



Investment Fraud & Fairer Financial Services

Briefing Note #3

for Parliamentarians in relation to the

Financial Services and Markets Bill [HL]

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1. Introduction and Purpose

The purpose statement for the All-Party Parliamentary Group on Investment Fraud and Fairer Financial Services (APPG) 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 issue of consumer protection is of great interest to the APPG.

This Briefing Note has been produced following Report Stage Day 1 of the Financial Services and Markets Bill [HL], held on Monday 7 September.

The over-riding motivation for its production is the on-going concern that consumer protections are being watered down through the Bill, despite the Government's continued narrative to the contrary.

This Briefing Note aggregates the views of a range of individuals including legal practitioners, compliance professionals and academic experts consulted on behalf of the APPG on the consumer redress provisions of the Bill.

Consultees were asked specifically about Clause 8 (FOS jurisdiction tied to FCA Rule compliance), Clause 6 (10-year longstop on FOS complaints), and the question of whether the FCA's Principles for Businesses and Consumer Duty constitute FCA 'Rules' for the purposes of the Bill as drafted. The Minister, Lord Stockwood, wrote to three Peers on 1 July 2026 following Committee Stage; consultees were provided with that letter and asked to respond to it.

In addition to the thoughts of those whom the APPG has sought input from, this report has made reference to the full transcript of Report Stage Day 1 (7 September 2026). Material from the transcript is incorporated at the relevant points in Sections 4 and 5, highlighted in amber, and summarised in Section 7. The transcript is the authoritative source where it bears on any point made by consultees; in no respect does it render their analysis obsolete.

Contributors are referred to by role only throughout. The views expressed are independent professional and academic opinions and do not constitute legal advice.

2. Profile of Consultees

The APPG Secretariat consulted the following categories of professionals.

- The head of a law firm specialising in financial services complaints and consumer rights, with extensive operational experience of FOS and FSCS processes.
- A specialist financial services KC with expertise in IFA, FSCS and FOS interactions.
- A financial services practitioner and former City professional with experience of institution-customer relationships and dispute resolution.
- A consumer law solicitor at an SRA-regulated practice specialising in financial services redress.
- A compliance director at an FCA-regulated claims management company, with a background in Trading Standards.
- A professor of financial regulation.
- A senior solicitor partner with expertise in FSMA statutory interpretation.
- A solicitor in independent practice with expertise in financial regulatory law.
- An emeritus professor of consumer and financial services law, with published expertise on FOS reform and consumer credit regulation.

The APPG wishes to thank all the consultees for their first class input into this Briefing Note; all of whom supported this collective endeavour on a pro bono basis, in the public interest.

3. The Government's Position: Lord Stockwood's Letter of 1 July 2026

3.1 On Clause 8 and the scope of FCA Rules

The effect of the provisions in Clause 8 of the Bill is that, where the subject matter of a complaint is the subject of FCA rules, and a firm has complied with its obligations under those rules, then the FOS will be required to find that it has acted fairly and reasonably.

All rules made by the FCA are within scope. This includes the Principles for Businesses ('the Principles'), and therefore the Consumer Duty, and the Code of Conduct — all of which form part of the FCA's Handbook.

If the FOS considers there to be ambiguity in what a Principle (or any other rule) requires, then it will be required to ask the FCA for an interpretation of the rules. The

FOS will then use this interpretation to consider whether, in the particular case before it, the firm has complied with its obligations, in order to make a determination.

3.2 On the 10-year longstop (Clause 6)

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

3.3 On mass redress events

In the event of complex, systemic issues like PPI, the Government considers that it is the responsibility of the FCA to investigate and apply an appropriate regulatory response - including in relation to redress - as it did in the case of PPI.

Report Stage, 7 September 2026 — At Report Stage, Lord Pitt-Watson (Parliamentary Secretary, HM Treasury) replaced Lord Stockwood as the Minister responsible for the Bill. The Government's substantive policy positions on Clauses 7 and 8 were maintained. Lord Pitt-Watson confirmed: (a) 'treating customers fairly is one of the business principles of the FCA and is therefore one of the criteria by which a complaint will be able to be made to the FOS'; (b) Clause 8 does not abolish the fair and reasonable test — 'that is the final adjudication that will be made by the FOS'; (c) the Government anticipates 'only a very small number of cases are going to be referred to the FCA'; (d) 'the memorandum of understanding... is creating a very small number of referrals from the FOS to the FCA.'

4. Key Concerns Identified by Consultees

4.1 The Rules/Guidance Distinction: Clause 8 Fails to Achieve Its Stated Intent

4.1.1 The distinction is real, documented, and built into the Handbook

The consumer law solicitor

The FCA Handbook marks every provision as either R (Rule) or G (Guidance). Not everything in the Handbook is a Rule, and the distinction is explicit and deliberate. A worked example from PRIN 2A (the Consumer Duty):

- PRIN 2A.2.1 (R): 'A firm must act in good faith towards retail customers.' — a binding Rule.
- PRIN 2A.2.2 (R): defines what acting in good faith means — also a Rule.
- PRIN 2A.2.4 (G): clarifies that acting in good faith does not prevent a firm from pursuing legitimate commercial interests or profit — Guidance only, not binding.

