



Investment Fraud & Fairer Financial Services

Briefing Note for Parliamentarians

in relation to the Second Reading of the

Financial Services and Markets Bill [HL]

on Monday 8th June

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Introduction

The overall purpose of this Briefing Note is to support scrutiny of the Financial Services and Markets Bill [HL] (The Bill) that is having its Second Reading in the House of Lords on Monday 8th June.

Recent correspondence from City Minister Rachel Blake MP explains that the purpose of the Bill is to:

- **Modernise consumer protections and redress arrangements to reflect today's markets and maintain confidence.** It will ensure consumers are appropriately protected when something goes wrong, making sure protections are fit for the digital age. Reforms to the Financial Ombudsman Service will increase consistency and clarity of decision-making, helping people resolve disputes more quickly and with greater certainty.
- **Consolidate the regulatory framework to enable stronger coordination and clearer responsibilities, reduce fragmentation of the regulators and support innovation.** By streamlining the regulatory architecture and consolidating the Payment Systems Regulator within the Financial Conduct Authority (FCA), firms will deal with fewer overlapping regulators, providing clearer accountability and faster decision-making.
- **Ensure that the administrative burden on financial services firms is proportionate without compromising on core consumer, prudential and market protections,** including reducing the overall burden of the Senior Managers and Certification Regime –the framework that holds senior leaders in financial firms personally accountable – by 50 per cent, with a focus on accountability of the most senior figures in financial services, freeing up firms to focus on serving customers and invest in growth, rather than dealing with overly burdensome compliance processes.
- **Enable credit unions to expand** by improving the rules on who can become a member. This will allow credit unions to serve more people and communities, widening access to affordable finance and supporting the Government's aim to double the size of the mutual and co-operative sector.
- **Support lending and investment** including by updating the statutory framework underpinning the ring-fencing regime, which requires major banks to separate their UK retail banking services from investment banking activities. The reforms will unlock more finance for UK businesses. Improved competition in Small and Medium-sized Enterprises (SMEs) lending will help small businesses access finance more easily, recognising SMEs as key drivers of innovation, job creation and economic growth across the UK.
- **Modernise oversight of anti-money laundering and counter-terrorist financing.** Consolidating supervision of professional services firms, which is currently spread across 22 professional body supervisors. The FCA will assume responsibility for the

supervision of lawyers, accountants and trust and company service providers, delivering stronger, more consistent oversight and improving confidence in the UK regime. The Bill will also enable the Home Office to seize more illicit cryptoassets, preventing criminals from putting proceeds of their crimes out of reach, and returning money to law enforcement, victims and the public purse.

- **Ensure access to in-person banking services for the future.** The Government has commissioned an independent review in this area and the Bill includes a power, pending the outcome of that process, to ensure the Government can take steps to protect access to face-to-face banking where needed.

The Bill contains some constructive measures, including access to banking services and greater control over appointed representatives. However, it also amends FSMA 2000 in ways that may weaken independent redress, concentrate more interpretive power in the Financial Conduct Authority (FCA), and reduce post-crisis individual accountability.

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, the APPG’s work and therefore this Briefing Note is focused on matters relating to consumer protection.

Given the positive and reassuring description of the purpose of the Bill provided by City Minister Rachel Blake MP as set out above, and the numerous inferences that the Bill will not weaken consumer protections, one might not consider any scrutiny of the Bill to be necessary. But as this Briefing Note goes on to explain there are several areas for concern, whereby the proposed legislation as presently drafted could lead to unintended consequences.

The overall thrust of this briefing note is therefore to support the work of Peers who may be keen to ensure that the risk of potential consumer detriment is mitigated, by raising awareness of where the problem areas are and why any deregulatory activity must be handled with great caution.



The Trust Deficit: Why Deregulation Could Undermine the Very Growth it Seeks to Create

Introduction

The FCA's own Financial Lives Survey data (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. That trust deficit can only be closed by demonstrating, through consistent action, that the regulatory framework genuinely protects consumers when things go wrong.

There is therefore a paradox at the heart of the current debate about financial services regulation. Governments and industry lobbying groups increasingly argue that rolling back regulatory constraints will unleash growth - that lighter-touch oversight will free firms to innovate, compete, and expand, drawing more consumers into saving, investing, insuring and banking. The logic has a surface appeal. Regulation has costs. Compliance burdens and the operational friction they create absorb resources. Rules can stifle product design. So the argument runs: remove the friction, and the sector flourishes.

But this argument contains a flaw. It treats trust as though it were a given - a fixed background condition that will persist regardless of how consumers are treated. It is not. Trust in financial services is fragile, historically abused, and hard-won. It is also, properly understood, the single most important precondition for the sector's growth. A deregulatory agenda that erodes consumer protections does not remove friction from a well-functioning market. It removes the scaffolding holding that market together. The unintended consequences - more harm, more scandal, more erosion of confidence, fewer people participating in financial products - may well produce the precise opposite of growth.

It is for this reason that Parliamentarians must extensively and forensically scrutinise the proposed legislation to identify all areas where deregulation may lead to unintended consequences that manifest in consumer harm that triggers yet more adverse publicity for the sector.

The Trust Deficit: A Crisis That Pre-Dates the Current Debate

To understand why consumer protection and sector growth are not in tension but are in fact inseparable, one must first reckon honestly with the scale and depth of the trust deficit that already exists in financial services.

This is not a new problem. Financial services has a centuries-old tradition of what economists politely 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. But the modern trust crisis has specific, documented landmarks.

The Payment Protection Insurance scandal in the United Kingdom is perhaps the most instructive. Over the course of roughly two decades, banks and lenders systematically mis-sold PPI to consumers - attaching insurance policies to loans and credit cards that were frequently unsuitable, often undisclosed in their true cost, and sometimes entirely invalid at the point of claim. By the time the redress scheme closed in 2019, British firms had paid out more than £38 billion in compensation. Millions of consumers had been harmed. And the reputational damage to the banking sector was profound and lasting.

PPI was not an isolated failure. The endowment mortgage scandal of the 1980s and 1990s left hundreds of thousands of homeowners with policies that had been sold on the basis of wildly optimistic projections, later failing to repay mortgages as intended. The numerous scandals surrounding the wholly inappropriate transfers out of defined-benefit pension schemes through commission-motivated regulated advisers is another sorry episode; it cost retirees their financial security. In wholesale markets, the LIBOR manipulation scandal demonstrated that the rate-rigging was not the work of a lone rogue but a systematic, multi-institutional manipulation of a benchmark underpinning trillions of dollars of contracts worldwide. More recently, the collapse of the London Capital & Finance mini-bond scheme in 2019 left over 11,000 investors facing losses of some £237 million, many of them elderly savers who had been drawn in by marketing that presented high-risk bonds as comparable to safe cash savings accounts. Then there is Connaught, Woodford, Lendy, Blackmore Bond, the car finance scandal and so on - there is a very long list of regulatory failures with associated consumer detriment and adverse publicity.

These are not isolated episodes. They represent a pattern: financial services firms, when not effectively regulated, have repeatedly prioritised short-term revenue extraction over the long-term interests of their clients; and even though they are the small minority the bad actors damage the reputation of the entire sector - the vast majority of good actors suffer too.

And each scandal leaves a sediment of distrust that does not wash away when the next mis-selling scandal begins.

The Economics of Trust

What gets missed in purely legalistic or compliance-focused discussions of regulation is that trust is not merely a moral good - it is an economic input of the highest order. Financial products are, by their nature, unusually dependent on trust.

When a consumer buys a car, they can test drive it, inspect it, have a mechanic examine it, and observe its condition. The value is, to a significant degree, immediately verifiable. When a consumer buys a pension, they are making a decades-long commitment to an institution, based on products of significant complexity, and mediated by advice they may not be fully equipped to evaluate; or perhaps worse still, no advice at all. The information asymmetry is vast. The consumer's ability to independently verify quality before - or sometimes even after - purchase is limited. In such markets, trust is not a luxury. It is a prerequisite for the transaction occurring at all.

This is why the financial services sector is structurally different from many other industries when it comes to consumer protection. In a market where buyers can readily assess quality, a bad actor will be punished by the market, often very quickly - consumers will simply not buy and if they already have they will not return. But in a market characterised by deep information asymmetry, long time horizons, and complex products, consumers may not realise they have been harmed until it is far too late. By then, the sale has long since been made, the commission collected, and the damage done. The market, left to itself, does not naturally correct for this. Regulation is what fills the void; or is at least meant to.

The implication is that consumer protection regulation in financial services does not merely protect individual consumers from individual bad actors. It performs a systemic function: it maintains the conditions under which the entire market can function. It is the infrastructure on which trust is built.

The Deregulatory Temptation and its (flawed) Logic

Against this backdrop, why does the deregulatory argument retain such appeal?

In part, it is because the costs of regulation are visible and the benefits are counterfactual. A compliance department costs money that can be counted. The pension scandal that did not happen because of robust suitability requirements is, by definition, not in the data. Financial services firms and their trade associations are skilled and highly motivated advocates who can place precise figures on regulatory burdens. The consumers who will not be harmed five years from now if protections are maintained cannot organise to make their case.

In the United Kingdom, the post-Brexit environment has added political momentum to deregulatory instincts. The "Edinburgh Reforms" announced in 2022 and the broader "smarter regulatory framework" agenda were explicitly framed as opportunities to move away from European rules and establish a more competitive, lighter-touch regime. The Competitiveness and Growth objective added to the remits of the Financial Conduct Authority and the Prudential Regulation Authority in 2023 created formal institutional pressure to weigh the costs of regulation to the sector's growth against its consumer protection purposes.

There is nothing intrinsically wrong with examining whether regulation achieves its purposes efficiently or whether the cumulative burden of rules has created unnecessary complexity. Some regulations are poorly designed, some are duplicative, and some have become outdated. A serious regulatory reform agenda that identifies and removes genuine inefficiencies while preserving the substantive protections is both possible and desirable.

However, the danger comes when the growth objective is pursued not by improving regulatory design but by diluting consumer protection on the assumption that the resulting expansion of financial activity will, in aggregate, leave everyone better off.

The central concern that we wish to express through this Briefing Note is that whether by accident or by design, there are real risks of harm as a direct consequence of proposed legislation as it is currently drafted, as we will go on to show.

The Mechanism of Harm: How Deregulation Produces its Own Drag

The mechanism by which weakened consumer protections undermine sector growth rather than advancing it runs through three interconnected channels: direct harm, scandal, and withdrawal.

Direct harm is the most immediate. When rules requiring suitability assessments are weakened, when disclosure obligations are reduced, when redress mechanisms are made harder to access, or when conduct standards are allowed to slip, more consumers will be sold unsuitable products, more will lose money they cannot afford to lose, and more will find themselves unable to obtain compensation. This is not a theoretical risk - it is what has happened, repeatedly, when the regulatory pendulum has swung toward the industry.

Scandal follows harm, though sometimes with a delay. Financial services scandals tend to follow a predictable arc: a pattern of mis-selling or abuse develops; it accumulates largely invisibly for years, often because the regulatory framework lacks the teeth to surface it; it eventually breaks through, either via whistleblowers, investigative journalism, or the sheer volume of complaints that can no longer be absorbed quietly; and it then explodes into public view with enormous force. The scandal phase is devastating not only for the firms directly implicated but for the sector as a whole. Every PPI story in the press, every segment about a retiree who lost their life savings, every parliamentary inquiry into mis-selling does not merely damage the reputation of the specific firms involved. It damages the public's generalised sense that financial firms can be trusted.

Withdrawal is the third and most economically significant consequence. There is strong and consistent evidence that trust levels are a material determinant of financial product participation. The Financial Lives Survey conducted by the FCA has, in successive waves, demonstrated the link between trust and engagement with financial services. The

proportion of adults who hold no cash savings, no investment products, and no adequate life or income protection insurance is not explained entirely by poverty. A significant portion reflects what researchers call "disengagement" - a conscious or subconscious 'decision', often implicit, not to participate in a system perceived as rigged against ordinary consumers.

This disengagement has macroeconomic consequences. Under-saving for retirement is one of the most serious and expensive long-term fiscal problems facing the United Kingdom. The growth of the retail investment market - repeatedly identified as a policy priority - depends on persuading millions of people who currently hold cash or do nothing to entrust their savings to market-linked products. That persuasion is impossible in an environment where trust continues to erode. A deregulatory agenda that weakens consumer protections may deliver short-term revenue uplift to financial firms - more products sold, more fees earned, less compliance cost. But if it generates even one significant scandal - and the historical record suggests it will - the trust damage could suppress participation for a decade.

The irony is exquisite and tragic in equal measure. The sector lobbies for deregulation in order to grow. Deregulation reduces the protections that keep consumers from being harmed. Harm generates scandal. Scandal destroys trust. Distrust suppresses participation. And the sector is smaller, not larger, than it would have been.

The False Dichotomy

The deepest error in the framing of regulation versus growth is the implicit assumption that these are opposing forces - that more protection means less dynamism, and that liberation from rules - or setting free the 'animal instincts' we are sometimes told about - means commercial vitality.

