

Financial Guidance and Claims Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON THIRD READING

[Amendments marked ★ are new or have been altered]

Amendment
No.

Before Clause 2

BARONESS BUSCOMBE

1 Insert the following new Clause –

“Objectives

- (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 is 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 is available to those most in need of it (and to allocate its resources accordingly), bearing in mind in particular the needs of people in vulnerable circumstances, 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.
- (3) In this section “information, guidance and advice” means –
 - (a) information and guidance on matters relating to occupational and personal pensions,
 - (b) information and advice on debt, and
 - (c) information and guidance designed to enhance people’s understanding and knowledge of financial matters and their ability to manage their own financial affairs.”

Clause 2

BARONESS BUSCOMBE
LORD STEVENSON OF BALMACARA

- 2 Page 2, line 21, at end insert “, and
(b) advice to the Secretary of State on the establishment of a debt respite scheme (see section (*Debt respite scheme: advice to the Secretary of State*)).”

BARONESS BUSCOMBE

- 3 Page 3, line 15, at end insert—
“() Where the single financial guidance body provides information, guidance or advice to a person in pursuance of one of the functions mentioned in subsection (1)(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 it must ensure that SFGB delivery partners are under a similar duty).”
- 4 Page 3, line 16, leave out “support and co-ordinate the development of” and insert “develop and co-ordinate”
- 5 Page 3, leave out lines 21 and 22 and insert—
“(13A) In developing and co-ordinating 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.”
- 6 Page 3, line 23, leave out subsection (14)
- 7 Page 3, line 38, leave out subsection (15)
- 8 Divide clause 2 into two clauses, the first (*Functions*) consisting of subsections (1) to (3) and (9) to (13A) and the second (*Cold-calling*) consisting of subsections (4) to (8)

Clause 3

BARONESS BUSCOMBE

- 9 Page 4, line 1, leave out from “In” to “insert” in line 2 and insert “section 137FB of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about the availability of pensions guidance), after subsection (3)”

After Clause 4

BARONESS BUSCOMBE
LORD STEVENSON OF BALMACARA

- 10 Insert the following new Clause—
“Debt respite scheme: advice to the Secretary of State
(1) The Secretary of State must, within three months of the establishment of the single financial guidance body, seek advice from the body on the establishment of a debt respite scheme.

After Clause 4 - continued

- (2) A debt respite scheme is a scheme designed to do one or more of the following—
 - (a) protect individuals in debt from the accrual of further interest or charges on their debts during the period specified by the scheme,
 - (b) protect individuals in debt from enforcement action from their creditors during that period, and
 - (c) help individuals in debt and their creditors to devise a realistic plan for the repayment of some or all of the debts.
- (3) The matters on which the Secretary of State may seek advice include (but are not limited to)—
 - (a) the appropriate person to administer the scheme (and the single financial guidance body may recommend the creation of a new body for this purpose);
 - (b) whether the scheme should apply in England only, or whether it should also apply in Wales or Northern Ireland (or both);
 - (c) the scope and design of the scheme, for example—
 - (i) the types of debtors and the types of debts it should cover;
 - (ii) the types of protections it should give;
 - (iii) the time period for which the protections should apply;
 - (iv) what the obligations on debtors and creditors should be during any period for which protections apply, including any period of a repayment plan;
 - (v) the consequences of a failure by a debtor or a creditor to comply with a repayment plan;
 - (d) how the scheme should work, for example—
 - (i) how an application should be made for the protections given by the scheme;
 - (ii) suitable arrangements to keep creditors informed;
 - (iii) whether there should be a central register of persons admitted to the scheme;
 - (e) how the scheme should be implemented.
- (4) The single financial guidance body must provide the advice sought within 12 months of its establishment.
- (5) The Secretary of State must publish the advice.”

11 Insert the following new Clause—

“Debt respite scheme: regulations

- (1) As soon as reasonably practicable after receiving advice from the single financial guidance body under section (*Debt respite scheme: advice to the Secretary of State*), the Secretary of State must consider whether to make regulations under this section.
- (2) After receiving advice from the single financial guidance body under section (*Debt respite scheme: advice to the Secretary of State*), the Secretary of State may make regulations establishing a debt respite scheme.
- (3) The regulations must take the advice into account.

