

# Written evidence submitted by the Association of British Insurers (ABI) (FGCB18)

## Financial Guidance and Claims Bill

### ABI submission to the Public Bill Committee

1. The Association of British Insurers (ABI) is the voice of the UK's world leading insurance and long-term savings industry. A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation.
2. The UK insurance industry is the largest in Europe and the fourth largest in the world. It is an essential part of the UK's economic strength, managing investments of over £1.7 trillion and paying nearly £12bn in taxes to the Government. It employs nearly 325,000 individuals, of which around a third are employed directly by providers with the remainder in auxiliary services such as broking.
3. The ABI is supportive of the measures set out within the Financial Guidance and Claims Bill on the creation of a Single Financial Guidance Body, and changes to the way claims management companies are regulated.
4. The ABI welcomes the opportunity to submit evidence to the Public Bill Committee on the Financial Guidance and Claims Bill. Our submission sets out key areas for consideration during the Committee Stage discussions on Thursday 1 and Tuesday 6 February, and outlines the ABI view on some amendments tabled at this stage.

### Part 1: The Single Financial Guidance Body

5. The ABI is supportive of the creation of a Single Financial Guidance Body (SFGB), merging the functions of the Money Advice Service (MAS), The Pensions Advice Service (TPAS), and Pension Wise into one organisation. High quality financial guidance is important in helping drive better outcomes for consumers facing a range of often difficult and complex financial challenges and choices. Delivering financial guidance through one body will offer convenience and create a strategic approach to supporting consumers where needs and financial understanding are often interlinked.

#### Key areas for consideration:

6. The need for clarity on what the new body will provide for consumers. This should include improving financial resilience by promoting early intervention to help people prepare for life events, such as the need to plan ahead to pay for care, and raising awareness of the benefits of protection products, such as income protection, critical illness cover and life insurance.

7. The SFGB can play a key role in considering the impact of cold-calling on consumers and the ABI welcomed the amendment in the House of Lords to the Bill giving the SFGB the power to recommend a ban on pensions cold calling to the Secretary of State. If a ban can be introduced sooner than this, it should be; it should also be accompanied by an awareness-raising campaign, in which the industry would play a part.
8. The SFGB should promote access to a full range of financial guidance services, including pensions dashboards. Access to a pensions dashboard overseen by the Department for Work and Pensions (DWP) could form part of the pensions guidance service provided by the new body.
9. The need for clarification from government on timelines for implementing the SFGB, including assurance that transitional arrangements will provide certainty of access to guidance for consumers, and certainty for providers in relation to signposting arrangements.
10. Although the Bill dictates that the new body will set itself standards to be approved by the Financial Conduct Authority, it does not specify how it should approach setting itself those standards, or how it intends to set out its strategy.
11. The Bill outlines that the SFGB can be funded through grants and loans, and through levies on financial services firms, but further detail is necessary to ensure the SFGB provides fairness to, and between, levy payers.
12. The ABI is in support of a joined-up approach across public financial guidance and it is important that the SFGB works collaboratively with all stakeholders to fulfill its objectives and ensure good customer outcomes.
13. We see the establishment of the SFGB as an important step towards citizens accessing guidance at all relevant points in life. This should include exploring with industry and DWP how we can make the use of guidance a recognised, positive norm when people choose to access their pension savings.
14. This role could be supported by a number of interventions to improve the retirement process, such as introducing retirement communications that are shorter, simpler and come much earlier, prompting people to use guidance (such as introducing a Midlife MOT), defaulting or auto-enrolling customers to guidance, and reviewing the retirement risk warnings, and communications once people have already accessed their pension. The ABI is exploring how these interventions could work together in practice.
15. The body could also play a key role in providing independent and impartial guidance for consumers considering a pension transfer. This could include outlining the risks and benefits, factors to take into account, and procedural considerations such as where and how to find an authorised and qualified financial adviser and what the adviser will cover as part of the pension transfer advice process.