The evidence points in the opposite direction. The jurisdictions with the most trusted financial sectors are not, in general, those with the lightest regulatory touch. The Nordic countries, consistently ranked among the world's most financially healthy and highly participating populations, have robust consumer protection frameworks. The United States, which has episodically pursued a deregulatory agenda in financial services with great enthusiasm, has also generated some of the world's most spectacular financial crises and scandals, each of which has set back household financial engagement for years.

Trust is a competitive advantage. A financial services firm - or a financial services sector - that is known to treat customers fairly, deliver on its promises, and provide genuine value for money does not need regulatory protection from competitors who cut corners. It is itself the standard that others must meet. Rebuilding trust in British financial services is not an obstacle to growth. It is the precondition for it.

In short, the sector is suffering because of its poor reputation, caused by the adverse publicity from scandal after scandal. Ineffective regulation and enforcement is a significant contributory factor. It would be a strategic mistake to respond to this harsh reality by finding ways to lower the bar in relation to the expectations of conduct in the sector; the better response would be to make regulation work for society and the City.

If, as the Government seems to be suggesting, there are no measures in the Bill that are designed to weaken the consumer's position to the benefit of the sector, we would hope and expect the Government to be very receptive to making amendments to the legislation that would help prevent any unintended consequences.

And of course, in the unlikely event that the Government has in fact deliberately drafted the legislation with the intention of tilting towards industry interests and away from consumer interests we would hope and expect the Government to understand that any attempts to stimulate growth through jeopardising consumer interests in this way will not work, in all but the very short term; and would thereby change the direction of policy travel without delay, for the sake of the public interest and the reputational integrity of the sector, its regulators and indeed for the reputational integrity of the Government itself.

Having set the scene by emphasising the primacy of the importance of maintaining (or should that be repairing?) the sector's reputation; and at the very least not doing anything to damage it, we will now turn to specific areas for potential concern.

Why Regulators Shouldn't be Cheerleaders

Lessons from the Global Financial Crisis

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.

Markets rely on trust, and consumers and SMEs invest less when lending terms, redress routes or regulators appear conflicted.

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. The Parliamentary Commission on Banking Standards was established to examine banking culture, LIBOR-related failings, corporate governance, transparency and conflicts of interest, and its work led directly into the individual-accountability reforms later embodied in the Senior Managers and Certification Regime (SMCR). 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.

The Proposed Reforms Weaken the Consumer Duty

Introduction

Whilst significantly inferior to a Duty of Care or a Fiduciary Duty, the Consumer Duty was introduced to establish a higher standard of consumer protection across the financial services sector. It was intended to shift the regulatory culture from one based primarily on technical compliance towards one focused on delivering good outcomes for consumers.

The Consumer Duty places obligations on firms to ensure their products and services provide fair value, that communications are clear and not misleading, that support is provided to customers when they need it, and that vulnerable customers are identified and appropriately served. It is not a perfect instrument, and its full implementation and enforcement will take years to bed in. But it represents precisely the kind of structural reform that can, over time, change the culture of an industry - not by making compliance burdensome, but by aligning the commercial interests of firms with the outcomes of their customers.

Any deregulatory agenda that dilutes the Consumer Duty, weakens the FCA's ability to enforce it, or retreats from its underlying principles would be deeply counterproductive. The Consumer Duty is not a cost imposed on the sector from outside. It is an attempt to rebuild the foundations of the trust on which the sector's long-term growth depends.

The proposed reforms contained within the Bill risk weakening that framework by limiting the practical influence of the Consumer Duty on complaint handling, reducing regulatory flexibility, and making it harder for consumers to benefit from the higher standards that Parliament intended the Duty to achieve.

While the stated objective of the reforms may be to improve certainty, consistency, and efficiency, there is a significant risk that they will weaken the Consumer Duty's effectiveness as a consumer protection tool.

By encouraging a return to rules-based compliance, limiting the flexibility of the FOS, increasing the emphasis on regulatory certainty, and reducing the practical influence of consumer outcome considerations, the reforms may dilute one of the most important advances in UK consumer protection in recent years.

The Consumer Duty was designed to raise standards and improve outcomes for consumers. Any reform should be judged against that benchmark and should proceed only if it can be demonstrated that consumer protection will be strengthened rather than weakened.

A further criticism is that many of the reforms appear to be driven by concerns expressed by firms about regulatory uncertainty and the possibility that the FOS may interpret Consumer Duty obligations more broadly than firms would like. While such concerns are understandable from an industry perspective, Parliament should be wary of reforms that prioritise certainty for regulated firms over flexibility for consumers.

The Consumer Duty was deliberately drafted as a higher standard designed to evolve with changing market practices. Constraining its interpretation risks reducing it from a transformative consumer protection measure into 'tick box as usual.'

Further elaboration on the key issues:

Risk of Returning to a Rules-Based Rather Than Outcomes-Based Approach

One of the principal strengths of the Consumer Duty is that it focuses on consumer outcomes rather than merely compliance with detailed rules.

The Duty recognises that firms can sometimes comply with the letter of regulatory requirements while nevertheless producing poor outcomes for consumers.

The proposed reforms risk reversing this progress by placing greater emphasis on predictability, consistency, and alignment with existing FCA rules.

In practice, this may encourage firms to focus once again on demonstrating technical compliance rather than considering whether their conduct genuinely delivered fair outcomes.

A system that prioritises regulatory certainty may inadvertently weaken the ability of the Consumer Duty to challenge conduct that is technically compliant but unfair in substance.

Restricting the Ability of the FOS to Apply Consumer Duty Principles

A key concern is that the reforms may limit the extent to which the FOS can rely upon broader Consumer Duty principles when determining complaints.

As elaborated on elsewhere, historically, the FOS has been able to consider what is "fair and reasonable in all the circumstances of the case."

This flexibility has been one of its greatest strengths.

If reforms encourage greater reliance on FCA guidance, thematic reports, or predetermined interpretations of regulatory requirements, the practical effect may be to narrow the scope for ombudsmen to apply Consumer Duty principles to individual cases.

This could reduce the ability of consumers to obtain redress where conduct was unfair even if it did not clearly breach a specific rule.

Increased Emphasis on Regulatory Certainty May Favour Firms Over Consumers

Many of the proposed reforms are justified on the basis of increasing certainty for firms. While regulatory certainty has value, it is important to recognise that certainty is not always synonymous with fairness.

Large financial institutions generally possess:

- Significant legal resources
- Specialist compliance functions
- Detailed knowledge of regulatory expectations

Consumers do not.

If reforms are designed primarily to reduce uncertainty for firms, there is a risk that they will disproportionately benefit sophisticated market participants at the expense of consumers.

The Consumer Duty was intended to rebalance this relationship by placing greater responsibility on firms to consider consumer outcomes. Any reform that shifts the balance back towards regulatory certainty risks weakening consumer protection.

Reduced Incentive for Firms to Exceed Minimum Compliance Standards

The Consumer Duty encourages firms to ask not merely:

"Have we complied with the rules?"

but also:

"Have we delivered a good outcome for consumers?"

This cultural shift is one of the Duty's most important features.

However, if firms become increasingly confident that complaints will be assessed against published guidance, thematic reports, or narrow regulatory interpretations, there is a danger that they will focus on satisfying those minimum expectations rather than striving for genuinely good consumer outcomes.

The result could be a gradual return to a "tick-box compliance" culture that the Consumer Duty was specifically designed to address.

Potential Weakening of Consumer Redress

The effectiveness of any regulatory regime ultimately depends on whether consumers can obtain redress when things go wrong.

The Consumer Duty has strengthened consumers' position by providing a broader framework against which firms' conduct can be assessed.

If reforms constrain the way in which the Duty is applied in complaints, consumers may find it more difficult to challenge conduct that appears unfair but does not fit neatly within established categories or published guidance.

This could lead to situations where:

- Poor outcomes are identified but not remedied
- Firms escape accountability despite causing consumer detriment
- The practical value of the Consumer Duty is diminished

A right without an effective remedy is of limited value.

Undermining Parliament's Original Intention

The Consumer Duty was introduced because previous regulatory frameworks were widely criticised for allowing firms to comply with technical requirements while consumers continued to suffer harm.

The Consumer Duty represented a conscious decision to raise standards and place consumer interests more firmly at the centre of financial regulation.

Any reform that narrows the practical application of the Consumer Duty risks undermining that objective. Parliament should be cautious about reforms that make the Consumer Duty more predictable for firms if the consequence is that it becomes less effective for consumers.

Time Limit for Making Complaints

Introduction

Clause 6 introduces an 'applicable time limit' that is the earlier of ten years from the act or omission or a period set by rules, while applying the change to complaints made after commencement even where the underlying conduct occurred earlier. For complex and concealed mis-selling, fraud, pension-transfer harm and unsuitable product sales, a long-stop such as this can remove rights before victims could reasonably know they were harmed.

The relevant sections from the Introductory Notes are copied them here for ease of reference:

89 Paragraph 13(1) of Schedule 17 of FSMA 2000 requires the FCA to make rules to determine the time limit in which a complaint is eligible for the FOS to consider. This is set out in the FCA's DISP Rules. Unless the Ombudsman thinks that there are exceptional circumstances to extend the time a complaint can be brought to the FOS, or the complainant and respondent firm agree to the Ombudsman considering a complaint out of time, the current time limits are that, to be eligible for determination by the FOS, a complainant must submit their complaint within six months from a firm's final response to their complaint, or no more than six years after the event complained of or, where later, three years from when they first knew, or reasonably should have known, about an issue.

90 The current rules mean that, provided a complaint is made within three years of a complainant finding out (or reasonably being able to find out) about an issue, or in other exceptional circumstances, a complaint can be made to the FOS decades after an event has taken place.

91 In practice, this can cause issues relating to compliance with data retention and record- keeping requirements meaning that relevant records are no longer available, and result in uncertainty for both consumers and firms about whether certain complaints are eligible to be brought to the FOS. This can also cause additional complexity in the handling and determination of complaints by the FOS, which runs counter to FOS's remit as a relatively simple and cost-effective alternative to the courts.

92 The Bill will therefore introduce a statutory time limit to specify that the FOS may not consider any complaints that are brought more than 10 years from the act or omission of the respondent firm.

93 Recognising the diverse range of financial services products, including products that are long-term by nature such as pensions, the Bill will also give the FCA a power in legislation to determine exceptions to the time limit, in certain specified circumstances. These exceptions will be clearly defined by the FCA.

94 The Bill does not affect access to the courts for complaints relating to matters older than 10 years, and are not covered by exceptions introduced to the FCA, subject to courts' usual time limits.

What is Proposed in the Bill?

The current Rules, as set out in the FCA Handbook focus on 6 years and, if later, 3 years, but, as explained in Section 90 above, there is no long-term time limit provided that the complaint is brought within 3 years of the Complainant becoming aware of (or reasonably becoming aware of) having cause to complain.

FS&M-26 sets a long-term time limit of 10 years, with very limited exceptions, and it appears that the FCA will be able to change the current 6-year and 3-year rules, even providing for different times in relation to different cases.

What Are The Concerns?

The most obvious concern is about long-term products such as pensions and mortgages where consumers do not find out for years, or even decades, that they have cause to complain.

The Introductory Notes suggest that allowing complaints to be made years, or even decades, later “can cause issues relating to compliance with data retention and record-keeping requirements meaning that relevant records are no longer available”. However, COBS 9.5.2R, states that a firm must retain its records relating to suitability “Indefinitely” if they relate to a pension transfer, pension conversion, pension opt-out, or FSAVC.

This challenges the “data retention” concern because the FCA could require more firms to hold data for longer periods.

There is also a concern that if the FCA are allowed to make different Rules in relation to different cases this will create uncertainty for consumers, firms and the FOS.

The FCA have suggested that the complainant could take a complaint to the civil courts, but appear to have disregarded the costs, cost-risks, burden of proof and time-line for such matters, which is, after-all, one of the primary reasons for the very existence of the FOS.

The Consequences

If the provisions in the Bill are allowed to reach the Statue Book there is a foreseeable risk that consumers who have been mis-sold long-term financial products, such as pensions and mortgages, will not be able to obtain redress through FOS and this would be a significant backwards step in consumer protection.

Narrowing the Financial Ombudsman Test

Through clause 8 the Bill would amend section 228 FSMA so a compulsory-jurisdiction complaint may be determined in favour of the complainant only where, at the time of the disputed act or omission, either an FCA rule was breached or no relevant FCA rule applied, and the act or omission was not fair and reasonable.

It also requires the Ombudsman to take account of FCA opinions, FCA publications and the principle that consumers should take responsibility for their decisions. This risks turning FCA rule compliance into a practical safe harbour. That is problematic where FCA rules are the product of industry lobbying, supervisory compromise or regulatory delay. It also cuts against the Consumer Duty's stated move beyond compliance checklists towards fairness, transparency and customer-centric outcomes.

FCA power over complaints

Clause 7 requires referral to the FCA where a complaint may have significant market implications or where FCA rule interpretation is relevant; the FCA may direct the Financial Ombudsman not to determine the complaint until the direction is revoked.

