appg Investment Fraud & Fairer Financial Services

Briefing Note for Members of Parliament

in relation to the

Financial Services and Markets Bill [HL] 2026

Financial Services and Markets Bill [HL]

Produced for the Commons Second Reading

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Produced by the APPG on Investment Fraud and Fairer Financial Services
APPG Secretariat Chair: Andy Agathangelou FRSA
andy.agathangelou@transparencytaskforce.org | www.appgifffs.org

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This Briefing Note combines and rationalises Briefing Notes #1, #2 and #3 produced for the Lords stages of this Bill. It preserves the key contributions from Peers across all parties, the conclusions of nine expert legal and academic consultees who have provided input to the APPG, and a summary of the Bill's passage through the House of Lords (Second Reading, Committee Stage, and Report Stage. It is produced for use at the Commons Second Reading.

A. Introduction

The purpose of this Briefing Note is to support scrutiny of the Financial Services and Markets Bill [HL] as it reaches its Second Reading in the House of Commons on 10 November 2026. The Bill has completed its passage through the House of Lords, where it was subject to extensive debate. It arrives in the Commons with significant remaining concerns about its consumer protection provisions, which this note sets out in detail.

The Purpose Statement of the APPG on Investment Fraud and Fairer Financial Services is:

> *"To advocate for the victims of financial misconduct, crimes, scandals, frauds and regulatory failures, by driving positive, progressive, and purposeful reforms that achieve a fair, trusted and just system, where the service providers, regulators and government agencies provide appropriate protection and deliver good outcomes, including redress for historical wrongs."*

As such, this APPG Briefing Note is focused on issues that are relevant to consumer protection. A previous APPG Briefing Note was referenced by name during the Lords Second Reading debate:

Second Reading — Lord Sharkey (LD)

"I thank the many organisations that have provided us with briefings, especially the APPG on Investment Fraud and Fairer Financial Services. Its 70-page analysis deals with each part of the Bill in depth and reaches an important overall conclusion, which is that the case for protecting consumers within any reform of financial services is not merely a moral case, although the moral case is strong, it is an economic case, grounded in a clear-eyed analysis of how trust works, how it is destroyed and what happens to markets when it is lost. The report also notes that the Bill should not simply make complaint handling faster or more predictable for institutions; it should ensure that ordinary people can get the real issue investigated, decided, escalated where necessary and put right. It is not at all clear that the Bill does this or does this sufficiently."

Lord Sharkey has been an outstanding advocate for the defence and advancement of consumer protections over many years, and he articulated his thoughts in a characteristically clear and compelling way as the Bill made its way through the Lords.

Lord Sharkey kindly spoke about his concerns that consumer protections are in jeopardy at an online Transparency Task Force event on 19th October, entitled:

"Financial Services & Markets Bill: Are Consumers at Risk?"



We believe that the points made by Lord Sharkey and the other speakers during that event are a very useful way for MPs to get a helpful overview of the main consumer protection concerns in

the Bill, of which there are many. Full event details are here and the recording of the event can be watched here.

The Government states that the purpose of the Bill is to: modernise consumer protections and redress arrangements; consolidate the regulatory framework; reduce administrative burdens on firms proportionately; enable credit unions to expand; support lending and investment; modernise anti-money laundering oversight; and ensure access to in-person banking services. The Bill contains some constructive measures. However, it also amends the Financial Services and Markets Act (FSMA) 2000 in ways that may weaken independent redress, concentrate more interpretive power in the FCA, and reduce post-crisis individual accountability.

B. The Trust Deficit: Why Consumer Protection is Fundamental to Growth

The FCA's own Financial Lives Survey (May 2025) records that only 39% of adults have confidence in UK financial services, and only 36% believe most financial firms are honest and transparent. These figures are deeply troubling - and directly relevant to the Bill's growth ambitions.

Second Reading — Lord Pitt-Watson (Lab)

"People do not express trust in the finance industry. According to FCA surveys, in 2024 only 36% of people felt that "most financial firms are honest and transparent in the way they treat them"; 27% felt the opposite. Some years ago, the Bank of England asked British people to find one word to describe the finance industry. Do noble Lords know which word they chose? It was "corrupt". The finance industry accounts for about 9% of GDP and it is responsible for 42% of corporate fines that have been issued. The Local Government Ombudsman gets 22,000 complaints a year; the Financial Ombudsman gets 216,000. There is a deficit of trust in the financial services industry. Regulation should align consumer, producer and society."