Qualifying Guidance provisions materially dilute the Rules they sit alongside. Firms can point to the Guidance to justify conduct that appears to breach the spirit of the Rule, relying on elastic concepts such as 'legitimate commercial interests.' This pattern recurs throughout CONC (the [Consumer Credit Handbook](#)) and the wider Handbook.

Report Stage, 7 September 2026 — Lord Pitt-Watson at Report Stage asserted that the consumer duty 'is one of the criteria by which a complaint could be made' to FOS and that Clause 8 covers 'all the FCA's rules... the principles for business, the consumer duty and the code of conduct.' However, he did not address the R/G distinction within the Handbook identified by the consumer law solicitor — specifically, that Guidance provisions qualifying binding Rules give firms room to minimise their obligations while claiming compliance. This gap in the Government's response is not remedied by the minister's assurances.

The KC — drafting critique

The KC identified a 'facile category error' in the Minister's letter. The Sourcebooks contain Rules — but also the FCA's name and address, editorial material, tables of contents, and Guidance that explicitly states it is not a rule. His conclusion:

The letter makes the Government's intent clear. Clause 8 signally fails to give effect to that intent. If one had a suspicious mind, one would see the obvious advantages to a finance company of not being subject to the Ombudsman's jurisdiction unless the matter complained of fell under the strict four corners of a 'Rule' — as long as one stuck to the rules, one could depart from the Guidance with impunity.

The senior solicitor partner — statutory definition analysis

Section 417 of FSMA 2000 defines 'Rule' to include 'a principle' — by reference to PRIN 2.1.1 R — meaning the Principles for Businesses are within the statutory definition. However, the Code of Conduct is not expressly mentioned. The Minister's letter asserts it is within scope; the statute does not say so. The Bill should state this expressly.

Report Stage, 7 September 2026 — Lord Pitt-Watson at Report Stage asserted the Code of Conduct is within scope. This does not cure the statutory gap identified — the point made in the expert opinion that only a provision in the Bill itself can achieve what the Minister intends. The assurance does not change the legislative text.

4.1.2 The status of Dear CEO letters and FCA warnings

The specialist financial services complaints solicitor

A further concern about scope that has not been addressed in Parliament: the Bill refers throughout to FCA 'rules,' but the FCA's supervisory toolkit includes communications — Dear CEO letters, finalised guidance, and FCA warnings — that sit outside the formal Rule-making architecture but have established legal force. It is well established that failure to implement a Dear CEO communication can be a breach of a duty owed to a consumer and is actionable in court. Whether such communications constitute a breach of an (undefined) 'rule' for the purposes of Clause 8 is entirely unclear. The Bill is silent on this.

The Principles are also supposed to be overarching standards — they sit above the more detailed conduct rules, not below them. It is therefore a legitimate question whether they will carry a different regulatory weighting or approach under the new Clause 8 framework, given that FOS will be required to apply the FCA's interpretation of Rules rather than exercising its own fairness discretion. If the Principles are downgraded in practice to the status of any other Rule, one of the most

important structural features of UK financial regulation — the primacy of high-level principles over box-ticking detailed compliance — is effectively abolished.

4.1.3 Being a Rule for regulatory purposes does not mean being actionable as one

The compliance director

FSMA Section 138D and PRIN Schedule 5 provide that the right of a private person to sue for damages caused by breach of an FCA rule does not automatically apply to PRIN rules in isolation. FOS has historically been able to take PRIN into account precisely because its 'fair and reasonable' jurisdiction is broader than what a court can do. Clause 8 risks collapsing these two distinct standards:

What is the purpose of FOS in this new regime?

4.1.4 The Minister's letter cannot resolve the problem

A ministerial letter cannot convert guidance into rules or amend the FSMA. It may assist as evidence of the Government's intention if the legislation is ambiguous, but it does not itself alter the Handbook or the statute. If Parliament wants the point put beyond argument, the Bill should say so expressly. — The compliance director

There is no substitute for having clarity in the drafting of the legislation itself. — The senior solicitor partner

Report Stage, 7 September 2026 — At Report Stage, Lord Pitt-Watson's ministerial assurances confirmed the Government's intent but did not change the legislative text. The expert opinion that ministerial letters cannot cure statutory drafting gaps remains unanswered.

4.1.5 Judicial authority: Principles cannot be displaced by Rule compliance — and a hidden secondary legislation power

The emeritus professor of consumer and financial services law

An emeritus professor of consumer and financial services law provided two points of particular weight that have not been addressed elsewhere in this report or in the parliamentary debate.

First, judicial authority establishes that Principles cannot be displaced by Rule compliance. The courts have held in *R (British Bankers Association) v Financial Services Authority* [2011] Bus LR 1531 that the FCA Principles are the "ever present substrata to which the specific rules are added." The specific rules "do not supplant them and cannot be used to contradict them." And: "the general notion that the specific rules can exhaust the application of the Principles is inappropriate." The courts have explicitly rejected the argument that compliance with specific conduct rules — such as ICOB rules — can exhaust the application of the overarching Principles. This is directly relevant to Clause 8: by making Rule compliance conclusive of what is fair and reasonable, the Bill inverts the legal hierarchy that the courts have established. A firm that complies with every specific Rule may still have breached an overarching Principle — and under existing law, that matters. Under Clause 8, it would not.

Second, the Treasury reserved a hidden power to exclude the Principles from FOS jurisdiction entirely by secondary legislation.

