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GENERAL COMMITTEES

Public Bill Committee

FINANCIAL SERVICES BILL

Eighth Sitting

Thursday 1 March 2012

(Afternoon)

CONTENTS

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Monday 5 March 2012

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr James Gray, † Mr George Howarth, Mr Edward Leigh

† Bradley, Karen *(Staffordshire Moorlands)* (Con)
† Burt, Lorely *(Solihull)* (LD)
† Durkan, Mark *(Foyle)* (SDLP)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Fovargue, Yvonne *(Makerfield)* (Lab)
† Garnier, Mark *(Wyre Forest)* (Con)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Gilmore, Sheila *(Edinburgh East)* (Lab)
† Hamilton, Fabian *(Leeds North East)* (Lab)
† Hancock, Matthew *(West Suffolk)* (Con)
† Hands, Greg *(Chelsea and Fulham)* (Con)
† Hoban, Mr Mark *(Financial Secretary to the Treasury)*
† Jamieson, Cathy *(Kilmarnock and Loudoun)* (Lab/Co-op)
† Leslie, Chris *(Nottingham East)* (Lab/Co-op)
† Norman, Jesse *(Hereford and South Herefordshire)* (Con)
† Pearce, Teresa *(Erith and Thamesmead)* (Lab)
† Rutley, David *(Macclesfield)* (Con)
† Sharma, Alok *(Reading West)* (Con)

James Rhys, Marek Kubala, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 1 March 2012

(Afternoon)

[Mr George Howarth *in the Chair*]

Financial Services Bill

Clause 5

The new Regulators

Amendment moved (this day): 72, in clause 5, page 16, line 7, at end insert—

'(5) The FCA must, so far as is compatible with acting in a way which advances its operational objectives, discharge its general functions in a way which promotes the growth and development of social finance and social investment.'.—*(Chris Leslie.)*

1 pm

The Chair: I remind the Committee that with this we are discussing amendment 73, in clause 5, page 22, line 44, at end insert—

1R The Social Investment Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the Social Investment Panel") to represent the interests of organisations which specialise wholly or mainly in social finance or social investment.

(2) The FCA must appoint one of the members of the Social Investment Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The FCA must appoint to the Social Investment Panel such—

(a) individuals who represent organisations carrying out social finance activity, and

(b) individuals who represent social sector organisations receiving social investment, as it considers appropriate.

(5) The FCA may appoint to the Social Investment Panel such other persons as it considers appropriate.

(6) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of a range of different forms of social sector organisations.'.

Chris Leslie (Nottingham East) (Lab/Co-op): Before lunch, we were midway through the discussion on amendments 72 and 73 to clause 5 in relation to the need to have a positive approach to social finance and social investment. With amendment 72, we are arguing that the Financial Conduct Authority should, as long as this is compatible with its operational objectives, discharge its functions

"in a way which promotes the growth and development of social finance and social investment."

Hon. Members will recall that, with amendment 73, we seek the establishment of a social investment panel. Under the other arrangements, the FCA will have a number of other panels. There should be a social investment panel

"to represent the interests of organisations which specialise wholly or mainly in social finance or social investment."

I had started to talk about the civil society, third sector and voluntary organisations that supported the amendments. I am very pleased to say that we had considerable support, co-ordinated in many ways by the UK Sustainable Investment and Finance Association. A letter has been sent to all members of the Committee and to the Minister, signed first by Sir Stuart Etherington, chief executive of the National Council for Voluntary Organisations, but also by the chief executives of organisations including the Charity Finance Directors' Group, the Association of Chief Executives of Voluntary Organisations—I think that the Prime Minister prays in aid ACEVO from time to time—Investing for Good, Bridges Ventures, Charity Bank, Social Enterprise UK, the Community Development Finance Association, Social Finance, the Social Investment Business, the social stock exchange, Big Issue Invest, Big Society Capital, Bates, Wells & Braithwaite, the Young Foundation and Triodos Investment Banking. We have a great deal of support.

The letter to the Minister from the organisations that I have listed says:

"The amendments pave the way for the growth of the social investment market, which is about to receive a large injection of capital from Big Society Capital."

That is a new social investment wholesaler set up under the Dormant Bank and Building Society Accounts Act 2008. A wave of innovation is currently being experienced and it requires sensitive regulation. The letter continues:

"The amendments are simple and stand-alone, do not cost the taxpayer and do not interfere with any other aspects of the bill. At a time of austerity and public funding cuts for charities, the amendments would help to support the role of social investment to finance civil society and would help the UK to develop as a leading international destination for social investment."

Those are the key points.

The Minister for the Cabinet Office and Paymaster General has said in the past:

"It's unthinkable for businesses to grow and thrive without capital finance but this has too often been the reality for charities and social enterprises."

In the foreword to "Growing the Social Investment Market: A vision and strategy", a document recently published by the Cabinet Office, the Minister for the Cabinet Office and the Parliamentary Secretary, Cabinet Office, the hon. Member for Ruislip, Northwood and Pinner (Mr Hurd), wrote jointly:

"We want more social investment opportunities to be available to citizens and the managers of our savings. In the same way that finance flowing to business start-ups is the lifeblood of our economy, so it will be with social enterprises."

I hope, therefore, that this is an area of cross-party concern. We know that there were great hopes in the third sector following the Prime Minister's rhetoric about the big society, but the cuts in grants to local authorities, for example—we have talked about the pace and nature of those cuts—have filtered through to and hit many local authorities quite hard on the front line. Very many third sector organisations are experiencing a severe period of retrenchment just at the moment when they arguably need to be doing more and a wider range of activities. Therefore, in a small way, ensuring that the regulators have an ear to their concerns and are attuned to their particular challenges would be an important

step forward. That is the argument behind the amendments. I have made the point about why they are necessary, so it would be useful now to hear the Minister's case. I hope that he will accept the amendments.

The Financial Secretary to the Treasury (Mr Mark Hoban): It is a pleasure to serve under your chairmanship, Mr Howarth. Let me be clear, as the hon. Member for Nottingham East was, that there is widespread support for social investment. I served on the Committee that considered the Dormant Bank and Building Society Accounts Bill, and it is interesting that the hon. Gentleman almost prayed it in aid. The first priority of that legislation, which was introduced by the now shadow Chancellor, was on youth facilities, not social investment. We welcome the conversion to the cause of using that money to fund the Big Society Bank, and to promote investment in social investment projects.

There are several projects around, and I am working closely with people in my area to help to create a new social investment project serving south-east Hampshire. However, I counsel caution, because the FCA is not being set up to promote financial services companies or particular sectors. If the words "social investment" were substituted for "other sectors and financial services", I wonder whether it would receive such a warm welcome from the hon. Gentleman. I think we all agree that there should be a level playing field, and that consumers, whether they invest in a social investment fund, an ISA, or a pension, need the same level of protection. We should not distinguish between one set of providers compared with another. There should be a level playing field for all.

We are setting up the FCA to encourage competition, to promote access, and to find ways of creating a market in which people may choose between different forms of investment and investment providers. The amendment is unnecessary because the whole ethos of the FCA is to promote new providers coming forward, to encourage competition in the market, and not to close the market to others.

Fabian Hamilton (Leeds North East) (Lab): I understand what the Minister is trying to say, but unlike the previous amendments tabled by my hon. Friend the Member for Nottingham East and other hon. Friends, this one has enormous support—*[Interruption.]* It has enormous support outside the House from a much broader selection of organisations. The appendix to the letter that was sent to all hon. Members by Bates Wells & Braithwaite lists a huge selection of social enterprise organisations. Does the Minister agree that that perhaps gives a little more credibility to my hon. Friend's already fantastically good amendment?

Mr Hoban: I am pleased that someone supports amendments tabled by the hon. Member for Nottingham East. It is novel in our proceedings so far to find an amendment that has such wide support. It is great that many people support it, but I am not sure that that is a justification for putting it in the Bill. If one of my hon. Friends proposed an amendment for a special hedge fund promotion panel, and listed hundreds of thousands of hedge funds, that would not cut much ice with Opposition Members. We need a regime that shows no fear and no favour in regulation.

Mark Durkan (Foyle) (SDLP): The Minister has emphasised the difficulties that he believes would be created by the word "promotes"—putting a requirement on the FCA to promote any particular form of investment. Would he consider thinking again about the provision, and perhaps changing "promote" to "facilitate"? What would be wrong with asking the FCA to facilitate the growth and development of social investment? That would not have the risk that he says would be associated with the word "promote."

Mr Hoban: I am not sure what the hon. Gentleman means by facilitate. If he means encourage, we need to ensure that there is a proper regulatory regime in place for this. Why this sector out of all other sectors? Lots of sectors are covered by the Financial Services Authority and the FCA. It is not appropriate for the Bill to be used as a vehicle to promote or facilitate a particular type of investment. Let us not forget that all investments involve an element of risk. We need to be very careful about the purpose for which this regulator is being used.

Mark Durkan: Do the Government not want the growth and development of social finance and social investment? I thought that they did.

Mr Hoban: Yes, but there is a difference between wanting that growth and having a body that promotes that growth, or saying that the regulator should promote that growth. I want more people to invest in pensions; I want more people to save in ISAs. However, I am not sure that saying the role of the FCA is to promote pensions and savings in ISAs is appropriate. Just because we want something to happen does not mean that necessarily the best way of doing it is for the regulator to give it a lighter touch and encourage one thing against another. That is not the impartial role that we would expect a regulator to play.

Sheila Gilmore (Edinburgh East) (Lab): Does the Minister consider that the issue is not about promoting social investment, but about ensuring that it is not inadvertently hampered by a level of regulation or lack of understanding of the nature of social enterprise? Far from facilitating such an approach, that could, in fact, do the opposite and stand in its way. That is my understanding of why these organisations are suggesting that this level of attention should be paid to social investment: to ensure that it can, indeed, flourish and is not harmed by poor regulation.

Mr Hoban: The hon. Lady needs to read the amendment. It is not about making sure there is no barrier in place. The amendment states:

"promotes the growth and development of social finance and social investment."

It is not saying that social investment should not be penalised; it is saying that social investment should be promoted. There is a very different emphasis in the amendment compared with the point the hon. Lady is making. However, she is absolutely right. In the same way that no group should have undue promotion, no group should be particularly penalised either. There should be a level playing field for regulation across all sectors, not an uneven playing field. I am afraid that the amendment would create an uneven playing field.

Chris Leslie: The Minister feels very passionately that there should not be any special treatment for the social investment and social finance sector. However, what if we were to reframe the amendment so that, instead of emphasising promoting or advancing, it talked about not prejudicing or inhibiting the growth and development of the social finance and investment sector? I am trying to find a form of words that the Minister might accept. Is that something to which he is more amenable?

Mr Hoban: That is unnecessary because the regulator should not be unduly penalising any sector. To include an amendment in the terms the hon. Gentleman expresses, would suggest that there is something in the Bill that suggests that that there is something the regulator should, would or, even, could do. The reality is that if this were accepted, we would have other groups saying, "Why are you giving special favours to social investment? Why not give some special favours to credit unions, building societies, banks or insurers?" The reality is this. What is in the best interests of all sectors in the financial services is to have a regulator that provides appropriate protection to consumers and that encourages the competition and openness that will allow others to introduce products. Let us not forget that we are talking about investments here. It is right to ensure that there is proper consumer protection. I would not want consumers to feel that they were getting some sort of short change as a consequence of the amendment. A level playing field is a far better way of resolving the matter.

Mark Durkan: If the Minister believes that the measure is not necessary and that all the other provisions for the level playing field will be good enough for social finance and the social investment sector, which of the panels that the FCA will be setting up does he believe will particularly accommodate or reflect social investment sectors and trusts?

1.15 pm

Mr Hoban: I would think that the smaller businesses practitioner panel would be the ideal place for someone from the social investment sector, although there may be some large social investment players out there, who might be in the normal practitioner panel. Going back to the point about not inhibiting the sector's growth, the reality is that the proportionality principle in the provision ensures a level playing field across sectors.

Chris Leslie: I appreciate that the Minister is taking a significant number of interventions. In trying to reach consensus, then, he does not want the wording of the amendment, and he thinks that protecting or inhibiting measures would also be unnecessary. Will he at least agree to the request of Sir Stuart Etherington, the chief executive of the National Council for Voluntary Organisations, and others, who wrote to him last week about the amendments, to meet him to discuss the issue? Can he do that before Report?

Mr Hoban: I am always happy to meet third parties, and my door is always open to people such as Sir Stuart; but of course the party they should engage with is the regulator, because the regulator will design the rules. Although I am happy to meet Sir Stuart—subject to some diary management before accepting another appointment before Report—he and the other concerned parties should engage with the FCA on the matter. It sets the rules. *[Interruption.]* Yes, but it deals with the detailed application of rules, and the Cabinet Office is working on the regulatory environment of social investment.

I do not think that the amendment is necessary. It sends the wrong signal. Any sense of a lighter touch regime would set the sector back, rather than strengthen it. We have a regulator that should act proportionally and encourage competition and access. That should be sufficient to ensure that social investment funds have a fair hearing.

Chris Leslie: I am sorry that in resisting the amendment the Minister did not take heed of the Prime Minister's commitment to the big society. I do not mind anyone pointing out drafting anomalies and such things, but there was no sense of an attempt to accommodate some of the concerns.

The Minister gave the impression that no obstacles fall in the way of social investment and finance in the regulatory context, but he knows that the FSA and, undoubtedly, the FCA, will regard that corner of investment activity as a marginal or somehow second-order range of issues, and will not be as focused as they should on the issues in question.

Those in the sector are often motivated by non-profit means, and there is a notion that, "Oh, well, they can be patted on the head and get their voice heard: why don't they just take a seat on the smaller businesses practitioners panel or practitioner panel?" The Minister could equally make the spurious argument that creating a smaller businesses panel is special treatment to a particular corner of industry; so he knocks down his own argument—which would be a ridiculous one.

Matthew Hancock (West Suffolk) (Con): Talking of ridiculous arguments, were the amendment to be accepted, the FCA would have a responsibility to promote social finance and investment above the needs of, for instance, small business. I shall vote against it in support of small businesses, and against that position.

Chris Leslie: I cannot believe that intervention. I hope that he will be willing to make exactly those points to all those third sector, charitable and voluntary sector organisations in his constituency and county and to national organisations. As well as meeting the Minister, they clearly also need to have a word with him.

Social investment and finance are important. They hit a number of obstacles. We have not seen it develop in a sensible way, and in a manner that is compatible with advancing the operational objectives of the FCA. The amendment is not framed to put this above those operational objectives. Such objectives are clearly paramount, and that is clear in the framing of the amendment.

