

Financial Guidance and Claims Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 19th October 2017, as follows –

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

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 2

LORD SHARKEY
LORD MCKENZIE OF LUTON
BARONESS ALTMANN
THE EARL OF KINNOULL

- 1★** Page 2, line 12, at end insert –
“() the consumer protection function;”
- 2★** Page 2, line 18, at end insert –
“(3A) In exercising its functions the single financial guidance body must have regard to the effect of cold-calling on consumer protection and must make and publish an annual assessment of any consumer detriment.
(3B) If the single financial guidance body considers that there are products or services where a ban on cold-calling would be conducive to its functions it must advise the Secretary of State to institute bans on such cold-calling and the commercial use of any data obtained by such cold-calling.
(3C) On receipt of advice from the single financial guidance body under subsection (3B), the Secretary of State may by regulations made by statutory instrument introduce a ban on cold-calling and the commercial use of any data obtained by such cold-calling as recommended by the single financial guidance body.
(3D) 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.

Clause 2 - continued

(3E) For the purposes of this section “cold-calling” refers to unsolicited real-time direct approaches to members of the public carried out by whatever means, digital or otherwise.”

BARONESS BUSCOMBE

3 Page 2, line 19, after “public,” insert “free and impartial”

BARONESS DRAKE

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

BARONESS BUSCOMBE

5 Page 2, line 22, after “England,” insert “free and impartial”

6 Page 2, line 24, after “public,” insert “free and impartial”

LORD SHARKEY
LORD MCKENZIE OF LUTON
BARONESS ALTMANN
THE EARL OF KINNOULL

7★ Page 2, line 27, at end insert –

“() The consumer protection function includes the obligation for the single financial guidance body to pass on casework from consumers to the FCA relating to –

- (a) suspected inappropriate, misleading or harassing approaches with regard to debt advice, debt management, pension access and claims management services; and
- (b) suspected dishonest, unfair or unprofessional conduct by those supplying financial services relating to the areas of activity of the single financial guidance body.”

LORD MCKENZIE OF LUTON
BARONESS KRAMER

8★ Page 2, line 28, after “support” insert “financial inclusion and to support”

LORD STEVENSON OF BALMACARA

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

10★ 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,”

Clause 2 - continued

BARONESS FINLAY OF LLANDAFF
BARONESS COUSSINS
BARONESS HOLLINS
LORD MCKENZIE OF LUTON

11 Page 2, line 32, at end insert –

“() access to financial services for people in vulnerable circumstances,”

LORD MCKENZIE OF LUTON

12★ Page 2, line 32, at end insert –

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

13★ 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.”

14★ 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.”

LORD STEVENSON OF BALMACARA

15★ 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.”

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

Clause 2 - continued

LORD MCKENZIE OF LUTON

- 17★ Page 3, line 5, at end insert –
 “() to contribute to the reduction and elimination of financial exclusion, in particular for vulnerable individuals, families and communities.”
- 18★ 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.”

LORD STEVENSON OF BALMACARA

- 19★ 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 members of the public in England.”
- 20★ 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.”

- 21★ Leave out clause 2 and insert the following new clause –
“Objectives and functions
 (1) The objectives of the single financial guidance body are –
 (a) to improve the ability of members of the public to make informed financial decisions,
 (b) to support the provision of information, guidance and advice in areas where it is lacking,
 (c) to secure that information, guidance and advice are provided to members of the public in the clearest and most cost-effective way (including having regard to information provided by other organisations),
 (d) to ensure that information, guidance and advice are available to those most in need of them (and to allocate its resources accordingly), and
 (e) to work closely with the devolved authorities as regards the provision of information, guidance and advice to members of the public in Scotland, Wales and Northern Ireland.
 (2) The single financial guidance body must have regard to its objectives when it exercises its functions.

