HOUSE OF COMMONS
LIBRARY

Financial Services Bill: Committee Stage Report

Bill No6 of 2009-10

RESEARCH PAPER 10/04 20 January 2010

This Paper summarises the House of Commons Committee Stage proceedings of the Financial Services Bill. It supplements Research Paper 09/84 which describes the background content of the Bill in detail. The Bill received its second reading on 30 November 2009.

This is the third piece of financial services legislation since 2007 to respond to the banking and financial crisis. It does however, include other measures designed to improve the position of financial services customers. It creates a Council for Financial Stability to co-ordinate the responsibilities and action of the Bank of England, FSA and Treasury with respect to financial stability matters. It enhances and extends the powers of the FSA and gives it new duties. Lastly, amongst other consumer protection measures, it provides for collective consumer legal action to be taken in cases of multiple claimants against financial companies.

Timothy Edmonds

Recent Research Papers

09/89	Child Poverty Bill: Committee Stage Report	03.12.09
09/90	Personal Care at Home Bill [Bill 11 of 2009-10]	09.12.09
09/91	Flood and Water Management Bill [Bill 9 of 2009-10]	10.12.09
09/92	The Islamic Republic of Iran: An Introduction	11.12.09
09/93	The National Lottery – The First 15 Years	14.12.09
09/94	Unemployment by Constituency, November 2009	16.12.09
09/95	Children, Schools and Families Bill [Bill 8 of 2009-10]	16.12.09
09/96	Fiscal Responsibility Bill [Bill 13 of 2009-10]	22.12.09
09/97	Crime and Security Bill [Bill 3 of 2009-10]	22.12.09
09/98	Video Recordings Bill [Bill 14 of 2009-10]	31.12.09
10/01	Economic Indicators, January 2010	06.01.10
10/02	Social Indicators	19.01.10
10/03	Unemployment by Constituency, December 2009	20.01.10

Research Paper 10/04

ISSN 1368-8456

Contents

Summary

The committee stage lasted for 14 sittings, the first four of which were oral evidence sessions. Very few amendments were voted on and much of the debate was on a clause stand part basis. There was only one amendment made to the Bill: a Government amendment that emphasised that the Bill had no retrospective impact upon executive remuneration contracts. The key debate was about the structure of the regulatory system and the establishment of the Council for Financial Stability. A number of non government New Clauses were introduced in the final sitting, covering a range of issues, but were all withdrawn without a vote.

1 Introduction

The *Financial Services Bill* was introduced in the House of Commons on 19 November 2009 and had its Second Reading on 30 November.[1] The Bill was committed to a Public Bill Committee on 8 December. Oral evidence was taken at the first four sittings and a further ten sittings discussed the Bill in detail until 14 January 2010.

The Bill will establish a new body called the Council for Financial Stability which will replace the existing Standing committee with joint responsibility for financial stability shared by the Bank of England, the FSA and the Treasury under what are normally called the tripartite arrangements.

The Bill significantly expands the reach and obligations of the FSA. In several cases, the statutory authority for FSA action is widened from reliance on one reason, for example, consumer stability, to include any of the Authority's statutory objectives. New or enhanced powers include:

> Requiring the creation and monitoring of Recovery and Resolution plans (the 'living wills'): the Bill places a duty on the FSA to make rules requiring firms to create and maintain both recovery and resolution plans (S139B (1) and S139C (1)) in the event that they become financially vulnerable.
>
> Controls over executive remuneration and corporate governance: the Bill lays a new duty on the FSA requiring it to make 'general rules about remuneration'. In addition a new duty will be laid on companies to produce executive (i.e. not directors) remuneration reports. The Bill gives the Treasury power to expand the company law disclosure regime under which companies must disclose details about remuneration of their directors.
>
> Short selling: the existing power to prohibit short selling is linked to cases of possible market abuse. The Bill intends to remove this link, thus allowing the FSA greater freedom in applying such prohibitions.
>
> Promotion of international regulation: the Bill places a further duty on the FSA to work in international fora to develop standards of regulation.
>
> Increased powers of information gathering and punishment are to be given to the FSA to make effective their new duties and the more intrusive style of supervision promised as part of the supervisory enhancement programme.