Fabian Hamilton: Does my hon. Friend agree that the amendment provides for the FCA to establish a social investment panel, which would comprise persons with knowledge and expertise of social finance and social investment? Surely that would help to give a level playing field.

Chris Leslie: No harm could come from having such a panel. It would provide good information and a better dialogue. We are getting into the bunker mode in this phase of the Bill in which the Minister is just saying, "Resist! Resist!" They are saying that in all circumstances, even to some of the most amenable cross-party suggestions. These changes are simple and straightforward, with no cost implications or consequences for the rest of the Bill. All parties recognise the growing importance of social finance and social investment, particularly given the catastrophic state in which the Government are leaving the wider public finances and the economy. They should recognise that the social finance market is in need of development and careful regulation. I do not understand the Minister's objections. He talks about how dreadful it would be to promote the growth and development of social finance and social investment. He asks why this sector should be singled out for special treatment. We need to give this sector some support. However we do it, it is important that that help is there. I did not think that there was such a big difference between the parties, but, obviously, I was wrong. I do not wish to withdraw amendment 72; I wish to press it to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 12]

AYES

Durkan, Mark	Hamilton, Fabian
Evans, Chris	Jamieson, Cathy
Fovargue, Yvonne	Leslie, Chris
Gilmore, Sheila	Pearce, Teresa

NOES

Bradley, Karen	Hands, Greg
Burt, Lorely	Hoban, Mr Mark
Garnier, Mark	Norman, Jesse
Gilbert, Stephen	Rutley, David
Hancock, Matthew	Sharma, Alok

Question accordingly negatived.

Chris Leslie: I beg to move amendment 54, in clause 5, page 16, line 15, at end insert—

'(c) the ease with which consumers can have access to financial services and products which are affordable and appropriate to their needs'.

The Chair: With this it will be convenient to discuss the following:

Amendment 85, in clause 5, page 16, line 41, after 'is', insert

'intelligible to them, appropriately presented'.

Amendment 50, in clause 5, page 16, line 41, at end insert

', legible and in plain and intelligible terms;'.

Amendment 53, in clause 5, page 16, line 41, at end insert—

'(d) the ability of consumers to access financial services'.

Amendment 55, in clause 5, page 17, line 27, after 'services', insert 'and products'.

Amendment 84, in clause 5, page 17, line 31, at end insert—

'(aa) the ease with which consumers, in all parts of the UK, can identify and obtain services which are appropriate to their needs and represent good value for money.'.

Amendment 41, in clause 5, page 17, line 35, at end insert—

'(f) the ease with which consumers can identify and obtain services which are appropriate to their needs and represent good value for money.'.

Amendment 123, in clause 5, page 17, line 35, at end insert—

'(3) In furtherance of the competition objective, the FCA shall publish, maintain and review a code [The access and choice code] setting out (amongst other things)—

(a) the approach that the FCA will take to ensure that the market provides different consumers with access to and choice about products and services that are suitable for their needs.

(b) the approach that the FCA will take to ensure that the business conduct of those providing regulated financial services continues to promote competition in the interests of different consumers over the life of any agreement.

(c) The additional steps that the FCA may take where competition does not deliver access and choice to suitable products and service for different consumers.

(4) The Treasury may by order specify—

(a) financial needs of different consumers that are to be considered essential;

(b) the outcomes that are necessary to demonstrate that essential financial needs of different consumers are met.

(5) Sections 138L (1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the FSA if it considers that it is necessary or expedient not to comply with them for the purpose of achieving an outcome specified in an order under subsection (4) of this section.

(6) Transactional banking is an essential financial need for all groups of consumers.

(7) Where the FCA considers that it is unable to achieve an outcome specified in an order made under subsection (4), the Treasury may by order confer additional powers on the FCA or direct obligations on those providing regulated financial services to ensure that the essential needs of different consumers are met.'.

Chris Leslie: Amendment 54 has been grouped with a considerable number of other amendments. In this group, we are discussing access by consumers to financial service products, the legibility of those products, the propensity of firms to produce great volumes of small print on those products, the need for transparency and good value for money to be adhered to in the availability of services for customers and, for the financially excluded in society, some sort of access and code with which the regulator can be involved.

Under amendments 54, 53 and 55, the Financial Conduct Authority has a duty to observe a number of objectives. We seek to insert, at line 15 on page 16, another issue to which the FCA must have regard, namely

"the ease with which consumers can have access to financial services and products which are affordable and appropriate to their needs".

It should also have regard to the ability of consumers to access financial services; although the Bill grants the FCA significant powers, it makes little mention of consumer access to financial services and products.

[Chris Leslie]

Conservative Members might not be particularly familiar with this, but in many parts of the country, there are individuals who struggle to open even basic banking facilities or to gain access to small levels of credit, and who find that, even if the core products are intelligible, getting permission to use them is often difficult, given their circumstances. In this day and age, credit is in many ways a necessity of life for many people—bridging between pay days, for example, can be difficult for many in society—so ensuring adequate cash-flow capabilities and so forth is difficult, although too many other people take that for granted.

The Financial Services Authority has a consumer panel, which rightly states that there is not much point talking about a fairer or more competitive market in financial products if consumers are unable to access those products because of regulatory or industry actions. The Financial Services Consumer Panel is a statutory body set up by the Financial Services and Markets Act 2000. In the panel's briefing for Second Reading, the opinion was that the FCA, when fulfilling its statutory duty, should have regard to the ability of consumers to access financial services; that would ensure that it considered the impact of its regulations and the actions of the industry on a consumer's ability to access essential services.

A simple competition and efficiency objective does not in itself guarantee access—a point that Which?—the consumer association—and Citizens Advice also emphasised. Lots of consumer organisations are exercised about this issue. For instance, the direct payments for social care, which individuals now have some stewardship over, the green deal and even proposals for social care and retirement funds all require individuals to engage with the financial services sector. Social policy increasingly requires consumers to purchase financial services, but there is no guarantee that the necessary services will be available to them, never mind at an affordable price.

The amendments are designed to get a sense of the Government's understanding of the fact that competition alone does not drive accessibility. There is a need to address those concerns more accurately in the Bill. That could be done by defining effective competition more broadly, or perhaps by inserting a clearer distinction between consumer choice and effective competition, but other suggestions have been made, partly in response to concerns in recent months as the Government have scaled back their support for, and attention to, the financially excluded sector of society. Recent changes mean that there is no longer the same emphasis on, or championing of, those issues. Basic bank account facilities have begun to be chipped away at, with some high street banks pulling out of the Link cash machine system and introducing charges for customers with few means accessing their money through other machines that might be more convenient.

1.30 pm

Others in the protection and general insurance sectors support the amendments. Aviva has stated:

"The FCA should be working towards positive consumer outcomes, not just avoiding negative outcomes."

That touches on our debate about social investment. We need a regulator that takes a proactive and positive attitude, and that not only prevents difficulties but promotes ease of access and convenience. Ultimately, the regulator should be a consumer champion. As we discussed earlier, that is not specified in the FCA's strategic objective, which is lacklustre. The Minister has said that he wants the FCA to be a consumer champion; he should produce the legislation to back up his assertion.

The Association of British Insurers has stated:

"The FCA should not restrict itself to avoiding negative outcomes…it should also put value on, and strive for, positive outcomes."

The ABI has also suggested that the FCA's

"objectives should require it to work with the industry to promote consumer access to financial services."

I would be grateful if the Minister took those issues seriously.

My hon. Friend the Member for Foyle has given significant thought to these questions and, by happenstance, we have tabled similar amendments; his amendment 85 and my amendment 50 relate to a discrete policy area. We have all encountered constituents who are befuddled by the small print and the impenetrability of financial services contracts and terms and conditions. Many rational, well educated people are frequently confused about what exactly is set out in contractual terms and conditions. My amendment 50 seeks to tweak an aspect of the consumer protection objective in proposed new section 1C(2)(c) of FSMA, which currently refers to

"the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose".

The amendment would add that that information and advice should be

"legible and in plain and intelligible terms".

We are supported by organisations that recognise the need for the amendment.

There is often a suspicion that many purveyors of financial products deliberately try to keep certain customers in the dark, which I hope is not the case. There is sometimes a sense that people, blinded with science, just sign up and, later down the track, find themselves caught by certain clauses or conditions of which they had been unaware. As we found in relation to earlier clauses, certain practitioners talk in terms that are so remote from the common-sense understanding of contractual agreements that people are completely unaware of what they are signing up to.

Yvonne Fovargue (Makerfield) (Lab): Does my hon. Friend agree that certain trigger words are used? For example, "guarantee" might be used in a headline but, in microscopic writing on page 26, the contract states that "guarantee" means totally the opposite of what an average person would expect.

Chris Leslie: Many contractual arrangements use the English language in a self-defining manner and twist words into different meanings. Several actions need to be taken, especially in the context of advertising in the media, to crack down on misdescriptions or mis-selling of products that purveyors push to the margins of intelligibility. We will all have picked up the phone in the middle of dinner or lunch at home and discovered a recorded message trying to sell some claims management product or other debt management consolidation arrangement. That will often be done in

alluring terms, with talk of guarantees and a Government scheme. There are all sorts of things that people try to do to net in customers, and those are issues that need to be dealt with through regulations around advertising arrangements. We need a broader understanding of what is meant by the principle of

"advice that is accurate and fit for purpose".

Unless we say in the Bill that it needs to be legible, intelligible and understandable, we will not see the change of culture that we need. Those were the concerns particular to amendments 50 and 85.

Amendment 41 is similar to amendment 84, which was tabled by my hon. Friend the Member for Foyle. It would change the consumer protection objective, inserting the concept that the FCA must have regard to

"the ease with which consumers can identify and obtain services which are appropriate to their needs and represent good value for money."

Which?, the consumer association, has suggested that we need an amendment that gives the new financial regulator the power to put a stop to practices such as unfair overdraft charges, excessive fees and complicated pricing structures, which often hinder competition. Many people will sign up to a bank account or a particular credit arrangement having looked at the headline annual percentage rate, or having compared one product with another, and will think, "That looks rather good and competitive. I will go for that one." They then find that if they stray beyond the normal activities within that particular contract, they will be penalised for late payment in a disproportionate way, or they will fall foul of charges that are clearly disproportionate to the offence. Some individuals who balance their budgets finely will go into the red—just by pennies on occasion—and have a £50 fine imposed on them for those infringements in a way that they were unaware could happen.

We need to ensure that consumers can discern more effectively the value for money of the products that are suitable to their needs. That requires serious work on behalf of the consumer champion, and the FCA should be doing that job. We need to clarify some of these unfair terms and regulations, and amendment 41 could help achieve that.

Finally, amendment 123 would clarify the competition objective of the Financial Conduct Authority. Citizens Advice has suggested that that is necessary. It believes that we need an access and choice code to ensure more comprehensively that we are clear about the beneficiaries of competition and how consumers should benefit. It argues, and therefore the amendment argues, that the FCA should produce and update an appropriate document, setting out how it will work to ensure that the needs of different consumers are met, as well as ensuring that the FCA's approach to competition focuses not only on consumers in the middle of the market, but particularly on those who may need to benefit more than most from choice, convenience and accessibility.

The amendment would also give the Treasury an order-making power to declare a particular financial need or needs to be essential, to prioritise attention on a particular class of difficulties that some in society face. We need to pay attention to the high-cost credit market and blow away the cobwebs when it comes to some practices in the sector. We must allow the Treasury, the regulator, to work in support of social policy objectives, too. I know that the proposal will be rebutted by the Minister, because it does not fit in his neat little boxes of policy. He will think that it is for another part of Government, but how the regulator approaches such issues really matters.

Amendment 123 would also allow the FCA to waive the usual requirements on rule-making powers, particularly the cost-benefit analysis requirement, when that is necessary to meet one or more of the outcomes specified by the Treasury in relation to essential financial need. Such a provision would be especially important for those corners of society in which the financial services sector will not necessarily fight over particular products that are not massively profitable for them. As a society, we must collectively ensure that such products are available, given how essential basic banking facilities are these days. That is the main point of the amendment, although we have managed to write other safeguards into it.

I apologise for the fact that the amendment group is long. It covers a degree of territory on a serious and comprehensive range of consumer protection issues. It is important, however, to hear the Minister's logic on the points that I have touched on.

Mark Durkan: It is a pleasure to be under your chairmanship, Mr Howarth. I speak on this group of amendments because my name is on some of them—two are in the class of "O sole mio" amendments. I suppose that I should speak to them alone, but I hope that they speak for themselves.

The aim of the amendments is to plug some of the consumer holes in the legislative bucket of the new regulatory regime. I hope that Government Members will be receptive to the concerns behind the proposals, even if they have issues with some of the wording. No doubt they will tell us that they do.

The amendments have two broad objectives: first, to ensure that consumers have meaningful choices in the bright, brand new world that we are discussing; and secondly, to ensure that consumers know the meaning of those choices. If regulation does not make it its business to ensure that the FCA promotes both, there are serious problems with the Bill. Pretending that that is a minor matter would be the same as trying to pretend that a tyre is flat only at the bottom. Meaningful choice that people can understand is significantly missing in the scheme of the Bill.

Amendment 54 relates to the FCA "discharging its general functions" and would ensure that it had clear regard to

"the ease with which consumers can have access to financial services and products which are affordable and appropriate to their needs'.".

Without the amendment, that basic requirement will not be addressed in the Bill at all, which is significant.

I am old enough to remember the whole series of Pink Panther movies with Peter Sellers. In one film, Clouseau is coming along the street and sees a character, played by Graham Stark, sitting on a step with a dog beside him. Clouseau says, "Excuse me. Does your dog bite?" Graham Stark's character says, "No. My dog doesn't bite." Clouseau goes to pet the dog and is nearly devoured by it, whereupon he says, "I thought you said your dog didn't bite." Graham Stark's character says, "That is not my dog."

We are in danger of putting consumers in a similar situation, and we as the legislators will be the Graham Stark because we will be responsible for whether or

[Mark Durkan]

not the Bill has meaningful and adequate protection for, and promotion of, consumers' interests, which is why amendment 54 is so important. I know that the Minister will say that the amendment is in respect of proposed new section 1B(5) of the 2000 Act and would insert new paragraph (c), but that proposed new section 1B(5)(a) refers to the regulatory principles under proposed new section 3B. When we look at those regulatory principles, there is a mention of consumers but it concerns the

"the general principle that consumers should take responsibility for their decisions".

So important is that to the Government that they have that same wording not once in the Bill, but twice.