Clause 2 - continued

- (3) The single financial guidance body has the following functions –
 - (a) the pensions guidance function;
 - (b) the debt advice function;
 - (c) the money guidance function;
 - (d) the strategic function.
- (4) The pensions guidance function is to provide, to members of the public, free and impartial information and guidance on matters relating to occupational and personal pensions.
- (5) The debt advice function is to provide, to members of the public in England, free and impartial information and advice on debt.
- (6) The money guidance function is to provide, to members of the public, free and impartial information and guidance designed to enhance people’s understanding and knowledge of financial matters and their ability to manage their own financial affairs.
- (7) Where the single financial guidance body provides information, guidance or advice to a person in pursuance of one of the functions mentioned in subsection (3)(a) to (c), it must consider whether the person would benefit from receiving information, guidance or advice in pursuance of any other of those functions and the single financial guidance body must ensure that, where information, guidance or advice is provided on its behalf by an SFGB delivery partner, the SFGB delivery partner is under a duty to do the same.
- (8) The strategic function is to develop and co-ordinate a national strategy to improve –
 - (a) the financial capability of members of the public,
 - (b) the ability of members of the public to manage their debts, and
 - (c) the provision of financial education.
- (9) In developing the national strategy, the single financial guidance body must work with others, such as those in the financial services industry, the devolved authorities and the public and voluntary sectors.
- (10) The single financial guidance body also has the function of providing advice and assistance to the Secretary of State on matters relating to the functions listed in subsection (3).
- (11) The single financial guidance body may do anything that is incidental or conducive to the exercise of its functions.
- (12) In this section “the devolved authorities” means –
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Department for Communities in Northern Ireland.”

After Clause 2

LORD STEVENSON OF BALMACARA
 BARONESS ALTMANN
 LORD SHARKEY

22★

Insert the following new Clause –

“Debt respite scheme

- (1) As part of its debt advice function, the single financial guidance body must operate a debt respite scheme (“the scheme”) under which authorised debt advice providers who approach the single financial guidance body for further advice or guidance in relation to a specific case may receive statutory protections for their clients in respect of the relevant debts for the period during which advice or guidance is being sought.
- (2) The Secretary of State must make regulations by statutory instrument detailing the operation of the scheme by the single financial guidance body under subsection (1).
- (3) The regulations must limit access to the scheme to persons who have received debt advice from a debt advice provider who has been authorised by the FCA.
- (4) The regulations must make provision about the length of a period or periods where the protections under the scheme will apply.
- (5) The regulations must set out the terms of the scheme, including but not limited to –
 - (a) the nature of relevant debts for the purpose of the scheme;
 - (b) the process and conditions of eligibility under which FCA authorised debt advice providers are able to apply for statutory protections for their clients under the scheme;
 - (c) the criteria under which FCA authorised debt advice providers will be authorised to advise persons on the scheme, support applications to the scheme, and operate designated debt management plans for persons while under the statutory protections of the scheme;
 - (d) the limitations to be placed on actions that may be taken by creditors against persons in receipt of statutory protection under the scheme;
 - (e) the method for determining the level and timing of debt repayments by a person while under the statutory protections of the scheme;
 - (f) safeguards to protect the integrity of the scheme;
 - (g) the arrangements to be made to create a central register of persons admitted to the scheme; and
 - (h) the arrangements to be made to ensure that creditors of persons on the scheme are kept informed.
- (6) A statutory instrument containing regulations under subsection (2) may not be made unless a draft instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) The Secretary of State must make regulations under subsection (2) within two years of the commencement of this section, subject to subsection (6).”

Clause 3

LORD SHARKEY
BARONESS ALTMANN
THE EARL OF KINNOULL

23★ Page 3, line 15, at end insert –

- “() As part of its pensions guidance function the single financial guidance body must make provision to ensure that members of the public receive the information and guidance set out in subsection (1) through either –
- (a) the single financial guidance body, or
 - (b) regulated advice from a financial advisor,
- before accessing or transferring defined contribution, defined benefit or money purchase pension benefits.”

LORD SHARKEY
BARONESS ALTMANN

24★ Page 3, line 15, at end insert –

- “() In Schedule 3 to the Pensions Schemes Act 2015 (pensions guidance), after paragraph 6(3) insert –
- “(3A) In determining what provision to include in the rules, the FCA must include a requirement for pension providers to ask their customers, at the point at which they require access or a transfer of their pension assets, if they have received the information and guidance required under section 3 of the Financial Guidance and Claims Act 2017 (specific requirements as to the pensions guidance function), and if they have not received such information and guidance, to require the provider to provide access to such information and guidance before proceeding.””