The Government's March 2026 consultation response (para 2.19) stated that it intends to take a power that would allow it to specify that particular rules are not to be included in the adapted fair and reasonable test, and that this 'is particularly relevant when considering the application of the high-level obligation contained in the FCA's Principles for Business.' This power appears to be enacted in the proposed s228(4)(d) of the Bill. The practical consequence is that the Principles — including the Consumer Duty — could be excluded from FOS jurisdiction entirely by Treasury regulations, with minimal parliamentary scrutiny. This risk has not been addressed in the debate on the Bill. The professor notes that the relevant paragraph was present in the online version of the consultation response when first published but subsequently appeared to have been removed from the Treasury's website, though he retains a hard copy.

Third, a specific provision in the Bill reflects industry lobbying at the expense of the consumer protection balance the FCA itself maintains.

The Bill requires FOS to take into account 'the general principle that consumers should take responsibility for their decisions.' The professor identifies this as a provision inserted in response to UK Finance's submission to the consultation. Yet the FCA's own Consumer Duty guidance — PRIN 2A.1.9 — explicitly qualifies that same consumer responsibility principle, noting that 'it is appropriate to require a high level of protection for retail customers' because: (1) consumers typically face a weak bargaining position; (2) they are susceptible to cognitive and behavioural biases; (3) they may lack experience or expertise; and (4) there are frequently information asymmetries in retail financial markets. The Bill adopts one half of the FCA's own balancing exercise while omitting the other half — the four factors that justify a high level of consumer protection.

4.2 Clause 8 Makes FCA Compliance a Barrier to Consumer Redress

The compliance director

The current FOS jurisdiction starts from what is 'fair and reasonable in all the circumstances.' Clause 8 removes that residual fairness discretion in cases where FCA rules cover the field. This removes 'the final fairness discretion precisely where it is most needed.'

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

Report Stage, 7 September 2026 — Lord Pitt-Watson at Report Stage stated the Government's position directly: 'Where the relevant FCA rules apply, the Government consider that FOS determinations should be consistent with those rules.' He further stated that Clause 8 does not abolish the fair and reasonable test — the FOS 'will still make its determination based on all the circumstances of the case.' However, Lord Sharkey (LD) challenged this directly, noting that the Bill goes much further than the MoU in practice and 'reduces the scope of this discretion.' Baroness Kramer (LD) illustrated the gap with the motor finance example: 'For years, firms relied on nuances in the FCA's disclosure rules to argue that discretionary commission arrangements were permissible, but these were hidden discretionary commissions, and any reasonable person looking at those structures from a consumer's perspective could see that variable hidden commissions... were inherently unfair.' Lord Davies of Brixton (Lab) — a Government Peer — pressed the Minister for assurance that 'these changes are contingent and will be reviewed and judged on their effect.' Division 4 on Amendment 14 (to restore the fair and reasonable test) was lost 59-144.

The consumer law solicitor

Firms will invariably interpret rules to maximise profits and push the risk of failure onto the consumer. The Bill and restrictions on FOS will increase harm to consumers.

The professor of financial regulation

The UK's principles-based regulatory system was deliberately designed without the 'bright lines' of rules-based systems. Ambiguity is a feature, not a flaw. Tying FOS jurisdiction to Rule compliance alone produces indeterminate and consumer-unfavourable outcomes.

I have not seen any such analysis of judgements of the FOS indicating the proportion of cases affected by such overreach. This could be a Freedom of Information request.

Report Stage, 7 September 2026 — At Report Stage, the absence of an evidence base was the central theme of the debate on Clauses 7 and 8. Lord Sharkey confirmed he had sought hard evidence at Second Reading, Committee Day 1, and Committee Day 6, and received nothing on each occasion. The FCA Deputy CEO Sarah Pritchard formally re-iterated Parliament's request to HMT by letter of 6 August 2026 — and also received no response. Lord Pitt-Watson's Report Stage response offered the following as the Government's evidence base: (a) the Growing Pains report of the FSR Committee, which stated FOS decisions 'can have regulatory impacts by creating precedents that the FCA requires firms to follow'; (b) a forthcoming industry publication with examples of alleged FOS inconsistency (not yet published); and (c) a Government review of the FOS conducted in spring 2025 — but this review has not been published and the conclusions have not been shared with Parliament. Baroness Bowles (LD) expressed specifically on motor finance: she characterised this as a scandal exposed by FOS while 'the FCA stood to the side,' resulting in a £7 billion redress scheme, and asked whether under the new framework 'this scandal would never be exposed and there would never be redress.' The Minister did not directly answer.

4.3 The Contract Law Omission — and the Third-Party Liability Gap

The financial services practitioner

A substantial proportion of FOS complaints involve contractual breaches: unauthorised investments, payments made without authority, overcharging. None of these necessarily maps onto a specific FCA Rule.

Are they seriously proposing all such claims are to be excluded from FOS jurisdiction unless the complainant can also point to a specific Rule breach?

Rule compliance does not extinguish contractual liability or negligence. A firm can comply with every applicable FCA Rule and still have breached its contract with the customer or acted negligently. Clause 8 does not engage with this dimension of the consumer relationship at all.