1.45 pm

When we draft an amendment, some of us might want the provision to be inserted into one or two clauses, but discover that that is not necessary because it is stated elsewhere in the Bill or we find something that means nearly the same. However, it is interesting that the same provision under proposed new section 3B(1)(c) emphasising

"the general principle that consumers should take responsibility for their decisions"

is also set out on the page to which the amendment applies at proposed new section 1C(2)(d). If we need to emphasise such a provision to consumers, we should at least make sure that it is someone's responsibility to ensure that consumers have the chance to make a reasonable choice and have different products from which they can choose.

While the proposals do not contain particular geographic considerations, I am certainly conscious of them. Perhaps hon. Members from other places do not notice the frequency with which the advertisements appear on TV usually at the end of programmes with the words "excludes Northern Ireland" in respect of various financial services. Some companies have developed other ways of drafting such advertisements. Instead of saying "excludes Northern Ireland", Churchill now uses the words "extends to England, Scotland and Wales", a different way of making such a point. It is important that consumers have access to financial services and products that are also affordable and appropriate to their needs. In rejecting the amendment, it will be said that the FCA should have no interest in it. We therefore have more fundamental reasons to be worried about the Bill.

Amendment 85 is the first of the "O sole mio" amendments. As my hon. Friend the Member for Nottingham East said, it is a variant of amendment 50. I cannot understand why it would be wrong to provide for

"the needs that consumers may have for the timely provision of information and advice"

that are

"intelligible to them, appropriately presented,"

accurate and fit for purpose, because surely that is necessary. As presently drafted, the provision uses the phrase:

"accurate and fit for purpose".

In whose judgment? In the judgment of a financial adviser, of experts or of professionals? The amendment would make it clear that the information must be accurate and fit for purpose in the clear reasonable understanding of consumers. The amendment seeks more transparent fairness.

Amendment 84 is similar to amendment 41 tabled by my hon. Friend the Member for Nottingham East, except that I have included the words

"in all parts of the UK"

so that, when referring to the ease with which consumers can identify and obtain services, it would be in all parts of the UK not least for the reasons and examples that I have given in relation to other services.

Similarly, amendments 53 and 55 are about real consumer access. The Government use language about consumers in different parts of the Bill, but their resistance to the amendments basically means that, when it comes to translating that general language into meaningful protection of consumers' interests and a meaningful regard for the FCA's consumer interests, it is not really real. We all know the old joke about going into the two-hour drycleaners and being told to come back next Tuesday for our suit. If we say, "But it says that this is a two-hour drycleaners," they say, "No, that is just the name of the shop." That is what we are in danger of getting here. I ask the Government to consider carefully the problem of the language in the Bill and to embrace the logic of the amendments.

Lorely Burt (Solihull) (LD): I have every sympathy with the amendments, which make the FCA take on a positive rather than a negative role. On plain English, the hon. Gentleman makes a compelling case for not using misleading language. However, under the measure, it also says that the language should be "fit for purpose". Does he not feel that "fit for purpose" might fit the bill in this case?

Mark Durkan: No, I do not. One of the ways in which we can ensure that "fit for purpose" fits the bill is to accept the amendment. At the time, I said, "Accurate and fit for purpose in whose judgment?" Are we talking about the judgment of professionals or financial advisers? Some of these issues have already been tested by the provider or financial adviser at the service interface. We are trying to make it clear that this measure relates to the consumer. One phrase that appears twice in the Bill refers to

"the general principle that consumers should take responsibility for their decisions."

If that principle is going to be enforced and emphasised and consumers are going to be brought back to that, at least let us make sure that we are clear in this Act that we are talking about things that will be intelligible and understandable to them, and that it is not to be made understandable and clear for anybody else's judgment.

Mr Hoban: May I draw the hon. Gentleman's attention to proposed new section 1C(1) to the Financial Services and Markets Act 2000, which is the consumer protection objective? It says that the objective is

"securing an appropriate degree of protection for consumers."

When we talk about information that is fit for purpose, it is fit for purpose in the interests of the consumer and not the product provider.

Mark Durkan: What is wrong with the language in the amendment? If the Minister says what that means, what is wrong with adding a few additional words to

make it absolutely unambiguous not just to those of us sitting in this Room but to anyone who has to refer to this Bill when it becomes an Act?

Mr Hoban: It is already unambiguous and clear. The hon. Gentleman seeks to add additional words that remove the clarity already there. If we read proposed new section 1C in its entirety, we find that the purpose is extremely clear. We are in danger here of adding words for the sake of it.

Mark Durkan: I reject that. It is adding words not for the sake of it but for absolute clarity and unmistakeability because these things can be interpreted in different ways. We are talking about only a very few extra words. Under amendment 85, we are talking about five words. As I have already mentioned, this is a Bill that repeats things. The words in proposed new section 1C(2)(d) are repeated in proposed new section 3B(1)(c). The Minister is happy to produce a Bill that repeats the same words in different places for emphasis, so what is wrong with having some additional words, which as he says, make no difference to the meaning of the Bill? If it makes no difference to the meaning, it does make a difference to the clarity of the Bill. Something that improves clarity, particularly in the interests of consumers, should not be too much to ask for in this Committee.

Sheila Gilmore: The emphasis in this group of amendments, especially amendments 84 and 123, is on the needs of people who are often referred to as the financially excluded One important thing that the last Government did was to focus attention on the needs of this group of consumers. Financial inclusion became an important part of the Treasury's role, with the financial inclusion taskforce co-ordinating the different elements. Sometimes, we end up assuming, or even proposing, that those who are financially excluded can be catered for with their own brand of financial services and products, which may be good in themselves, but which are distinct in form. For example, there seems to be great enthusiasm throughout the House for credit unions and that form of financial provision. My hesitation about that is that we are saying that for some people access to mainstream financial services is less important.

When I was a councillor in Edinburgh, a colleague who represented a deprived area was struggling to sustain its credit union for all sort sorts of reasons. In exasperation, he eventually said, "Why can't my constituents have access to banks like everyone else?" The area was remarkably short of banks. If we want people to have access to the same services, and at the sane time to recognise that particular challenges must be considered and met, regulation is part of that. We do not want a regulatory regime that only stops things happening after the event; we want a regulatory system that is active and forward-looking, and promotes good practice, not one that just closes the door when something has gone wrong.

Amendment 123 would do that. It makes it clear that the FCA should encourage service providers to provide for people who are financially excluded. I draw attention to amendment 123(6), which states:

"Transactional banking is an essential financial need for all groups of consumers."

There has been much debate during this Parliament about basic bank accounts. The previous Government were going to make it an obligation for people to have the right to a basic bank account, but that has not happened. As my hon. Friend the Member for Bristol North West said, some of what was established voluntarily has been eroded, and people do not have the same access to the same form of banking. It is hugely important that people have basic bank accounts. It may be critical to someone getting a job, because many employers want employees to have an account. What may seem a small part of the amendment is important, because it would make it clear that the FCA should encourage proper access, mean that it is regulated in a way that ensures that people have proper access, and ensure that undue obstacles are not placed in the way.

It would be regrettable if that intention were not included in this part of what we are trying to do. I am sorry that the Government have decided that a financial inclusion taskforce and someone in the Treasury to champion access are not necessary, but there is no reason why that role could not be clearly identified as one of the FCA's functions, so that it can go further than just saying that it is a level playing field. It is not always a level playing field, and if we assume that it is, that is not the reality. People may find it hard to access certain quality services and products. That may be for geographical reasons, but may be the case even in a city. In my city, mainstream banks are quite difficult to find.

Teresa Pearce (Erith and Thamesmead) (Lab): I am interested in what the hon. Lady is saying, because in the area that I represent, Erith has 45,000 people and not a single bank. Would those people benefit from the amendment?

2 pm

Sheila Gilmore: They would benefit from the amendment because it draws attention to the need to ensure that transactional banking is available for all consumers. We should encourage banks and say that they must provide such services if they are to fulfil their obligations. I know that some mainstream banking practices regarding less well-off consumers can be criticised, and I do not want to detract from that. People can find themselves in considerable difficulty if they become overdrawn or, in the case of basic bank accounts, if charges that can be expensive and difficult for some low-income consumers are imposed, but that is no reason for lacking access to banking.

It is sometimes suggested that we should not encourage people to take up banking services because they could get into difficulties. I believe, however, that we should look at how we can ensure that low-income consumers are not unduly harmed by banking practices, such as charges, that make it difficult for them to continue banking. There is evidence that some people have lost or stopped using their basic bank accounts because of certain banking practices or charges that led them into financial difficulty. Such difficulties do not mean that we should give up on bank accounts and access to mainstream banking; I would rather have a regulator that views this issue as a priority. Accepting the amendments would make it clear that this area of financial regulation is important to many in our society, and that it should be part—although not all—of the job carried out by the FCA.

Yvonne Fovargue: I would like to speak to the amendment tabled in my name, but first I wish to discuss amendments 85 and 50 on the intelligibility and clarity of information.

I have a small cautionary tale to tell. Yesterday, I met someone who provides financial services as a payday lender. She said that she wanted her information to be clear, so she went to the company and said, "I want you to produce all the information that somebody needs to know before taking out a payday loan." She waited for a week, and the response came back containing 26 pages of information. She said, "I didn't mean that; I was asking about what somebody would read." The company replied, "That is what people need to know. That is what you asked for and that is what you will get unless you make it clear that the information has to be intelligible." The woman sent those pages back and asked for just one page of information. People must ask for that; otherwise they will get 26 pages of densely written information because that is what the legislation requires.

On amendment 123, I was pleased to hear the Minister mention a level playing field. As my hon. Friend the Member for Edinburgh East said, however, there is no level playing field in banking for a lot of people, particularly those on a low income or those who are perhaps coming back from the margins of society and have never previously held an account.

I do not know whether the Minister has ever gone with anyone to try and open a basic bank account. I have, because the person in question could not open one themselves. They went into the bank, and the bank tried to sell them another product that made it more money than the basic account. The bank claimed that the basic accounts were no longer in operation and that the scheme had finished. Without Government intervention, that is what will happen to simple products. Competition will not deliver such products because they are not as profitable.

What will happen when competition does not deliver appropriate, simple products for the consumer? How will the FCA intervene in such cases? That concerns me because I feel that banking, like communication, is an essential service. We have no choice but to engage with the financial services industry, but that industry does not appear to be under any obligation to provide an appropriate service to us and to those who are currently unbanked. I would therefore like the regulator to have the powers to deliver on the Government's social policy objectives and I am concerned that the Bill does not state that that is the case. It gives the regulator the power to deal with bad products, but how does it ensure that good and simple products will come to the market? Does it have the right powers to do that in the Bill? Also, it no longer contains an efficiency and choice objective for the FCA, so how could the FCA take action? Is there a power whereby it can take action under the Bill?

Mr Hoban: May I draw the hon. Lady's attention to proposed new section 1E of the Financial Services and Markets Act 2000? This may not be quite the same language as was used before, but it does refer to

"promoting effective competition in the interests of consumers".

Yvonne Fovargue: I thank the Minister for that answer, but to be honest, these products are not competitive. No bank was leaping over itself to provide a basic account. Banks had to be taken, kicking and screaming, to basic bank accounts. In fact, it was only after I had entered this place, in 2010, that one bank said, "We are going to provide a basic bank account." It had resisted doing so for that long. That was at a meeting of one of the all-party groups. It did not want to provide basic bank accounts, because it would not be provided with enough profit. The market was not delivering what consumers needed. That is what I am saying: banking is an essential service.

The FCA is there as a consumer champion. How will it ensure that people have access to banking? Banking is a gateway to other services. If it is not available, the Government will have to step in, as they have done on Post Office card accounts and girocheques, to ensure that people have access to some financial products. I therefore ask the Minister to answer the questions that I have raised and to ensure that people who have never yet had a bank account, who have no access to a bank account or who have stopped using their bank account do have access to banking. I am thinking particularly of elderly people. I think that some 25% of over-65s use someone else to access their money. That surely is not acceptable in today's society.

Chris Evans (Islwyn) (Lab/Co-op): It is a pleasure to be called to speak again on St David's day, Mr Howarth. *[Interruption.]* My daffodil fell off; how's that? I want to speak to amendments 55 and 123. Banks are in a powerful position. First, many people think that they are benevolent institutions. I always laugh to myself when people say that the financial crisis was all the Labour Government's fault, as though there was some sort of control of the banks. The banks are there to make money—to make profit—but they are in a different situation from any other type of institution. Let us consider supermarkets, such as Tesco, Asda or Morrisons. People can walk away from supermarkets. They can go to the corner shop; there are other options. But whatever bank people go to, they have to use a bank. They have to have their wages paid into a bank. People cannot put their savings under the bed any more, because we live in a society in which it just is not safe to do that.

The banks are in a very powerful position. People often find it difficult to move their account to another bank, even though we see adverts in which people say, "Oh, it's easy to move your bank account." Often, it is difficult to move direct debits and standing orders, so even though people are getting a raw deal from their bank, they will stay with it. It is therefore important to make it clear in the Bill that people need banks in order to carry out financial transactions. Transactional banking is an essential financial need for all groups of consumers.

Let me explain one bugbear that I always had when I worked in a bank. Often, people who came into the bank were financially uneducated. The reason why the banks have had the problem with loan protection insurance is the way in which they were selling it. I remember that when I was doing unsecured lending, we were always targeted—I always felt that it was dangerous when we were talking about lending money to anybody we could—for sales needs. For every £1,000 borrowed, we would earn what was known as nine points. Those nine points would count towards the target that we had every day of 400 points. However, if we also sold loan protection—it was front-loaded, in that the premium was lent to the

consumer—we earned 90 points. The more insurance we sold, the more points we earned and the more often we hit our target, which was how the banks sold their products.

I found the regulated side—personally, I used to call unsecured lending "unregulated"—far better for selling products. There would be an initial interview, in which the needs of the consumer would be identified. The consumer would return for a second interview, when products were recommended to them for purchase, after which they would have a 30-day cooling-off period. Yet I have seen people with a basic bank account walk into a bank and be sold whatever they wanted, after which they walked off and had no cooling-off period. It is important to address those sales techniques, which were wrong.

To pick up a point about basic bank accounts, raised by my hon. Friend the Member for Makerfield, I also want to address how banks have to be brought kicking and screaming towards such things. The last time I said something against banks I was ripped apart by a magazine, which called me misinformed. I will, however, say that I do not believe that banks wanted basic bank accounts, because they completely ignored most of the people with such accounts, who needed more help than those who usually call in to see them.