Financial services has a long record of what economists call information asymmetry and what consumers experience as being sold something they did not understand, did not need, or that quietly worked against their interests. The modern trust crisis has specific, documented landmarks: the PPI scandal (over £38 billion in compensation), endowment mortgages, pension transfer mis-selling, LIBOR manipulation, London Capital & Finance, Connaught, the Mortgage Prisoners, Woodford, the car finance scandal; and many more. Each scandal is not an isolated episode. Taken together, they represent a pattern.

Second Reading — Lord Davies of Brixton (Lab)

"We have experienced a cycle of financial disaster, followed by stronger regulation, followed by the growth of complacency, followed by demands to remove restrictions on markets, followed by injudicious deregulation, followed by yet another disaster. Consumer protection is not an impediment to a well-functioning market but a key to that market functioning properly. Remove the fence without checking why it is there, and the likely result is not greater efficiency but the familiar cycle of mis-selling, scandal and declining consumer engagement with the very products that are supposed to serve their financial interests."

Second Reading — Lord Eatwell (Lab)

> *"The prosperity of the City of London depends upon the global prestige of English law and the public institutions that enforce it. Similarly, financial services depend on the public provision of a stable monetary framework and a respected code of financial regulation. Public provision defines the environment within which financial services prosper. In return, financial services should work in a way that serves society by funding the investment in innovation, productive capacity, research and skills that the country needs. That is the settlement between the public realm and financial services. That settlement is not working."*

The deepest error in the framing of regulation versus growth is the implicit assumption that these are opposing forces. Trust is a competitive advantage. Rebuilding trust in British financial services is not an obstacle to growth - it is the precondition for it. Martin Lewis, as cited by Lord Sharkey at Second Reading, warned directly:

> **Second Reading — Lord Sharkey (LD), citing Martin Lewis**
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> *"Restricting ... access to free and fair redress is not a recipe for economic growth. Once consumers are warned about the erosion of their rights, it's possible it will lead to disengagement from ... financial services ... and diminishing trust."*

The Bank of England Governor, Andrew Bailey, warned in 2025 that resistance to regulation grows as memories of the Global Financial Crisis recede. Those warnings should frame scrutiny of this Bill.

C. Why Regulators Shouldn't Be Cheerleaders

Parliament should not allow a growth and competitiveness agenda to reproduce the pre-2008 error of treating the interests of the financial sector as a proxy for the public interest. The post-GFC settlement was built on a simple lesson: accountability must attach to named individuals and independent redress must remain able to look beyond technical compliance.

> **Second Reading — Lord Davies of Brixton (Lab)**
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> *"There is a thought experiment, a century old, that I think should be made compulsory for every financial regulator, every market reformer and, frankly, every politician who has uttered the word "modernisation". It comes from GK Chesterton. Imagine you come across a fence in the road and cannot immediately see why it is there. The modern, progressive, efficient temptation is to conclude that because you cannot see the purpose, there is no purpose, and to tear it down. Chesterton's counterpoint is simple and devastating: do not touch it until you understand why it was put there, because someone at some point thought hard enough about this road to put a fence on it. Only when you know why are you entitled to remove it."*

A complaint can be closed without the real issue being answered. A redress system should not be judged only by process metrics. It should be judged by justice-facing metrics: Was the complainant's real issue identified? Was the key evidence actually considered? Were repeated patterns escalated? Was redress actually paid? The Bill should be tested against that whole-system standard.

> **Second Reading — Lord Mann (Lab)**

> *"If working-class people do the right thing and get some money and invest it, who is going to protect that? People are not surrounded by good accountants, if any, or by good lawyers, if any, when they first come into money. If we look at the financial fraud cases, we see case after case where people are getting done over by people who appear to be cleverer than them, giving them advice and mis-selling — and the system is not helping them out. That is fundamental."*

D. What Happened in the House of Lords: Key Outcomes

The Bill completed its passage through the House of Lords after Second Reading (8 June 2026), Committee Stage (June–July 2026), and Report Stage (commencing 7 September 2026). The following key outcomes are relevant to the consideration of the Bill in the Commons.

D.1 Clause 3 (Access to Banking) — Removed by the House

Report Stage Day 1 produced the most significant structural change to the Bill. The House voted 246–165 to remove Clause 3, which had given the Treasury sweeping Henry VIII powers to amend any Act of Parliament in connection with access to banking services, before the Government had decided what it intended to do with those powers. Both the Delegated Powers and Regulatory Reform Committee (DPRRC) and the Secondary Legislation Scrutiny Committee had recommended its removal.

