

Financial Services and Markets Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

After Clause 23

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“FCA powers beyond designated activities

- (1) This section applies to any person (P) conducting or purporting to conduct any financial services and markets activity, including advisory services, whether or not that activity is designated or regulated, provided that P—
 - (a) occupies a position in which they are expected to safeguard, or not to act against, the financial interests of another person (CP), or in which there is significant asymmetry of information,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position—
 - (i) to make a gain for P or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused their position even though their conduct consisted of an omission rather than an act.
- (3) If the conditions set out in subsections (1) and (2) are met, the FCA has the following powers in relation to P—
 - (a) a power to require the supply of information;
 - (b) a power to make investigations (including the making of reports);
 - (c) a power of entry into premises controlled by P;
 - (d) powers of inspection, search and seizure with respect to premises controlled by P;
 - (e) a power to make a private or public statement of censure;
 - (f) a power to impose monetary penalties.
- (4) The Treasury may by regulations make provision about enforcement in connection with the powers included in subsection (3), and may make such modifications to the provision in subsection (3) as the Treasury considers appropriate.
- (5) If the conditions set out in subsections (1) and (2) are met, P is liable—

After Clause 23 - continued

- (a) to account to CP for any gain P has made directly or indirectly by the transaction, and
 - (b) to indemnify CP for any loss or damage resulting from the transaction.
- (6) If the FCA is satisfied that the conditions set out in subsections (1) and (2) are met, it may order P to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just, having regard to the profits appearing to the FCA to have accrued to P.
- (7) The FCA has the power to institute criminal proceedings, including under section 4 of the Fraud Act 2006, provided that the conditions set out in subsections (1) and (2) are satisfied.”

Insert the following new Clause –

“Persons carrying out both regulated and unregulated activities

- (1) Where an authorised person (P) carries out both regulated and unregulated activities, P must ensure clear and prominent signage relating to any advice or activity that is unregulated which must include –
- (a) a warning that the relevant advice or activity does not carry regulatory oversight, and
 - (b) a clear statement explaining the limits of Financial Services Compensation cover and the jurisdiction of the Financial Ombudsman Service.
- (2) Where P contravenes the requirement in subsection (1), the FCA has the following powers in relation to P –
- (a) a power to require the supply of information;
 - (b) a power to make investigations (including the making of reports);
 - (c) a power of entry into premises controlled by P;
 - (d) powers of inspection, search and seizure with respect to premises controlled by P;
 - (e) a power to make a private or public statement of censure;
 - (f) a power to impose monetary penalties.
- (3) The Treasury may by regulations make provision about enforcement in connection with the powers included in subsection (2) and may make such modifications to the provision in subsection (2) as the Treasury considers appropriate.
- (4) Where P contravenes the requirement in subsection (1), and another person (CP) has been induced, as a result of the contravention, to enter into a transaction either with P or with a member of the group of companies to which P belongs –
- (a) the transaction is voidable at the instance of CP;
 - (b) whether or not the transaction is voided, P and any member of the same group of companies which was party to the transaction is liable –
 - (i) to account to CP for any gain they have made directly or indirectly by the transaction, and
 - (ii) to indemnify CP for any loss or damage resulting from the transaction.

After Clause 23 - continued

- (5) If the FCA is satisfied that P has contravened the requirement in subsection (1), it may order P to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just, having regard to the profits appearing to the FCA to have accrued to P.”

Clause 24

BARONESS BOWLES OF BERKHAMSTED

Page 38, line 25, leave out “(including in particular the financial services sector)”

Member’s explanatory statement

This amendment is to ensure that, although the regulators have specific responsibility for financial services, they discharge their duties without preference for the financial services sector.

Page 38, line 27, at end insert –

- “(2) In pursuance of the objective in subsection (1), the FCA must ensure that its supervisory and approval interactions are efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.”

Page 39, line 4, leave out from “Kingdom” to “, and” in line 6

Member’s explanatory statement

This amendment is to ensure that, although the regulators have specific responsibility for financial services, they discharge their duties without preference for the financial services sector.

Page 39, line 7, at end insert –

- “(1C) In pursuance of the objective in subsection (1B), the PRA must ensure that its supervisory and approval interactions are efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.”

After Clause 24

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“Prevention of fraud objective

In section 1B of FSMA 2000 (FCA’s general duties), in subsection (3) at the end insert –

- “(d) the prevention and detection of fraud perpetrated in or through financial services.””

After Clause 25

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“Regulatory principles: efficiency

In section 3B of FSMA 2000 (regulatory principles to be applied by both regulators), in subsection (1) after paragraph (h) insert—

- “(i) the principle that the regulators should exercise their supervisory and approval interactions in a manner that is efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.””