To put it simply, basic bank accounts do not provide overdrafts or credit score for any products, such as lending, credit cards and all the traditional ways in which banks make their money—I am not criticising them for that—and they tended not to have account managers. I was personal account manager, and at one point I had 3,000 accounts. Each account was credit scored, and if there was a massive overdraft I tried to turn that account over and change it into a personal loan or, in some cases, a home loan. People with a basic bank account probably needed my advice and help more than anyone else, but I never saw them. At team meetings, I would point out that I had 3,000 bank accounts but that the bank—it was in a poor area—was setting up 100 basic bank accounts every month. That meant 100 more people having their benefits paid in or, if they got a job, their pay, but we did not talk to them; we ignored them.

In a Westminster Hall debate, I raised with the Minister a question that had been asked by my hon. Friend the Member for Edinburgh East in relation to basic banking in Scotland: how do we manage such people from basic banking to mainstream banking? I still do not believe that there is a way to do that. A solution should be enshrined in the Bill, and I hope that the Minister will have good news for us.

Mr Hoban: As the hon. Member for Nottingham East said, this is a diverse group of amendments, but they all drive at a single objective, which is to secure better outcomes for users of financial services. I support that intention, and I believe that the FCA will be a key driver in making that vision a reality.

We will give the FCA a mandate to promote effective competition, which is in the interests of consumers, and we will bolster its ability to advance its consumer protection objective by giving it a suite of powers on product intervention, transparency and disclosure. Those are the legislative foundations of the new judgment-led approach of the FCA, which will take earlier and decisive action, and focus on the design and performance of products. Alongside that, it will maintain its traditional concern with how products are marketed and sold.

On amendments 54, 53 and 123, I fully agree with Opposition Members that consumers should have access to financial services that meet their needs. However, in the first instance we should seek to create the conditions in which markets can work to achieve that, so that supply responds to demand and so that such needs are met without undue interference or prescription from outside. The FCA's new competition objective will give it an explicit mandate to consider the needs of consumers and to act to improve competition so that those needs are met. That is clearly set out in proposed new section 1E of the 2000 Act.

When acting to protect consumers, the FCA must also have regard to consumers' differing experience and expertise, and to their needs for information that is timely, accurate and fit for purpose, as is set out in proposed new section 1C. The FCA must therefore consider whether consumers are vulnerable or marginalised, and must recognise that they may need additional information, protection or support. The hon. Member for Makerfield made an important point when she referred to the information that was supplied to someone who was seeking a payday loan. There is a difference between disclosure and transparency. Too much information can get in the way of the facts that someone needs to know. This is where it is important to get across the point about information being accurate and fit for purpose. People need to know their rights and the key facts that will help them make a decision. Those matters are addressed. When financial services are provided to those who are vulnerable and who are perhaps unfamiliar with financial services, we need to ensure that the information is targeted at them and their needs, rather than having something that the provider thinks will be okay for someone who is much more financially sophisticated.

2.15 pm

We need to remember and respect the limits on the role of the regulator. The FCA is there to regulate the provision of financial services, not to ensure that all consumers have access to all the services they might want at any time. The extent to which the FCA has a role in addressing financial exclusion or ensuing access is limited to and delivered through its work on competition and consumer protection, rather than some mandate to ensure access for consumers at all times.

This broader issue is a matter for social policy and a matter for Government action, in the same way that the basic bank account was not a regulatory intervention by the FSA; it was an action that the previous Government took in conjunction with the banks. We in this Government are taking action to ensure that a suite of simple, easily accessible products is available to consumers, such as a straightforward cash savings account and straightforward protection accounts. We need to distinguish between the role of the regulator and the governance role.

Cathy Jamieson (Kilmarnock and Loudoun) (Lab/Co-op): I seek clarification on an issue that has been brought to me by constituents. They want to know whether the regulator will ensure that UK banks provide

[Cathy Jamieson]

a level playing field across the United Kingdom, and that there is not a position where they are offering different products north and south of the border.

Mr Hoban: Banks have to make commercial decisions on where they operate. Not every bank will operate in every location. The Clydesdale does not offer many of its services south of the border. One of the things that has intrigued me in recent months is looking at where banks have their operations. The location is often based on historical patterns. Lloyds Banking Group, which is part of the HBOS acquisition, has a concentration in Scotland. Its links to TSB also meant that it had a strong Scottish representation. There are all sorts of historic reasons why there is an uneven spread of banks across the country. They will have to tailor products to different markets as they see appropriate. Issues around access and types of products are a matter of social policy rather than regulatory intervention.

Cathy Jamieson: A constituent of mine who is a Halifax customer has been told that she has to travel to Carlisle to get a particular rate on a product. She has to open it over the border, which seems odd when the Halifax can open and close accounts in Scotland.

Mr Hoban: I suggest the hon. Lady should tell her constituent to make a formal complaint to HBOS and then raise it with the financial ombudsman, although I am sure she is on top of the case and has already given that advice.

On amendments 84 and 41, when consumers purchase a product they should be confident that the product will do the job for which it was purchased, but we also want it to represent good value for the consumer and not come with unexpected charges or costs. The FCA will have a clear statutory mandate and a broad range of tools, including new product intervention powers and the ability to make and police rules, to act in pursuit of effective competition and consumer protection. I want to be absolutely clear at this point in our discussions that the FCA will have the powers and mandate to intervene on matters of price and value for money, if the case to do so is made. It does not need bespoke powers and its objectives do not need to be amended. It has the mandate to take action under its competition and consumer protection objectives.

On amendments 85 and 50, the Government recognise that there can be significant information and capability asymmetries between firms and consumers. Although poor provision of information is unlikely to be the sole cause of a consumer ending up with an unsuitable product, it is certainly one of the key factors. I therefore fully support the intention behind the amendments. I agree that information and advice provided to consumers should be legible, intelligible, in clear and plain terms and appropriately presented. I am slightly perplexed about whether "legible", in amendment 50, means that we would end up specifying font size and type—perhaps that will be in another iteration of Opposition amendments. The more general language that the Government propose—timely information and advice that is accurate and fit for purpose—is a better way to achieve the stated aim of ensuring that the FCA takes robust action to enhance the provision of consumer information and advice.

Sheila Gilmore: There has been a tendency for many years for the regulation of financial matters to be honoured in the letter—often in many letters and many words. This does not just affect newcomers to financial arrangements. It might be accurate—this goes back to the business of giving all the information—but it does not make it very intelligible. There has been a pattern of consumers, not only disadvantaged ones, getting lengthy letters to explain what we think are minor changes to bank accounts; we are all probably guilty of hardly looking at those letters or putting them aside quickly. Given that history, would it not be helpful to make this requirement absolutely clear?

Mr Hoban: I think it is clear. This is one of the problems with the Opposition's approach. The hon. Member for Nottingham East complained on the first day of our proceedings that this is a two-volume Bill, but now he seems to be trying to add all sorts of elaborations or declaratory statements, which would lengthen the Bill and make its purpose more confused and less clear. Perhaps the hon. Lady will focus on proposed new section 1C(2)(c), which talks about providing information that is

"accurate and fit for purpose".

We are working to protect the consumer, so the measure must relate to what is in the consumer's interest, not the product provider's interest. The Bill introduces a key change to the regime. It is much more pro-consumer. The emphasis is on what the consumer needs rather than what the product provider will offer when it comes to language.

Let me give another example of how we have strengthened the FCA's powers. The FSA's rules state clearly that financial promotions must be clear, fair and not misleading, but we have gone a step further in the Bill. We will give the FCA new powers to police that rule, but also give it the power to take action against misleading financial promotions and tell people that it has done so. At present, if it takes action against a provider that uses very unclear or unfair promotional terms, it cannot tell anyone. It is important that good and bad providers are identified. The power to name providers that have given misleading financial promotions is an important tool to ensure that proper information is given to consumers.

Yvonne Fovargue: I totally agree that the power to name and shame is extremely important. I know we will discuss this later, but is there not a duty to consult? If the Minister expects financial providers to say, "It's a fair cop, guv," he is not living in the real world.

Mr Hoban: The hon. Lady is right to identify the naming and shaming and the right to consult when it comes to the publication of warning notices. We can debate the appropriateness of that consultation step later. This is a powerful point to get across.

We should not add unnecessarily to the Bill if the terms are clear. The emphasis on meeting consumers' needs is at the heart of the provisions on consumer protection. We should leave some of the more granular aspects to the FCA's rulebook; otherwise the Committee will end up creating a rulebook, when that should be the FCA's responsibility.

Amendment 55 would add the word "products" to the regulated financial services for which the FCA will promote effective competition. We agree that products are important—in fact, the focus on the design and governance of products will be one of the key ways in which the FCA will be different from its predecessor—but the amendment's desired outcome is already reflected in the Bill. A product in the context of financial services is ultimately an agreement under which one person agrees to provide a service of some kind to another person. Thus, products are captured by the term "regulated financial services" in the Bill.

There are two distinct issues. One is the clarity and fitness for purpose of information, and that is properly addressed in proposed new section 1C, so it does not need any further elaboration. I share Opposition Members' view that information needs to be clear and intelligible to not just the provider, but the consumer, but the amendments are not required. Government Members take issues of access as seriously as Opposition Members, but they are a matter for social policy; it is not for the FCA to go beyond its current remit of consumer protection and competition. With that in mind, I hope the hon. Gentleman will seek the Committee's leave to withdraw the amendment.

Chris Leslie: I hear what the Minister says, although he did not necessarily say it in the plainest of English, especially when he talked about information asymmetry during our discussion of common-sense plain English. I regret, however, that there is a creeping sense of complacency on the part of the Government about consumer protection issues that are vital, especially for those who are financially excluded or marginalised, or who are being penalised or taken advantage of—there are different ways of looking at it—because of their predicament.

The Bill has a consumer protection objective—that much we can see—but the crux of the issue is whether it is framed to strike the right balance. My hon. Friend the Member for Foyle was right to talk about the imprecision of some of the terms in the Bill. As we know, it will be left to financial services regulators and those who are steeped in the sector to interpret these things. Phrases such as

"an appropriate degree of protection for consumers",

"fit for purpose" and the level of care "appropriate" to a degree of risk are highly subjective, and their interpretation will be in the hands of those who implement them, who will not necessarily take a consumer-champion perspective.

We are tabling the amendments not to elongate the Bill or to create legislation that is more complex than necessary. Quite the opposite: we are trying to clarify, in very precise ways, some of the important consumer objectives in the Bill. The Bill is the only legislative opportunity we are likely to have to deal with this issue perhaps for a generation, so it is important that we get it right. My hon. Friend framed amendment 85 in an even more crisp and succinct way than I did my similar proposal on legibility and intelligibility, and I would urge him to challenge the Government with his amendment.

Occasionally, these things do come down to font size. We have been talking about plain English, and I notice that the Minister has ocular enhancement on his proboscis—he is wearing a pair of glasses, for those who are reading these proceedings in *Hansard*. Sometimes, elderly and vulnerable people need to have the terms of their credit arrangements put in an accessible form. Such considerations are necessary from time to time.

Jesse Norman (Hereford and South Herefordshire) (Con): Is the hon. Gentleman intentionally drawing a comparison between the Minister, who is in the very fullness of youth and energy, and these individuals who struggle to read the financial documents of which he speaks?

The Chair: Order. We are not here to discuss the characteristics of the Minister or anyone else.

Chris Leslie: I would not dream of doing so, Mr Howarth.

The hon. Gentleman is right: the Minister has before him at least a ream of A4 paper. I am sure that his ability to consume and devour small print is second to none but, for the ordinary man and woman in the street, particularly those who might not be steeped in the particular issue, it is important that we are proportionate and focus on accessibility to financial services.

I do not wish to detain the Committee. We have a lot of amendments to discuss and, if we were to press them all to a Division, that would be disproportionate. However, by withdrawing some of them, I do not wish to give the impression that I do not feel strongly about them. To test the principle of accessibility, I wish to press amendment 54 to a Division.

2.30 pm

Mark Durkan: I am glad that my hon. Friend will press amendment 54 to a Division because, as I said earlier, it covers important principles that need to be on the statute book. I do not accept the Minister's argument that some matters are about granular detail, or that we are trying in Committee to write the rule book for the FCA. After all, we are agreeing to many clauses that leave a lot to the FCA and leave it to liaise about with various panels and other interests.

We are not responsible for the FCA's rule book, but we as legislators are responsible for the statute book. It is not enough for us to say that we have enough confidence in things that have gone on and are going to say that we do not need to make that clear in the legislation—we do not need to make sure that there is absolutely no ambiguity about the meaning of

"accurate and fit for purpose".

Proposed new section 1C relates to the FCA and what it must have regard to; it concerns the FCA's judgment and it does not relate solely to consumers, because under other proposed new sections it also refers to those providing regulated financial services. It does not apply exclusively to consumers. I am not content with the Minister's assurance that the earlier reference to consumers means that everything below it refers solely to consumers and accuracy in the eyes of consumers and their idea of fit for purpose.

The Minister has emphasised that new section 1C(2)(c) is adequate, but that is followed by proposed new section 1C(2)(d), which refers to

[Mark Durkan]

"the general principle that consumers should take responsibility for their decisions".

We are simply trying to make sure, if consumers are to be held to that, that the information they had in front of them when they made such decisions was clear and unmistakable.

I will not be withdrawing amendment 85, as the Minister requested, because for him for to say that it is not necessary is not a good enough argument. We must make sure that the provision is unambiguously stated in the Bill. If he is arguing that the amendment would not add any meaning to the Bill, or that it would not add anything to the burden of the FCA's conduct and consideration, or to the responsibilities of providers or their costs, my question is: what would be wrong with adding such clarity?

We have received many submissions about the Bill and the amendments, so the Minister will be aware that some of the amendments in the group are supported by the consumer panel, which we are told is renewed elsewhere in the Bill. The panel is meant to represent the consumer interest. If we as a Committee rejected the amendments and said, "No, we will ignore the panel. That's a very precious consideration. Why should the panel be worried about that?" that would not set a good example for the FCA, nor would it if we said, "It doesn't matter. Don't bother us with that. Just go to the FCA about it."

This is the one chance that the consumer interest has to shape and improve the Bill where it has particular concerns. It would be a failure of the Committee and the House more widely to say, "No, don't worry your pretty little heads about it. It will be all right under the FCA." We owe it to the FCA to offer it clarity about what as legislators expect, and we owe it to consumers to guarantee that. We are not content just to live with ambiguity, and to trust.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 13]

AYES

Durkan, Mark	Jamieson, Cathy
Evans, Chris	Leslie, Chris
Fovargue, Yvonne	
Gilmore, Sheila	Pearce, Teresa

NOES

Bradley, Karen	Hands, Greg
Burt, Lorely	Hoban, Mr Mark
Garnier, Mark	Norman, Jesse
Gilbert, Stephen	Rutley, David
Hancock, Matthew	Sharma, Alok

Question accordingly negatived.