Powers under the Bill will give effect to recommendations of the Walker Review on corporate governance.

The Bill also includes provisions to introduce new channels through which consumers might get redress in cases where there has been a mass failure of practice which has affected significant numbers of consumers. Collective court actions will be permitted and practitioner based consumer redress schemes are to be given greater scope.

More specifically, the issuance of credit card cheques are to be more tightly controlled. Card companies will no longer be able to send them unsolicited to customers and the total number of cheques which can be issued in a year is to be limited.

---

1 HC Deb 30 November 2009 cc872-940

Detailed information on the provisions in the Bill and the background to them can be found in Library Research Paper 09/84 prepared for Second Reading. Further material and links to the proceedings on the Bill can be found on the Library's Bill Gateway pages.

2 Second Reading

Reflecting the diverse content of the Bill, the second reading debate (described as 'thoughtful and low key' by the Conservative Opposition spokesman[2]) included not only a long exchange between the first speakers (the Chancellor and Shadow Chancellor) about 'UK regulatory architecture'[3] but also questions and comments about specific instances of poor practice towards consumers such as the potential for misuse of credit card cheques.

On the former, there was a long debate over the argument whether 'central banks need to be in charge of prudential supervision'.[4] For the Opposition, George Osborne drew attention to various international bodies and reports which suggested that it should and the fact that there is a 'trend in many countries to try to put the central bank back in charge'.[5] In contrast the Chancellor referred to the complexity of financial services and that 'A single organisation [...] responsible for the individual regulation of banks large and small, as well as financial advisers, some of which are very small indeed, makes no sense'.[6] He summed up his position by saying 'I simply think that the proposal to put everything under the Bank of England is inherently risky, and I would not do that'.[7]

The Chancellor also discussed the potential relationship between UK regulatory authorities and the embryonic organisations being established at the EU level. In response to a comment by Mr Cash, about the impact of majority voting at the EU level eroding 'national supervision', the Chancellor gave the example of the Icelandic banks operating in London:

> One of the Icelandic banks was operating in London with its headquarters in Iceland, but we did not have sufficient levers to head off some of the problems because we did not have the powers to do so. It could well be in Britain's interest in the future to be able to use the leverage of European supervision to try to ensure that we are not adversely affected by what we regard as a failure of regulation or insufficient regulation in another country.[8]

Ensuring that none of the new European bodies could 'impinge in any way on the fiscal responsibility of member states' was one of the Chancellor's 'red lines'.[9]

The main thrust of the speech by Mr Osborne was that the Government had not proposed a more radical and fundamental, root and branch reform of the regulatory system. He contrasted reform in 'almost every other country in the world [which are] proposing considerable changes' with the UK which is prepared to 'stick with the existing system'.[10] He welcomed parts of the Bill– controls on market abuse; greater penalties against practitioners

---

2 Ibid c929
3 Ibid c874
4 Ibid c874, George Osborne
5 Ibid
6 Ibid c875
7 Ibid c877
8 Ibid c880
9 Ibid
10 Ibid c888

and controls on credit card cheques – but noted with caution comments made about the possible illegality or unenforceability of controls on bonus payments set out in the Bill.[11]

For the Liberal Democrats, Vincent Cable made several points about the 'big picture'. Some stability had returned, but the potential for nasty shocks (Dubai) remained. The failure of the Government to:[12]

> follow through on their ownership and control of leading banks in terms of influencing their lending policy. We had a good reminder of that last week when RBS, a nationalised bank, was able to mobilise hundreds of millions of pounds in support of an aggressive takeover of Cadbury by Kraft-as it happens, the world has moved on-while having to acknowledge publicly that it would not, by a very long way, meet its net lending obligations to small and medium companies. There has been a failure of governance by UKFI, the state directors-a failure to ensure that RBS and other state institutions meet the test of national interest. They are clearly not meeting that test.

Lastly he referred to the unresolved issue of the 'too big to fail' banks. If they were not to be broken up, should they not be made to pay for the implicit public guarantee they enjoy.