Report Stage, 7 September 2026 — Baroness Bowles (LD) at Report Stage identified precisely this structural problem from a different angle, in the context of Consumer Credit Act (CCA) reform: 'Tail risk usually arises from bad behaviour that simply takes a long time to surface. There is no justifiable reason for remedy to disappear.' She explicitly characterised 'removing tail risk for firms' as a 'theme running through the changes to the CCA and FOS' — confirming the same structural concern identified by the financial services practitioner applies across both the FOS and CCA provisions. The motor finance example (Baroness Kramer (LD), Baroness Bowles (LD)) is a concrete illustration of the contractual/fairness gap: firms complied with disclosure rules but the hidden commission structure was inherently unfair to consumers regardless of rule compliance.

The specialist financial services complaints solicitor

This contributor identified two further specific statutory gaps that the other contributions and the parliamentary debate have not addressed, and which significantly extend the contractual liability concern:

The Section 75 and Section 140 CCA problem. Under Section 75 of the Consumer Credit Act, a credit provider is liable for a supplier's breach of contract or misrepresentation. Under Section 140 (unfair relationships provisions), the act or omission complained of is not the respondent's own — it is an act by a party for whom the respondent is legally responsible. In both cases, the Bill's framing around 'acts or omissions' of the respondent risks excluding these entirely from FOS jurisdiction, because the relevant act or omission is a third party's. The Government has confirmed that Section 75 itself will remain in legislation — but if FOS jurisdiction over Section 75 complaints is excluded because the relevant act or omission was the supplier's rather than the credit provider's, the statutory right is preserved in name while the enforcement mechanism is removed in practice.

The Authorised Representative liability gap. The same problem extends to the doctrine under which a Principal firm is responsible for the acts and omissions of its Authorised Representatives. A consumer whose loss arises from an AR's conduct would find that the AR's act or omission is attributed to the Principal — but the Bill's framing may exclude FOS jurisdiction if the act or omission was not technically the respondent firm's own. This is a significant gap given the scale of AR networks in financial services.

Both of these gaps compound the concern already raised by the financial services practitioner: the Bill's framing is narrower than the range of consumer harms that FOS was designed to address.

4.4 The FCA as Effective Arbiter: A Structural Conflict of Interest

The compliance director

This is particularly worrying where the issue is systemic mis-selling, because early identification of systemic harm has not always been the FCA's strength — and that is me being polite.

Report Stage, 7 September 2026 — At Report Stage, Lord Sharkey quoted FCA CEO Nikhil Rathi (Treasury Select Committee, 15 July): 'From the FCA's perspective, we want an independent Financial Ombudsman Service. That is a really important safeguard for your consumers.' Rathi warned that the referral mechanism risks the system becoming 'gummed up' if misused. FCA Chair Mr Alder: 'if we get this wrong, the system will become gummed up... the main objectives of those changes in the legislation will not be met.' FCA Deputy CEO Sarah Pritchard: 'We do not want to turn into a backdoor appeal mechanism.' These warnings from the regulator itself have not been directly answered by the Government. Lord Pitt-Watson acknowledged the risk and stated the Government anticipates 'only a very small number of cases are going to be referred to the FCA' — but declined to explain what would prevent the number from growing or how 'instrumentalisation' of the system would be prevented.

The professor of financial regulation

When the FCA provides interpretive opinions to FOS, will those opinions be made public? Opaque FCA opinions, applied by FOS but never published, would make the effective standard of consumer protection invisible to the consumers whose rights depend on it.

Report Stage, 7 September 2026 — This question was not addressed at Report Stage. The Government's position — that the FCA's interpretive role is appropriate given its statutory function as rule-maker — does not address the transparency concern.

The financial services complaints solicitor

FOS adjudicators cannot currently refer to case law, whereas the FSCS can. Subordinating FOS to FCA interpretive authority would further erode the institutional independence that has been FOS's principal distinguishing feature.

4.5 The 10-Year Longstop (Clause 6): A Structural Shield for Wrongdoers

The consumer law solicitor

The 10-year longstop is 'simply a get out of jail free card for firms hiding the consumer detriment well.' Firms will be incentivised — and may be legally entitled — to delete all records at the 10-year mark, making even a permitted exception effectively unenforceable.

Report Stage, 7 September 2026 — Baroness Bowles (LD) at Report Stage addressed the longstop directly: 'A 10-year cut-off rewards firms that manage to keep material facts hidden for a decade, while shutting the door on consumers who discover the harm only years later. Under Section 32 of the Limitation Act, the courts do not allow time to run when material facts have been concealed. Why should the Financial Ombudsman be forced to do so? A regime that rewards concealment is not a regime that promotes fairness.' This precisely confirms the analysis of the consumer law solicitor and the compliance director. Baroness Bowles (LD) also drew the explicit connection: the same logic that removes tail risk from firms through the longstop applies to both the CCA and FOS reforms — it is a coherent policy design to limit firm liability, not a series of unrelated technical adjustments.

The financial services practitioner

The Limitation Act already allows historically old cases to proceed where there has been dishonest concealment. The practical effect of Clause 6 is to displace claims from the cheap, informal FOS route to the court system.

The compliance director

Online sales journeys, email trails, call recordings, case management notes, audit logs and retained policy documents often mean there is a much better evidential trail than existed in the paper era.

FCA rules already require indefinite record retention for certain categories, including pension transfer records, making the Government's evidential-decay argument weaker still for those categories.