Amendment proposed: 85, in clause 5, page 16, line 41, after 'is', insert 'intelligible to them, appropriately presented'. —*(Mark Durkan.)*

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 14]

AYES

Durkan, Mark	Jamieson, Cathy
Evans, Chris	Leslie, Chris
Fovargue, Yvonne	
Gilmore, Sheila	Pearce, Teresa

NOES

Bradley, Karen	Hands, Greg
Burt, Lorely	Hoban, Mr Mark
Garnier, Mark	Norman, Jesse
Gilbert, Stephen	Rutley, David
Hancock, Matthew	Sharma, Alok

Question accordingly negatived.

Chris Leslie: I beg to move amendment 49, in clause 5, page 16, line 45, leave out 'level' and insert 'fiduciary duty'.

The Chair: With this it will be convenient to discuss the following:

Amendment 44, in clause 5, page 17, line 2, at end insert—

'(f) the general principle that firms or advisers must act honestly, fairly and professionally in the best interests of their customers.'.

Amendment 48, in clause 5, page 17, line 2, at end insert—

'(ea) the general principle that regulated entities engaging in discretionary asset management will ordinarily owe fiduciary duty to their clients.'.

Amendment 76, in clause 5, page 29, line 7, after 'consumers', insert

'to act honestly, fairly and professionally'.

Amendment 82, in clause 5, page 29, line 7, leave out

'in relation to compliance with these requirements'

and insert

'include responsibility for their decisions and compliance with those requirements'.

Amendment 64, in clause 5, page 29, line 15, at end insert—

'(g) the principle that, where appropriate, authorised persons should have a fiduciary duty towards the consumers who are their clients'.

Chris Leslie: This group of amendments follows on quite neatly from the previous group. Amendment 49, which sums up some of the crucial issues we need to address, would replace "level" with "fiduciary duty". "Fiduciary" is a term that is familiar to many in the financial services sector and more widely. It means holding in trust and good faith. It would enter into the legislation a concept that would add a great deal to ensuring that consumers could have full confidence that their best interests were being served, and that those selling financial services products were acting in a prudent and ethical manner with their care and best interests at heart.

The consumer protection objective that we have just been discussing seems not quite to strike the right balance when it comes to protecting the consumer. Members will know that there is a serious lack of trust

in the financial services sector. That is bad for consumers, bad for the sector, bad for society and bad for the economy. We know that the financial services industry has a huge advantage over many consumers when it comes to the balance of knowledge on particular products. Despite that, there are no specific obligations on firms to avoid conflicts of interest, not to profit at the expense of the consumer without their knowledge and consent, and to have undivided loyalty and a duty of confidentiality to the customer. Those providing financial services should owe their customers the same duty of care as lawyers or other professionals, particularly with regard to avoiding conflicts of interest. The pre-legislative scrutiny Committee said:

"We are especially concerned about problems caused by conflicts of interest, where the interests of a firm or adviser are not aligned with the best interests of its customers. An example is where an adviser receives commission from a product provider for recommending a particular product, regardless of whether it is suitable let alone the best product for a customer's needs."

My hon. Friend the Member for Islwyn touched on that earlier. The PLSC continued:

"This is an area which the FSA has recognised as a problem and taken action".

The Financial Services Authority tried to address it in the retail distribution review, for example.

The Minister told the House in November 2010:

"I cannot overstate the detriment to consumers from poor and biased advice."—[*Official Report*, 29 November 2010; Vol. 519, c. 634.]

We agree with him on this occasion. A principle in the Bill to require firms to have a duty of care to their customers, based on the common law fiduciary duty, which applies in some instances, would, therefore, enhance consumer protection standards, including by preventing conflicts of interest. Not only would the consumer interest be served by a fiduciary duty, but firms that recognised their fiduciary responsibilities to their customers would raise their professional standing and professionalism. The duty would also help to re-establish the mutual trust necessary for the industry to serve society and for consumers to feel confident about saving for their future.

Requiring providers of financial services to have a duty of care towards their customers would complement and enhance the regulatory approach adopted through the FSA's "treating customers fairly" initiative, which requires a firm to pay due regard to the interests of its customers and treat them fairly. On its own, however, the initiative has failed to tackle a number of market problems that, as hon. Members will know, led to poor consumer outcomes, such as the payment protection insurance mis-selling scandal.

I also have serious concerns about the mortgage and remortgage markets, where stronger safeguards need to be pursued, particularly on the best interests of clients. Millions of mortgage customers on standard variable rates, for example, might be persuaded that remortgaging is their only option in certain circumstances and would, perhaps unwittingly, fall into facing significant costs—costs arising from surveying, legal fees and so on. Because those costs are simply added to the mortgage in many cases, the customer does not necessarily feel then and there that they are being penalised or having to pay for a remortgaging product, yet those costs will hit them at some point. That is just one example of an area in which a fiduciary duty might be relevant.

I accept that some firms have been fulfilling their "treating customers fairly" obligations and, as we have heard, are providing customers with increasingly voluminous disclosure documentation. The fiduciary duty would build on the TCF obligation and ensure that the large amount of perplexing documentation that often hits consumers would be balanced by the requirement for clear and consistent information.

There is a growing body of evidence that a fiduciary duty of care would be valuable for both the sector and the consumer, and I would be grateful if the Minister recognised that other developed jurisdictions are considering such changes. In the United States, the Dodd–Frank Act has taken up some of those ideas. The Act ensures that, over there, consumers are owed a fiduciary duty of care by those regulated by the Securities and Exchange Commission. We believe that the FCA should be given similar powers in the Bill. A stronger duty of care would ensure that the industry has to take customers' interests into account when designing products, and has to provide advice throughout the product life-cycle.

Similarly, amendments 44 and 76, which I think are in parallel with amendment 82 in the name of my hon. Friend the Member for Foyle, would inject the concept of professionalism more precisely into the framing of the legislation. We have discussed the need for professional standards and for competencies to be proven, and of course that is one of the big lessons we ought to learn.

2.45 pm

Lorely Burt: I have no argument whatever with the exhortation on professionals working in the sector to act in the way that the hon. Gentleman describes—with honesty, professionalism and fairness. This is an open question: is that not covered by the codes of conduct to which those professionals are already subject? The more specific the words put in the Bill, the more opportunity there might be for rogues and cowboys to manoeuvre around the selected words to get round the legislation.

Chris Leslie: I think that I understand the hon. Lady's point, but I do not think that the amendments would cause that problem, particularly as regards the concept of a fiduciary duty of care. Courts have in some instances long interpreted that under the body of case law, so the amendments are not drafted in a way that would fetter the ability of the courts to interpret the meaning. I do not think saying that

"firms or advisers must act honestly, fairly and professionally",

as in amendment 44, would add a great deal of difficulty.

Amendment 48 seeks to clarify the fiduciary duty of care for asset managers, and discretionary asset managers in particular. My understanding is that the fund management industry's duties are to savers, but they are sometimes poorly understood and observed. As the Law Commission has confirmed, where firms manage other people's money or give financial advice, they have strict fiduciary duties to act in those people's interests in common law—that includes both individual clients and institutions, such as pension funds, which represent large underlying savers—yet that fact is not generally accepted in the industry. Moreover, because they are common law duties, they do not form part of the FSA's

[Chris Leslie]

regulatory approach, so an explicit reference to a fiduciary duty in the Bill would give the FCA a powerful tool to ensure that consumer interests are protected.

I would be grateful if the Minister specifically addressed amendment 48 and discretionary asset managers. If there is already a common law duty, what would be the harm of putting a duty explicitly in the Bill, given the occasional disputes about whether the duty applies? That is especially important as we approach auto-enrolment in pension schemes and other circumstances. I am conscious of the time, and I do not wish to detain the Committee any longer, but it would be useful to hear the Minister's thoughts on the group of amendments.

Mark Durkan: I tabled some of the amendments in the group together with other hon. Members, and one is in my name alone.

I stress again that the Committee gives us the opportunity and responsibility to legislate for a clear, reliable regulatory environment, and to leave no doubts or ambiguities. We also have a duty to ensure that in our treatment of amendments and our debates on the Bill we do not add to any doubts or confusion, because there is a range of understanding or interpretation around the question of fiduciary duties in respect of those making decisions with what is essentially other people's money.

Some of the amendments that we are discussing have been described as ambushing or hijacking the Bill and as having something dangerous or sinister about them. If there are people in the market that we are trying to regulate who believe that the common-law principle of fiduciary duty, which we are told applies in this area, is somehow subversive, alien, and dangerous, we as legislators have a duty to decide where we want to resolve that issue, which is clear and fundamental.

As the hon. Member for Nottingham East has said, the previous Parliament provided for auto-enrolment—something that we all, for understandable reasons, support and hope will work. That means that more people will have their money represented, used, and hopefully not played with. In a debate on earlier amendments, the Minister said that it is not for the Committee to promote anything in particular or force people in any particular direction, but with auto-enrolment and other proposals we are pushing people in the direction of particular choices. However, it is still their money, and we need to ensure that those who make decisions about that money have a clear fiduciary duty. In particular, we need to ensure that the FCA is absolutely clear that there is no ambiguity in the statute or in Parliament.

Matthew Hancock: I strongly support the need for more honesty and fairness from those delivering financial services. The thrust of the hon. Gentleman's argument is right, and I hope that the Minister will express the same view, but since the matter is covered by the common-law principle of fiduciary duty, why is it necessary to write that duty into the Bill?

Mark Durkan: Precisely because not everybody seems to recognise that. Why are people so worried that putting the duty in the Bill will make a particular difference and somehow constrain people? Putting it in the Bill will assert in an unambiguous way the common-law principle, which not everybody observes or appreciates. We can point to different examples of that. There are questions around what happens with unauthorised profits. Are people able to play with other people's money, make profits and then not ensure that the full profit from those returns or dividends goes to the people whose money is actually the source of the fund or portfolio?

Mark Garnier (Wyre Forest) (Con): The problem with what the amendments suggest is that it would tie the regulator to the fiduciary duty. If you look at the FSA handbook, there are seven statements of principle, issued under section 64 of the Financial Services and Markets Act 2000, which are set and determined by the regulator. Furthermore, if you look at the Chartered Institute for Securities and Investment—I declare an interest as a fellow of that institute—you will see that it also has seven statements of principle. This is all about the regulator and the practitioner bodies trying to modify and update their statements of principle as trends and patterns change. If we fix the duty in the Bill, their ability to change with the trends will be removed.

The Chair: Order. I think the hon. Gentleman did not intend to suggest that the Chair should read those various documents. I think he was addressing his remarks to the hon. Member for Foyle.

Mark Durkan: In reply to the hon. Member for Wyre Forest, I make the point that to agree to the amendment would be to follow the exact logic of the Government and everyone else who supports and sees the need for the Bill. All the experiences and lessons of recent years mean that we need legislation to reconstruct what needs reconstructing and to clarify the regulatory landscape. We need to resolve past difficulties about understanding and communication and about what decision trees are used in any given situation. That is why we have the new regime and the new entities which, we are told, will change everything and mean there are no more problems. Yet we constantly hear that many things do not need to be changed by the Bill, and we are told that it is all about continuity: it will just take what the FSA, the business and all the professional bodies and practitioners have been doing, and say, "That's enough—carry on as you are."

The fact is that, in relation to a fiduciary duty, there is some contention and concern that we, as legislators, should deal with and resolve clearly. If we fail to legislate, that basically says that we want the ambiguity, and possibly the undue practices, to continue. To go back to my point about unauthorised profits—when clients' shares are lent out—I have seen research showing that only two thirds of the income from such activities is returned to the fund for the benefit of the source client. With a fiduciary duty, that might be unlawful, as any such profit should be returned to the underlying investor. That is what I seek to clarify, because Parliament is putting more people in the direction of having to rely on such funds and on the people who make such decisions. With auto-enrolment, we are putting more people in that direction, and potentially in the way of temptation, as they handle the funds.

Let us send a clearer signal, because otherwise we might leave the FCA unsure about what Parliament intends. Parliament may say that it is happy enough to rely on a general common law principle, but we know that that principle is not fully or properly observed. We should say either that the regulator should do what it is meant to do or that it does not. We are back to "That's not my dog", in that we are saying that we do not need to make that law, because it is covered by the common law. However, several aspects of the common law are repeated in the Bill, and parts of the Bill are repeated in other parts of it. I made that point about the position of consumers in relation to an earlier amendment, because I wanted to do so, with feeling, one more time. With the amendments, we are attempting to make clear the responsibilities of the FCA in relation to all those involved in such transactions and decisions.

There is also the issue about the exercise of shareholder rights. We have recently been told in the Chamber, by both Treasury and BIS Ministers, that the answer to the whole question of excessive executive remuneration and bonuses is the clear exercise of shareholder influence and responsibility. However, the fact is that asset managers acting on behalf of pension savers are those who exercise voting rights in major companies on decisions such as executive remuneration. I have received evidence, which is no more than anecdotal but which I would not dismiss as less than reliable—I cannot say how far it goes or how widespread it is—about fund managers being told by their superiors not to interfere in the question of executive remuneration or anything else, but to wave through all sorts of excessive pay and bonus deals to avoid upsetting potential clients. It should be clear in whose interest shareholders are meant to be exercising their responsibility and leverage.

3 pm

If the Government say that we must rely on the power of shareholders, we need to remember that because of changes in auto-enrolment and all sorts of other things, the source shareholder is the person whose pension savings—life savings—are being represented and potentially played with in that situation. If we are talking about joined-up legislation and joined-up government in relation to the standards, we should be able to secure that in legislation. We should not say one thing in one place and another thing in another, and tell people that they can go to the common law to find something out. We should not say that we do not need to clarify and codify an issue such as this in a Bill that is meant to be the proper source book.

If we are creating a brave new world of financial regulation that sets clear standards and guidance, and puts manners on a system that lost the run of itself for many years and lost many people's money—including that of the taxpayer, who is now having to foot the bill—we should go the distance in the legislation. That is what the amendments are all about, which is why I support them.

Mr Hoban: Let us start with fiduciary duty—a good, straightforward term that everyone understands. The term derives from the law of trusts, and has been developed in a completely different context. I am not convinced that it is the right standard to impose across the board between providers and consumers, and I do not think that a fiduciary duty is a clear means of ensuring that firms treat customers appropriately. Customers should not have to dust down the old statute books and dig out their dictionaries to understand common law and to identify what standards they can expect from providers. It is far better for the FCA to set out, via rules, a specific, clear, focused and transparent set of duties on firms, which can be enforced by the regulator and, where appropriate, by the consumer. I do not believe that the liberal scattering of fiduciary duty particularly helps consumers in this case.