Clause 12 would allow the FCA to direct firms, the FOS and those acting for them to take, or refrain from taking, action in relation to complaints. In systemic cases this may help coordination, but it creates a serious conflict risk: the same regulator whose rules, supervision or omissions may be central to the complaint can delay independent adjudication.

Redress Schemes displacing FOS Adjudication

Through clauses 10 & 11, the Bill expands section 404 consumer-redress arrangements and requires the Ombudsman to refer complaints back to the respondent where the subject-matter falls to be dealt with under a redress scheme; consumers may not otherwise complain to the Ombudsman once the matter has been dealt with under a scheme.

Schemes may include arrangements imposed by permission variation or agreed between the FCA and a firm. Redress schemes can be valuable, but without safeguards they may become regulator- or firm-controlled substitutes for independent adjudication. Weakened FOS discretion and FCA-centric redress would narrow routes by which consumers can access redress and insulate the regulatory system from scrutiny.

Growth reporting without equivalent consumer-protection reporting

Clause 20 requires each regulator to report annually to the Treasury on how it has advanced the competitiveness and growth objective, including how that objective is embedded in operations, processes and decision-making and how rules and guidance advance it. The Bill does not create a symmetrical annual report on consumer detriment, enforcement delay, redress failures, lobbying contact, secondments, revolving-door appointments or conflicts of interest. That imbalance is central to the risk of regulatory capture.

Changes to the Consumer Credit Act

Introduction

The reform of the UK consumer credit regime is one of the most significant deregulatory projects currently underway in financial services. While the government presents it as a modernisation exercise, there are credible concerns that some of the proposed changes could weaken long-established consumer protections that have existed since the 1970s.

HM Treasury [first announced](#) its intention to reform the Consumer Credit Act 1974 (CCA) in 2022. The core objective is to move much of consumer credit regulation out of primary legislation and into the FCA rulebook. The argument is that the CCA is prescriptive, outdated and difficult to amend, whereas FCA rules can be updated more quickly to reflect changes in the market.

The reform programme accelerated following the enactment of the Financial Services and Markets Act 2023. HM Treasury has [stated](#) that it intends to repeal large parts of the CCA and replace them with FCA rules.

What is being changed?

The government's Phase 1 proposals focus on three main areas:

1. Information and disclosure requirements

The government proposes repealing many statutory requirements covering:

- Pre-contract credit information
- Credit agreement content
- Arrears notices

- Default notices
- Other prescribed consumer communications

These requirements would instead be [rewritten by the FCA](#), primarily in its Consumer Credit Sourcebook (CONC).

2. The sanctions regime

This is potentially the most controversial aspect.

The current CCA contains powerful statutory sanctions that apply when lenders fail to comply with certain requirements. These include:

- Agreements becoming unenforceable without a court order
- Temporary unenforceability until breaches are remedied
- Loss of entitlement to interest and default charges
- Certain criminal offences

HM Treasury has [proposed](#) repealing many of these sanctions and relying more heavily on FCA supervision and enforcement instead.

3. Transfer of responsibility to the FCA

Rather than Parliament prescribing detailed consumer protections, the FCA would be given much greater responsibility for designing and updating the rules governing consumer credit. The FCA [has indicated](#) that its future framework would be built around the Consumer Duty.

What is the basis for consumer protection concerns?

1. Loss of statutory rights and remedies

The CCA is unusual because it does not simply regulate firms; it gives consumers direct legal rights.

For example, if a lender fails to comply with certain disclosure requirements, the consumer can often rely on statutory consequences such as unenforceability.

Under an FCA-rules model:

- The firm may still have breached a rule.
- The FCA may take supervisory action.
- But the consumer may no longer have an equivalent automatic statutory remedy.

This shifts enforcement power away from individual consumers and [towards the regulator](#). This is a concern because FCA enforcement is selective and resource constrained.

2. Replacing hard legal protections with regulatory discretion

The CCA's protections are embedded in legislation passed by Parliament.

Once protections move into FCA rules:

- The FCA can amend them more easily.
- Governments can exert indirect pressure through growth and competitiveness objectives.
- Protections become more vulnerable to future deregulation.

[Critics](#) argue that rights protected by statute are inherently more secure than rights protected only by regulatory rules.

3. The FCA's track record

Many consumer advocates point to scandals involving:

- Interest rate hedging products
- Payday lending
- Mini-bonds
- Pension transfers
- Investment fraud

...and argue that replacing statutory protections with greater FCA discretion requires confidence in the regulator's effectiveness. The issue is that concerns about regulatory capture and supervisory failures means the reforms as proposed could be viewed as concentrating more power in an institution that has not always protected consumers effectively.

4. The Consumer Duty is not a substitute for legal rights

HM Treasury and the FCA frequently point to the Consumer Duty as a safeguard.

The problem is that the Consumer Duty is:

- Principles-based
- Interpretive
- Dependent on FCA supervision

Whereas the CCA often provides:



- Unambiguous, bright-line legal requirements
- Prescriptive obligations
- Defined consumer remedies

A principle-based regime may allow flexibility, but it can also [create uncertainty](#) for consumers seeking redress.

5. Future reforms may reach core consumer protections

HM Treasury has postponed consultation on some of the most complex parts of the Act, including:

- Section 56
- Section 75
- Section 75A
- Sections 140A–140C (the unfair relationship provisions)

Importantly, HM Treasury has not yet proposed abolishing these provisions. However, it [has indicated](#) that these areas remain under consideration.

This matters because:

Section 75

Section 75 Consumer Credit Act gives consumers joint liability rights against credit card providers when suppliers breach contracts or misrepresent goods or services.

It is one of the strongest consumer protections in UK law.

Unfair Relationship Provisions

Sections 140A-140C Consumer Credit Act allow courts to intervene where lender-consumer relationships are unfair.

These provisions have been powerful tools against abusive lending practices.

Many consumer groups would strongly resist any attempt to dilute these rights.

What does this have to do with the Financial Services and Markets Bill [HL]?

The original Financial Services and Markets Bill [HL] was part of the post-Brexit "Future Regulatory Framework" programme.

Its underlying philosophy was:

- Move detailed financial regulation out of legislation.
- Give regulators greater rule-making powers.
- Allow quicker adaptation to market developments.
- Promote UK competitiveness and growth.

Consumer credit reform is effectively an extension of that philosophy. The Treasury's current proposals would continue the transfer of detailed legal requirements from Parliament to the FCA.

Critics argue that this represents a constitutional shift:

Traditional CCA model	Proposed model
Parliament sets detailed consumer protections	FCA sets detailed protections
Consumers have direct statutory remedies	Greater reliance on regulatory supervision
Rights can only be changed through legislation	Rights can be changed through FCA rulemaking
Strong legal sanctions on firms	Greater emphasis on regulatory enforcement; and dependency

Why Parliamentarians may be especially concerned

For Parliamentarians interested in financial misconduct, fraud, regulatory failure and consumer redress, the greatest concern is not necessarily the rewriting of disclosure documents.

It is the possibility that:

1. Statutory rights become regulatory expectations;
2. Automatic consumer remedies become FCA enforcement issues;
3. Parliament loses direct control over consumer protections; and
4. Future governments can more easily weaken protections in the name of growth, innovation or competitiveness.

That concern has been expressed by consumer groups such as [Which?](#), which has argued that key consumer rights, protections and sanctions should remain in legislation rather than being transferred wholesale into FCA rules.

From a consumer-protection perspective, the central question is therefore not whether the CCA needs updating - it probably does - but whether modernisation can occur without losing the statutory rights and enforcement mechanisms that have historically given consumers leverage against powerful lenders.

Calculating the right level of redress

Introduction

There is a legitimate policy concern that a number of regulatory reforms, when viewed together, could gradually weaken the principle that consumers should be fully restored to the position they would have occupied had misconduct not occurred.

That principle - often referred to as *restitutio in integrum* - has long underpinned redress in UK financial services. It is reflected in the approach historically taken by the FOS, which has generally sought to ensure that consumers receive compensation sufficient to put them back into the position they would have been in absent the wrongdoing.

Why this principle matters

The rationale is straightforward. If firms are allowed to retain any financial benefit from misconduct, then unlawful or unfair conduct can remain economically advantageous.

In other words, if a firm:

- gains £1,000 from misconduct,
- pays only £700 in redress,

...then the firm retains a £300 benefit from the wrongdoing.

That creates a moral hazard. Misconduct becomes a manageable business cost rather than a genuine deterrent.

For that reason, effective redress regimes traditionally aim not merely to compensate consumers partially, but to eliminate any economic gain derived from the misconduct; and better still to further penalise the bad actor and thereby create a positive disincentive.

The significance of current reforms

A concern expressed by some is that the UK's regulatory framework is moving towards greater emphasis on:

- Regulatory discretion
- Regulatory efficiency
- Economic growth and competitiveness objectives
- Large-scale administrative redress schemes

...rather than individualised determinations of loss.

At the same time, reforms arising from the post-Brexit Future Regulatory Framework and the Financial Services and Markets Act 2023 have increased the power of regulators relative to Parliament and altered relationships between institutions.

This creates a risk that redress becomes increasingly shaped by policy considerations rather than strict compensatory principles.

The importance of FOS independence

Historically, one of the strengths of the FOS has been its relative independence from both government and the FCA.

As explained elsewhere, the ombudsman's statutory test is not simply whether a firm breached FCA rules. Rather, it determines what is "fair and reasonable in all the circumstances."

That has often enabled outcomes that go beyond narrow regulatory compliance.

Proposals to align the FOS more closely with FCA policy and rules could reduce the scope for independent judgments based on fairness.

The concern is not necessarily that such a change will occur, but that if the FOS becomes more tightly integrated into the FCA's regulatory framework, there may be less room for it to pursue redress outcomes that differ from broader regulatory policy objectives.

For consumers, that matters because the FCA's responsibilities are increasingly balanced between:

- Consumer protection,
- Market integrity,
- International competitiveness,
- Economic growth.

Those objectives do not always point in the same direction.

The car finance example

The ongoing motor finance commission scandal provides a useful illustration of why these concerns arise.

One notable feature of the proposed industry redress discussions is the emphasis on ensuring that consumers do not receive a "windfall gain."

At one level, that is unobjectionable. Redress should compensate for loss rather than create profit.

However, some commentators note an asymmetry.

The framework explicitly guards against consumers receiving more than their loss, yet there is often less discussion of ensuring that consumers are not undercompensated.

The practical question therefore becomes:

Has the consumer genuinely been restored to the position they would have occupied had the misconduct not occurred?

If the answer is no, then the redress falls short of traditional compensatory principles.

The interest-rate issue

The concern becomes particularly acute when considering compensatory interest.

Suppose a lender improperly benefits from consumer funds over many years.

If compensation includes interest at a rate substantially below:

- Inflation
- Commercial borrowing costs
- The firm's own cost of capital

...then the lender may retain a significant economic advantage even after paying redress.

Critics argue that this resembles a situation in which firms have effectively obtained long-term financing from consumers at rates unavailable in normal capital markets.

If a lender's normal funding costs are materially higher than the compensation interest it ultimately pays, then the lender may have enjoyed a net economic benefit throughout the period of misconduct.

In that scenario, redress compensates consumers only partially while failing fully to strip the gains from the wrongdoer.

Why this matters beyond car finance

The wider concern is that a shift towards regulatory pragmatism could alter the philosophy of redress itself.

Traditionally, the hierarchy has been:

1. Consumer made whole
2. Firm stripped of gains
3. Market confidence restored

Some fear a new hierarchy could emerge:

1. Deliver operationally manageable redress
2. Preserve market stability
3. Limit industry costs
4. Compensate consumers within those constraints

If that occurred, redress would cease to be principally about restoring consumers to their pre-harm position and instead become a balancing exercise between competing policy objectives.

The fundamental question

The key question raised by this aspect of the reforms is therefore not whether consumers should be compensated.

It is whether the UK's financial redress system will continue to be anchored to the principle that:

A consumer who suffers financial harm should be restored, as nearly as possible, to the position they would have occupied had the misconduct never occurred.

If that principle weakens, even incrementally, there is a risk that firms may continue to retain part of the economic benefit of misconduct. In that situation, redress ceases to function solely as compensation and becomes, in effect, a negotiated sharing of losses between the wrongdoer and the victim.

That is the central concern underlying many criticisms of current financial regulatory reforms and of certain aspects of the proposed motor finance compensation arrangements.

Dilution of post-GFC accountability; changes to SMCR

Introduction

This part of our Briefing Note relates to clauses 31 to 35.

The Senior Managers and Certification Regime (SMCR) has its roots in the Financial Crisis of 2008, albeit that it took 6 years to develop and implement.

It is a 3-part regulatory framework for the UK financial services industry designed to improve accountability and raise standards of conduct among individuals working in financial firms.

The three parts are:

1. Senior Managers Regime (SMR) - This applies to the most senior decision-makers in a firm. Each senior manager must have a clear "Statement of Responsibilities" documenting what they are personally accountable for. If something goes wrong in their area, they can be held directly responsible unless they can demonstrate they took reasonable steps to prevent it.
2. Certification Regime - Covers a broader group of staff whose roles could pose a risk of significant harm to the firm or its customers (e.g. traders, advisers). Firms must annually certify that these individuals are "fit and proper" to perform their roles.
3. Conduct Rules - A set of basic behavioural standards that apply to almost all employees in a regulated firm, not just senior staff.