Amendment Tabled	ABI Position
<p><b><u>NC1</u></b> <i>Guy Opperman</i></p> <p>* To move the following Clause —</p> <p><b>Personal pension schemes: requirements to recommend guidance etc</b></p> <p>(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.</p> <p>(2) After subsection (1), insert —</p> <p>“(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—</p> <p>(a) to transfer any rights accrued under the scheme, or</p> <p>(b) to start receiving benefits provided by the scheme.</p> <p>(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.</p>	<p>The ABI is seeking future clarity from this amendment, particularly with regards to 1B, to ensure that it allows the FCA latitude in how they make the rules.</p> <p>The ABI believe that enhancing access to advice and guidance is essential, and the SFGB has the potential to play a crucial role in helping to close the advice gap and to help more people understand their pension options.</p> <p>This should include exploring with industry and DWP how we can make the use of guidance a recognised, positive norm when people choose to access their pension savings.</p> <p>Following debate in the House of Lords, we understand that the intention within this section of the Bill is to introduce guidance as a default measure. This is reflected in the amendments as incorporated in the Lords and, we believe, remains the Government's intention. However, it is important that any amendment gives the FCA and DWP scope to make rules that will have the desired impact on consumer behaviour and should allow government and the industry, to find the right practical solution having worked through the challenges. As it stands, it is not clear that the amendment fulfils those aims.</p> <p>The ABI is exploring how a number of interventions could work together to improve the retirement process. As well as defaulting or auto-enrolling customers to guidance, this includes introducing retirement communications that are shorter, simpler and come much earlier; encouraging individuals to take stock and make informed decisions about their financial situation through the proposed Midlife MOT; and reviewing the retirement risk warnings, and communications once people have already accessed their pension.</p> <p>In addition, this amendment could be problematic as it could make transfers inefficient if all transfers have to pause for guidance. The Government should make clear that the receiving provider in a transfer process should have the duty to recommend guidance, and ensure that the rules allow for this.</p>
<p><b><u>26</u></b> <i>Jack Dromey, Mike Amesbury, Vicky Foxcroft</i></p> <p>* Clause 3, page 3, line 5, at end insert “including by means of provision to the public of a pensions dashboard within the meaning of subsection (11).”</p>	<p>The SFGB should promote access to a full range of financial guidance services, including pensions dashboards which will allow consumers to see all of their pension pots, including their State Pension entitlement, together in one place of their choice online. This will not only encourage people to engage more with their saving and retirement choices, but will also incentivise them to use advice and financial guidance services.</p>
<p><b><u>31</u></b> <i>Jack Dromey Mike Amesbury Vicky Foxcroft</i></p> <p>* Clause 3, page 3, line 34, at end insert —</p> <p>“(11) In this section and section 5, “pensions dashboard” means a publicly available service where members of the public can securely view details of their state and other pensions savings.”</p>	<p>The ABI led the Pensions Dashboard Prototype Project, which set out key recommendations in an <a href="#">interim report</a> for DWP to take forward in its feasibility study. These recommendations include requiring all pension providers and schemes to make their data available; to establish a non-commercial, Government-backed platform which will operate alongside services from regulated third parties; and an implementation timetable and body to establish the necessary standards.</p>
<p><b><u>32</u></b> <i>Jack Dromey, Mike Amesbury, Vicky Foxcroft</i></p>	

<p>* Clause 5, page 4, line 12, at end insert “including by means of provision to the public of a pensions dashboard within the meaning of section 3(11).”</p>	
<p><b>30</b> <i>Jack Dromey, Mike Amesbury, Vicky Foxcroft</i></p> <p>* Clause 3, page 3, line 32, at end insert —</p> <p>“(d) the understanding members of the public have on how the duties placed on financial service providers under the Equality Act 2010, including the requirements on service providers to make reasonable adjustments, can enhance their ability to manage their financial affairs.”</p>	<p>The SFGB should draw on work the FCA has undertaken to ensure better support for vulnerable customers.</p> <p>Last year, the ABI published a <a href="#">good practice guide</a> designed to help firms operating in the long-term savings market better understand, identify and support customers who may be vulnerable, to ensure all customers are supported through the whole customer journey.</p>
<p><b>37</b> <i>Mhairi Black, Neil Gray</i></p> <p>* Clause 2, page 2, line 19, leave out from “accordingly” to end of line 20 and insert —</p> <p>“(da) to ensure the needs of people in vulnerable circumstances, including but not exclusively—</p> <ul style="list-style-type: none"> <li>(i) those who suffer long-term sickness or disability,</li> <li>(ii) carers,</li> <li>(iii) those on low incomes, and</li> <li>(iv) recipients of benefits, are met and that resources are allocated in such a way as to allow specially trained advisers and guidance to be made available to them.”</li> </ul>	<p>The SFGB should also offer a full range of guidance services designed to improve financial resilience. This should include information on how individuals can prepare for unexpected financial shocks, such as a loss of income due to inability to work because of long term sickness or bereavement.</p> <p>The ABI’s <a href="#">good practice guide</a> recommends that firms implement a vulnerability policy, if they do not already have one, by January 2018; provide regular staff training on vulnerability awareness, and continue to share good practice through the ABI.</p>
<p><b>NC10</b> <i>Neil Coyle</i></p> <p>To move the following Clause —</p> <p><b>“Insurance products and terrorism</b></p> <p>(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.</p> <p>(2) The single financial guidance body shall specifically have regard to—</p> <p>(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 an impact on businesses without necessarily causing physical damage to property, and</p>	<p>Due to longstanding arrangements on reinsurance put in place following the 1993 Baltic Exchange bombing, terrorist attacks are reinsured through a company called Pool Re, which is backed by the Government. Where a business does not suffer property damage due to the attack, but suffers a loss of trade because of closures, there is specific cover available in the current market.</p> <p>The ABI has been engaged in discussions about how the reinsurance cover provided by Pool Re could be adapted to reflect the changing nature of terrorist attacks, including considering where businesses are disrupted but damage to property does not occur. Adapting Pool Re could help widen insurer access to reinsurance cover for non-damage business interruption, however, careful consideration would need to be given to any Government conditions. We understand that HM Treasury is continuing to examine options, including amending relevant legislation, in relation to this issue.</p>

(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.”