Although there was, he said, much in the Bill which was 'perfectly sensible' 'if the Government are to embark on a wholesale review of the current deficiencies in consumer protection in respect of banks, quite a few key items are missing'.[13]

Subsequent contributions focussed upon the history of past failures and the weaknesses of alternative solutions; whether financial structures were important or not, if so what would the Bill change. Did the Bill resolve questions over who was in charge in a crisis and were responsibilities of the key players sufficiently delineated or was it what people did rather than the 'label' under which they operated that really mattered.

The proposals to improve the position of consumers were generally welcomed (see Mr Twigg's comments cc920-921) though some, like Mr Cable, thought they did not go far enough and others, Mr Howell, were concerned about the 'rushed' nature in which the proposals have been brought forward.[14]

3 Summary of Committee Stage Debates

The Committee held four evidence sessions and received a considerable number of written evidence submissions. A list of witnesses and submissions are listed in the Appendix to this Paper.

The Committee did not consider clauses in strict numerical order, however, this Paper will. Where a clause is not mentioned below it reflects either the brevity of the debate or the degree of consensus on the Clause.

3.1 Clause 1: Council for Financial Stability

This was described by several Members as being the most important clause, or cornerstone, of the Bill. There was a long debate, covering two sessions, which merged debate on particular opposition amendments (not carried) with the stand part debate. Simplified, the main (opposition) arguments throughout the debate were:

---

11 Ibid c894
12 Ibid c897
13 Ibid c902
14 Ibid c916

- The Council for Financial Stability (CFS) changes nothing
- The Government is sticking to a failed system
- The system is unclear and not transparent
- The Government were warned of problems in 1999 when the *Financial Services and Markets Bill* was debated
- The main authorities don't recognise their own responsibilities
- The tripartite system should become a bipartite one with the Bank of England assuming far greater powers.

The Government's response (again simplified) is:

- The CFS clarifies and improves the existing system
- Transparency will be improved
- What the authorities do is more important than precise concerns over financial architecture
- Financial problems arose in countries with diverse regulatory structures – both those with one regulator or several; a leading role for the central bank and the reverse
- Abolishing the FSA won't help

The Opposition amendment, proposed by Mr Hoban, was designed to 'explore the issue of responsibility' but he developed this also to look at what the CFS could do. Was it simply a coordinating body or did it have executive functions – and by analogy was it different from the previous tripartite system governed by the memorandum of understanding between the Treasury, the Bank of England and the Financial Services Authority (FSA).

With respect to the Bank, he quoted comments made by several of its members, including the Governor, in speeches and in evidence to the Treasury Select Committee, to the effect that the Bank's responsibility for monetary policy was insufficient to discharge its new responsibility for financial stability. He concluded:[15]

> There is clearly a gap between the collective responsibility that the Minister believes in when it comes to enhancing or maintaining financial stability, and what the Bank sees as its contribution to that objective. The Minister suggested monetary policy, but Adam Posen suggests that monetary policy, as currently practised, does not deliver. John Footman identified some of the tools available to the Bank to deliver financial stability, but even then the Governor felt that his role was limited to that of being a preacher and to giving sermons, and in need of more powers if he was to be able to fulfil fully the responsibility given to the Bank in the Banking Act for maintaining financial stability.

With respect to the FSA Mr Hoban drew attention to comments made during the evidence sessions:[16]

---

15 PBC 5 January 2010, seventh sitting, c191

16 Ibid c194

> The FSA's view was interesting. Again, it diverged from the view taken in the footballing team analogy used by the Minister. Although the FSA recognised that it shared a responsibility, it was clear about the limits of what it could do to deliver that objective. It was also clear about where it was in the hierarchy, when it came to delivering financial stability. Mr. Whittaker said:
>
> > "We, for our part, recognise that our role in relation to financial stability is, in some senses, a secondary one to the other authorities"
>
> and
>
> > "it is inconceivable that we would wish to second-guess the views of the other authorities in that respect."——[*Official Report, Financial Services Public Bill Committee,* 8 December 2009; c. 28, Q58.]
>
> I thought that a clear statement from Mr. Whittaker about the FSA's role. It is the economic and business regulator, and the micro-prudential regulator, for the financial services sector. He clearly had a restricted view of what the FSA's role would be in terms of delivering financial stability. It is entirely consistent with the remit of the FSA for him to see the matter in that light.
>
> We can develop the point. If the FSA as a micro-prudential regulator believes that it has a secondary role, who is responsible for delivering macro-prudential stability? Who is the macro-prudential regulator? Is it the Bank of England, which does not seem to have the powers under the Banking Act 2009 to fulfil that role? The FSA sees itself as the micro-prudential regulator, and as not having that other role.