The Bill accordingly reaches the Commons without Clause 3. The Government confirmed at Report Stage that it intends to bring forward a narrower power once the Lloyd review into access to banking reports. At the time of writing it is overdue, and expected imminently. That replacement power will need to be considered during the Commons passage.

The context for this matters:

- **Nearly 7,000** bank and building society branches have closed since 2015 (Baroness Kramer (LD)).
- **1.4 million** over-65s are fully digitally excluded; only 15% of over-65s are fully digitally included (Baroness Altmann, citing Age UK, September 2026).
- Academic research published in the *European Journal of Finance* (January 2025) found that significantly higher numbers of financial misconduct cases occur in areas of high bank branch closure.

D.2 Clauses 7 and 8 (FOS Reform) — Amendment Defeated 59–144

Lord Sharkey (LD) moved Amendment 14 at Report Stage, which would have restored the FOS's independent "fair and reasonable" adjudication standard. It was defeated 59–144. The concerns about Clauses 7 and 8 were not resolved at Report Stage and are carried directly into the Commons consideration. These are the most significant consumer protection provisions in the Bill and are discussed in full in Section E below.

D.3 Mortgage Prisoners — Amendment Defeated 76–164

Amendment 5 (Lord Sharkey), which would have capped interest rates for approximately 105,000 mortgage prisoners trapped in closed-book products, was defeated 76–164. The Government said a rate cap "does not seem to be the right solution" and provided no alternative commitment.

These consumers - who cannot switch to other lenders and are paying rates above market - remain without a solution.

D.4 Consumer Credit Act Non-Diminution — Commitments Secured but Not in Legislation

Baroness Bowles (LD) pressed amendments at Report Stage to ensure that the transfer of consumer credit protections from the Consumer Credit Act 1974 to FCA rule-making powers would not diminish consumer rights. These were not voted on after the Government confirmed: Section 75 (credit card liability) and the unfair relationships provisions (Sections 140A–140D) will remain in legislation; and CCA repeal will not commence without replacement arrangements in place. Members should seek written confirmation of these commitments and ensure they are reflected in the Bill itself.

D.5 Other Outcomes at Report Stage

- Amendment 11 (affordable credit framework) — defeated 69–171.
- Amendment 60 (child trust funds for incapacitated young adults) — not pressed; Government confirmed primary legislation required; MoJ exploring options; FCA review underway.
- Minister change: Lord Stockwood was replaced by Lord Pitt-Watson (Parliamentary Secretary, HM Treasury) as the Minister responsible for the Bill at Report Stage.

E. The Central Issue: FOS Reform (Clauses 7 and 8)

Clauses 7 and 8 are the most consequential consumer protection provisions in the Bill. They fundamentally alter the Financial Ombudsman Service's adjudication framework in ways that have drawn unanimous expert concern and cross-party opposition in the Lords. These concerns are carried unresolved into the Commons.

E.1 The Current FOS System and What Would Change

Section 228(2) of FSMA 2000 currently states that a complaint is to be determined by reference to what is, in the opinion of the ombudsman, "fair and reasonable in all the circumstances of the case." The FCA Handbook requires FOS to "take account of" relevant laws, regulations, rules, guidance and codes - but this is not a precondition. The FOS has independent adjudication authority.

Clause 7 introduces a referral mechanism under which the FOS must (or may) refer complaints to the FCA where there is a question about how an FCA rule applies. The FCA may then direct the FOS not to determine the complaint until the direction is revoked. This creates a structural mechanism by which the FCA - the same regulator whose rules, supervision and omissions may be central to the complaint - can delay and potentially shape the outcome of individual adjudications.

Clause 8 amends section 228 of FSMA 2000 to provide that a complaint may only be determined in favour of the complainant if: (a) the act or omission did not comply with an FCA rule, or there was no FCA rule applying, AND (b) the act or omission was not fair and reasonable in all the circumstances. It also adds a "consumer responsibility" principle that the ombudsman must weigh even where a firm has breached rules and acted unfairly.

This changes the FOS in two critical ways. First, it introduces FCA rule non-compliance as a precondition for a finding in favour of the complainant: if a financial firm has complied with the relevant FCA rule, even if that compliance produced an unjust outcome, the FOS must decline the complaint. Second, it adds a consumer responsibility principle that tilts the balance further against complainants.

