

Submission to the Financial Services Bill Committee

Finance Innovation Lab, November 2020

About the Finance Innovation Lab

The [Finance Innovation Lab](#) is a charity that works to transform the financial system for people and planet. We work with changemakers from inside and outside the financial system, including innovators and influencers from values-based finance, fintech, mainstream finance, civil society organisations, governmental organisations and academia. With Positive Money, the Lab coordinates the Transforming Finance Network of civil society organisations focussed on financial sector policy.

Summary – important amendments

We have examined the proposed amendments to the Bill with care and believe the following amendments, grouped under impact areas, would significantly strengthen the Bill:

- 1. Integrating social and environmental purpose.**
 - i. **Amendments 39, 42, NC33** – which introduce the requirement for regulators to consider or report on climate change impacts and on the UK aligning with Paris Agreement goals.
 - ii. **Amendment 30** – which improves environmental, social and governance disclosure in PRIIPS, to aid consumers and investors.
 - iii. **Amendments 29, 33, NC11** – which improve the debt respite scheme.
 - iv. **Amendment NC6** – which introduces a duty of care for the FCA to protect consumers from exploitation.
- 2. Strengthening accountability and scrutiny**
 - i. **Amendments 22, 26, 27, NC20, NC32** - which give proper oversight and accountability powers to Parliament.
- 3. Governance, financial integrity and anti-corruption**
 - i. **Amendment NC24** – to prevent the facilitation of economic crime.
- 4. A more resilient, diverse financial system**
 - i. **Amendment NC13** – which helps remove one barrier to the development of the much-needed co-operative banking sector.
 - ii. **Amendment NC27** – which gives small businesses greater protection against the mis-selling of financial services.

We are not proposing new amendments at this stage as we understand the Committee is focussing on those tabled. We provide supporting evidence for the above amendments under each impact area below.

Supporting evidence

1. Integrating social and environmental purpose

i. Climate change (Amendments 39, 42, NC33)

The 2015 Paris Agreement sets a target of 1.5 degrees of warming compared to pre-industrial levels. We have already reached one degree of warming, and this is having major climate impacts, like the recent [flooding in the normally dry Sahel region of Africa](#) that destroyed hundreds of thousands of hectares of croplands and led to loss of life. According to [scientists](#), 2 degrees of warming will be devastating for large swathes of the globe with many low-lying areas becoming uninhabitable, extremes of weather multiplying, millions of people forced to leave their homes and billions of livelihoods affected. We are [currently heading for 3 degrees of warming](#), the consequences of which would be catastrophic.

Despite an increasing number of commitments from banks and other financial sector actors to align their activities with the Paris Agreement, recent research found that, for example, [lending to fossil fuels from 35 of the biggest global banks continues to rise](#): it was \$736 billion in 2019, up from \$700 billion the year before.

Part of the reason that financial institutions are not moving fast enough to help to prevent catastrophic climate change, is that regulators and policy making departments do not sufficiently consider climate and environmental impacts. For example, in [the Treasury's impact assessment](#) for the Bill, greenhouse gas impacts are listed as not applicable, even though significant changes to how investment firms behave – the centrepiece of the Bill – are bound to have such impacts

Amendments 39 and 42 are important first steps towards ensuring that regulators and financial sector policy makers take climate change and the UK's international commitments on this issue into account when setting regulations and making policy. **Amendment NC33** is a welcome requirement for the government to review the impacts of the Bill on meeting the Paris Agreement commitments.

ii. ESG disclosure for PRIIPS (Amendment 30)

Section 34 (4) of the Bill is designed to overcome criticisms that the EU's Packaged Retail Investment and Insurance-based Products (PRIIPs) regime does not provide useful information for investors in the mandatory Key Information Document (KID) as it relies on 'performance scenarios' [which can be misleading](#). The Bill allows the FCA greater leeway to define what is needed, stipulating only 'information on performance.'