In essence, the argument was that between two of the triumvirate, there existed a lacuna where the role of macro-prudential regulation ought to be. The Bank, because of lack of 'weapons'; the FSA because of a lack of seniority. He continued:[17]

> In its discussion paper in November, the Bank described macro-prudential regulation as the missing link in the policy framework. There is something that the Bank needs to have, in addition to monetary policy, to enable it to act as a macro-prudential regulator. Interest rate policy, which is geared towards controlling inflation, would not deal with asset bubbles. What tools, therefore, does the Bank of England need to deal with that? If the Bank does not have the tools it needs, how will it deliver the financial stability objective? The Bill is silent on what additional tools the Bank—or indeed the FSA—will need to act as a macro-prudential regulator. That gap needs to be addressed, and new clause 2 [the Opposition amendment] gives a legal structure for doing that. The Government should bring forward a report identifying where the gaps are and what powers are needed for that crucial link, to fill the gap that exists in the toolkit that either the Bank or the FSA is able to exercise. New clause 2 is important as it imposes a statutory requirement to look ahead at the tools that are emerging through discussions at international and national level on macro-prudential regulation and ensure that the regulators have all the tools and powers that they need to enable them to contribute towards financial stability. My concern about how the structure is set out in clause 1 is that it gives collective responsibility to the Treasury, the Bank and the FSA without actually knowing precisely where the limits of those responsibilities are, and what powers they have to contribute to deliver that objective of financial stability. My amendments and new clause in this group help clarify those powers and responsibilities, but also recognise that there needs to be more work to ensure that the regulators have all the tools they need to help deliver the financial stability objective that the Bank already has, and the FSA is being given in clause 5.

---

[17] Ibid cc200-201

Mr Hoban's contribution was followed by a speech by Mr Tyrie which was highly regarded by several members of the Committee. The unique feature of this speech was the fact that Mr Tyrie, alone of the current members of the Committee, had been on the Committee of the *Financial Services and Markets Bill* in 1999.[18] Thus, he was able to bring to mind arguments made in 1999 that were on the very same issues as those debated now. The crux of his contribution was 'who was in charge?'. Having put forward his contention that the current regulatory system had failed he pointed out what had been said in 1999 and how it was pertinent to the current situation.[19]

> It could reasonably be argued that all of that can be said with the advantage of hindsight, but it did not require hindsight to spot the risk, and others spotted it 10 years ago in the equivalent of this Committee. I was one of them, as were Howard Flight and my right hon. Friend the Member for Hitchin and Harpenden (Mr. Lilley), who was not on the Committee, although he spoke about the issue on the Floor of the House.
>
> Of course, it is easy to put down markers in opposition. Then when things go wrong, one's number can come up like the numbers on a roulette wheel. If we look carefully at the detail of the Opposition's points, however, it is clear that that is not what was going on. We went straight to the heart of what was wrong with the system at its inception.
>
> I tried repeatedly to raise some of the points that are being made today. I tried, but failed, to get the Government to focus on the manifest flaw in their new system for managing systemic risk and ensuring financial stability. I repeatedly asked who was in charge. When I say "repeatedly", I mean on at least three occasions in six months on the Floor of the House or in Committee.
>
> The key issue is whether the existing flaws are being removed in the Bill. The existing system requires the tripartite committee to work on the basis of a memorandum of understating. As several hon. Members have said, however, the Bill does little more than put the committee on a statutory footing. It is becoming increasingly clear that little will change as a result, and the hon. Member for South Derbyshire said pretty much the same a moment ago. He challenged the alternatives that might be put in place, and I might come to that if I am allowed to stray from clause 1 for a moment.
>
> Let us go back for a moment to those three points in 1999. My first point was that the FSA's responsibility for systemic risk should be added to the legislation as an objective of the FSA and put on the statute book. That is now—finally, belatedly, 10 years later—being done, in clause 5 of the Bill, which we shall discuss later.
>
> Secondly, as I have already mentioned, I pointed out that no one seemed to be in charge under the memorandum of understanding as drafted at the time, and it remained in that form. As I said at the time—for "bank", read "Northern Rock"—
>
> > "If a single bank crisis develops into a systemic crisis, who is responsible then?"—[*Official Report, Standing Committee A,* 13 July 1999; c. 174.]
>
> The memorandum of understanding required the responsibility to be shared. It is still being shared in pretty much the same way. I challenged whether those arrangements were sustainable and argued that, for the tripartite to be effective, a formal and reasonably transparent structure was needed, with papers, minutes and, where practical, something available in the public domain, to show that the job was being done. My hon. Friend the Member for Henley might well say more about that, I gather, if he manages to catch your eye, Mr. Gale.