After Clause 4 - continued

- (4) The regulations may provide for the scheme to apply –
- (a) in England only,
 - (b) in England and Wales,
 - (c) in England and Northern Ireland, or
 - (d) in England, Wales and Northern Ireland.
- (5) Regulations under this section may –
- (a) make different provision for different purposes,
 - (b) make different provision for different areas,
 - (c) make incidental, supplemental, consequential, transitional or saving provision, and
 - (d) apply to obligations entered into, or debts due to be repaid, before the regulations come into force.
- (6) Provision under subsection (5)(c) may amend any provision made by or under –
- (a) an Act of Parliament,
 - (b) in the case where the regulations provide for the scheme to apply in Wales, a Measure or Act of the National Assembly for Wales, and
 - (c) in the case where the regulations provide for the scheme to apply in Northern Ireland, Northern Ireland legislation.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) An 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 –
- (a) each House of Parliament,
 - (b) in the case where the regulations provide for the scheme to apply in Wales, the National Assembly for Wales, and
 - (c) in the case where the regulations provide for the scheme to apply in Northern Ireland, the Northern Ireland Assembly.”

Clause 14

BARONESS BUSCOMBE

12 Page 12, line 29, leave out subsection (9)

Clause 19

BARONESS BUSCOMBE

13 Page 15, line 4, at end insert –

“the “devolved authorities” means –

- (a) the Scottish Ministers,
- (b) the Welsh Ministers, and
- (c) the Department for Communities in Northern Ireland;”

Clause 20

BARONESS BUSCOMBE

- 14 Page 15, line 32, leave out “England or Wales” and insert “Great Britain”
- 15 Page 15, line 42, leave out “England or Wales” and insert “Great Britain”
- 16 Page 16, line 6, leave out “England and Wales” and insert “Great Britain”
- 17 Page 16, line 8, leave out “England and Wales” and insert “Great Britain”
- 18 Page 16, line 11, leave out “England and Wales” and insert “Great Britain”
- 19 Page 16, line 15, leave out “England and Wales” and insert “Great Britain”
- 20 Page 16, line 16, leave out “England and Wales” and insert “Great Britain”
- 21 Page 16, line 20, leave out “England and Wales” and insert “Great Britain”
- 22 Page 16, line 22, leave out “England and Wales” and insert “Great Britain”
- 23 Page 17, line 7, leave out “England or Wales” and insert “Great Britain”
- 24 Page 17, line 12, leave out “England or Wales” and insert “Great Britain”

After Clause 21BARONESS BUSCOMBE
LORD MCKENZIE OF LUTON

- 25 Insert the following new Clause—

“PPI claims and charges for claims management services: general

- (1) This section and sections (*PPI claims: interim restriction on charges before transfer of regulation to FCA*) and (*PPI claims: interim restriction on charges after transfer of regulation to FCA*) make provision for a fee cap to apply in certain circumstances to charges for regulated services provided in connection with a PPI claim.
- (2) The following provisions explain terms used in those sections.
- (3) The fee cap applicable to the amount charged for regulated services provided in connection with a PPI claim is 20% of the amount recovered for the claimant in satisfaction of the claim.
Accordingly, where nothing is recovered (whether or not a claim has been made or concluded) the fee cap is zero.
- (4) But the charging of a reasonable amount for work done for the claimant is not to be regarded as exceeding the fee cap for a PPI claim if—
 - (a) the amount is charged for regulated services provided in connection with the claim,