There is a growing consensus in the financial community that, given that ESG issues such as climate change, human rights, or corruption impact investment portfolio performance, investors have a fiduciary duty to take ESG issues into consideration. Yet there are no requirements in the huge PRIIPs market – worth €10 trillion in the EU for example – for ESG information to be made available to investors in the KID.

Amendment 30 the Bill would give the FCA the task of requiring ESG information to be included in the Key Information Documents that PRIIPs require to make sure investors can fully understand what they are buying and that consumers have better understanding of the ESG issues in their investments. This could play an important part in shifting finance towards socially and environmentally responsible products: a recent [government survey](#) found that most people in the UK want this information and it would affect their investment choices.

iii. Debt respite scheme (Amendments 29, 33, NC11)

[Recent research](#) shows how much worse the problem debt situation has become as a result of the COVID-19 crisis. Of those whose personal finances have been negatively affected by the crisis:

- 1.2 million have severe problem debt.
- 4.6 to 5.6 million have fallen into arrears or borrowed to make ends meet.

Clause 32 of the Bill amends sections of the Financial Guidance and Claims Act 2018, related to the Statutory Debt Repayment Plan (SDRP), part of the Debt Respite Scheme. As the debt advisory charity, [Step Change has set out](#), it is a welcome improvement: clarifying that the scheme also applies to debts owed to government; allowing for creditors to fund debt advice and administration; and empowering the government to compel creditors to accept terms.

Ensuring the scheme becomes rapidly operational and is as flexible as possible is vitally important in this time when debt problems are greatly increased, many people face significant uncertainty about their futures and those millions with debt problems are likely to need longer and more tailored support to recover.

Amendment 29 deals with one key problem with the SDRP – that the government has not yet set a start date for implementation. Setting a timetable of up to one year will allow those who urgently need the scheme to have access as soon as possible, and give a clear timetable to help those planning for implementation, including debt advice charities.

Amendment 33 introduces an assessment of debtor's resources when entering the SDRP to make sure that those who are actually unable to repay are identified so that they can consider alternative options. We believe this is an important proposal, to try to ensure that those who will be unable to repay debts without detriment to basic living standards can be offered alternatives based on debt relief of some description. The amendment highlights the need for some debtors to consider insolvency, which can be appropriate in certain cases. However, at present, the fees for entering this process are prohibitive for many debtors, an important issue that the committee may consider additional amendments to resolve.

Amendment NC11 deals with the fact that the current 60 day Breathing Space period is far too short set up a debt solution for many people, even when a solution has been identified and is being put in place. In addition to the stress caused by a short deadline, many risk falling out of protection between Breathing Space ending and a solution being in place, which can have potentially serious consequences. Extending the period for up to a year, as the amendment proposes, would be welcome.

iv. Duty of care (Amendment NC6)

Amendment NC6 introduces the principle that firms should not profit from exploiting a consumer's vulnerability, behavioural biases or constrained choices, and allows the FCA to introduce a duty of care to protect consumers from exploitation by financial service providers. This is an extremely important proposal as it would sharpen the FCA's focus on vulnerability and the fact that those who face serious financial problems are in stressful situations with limited choices and need far greater protection from unscrupulous providers.

2. Strengthening accountability and scrutiny

i. Parliamentary oversight (Amendments 22, 26, 27, NC20, NC32)

The Bill is the start of a shift in control over financial regulation from Brussels to the UK. In Brussels, the active engagement of the European Parliament and civil society groups ensured there were active accountability mechanisms, even if imperfect. We are concerned that the Bill – and other government statements – suggest that this shift from Brussels to the UK will also entail an increase in the power of the government and regulatory agencies to set the rules through secondary legislation and regulation without boosting accountability mechanisms. This is worrying for two reasons. First, it reduces the vital democratic scrutiny role that Parliament should play. Second, it will likely increase the power of narrowly focussed industry lobbyists, particularly those from larger players who have the resources needed for behind the scenes influence, and make it more difficult for those with broader societal or environmental concerns, and smaller players within the industry to be heard.