---

[18] The legislation which established the current regulatory system

[19] PBC 5 January 2010, seventh sitting, cc210-211

> At the time when I was making those points, others—many others—were making them outside the Committee. The Joint Committee under Lord Burns had looked at the Financial Services and Markets Bill in 1999 and had come to pretty much the same conclusion. By the end of that year I had made up my mind that the new system was an accident waiting to happen and that the system, with its three-way division of responsibilities, would create deep problems. I said that the system was wholly untested and might be found wanting. I said that the problem with the memorandum was the division of responsibility between the three groups. It was the FSA's job to spot something early on, when trouble might arise in a particular firm, but it was the Bank's responsibility to suggest and put in place a support operation and the Chancellor's job to explain everything to Parliament. I explained at the time that the system would not work and would be a mess—and so it has proved.
>
> I have already pointed out that we had very little time to look into the matter in 1999. The scrutiny of such a crucial part of the Bill in 1999 was an object lesson in how not to do line-by-line scrutiny. The only substantive response from the Minister—the right hon. Member for Leicester, West (Ms Hewitt)—was pretty perfunctory and gave the impression that none of those issues mattered at all:
>
> > "The questions raised by Opposition Members at considerable length are nothing like as difficult as has been suggested."
>
> She went on to say something that I have already quoted:
>
> > "As the memorandum of understanding clearly states, managing financial responsibility is a common objective of the three institutions whose roles and responsibilities are clearly delineated in that memorandum."—[*Official Report, Standing Committee A,* 13 July 1999; c. 182.]
>
> That is just what we have been hearing, is it not? It is what we are getting from the Government on the new measure. As I have also mentioned, the Minister then concluded that we were all wasting time, a response which, in retrospect, was highly irresponsible.
>
> That is why it is so important that we do not rush consideration of such a crucial measure now. We should avoid a repetition of the past, and should not rush into a set of arrangements that are equally or almost as flawed.

Responding in part to this speech Mr Marris said:[20]

> When the hon. Member for Chichester talked about a tripartite arrangement that failed, he went on, unusually for him, because he is usually intellectually astute, to condemn tripartism itself. One needs to make a distinction. The tripartite arrangements in the UK, which the Council for Financial Stability seeks to address, did not work as well as they should have. I do not leap from that, as he apparently does, to saying that tripartism is the problem.
>
> That is the leap of faith that his own Front Benchers take. It was, to use the words of the hon. Member for Chichester, to do with how things performed operationally. As the Treasury Committee report stated, we had complacency and underperformance from the FSA, to which my hon. Friend the Member for South Derbyshire referred, and, arguably, from the Bank of England as well. So, putting all the eggs in the Bank of England basket is not necessarily a great way of preventing that.

---

[20] Ibid c218

He illustrated this point with a detailed description of the tripartite system in Canada and how it had apparently prevented many of the worst excesses of the crisis. His view was that the criticisms of Mr Tyrie had been correct, coordination had failed, but his own conclusion was that Clause 1 rectified that, although he agreed with other members of the Committee that 'it would have been better had there been some of that sharper focus [on responsibilities and duties] in the Bill'.[21]

In response, the Minister, Mr Ian Pearson, acknowledged that the problems of Northern Rock had 'severely tested for the first time' the 'crisis management arrangements put in place in 1997'.[22] He acknowledged too that 'I do not pretend there was not room for improvement – indeed lessons have been learnt'[23] and later 'I believe we have genuinely learned lessons'.[24] He then turned to the alternative proposed by the Opposition, namely, abandoning the current structure:[25]