4.6 Mass Redress Schemes Are Not a Credible Safety Valve

The financial services practitioner

The Minister's letter argues that for large systemic events, the appropriate mechanism is FCA-administered consumer redress schemes. This is 'a gross fantasy,' citing two examples relevant to the APPG's work:

- The Woodford investor redress scheme, which the APPG understands investors regard as deeply inadequate.
- The absence of any mass redress scheme for approximately 900,000 victims of SafetyNet Credit, despite the scale of consumer harm.

Report Stage, 7 September 2026 — Baroness Kramer (LD) at Report Stage put this concern in its sharpest form, using the motor finance scandal as the test case. The FOS exposed a major systemic harm while the FCA 'stood to the side.' The resulting FCA-administered redress scheme is currently £7 billion. She asked directly whether under the new framework 'this scandal would never be exposed and there would never be redress.' The Minister did not answer. The report of the FSR Committee Growing Pains, which the Government cited as its evidence base, itself recorded FOS decisions 'creating precedents that the FCA requires firms to follow' — but this is cited by the Government as a problem (quasi-regulation) rather than as the mechanism by which systemic consumer harms are identified and remedied.

4.7 Litigation Proliferation: Self-Defeating Consequences

The financial services practitioner

Upset customers will always seek redress. So if you cut off the cheap informal FOS route, they will simply redeploy to the court service. They won't just disappear.

Someone has not given it much contextual thought.

4.8 Pre-existing FOS Structural Weaknesses That Clause 8 Compounds

The financial services complaints solicitor

Key concerns from operational experience:

- FOS decisions are binding but unenforceable — regulated firms can enter liquidation to avoid paying compensation.
- Directors of regulated companies are not necessarily regulated persons and are therefore beyond FOS reach.
- Judicial review is the only avenue to challenge a final FOS decision — disproportionately expensive for most consumers.
- Adjudicators and ombudsmen cannot refer to case law and lack formal financial services backgrounds.
- The FCA actively discourages complainants from using professional representatives, on cost grounds — but without professional assistance consumers have very limited realistic prospect of arguing successfully against a regulated firm.
- The official FOS uphold rate is 31.1%, meaning 69.9% of complaints are rejected.
- When firms cannot pay and become insolvent, complaints transfer to FSCS — but FSCS applies different criteria, creating a redress gap. The LCF case illustrates this.

Report Stage, 7 September 2026 — Lord Davies of Brixton (Lab) at Report Stage noted that the Government itself finds it 'quite difficult... to point to cases in which they expect a different result following this change from what was happening before.' This is significant: Lord Davies is a Government Peer, and his statement — that the Government cannot identify cases where it expects a different FOS outcome — directly confirms the practitioner's concern that the Bill is addressing a non-evidenced problem while compounding existing FOS weaknesses. The Lord Bishop of Manchester noted that data from the last year shows 25% of cases seen by FOS involved vulnerable consumers — precisely the group least able to absorb the additional barriers Clause 8 introduces.

4.9 Bank Branch Closure and Predatory Market Formation

The professor of financial regulation

The academic contributor's peer-reviewed paper — 'Mapping the Slippery Slope: the Growth of Predatory Financial Services Markets Across the UK,' European Journal of Finance, January 2025 — examines 83,064 UK AFSPs between 2002 and 2015 and finds:

- Significantly higher numbers of AFSPs engage in financial misconduct in areas of high bank branch closure.

- The most severe offending occurs in urban and deprived areas.
- Both new entrants and existing firms adapt their behaviour following bank branch closures.

Report Stage, 7 September 2026 — Report Stage Day 1 produced one of its most significant outcomes on Clause 3 (access to banking services). The House voted 246-165 to remove Clause 3 entirely — the provision that would have given the Treasury sweeping Henry VIII powers to amend any Act of Parliament in connection with access to banking, before the Government knew what it intended to do with those powers. Both the Delegated Powers and Regulatory Reform Committee and the Secondary Legislation Scrutiny Committee had recommended removal. Baroness Kramer noted nearly 7,000 bank and building society branches have closed since 2015. Baroness Altmann cited the recent Age UK report: only 15% of over-65s are fully digitally included, and 1.4 million are fully digitally excluded. Lord Pitt-Watson confirmed the Government intends to narrow Clause 3's powers after the Lloyd review reports in October 2026 — by which time the Bill will be in the Commons. The removal of Clause 3 directly vindicates the academic contributor's research: Parliament has recognised that the bank branch closure problem cannot be addressed through sweeping executive powers designed before the problem is properly diagnosed, which is precisely the regulatory failure his paper documents.

5. Proposed Remedies and Legislative Recommendations

5.1 Definition of 'FCA Rule' — three formulations

Three formulations have been proposed, each with a different emphasis:

The compliance director proposed the most explicit version:

For the purposes of this section, 'FCA rule' includes the Principles for Businesses, the Consumer Duty, the Code of Conduct and any other FCA Handbook provision expressed to have binding status.

The specialist financial services complaints solicitor proposed a simpler and broader functional definition that avoids the need to enumerate specific Handbook modules:

FCA Rule should be defined as something along the lines of 'the contents of the FCA Handbook as updated from time to time.'

The advantage of this formulation is that it avoids the problem of enumeration — any future change to the Handbook's structure or the introduction of new modules would automatically fall within scope, without requiring further legislative amendment. The disadvantage is that it may give rise to the same R/G distinction argument, since the Handbook as a whole includes Guidance as well as Rules.