## Part 2: Regulation of Claims Management Services

16. Reform of claims management company (CMC) regulation is urgently needed, and the ABI welcomes the provisions within the Bill. The ABI had called for the Financial Conduct Authority (FCA) to assume responsibility for CMCs in its response to Carol Brady’s independent review of Claims Management Regulation, and we strongly welcome the Government’s decision to implement this proposal.
17. In 2017 alone there were 752 authorised Personal Injury CMCs<sup>1</sup> – more than in any other claims sector (including PPI), and we believe that the measures within the Bill are crucial in ensuring the success of the Government’s wider efforts to tackle bad practice in the personal injury claims market, including the measures within the forthcoming Civil Liability Bill and the proposed increase in the Small Claims Track limit.
18. The insurance industry is confident that the FCA’s more robust regulatory regime will ensure consumers are given more information about the services a CMC offers and more transparency about the fee structure and therefore, it is important that improved regulation of CMCs is implemented alongside personal injury reform.

<sup>1</sup> Ministry of Justice, Claims Management Regulator: annual report 2016 to 2017, August 2017: <https://www.gov.uk/government/publications/claims-management-regulator-annual-report-2016-to-2017>

19. The ABI has been working closely in support of the Ministry of Justice (MoJ), and other key stakeholders such as claimant representatives, through the MoJ stakeholder steering group to oversee the development of the new claims system including improved guidance and support and the development of a consumer focussed claims portal with appropriate liability dispute mechanism.

**Key areas for consideration:**

20. There are two significant benefits to CMCs being regulated by the FCA, both of which will play a vital role in addressing the problems associated with this sector:

- o A robust authorisation regime, based on understanding the business models of individual CMCs, will prevent those firms that do not offer good value to consumers from operating.
- o Personal accountability for senior managers of CMCs will ensure that, when a firm is struck off, their directors cannot simply resurface as a new CMC.

21. This Bill also presents a welcome opportunity to tackle the bad behaviours of CMCs throughout the United Kingdom and the insurance industry strongly welcomed the amendment in the House of Lords to extend the scope of the FCA's regulation of CMCs to Scotland.

22. The FCA should assume responsibility as soon as possible in order to address the drastic spike in claims related to gastric sickness while on holiday. It is not a coincidence that there has been a surge in claims of this nature as CMCs prepare for the deadline for bringing PPI claims and the introduction of measures to tackle the high number of whiplash claims.

Amendment Tabled	ABI Position
<p><b>NC3</b> <i>Guy Opperman</i></p> <p>* To move the following Clause—</p> <p><b>“PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA</b></p>	<p>The transfer of the regulation of CMCs to the FCA will play an important role in ensuring some of the more dubious practices of CMCs are controlled.</p> <p>However, as it stands, there is still insufficient control over the amount CMCs can charge their customers.</p> <p>We recognise that more detailed work will be needed on the precise structure of any fees cap and therefore we are not calling for the measures on PPI claims in this Bill to be immediately extended to also cover personal injury claims. While the fee structure for personal injury is more complex, there is a strong need to contain the fees that can be charged by CMCs handling personal injury claims and we believe the Government should work with the FCA to ensure that CMCs never overcharge claimants.</p> <p>It will also be important that the FCA closely monitors the impact of the SCT reforms on CMC turnover. In particular, the FCA should cap the fees that a CMC can charge for a PI claim to ensure that claimants are not forced to hand a disproportionate proportion of their damages to a CMC (as has already been introduced to cap the fees charged by CMCs handling PPI claims).</p>

**NC6** *Guy Opperman*

\* 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**

Confirmation of tougher regulation of claims management companies cannot come soon enough for people who are plagued by unsolicited calls and texts and the ABI has long called for and supports a crackdown on nuisance calling of all kinds. The ABI supports the Government's decision to bring forward this amendment in the belief that the Bill represents an excellent opportunity to tackle this problem.

However, the most effective way to stop nuisance calling is by removing the financial incentives that encourage firms to harass the public in this way. The reforms soon to be introduced within the Civil Liability Bill will play a key role in this, by introducing a new fixed tariff on compensation for soft tissue whiplash-related injuries alongside an increase in the small claims track limit to £5,000 for personal injury cases.

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