Second Reading — Lord Sharkey (LD), citing StepChange

"The "fair and reasonable" test was carefully designed by Parliament, requiring FOS to consider "all the circumstances of the case". In contrast, "FCA rules are often high level and permissive". StepChange believes that: "The scope and flexibility of the test is essential for FOS to decide cases in a manner that is ... fair". Shifting this to be based on compliance with FCA rules risks creating a tick-box exercise and weakening consumer protection."

Second Reading — Lord Sikka (Lab)

"Clause 8 also adds the concept of "consumer responsibility" when things go wrong. So, even when a breach of rules has occurred and the firm has acted unfairly, the ombudsman would be required to consider the general principle that "consumers should take responsibility for their decisions". The entire clause needs to be deleted; it is unacceptable that, in this day and age, consumer protection is being diminished."

E.2 The Consumer Duty and Principle-Based Rules

A critical question under Clause 8 is whether the FCA's Principles for Business and the Consumer Duty constitute "FCA rules" for the purposes of the amended test. The Consumer Duty was Parliament's most significant recent contribution to consumer protection in financial services. If Clause 8 reduces it to a subordinate factor rather than a primary protection, its effect is substantially hollowed out.

Second Reading — Baroness Bowles of Berkhamsted (LD)

"Before anybody says that the consumer duty does it all, it does not. It does not replace statutory duties or bind the regulator in any way that Parliament can, and it certainly does not give courts the tools they need to test regulatory decisions. It is an FCA rule, changeable by the FCA, not a fair substitute for a statutory duty."

Second Reading — Lord Carlile of Berriew (CB)

"Parliament should never lose sight of the distinction between creating rights and administering those rights. A right without an effective remedy qualifies as what the eminent jurist Hohfeld strikingly described as a no-right. The Bill should avoid no-rights."

E.3 The Expert Consensus (Briefing Note #3, September 2026; see here.)

The APPG engaged nine independent legal and academic experts on Clause 8 specifically, following Lord Stockwood's letter of 1 July 2026 to three Peers. Their conclusions are consistent and unambiguous.

A "facile category error" in the Government's drafting. A specialist financial services KC identified that the Minister's letter made the Government's intent clear but that "Clause 8 signally fails to give effect to that intent." The FCA Handbook contains not only Rules but also Guidance, editorial material, and provisions that explicitly state they are not Rules. The KC concluded: "If one had a suspicious mind, one would see the obvious advantages to a finance company of not being subject to the Ombudsman's jurisdiction unless the matter complained of fell under the strict four corners of a Rule - as long as one stuck to the rules, one could depart from the Guidance with impunity."

Rule compliance is not the same as fair dealing. The compliance director observed: "The Bill should not proceed on the basis that compliance with FCA rules is necessarily conclusive of what is fair. The FOS is supposed to exist precisely because strict legal or regulatory compliance does not always answer the consumer fairness question."

A hidden secondary legislation power. An emeritus professor of consumer and financial services law identified that the Government's March 2026 consultation response (paragraph 2.19) had stated it intended to take a power allowing it to specify that particular rules - specifically including the FCA's Principles for Business - are not to be included in the adapted fair and reasonable test. This power appears to be enacted in proposed section 228(4)(d). The practical consequence would be that the Principles, including the Consumer Duty, could be excluded from FOS jurisdiction entirely by Treasury regulations, with minimal parliamentary scrutiny.

Ministerial letters cannot cure statutory gaps. "There is no substitute for having clarity in the drafting of the legislation itself." - Senior solicitor partner. "A ministerial letter cannot convert guidance into rules or amend FSMA. It may assist as evidence of the Government's intention if the legislation is ambiguous, but it does not itself alter the Handbook or the statute." - Compliance director.

The legal hierarchy is inverted. The courts held in R (British Bankers Association) v Financial Services Authority [2011] that the FCA Principles are the "ever present substrata to which the specific rules are added." The specific rules "do not supplant them and cannot be used to contradict them." By making Rule compliance conclusive of what is fair and reasonable, Clause 8 inverts the legal hierarchy that the courts have established.