The senior solicitor partner's specific additional point: the Code of Conduct must be expressly included in whichever formulation is adopted, given its absence from the Section 417 FSMA definition. The consumer law solicitor's minimum condition: any Rule that is currently open to firm-favourable interpretation through associated Guidance provisions must be redrafted to remove ambiguity before FOS jurisdiction is restricted.

Report Stage, 7 September 2026 — Lord Pitt-Watson's Report Stage assurance that the Code of Conduct is within scope does not cure the statutory gap — the assurance lives in Hansard, not in the Bill. If the Government accepts that the Code of Conduct should be within scope, the straightforward remedy is to say so in the Bill.

5.2 Scope of FOS jurisdiction — Dear CEO letters and third-party liability

The specialist financial services complaints solicitor

This contributor proposed the most detailed legislative remedy, restructuring Section 228 FSMA to expressly preserve FOS jurisdiction over contractual claims, tortious claims, third-party statutory liability (including s.75 and s.140 CCA), and Principal/AR liability — and to require FOS to take into account Dear CEO letters, NCA communications, court judgments, and voluntary codes. The proposed new wording for Section 228(2) would read:

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, (ii) the act or omission complained of is an alleged breach of a duty owed to the claimant in tort or an alleged breach of a contract; (iii) the act or omission complained of is an act for which another statute imposes potential or concurrent liability upon the respondent, or (iv) 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.

He also proposed that Section 228A be amended to require FOS, when determining whether an FCA rule applied or was complied with, to take into account:

- Any law relating to the act or omission.
- Any opinion given by the FCA under section 227C relating to the FCA rule.
- Anything else published by the FCA relating to the FCA rule.
- Any other matters specified in regulations made by the Treasury.
- Any communication issued by the FCA, NCA or a Court of Competent Jurisdiction of which the respondent ought reasonably to be aware — specifically including Dear CEO letters.
- Any law relating to liability for acts, omissions, breach of contract, tortious liabilities, or otherwise that imposes a legal duty on a respondent for the actions or omissions of another (covering s.75 CCA, s.140 CCA, and Principal/AR liability).
- Anything published by the FCA or other regulators (including rules, guidance or standards) relating to the act or omission.
- Any voluntary codes of practice relating to the act or omission, to the extent they applied to the respondent.

This proposed amendment is the most comprehensive legislative remedy produced by any contributor. It addresses the contract law omission, the third-party liability gap, the Dear CEO letter gap, and the fair and reasonable test question simultaneously.

5.3 Preservation of FOS residual fairness discretion

The compliance director

Nothing in this section requires the Financial Ombudsman to treat compliance with a detailed FCA rule as conclusive where the disputed act or omission may nevertheless have breached the Principles, the Consumer Duty, or was otherwise not fair and reasonable in all the circumstances.

Report Stage, 7 September 2026 — Amendment 14, moved by Lord Sharkey (LD) at Report Stage, sought to remove Clause 8 and replace it with a provision requiring FOS, when determining what is fair and reasonable, to take into account 'the relevant law and regulations, the relevant regulator's rules, guidance and standards, the relevant codes of practice and (where appropriate) what the Financial Ombudsman considers to have been good industry practice at the relevant time.' This was defeated 59-144. The Government's case against it rested on the assertion that Clause 8 does not abolish the fair and reasonable test — a position directly challenged by Lord Sharkey, Baroness Bowles and Baroness Kramer (LD). The motor finance example (Baroness Bowles/Kramer) — where firms complied with disclosure rules but hidden commissions were inherently unfair — remains the most powerful practical illustration of why residual fairness discretion is essential.

5.4 Statutory minimum exceptions to the 10-year longstop

The compliance director

The 10-year limit shall not apply where the complainant could not reasonably have known of the facts giving rise to the complaint within that period, where the act or omission was concealed, where the complaint concerns a continuing relationship or continuing effect, where the firm failed to retain records it was required to retain, or where the complaint forms part of a wider systemic issue or redress event.

Report Stage, 7 September 2026 — Baroness Bowles (LD) at Report Stage confirmed these exceptions are necessary by reference to Section 32 of the Limitation Act: courts do not permit time to run when material facts have been concealed, and FOS should not be forced to do so either. This is a direct endorsement of the compliance director's proposed exception for cases of concealment.

5.5 Transparency of FCA interpretive opinions

The Bill should require publication of FCA opinions provided to FOS on rule interpretation. Without it, the effective standard of consumer protection becomes invisible to consumers.

5.6 Evidence base before commencement

A Freedom of Information request for the specific FOS decisions in which FOS applied a different standard from the FCA remains the most available mechanism for Parliament to assess the Government's evidence base. The proportionality argument for these reforms cannot be assessed without the underlying data.

Report Stage, 7 September 2026 — Lord Sharkey (LD) at Report Stage formally noted this lacuna: 'A lack of evidence for the reform proposals still exists. We still have not seen what it is that is wrong with the current system. We have not seen any hard data.' His proposed Amendment 15 — to require an independent review before commencement of Clauses 7 and 8 — was not pressed following withdrawal of Amendment 13, but the evidential gap it was designed to address remains entirely unresolved.