May I deal with amendment 48 specifically? The consumer protection objective in the Bill will allow the FCA to provide an appropriate degree of protection for different types of consumers, so it is not necessary to specify one type of financial services provider or consumer. Amendment 48 specifies one type of provider, but doing so might call into question the FCA's ability to act in relation to other types of financial services provider that are not explicitly listed, so it would have a slightly odd effect.

Chris Leslie: I am quite happy not to press amendment 48 if the Minister will confirm his understanding that under common law there is a fiduciary duty on that class of asset managers, because they have a duty of care to client funds. I was trying to test specifically that point. Some asset managers have been querying whether that fiduciary duty of care exists in common law, so I sought to clarify that through the amendment. If it does not need to be in the Bill, and if the Crown's understanding is as such, I am happy not to press the amendment.

Mr Hoban: In a way, that typifies the challenge we have about to what extent we rely on common law and to what extent we rely on a very clear statement of responsibilities, duties and clear statements of protection. The problem with the application of fiduciary duties to discretionary asset management is that it depends on the facts of the case. That is not a helpful situation for consumers, which is why it is important that the Bill contains some clear protections for consumers. That is why there are rules in the FSA handbook, and there will be rules in the FCA handbook, about client money and client assets to provide some of those protections. I will not say that we are in danger of getting ourselves worked up into a frenzy, because that would suggest that the Committee's proceedings were more torrid than they are, but we are in danger of getting worked up about the matter. The proper focus should be: what are the rules of the regulator that protect consumers? What are the appropriate protections that should be in place? That provides greater clarity for consumers and providers than reliance on common law duties, where it does depend on practice.

Of course, the entire regulatory framework imposes duties on firms, including in the area of consumer protection. Firms have clear and substantial responsibilities to consumers set out in rules and obligations enshrined in law, and there is a whole host of contractual obligations and rights to redress for consumers. I would say to the hon. Gentleman that I am not sure the amendments achieve what they set out to do. The insertion of "have regards" creates an opportunity for firms to argue that there is a protective space around their responsibility to clients. That means that the regulator cannot intervene

[Mr Hoban]

and enforce regulation, and I do not think that is what the hon. Gentleman is aiming for, as I am sure he would agree.

The other issue in amendments 76 and 82 is about the principle of responsibility for senior managers. That topic came up in the oral evidence I gave to the Treasury Committee and in evidence that the Chancellor and I gave to the pre-legislative scrutiny Committee. We have listened to what was said and amended the Bill. It is interesting: when good arguments are made, the Government are prepared to listen and to update legislation. That is why, on page 29, in proposed new section 3B(1)(d) of the 2000 Act, we have a statement on the responsibilities of senior management, which makes sure there is a proper balance.

To protect consumers it is important to have clear rules and a clear sense of where the regulator is coming from. That is very clear. The hon. Member for Foyle suggested that all we were doing was rolling over the FSA regime into the FCA regime, and that business would continue. That is most definitely not the case—not just in terms of the additional powers given to the FCA, but the focus of its responsibilities in the clauses we are discussing today. I do not think it is the same; I think it is a very different organisation with much clearer objectives and powers, and much clearer protections for consumers, which is where we should be.

Mark Durkan: I would like to clarify. I am glad the Minister was at least in part listening to what I said. My point was not that this changes nothing, but that the argument from the Government against all amendments is that we can rely on what is already there—on what the FSA has been doing. To that extent there is a carry on with what we have. That seems to be the constant basis on which the Government rebut amendments.

Mr Hoban: No, not at all. In fact, as I just demonstrated with the change on page 29, we do listen and we do amend the Bill. We have thought through some of the points that have been made. I am clear that the draft Bill is not set in stone. This Bill is not set in stone; we will listen to good arguments and change as appropriate. That does not mean that we just add declaratory statements because it makes us feel better to do so.

The Bill seeks clear protections for consumers. The insertion of a fiduciary duty would serve to complicate and potentially restrict the ability of the regulator. I do not think that is what the Opposition want, so I invite them to withdraw their amendment.

Chris Leslie: I am conscious of the time and aware there could be a Division in the House any minute. We tabled the amendments for particular and precise reasons, not least because other jurisdictions—the United States, to name but one—feel it perfectly proper and possible—

Mr Hoban: The advice I have is that the governance structure of securities business in the US is different. With investment advisers and broker dealers, they need to insert that sort of provision. It does not apply here, where the structure is rather different.

Chris Leslie: That is the Minister's opinion and I differ from it. Of course the American system is different, but the principle remains the same. An overarching duty of care, an attempt to rebuild faith and trust between the consumer and the provider of a service, is incredibly important. The many organisations that speak for the consumer are all asking and arguing in favour of these sorts of changes.

My hon. Friend the Member for Foyle makes incredibly important and powerful points. I am particularly worried that the Minister was not able to put on the record what I assume to be the case: the common law assumption that asset managers in activities where they hold client moneys in trust do have a fiduciary duty of care. I expected the Government to accept that. It seems that now the Government are saying that they do not regard that as a generally accepted condition on that class of provider.

Mark Durkan: With regard to my hon. Friend's reference to trust, as I understand it, a fiduciary duty applies to trust-based pension schemes, and hopefully that should be clear to all involved. That is not so clear when it comes to contract-based pension schemes. Many people will be auto-enrolled into such schemes. Has my hon. Friend been able to divine from what the Minister said whether contract-based pension schemes are protected by a fiduciary duty in a similar way to trust-based schemes?

Chris Leslie: I can only infer from the Minister's comments that he does not feel that they are.

3.11 pm

Sitting suspended for a Division in the House.

3.26 pm

On resuming—

Chris Leslie: I was in the process of winding up my remarks on amendment 49 and the others I have tabled in this group. I am sorry that the Minister thinks that the term "fiduciary duty" is too imprecise and I am slightly concerned that he was not able to assure me that the understanding that many have of the fiduciary duty of care, beholden or not to discretionary asset managers on a trust-based arrangement, is actually the case. It is important that the Government clarify the particular details of where the fiduciary duty applies and whether it applies simply to trust arrangements—the Minister was not clear about that point—or to contractual arrangements as well. Those are incredibly important points.

Given the time that we have and because we just lost a bit of time to a Division, I will not press all the amendments to a vote. It is important, however, to emphasise the importance of amendment 49, which is one of the core amendments on the principle of the fiduciary duty. It would have been nice to have tested the Committee on the other amendments, but for the time being, we will press that amendment to a vote and perhaps revisit some of these other questions on Report or at another time.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 15]

AYES

Durkan, Mark	Jamieson, Cathy
Fovargue, Yvonne	
Gilmore, Sheila	Leslie, Chris

NOES

Bradley, Karen	Hancock, Matthew
Burt, Lorely	Hands, Greg
Garnier, Mark	Hoban, Mr Mark
Gilbert, Stephen	Sharma, Alok

Question accordingly negatived.

Chris Leslie: I beg to move amendment 117, in clause 5, page 19, line 3, at end insert—

'(j) by claims management companies who provide services to persons covering litigation, or claims under regulation schemes or voluntary arrangements.'.

The Chair: With this it will be convenient to discuss amendment 115, in clause 6, page 39, line 5, at end insert—

'Claims management companies

23C Provision of services consisting of advice or services in respect of claims for compensation, restitution, repayment or any other remedy for loss or damage, or in respect of some other obligation.'.

Chris Leslie: I am grateful to you, Mr Howarth, for selecting these amendments for debate. It is important that we recognise that there is a particular issue with claims management companies. After the moral victory that we have just secured in the previous set of amendments, it is important that we try to have a similar victory on these amendments as well. Who knows? The Minister may well concede the point.

3.30 pm

The amendments would insert fuller protection for consumers on claims management companies into the existing provisions under the Financial Services and Markets Act 2000. Members will know that the rise in prominence of claims management companies makes establishing this protection a priority. Take the striking example of the recent National Audit Office report, which showed that claims management companies are the originators for complaints that account for around 45% of the financial ombudsman's cases in 2011, compared with 43% arising directly from individuals. Earlier submissions to the Treasury Committee by the Association of British Insurers, Legal and General and others supported looking at bringing claims management companies into regulation within the FCA's remit. We should like to support the spirit of those calls through the amendment.

The purpose of amendment 117 is therefore both to bring CMCs within the FCA's purview and to establish a specific definition of CMCs in the body of law. Companies specialising in winning claims for compensation, restitution and repayment and other remedies have proliferated, but there have been serious accompanying problems. That is why the ABI supports amending the Act, on the grounds that consumers should be protected from the unfair practices of some CMCs. It proposes that responsibility for regulation should be transferred from the Ministry of Justice to the FCA, given the large number of CMCs that get involved in financial services. There are record levels of complaints against CMCs and this highlights the need for the FCA to protect consumers in this area, particularly in the wake of payment protection insurance mis-selling. There is a fear that some customers may end up being ripped off twice. I should be grateful if the Minister would recognise that we also need to transfer this set of responsibilities for the regulation of claims management companies to the FCA.

Amendment 115 is a similar amendment to clause 6. Again, I shall be grateful if the Minister will recognise that this is a serious issue which needs close attention.

Mr Hoban: The hon. Gentleman is right; it is a serious issue that needs close attention. The regulation of CMCs does need to be improved. But it is better for those reforms to be made through the Ministry of Justice, which is directly responsible for regulating the activities of businesses providing claims management services. The MOJ has carried out a review of claims management regulation, which concluded that fundamental reform was not needed but identified a number of areas where improvements could be made. We should also recognise that the FCA is a conduct of business regulator for financial services. Claims management companies do not provide a financial service. While many of these companies are active in financial services, their business is not limited to claims in relation to financial services. It would go against the grain of what we are trying to achieve in setting up the FCA as a focused regulator to give it responsibility for a large number of non-financial services firms.

I do not believe the shift in responsibilities that is proposed would address the underlying problems in the conduct of claims management companies and it would detract from the concrete steps that the Government are taking to do so. It would ignore the outcome of a detailed review and would create needless uncertainty. Given that these are not financial services businesses, and that there has been a recent review by the MOJ of their regulation, which will lead to some changes, I would encourage the hon. Gentleman to withdraw his amendment.

Chris Leslie: I am grateful for the Minister's comments. I am not sure that I fully agree with his view that somehow leaving this issue in the Ministry of Justice will achieve the level of regulatory improvements that need to be made. After all, as far as many of our constituents are concerned, these are gateway organisations that bring people into complaints about financial services products and therefore it is important that we ensure the FCA has an ambit that can extend over some of these activities. Many people have woken up to the fact that some of the activities of these claims management companies are not exactly expressions of customer grievances, but rather result from companies obtaining information about product sales, cold-calling customers by phone and text messages, buying lists of contacts from brokers and so on. Armed with the knowledge that there is a relationship between a certain customer

[Chris Leslie]

and certain firms they can play into the firms in a factory-farmed manner in order to harvest any gains that they can get.

There are often people who lose significant sums of money which they are genuinely owed because of the outrageous terms and profiteering of some of these claims management companies. It is an important part of the FCA's role. Given the time pressures we are under, can the Minister encourage the FSA to write to the Committee to update us? Perhaps it is in dialogue with the Ministry of Justice or is considering claims management arrangements in other ways. This is a consumer matter that merits particular attention. Having listened to the Minister, I am happy not to press the amendment, but I emphasise its importance. I shall not press the amendment.

The Chair: Does the hon. Gentleman not wish to move his amendment?

Chris Leslie: No.

The Chair: The amendment is not moved.

Chris Leslie: I beg to move amendment 118, in clause 5, page 19, line 3, at end insert—

'(j) by debt management companies or debt adjustment services companies.'.

The Chair: With this it will be convenient to discuss the following:

Amendment 91, in clause 6, page 39, line 5, at end insert—

'(4A) After paragraph 23B insert—

"Contracts for debt management services

23C (1) Rights under a contract for debt adjustment or debt management services.

(2) Debt-adjusting is, in relation to debts due under regulated credit agreements or contracts for the hire of goods, negotiating with the creditor or owner, on behalf of the debtor or hirer, terms for the discharge of a debt, or taking over, in return for payments by the debtor or hirer, his obligation to discharge a debt, or any similar activity concerned with the liquidation of a debt.

(3) Debt management is the giving of advice to debtors or hirers about the liquidation of debts including those due under regulated credit agreements or contracts for the hire of goods.".'.

Amendment 90, in clause 6, page 39, line 29, at end insert—

'(6) The Consumer Credit Act 1974 shall be amended as follows—

"In section 32(7) after "revocation" delete to the end of that section and replace with "under this section shall not take effect before the end of the appeal period. A suspension under this section may take effect before the end of the appeal period until such time as the commencement of section 6(3) of the Financial Services Act 2012 and responsibility for consumer credit regulation rests with the Financial Conduct Authority, after which time a suspension shall not take effect before the end of an appeal period.".'.

Amendment 87, in clause 22, page 80, line 2, at end insert—

'(2A) The FCA may make rules or apply a sanction to authorised persons who offer credit on terms that the FCA judge to cause consumer detriment. This may include rules that determine a maximum total cost for consumers of a product and determine the maximum duration of a supply of a product or service to an individual consumer.'.

New clause 1—*Debt management fees*—

'The FCA shall bring forward recommendations within a year of the commencement of this Act to phase out the practice of directly charging consumers fees or charges for the provision of debt management plans.'.

Chris Leslie: I suppose I should declare an old interest. For five years, I was a trustee of the Consumer Credit Counselling Service, which is an organisation that gives advice—mostly telephone-based, but these days web-based too—to support individuals who are suffering serious indebtedness. It is a fantastic charity, and many other charities are carrying out similar money-advice activities. One of the ways in which it helps those in greatest need is to advise them whether the debt management plan options at their disposal are appropriate. It approaches the creditors of individuals who might be heavily indebted. It consolidates their debts and renegotiates credit terms to make repayments possible through reduced amounts or elongated payment terms.

It is an important principle for the consumer to take some responsibility for the contracts that they enter into, so always going down the route of bankruptcy or evading repayments entirely is not the right way to proceed. However, giving people some help in renegotiating with creditors is an important part of the process. That is the nub of the issue, because there are very different types of debt management providers. Some operate on what is known as the fair share basis. In other words, they do not charge the customer for the administrative cost of establishing a debt management plan. Instead, the creditor—who will, after all, recover some of the money owed—will cover such administrative costs. In my view, that is a virtuous model of debt management plan arrangement.