E.4 The Motor Finance Example: Why Residual Fairness Discretion Matters

The motor finance scandal is the most powerful practical illustration of why the FOS's independent fairness discretion is essential. It was the FOS, not the FCA, that identified this systemic consumer harm. The FCA "stood to the side" while firms relied on nuances in its disclosure rules to argue that discretionary commission arrangements were permissible.

Report Stage, 7 September 2026 — Baroness Kramer (LD)

"For years, firms relied on nuances in the FCA's disclosure rules to argue that discretionary commission arrangements were permissible, but these were hidden discretionary commissions, and any reasonable person

looking at those structures from a consumer's perspective could see that variable hidden commissions... were inherently unfair."

"Under the new framework, would this scandal never be exposed and would there never be redress?"

Report Stage, 7 September 2026 — Baroness Bowles (LD)

"A 10-year cut-off rewards firms that manage to keep material facts hidden for a decade, while shutting the door on consumers who discover the harm only years later. Under Section 32 of the Limitation Act, the courts do not allow time to run when material facts have been concealed. Why should the Financial Ombudsman be forced to do so? A regime that rewards concealment is not a regime that promotes fairness. Tail risk usually arises from bad behaviour that simply takes a long time to surface. There is no justifiable reason for remedy to disappear."

The motor finance redress scheme is currently estimated at £7 billion. Baroness Kramer asked directly whether, under the new framework, "this scandal would never be exposed and there would never be redress." The Minister did not directly answer.

E.5 The FCA's Own Warnings

What is particularly remarkable is that the FCA itself has expressed serious reservations about the framework it is being handed. These warnings have not been directly answered by the Government.

- **FCA CEO Nikhil Rathi** (Treasury Select Committee, 15 July 2026): "From the FCA's perspective, we want an independent Financial Ombudsman Service. That is a really important safeguard for your consumers." He warned that the referral mechanism risks the system becoming "gummed up" if misused.
- **FCA Chair Mr Alder** (same TSC session): "If we get this wrong, the system will become gummed up... the main objectives of those changes in the legislation will not be met."
- **FCA Deputy CEO Sarah Pritchard:** "We do not want to turn into a backdoor appeal mechanism."
- **FCA Deputy CEO Sarah Pritchard** formally wrote to HMT on 6 August 2026 to re-iterate Parliament's repeated request for the evidence base behind the reform - and received no response.

E.6 No Evidence Base: A Persistent and Formal Lacuna

Report Stage, 7 September 2026 — Lord Sharkey (LD)

"A lack of evidence for the reform proposals still exists. We still have not seen what it is that is wrong with the current system. We have not seen any hard data. The Government has identified a problem affecting a "small but significant minority" of FOS cases — its own characterisation, still unquantified — and has responded with a structural restriction that will affect every complaint where the firm has complied with the relevant rules but has nevertheless acted unfairly."

Report Stage, 7 September 2026 — Lord Davies of Brixton (Lab) (a Government Peer)

“The Government itself finds it "quite difficult... to point to cases in which they expect a different result following this change from what was happening before."”

Lord Sharkey confirmed he had sought hard evidence at Second Reading, Committee Day 1, and Committee Day 6, and received nothing on each occasion. The FCA has formally asked for it in writing. It has not been produced.

E.7 The Self-Defeating Consequences

From an expert financial services practitioner: "Upset customers will always seek redress. So if you cut off the cheap informal FOS route, they will simply redeploy to the court service. They won't just disappear. Someone has not given it much contextual thought."

The Lord Bishop of Manchester noted at Report Stage that data from the last year shows 25% of cases seen by FOS involved vulnerable consumers - precisely the group least able to absorb the additional barriers Clause 8 introduces.

F. Clause 6: The 10-Year Longstop on FOS Complaints

Clause 6 introduces a 10-year longstop on FOS complaints, running from the date of the act or omission complained of, regardless of when the consumer could reasonably have known they had cause to complain. This applies even to long-term products such as pensions and life insurance.

The Government's own impact assessment estimates that the 10-year longstop will remove approximately 27,900 cases per year - with around 3,000 consumers expected to have their complaints upheld losing out on an estimated £600,000 in annual cash redress. The case fees to process those complaints were £18.1 million, 30 times the redress awarded. The Minister cited this as justification - but this statistical argument reflects the position in one normal year, not in years when large historical mis-selling scandals come to light.

Had the 10-year limit been in place during PPI, endowment mortgages, pension transfer mis-selling, or the discretionary commission arrangement scandal, it is likely that millions of consumers would have been deprived of the redress they were entitled to.