5.7 Non-diminution of consumer protection on CCA transfer

Report Stage, 7 September 2026 — This is a new recommendation arising from Report Stage. Baroness Bowles' (LD) Amendments 2 and 3 proposed that CCA reforms should not be commenced unless consumer protections are not diminished. The Government resisted this. However, the Government confirmed that Section 75 and the unfair relationships provisions (Sections 140A-140D) will remain in legislation, and that CCA repeal will not commence without replacement arrangements in place. Parliamentarians should seek formal written confirmation of these commitments. The FCA's own acknowledgement that many CCA provisions 'could not be replaced by FCA rules without adversely affecting consumer protection' makes the non-diminution principle not merely desirable but necessary.

5.8 Mass redress: independent scheme design

If mass redress schemes are to serve as the safety valve for restrictions on individual FOS complaints, those schemes must be designed independently of the FCA. The motor finance redress scheme — cited by Baroness Kramer (LD) at Report Stage as costing an estimated £7 billion — is the current test of whether FCA-designed schemes deliver adequate consumer outcomes.

5.9 Restore the legal hierarchy: Principles must govern Rules, not be subject to them

The emeritus professor of consumer and financial services law proposed three specific remedies arising from his analysis:

- The Bill should state expressly that the Principles — including the Consumer Duty — are within the scope of FCA rules for the purposes of Clause 8, and that compliance with specific detailed rules does not exhaust the application of the Principles. This would give statutory force to the judicial position established in *R (British Bankers Association) v FSA* [2011].
- The power in the proposed s228(4)(d) — which would allow the Treasury to exclude particular rules (including the Principles) from the adapted fair and reasonable test by secondary legislation — should be removed from the Bill, or at minimum made subject to the affirmative procedure with a requirement that Parliament approve any exclusion of principle-based rules.
- The provision requiring FOS to take into account "the general principle that consumers should take responsibility for their decisions" should be replaced with, or balanced by, a requirement to take into account the consumer protection objective in s1C of FSMA

2000 — specifically the factors identified in the FCA's own Consumer Duty guidance (PRIN 2A.1.9) that justify a high level of protection: weak bargaining position, cognitive biases, lack of expertise, and information asymmetry. Including only the consumer responsibility principle without these countervailing factors is not a neutral drafting choice; it reflects a one-sided lobbying outcome.

6. Synthesis: The Direction of Travel and the APPG's Assessment

The picture that emerges from the aggregated expert opinion and the Report Stage transcript is consistent. The Bill's FOS provisions are converging around a single structural shift: from a system in which FOS exercises independent fairness discretion on behalf of consumers, to one in which FOS acts as an enforcement mechanism for FCA Rule compliance — with the FCA itself providing the interpretive framework within which FOS must operate.

- The consultees across professional and academic disciplines, and the Peers across party lines at Report Stage, identify this shift as:
- Legally incomplete — the statutory drafting does not achieve what the Minister's letter says is intended; ministerial assurances in Hansard do not cure this gap.
- Architecturally incoherent — it imposes a rules-based adjudication model on a principles-based regulatory system, producing indeterminate outcomes that favour firms over consumers.
 - Practically self-defeating — restricting FOS access will not reduce consumer grievances; it will redirect them into an already strained court system at higher cost to all parties.
- Disproportionate — the Government has identified a problem affecting a 'small but significant minority' of FOS cases (its own characterisation, still unquantified) and has responded with a structural restriction that will affect every complaint where the firm has complied with the relevant Rules but has nevertheless acted unfairly.
- Evidentially unsupported — three months of parliamentary requests, confirmed in writing by the FCA's own Deputy CEO, have produced no hard data. The motor finance scandal — exposed by FOS, costing firms an estimated £7 billion in redress — illustrates exactly what the system is at risk of losing.

The APPG notes that the vote to remove Clause 3 (246-165) demonstrates the House of Lords is prepared to act decisively when a provision is constitutionally unsound. The evidence assembled in this report provides the detailed technical and practitioner basis for the same scrutiny to be applied to Clauses 7 and 8. Lord Davies of Brixton — a Government Peer — explicitly invited the Minister at Report Stage to confirm 'these changes are contingent and will be reviewed and judged on their effect.' The Government did not give that assurance. The APPG urges it to do so.

7. Report Stage Day 1 (7 September 2026) — Summary of Relevant Proceedings

Minister. Lord Stockwood replaced by Lord Pitt-Watson (Parliamentary Secretary, HM Treasury) for Report Stage.

7.1 Clause 3 — Access to Banking — Removed by the House (Division 2: 246-165)

Baroness Neville-Rolfe's (Con) Amendment 10 to remove Clause 3 was carried 246-165 — a significant Government defeat. The clause gave the Treasury unlimited power to amend any Act of Parliament in connection with access to banking before the Lloyd review had reported. Both the DPRRC and the Secondary Legislation Scrutiny Committee had recommended removal. The Government confirmed it will narrow the powers once the Lloyd review reports in October 2026 — after which the Bill will be in the Commons.

- Nearly 7,000 bank and building society branches have closed since 2015 (Baroness Kramer (LD)).
- 1.4 million over-65s are fully digitally excluded (Baroness Altmann, citing Age UK report, September 2026).
- The vote corrected: Contents 246, Not-Contents 165 (announced at 18:43).

7.2 Clauses 7 and 8 — FOS Reform

Lord Sharkey (LD) moved Amendment 13 (to remove Clause 7) and Amendment 14 (to restore the fair and reasonable test). Amendment 13 was withdrawn following debate; Amendment 14 was pressed to a Division and defeated 59-144.