Unfortunately, however, significant numbers of debt management plan providers charge the customer up-front for the administrative cost. Those models are dangerous. Many consumers will be under the illusion that, by entering into a debt management plan, they have started to pay off their debts. In fact, for weeks, months or perhaps longer, they have being paying only the administrative costs of establishing the plan and have not eaten away at any of their debts. Those business models are reprehensible and must be phased out. Such systems cannot be switched off instantaneously. We must ensure that debt management plan advice is sufficient and that the market can cope with any regulatory change that might come along. However, the time has come to phase out the fee-charging DMP provision, and we hope to achieve just that in the amendments.

Some of the more virtuous creditor-charging providers, such as Payplan, have argued that the Financial Conduct Authority should be able to regulate such activities. It is a large issue that affects many thousands of people. Payplan has been pushing for the introduction of statutory regulation for debt management plans under the Tribunals, Courts and Enforcement Act 2007. I understand that the Office of Fair Trading has not decided what debt management guidelines there should be. The OFT, currently the closest regulator that we have to some of the non-legislative debt management plan consolidation activities, states on its website that it

"is currently preparing final revised debt management guidance following its recently closed consultation."

Will the Minister update the Committee on where the OFT stand on the issue, with regards to its consultation? When will we see specific proposals? Does he agree that this sort of activity should be transferred properly to the ambit of the Financial Conduct Authority? That was the aim of amendment 91 to clause 6—to transfer responsibility of the regulation of debt management and debt adjustment services to the FCA—and the same arguments apply to that amendment, too.

My hon. Friend the Member for Makerfield has helpfully tabled amendment 90, which also looks at other aspects of consumer credit agreement arrangements that are disadvantageous to consumers. She may want to say something about that in a moment. However, I agree with her point, and the argument made by Which? and Citizens Advice, that we need to be careful about the gap that could exist with any transfer of responsibility under the Office of Fair Trading to responsibility under the FCA. We could end up with a period where, unwittingly, the transfer process sees consumers unprotected while the FCA takes over that responsibility. The amendment would ensure that the power of the OFT to suspend the licence is more explicitly linked to the transition period. I will let my hon. Friend elaborate more on that in a moment.

I will come to the separate question of amendment 87 shortly, but new clause 1 also seeks to make it absolutely clear that the FCA should bring forward recommendations within a year of the Act's commencement to phase out the practice of directly charging consumer fees, or charges for the provision of debt management plans. It is not enough simply to transfer that issue to the FCA. We must make more progress on the matter, and new clause 1 is designed to send out a clear signal that we want to see changes. Many consumers are suffering under these circumstances, and I would be grateful if the Minister accepted that those fee-charging DMPs need to be changed.

Amendment 87 addresses a pretty big topic, the widely debated issue of high-cost credit in society. As many hon. Members know, my hon. Friends the Members for Walthamstow (Stella Creasy) and for Makerfield, and others, have, for some time, been championing the need for regulation properly to ensure that the high-cost credit market is reined in and brought within an acceptable level of behaviour and responsibility. I understand that the hon. Member for Solihull has been involved in many such discussions previously, and a lot of cross-party consensus is beginning to emerge on some of those issues.

Rather than specify in statute a particular cap on annual percentage rates and so forth, it would be preferable to ask the FCA to make some rules, using their expert judgment on how to frame and define total costs of credit, and to consider whether there is a level at which consumer detriment really begins to kick in. There is a large body of debate about the availability of high-cost credit, because in certain circumstances, short-term, readily available credit may be necessary in the lives of some individuals. Simply measuring it by an annualised percentage rate may give rise to the impression that hundreds and thousands of percentage points of interest are charged; if the loan is over a week, there will clearly be a de minimis level of administrative costs upon some of those activities, and in certain circumstances, one can understand there being a particular premium on such services. We must be careful not to eradicate the availability of short-term credit and push people unwittingly into the hands of loan sharks.

By the same token, we have to do something about protecting those who, unfortunately, become slightly dependent on high-cost credit. They go from week to week, or occasionally month to month—perhaps even year to year—using what are clearly inappropriate lines of credit, given their personal circumstances.

Any regulatory approach taken by the FCA under amendment 86 should look not only at the total cost, but at the duration of appropriate availability of a high-cost credit product to an individual. In other words, should there be preventive measures to stop particular arrangements from rolling over? I am thinking of loans that go on and on.

In other jurisdictions—Florida and others—there are sophisticated systems to prevent long-term dependency on high-cost credit. That is the sort of regulatory change that we need to start investigating. This is one of the most important changes that the FCA needs to address as a matter of urgency. If it is a body that champions consumers, that is the sort of change that I want it to have right at the top of its agenda.

3.45 pm

Yvonne Fovargue: Does my hon. Friend agree that it is really important that the FCA should have the ability to take on board the recommendations that come out of the OFT's current review of high-cost credit?

Chris Leslie: Absolutely. That is why we need to get an update from the Minister about where things stand. In my constituency in central Nottingham, I have a lot of discussion about payday lenders and doorstep lenders as part of my case load. Some people call them legal loan sharks, but I do not know whether that is fair; personally, I would not describe them in that way. But there are high-cost credit providers who push things too far, and regulation needs to be brought in.

I could talk about the issue for a considerable period. The Minister genuinely knows how important we feel the issue is. But I am conscious of where we are in the Bill, and it is important that we should make progress. I do not want a shorter contribution from me, however, to be interpreted in any way as undermining the importance of the issue at hand.

Yvonne Fovargue: I rise to support the two amendments that are also tabled in my name.

Amendment 91 is aimed at finding out whether fee-charging debt management companies will be included. The legislation mentions a contract under which one person provides another with credit, but those companies do not fall under that definition. That could provide a perverse incentive for them to charge up-front fees, because they would then certainly not be providing credit. Monthly plans could be providing credit. We certainly do not want a perverse incentive that leads to such companies all charging up-front fees, which give the person in debt no incentive to carry on paying. The company would encourage that because it would have got its money first.

[Yvonne Fovargue]

There are still problems with fee-charging debt management companies, which is why I also support new clause 1. There is pressure-selling. During a debate about fee-charging debt management companies, I actually got a text asking whether I had debts and, if so, whether I would like to clear them. There is poor service; money sits in accounts for a long time and often is not paid to the creditors. Priority debtors are not dealt with in the right order and the companies sometimes fail to keep clients' money safe.

The worst example that I have seen was when a client had taken out a second mortgage for £55,000 on the advice of a debt management company, and paid it all to that company, which paid £25,000 to the creditors and went bankrupt with the rest. It set up under a new name the next day. That really is a bad practice. Fee-charging debt management companies provide financial services, so the FCA is the correct regulator for them.

Lorely Burt: I am sympathetic to the points made by the hon. Member for Nottingham East.

On the removal of charging from debt management services, would the hon. Lady agree that not all debt management companies are bad? Some provide a thorough service and can be helpful. Making a provision to withdraw all charging debt management companies from the market might throw the proverbial baby out with the bathwater and do more harm than good. At the moment, free debt management companies get their money from the people to whom money is owed, which is a good model, but not everyone is necessarily entirely well served; some people will require a higher level of service.

The Chair: That is a very long intervention.

Yvonne Fovargue: Actually, I feel that withdrawing the debt management companies will help those who provide free services. The debt management companies deal with people who can afford to pay; they do not deal with people who have no income and go for write-offs, and that type of thing. Such debt management companies take clients from those, such as the Consumer Credit Counselling Service and Payplan, that use fair shares. And the more they take money from their clients and leave fair shares agencies with people who cannot afford to pay, the more those agencies struggle, because they cannot get their money from fair shares. We should look at the business models of CCCS and Payplan, both of which use the fair shares model, because the more the fee-charging debt management companies go in and charge clients, the more they are taking the customers who could use the fair shares model, and it tilts their business model, too.

Lorely Burt: I am very interested in what the hon. Lady is saying. If the Government were to take away the fee-charging debt management services, would that not put a huge burden on existing free services, in addition to the variety of other services they provide to customers?

Yvonne Fovargue: Phasing is an important issue, but current capacity is important, too. I am assured by two firms, one of which is the CCCS, that they have 60% capacity to take on more clients over the telephone. It is the free advice services that cannot work the fair shares model, such as citizens advice bureaux and law centres, that will have problems, because they often see the clients who have to go for write-offs. Those clients have very little income and need to suspend the interest and payments completely. Those services need support to help that group of vulnerable people. So there is some spare capacity, and the more fair shares they get, the more capacity there will be, because they can build capacity with the money they get in, which I support.

Amendment 90 addresses the power to suspend, which is so important in the interim period because we do not want the Office of Fair Trading to be seen as a paper tiger and for companies to rise up and think, "I've got two years before anyone will act against me." The OFT has said that it can take more than two years to investigate a company and remove its licence. In the meantime, that company is still operating.

There are obvious examples of people acting illegally. Yesterday, a payday lender told me of an illegal lender that is using somebody else's credit licence and has paid for a website name—the company's name is not The Money Shop, but it sounds similar because it is trading on that name. That is easy, and the lender is acting illegally.

I had a client in who had to sign a contract with a payday lender for six rollovers, which is not payday lending. Instead of signing to borrow for what should be a fortnight or a month, the client entered a contract for six rollovers on a loan. If that is not consumer detriment, I do not know what is. That company is being investigated —two years—but in the meantime it will carry on trading and will close down as soon as it sees any form of action on the horizon.

Particularly in the period when the powers are being transferred, and particularly while the FSA is looking at the regulation and while the OFT is investigating payday lending, there needs to be a power to suspend a company. I am sure that the OFT will not use that power willy-nilly and suspend companies immediately. It is not noted for that. There are powers to suspend other firms. Garages can be suspended for acting illegally. All sorts of companies can be suspended for acting outside the consumer interest. It seems perverse that payday lenders who can cause so many problems—not those who are acting legally, but those who set up simply to rip off consumers—can carry on trading for as long as two years.

Mr Hoban: I want to reassure the hon. Member for Nottingham East that I have not made a direct link between the length of his speeches and the importance that he attaches to a particular topic.

The debate is helpful. It is important to recognise that one of the big changes that we are making under the Bill is the transfer of responsibility for consumer credit from the OFT to the FCA. It is essential that there is a single regulator for consumer finance products and tougher and more hands-on regulation of firms, such as payday lenders and debt management companies. One of my motivations in driving forward such measures was to ensure proper and effective regulation throughout the consumer credit sector. The nature of the regime that the OFT operates is statutory rather than rules-based,

and that has actually made it difficult to keep pace with some of the developments in the market. The move proposed under the Bill is particularly important, and I am sure that we shall discuss the merits of the transfer in more detail when we reach clause 6.

Lorely Burt: I am mindful of the comments of the hon. Member for Makerfield about the current OFT investigation into high-cost credit. Can the Minister reassure me that the Bill will be sufficiently enabling that recommendations from the OFT could, in fact, be incorporated, if necessary, into the practice that comes under the subsidiary legislation relating to the Bill?

Mr Hoban: It will be open to the FSA to follow through its rules any actions that the OFT believes are appropriate. We will see two things during the course of the move from the OFT to the FCA: one is a continuing crackdown on illegal and sharp practice. The OFT's investigation of high-cost credit was an important signal of that, and there is other action that it intends to take. During the transition, we also need to get the regulatory framework for the FCA right, which includes taking into account the lessons that are being learnt from those sectors.

On amendments 118 and 91, I wish to reassure the Committee that, although there is no specific reference to debt management in the Bill, the way in which clause 6 works is to enable all activities currently regulated under the Consumer Credit Act 2006 to be transferred to the FCA, including debt management. It just happens to be the way in which FSMA works that those within the perimeter are specified under secondary legislation in the related activities order.

As for new clause 1, I understand the issues that have been raised about fee-charging debt management companies and I have a lot of sympathy for them. I pay tribute to the work of organisations such as the Consumer Credit Counselling Service, which offers its services to the customer without charging fees. However, we need to be very careful that we do not, as my hon. Friend the Member for Solihull said, throw the baby out with the bathwater. We should look at how we can better regulate fee-charging debt management companies. There is a responsibility that several parties—I do not mean political parties—must exercise by ensuring that there is good signposting to organisations such as the CAB, which can do management plans, and to those organisations that do not charge customers for debt management plans.

The hon. Member for Makerfield talked about getting texts from a debt management company. They advertise quite widely, so they are often at the front of people's minds when they think about a debt management plan. We need much more effective signposting of alternatives to fee-charging debt management companies, as well as better regulation of them.

4 pm

Amendment 90 relates to the power to suspend. We need to ensure there is continued effectiveness of regulation during the transfer to the FCA, and it will be business as usual for the OFT up to the point of that transfer. Any changes to the OFT's powers should be subject to a proper consultation process. We make a merit and virtue of having proper consultation, and the hon. Member for Nottingham East praised that practice earlier. Rather than include the proposed provision in the Bill, we need to consult carefully and widely to ensure we get the right suspension regime in place.

On amendment 87, I can reassure the Committee that the FCA will have the ability to tackle detrimental lending practices. The new product intervention power already includes the ability to make rules on charges and on specific product features such as duration of contracts. However, it will be for the FCA to decide whether such interventions are appropriate and proportionate, based on individual circumstances.

The FCA's approach to high-cost credit will be informed not just by the OFT's review of payday lenders' compliance with the irresponsible lending guidance, but by the research commissioned by BIS into the total cost of credit. I think that the Bill already achieves the effect sought by amendments 118, 91 and 97, but I do not think amendment 90 and proposed new clause 1 are appropriate.

Chris Leslie: The Minister made a number of helpful comments about aspects of the Bill and his understanding of what might fall under the purview of the legislation as drafted. However, I disagree with him on a couple of points.

On debt management plans, it would be useful to clarify the legislation to be certain that regulated financial services include debt management and debt adjustment service companies. The Minister implied that that is already given in the Bill, and I will take his assurance on that. On the other hand, with regard to proposed new clause 1, I think it is possible to ask the FCA to bring forward recommendations within a year, so there is no particular rush, on how we could phase out the practice of directly charging consumer fees. Nobody is asking for a cliff-edge, instantaneous ban on the commencement of the Act. It is important that we have a transition, which I have reflected in the drafting of proposed new clause 1.

Sheila Gilmore: I should be interested in my hon. Friend's view. It has been suggested that by proposing this, he wants to drive out all but organisations such as CAB, which is certainly struggling. Is it not the case that there is another method, that companies could continue to operate without making a direct up-front charge to consumers?