How Well Was It Worked?

It is disappointing to note that with the exception of a few notable cases, such as Jes Staley (former CEO of Barclays, fined £642,430); Carlos Abarca (former CIO of TSB, fined £81,620) and Iain Mark Hunter (former CEO of Wyelands Bank, fined £118,808), there have been very few cases pursued by either the FCA or PRA on the basis of SMCR.

This extremely low level of enforcement is widely seen as likely to hamper the competitiveness of the UK financial services markets by not providing a sufficient deterrent to unsound and unsafe financial conduct. Commentators note that the US, despite lacking an equivalent regime to SMCR, has imposed higher sanctions on both companies and individuals.

What is Proposed in the Bill?

Changes to SMCR are taking place in two stages.

The Phase 1 changes are largely administrative, so the FCA and PRA have been able to make these changes without needing to amend legislation. They cover such matters as the period of time allowed to submit Senior Manager applications and the need to report changes to Statements of Responsibilities within a specified period of time.

The Phase 2 changes, which are facilitated by the Bill, are more significant. Examples of the possible outcomes are:

- Removing the Certification Regime from legislation so that it can be recast in regulator rules
- Allowing the regulators to specify circumstances in which firms may appoint certain Senior Managers without pre-approval by the regulators
- Repealing provisions relating to Statements of Responsibilities.

It will be important to thoroughly review the exact workings and carefully consider the true scope and any wider implications as the Bill progresses through its various stages.

Furthermore, it must be said that repealing those statutory safeguards before a robust replacement is in force risks recreating the accountability firewall that post-crisis reforms were designed to remove.

The Consequences

If the provisions in the Bill are allowed to reach the Statute Book it is likely they will reduce the level of individual accountability which was one of the major reasons for establishing SMCR after the financial crash of 2008. This would be a significant backwards step in consumer protection.

“Fair and Reasonable”

Introduction

The principle of “Fair and Reasonable” is at the very heart of the purpose of the Financial Ombudsman Service (FOS).

Section 228(2) of the Financial Services & Markets Act 2000 (FSMA 2000) 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. (our emphasis).*

The Financial Conduct Authority (FCA) Handbook expresses this regulatory obligation in DISP 3.6.4R (the section of the Handbook that sets out how FOS should perform its role as an Alternative DISPUTE Resolution Service) by specifically requiring FOS “to take account of the relevant laws and regulations, regulators' rules, guidance and standards, codes of practice etc.” The words “to take account of” are very significant because it allows FOS to make decisions that are not bound by strict adherence to the law or regulations, and this is vitally important for consumer protection.

FOS exercise their responsibility to make decisions that are “fair and reasonable” in response to a variety of circumstances, two of which are illustrated in the case studies shown below.

What is Proposed in the Bill?

The new Bill proposes replacing the current wording on Section 228(2) with the following:

Section 8 - Determination of complaints under the compulsory jurisdiction (pages 10-11).

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 228 (determination of complaints under the compulsory jurisdiction of the ombudsman scheme), for subsection (2) substitute -

(2) A complaint may be determined in favour of the complainant **only if**, in the opinion of the Financial Ombudsman -

(a) at the time the disputed act or omission occurred, either -

(i) **the act or omission did not comply with an FCA rule** applying to the respondent, or

(ii) there was no FCA rule applying to the respondent that related to the act or omission, and

(b) the disputed act or omission was not fair and reasonable in all the circumstances of the case.

(our emphasis)

What Will This Mean?

The new wording means that if, for example, the bank has complied with the relevant FCA Rule, which in this case is that the bank will not be required to consider a complaint because it was not made within 13 months, then FOS must find that the actions of the bank were “fair and reasonable” and decline the complaint.

The new FPS-RR Rules created an unjust outcome which FOS can over-ride under FS&MA 2000 but which they will not be allowed to over-ride under the Bill.

What Needs To Happen?

There are at least two ways of addressing this substantial reduction in consumer protection.

The new wording which is set out above and presently shown on pages 10 & 11, under “Section 8 - Determination of complaints under the compulsory jurisdiction” could be removed from the Bill, leaving the existing provisions in FS&MA 2000 in place, i.e. for there to be no change in the way that FOS are able to make decisions that are fair and reasonable.

Alternatively, or additionally, the Bill could be amended to oblige the FCA to create a new Rule, in the Handbook, that requires firms to obey the FCA’s Principles for Business. Principle 1 says that: “A firm must conduct its business with integrity and Principle 6 says that: “A firm must pay due regard to the interests of its customers and treat them fairly.” So, if, for example, a bank lies to its customer or does not treat a customer fairly, the FOS could consider a complaint for the breach of the relevant FCA Principle.

The Consequences

If the changes proposed in the Bill are allowed to reach the Statue Book, without the suggested additional provision of a new Rule, they will seriously damage Consumer Protection by making the FOS into a “Rule Enforcer”, giving it no scope at all to consider whether a firm’s action have created an unfair or unjust outcome.

Why Is This So Important?

Case Study A - Sarah’s Unauthorised Transactions

In this case the Regulations - PSR 2017 - are fundamentally fair and reasonable but the specific circumstances of the individual case meant that complying with the Regulations would have resulted in an outcome that didn’t follow natural justice.



PSR 2017, Regulation 74, requires the Payer to notify their bank no later than 13 months after an unauthorised payment transaction. Sarah did not notify her bank for nearly 6 years for the simple reason that she did not know about the transactions, for reasons that will be explained.

Sarah (not her real name) was just 16 when her father passed away and she became an orphan when her mother passed away a few months later. There had never been very much money in the family, so she had no expectation of a significant inheritance. Sarah and her family knew the owner of the riding stables (Mrs S) where she both rode and sometimes helped out, so it made sense for her to go live there until she went to university in two years time. Mrs S acted 'in loco parentis' and looked after Sarah's financial affairs.

Just after she turned 21 Sarah received an unexpected letter saying that she was to receive a sum of money from an investment that her father had made for her when she was young. This resulted in her discovering that she had actually inherited over £60,000 from her parents' estates when she was 16 and that Mrs S had stolen it through a series of unauthorised transactions on Sarah's bank account.

FOS correctly decided that, subject to an agreed deduction for a proportion of the money that was spent on Sarah, such as driving lessons, it was "*fair and reasonable in all the circumstances of the case*" to instruct the bank to reimburse her, which they did.

Case Study B - The FPS Reimbursement Requirement

In this case the Mandatory Reimbursement Requirement, which was implemented by the FCA in October 2024 under the new title of the FPS Reimbursement Requirement (FPS-RR), is fundamentally unfair and unreasonable for reasons that will be explained.

FPS-RR includes a Rule that requires a victim of an Authorised Push Payment Fraud (APPFraud) to report it to their bank within 13 months of making the payment.

But what if a consumer takes out a 2 or 3-year investment only to find out at the end of the term, when they don't get their money back, that the investment provider is actually a fraudulent or cloned entity? Their bank can decline their claim for reimbursement because it was not made within 13 months. The rather obvious point being that they could not have reported it within 13 months because they wouldn't have known that it was fraud until the end of the term.

We have been provided with figures by Refundee, a leading a Claims Management Company, who have reviewed 594 cases of investment fraud where the investment was made before FPS-RR was introduced and have asked the question

“What would have happened to these cases under the FPS Reimbursement Requirement?”

They found that 66% of them, with average losses of £46,618 (i.e. 400 individuals or families with losses totalling £18,000,000) were likely to have been declined by their bank resulting in complaints to FOS.

The current rules, under FS&M 2000, allow FOS to decide that the FPS-RR rule was unfair and unreasonable, and uphold the complaint.

The Bill will require FOS to decline all of these complaints because the banks acted in accordance with the FPS-RR Rules. This is clearly unfair and is a life-changing reduction in consumer protection.

The key point of course is that the proposed changes to ‘Fair and Reasonable’ significantly weaken consumer protections and mean that the FOS may have to find for the institution against the consumer even where they’ve broken the law, broken a contract, breached the Consumer Duty or any other of the FCA’s Principles for Business, provided no FCA Rule was explicitly broken.

As such, the FOS will be rendered by statute incapable of determining that consumers have been wronged and of recommending they be paid redress in situations in which any reasonable person would conclude that natural justice would be harmed and the organisation rendered impotent by it being downgraded from an ombudsman in the true sense to just being an enforcer of the FCA’s rules.

As explained, one solution could be for an amendment to be introduced that would require the FCA to create a rule obliging firms to obey the FCA’s Principles for Business. This change would mean that breaches of the Principles would also constitute breaches of the Rules, and therefore would give rise to a right of the FOS to find for wronged consumers and recommend the payment to them of compensation.

If only the FCA introduced a Duty of Care as Parliament wanted

Much of the Bill is about stripping away red tape, bureaucracy and friction from the regulatory system, in an attempt to lighten the regulatory burden. It is ironic that the FCA missed a golden opportunity to do exactly that when it failed to introduce a Duty of Care, when the Lords tasked it with doing so.

As a reminder, following work done in the Lords, Section 29 of the Financial Services Act 2021 placed an obligation on the FCA to consult on the question of whether there should be established a general rule that authorised persons should owe a duty of care to consumers.

The legal obligation

Section 29 of the 2021 Act states (*inter alia*):

“29. FCA rules about level of care provided to consumers by authorised persons

(1) The Financial Conduct Authority must carry out a public consultation about whether it should make general rules providing that authorised persons owe a duty of care to consumers.

(2) The consultation must include consultation about—

(a) whether the Financial Conduct Authority should make other provision in general rules about the level of care that must be provided to consumers by authorised persons, either instead of or in addition to a duty of care,

(b) whether a duty of care should be owed, or other provision should apply, to all consumers or to particular classes of consumer, and

(c) the extent to which a duty of care, or other provision, would advance the Financial Conduct Authority’s consumer protection objective (see section 1C of the Financial Services and Markets Act 2000).”

It should be noted that section 29(2)(b) specifically required there to be conducted a consultation on whether a duty of care should be owed by authorised persons to consumers

However, the FCA failed to consult on a Duty of Care, choosing instead to consult on what it called a Consumer Duty.

Various stakeholders including the Bar Council expressed concern that the FCA had not complied with what Parliament had asked for.

Nevertheless the FCA persisted with its consultation on its Consumer Duty and went on to introduce the Consumer Duty.

The Difference between a Duty of Care and a Consumer Duty; and why it matters

The Bar Council's [first class response to the FCA's consultation](#) sets out the difference between a Duty of Care and the Consumer Duty, and why it matters.

The key point is that the term “duty of care” has a very specific meaning in law. It creates an obligation on a party (A) which is owed to another party (B), breach of which creates a legal liability on the part of A to pay damages to B, in the event that B has suffered loss as a result of the breach of duty. It is clear that what section 29(2)(b) requires the FCA to do is to consult on whether such a duty ought to be imposed. To say (as paragraph 2.1 in [the FCA consultation](#) says) that “‘duty of care’ may have different meanings” is, simply, wrong. It has only one meaning in law.

Whereas the FCA's Consumer Duty is not a duty of care, because:

- Principle 2 does not create a duty of care because breach of the FCA's [Principles for Business](#) does not give rise to a right of private action by parties injured by a breach thereof;
- Section 49 of the Consumer Rights Act 2015 does not create a general duty of care such as envisaged in section 29, because, while it does give rise to a right of private action where a consumer is a party to a contract, that right does not extend to a consumer who is not a party to a contract but where the service provider could reasonably have foreseen that a consumer would be harmed by its actions.

To give just one example, should a firm authorised by the FCA approve a promotion for an unauthorised firm which then uses it to attract customers, if those consumers subsequently discover that the promotion was misleading, the Consumer Rights Act does not give them a right of action against the firm that approved it (because there is no contractual relationship between the consumers and the authorised firm), whereas a duty of care founded in tort (or, in Scotland, delict) would give such a right of action. This is the very issue which was addressed and solved by the articulation in the law of tort and of delict of the neighbourhood principle – that liability is not restricted to an injured party with whom there is a contractual relationship, but extends to all those who might reasonably be foreseen as likely to be injured by one's actions - as long ago as 1932 in *Donoghue v Stevenson* [1932] AC 562 (as it happens, in a case which involved a consumer, though the principle is of universal application);

The major advantage which consumers would derive from the imposition of a duty of care is that it would give to consumers who have suffered reasonably foreseeable loss as a result of the actions or inactions of authorised persons the right to sue them for damages, whereas under the FCA's Consumer Duty consumers would have no right to sue and any hopes they may have of receiving compensation would continue to be dependent on the FCA either



imposing a restitution order under the powers conferred upon it by the [Financial Services and Markets Act 2000](#) or in negotiating a voluntary redress, both of which are vanishingly rare occurrences.

Had a Duty of Care been consulted on and introduced we would now be in a position to cast away hundreds if not thousands of pages of financial regulation, because the Duty of Care would have enabled a direct route to justice for harmed consumers; and of course the deterrent value to organisations considering malpractice would have been substantial.