- The 'fair and reasonable' test has been 'abolished by the Bill, despite having been explicitly confirmed in July last year in the memorandum of understanding signed by the FOS and the FCA' (Lord Sharkey (LD)).
- The Government has produced no hard evidence for the claim that FOS has acted as a quasi-regulator in a 'small but significant minority' of cases — despite requests at Second Reading, Committee Day 1, and Committee Day 6.
- FCA Deputy CEO Sarah Pritchard formally re-iterated Parliament's request for this evidence to HMT (letter, 6 August 2026) — and received no response.
- FCA CEO Nikhil Rathi (Treasury Select Committee, 15 July): FCA wants 'an independent Financial Ombudsman Service'; the referral mechanism risks the system becoming 'gummed up.'
- FCA Chair Mr Alder (same TSC session): 'if we get this wrong, the system will become gummed up... the main objectives of those changes in the legislation will not be met.'
- FCA Deputy CEO Pritchard: 'We do not want to turn into a backdoor appeal mechanism.'
- 12 leading consumer organisations wrote in support of Amendments 13, 14 and 15; Martin Lewis strongly supports removal of Clause 7 and restoration of the fair and reasonable test.
- Lord Davies of Brixton (Lab, a Government Peer): confirmed the Government itself cannot point to specific cases where it expects a different FOS outcome following the reform; urged the Minister to confirm the changes are 'contingent and will be reviewed and judged on their effect.'
- Baroness Bowles (LD): motor finance saga — firms complied with disclosure rules but hidden commissions were inherently unfair; longstop rewards concealment; 'A regime that rewards concealment is not a regime that promotes fairness.'

- Baroness Kramer (LD): motor finance redress scheme currently £7 billion — exposed by FOS while FCA 'stood to the side'; asked whether under new framework 'this scandal would never be exposed and there would never be redress.' Minister did not directly answer.
- Lord Altrincham (Con): called for more fundamental FOS reform — replacement with a Financial Adjudication Service and dedicated financial services tribunal.
- Lord Pitt-Watson: 'treating customers fairly is one of the business principles of the FCA and is therefore one of the criteria by which a complaint will be able to be made to the FOS'; Clause 8 does not abolish fair and reasonable test; 'only a very small number of cases are going to be referred to the FCA'; industry publication with examples of alleged inconsistency forthcoming but not yet published.

7.3 Consumer Credit Act Non-Diminution — Not Pressed to a Vote

Baroness Bowles' (LD) Amendments 2 and 3 (non-diminution of CCA consumer protections) were not moved to a vote after the Government resisted. Government concessions confirmed: Section 75 and unfair relationships provisions (Sections 140A-140D) will remain in legislation; CCA repeal will not commence without replacement arrangements in place.

7.4 Mortgage Prisoners — Defeated (Division 1: 76-164)

Amendment 5 (Lord Sharkey), to cap interest rates for mortgage prisoners in closed-book products, was defeated 76-164. 105,000 mortgage prisoners remain. The Government said a rate cap 'does not seem to be the right solution' and gave no alternative commitment.

7.5 Other relevant matters

Amendment 11 (affordable credit framework, CDFI rating) defeated 69-171. Amendment 60 (child trust funds for incapacitated young adults) not pressed — Government confirmed primary legislation required, MoJ exploring options, FCA review underway. Amendment 70 (IHT423 mandatory scheme) not pressed — Government confirmed some bond products excluded from existing voluntary scheme; M&G confirmed it does facilitate direct payments but certain products excluded.

8. Potential actions for Peers with an interest in consumer protection to consider

The APPG believes that peers with an interest in consumer protection may wish to seek the Government to:

- **Produce the evidence.** Publish the spring 2025 FOS review and the specific case data underpinning the claim that FOS has acted as a quasi-regulator in a 'small but significant minority' of cases. The FCA has formally asked for this to be done. Parliament has asked for this to be done. It has not been done.
- **Cure the Code of Conduct gap in the Bill.** Accept an amendment inserting an express definition of 'FCA Rule' that includes the Code of Conduct.
- **Preserve FOS jurisdiction over contractual, tortious and third-party liability claims.** Accept an amendment to Section 228 FSMA along the lines proposed by the specialist KC.

- **Protect against concealment under the longstop.** Accept primary legislation minimum exceptions to Clause 6, in particular for cases of active concealment of the cause of action.
- **Publish FCA interpretive opinions.** Accept an amendment requiring publication of any FCA opinion provided to FOS under Clause 7.
- **Confirm CCA commitments in writing.** Provide formal written confirmation that Section 75 and ss.140A-140D will remain in legislation and that CCA repeal will not commence without equivalent replacement protections.
- **Confirm the changes are contingent.** Give the assurance explicitly requested by Lord Davies of Brixton (a Government Peer) at Report Stage: that the FOS changes are contingent and will be reviewed and judged on their effect.

9. Contact and Further Information

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- APPG Briefing Note #2:
<https://www.appgiffs.org/wp-content/uploads/2026/06/Briefing-Note-2-Financial-Services-and-Markets-Bill.pdf>
- Academic paper on predatory financial services markets (Section 4.9):
<https://doi.org/10.1080/1351847X.2024.2446718>
- APPG Website
<https://www.appgiffs.org/>