Clause 27

BARONESS BOWLES OF BERKHAMSTED

Page 40, line 14, after “rules” insert “or a thematic review”

Page 40, line 23, at end insert—

“or if a relevant Parliamentary Committee has requested a review.”

Page 40, line 41, at end insert “and the Treasury Committee of the House of Commons”

Page 41, line 4, at end insert—

- “(10) The Treasury must establish a rolling programme of thematic reviews and report annually to Parliament on that programme and on any changes to the programme in the light of reviews carried out under subsection (1).
- (11) The Treasury must in its annual report to Parliament set out the work programme for the next three years, including all the terms of reference, indicative timetables for completion and reporting and how the work will be undertaken and by whom.”

Clause 36

LORD TUNNICLIFFE

Page 50, line 31, after “Commons” insert “and the chair of the Economic Affairs Committee of the House of Lords”

Page 50, line 43, after “Commons” insert “and the Economic Affairs Committee of the House of Lords”

BARONESS BOWLES OF BERKHAMSTED

Page 50, line 43, at end insert “and include reference to relevant recommendations that have been made by a committee of the House of Commons or House of Lords or a joint committee of both Houses”

Clause 36 - continued

LORD TUNNICLIFFE

Page 51, line 2, after “Commons” insert “and the Economic Affairs Committee of the House of Lords”

Page 51, line 7, after “Commons” insert “or House of Lords”

Page 51, line 11, after “Commons” insert “or House of Lords”

Page 51, line 43, after “Commons” insert “and the chair of the Economic Affairs Committee of the House of Lords”

Page 52, line 11, after “Commons” insert “and the Economic Affairs Committee of the House of Lords”

BARONESS BOWLES OF BERKHAMSTED

Page 52, line 11, at end insert “and must include reference to relevant recommendations that have been made by a committee of the House of Commons or House of Lords or a joint committee of both Houses”

LORD TUNNICLIFFE

Page 52, line 13, after “Commons” insert “and the Economic Affairs Committee of the House of Lords”

Page 52, line 18, after “Commons” insert “or the House of Lords”

Page 52, line 22, after “Commons” insert “or the House of Lords”

After Clause 37

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“FCA annual report: performance metrics

In paragraph 11 of Schedule 1ZA to FSMA 2000 (FCA annual report), in subparagraph (1) after paragraph (b) insert –

“(ba) its performance against a set of statistics developed and periodically updated by the National Audit Office in consultation with consumer representatives that together constitute a suite of metrics by which the FCA’s achievement and progress may be objectively evaluated.”

Member’s explanatory statement

This amendment is to ensure independent measures against which the FCA reports.

Clause 44

BARONESS BOWLES OF BERKHAMSTED

Page 61, line 25, at end insert –

“(4) Each panel must include representation of the public interest, and members who represent the public interest must not have had, in the previous 5 years, or while sitting on the panel, any significant financial interest in or material business relationship with firms in the relevant regulated sector.”

Page 62, line 28, at end insert –

“(5D) Each panel must include representation of the public interest, and members who represent the public interest must not have had, in the previous 5 years, or while sitting on the panel, any significant financial interest in or material business relationship with firms in the relevant regulated sector.”

After Clause 44

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“Practitioner Panel parliamentary appointments

- (1) FSMA 2000 is amended as follows.
- (2) In section 1N (the FCA Practitioner Panel), at the end insert –
 - “(6) The House of Commons and the House of Lords may each appoint one member, subject to approval by the relevant committee of the respective House, or where there is more than one relevant committee, by joint agreement between those committees.”
- (3) In section 2M (the PRA Practitioner Panel), at the end insert –
 - “(6) The House of Commons and the House of Lords may each appoint one member, subject to approval by the relevant committee of the respective House, or where there is more than one relevant committee, by joint agreement between those committees.””

Clause 45

BARONESS BOWLES OF BERKHAMSTED

Page 64, line 19, at end insert –

“(j) the principle that the Bank should exercise its supervisory and approval interactions in a manner that is efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.”

Clause 46

BARONESS BOWLES OF BERKHAMSTED

Page 67, line 22, after “Act” insert “or a thematic review”

Clause 46 - continued

Page 67, line 31, at end insert –

“or if a relevant Parliamentary Committee has requested a review”

Page 68, line 8, at end insert “and the Treasury Committee of the House of Commons”

Page 68, line 16, at end insert –

- “(10) The Treasury must establish a rolling programme of thematic reviews and report annually to Parliament on that programme and on any changes to the programme in the light of reviews carried out under subsection (1).
- (11) The Treasury must in its annual report to Parliament set out the work programme for the next three years, including all the terms of reference, indicative timetables for completion and reporting and how the work will be undertaken and by whom.”