In recent years, there have been far too many instances of consumers being treated badly by some in the industry, and of them being expected to shoulder some or all of the resulting losses. Rebuilding confidence in the sector will require the introduction of bold measures designed to make both the industry and its conduct regulator more accountable to consumers, both in governance terms and financially. The creation of a duty of care, which by definition includes a Private Right to Action, is a necessary step along this path.

Is it too late to introduce a Duty of Care now?

No, if Parliament decrees that is what is wanted.

Would a Statutory Fiduciary Duty be the best way forward?

Introduction

An alternative approach to achieving a similar outcome to the benefits of a legally enforceable Duty of Care with a Private Right to Action would be to introduce a Statutory Fiduciary Duty. Such a move would elevate relevant parts of the UK's financial services consumer protection legislation to be on a par with parts of the regulatory framework in the USA where a fiduciary duty applies.

Amendments could be introduced to define, and make enforceable, a fiduciary duty in retail and small-business financial services. The proposal would not be to make every bank, insurer or lender a trustee. It would be to impose a clear statutory duty of loyalty where a firm undertakes to act for or on behalf of a customer, exercises discretion or control over customer assets, gives advice on which reliance is reasonably placed, or receives undisclosed benefits in a relationship of trust and confidence.

A new clause could be added after Clause 12 of the Bill, amending FSMA 2000 to insert a statutory definition of "fiduciary capacity" and "fiduciary duty"; make breach actionable by consumers and eligible complainants; and require the Financial Ombudsman Service and any consumer redress scheme to treat breach of fiduciary duty as an independent basis for

redress. This would give Parliament, rather than only the FCA, a clear standard of loyalty against conflicts, hidden commissions, self-dealing and regulatory-perimeter avoidance.

Why the amendment is needed now

The Bill currently contains no fiduciary definition. Its Part 2 rewrites significant parts of the complaints and redress architecture: Clause 7 creates a mechanism for referral of matters to the FCA and FCA opinions on rules; Clause 8 would restrict the FOS's ability to determine a compulsory-jurisdiction complaint in favour of a complainant to cases where an FCA rule was breached, or where there was no relevant FCA rule, and the disputed act or omission was not fair and reasonable; Clauses 10 and 11 reframe consumer redress schemes. The statutory fiduciary amendment should therefore be linked expressly to the FOS and redress provisions, so rule compliance cannot become a safe harbour where the real problem is divided loyalty or undisclosed profit.

Repeated scandals are not isolated events but evidence of structural weakness, including unclear accountability, weak routes to redress, regulatory perimeter gaps, and consumer protection being subordinated to institutional interests.

The FCA's Consumer Duty is a worthwhile and important baseline, but it is not enough. FCA guidance states that the Consumer Duty sets the standard of care in retail financial markets and requires firms to act to deliver good outcomes for retail customers, with cross-cutting rules to act in good faith, avoid foreseeable harm and support financial objectives.

However, the same guidance also states that the Duty does not create a fiduciary relationship where one does not otherwise exist and does not apply retrospectively to past actions. That is precisely the gap Parliament can fill prospectively and, for redress purposes, by ensuring that fiduciary principles are not displaced by narrow readings of FCA rules.

Legal foundation: what should be codified

English law treats fiduciary duty as a duty of loyalty: a fiduciary is someone who has undertaken to act for or on behalf of another in a matter in circumstances giving rise to trust and confidence. The core obligation is not merely care and skill; it is loyalty, including avoiding conflicts, not profiting from the fiduciary position, and obtaining fully informed consent where consent is capable of curing the conflict.

Modern financial-services cases show why statutory clarity is needed. *Hurstanger v Wilson* and *Wood v Commercial First* demonstrate that credit brokers and mortgage brokers can owe fiduciary-type or disinterested duties where customers rely on them and commissions are not fully disclosed.

Whereas the motor-finance litigation culminating in *Hopcraft/Johnson/Wrench v Close Brothers* and *MotoNovo* illustrates the opposite point: courts may be reluctant to impose

full fiduciary or bribery liability across ordinary sales/credit-broking relationships, even where undisclosed commission creates unfairness under consumer-credit statute. The legislative lesson is that Parliament should define the loyalty standard where financial firms occupy trusted advisory, discretionary or intermediary positions, rather than leaving the question to expensive case-by-case litigation.

Statute already offers models. Companies Act 2006 ss.170–177 codifies directors’ duties while preserving interpretation by common law and equitable principles; Trustee Act 2000 s.1 imposes a calibrated duty of care; Consumer Credit Act 1974 s.140A gives courts an unfair-relationship jurisdiction. FSMA can adopt the same technique: define the core fiduciary duty in statute, preserve the equitable principles behind it, and make remedies available through courts, FOS and redress schemes.

Framework for a statutory fiduciary duty

- Targeted trigger: the duty should arise only where the firm acts in a fiduciary capacity - for example advice, discretionary management, control over assets, acting as intermediary/agent, pension or investment administration, referrals in a relationship of reliance, or receipt of third-party benefits connected with the customer’s transaction.
- Protected persons: “retail customer” should be aligned with FCA terminology, but coverage should also include “eligible complainants” for FOS purposes, so micro-enterprises, small businesses, small charities and trustees are not excluded.
- Core duties: good faith, best interests within the scope of the mandate, no conflict, no undisclosed profit, no misuse of information/opportunity/property, full disclosure, record keeping, and prompt redress/accounting.
- Informed consent: general disclosure in standard terms should not be enough. Consent should be prior, specific, freely given, in a durable medium, and based on clear disclosure of the nature, source, amount or calculation basis of the benefit/conflict, plus the consequences for the customer.
- Enforcement: breach should be actionable by the customer, enforceable by the FCA, and expressly within FOS/redress-scheme jurisdiction. Terms excluding the duty for consumers or eligible complainants should be void.

Parliamentary Effect

The idea of a Fiduciary Duty being introduced to upgrade the quality of the UK's financial services regulatory framework is not new. As far back as 2012, the FCA's own Consumer Panel published [this paper](#) advocating for the introduction of a statutory Fiduciary Duty.

The rationale for its introduction is as strong now as it was then.

This introduction of a suitable amendment to introduce a fiduciary duty would not eliminate commercial risk or make firms guarantors of every financial outcome. It would instead identify a narrower category of relationships where loyalty is expected and where conflicts, commissions and self-interest create the highest risk of consumer detriment. It would strengthen the Bill by making fiduciary breach a matter of statutory law, preserving FOS independence, improving redress, and giving the FCA a clear rule-making mandate.

Most importantly, it would translate the post-Global Financial Crisis lesson into statutory form: where financial firms are trusted to advise, manage, arrange or intermediate for consumers, loyalty must be owed to the person whose money, home, pension, business or financial future is at stake.

Administrative complaint-handling does not equate to justice

Introduction

The Bill is presented as modernising the financial redress system. But a modernised system is not necessarily a fairer system. A complaints architecture can be faster, more predictable and more efficient while still failing to answer the real question, consider the key evidence, escalate systemic harm or deliver compensation to victims.

The central test should be:

Will the Bill help harmed people get the real issue investigated, decided, escalated where necessary and put right - or will it merely modernise the machinery that is failing them?

Complaint closure is not the same as justice

A complaint can be closed without the real issue being answered.

A redress system should not be judged only by:

- The number of complaints closed
- Speed of handling
- Internal process compliance
- Consistency of outcomes
- Administrative efficiency

Those are process metrics. They do not show whether justice was done.

The system should also be judged by justice-facing metrics:

- Was the complainant's real issue identified?
- Was the key evidence actually considered?
- Was the central legal or regulatory issue determined?
- Were unresolved issues clearly stated?
- Were repeated patterns escalated?
- Was redress actually paid?
- Did victims receive full compensation or were they left short?
- In the final analysis, was trust and confidence in 'the system' restored, or lost?

Evidence must be demonstrably considered

Consumers, SMEs and investors often submit evidence over long periods, sometimes across multiple departments and even regulators/statutory bodies.

A serious procedural weakness arises where a regulator or redress body can say evidence was "received", "logged" or "shared", but cannot show:

- What evidence was considered
- Who considered it
- When it was considered
- Whether historic evidence formed part of the decision-making record
- Whether the evidence influenced the outcome

That undermines confidence in the complaints process.

The public should not have to guess whether the evidence they sent was actually read.

Access to determination

One of the deepest problems in financial redress is that the real issue may never be determined.

A complaint may raise a decisive legal, regulatory or classification question. But instead of that question being answered, the case may be narrowed, diverted, paused, settled, time-limited or closed.

That creates false finality:

The system says the matter is over even though the main question was never answered.

The Bill should prevent unresolved issues from being treated as resolved merely because a process has ended.

Systemic escalation

Where repeated complaints or FOS decisions reveal the same pattern of harm, the issue should not remain trapped inside individual complaint files.

The system should ask:

- Who else may have been affected?
- Did the same conduct occur repeatedly?
- Was the FCA notified?
- Did the FCA respond?
- Was there a reasoned decision not to act?
- Was Parliament informed where the issue was systemic?

A proper redress system should not merely close individual complaints. It should identify patterns and escalate them.

Remedy-capacity

Rights and determinations are meaningless if no one can pay.

The Bill's reforms to appointed representatives and principal firms should therefore test not only whether a firm is fit to act as principal, but whether it has the financial capacity to meet the liabilities it assumes.

The public question is simple:

If a firm is allowed to carry risk to consumers, is there someone financially capable of paying redress when that risk crystallises?

Without remedy-capacity, consumers may be left dependent on parent-company goodwill, regulatory discretion, insurance gaps or limited compensation schemes.

Redress actually reaching victims

Regulatory action is not the same as victim repair.

A fine is not the same as compensation. A public censure is not the same as redress. A redress scheme is not the same as full justice unless Parliament can see:

- How much consumers lost
- How much redress was assessed
- How much was actually paid
- Who paid it
- What shortfall remains
- Whether victims released claims
- Whether fines went to victims or to the Treasury.

Parliament should not be told only that action was taken. It should be told what happened to the people harmed.

The core problem

The financial consumer protection system should be judged by its output, not merely by whether its constituent parts function as designed in isolation.

If the FCA, FOS, courts, FSCS, Treasury, redress schemes and sectoral regulators each perform a narrow function, but the citizen still cannot obtain evidence, determination, escalation, enforcement and remedy, then the system as a whole has failed.

The Bill should be tested against that whole-system failure.

Core message

A proper redress system resolves the real problem. A containment system processes the complaint, narrows the issue, closes the file, and avoids admitting that the problem may go wider.

Should the Chief Ombudsman be responsible for all determinations?

Introduction

The proposal contained in the Bill is to "make structural changes to the Financial Ombudsman Service (FOS) to provide greater consistency in decision making by giving the Chief Ombudsman overall responsibility for FOS determinations."

This proposal raises significant concerns regarding operational effectiveness, independence, accountability, and the quality of decision-making.

The proposed reform risks creating a single point of failure within the Financial Ombudsman Service. It would concentrate influence in one office, create operational bottlenecks, expose the Chief Ombudsman to increased external pressure, weaken the independence of individual ombudsmen, and risk damaging staff morale and retention.

While improving consistency is a legitimate objective, centralising responsibility for all determinations is neither necessary nor desirable. A stronger system of quality assurance, peer review, transparency, and accountability would achieve the objective of greater consistency without sacrificing the independence and effectiveness that underpin confidence in the Financial Ombudsman Service.

A further constitutional argument is that the ombudsman model is deliberately designed to avoid decision-making power being concentrated in a single individual. The proposal arguably moves the FOS away from a plural, tribunal-like structure towards a chief executive

model of adjudication. That risks undermining the very features - independence, impartiality, distributed expertise, and resilience - that Parliament originally intended the ombudsman system to provide.

While consistency is a legitimate objective, concentrating responsibility for all determinations in the hands of a single individual risks creating problems that outweigh any perceived benefits, as elaborated on here:

Creation of a Significant Operational Bottleneck

The most immediate concern is that the proposal would create an obvious operational "pinch point" within the FOS.

The FOS handles tens of thousands of complaints each year. If the Chief Ombudsman were to have overall responsibility for every determination, whether through formal sign-off, oversight, approval, or accountability, the role would inevitably become a bottleneck in the decision-making process.

No single individual, regardless of ability or experience, can realistically oversee such a volume of cases without creating delays. The result could be:

- Slower complaint resolution times
- Increased case backlogs
- Longer waiting periods for consumers and firms
- Reduced operational efficiency

At a time when concerns already exist regarding the FOS' complaint-handling times, introducing a further layer of centralised oversight risks exacerbating delays rather than improving outcomes.

Excessive Concentration of Influence and External Pressure

The proposal would also concentrate significant influence over outcomes in the hands of a single office-holder.

Currently, decision-making responsibility is distributed among ombudsmen, which provides an important safeguard against undue influence and reduces the risk that any one individual becomes the focus of lobbying or pressure.

If the Chief Ombudsman becomes the ultimate decision-maker or is seen as having responsibility for all determinations, there is an obvious risk that external stakeholders—including large financial firms, industry bodies, government departments, and in particular the FCA - could seek to exert influence and pressure on that individual.