Clause 6

BARONESS BUSCOMBE

25 Page 4, line 32, at end insert –

- “() In determining whether to approve the standards, the FCA must have regard to the needs of people who are receiving, or who may seek to receive, the information, guidance or advice to which the standards will apply.”

Clause 10

BARONESS BUSCOMBE

26 Page 7, line 15, leave out from “Regulations” to “of” in line 16 and insert “2017 (S.I. 2017/752) as a result of falling within any of paragraphs (a) to (h)”

Before Clause 12

BARONESS BUSCOMBE
BARONESS DRAKE
BARONESS ALTMANN

27 Insert the following new Clause—

“False claims about provision of information etc

- (1) It is an offence for a person to hold himself or herself out (or where the person is a body, to hold itself out) as providing information, guidance or advice on behalf of the single financial guidance body when that is not in fact the case.
- (2) It is a defence for a person charged with an offence under this section to prove that the person 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 6 months or a fine not exceeding level 5 on the standard scale, or both.
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (3)(a) to 51 weeks is to be read as a reference to 6 months.
- (5) Proceedings for an offence under this section may be instituted in England and Wales only by or with the consent of the Director of Public Prosecutions.
- (6) Proceedings for an offence under this section may be instituted in Northern Ireland only by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

28 Insert the following new Clause—

“Offences under section (*False claims about provision of information etc*) committed by bodies corporate etc

- (1) If an offence under section (*False claims about provision of information etc*) committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to any neglect on the part of such an officer,
 the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1)“officer”, in relation to a body corporate, means—
 - (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;
 - (b) an individual who is a controller of the body.

Before Clause 12 - continued

- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (4) If an offence under section (*False claims about provision of information etc*) committed by a partnership is proved –
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of the partner,
- the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In subsection (4) “partner” includes a person purporting to act as a partner.
- (6) If an offence under section (*False claims about provision of information etc*) committed by an unincorporated association other than a partnership is proved –
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
 - (b) to be attributable to any neglect on the part of such an officer or member,
- the officer or member, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) Proceedings for an offence under section (*False claims about provision of information etc*) must be brought –
- (a) where the offence is alleged to have been committed by a partnership, against the partnership in the firm name;
 - (b) where the offence is alleged to have been committed by any other type of unincorporated association, against the association in its own name.
- (8) Rules of court relating to the service of documents have effect in relation to such proceedings as if the partnership or unincorporated association were a body corporate.”

After Clause 12

BARONESS BUSCOMBE

29

Insert the following new Clause –

“FCA general rules: information about the availability of guidance

After section 137FBB of the Financial Services and Markets Act 2000 insert –

“137FC FCA rules: disclosure of information about the availability of financial guidance

- (1) The FCA must make general rules requiring specified authorised persons to provide information about the availability of financial guidance to the descriptions of persons specified in the rules.
- (2) The rules may specify the circumstances in which the duty to provide the information applies.

After Clause 12 - continued

- (3) 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.
- (4) In this section –
- “financial guidance” means information, guidance or advice provided in pursuance of the single financial guidance body’s pensions guidance, debt advice or money guidance function (see section 2 of the Financial Guidance and Claims Act 2017);
- “specified authorised person” means an authorised person of a description specified in rules made by virtue of this section.””

Schedule 3

BARONESS BUSCOMBE

- 30 Page 24, line 31, at end insert –
“() before “, 137SA”(inserted by paragraph (a)), insert “, 137FC;”
- 31 Page 24, line 38, at end insert –
“() before paragraph (ac)(inserted by paragraph (a)), insert –
“(aba) section 137FC;”;
- 32 Page 25, line 3, at end insert –
“() before “, 137SA”(inserted by paragraph (a)), insert “, 137FC;”