After Clause 21 - continued

- (b) no other amount is charged for those services,
 - (c) the claimant has terminated the agreement governing the provision of such services (whether before or after the making of a claim), and
 - (d) the termination was not achieved by the cancellation of the agreement during a cooling off period available to the claimant by right (whether conferred by the agreement or otherwise).
- (5) References to a claim are to a claim (however described) seeking compensation, restitution, repayment or any other financial remedy or relief, whether or not the claim is made or could be made by way of legal proceedings.
- (6) References to the amount charged for regulated services provided in connection with a PPI claim are references to a sum comprising all amounts charged for such services in connection with the claim (whether or not charged under a single agreement), exclusive of VAT.
- (7) References to the amount recovered for the claimant, in relation to a PPI claim, include a reference to any amount which (instead of being paid to or to the order of the claimant) –
- (a) is set off against a debt due from the claimant to the person against whom the claim is made, or
 - (b) is paid to any person other than the claimant (whether a person providing regulated services in connection with the claim or any other person) with a view to discharging the whole or part of a debt due from the claimant.
- (8) In this section references to regulated services are –
- (a) so far as relevant for the purposes of section (*PPI claims: interim restriction on charges before transfer of regulation to FCA*), to be read as referring to regulated claims management services, and
 - (b) so far as relevant for the purposes of section (*PPI claims: interim restriction on charges after transfer of regulation to FCA*), to be read as referring to any service which is a regulated claims management activity.
- (9) “PPI claim” means a claim relating to the selling of payment protection insurance (whether it concerns amounts paid by the policyholder or otherwise).
- (10) “Regulated claims management services” –
- (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, has the same meaning as in the Compensation Act 2006 (see section 14 of that Act).
- (11) “Regulated claims management activity” has the same meaning as in the Financial Services and Markets Act 2000 (see the definition inserted by this Act in section 417(1) of that Act).

After Clause 21 - continued

- (12) “Section 22(1B) specified activity provisions” means provisions of an order made under section 22(1B) of the Financial Services and Markets Act 2000 (as inserted by this Act) which specify a kind of activity as a regulated activity within the meaning of that Act.
- (13) “The FCA” means the Financial Conduct Authority.”

26

Insert the following new Clause –

“PPI claims: interim restriction on charges before transfer of regulation to FCA

- (1) A regulated person –
- (a) must not charge a claimant, for regulated claims management services 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 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) A breach of either of those prohibitions is not actionable as a breach of statutory duty; but –
- (a) any payment in excess of the fee cap for a PPI claim 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).
- (3) In subsection (2) “payment” means a payment of charges for regulated claims management services provided in connection with the claim.
- (4) A relevant regulator –
- (a) must ensure that it has appropriate arrangements for monitoring and enforcing the prohibitions in subsection (1) as they apply to the regulated persons for whom it is the relevant regulator;
 - (b) may make rules for the purposes of doing so (which may include provision applying, in relation to breaches of a prohibition in subsection (1), functions the relevant regulator has in relation to breaches of another restriction).
- (5) For the purposes of this section –
- (a) “regulated person” means –
 - (i) a person who falls within any category of regulated person specified in column 2 below, or
 - (ii) any person not within sub-paragraph (i) who, by virtue of article 4 of the Compensation (Exemptions) Order 2007 (S.I. 2007/209), is not prevented by section 4(1) of the Compensation Act 2006 from providing regulated claims management services;
 - (b) “relevant regulator” means a person listed in column 1 below; and
 - (c) the regulated persons for whom a person listed in column 1 below is the relevant regulator are described in the corresponding entry or entries in column 2.

After Clause 21 - continued

<i>Relevant regulator</i>	<i>Regulated persons</i>
The Regulator	Persons authorised to provide regulated claims management services under section 5(1)(a) of the Compensation Act 2006.
The General Council of the Bar	<ol style="list-style-type: none"> 1. Persons who, or licensable bodies which, are authorised by the General Council to carry on a reserved legal activity. 2. European lawyers registered with the General Council under the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119).
The Law Society of England and Wales	<ol style="list-style-type: none"> 1. Persons who, or licensable bodies which, are authorised by the Law Society to carry on a reserved legal activity. 2. European lawyers registered with the Law Society under the European Communities (Lawyer's Practice) Regulations 2000. 3. Foreign lawyers registered with the Law Society under section 89 of the Courts and Legal Services Act 1990.
The Chartered Institute of Legal Executives	Persons authorised by the Institute to carry on a reserved legal activity.