Second Reading — Lord Sikka (Lab)

“The 10-year limit proposed by Clause 6 is a regressive step. How exactly are people supposed to become aware of the trigger events when Governments and regulators seek to bury them? The Bank of Credit and Commerce International was closed in July 1991 and, to date, there has been no investigation, so how does the 10-year period affect the victims of that scandal? Clause 6, in my view, harms customer rights and allows banks to escape liability, and that is unacceptable.”

Second Reading — Lord Davies of Brixton (Lab), citing Which?

“A third problem is the new 10-year time limit on FOS complaints. It is totally unsuited to financial products, a large proportion of which are long term, typical of mortgages, life insurance and pensions.”

Second Reading — The Lord Bishop of Manchester

"Some proposals, such as stricter time limits on making complaints, may present barriers to certain consumers making claims in the first place, particularly when they discover the issue only after many years."

An expert compliance director observed: "Online sales journeys, email trails, call recordings, case management notes, audit logs and retained policy documents often mean there is a much better evidential trail than existed in the paper era." FCA rules already require indefinite record retention for pension transfer records, making the Government's evidential-decay argument weaker still for those categories.

The expert analysis in Briefing Note #3 characterised the longstop as "simply a get out of jail free card for firms hiding consumer detriment well. Firms will be incentivised - and may be legally entitled - to delete all records at the 10-year mark, making even a permitted exception effectively unenforceable."

G. The Government's Position: What Was Said, and What Remains Open

Lord Stockwood, the Minister responsible for the Bill at Second Reading and Committee Stage, wrote to three Peers on 1 July 2026 setting out the Government's position. Lord Stockwood was replaced by Lord Pitt-Watson (Parliamentary Secretary, HM Treasury) at Report Stage. Both Ministers confirmed the same substantive positions.

G.1 On Clause 8 and the Scope of FCA Rules

The Government's position (Lord Stockwood letter, 1 July 2026):

> *"The effect of the provisions in Clause 8 of the Bill is that, where the subject matter of a complaint is the subject of FCA rules, and a firm has complied with its obligations under those rules, then the FOS will be required to find that it has acted fairly and reasonably. All rules made by the FCA are within scope. This includes the Principles for Businesses ('the Principles'), and therefore the Consumer Duty, and the Code of Conduct — all of which form part of the FCA's Handbook."*

What remains open: Seven of nine expert consultees identified that the Bill does not on its face achieve what Lord Stockwood's letter asserts. The Handbook contains not only Rules (marked "R") but also Guidance (marked "G"), editorial material, and provisions expressly stated not to be binding. A ministerial letter stating intent does not change the statutory language. As the report's experts consistently concluded: only an amendment to the Bill itself can achieve what the Minister intends. The Code of Conduct is not mentioned in the Section 417 FSMA definition of "Rule" - the assurance lives only in Hansard, not in the Bill.

G.2 On the 10-Year Longstop (Clause 6)

"The new 10-year limit will be relevant in cases where a consumer does not become aware, and could not reasonably have become aware, of an issue for more than 10 years since the act or omission complained about. The Bill also provides for the FCA to make exceptions to the 10-year time limit in specified circumstances."

What remains open: The 10-year limit runs from the act or omission, not from when the consumer became aware. The consumer's knowledge is relevant only to the existing individual time limits (six years from event, three from awareness). The 10-year longstop operates regardless of knowledge. The FCA's exception-making power is exactly that: a discretion that the FCA, with its growth and competitiveness mandate, may be predisposed not to exercise.

G.3 The Dropped Secondary Legislation Power: A Genuine Welcome Step

One specific, citable and positive development: HM Treasury's response to its consultation on FOS had originally proposed a power allowing the Government to exclude the Principles for Business and the Consumer Duty from the scope of the reformed test entirely by secondary legislation. That power was dropped on 18 May 2026 - the day before the Bill was introduced.

This is a specific, durable and genuinely welcome step: it closes off a route by which these protections could otherwise have been narrowed without any further Act of Parliament. The APPG credits this change with real confidence.

H. A Note of Cautious Optimism on the 'Fair and Reasonable' Test

We understand that just prior to the Bill being introduced there was a significant change in relation to how the FOS's "fair and reasonable" test and related matters would be applied. If we now understand things correctly, we hope and expect that this will mean that some of the concerns raised elsewhere in this Briefing Note about the watering down of consumer protections are ameliorated.