Even where no improper conduct occurs, the perception that one individual can influence the direction of thousands of complaint outcomes may undermine public confidence in the system.

The proposal therefore creates both:

- A practical risk of increased external pressure
- A reputational risk that the FOS will be perceived as more vulnerable to institutional or industry influence

This is particularly concerning given that the FOS exists to provide consumers with an independent alternative to the courts.

Reduced Independence and Impartiality

A central strength of the current ombudsman model is that decision-making authority is distributed among multiple independent ombudsmen exercising professional judgement on the facts of individual cases.

Concentrating responsibility in the Chief Ombudsman risks creating a more hierarchical structure in which decision-makers feel compelled to align their reasoning with perceived leadership preferences.

Such a model could weaken:

- Independent judgement
- Diversity of legal and evidential reasoning
- The ability of ombudsmen to challenge prevailing views
- Public confidence that each case is assessed on its individual merits

Consistency should not be confused with uniformity. A degree of variation is inevitable - and often desirable - when different cases present different facts and circumstances.

Indeed, excessive centralisation may encourage formulaic decision-making at the expense of fair and nuanced case assessment.

Increased Risk of Staff Demoralisation and Turnover

The proposal also risks damaging staff morale.

Experienced ombudsmen are recruited because they possess judgement, expertise, and the ability to make independent decisions. If responsibility is effectively transferred upwards to the Chief Ombudsman, some staff may feel disempowered and reduced to implementing decisions rather than exercising professional judgement.

This could result in:

- Lower morale
- Reduced job satisfaction
- Greater staff turnover
- Difficulty attracting high-quality, independently-minded decision-makers

Over time, this could weaken institutional expertise and further undermine decision quality.

Consistency Must Not Come at the Expense of Accountability

The rationale for the proposal appears to be improving consistency. However, consistency is not synonymous with correctness.

It is well recognised that some ombudsman decisions are wrong, unfair, inadequately reasoned, or inconsistent with previous decisions. Consumers, firms, and representatives frequently identify examples where decisions appear flawed and contradictory.

The solution is not to centralise authority in one individual.

Rather, there should be robust quality-control mechanisms that allow poor decisions to be identified, challenged, and corrected.

Possible approaches include:

- Enhanced peer review of decisions
- Independent quality assurance panels
- Regular audits of determination quality
- Greater publication of decisions and reasoning
- Improved mechanisms for reviewing potentially flawed determinations
- Stronger internal escalation procedures where significant issues of principle arise.

These measures would improve consistency and quality while preserving the distributed decision-making model that supports independence and impartiality.

A Better Alternative

A more proportionate approach would be to maintain individual ombudsman responsibility for determinations while strengthening oversight, training, guidance, and quality assurance processes.

The Chief Ombudsman should set strategic direction, establish decision-making frameworks, monitor consistency trends, and oversee quality-control systems - not become the effective gatekeeper for every complaint outcome.

Such an approach would preserve:

- Operational efficiency
- Independence of decision-making
- Staff empowerment
- Public confidence
- Institutional resilience

Concerns Regarding FCA/FOS Thematic Reviews and Guidance Reports

Introduction

The proposal to require the Financial Ombudsman Service (FOS) and the Financial Conduct Authority (FCA) to publish regular thematic reports explaining how the FOS is likely to consider particular categories of complaint is presented as a means of improving clarity, consistency, and transparency.

While greater transparency is, in principle, a legitimate objective, there are potential risks that such reports could have unintended consequences that undermine consumer protection and the fundamental purpose of the ombudsman scheme:

Risk of Creating a "Painting-by-Numbers" Defence Strategy for Firms

One of the principal concerns is that regular thematic reports could effectively provide firms with a detailed roadmap showing how to defend complaints in a manner most likely to satisfy the FOS.

In theory, such reports are intended to help both consumers and firms understand how complaints are assessed. In practice, however, large financial institutions possess considerably greater resources, legal expertise, compliance functions, and specialist complaint-handling teams than individual consumers.

As a result, firms may be better placed to exploit thematic guidance by:

- Tailoring complaint responses to fit the language and reasoning favoured by the FOS
- Producing standardised "template" responses designed to meet the minimum expectations identified in thematic reports
- Framing evidence and arguments in ways that mirror previous FOS reasoning
- Developing increasingly sophisticated complaint-rejection processes based on published FOS approaches

The danger is that thematic reports become less a tool for transparency and more a blueprint for defensive complaint management.

Over time, this could create a system in which firms become increasingly adept at navigating the FOS process, while consumers remain at a significant informational disadvantage.

Risk of Deterring Legitimate Consumer Complaints

The publication of thematic reports may also discourage consumers from pursuing complaints. Many consumers already find the complaints process intimidating and assume that financial firms possess greater expertise and influence. If thematic reports appear to indicate that certain categories of complaint are unlikely to succeed, consumers may conclude - correctly or incorrectly - that there is little point in pursuing their case.

This creates a risk that:

- Consumers abandon potentially meritorious complaints
- Vulnerable consumers become discouraged from seeking redress
- Firms face less accountability for poor conduct
- Access to justice is weakened

The effect may be particularly pronounced where consumers have unusual circumstances that do not fit neatly within the broad categories discussed in thematic reports.

The mere perception that the outcome of a complaint has effectively been predetermined may discourage individuals from exercising their right to seek independent adjudication.

Undermining the Principle that Every Complaint Must Be Considered on Its Own Facts

A more fundamental concern is that the proposal risks downplaying one of the central principles of ombudsman justice: namely, that every complaint should be assessed on its individual facts and circumstances.

The FOS was not established to operate as a court applying rigid precedents. Parliament deliberately created a more flexible dispute-resolution mechanism capable of considering fairness, reasonableness, and the specific circumstances of individual consumers.

Thematic reports may unintentionally encourage:

- Greater standardisation of outcomes
- Formulaic decision-making
- Increased reliance on broad categories rather than individual circumstances

- Reduced consideration of unique or exceptional facts

The reality is that complaints involving ostensibly similar products, firms, or regulatory issues often differ materially in their facts.

A consumer's vulnerability, financial sophistication, health, age, personal circumstances, interactions with the firm, risk appetite or the specific conduct of individual employees may all be highly relevant to determining what is fair and reasonable in a particular case.

There is a danger that thematic guidance creates an expectation that complaints falling within a particular category should generally produce similar outcomes, thereby weakening the flexibility that has historically been one of the FOS's greatest strengths.

Risk of Informal Precedent Developing Outside Parliamentary Intent

There is also a broader constitutional concern.

Although FOS decisions are not intended to create binding precedent, regular thematic reports could gradually acquire quasi-precedential status.

Firms, complainants, claims management companies, lawyers, adjudicators, and ombudsmen may increasingly treat thematic reports as authoritative statements of likely outcomes.

Over time, this could result in:

- Informal precedent developing through guidance documents
- Reduced discretion for adjudicators and ombudsmen
- Pressure to align decisions with published themes
- Less flexibility to reach different conclusions where fairness requires it

This would represent a significant shift away from the original purpose of the ombudsman scheme, which was designed to provide flexible and accessible dispute resolution rather than a parallel system of precedent-based adjudication.

The Risk of Benefiting Repeat Offenders

The proposal may inadvertently strengthen the position of repeat players - the banks, insurers, investment firms and their legal advisers - who engage with the FOS daily and can rapidly adapt to published guidance. Consumers, by contrast, are typically one-time users of the scheme. The more predictable and codified the system becomes, the greater the advantage enjoyed by sophisticated institutions over individual complainants. This risks creating an imbalance that is contrary to the FOS's original purpose as an accessible, consumer-focused redress mechanism.

A Fundamentally Unfair Approach to Disclosure of Evidence

Introduction

The FOS has broad powers to obtain information from firms. During an investigation, a bank or financial institution may provide information to the FOS that is not fully disclosed to the complainant.

This can occur for various reasons, including claims of:

- Commercial confidentiality
- Legal privilege
- Data protection concerns relating to third parties
- Internal fraud-prevention information
- Regulatory sensitivity

In some cases, the FOS may rely upon information, documents, or explanations supplied by the firm when reaching its conclusions, while providing the complainant with only a summary - or, occasionally, no meaningful description - of the material relied upon to make their determination.

The result can be that a complainant receives a decision stating, in effect:

"Having reviewed information provided by the firm, we are satisfied that..."

...without being given access to the underlying evidence.

Why does this raise natural justice concerns?

One of the oldest principles of natural justice is the rule of *audi alteram partem* ("hear the other side").

The principle requires that:

1. A person should know the case against them
2. A person should have an opportunity to challenge adverse evidence
3. A decision-maker should not rely on secret evidence that one party has had no opportunity to address

The problem is obvious.

If the bank can provide information that the consumer never sees, then the consumer cannot:

- Challenge its accuracy
- Point out inconsistencies
- Provide contrary evidence
- Explain why it is irrelevant
- Identify misunderstandings or factual errors

In those circumstances, the consumer may feel that they have effectively been asked to fight an unseen case.

Many lawyers would regard this as fundamentally inconsistent with procedural fairness.

Is it contrary to the spirit of the ombudsman system?

Arguably yes.

The FOS was established as an accessible alternative to court proceedings.

Consumers are often told that the process is:

- Informal
- Fair
- Independent
- Accessible without legal representation

However, fairness requires transparency.

If evidence is being relied upon to reject a complaint, many would argue that basic fairness requires the consumer to know what that evidence is and to have an opportunity to comment upon it.

Otherwise, the process risks appearing opaque and one-sided.

Is it a breach of Article 6 of the European Convention on Human Rights?

This is less clear-cut.

Article 6 protects the right to a fair hearing in the determination of civil rights and obligations.

The argument would be:

- Secret evidence is generally inconsistent with equality of arms
- Equality of arms requires each party to have a reasonable opportunity to present their case
- A party cannot effectively present their case if they are unaware of evidence being relied upon against them

However, there are counterarguments.

The courts have generally regarded the FOS as an alternative dispute resolution scheme rather than a court or tribunal.

A key factor is that:

- Consumers are not forced to accept an ombudsman's final decision
- Consumers can reject the decision and pursue litigation instead

Because court proceedings remain available, courts have often been reluctant to apply Article 6 requirements to the FOS in exactly the same way as they would to a court.

Therefore, while there is a respectable Article 6 argument, it is not straightforward to establish that every instance of non-disclosure constitutes a human rights violation.

A stronger argument: procedural unfairness

The strongest criticism may be based not on human rights law but on public law principles.

Even if the FOS is not bound by every procedural requirement applicable to a court, there remains a legitimate expectation that it will act fairly.

A complainant could reasonably argue:

It is inherently unfair for an ombudsman to rely upon evidence supplied by one party while denying the other party any meaningful opportunity to examine or challenge that evidence.

That argument goes to the heart of procedural fairness.

Why this matters particularly in financial services disputes

The concern is amplified because of the imbalance between the parties.

Typically:

- The bank or other large financial institution has specialist legal teams

- The bank controls most of the documentary evidence
- The bank understands its internal systems
- The consumer has limited access to information

If the FOS then accepts undisclosed evidence from the bank, the imbalance becomes even greater.

Critics argue that this risks creating a situation where:

- The bank knows all the evidence
- The FOS knows all the evidence
- The consumer knows only part of the evidence

That is difficult to reconcile with the principle that both sides should have a fair opportunity to participate in the decision-making process.

A possible reform

A stronger procedural safeguard would be to require that:

- Any material evidence relied upon by the FOS must be disclosed to both parties
- Where disclosure is genuinely inappropriate (for example because of third-party confidentiality), the substance of the evidence must be summarised in sufficient detail to allow meaningful challenge
- No determination should be based on evidence that the affected party has had no reasonable opportunity to address

That approach would better reflect the principles of natural justice, procedural fairness, transparency and equality of arms while still allowing the FOS to protect genuinely confidential information where necessary.

In short, the criticism is not merely that the FOS may occasionally rely on undisclosed material; it is that a consumer can lose their case without ever knowing the evidence that persuaded the decision-maker; evidence that could even be false and unchallenged testimony.

Some would regard that as being in significant tension with the fundamental principle that justice should not only be done, but should be seen to be done.

Concerns about Proposed FCA Powers regarding Mass Redress Events

Introduction

The proposal to ensure that the FCA has the tools it needs to respond quickly and effectively to mass redress events is understandable in principle. Where widespread consumer detriment has occurred, there is a legitimate public interest in securing efficient, coordinated, and consistent outcomes.

However, there are significant risks that increased FCA involvement in mass redress matters could unintentionally undermine the rights of individual complainants and delay access to justice.

Without appropriate safeguards, the reforms could lead to delays in individual complaint resolution, encourage lengthy regulatory processes at the expense of timely justice, and create concerns that broader economic or competitiveness objectives are influencing redress outcomes.

The challenge is to ensure that the pursuit of coordinated regulatory solutions does not come at the expense of the rights of individual consumers seeking fair and prompt resolution of their complaints.