- (6) In column 1 “the Regulator” means the person designated under section 5(1) of the Compensation Act 2006, or, if no person is so designated, the Secretary of State.
- (7) In column 2 “reserved legal activity” has the meaning given by section 12 of the Legal Services Act 2007.
- (8) This section applies as follows –
- (a) the prohibition in subsection (1)(a) applies only to charges imposed under an agreement entered into during the first interim period, and
 - (b) the prohibition in subsection (1)(b) applies only to agreements entered into during that period.
- (9) In subsection (8) “the first interim period” is the period –
- (a) beginning with the day on which this section comes into force, and

After Clause 21 - continued

- (b) ending with the day before the day on which the first section 22(1B) specified activity provisions come into force for (or for purposes which include) the purposes of the general prohibition in section 19 of the Financial Services and Markets Act 2000.”

27

Insert the following new Clause –

“PPI claims: interim restriction on charges after transfer of regulation to FCA

- (1) The rule specified in subsection (2) is to be treated for the purposes of the Financial Services and Markets Act 2000 as if –
- (a) the rule were a general rule made by the FCA under section 137A of that Act, and
 - (b) this section were contained in that Act;
- and accordingly functions conferred on the FCA by that Act which apply in relation to general rules made under section 137A apply to that rule as they apply to other general rules made under that section.
- (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, 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 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) A breach of either of those prohibitions 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 in excess of the fee cap for a PPI claim is recoverable by the claimant, and
 - (b) any agreement entered into in breach of the prohibition in 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).
- (4) In subsection (3) “payment” means a payment of charges for a service which is a regulated claims management activity provided in connection with the claim.
- (5) The rule in subsection (2) applies as follows –
- (a) the prohibition in paragraph (a) applies only to charges imposed under an agreement which is entered into during the second interim period, and
 - (b) the prohibition in paragraph (b) applies only to agreements entered into during that period.
- (6) In subsection (5) “the second interim period” is the period –
- (a) beginning with the day on which the first section 22(1B) specified activity provisions come into force for (or for purposes which include) the purposes of the general prohibition in section 19 of the Financial Services and Markets Act 2000, and

After Clause 21 - continued

- (b) ending with the day before the coming into force of the first relevant general rule made by the FCA (whether for all purposes or for any specific purpose).
- (7) In subsection (6)(b) “relevant general rule” means a general rule that—
 - (a) is made under subsection (1) of section 137FD of the Financial Services and Markets Act 2000 (as inserted by this Act), and
 - (b) applies to, or to any description of, PPI claims (whether or not it also applies to anything else).
- (8) In this section “authorised person” has the same meaning as in the Financial Services and Markets Act 2000 (see section 31(2) of that Act).”

Clause 22

BARONESS BUSCOMBE
LORD STEVENSON OF BALMACARA

28 Page 19, line 20, at end insert—

- “() Sections (*Debt respite scheme: advice to the Secretary of State*) and (*Debt respite scheme: regulations*) extend to England and Wales and Northern Ireland.”

BARONESS BUSCOMBE
LORD MCKENZIE OF LUTON

29 Page 19, line 24, leave out subsection (3) and insert—

- “(3) The following provisions in Part 2 extend to England and Wales—
- (a) section 20(12) and Schedule 4;
 - (b) section (*PPI claims: interim restriction on charges before transfer of regulation to FCA*).
- (3A) The other provisions in Part 2 extend to England and Wales and Scotland.”

Clause 23

BARONESS BUSCOMBE
LORD MCKENZIE OF LUTON

30 Page 19, line 38, at end insert—

- “() Sections (*PPI claims and charges for claims management services: general*) to (*PPI claims: interim restriction on charges after transfer of regulation to FCA*) come into force at the end of the period of two months beginning with the day on which this Act is passed.”

BARONESS BUSCOMBE
LORD STEVENSON OF BALMACARA

31 Page 19, line 40, at end insert—

- “() Regulations under subsection (2) must provide for sections (*Debt respite scheme: advice to the Secretary of State*) and (*Debt respite scheme: regulations*) to come into force on the same day as section 1(1).”

Clause 23 - *continued*

BARONESS BUSCOMBE

- 32 Page 20, line 5, at end insert “, and
() different provision for different areas.”

In the Title

LORD SHARKEY

- 33★ Line 1, after “body” insert “(including provision about cold-calling and a debt respite scheme)”

BARONESS BUSCOMBE

- 34 Line 4, at end insert “; and for connected purposes.”

Financial Guidance and Claims Bill [HL]

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20 November 2017