Specifically, the Bill will allow the Treasury to amend key regulations including the Capital Requirements Regulation for banks using the 'affirmative procedure.' As members of the committee will know, this procedure is effectively a rubber stamp, and approval has been not withheld since 1978. Of particular concern is that the affirmative procedure does not involve a role for specialised committees, which are vital in a complex area such as financial services.

Amendments 22 and 26 require regulators to submit draft capital requirement rules to a specialised parliamentary committee, while **amendment NC32** requires a specialised scrutiny committee to be established in advance of the Financial Services Act being approved. These are sensible measures to ensure that financial services regulation is subject to some level of specialised parliamentary scrutiny.

Amendment 27 requires periodic reviews by Parliament of the accountability framework for regulators, while **Amendment NC20** gives a relevant select committee of the House of Commons the power to require the FCA to undertake an investigation when needed. These are both sensible increases in the power of Parliament to oversee the work of regulators and hold them to account in the public interest.

3. Governance, Financial integrity and Anti-corruption

i. Facilitation of Economic Crime (Amendment NC24)

Colleagues from the anti-corruption community have rightly pointed out that the current state of UK corporate liability law, known as ‘the directing mind’ test, effectively puts large companies and financial institutions beyond the reach of criminal prosecutors for certain economic crimes, primarily fraud, money laundering and false accounting. Spotlight on Corruption have highlighted this in their [briefing for the committee](#).

Amendment NC24 helps to rectify this problem, making the facilitation of economic crime or the failure to take the necessary steps to prevent an economic crime from being committed by a person acting in the capacity of the relevant body an offence.

This should be seen as an accompaniment to the Law Commission review on corporate crime rules – it is a straightforward yet vital step to bring fraud, money laundering and false accounting into line with bribery and tax evasion. It will bring the UK in line with the US and EU. It should be considered as urgent given the increase in fraud cases during the current crisis.

4. A more resilient, diverse financial system

i. Removing barriers for co-operative banking (Amendment NC 13)

The UK banking system suffers from a lack of diversity of types of institution, compared to comparators, and as a result misses important institutional models that can better support regional economies and small and medium enterprises, offer counter-cyclical and more sustainable models of banking, and improve competition in the sector. Absolutely central to improving diversity and competition will be the establishment of co-operative banks, which hold [over 20% of deposits](#) in European countries, but were only made legal in the UK through the Cooperative and Community Benefit Societies Act 2014.

Amendment NC13 seeks to remove an unfair barrier to the development and growth of co-operative banking in the UK: the way that withdrawable share capital – sometimes known as ‘community shares’ - is treated in regards to capital requirements, which are a subject of the Bill.

The 2014 Act prevents new co-operative banks from issuing withdrawable share capital which can be classified as additional tier 1 equity (AT1) to help a bank meet its capital requirements. This is an unfair disadvantage for co-operative banks in comparison with other banks and building societies.

In order for the amendment to fully address this problem, we believe it would need to remove Section 4, subsection (1) as well as Section 4, subsection (2).

ii. Protection against mis-selling (Amendment NC27)

Small businesses play a vital role in the UK economy – accounting for three fifths of the employment and around half of turnover in the UK private sector, [for example](#). Many have been particularly badly affected by the current crisis. Unfortunately, the financial system does not cater well for small businesses, with [only just over a third using external finance](#), a long-standing problem that has worsened since the global financial crisis.

There has been a long history of financial institutions mis-selling financial products, and regulations have been tightened to try to prevent this. However there remains a gap in the current regime which does not offer adequate protection for small businesses in particular. For example, small businesses complained [earlier this year](#) about the mis-selling of interest rates swaps.

Amendment NC27 would help to improve the situation for small businesses by giving them greater legal protections against the mis-selling of financial services.