It must be recognised that the FCA is not a neutral adjudicator in the same way that the FOS is intended to be. The FCA is a regulator that must balance multiple statutory objectives, policy considerations, market impacts and political expectations. The more influence it acquires over the timing and handling of mass redress cases, the greater the risk that complaint resolution becomes driven by regulatory strategy rather than the individual merits of consumers' cases. That would represent a significant shift away from the original rationale for having an independent ombudsman scheme in the first place.

Risk of Delaying Individual Complaints and FOS Determinations

One of the principal concerns is that the FCA already possesses considerable influence over the handling of systemic issues within the financial services sector.

In practice, when the FCA signals that it is investigating a particular issue or considering a wider regulatory intervention, there is often pressure on the FOS to pause, slow, or defer decisions relating to individual complaints until the regulator's position becomes clearer.

The proposed reforms may increase the likelihood of such delays.

While coordinated regulatory action may sometimes be appropriate, consumers who have already suffered financial harm should not be required to wait indefinitely for lengthy regulatory investigations, policy deliberations, industry consultations, or redress scheme design exercises to conclude.

For many consumers, redress delayed is redress denied.

Individuals may be experiencing:

- Significant financial hardship
- Loss of savings or investments
- Mortgage or debt difficulties
- Deteriorating health caused by prolonged disputes

Any reform should therefore include clear safeguards to ensure that the FCA's involvement in mass redress events does not result in the routine suspension or postponement of otherwise mature FOS complaints.

The rights of individual complainants must not become subordinate to broader regulatory processes.

Risk That "The Perfect Becomes the Enemy of the Good"

A second concern is that a desire to achieve a comprehensive, sector-wide solution may inadvertently delay or frustrate practical redress for affected consumers.

Regulators naturally seek consistency, completeness, and legal robustness when designing mass redress interventions. However, the pursuit of an ideal solution can sometimes result in prolonged consultation exercises, extensive data gathering, legal analysis, and negotiations with industry.

Meanwhile, consumers continue to wait.

There is a risk that:

- Regulatory perfectionism delays compensation
- Complex redress schemes become increasingly difficult to implement
- Individual cases that could have been resolved quickly through the FOS are held back pending wider regulatory action

The history of financial scandals demonstrates that large-scale redress exercises can take years to design and execute.

Consumers may reasonably ask why an individual complaint that could be resolved within months through the ombudsman system should be delayed while regulators attempt to construct a comprehensive industry-wide solution.

The pursuit of a theoretically optimal outcome should not prevent the delivery of timely and practical justice to individuals.

Potential Conflict Between Consumer Protection and the FCA's Growth and Competitiveness Objectives

A further concern arises from the FCA's increasingly broad statutory objectives.

Alongside its consumer protection responsibilities, the FCA is now required to have regard to wider considerations including economic growth, international competitiveness, and the attractiveness of UK financial markets.

While these objectives may be legitimate public policy goals, they can create tensions when major redress events arise.

Large-scale compensation exercises may have significant consequences for:

- Firm profitability
- Market stability
- Investor confidence
- The reputational integrity of the sector
- The competitiveness of the UK financial services sector

This creates a potential conflict.

Consumers may legitimately question whether a regulator charged with promoting growth and competitiveness can always approach major redress issues solely through the lens of consumer protection.

There is a risk - whether real or perceived - that the FCA could become reluctant to support outcomes that impose substantial financial liabilities on firms, particularly where broader economic considerations are engaged.

If enhanced FCA powers enable the regulator to exert greater influence over the handling of mass complaints, some consumers may fear that regulatory priorities could inadvertently frustrate or delay otherwise valid complaints that would have succeeded through the ordinary FOS process.

Even if no actual bias occurs, public confidence requires that redress mechanisms are demonstrably independent of competing policy considerations.

Preserving the Independence of the Financial Ombudsman Service

As emphasised consistently throughout this Briefing Note, the FOS exists to provide independent resolution of disputes between consumers and financial firms.

Any reform that increases FCA influence over mass redress events should be carefully designed to avoid undermining that independence.

There is a danger that:

- Regulatory policy objectives begin to influence complaint outcomes
- Individual merits receive less attention than systemic considerations
- Consumers perceive that complaints are being managed as part of a broader regulatory strategy rather than judged on their individual facts

The FOS should remain free to determine individual complaints fairly and independently, even where wider regulatory investigations or redress programmes are underway.

The Need for Strong Safeguards

If the proposed reforms proceed, Parliament should consider safeguards to ensure that:

- Individual complaints are not subject to unnecessary delay
- FCA investigations do not automatically prevent FOS determinations
- Consumers retain the ability to pursue redress through the ombudsman system while wider regulatory work continues
- The FCA's growth and competitiveness objectives do not interfere with, undermine or jeopardise consumer protection considerations
- The independence of FOS decision-making is fully preserved

The objective should be to enhance the FCA's ability to address systemic misconduct without weakening the rights of individual consumers to obtain prompt and independent redress.

Accountability Cures

Introduction

There has been much disappointment with the performance of the FCA as far as consumer protection is concerned, over many years, right across the political spectrum. And it is easy to argue that part of the problem is that the regulator has too much power, but not enough scrutiny or accountability.

A compelling case can be made that the UK's Financial Conduct Authority should be subject to significantly greater scrutiny, oversight and accountability than exists today. This is not simply because the FCA is an important public body; it is because of the combination of its extraordinary powers, its mixed record on consumer protection, and the critical role it plays in maintaining confidence in one of the world's leading financial centres.

The FCA occupies a uniquely important position

Few public bodies have as much influence over the lives of ordinary citizens and the functioning of the national economy as the FCA.

Its decisions affect:

- Consumer savings and investments
- Pensions and retirement outcomes
- Banking and payment systems
- Insurance markets
- Capital markets
- Financial crime prevention
- Market integrity and confidence in the City of London

The UK financial services sector contributes hundreds of billions of pounds to the economy and supports millions of jobs directly and indirectly. The effectiveness of financial regulation therefore has consequences far beyond individual firms or consumers.

When regulation works well, confidence, investment and economic growth are supported.

When regulation fails, the consequences can be severe:

- Consumer detriment
- Pension losses
- Fraud and financial crime
- Market instability
- Damage to the UK's international reputation

Given the systemic importance of the FCA's responsibilities, it is difficult to justify a comparatively weak accountability framework.

The FCA's record raises legitimate questions about regulatory effectiveness

No regulator can prevent every failure. However, over the past two decades, a recurring pattern has emerged in which significant consumer harm has occurred despite warning signs, complaints, whistleblower reports or supervisory intelligence.

Examples frequently cited include:

- London Capital & Finance
- British Steel Pension Scheme
- Connaught Income Fund
- Blackmore Bond
- Repeated scandals involving unsuitable investment products and pension transfers

What is striking is not merely the existence of these failures but the frequency with which subsequent reviews identify:

- Delayed intervention
- Inadequate supervision
- Poor intelligence handling
- Failure to escalate concerns
- Cultural weaknesses.
- Deficiencies in decision-making processes and governance

In many cases, consumers have suffered substantial losses while the regulator has faced little more than criticism and recommendations for improvement through a 'lessons learned' regime.

If a regulated firm exhibited a comparable pattern of recurring failures, the FCA itself would rightly demand enhanced supervision and accountability.

The accountability imbalance

The FCA imposes extensive obligations on firms.

It expects firms to:

- Demonstrate competence
- Deliver good outcomes
- Maintain effective governance
- Learn from mistakes
- Be transparent
- Compensate consumers when harm occurs

Yet the regulator itself is subject to comparatively limited external challenge.

This creates an accountability imbalance.

The FCA possesses:

- Extensive rule-making powers
- Investigatory powers
- Enforcement powers
- Supervisory powers
- Significant influence over public policy

However, scrutiny of how those powers are exercised remains relatively weak compared with the consequences of regulatory failure.

Treasury Committee oversight is valuable but demonstrably insufficient

The principal mechanism for parliamentary scrutiny is the Treasury Committee. The Committee performs an important role and has conducted several significant inquiries into regulatory failures.

However, structural limitations make it difficult for the Committee to provide the level of scrutiny that a regulator of the FCA's scale arguably requires.

The Committee faces several constraints:

Limited resources

The FCA employs thousands of staff and oversees tens of thousands of firms. By contrast, parliamentary committees operate with relatively modest resources and small secretariats.

The imbalance is obvious.

A regulator with a budget measured in hundreds of millions of pounds is effectively overseen by a committee that must simultaneously scrutinise:

- HM Treasury
- Tax policy
- Public finances
- Banking
- Financial services
- Economic policy
- Regulators

No committee can realistically undertake continuous, forensic supervision of such a vast and technically complex regulator.

Reactive rather than proactive scrutiny

Treasury Committee investigations are often triggered by major scandals. This means scrutiny tends to occur after consumers have already suffered harm.

The public inquiry model effectively becomes a process whereby :

1. Regulatory failure occurs
2. Consumers suffer losses
3. Parliamentary hearings are held
4. Lessons are identified

The challenge is that accountability arrives after the damage is done.

Political and parliamentary pressures

Committee members inevitably face competing priorities. Financial regulation is only one of many demands on parliamentary time. As a result, sustained specialist scrutiny of FCA performance is difficult to maintain over long periods.

Existing accountability mechanisms are fragmented

Current oversight arrangements are spread across numerous bodies:

- Parliament
- The Treasury
- The National Audit Office
- The Financial Regulators Complaints Commissioner
- Independent reviews
- Judicial review processes

The problem is that no single institution possesses a dedicated mandate to continuously assess:

- Regulatory effectiveness
- Consumer outcomes
- Supervisory performance
- Organisational culture
- Regulatory decision-making quality

As a result, oversight can become fragmented and episodic.

Lessons from Australia

A useful model exists in Australia.

Following the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, significant attention was directed not only at industry misconduct but also at the effectiveness of regulators, including the Australian Securities and Investments Commission (ASIC).

One of the lessons emerging from the Royal Commission was that regulators themselves require robust and ongoing scrutiny. Australia subsequently strengthened oversight arrangements through the establishment of enhanced accountability and performance review mechanisms focused specifically on financial regulators.

The underlying principle was straightforward:

Regulators should themselves be regulated.

A modern financial system cannot rely solely on the assumption that regulators will always regulate effectively. There must also be institutional mechanisms that independently assess whether regulators are fulfilling their responsibilities.

The case for a dedicated FCA Oversight Commission

The UK should consider creating a permanent independent body with responsibility for reviewing the FCA's effectiveness.

Such a body could:

- Conduct regular performance reviews
- Examine major regulatory failures
- Monitor consumer outcomes
- Assess supervisory effectiveness
- Review whistleblower handling
- Evaluate organisational culture
- Report directly to Parliament
- Publish annual assessments of regulatory performance

Crucially, it should possess:

- Independent statutory powers
- Specialist expertise
- Adequate resources
- Freedom from political interference

Its purpose would not be to second-guess every regulatory decision but to provide systematic scrutiny of whether the regulator is delivering on its statutory objectives.

A stronger accountability framework would strengthen, not weaken, regulation

Some argue that increased scrutiny could undermine regulatory independence.

The opposite may be true. Strong institutions are strengthened by strong accountability. The judiciary is independent but accountable. The Bank of England is independent but accountable. The National Audit Office is independent but accountable. The FCA should be no different. Independence should never mean insulation from scrutiny.

Indeed, public confidence in regulation is likely to increase if consumers can see that regulators themselves are subject to rigorous external examination.

The FCA's responsibilities are too important to be overseen primarily through periodic parliamentary hearings and ad hoc reviews after major scandals.

There is a strong case for establishing a dedicated, independent oversight body for the FCA, similar in principle to the enhanced regulatory accountability framework adopted in Australia following the Royal Commission.

The central principle should be simple: a regulator entrusted with protecting millions of consumers and safeguarding the integrity of one of the world's most important financial centres should itself be subject to continuous, expert and independent scrutiny.

In a mature regulatory system, accountability should not stop with regulated firms. It must extend fully to the regulator itself.

Is our financial sector being governed by Private Companies?

Introduction

The effective governance of our financial sector is clearly important. Given that importance it would be reasonable for Parliamentarians and the public to assume that the sector is being governed by official public authorities, not private companies.

But is that the case?

Examination of the official records of the relevant organisations shows that in fact the sector is being governed by Private Companies Limited by Guarantee.

The facts are revealed through Companies House records, thus:

- The Financial Conduct Authority; see [here](#)

- The Financial Regulators Complaints Commissioner (The Office of the Complaints Commissioner), see [here](#)
- The Financial Services Compensation Scheme, see [here](#)
- The Financial Ombudsman Service, see [here](#)
- The Prudential Regulation Authority, see [here](#)
- The Payment Systems Regulator, see [here](#)

As things currently stand there is good reason to be concerned that the sector is being governed by private companies, and that's an issue that Parliament ought to examine.

But given the general direction of travel for the Bill, which is to move control of the sector from Parliament to the FCA, it is critically important that we take this rare opportunity to re-consider the merits of having these organisations remaining as private companies, before they are given any more powers.

There is a particular issue where this becomes especially important - the Hillsborough Law. The live question is whether these financial services bodies are going to be in scope. Will they be deemed to be 'public authorities' and thereby in scope of Hillsborough Law's Duty of Candour, or will they be exempt, on the basis that they cannot be deemed to be public bodies because they are in fact private companies.