After Clause 46

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“Recommendations to FCA and PRA: systemic risk

In section 9Q of the Bank of England Act 1995 (recommendations to FCA and PRA), after subsection (2) insert –

- “(2A) The Financial Policy Committee may make recommendations to the Pensions Regulator, FCA and PRA about financial stability and systemic risk from investment strategies in Pension Funds, including risk modelling, margin, collateral and stress testing.
- (2B) The Financial Policy Committee may request a joint annual report from the Pensions Regulator, PRA and FCA about investment strategies in Pension Funds, and the outcomes of any risk modelling and stress testing, and to highlight aspects of investment or otherwise that may present a risk to financial stability or systemic risk.
- (2C) The report must be sent to relevant Parliamentary Committees.””

Schedule 7

LORD TUNNICLIFFE

Page 156, line 37, after “Commons” insert “and the chair of the Economic Affairs Committee of the House of Lords”

Page 157, line 6, after “Commons” insert “and the Economic Affairs Committee of the House of Lords”

Page 157, line 8, after “Commons” insert “and the Economic Affairs Committee of the House of Lords”

Schedule 7 - continued

Page 157, line 13, after “Commons” insert “or the House of Lords”

Page 157, line 17, after “Commons” insert “or the House of Lords”

Clause 50

BARONESS BOWLES OF BERKHAMSTED

Page 74, line 5, at end insert –

“(4BA) Where no consent is given, the indication of a response must be included, giving information as to the category of the respondent, including whether relevant financial services industry, commercial financial services user, public or other.”

Page 74, line 19, at end insert –

“(4BA) Where no consent is given, the indication of a response must be included, giving information as to the category of the respondent, including whether relevant financial services industry, commercial financial services user, public or other.”

After Clause 50

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“Systemic risk

While maintaining commitment to developing international standards, the Financial Policy Committee of the Bank of England, PRA and FCA must put in place systems and resources for monitoring and issuing directions relating to financial stability and the mitigation of systemic risk, including systemic risk outside firms that accept deposits, where there are significant or specific risks to financial stability or the financial system of the United Kingdom, including defined benefit pension schemes.”

After Clause 65

LORD SHARKEY

Insert the following new Clause –

“Duty of the FCA with regard to interest rates for mortgage prisoners

After section 137FD of FSMA 2000 insert –

“137FE FCA general rules: interest rate for mortgage prisoners

After Clause 65 - continued

- (1) The FCA must make general rules requiring authorised persons involved in regulated mortgage lending and regulated mortgage administration to introduce a cap on the standard variable rates charged to mortgage prisoners and to ensure that mortgage prisoners can access new fixed interest rate deals at an interest rate equal to or lower than an interest rate specified by the FCA.
- (2) In subsection (1) –
 - “mortgage prisoner” means a consumer who cannot switch to a different lender because of their characteristics and has a regulated mortgage contract with one of the following types of firms –
 - (a) inactive lenders, or firms authorised for mortgage lending that are no longer lending, and
 - (b) unregulated entities, or firms not authorised for mortgage lending and which contract with a regulated firm to undertake the regulated activity of mortgage administration;
 - “new fixed interest rate deals” means the ability for the consumer to fix the rate of interest payable on a regulated mortgage contract for periods of 2 years and 5 years;
 - “standard variable rate” means the reversion rate which is a variable rate of interest charged under the regulated mortgage contract after the end of any initial introductory deal.
- (3) The general rules made under subsection (1) must set the level of the cap on the standard variable rate at a level no more than 2 percentage points above the Bank of England base rate.
- (4) The general rules made under subsection (1) must make new fixed interest rate deals available to mortgage prisoners who –
 - (a) are up to date with payments or have aggregate arrears of no more than one monthly payment in the past 12 months,
 - (b) have a remaining term of 2 years or more,
 - (c) have an outstanding loan amount of at least £10,000, and
 - (d) have not received consent to let the property.
- (5) When specifying the interest rates for new fixed interest rate deals required by subsection (1) the FCA must specify rates for a range of loan-to-valuation ratios taking into account the average 2-year and 5-year fixed rates available to existing customers of active lenders through product transfers.
- (6) The FCA must ensure any rules that it is required to make as a result of subsection (1) are made no later than six months after this Act is passed.”

Member’s explanatory statement

This new Clause would require the FCA to introduce a cap on the Standard Variable Rates charged to mortgage prisoners and, under specified circumstances, ensure their access to fixed rate interest deals.

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12 January 2023