However, for the reasons we explain, we do not yet have absolute certainty that this will be the case in practice. At Second Reading, responding directly to a question from Lord Pitt-Watson, the then Minister Lord Stockwood gave the following assurance from the Despatch Box:

> **Second Reading — Lord Stockwood (Lab)**
> *"I can give my noble friend Lord Pitt-Watson the reassurance he asked for: when the FOS considers whether the firms have met their obligations under FCA rules, this will include principle-based rules, including the consumer duty."*

This is a welcome statement. So far as it goes, it answers the question put to the Minister: the reformed test in Clause 8 will treat a breach of the Consumer Duty, and of principle-based rules generally, as capable of satisfying the FCA-rule-compliance limb of the new test. The APPG notes that the specific Chamber statement names the Consumer Duty but refers to the remainder only through the broader expression "principle-based rules."

A second and separate point concerns what happens once a Principles or Consumer Duty breach is established. Confirming that Consumer Duty breaches can count as relevant rule non-compliance answers the first question, not the second: whether a given breach in fact renders the conduct not fair and reasonable remains a matter for the individual ombudsman's judgement, case by case. How consistently that judgement is exercised across a very large caseload is a different question from whether the right material is technically in scope.

Set against the above: there is one development the APPG can credit with real confidence - the dropped secondary legislation power (see G.3 above). That is a specific, citable and genuinely welcome step.

I. Additional Concerns: Matters on Which the Bill is Unsatisfactorily Silent

Beyond the key provisions discussed above, the APPG has identified a number of significant matters that the Bill does not address. These are summarised briefly below.

I.1 Fraud

The Bill is silent on fraud, despite investment and financial fraud reaching epidemic levels. The APPG estimates the annual loss to consumers from investment fraud alone is in excess of £1 billion. The Bill creates no specific framework for fraud-related consumer redress, no stronger anti-fraud obligations on authorised firms, and no mechanism for victims of fraud facilitated by FCA-authorised firms to obtain adequate compensation.

I.2 Economic Abuse

The Bill is silent on economic abuse, despite this being a significant and growing problem. Economic abuse - the use of financial mechanisms to control, exploit or harm a partner or family member - occurs within the regulated financial system. The Bill creates no obligations on authorised firms to identify or respond to it.

I.3 SMCR: Dilution of Post-GFC Accountability

The Senior Managers and Certification Regime (SMCR) was Parliament's central response to the Global Financial Crisis: the mechanism for holding named individuals accountable for failures in their area of responsibility. The Bill proposes to reduce the burden of SMCR by 50% and delegates the detail of this reduction to the FCA. The APPG's concern is that the accountability framework Parliament carefully built may be significantly weakened without further parliamentary scrutiny.

I.4 The PACCAR Judgement and Litigation Funding

The Bill is silent on the PACCAR judgement and its effect on litigation funding agreements, which has significantly disrupted access to justice for large numbers of financial mis-selling claimants whose claims were funded under litigation funding arrangements that were rendered invalid by PACCAR.

I.5 FCA Immunity from Civil Liability

Section 102 FSMA 2000 gives the FCA near-total immunity from civil liability. This immunity is anomalous within the broader public law framework and means that consumers harmed by FCA regulatory failures - including failures to act on warnings about firms that subsequently collapse - cannot sue for compensation. The Bill does not address this.

J. Legislative Recommendations

The following recommendations draw on the expert analysis in APPG Briefing Note #3 and the APPG's proposed amendments from Briefing Note #2. They represent the minimum changes needed to address the principal consumer protection concerns.

J.1 On Clauses 7 and 8 (FOS Reform)

- **Cure the statutory drafting gap.** Insert an express definition of "FCA Rule" that includes the Principles for Business, the Consumer Duty, the Code of Conduct and any other FCA Handbook provision expressed to have binding status. This gives statutory effect to what the Minister's letter says was intended.
- **Remove or substantially amend Clause 7.** The FCA referral mechanism creates a structural conflict of interest that the FCA's own senior leadership has warned against. If retained, it must be subject to: a maximum 60-day time limit; publication of reasons; individual notification of affected complainants; and a right for complainants to make representations.
- **Restore FOS fairness discretion over contractual and tortious claims.** Clause 8 does not engage with consumer claims that do not map onto a specific FCA Rule, including contractual breaches, negligence, and third-party liability (including Section 75 CCA liability). The Bill should expressly preserve FOS jurisdiction over these.
- **Remove the "consumer responsibility" principle, or balance it.** The Bill adopts one half of the FCA's own balancing exercise while omitting the other half - the factors that justify a high level of consumer protection (weak bargaining position, information asymmetry, opacity, cognitive biases, lack of expertise).
- **Remove the hidden power in proposed s228(4)(d).** Or at minimum make it subject to the affirmative procedure with a requirement that Parliament approve any exclusion of principle-based rules.