BARONESS ALTMANN
BARONESS KRAMER

- 33 Page 27, line 5, leave out paragraph 33

Clause 14

BARONESS BUSCOMBE

- 34 Page 10, line 16, leave out subsection (1) and insert –
- “(1) The Secretary of State must keep under review the question of whether the single financial guidance body should be dissolved.
- (1A) If the Secretary of State considers that the single financial guidance body should be dissolved, he or she must carry out a public consultation.
- (1B) If, after the period of 12 weeks beginning with the day on which the consultation began, the Secretary of State still considers dissolution of the single financial guidance body to be appropriate, he or she must lay before Parliament –
- (a) draft regulations, and
 - (b) an explanatory document.”
- 35 Page 10, line 18, after “The” insert “draft”

Clause 14 - continued

36 Page 10, line 28, after “The” insert “draft”

37 Page 10, line 32, after “The” insert “draft”

38 Page 11, line 1, leave out subsection (6)

After Clause 14

BARONESS BUSCOMBE

39 Insert the following new Clause—

“Regulations dissolving the new single financial guidance body: procedure

- (1) The 40-day affirmative procedure applies to draft regulations under section 14 unless, within the period of 30 days beginning with the day on which the draft regulations were laid before Parliament—
 - (a) either House of Parliament resolves that the super-affirmative procedure should apply, or
 - (b) a committee of either House charged with reporting on the draft regulations recommends that the super-affirmative procedure should apply and the House to which the recommendation is made does not by resolution reject the recommendation within that 30-day period.

In either of those cases the super-affirmative procedure applies.

- (2) Under the 40-day affirmative procedure, if after the expiry of the period of 40 days beginning with the day on which the regulations were laid before Parliament, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (3) Under the super-affirmative procedure, the Secretary of State must—
 - (a) have regard to the matters mentioned in subsection (4), and
 - (b) make the regulations in accordance with subsections (5) to (7).
- (4) The matters are—
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendation of a committee of either House of Parliament charged with reporting on the draft regulations,

made in relation to the draft regulations during the period of 60 days beginning with the day on which the draft regulations were laid before Parliament.
- (5) If, after the expiry of that 60-day period, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (6) If, after the expiry of that 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—

After Clause 14 - continued

- (a) revised draft regulations, and
 - (b) a statement giving a summary of the changes proposed.
- (7) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
 - (8) Regulations are made in the terms of draft regulations (including revised draft regulations) if the regulations contain no material changes.
 - (9) In calculating the periods of time referred to in this section, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
 - (10) The regulations are to be made by statutory instrument.”

After Clause 17

BARONESS MEACHER

40 Insert the following new Clause –

“Interim rules restricting charges for claims management services

- (1) The Compensation Act 2006 is amended as follows.
- (2) After section 5 (the regulator) insert –
 - “5A Power and duty of the regulator to make rules restricting charges for claims management services**
 - (1) The power of the regulator to make rules includes the power to make rules prohibiting authorised persons from –
 - (a) entering into a specified regulated claims management agreement that provides for the payment by a person of charges which, taken with charges payable under an agreement treated by the rules as being connected with the regulated claims management agreement (if any), are 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 regulated claims management activity.
 - (2) Within two months beginning with the day on which the Financial Guidance and Claims Act 2017 is passed, the regulator must make rules by virtue of subsection (1) in relation to all regulated claims management agreements, and all regulated claims management activities, which concern claims in relation to financial products or services.
 - (3) 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 regulated claims management activity.
 - (4) 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.

After Clause 17 - continued

- (5) 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.
- (6) This section is repealed at the beginning of the day on which section 17 of the Financial Guidance and Claims Act 2017 (power of the FCA to make rules restricting charges for claims management services) is implemented by the FCA.””

LORD HOLMES OF RICHMOND
 LORD MCKENZIE OF LUTON
 BARONESS KRAMER

41 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) 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.”

LORD SHARKEY
 BARONESS ALTMANN
 THE EARL OF KINNOULL

42★ Insert the following new 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,

After Clause 17 - continued

- (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.”

Clause 18

THE EARL OF KINNOULL
BARONESS ALTMANN

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

Clause 19

BARONESS BUSCOMBE

44 Page 16, line 11, after “11” insert “and section (*FCA general rules: information about the availability of guidance*)”

45 Page 16, line 12, after “11” insert “, section (*FCA general rules: information about the availability of guidance*)”

THE EARL OF KINNOULL
BARONESS ALTMANN

46 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]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

20 October 2017