Chris Leslie: That is exactly right. I am not even saying that the whole of the debt management market has to be non-profit. There is a business model that is about a relationship with the creditors, asking the creditors to contribute a fair share for the recovery work done by the intermediary, those consolidating the arrangements. That is precisely why we need to do something to shape the market. That is our duty as legislators; it is important that we step in and help. The Minister asks why the good guys do not advertise more successfully and signpost people towards the virtuous providers more effectively. It could be possible to go down the route of saying, "Let's allow them all to flourish, but ensure that the good guys out-advertise the bad ones." I do not think that is the right approach. Regulatory action must be

[Chris Leslie]

taken to phase out a business model that is simply detrimental to consumers, particularly the most vulnerable. I do not think that we will vote on new clause 1 straight away; it is one of those things that the Committee will divide on towards the end of proceedings. I do not want to withdraw new clause 1, because it is important that we test the issue.

Yvonne Fovargue: Does my hon. Friend agree that if it was simply a case of promoting the advertising and availability of advice, my ten-minute rule Bill, which said that all the fee-charging companies had to advertise the availability of free advice, preferably in large letters, could have been supported?

Chris Leslie: That would have been one way of making a change to the industry. I should not think that the fee chargers would be particularly happy about that, but my view is that we need to phase out the practice. We will divide on that new clause on another occasion.

On amendment 90, I will let my hon. Friend make her own mind up. It might be that we return to it at a later date. Amendment 87 is on high-cost credit and it is important that we make it clear in the Bill that the FCA should take an approach that fits the basic model, where we define total cost and duration, and consumer detriment is analysed through those perspectives and regulation follows suit. That was the amendment's intention. It is incredibly important that there is something in the Bill to send a strong message from Parliament to the new regulator.

Sheila Gilmore: Does my hon. Friend agree that the framing of this amendment is such that it is not demanding any particular method of making regulation? Indeed, it says "may" throughout. Is that not a means of giving plenty of opportunity for the various issues, which always come up when this matter is discussed, to be aired and thoroughly looked at before any regulations are made?

Chris Leslie: My hon. Friend recognises the modesty and reasonable way with which we have tried to frame these particular amendments. We are not being shrill, insistent or overly prescriptive. We are simply signalling to the new FCA that this is a priority. The Minister indicated that it sort of has the capability to do this anyway, but to put that beyond reasonable doubt would be useful. We want to divide the Committee on amendment 87, although, as it would amend clause 22, that Division may not happen at this point in time.

Mr Hoban: One of the problems with the current regime is that so much of it is in primary legislation, which makes it harder to amend, because the time needs to be found for primary legislation. By moving consumer credit to the FCA, it will make it easier and quicker to amend the legislation and keep the regulatory framework up to date, so that it does not get bogged down in the need to make primary legislation. That is important to think about for the context of this amendment.

Chris Leslie: If the Minister had accepted any amendments at all, I would take his words of wisdom to heart, but given his stern refusal to countenance any imperfection in his legislation, I find his words slightly disappointing.

Mark Durkan: Surely amendment 87 would not give rise to any of the problems alluded to by the Minister. It relates to rule-making powers, and it would not even oblige the FCA to make rules; it simply permits it to make rules. Those rules have been constructed in 13 American states, although I know that may make hon. Members nervous.

Chris Leslie: That is, indeed, the case. If the amendment were prescriptive and it somehow bound the hands of the FCA, the Minister's point would make sense. If the Minister does not want to make any amendments whatsoever to the Bill, why does he not just say so? As I have said, I find it disappointing that he is creating artificial arguments against particular amendments. It is important to make that change, but given that we are where we are with clause 5, I would be happy to take the Minister's assurance. If the definition of regulated financial services is covered, I would be happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Leslie: I beg to move amendment 56, in clause 5, page 20, line 21, after 'PRA.', insert—

'Coordination with the Financial Reporting Council

1KA The FCA's duty to co-ordinate with Financial Reporting Council (FRC)

'(1) The FCA must co-ordinate with the FRC with a view to promoting—

(a) understanding and application of the principles of the UK Stewardship Code by relevant authorised persons,

(b) transparency regarding the approach to the Stewardship Code taken by relevant authorised persons, and

(c) high standards of responsible ownership, including in relation to the management of environmental, social and governance (ESG) risks and opportunities.'.

The amendment is about guidance on the objectives. Proposed new section 1K of the Financial Services and Markets Act 2000 states:

"The general guidance given by the FCA…must include guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person...Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA."

The amendment would add a new subsection on the co-ordination with the Financial Reporting Council. The FCA should be under a more explicit duty to co-ordinate with the FRC with a view, first, to promote the understanding and application of the principles of the UK stewardship code by relevant authorised persons, secondly, to promote transparency regarding the approach to the stewardship code taken by relevant authorised persons, and, thirdly, to have responsibility to co-ordinate with the FRC on higher standards of responsible ownership, including the management of environmental, social and governance risks and opportunities.

Hon. Members will know that the FRC is the UK's independent regulator responsible for promoting high-quality corporate governance. The amendment would give the FCA and the FRC the opportunity to ensure that the current UK stewardship code has sufficient teeth. In recent weeks, we have seen instances of voluntary codes that have had rather disappointing outcomes, for example the Project Merlin deal—I do not know whether the Minister was personally involved in the negotiations,

but it clearly did not have teeth and was unable to ensure sufficiently that the banks lived up to their obligations. The code of practice on taxation is another example: although Ministers correctly acted to close retrospectively what they regarded as "offensive" tax avoidance activities, no consequences befell the banks concerned for breaching the code.

From time to time, we need to take stock and ask ourselves, "Do the codes have sufficient teeth? Can they be enforced?" I am not claiming that any Government of any complexion can always get such things right; sometimes a voluntary approach is the correct one, but if there are occasions when it is clear that such an approach is not working, it could be necessary to turn up the powers of enforcement on some of the important obligations.

Hon. Members on both sides of the House, at very senior levels, have put a lot of emphasis recently on the importance of good governance and shareholder activism. It is timely to review whether the stewardship code is sufficiently regulated and whether the new regulatory regime should have new abilities better to ensure compliance. Given that we want to inculcate good practice as far as possible, there is a strong argument in favour of establishing a formal relationship between the FRC and the FCA.

Principle 3 of the stewardship code ensures that institutional investors should monitor investee companies, and it would be beneficial if those responsible for consumer protection were actively liaising with the body developing shareholder guidelines.

4.15 pm

The Committee should not underestimate the potential of the stewardship code to drive up standards in the financial services industry. According to a recent FRC report, more than 230 asset managers, asset owners and service providers signed up to the stewardship code in the first 18 months of its existence, which is a positive step forward, and for the Bill as currently framed not even to acknowledge the FRC's existence seems perverse. I tried to do a word check of the Bill, which is difficult, but as far as I can see the FRC is not mentioned at all—perhaps I missed it—and I wonder whether the Minister can explain why. Is it an oversight or is there a particular reason for the FRC not be mentioned?

Serious change in stewardship and corporate governance in this country is needed. As we know, the banking sector has serious failings in the balance between senior executives and shareholders and in the lack of transparency and opportunity for shareholders to exert a proper degree of scrutiny and accountability over the banks. That has been particularly evident in recent times if we look at the role of the Government as a major shareholder in some of the biggest banks in the UK, and at their unwillingness to assert their rights as a shareholder. A whole range of issues is involved, on remuneration, on boardroom pay, on representation of employees on remuneration committees and on ensuring that we also take action to encourage shareholders and institutional investors to work together from time to time to assert collectively good practice and good behaviour.

The principles of the stewardship code are important, but we cannot say that it has adequately addressed all the remaining issues. The Prime Minister, the Leader of the Opposition and other senior figures in British politics are still talking about the need to tackle crony capitalism and advocating more responsible capitalism, so ensuring that we have a closer connection between the FCA and the FRC is an important part of the wiring—behind the scenes, in the system—to ensure a connection between those general aspirations in the stewardship code and the work that the regulator might have in such circumstances.

There is plenty more to say but, given the time, I ask the Minister for his thoughts.

Mr Hoban: The Government welcome the stewardship code and the work of the Financial Reporting Council. No one will argue that the proper stewardship of investments is not important or that asset managers should not take a proper interest in what investee companies do with investments. We are not convinced, however, that amendment 56 is necessary. The Bill provides a properly focused regulatory system in which individual regulators and other authorities have clear roles and responsibilities and the right to carry out their given tasks.

The FCA will be responsible for ensuring proper conduct by asset managers, including the interest that they take in investee companies, but of course its role is wider and to put too much emphasis on one point would be wrong, to the potential detriment of other key FCA rules. Furthermore, nothing in the Bill prevents the FCA from working with the FRC on any matter in its remit. *[Interruption.]* The hon. Member for Foyle chokes in surprise, but let me be clear: there are areas in which the FCA and the FRC will have considerable interest in company accounts and corporate governance, because the FCA includes the UK Listing Authority, which has an obvious interest in the work of the FRC. In the same way, the UKLA and the FRC can work together at the moment. There is nothing in statute that compels them to do so, and nothing that prevents them from doing so. To give some proof to that, the FSA has already brought in a rule that requires UK authorised asset managers to put statements of commitment to the stewardship code on their websites or, if an asset manager does not commit to the code, to display its alternative investment strategy. I am not sure what the requirement in paragraph (b) of the amendment would add. The two bodies already have the opportunity to work together, and they do so, which is to be commended. There should not be any requirement to force them to work together. The FSA already works with the FRC and with a wide range of bodies without being compelled to do so, and that is a sensible set of relations.

Mark Durkan: First, I note that the Minister is relying on saying that the FSA already works with the FRC, which makes my point about the basis on which the Government reject so many amendments. The Bill makes many provisions for different bodies to co-ordinate with each other, and nothing in the Bill prohibits such co-ordination, but the Minister has seen fit to provide all sorts of references to co-ordination between different bodies. What would be wrong with adding this one?

Mr Hoban: One has to take a pragmatic view about where the line is drawn regarding statutory obligations for co-ordination, which is why memorandums of understanding will be in place to co-ordinate between

[Mr Hoban]

individual regulators. Memorandums of understanding will be in place between the Bank of England, the PRA, the FCA and the Treasury. The existing bodies work effectively already with a wide range of people, although there is no stipulation in FSMA for them to do so.

Chris Leslie: Does the Minister envisage that there will be a memorandum of understanding between the FCA and the FRC?

Mr Hoban: I do not think there needs to be one, because the bodies already work well together. The hon. Gentleman has talked about there being too much spaghetti between the regulators, but he is now trying to add more spaghetti to the menu. Relationships already exist between the FSA and the FRC, and they work well; if they did not, there might be an argument for the amendment. The FSA and the FRC already work together on the stewardship code, and the amendment is unnecessary given that the existing relations appear to be working well.

Chris Leslie: If the Minister thinks that the stewardship and corporate governance situation in the UK is working well and that there is no need to make improvements to it, we fundamentally disagree. He is living in a different world if he does not think that we need to up the ante and make improvements. Indeed, the Prime Minister has been making the case for improvements most forcefully, but maybe the message has not yet trickled down into the interstices of the Treasury.

The stewardship code must be promoted and enforced with more rigour, which means making sure that the FCA has a role in asserting and promulgating the principles of the UK stewardship code to regulated persons. More ownership must be taken of that process beyond the FRC, so it would be helpful if the FRC's relationship with the FCA was more explicit in that regard. The Minister said that putting that requirement in the Bill would create spaghetti, but when I asked him whether it might be voluntary and communicated in a memorandum of understanding, he did not even think that that was necessary. The only conclusion we can draw, therefore, is that the status quo makes the Minister completely happy; that he does not believe that any changes are needed; and that he certainly does not think that the FCA should have any role in the enforcement or advocacy of the UK stewardship code.

Mr Hoban: So that the hon. Gentleman does not mislead those who read the record, I repeat that the FSA and the FRC already work together on the code. There is no need for a statutory requirement for them to do so.

Chris Leslie: But the Minister is abolishing the FSA, and we are creating a new regulator called the Financial Conduct Authority. I know that it is sometimes difficult to keep track of what the Minister is actually advocating, but that is a new body and we are discussing new legislation, new officials, and new individuals. It is therefore important to frame some of the details in the Bill, but if not, we should get commitments as part of that process. We are building this system from scratch, and it is a spaghetti of several different organisations. It is being built from the bottom up, and several specific obligations on regulators to work with one another are being put in the Bill in various clauses and in various ways. I thought that it would be perfectly topical and appropriate to discuss how the UK stewardship code fits into this particular set of regulatory reforms. The Minister seems to be saying that it does not fit in whatever and that there is absolutely no change to the role of the UK stewardship code and how it affects financial services in particular. That is a mistake and a missed opportunity. The Minister should at least tell the Committee that we should pick up on such issues in a different way.

As I have said, some reforms are necessary. Recent conversations with several fund managers have shone a light on some serious worries about the imbalance between the shareholders and senior managers of some of the largest banks. I have heard that, in times past before the crisis, large shareholders in RBS sought to voice their misgivings about Sir Fred Goodwin—*[Interruption.]* Mr Fred Goodwin, as he is now—*[Interruption.]* Will hon. Members listen to the point? Those shareholders wanted to voice concerns about his particular behaviour and sought a private meeting with the chairman of RBS to discuss those concerns. They were serious, big shareholders. They got that meeting with the chairman and went into the room to complain about the risky activities of the chief executive. Who was sitting next to the chairman? It was the chief executive. The shareholders' inability properly to assert their views was quite clear when senior executives decided that unless 50% plus one of the shareholders were asserting a particular view, they were not particularly bothered about it.

We need more clarity about the rights of investors to act in concert, to work together, and to co-ordinate to assert their misgivings. Otherwise, shareholders will just sell and exit rather than stay and fix and repair. That is a really important principle in the stewardship code, which mentions that it should be promoting the ability of investors to co-ordinate and work together, but there is a lack of clarity among many investment managers about whether they are able to do that, partly because in the United States and elsewhere they are fettered from doing so by anti-trust rules and so on. We need clarity about the shareholders' ability to assert their role, and that is an important part of the accountability of the checks and balances within corporate Britain. That is just one example of a reform that I think is necessary, and it could be brought forward through a better dialogue between the FRC and the Financial Conduct Authority.

These are enormous questions, and they deserve a broader airing. They are central to much of the political discourse in Britain today, but with the hope that we may return to them on Report and have a wider airing of some of their specifics, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned. *—(Greg Hands.)*

4.29 pm

Adjourned till Tuesday 6 March at half-past Ten o'clock.