J.2 On Clause 6 (The 10-Year Longstop)

- **Amend to a knowledge-based start date.** The 10-year period should run from the date on which the complainant first knew, or ought reasonably to have known, of the act or omission giving rise to the complaint - not from the date of the act or omission itself.
- **Enact statutory minimum exceptions.** The Bill should provide in primary legislation that the 10-year limit does not apply where: the complainant could not reasonably have known of the facts giving rise to the complaint within that period; the act or omission was concealed; the complaint concerns a continuing relationship; the firm failed to retain records it was required to retain; or the complaint forms part of a wider systemic issue or redress event.

J.3 On Consumer Credit Act Reform

- **Confirm CCA commitments in writing and in legislation.** The Government confirmed at Report Stage that Section 75 and Sections 140A–140D will remain in legislation and that CCA repeal will not commence without replacement protections. These commitments should be reflected in the Bill itself, not left as ministerial assurances in Hansard.

J.4 On Evidence and Transparency

- **Publish the evidence base.** Publish the spring 2025 FOS review and the specific case data underpinning the claim that FOS has acted as a quasi-regulator in a "small but significant minority" of cases. The FCA has formally asked for this to be done. Parliament has asked for this to be done. It has not been done.

- **Publish FCA interpretive opinions.** Any FCA opinion provided to FOS under Clause 7 should be required to be published. Without this, the effective standard of consumer protection becomes invisible to the consumers whose rights depend on it.
- **Confirm the changes are contingent.** Give the assurance explicitly requested by Lord Davies of Brixton (a Government Peer) at Report Stage: that the FOS changes are contingent and will be reviewed and judged on their effect.

K. What Members of Parliament Can Do

The Second Reading is the opportunity to signal the Commons' approach to the Bill's principles. Members with an interest in consumer protection may wish to consider the following.

K.1 At Second Reading

- Raise the absence of an evidence base for the FOS reforms. No hard data has been published to justify the structural changes to Clauses 7 and 8, despite repeated formal requests from the FCA itself, and others including Lord Sharkey.
- Ask the Minister to explain what prevents the number of FCA referrals under Clause 7 from growing, and how the system will be prevented from becoming "gummed up" (in the words of the FCA's own Chair).
- Ask whether the Government will commit to publishing the spring 2025 FOS review before Committee Stage.
- Note the Lords' significant vote to remove Clause 3 (246–165) and ask what replacement power the Government will bring forward for the Commons' consideration.
- Seek an assurance that the FOS reforms are contingent and will be reviewed against their effect on consumer outcomes.

K.2 For Committee Stage and Beyond

- Seek amendments to insert an express definition of "FCA Rule" that includes the Principles for Business and the Code of Conduct on the face of the Bill.
- Seek amendments to Clause 6 to introduce a knowledge-based start date for the longstop and statutory minimum exceptions for concealment cases.
- Seek removal of the power in proposed section 228(4)(d) that would allow the Treasury to exclude the Principles (including the Consumer Duty) from FOS jurisdiction by secondary legislation.
- Seek formal written confirmation of the Government's CCA commitments, and an amendment to the Bill to reflect them.
- Seek amendments to the SMCR provisions that ensure no reduction in the accountability of senior individuals at financial firms occurs without specific primary legislation authorisation.
- Seek a Non-Diminution of Consumer Protections clause as a precondition for commencement of the FOS provisions.

L. Contact and Further Information

- **APPG Secretariat:** Andy Agathangelou FRSA | andy.agathangelou@transparencytaskforce.org | +44 (0)7501 460308
- **APPG Website:** www.appgifffs.org and **members**: https://www.appgifffs.org/about-us/members

- **Bill Homepage (Parliament):** https://bills.parliament.uk/bills/4129
- **Academic paper on predatory financial services markets (referenced in Briefing Note #3):** https://doi.org/10.1080/1351847X.2024.2446718

Errors and Omissions Excepted (E&OE). This briefing does not constitute legal advice.