty of the FCA in respect of the single financial guidance body

In discharging its duty to approve standards set by the single financial guidance body under section 6(2) of the Financial Guidance and Claims Act 2017, the FCA will act in the interests of consumers and promote financial inclusion.””

BARONESS ALTMANN

69 Page 27, line 5, leave out paragraph 33

Clause 14

LORD SHARKEY

Lord Sharkey gives notice of his intention to oppose the Question that Clause 14 stand part of the Bill.

Clause 16

LORD HUNT OF WIRRAL

69A★ Page 12, line 38, at end insert –

“(ba) arranging the provision of temporary replacement motor vehicles,”

Clause 16 - continued

- 69B★** Page 12, line 38, at end insert—
 “(bb) commissioning the obtaining of medical evidence for personal injuries, within the meaning of the Civil Procedure Rules 1998,”

After Clause 16

LORD HOLMES OF RICHMOND

- 70** Insert the following new 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) where appropriate, authorised persons should act honestly, fairly and professionally in accordance with the best interests of consumers who are their clients; and
 - (b) where appropriate, 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.”

Clause 17

LORD HUNT OF WIRRAL

- 70A★** Page 14, line 33, at end insert “, and claims for personal injuries, within the meaning of the Civil Procedure Rules 1998.”

THE EARL OF KINNOULL

- 71** Page 15, line 6, at end insert—

- “(6A) The FCA must provide reasonable assistance in the interpretation of the rules under this section for those providing claims management services.”

After Clause 17LORD SHARKEY
BARONESS KRAMER

- 72** Insert the following new Clause—

“Ban on unsolicited direct approaches by, on behalf of, or for the benefit of, companies carrying out claims management services

The FCA must, within the period of six months beginning with the day on which this Act comes into force, introduce a ban on unsolicited direct approaches to members of the public carried out by whatever means, including digital, by, on behalf of, or for the benefit of, companies carrying out claims management services.”

After Clause 17 - continued

BARONESS ALTMANN

73 Insert the following new Clause—

“Prohibition on making unsolicited approaches for claims

- (1) A person must—
- (a) not use, nor instigate the use of a public electronic communications service for the purpose of making unsolicited telephone calls for direct marketing; and
 - (b) not transmit, nor instigate the transmission of, unsolicited communications for the purpose of direct marketing by means of electronic mail or otherwise,

where—

- (i) the person making or instigating the call or transmitting or instigating the use of electronic mail is acting on behalf of a claims management service, or does so with a view to providing information to a claims management service, and
- (ii) the purpose of the call or the electronic mail is to engage a consumer in commencing a claim.

- (2) In this section—

“call” means a connection established by means of a telephone service available to the public allowing two-way communication in real time;

“claim” means proceedings in which there is a claim for damages or compensation;

“claims management service” has the meaning given by section 419A of the Financial Services and Markets Act 2000;

“direct marketing” has the meaning given by section 11(3) of the Data Protection Act 1998;

“electronic mail” means any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient’s terminal equipment until it is collected by the recipient and includes messages sent using a short message service;

“public electronic communications service” has the meaning given by section 151 of the Communications Act 2003;

“unsolicited” means an approach which has not been specifically requested, even if a person has asked to receive marketing information.”

Clause 18

THE EARL OF KINNOULL

74 Page 15, line 27, at end insert “and Scotland.”

Clause 19

LORD MCKENZIE OF LUTON
LORD STEVENSON OF BALMACARA

75 Page 16, line 2, at end insert –

“() The Secretary of State must make regulations under this section relating to the commencement of sections 1 to 7 within the period of 18 months beginning with the day on which this Act is passed.”

THE EARL OF KINNOULL

76 Page 16, line 12, at end insert –

“() the Scottish Ministers, in relation to Part 2 as it applies in Scotland.”

Financial Guidance and Claims Bill [HL]

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

18 July 2017