Rather than having any such uncertainty, perhaps the best way forward would be for them all to be reformed into public authorities; or for them to be explicitly brought into scope.

The important thing is that a once-in-a-generation opportunity to introduce greater transparency, scrutiny, disclosure and accountability into the sector is not missed, in the public interest.

What would be required for them to be brought into scope?

Perhaps a pragmatic way forward would be for a simple and straightforward amendment introduced to the Public Office (Accountability) Bill. For example, all that may be needed would be an amendment to add these words where the Bill lists the kind of organisations that are in scope:

"...a regulator, ombudsman, compensation scheme, complaints commissioner; or"

Why can't consumers sue the FCA?

Introduction

The FCA is immune from civil liability, except in relation to breaches of human rights and acts of bad faith. That immunity is appropriate in relation to market participants i.e. it is a necessary state of affairs for the regulator to be protected from the risk of litigation from the entities it regulates, otherwise it would be in the courts permanently, defending itself against large financial institutions that are more than capable of using judicial process to undermine the efficacy of their regulator.

However, the same does not apply to consumers who have been harmed as a consequence of regulatory failure.

A strong case for change

A strong case can be made that the immunity from civil liability enjoyed by the FCA should be substantially narrowed or removed where consumers suffer loss as a direct consequence of serious regulatory failure.

The argument is not that the FCA should become an insurer of all investment losses or financial harm. Rather, it is that where the regulator acts negligently, recklessly, or in a manner falling significantly below reasonable regulatory standards, consumers should have access to legal redress just as they would against almost any other public or private body.

Accountability without liability is not true accountability

The FCA frequently asserts that it is accountable through Parliament, judicial review, independent reviews, complaints processes, and scrutiny by bodies such as the Treasury Committee.

However, these mechanisms rarely provide compensation to victims.

A consumer who loses their life savings because the FCA ignored warnings, failed to supervise firms adequately, or delayed intervention may receive:

- An apology
- A critical report
- Parliamentary criticism of the regulator

But they cannot recover their losses.

In most areas of society, accountability and liability go together. If a doctor, accountant, solicitor, engineer, or financial adviser acts negligently and causes foreseeable harm, those affected can seek compensation. The FCA is largely exempt from this principle.

This creates a significant accountability gap.

Immunity weakens incentives for regulatory excellence

Economic theory and practical experience suggest that organisations respond to incentives.

Where an institution knows that serious mistakes cannot result in civil liability, the incentive to avoid those mistakes is reduced.

The FCA faces:

- No meaningful financial consequences for regulatory failure
- No requirement to compensate victims of its failure
- No direct exposure to the losses suffered by consumers

The result is a classic moral hazard.

When firms fail consumers, the FCA often imposes large fines and argues that financial consequences drive behavioural change. The same logic should apply to regulators.

If the FCA can impose sanctions on firms because financial accountability improves conduct, it is difficult to argue that the regulator itself should be entirely shielded from equivalent principles.

The current framework creates inequality before the law

The present position creates a striking asymmetry.

Consumers can sue:

- Financial advisers
- Banks
- Insurers
- Investment firms
- Auditors
- Directors
- Solicitors

But they generally cannot sue the regulator that was created specifically to protect them.

This effectively places the FCA above the standards it imposes on others.

The principle of equality before the law suggests that public authorities exercising extensive powers should not enjoy broader protections than the citizens and firms they regulate.

Consumers bear the cost of regulatory failure

When regulatory failures occur, the costs are frequently borne by consumers rather than the regulator.

Examples often cited include failures connected with:

- London Capital & Finance
- British Steel Pension Scheme
- Connaught Income Fund
- Blackmore Bond
- Woodford Investment Management; and so on.

In many such cases:

- Consumers suffered devastating losses
- Independent reviews identified regulatory shortcomings
- The FCA faced criticism
- Victims received little or no compensation from the regulator itself

This undermines confidence in the regulatory system.

A consumer could reasonably ask:

"If the regulator can fail, and nobody can hold it financially accountable, what protection does regulation actually provide?"

Immunity undermines trust in regulation

The FCA's legitimacy rests largely on public trust.

Trust depends not merely on powers and promises but on accountability when things go wrong.

When consumers discover that:

- The regulator failed
- The failure contributed to their losses
- The regulator admits mistakes and commits to 'learn lessons'

- Yet compensation is unavailable because of statutory immunity

...many conclude that there is one system of justice for regulators and another for everyone else.

That perception damages confidence in both the FCA and the wider financial system.

Other public bodies operate without such extensive protection

Many public authorities can be challenged through negligence claims, misfeasance claims, or other legal mechanisms.

The FCA's immunity is unusually broad given:

- The scale of its powers
- The size of the financial losses that can result from regulatory failure
- Its explicit statutory consumer-protection objective

If Parliament entrusts the FCA with extraordinary powers over markets, firms, and consumers, it is reasonable to expect corresponding responsibilities.

Power and accountability should be proportionate.

Human rights and bad faith are unrealistically high thresholds

As explained earlier, the current exceptions to immunity are extremely narrow, in that victims must generally demonstrate either a breach of human rights obligations or bad faith.

Both thresholds are exceptionally difficult to satisfy.

Most regulatory failures arise not from malice but from:

- Negligence
- Incompetence
- Poor judgement
- Inadequate supervision
- Resource allocation failures
- Failure to act on warning signs

A consumer can suffer catastrophic losses because of these failures, yet still have no viable claim.

The law effectively says:

"You may be compensated if the regulator acted dishonestly, but not if it acted incompetently."

That distinction is difficult to justify.

Liability could be carefully limited

Opponents argue that removing immunity would expose the FCA to unlimited litigation and encourage defensive regulation.

This concern can be addressed through a carefully designed statutory framework.

For example, liability could arise only where:

- A serious regulatory failure is established
- The harm was reasonably foreseeable
- The FCA's conduct fell significantly below expected standards
- The claimant can demonstrate causation
- The courts apply a high threshold comparable to gross negligence or serious maladministration

This would not make the FCA liable for every market loss or firm collapse. Rather, it would provide remedies in exceptional cases where consumers can demonstrate that regulatory failures materially contributed to their losses.

The FCA should meet the standards it expects of firms

The FCA routinely argues that firms should:

- Act with due skill, care and diligence
- Deliver good outcomes
- Take responsibility for failures
- Compensate consumers when harm occurs

These are principles embodied in the FCA's own regulatory philosophy, including the Consumer Duty. There is a compelling argument that the regulator should itself be held to analogous standards. A regulator that can demand accountability but is insulated from accountability risks appearing inconsistent and unfair.

The constitutional principle: rights require remedies

A fundamental principle of justice is that where there is a wrong, there should be a remedy.

If Parliament creates:

- A regulator whose purpose is consumer protection
- Powers to supervise and intervene
- Duties to protect consumer
- The means through which the regulator can obtain the resource it needs

...then consumers harmed by serious breaches of those duties should have access to meaningful remedies. Otherwise, the duties become largely aspirational rather than enforceable.

The strongest argument for removing or substantially narrowing the FCA's immunity is not that regulators should guarantee consumers against all losses. It is that no public body exercising extensive powers should be effectively insulated from the consequences of its own serious failings.

In a system founded on the rule of law, accountability should not stop at criticism, apologies, or parliamentary scrutiny. It should include the possibility of legal redress for those harmed by regulatory failure.

A Question of Constitutionality

Introduction

In bringing this Briefing Note towards a close, we suggest a constitutional lens through which Peers may wish to scrutinise the Bill.

The Bill should not be treated only as a technical measure to streamline financial regulation. Its complaints and redress provisions may affect the practical ability of consumers, SMEs and investors to obtain independent determination, redress and accountability when things go wrong.

The central question is:

Does the Bill improve access to justice and redress, or does it give regulators and secondary processes greater power to narrow, delay or practically neutralise rights created by Parliament?

The Government's stated purpose

The stated policy aim is to modernise the redress framework, improve speed and consistency, and provide greater certainty for firms and consumers.

Those are legitimate aims. But they are not sufficient. A redress system should not be judged only by speed, consistency or administrative convenience. It must also be judged by whether

the real issue is investigated, the evidence is considered, the law is applied, systemic harm is escalated, and redress actually reaches victims.

Put plainly:

The public should not be told only how many complaints were closed. They should be told how many were actually resolved.

The constitutional concern

Parliament creates rights and remedies through primary legislation. Courts determine questions of law. Regulators make rules within the limits Parliament gives them.

The Bill risks allowing FCA rules, FCA opinions, FCA publications, Treasury regulations and redress-scheme mechanisms to become the practical route through which statutory rights are filtered.

The Bill may not expressly repeal consumer protections or statutory rights. The concern is subtler:

Rights created by Parliament may be diminished in practice if access to redress depends on FCA rule-compliance, FCA intent, FCA interpretation or Treasury-made conditions rather than independent determination of the underlying legal issue.

A concise way of putting the point is:

A regulator should not be able to turn a legal right into a regulatory opinion.

The contradiction at the heart of the Bill

The Bill is presented as improving consumer redress. Yet its structure may make redress more dependent on the same regulatory architecture whose past failures have given rise to much of the public concern.

That creates the core constitutional tension:

The Bill claims to enhance redress, but may do so by making redress more dependent on regulatory interpretation and less dependent on independent determination of legal rights.

That is not simply a technical issue. It affects the constitutional relationship between Parliament, courts, regulators, firms and citizens.

The FCA as rule-maker, interpreter and redress gatekeeper

The Bill's FOS/FCA mechanisms risk giving the FCA an enlarged role in the framing and timing of complaints.

There is a danger that the FCA becomes, in practical terms:

rule-maker, rule-interpreter, market-impact assessor, complaint-pauser, and gatekeeper to wider redress.

That may be administratively coherent. But it requires constitutional safeguards; especially given the number and severity of regulatory failures since the FCA was formed.

Historical failures are the context, not a distraction

This Bill should be tested against the historical failures that have led to public distrust in financial redress.

Many unresolved financial disputes and scandals share the same pattern:

- Evidence is received, but not demonstrably considered
- Complaints are closed, but the real issue is not determined
- Legal or regulatory classification questions are avoided
- Systemic patterns are not escalated
- Redress schemes create finality without full transparency
- Regulatory findings do not always translate into compensation reaching victims.

This is why the Bill must not simply streamline complaint-handling machinery. It must address whether citizens can get the real issue investigated, decided, escalated where necessary and put right.

The principle from the Supreme Court's *UNISON v Lord Chancellor* landmark 2017 judgment is relevant here. The UK Supreme Court unanimously ruled that the government's regime of employment tribunal fees was unlawful. The Court determined that charging fees effectively prevented access to justice, particularly for low-wage workers, and therefore breached both domestic constitutional principles and EU law.

The judgment is relevant by analogy: rights created by Parliament must be practical and effective, not merely theoretical.

The same constitutional caution applies here. A statutory right is not protected merely because it remains on paper. It must be practically accessible.

Consultation and process-integrity concern

There is also a serious process question.

Where the Bill overlaps with CP26/9, responses closed on 11 May 2026. The Bill was introduced on 19 May 2026.

Peers may therefore wish to ask:

How could consultation responses closing on 11 May have been fully analysed and reflected in a Bill introduced on 19 May?

Plainly:

Did Ministers listen before legislating, or legislate before listening?

Suggested constitutional test for the Bill

Peers may wish to test the Bill against five questions:

1. Does it preserve rights created by Parliament?
2. Does it preserve access to independent determination?
3. Does it prevent FCA opinion from becoming a practical substitute for law?
4. Does it require evidence, reasons, escalation and accountability?
5. Does it ensure redress actually reaches victims?

The core message in this briefing is 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.

And if that does not happen there will be reputational damage for the sector; there will be a further erosion of trust and there will be a brake on the much-needed economic growth that we all want.

Overall Conclusion

The case for protecting consumer protections within any reform of financial services regulation is not merely a moral case, though 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.

Financial services is not like most other industries. Its products are complex. Its time horizons are long. Its information asymmetries are deep. In such a sector, regulation that protects consumers is not friction imposed on a naturally efficient market - it is the mechanism by which the market is made possible. Without it, the equilibrium is not free-market dynamism but systematic exploitation, episodic scandal, and the progressive withdrawal of ordinary people from the products designed to serve them.

A deregulatory agenda that ignores this dynamic is not pro-growth. It is growth-destructive, by a mechanism sufficiently well-documented in history that there is no excuse for not seeing it. The political economy of financial services lobbying may make it difficult to hold this line. The short-term revenue interests of incumbent firms will always push toward less oversight, lower standards, and easier sales. But the long-term health of the sector - and the financial wellbeing of the millions of consumers it exists to serve - depends on resisting that pressure, and on recognising that in financial services, trust is not the enemy of growth. It is its only reliable foundation.



For all the reasons set out in this Briefing Note it is vital that the House of Lords uses its power and opportunity to scrutinise the Bill to ensure there will be no adverse outcomes for consumers or the reputational integrity of the sector as a consequence of the new legislation.