> I welcome the fact that the Treasury Committee, after a thorough analysis of the situation, took the view that the tripartite system was and remains the most appropriate, even though the Committee recommended improvements. I am trying to put some of the criticisms made of the tripartite system into perspective. It is always possible to focus on what has not gone well. As I said, there is no room for complacency—lessons have been learnt. We should always be prepared to consider whether more lessons need to be taken on board.
>
> What is also important is considering what has worked well, so that we do not end up throwing the baby out with the bathwater. The response of the tripartite authorities and the decision to legislate, through the Banking (Special Provisions) Act and the Banking Act 2009, show the tripartite authorities getting together, discussing how we handle situations and what powers and responsibilities are needed, and coming up with actions that make sure we have the tools required for the future.

And later:[26]

> The tripartite authorities have discussed such matters [the division of responsibilities and the tools needed to work], as the hon. Gentleman is very well aware, extensively over recent months, leading to the production of "Reforming financial markets" last year, in which the Government took a view of the financial crisis and identified the reforms needed to strengthen the financial system for the future. We consulted on that and the Bank of England and the FSA input to the consultation process and, indeed, to the process producing the White Paper in the first place. As a result of such discussions, we decided that we wanted to improve the standing committee arrangements. When we evaluated the standing committee and the wider tripartite arrangements, we took the view that while many different institutional frameworks exist in different countries across the world, that model of tripartite financial regulation was successful and remained appropriate.

The Minister moved on to deal with the question of whether the CFS represented a real change from the past. First, he listed the new procedures as set out in the Bill and then tried to capture the practical difference these would make:[27]

---

21 Ibid c220
22 PBC 5 January 2010, eighth sitting, c228
23 Ibid c226
24 Ibid c228
25 Ibid
26 Ibid c229
27 Ibid c232

> What I am saying is that as a result of introducing new arrangements, with the Council for Financial Stability, we are formalising processes that are already taking place. We are acting in a more transparent and accountable way. We believe we have struck a balance in making the deliberations of the tripartite more transparent. Let me explain. Clearly, a balance needs to be struck between the public benefit from greater transparency and the need to maintain confidentiality. That is a point flagged up by many respondents to the consultation.
>
> [...]
>
> What I am trying to say to the hon. Gentleman is that there was a standing committee, it met at regular times during the financial crisis over the past couple of years, and it will be replaced by the Council for Financial Stability. The council will formalise meeting arrangements, will be more transparent and will ensure that there is a clear line of accountability to Parliament. We intend that parliamentary scrutiny will be facilitated by the transparency of the council through its quarterly meetings and the Treasury's annual report, which is proposed in the legislation. Clearly, there are opportunities for the Treasury Committee to make its own judgments on how it wants to scrutinise matters. It is not for me as a Government Minister to make comments in that regard, but I think there is a strong case for the Treasury Committee to have a major role in providing appropriate channels of accountability to Parliament.

In answer to the 'Tyrie question – who was in charge?' the Minister replied:[28]

> In response to the question about who is in charge, each authority has its responsibilities and tools for financial stability. The key point is that each analysis and approach is effectively aligned and co-ordinated, and that is where the Council for Financial Stability can improve on the system that has been in operation. Its role will be to monitor and co-ordinate to ensure that effective alignment.

Addressing the point made by Mr Hoban about the lack of tools for dealing with macro prudential supervision and the bi-partite alternative, the Minister said:[29]

> The second point of substance to which I feel I need to respond is about macro-prudential tools. The White Paper is clear on the matter, which we are pursuing internationally, as the hon. Member for Fareham knows. International co-ordination is obviously crucial, to avoid regulatory arbitrage and to ensure consistency of approach. After we have developed the macro-prudential toolkit through ongoing work in the Basel committee, for example, we will take the decisions necessary to place those tools with the appropriate authority. Both the Bank of England and the Financial Services Authority support that position fully. We must determine what tools are needed before deciding to whom to give them. I hope that he will recognise that point.
>
> Amendments 37 and 38 provide a different model for the council from that proposed by the Government. The council would have ultimate authority and the ability to direct the Treasury, the Bank and the FSA. As I have argued, the Government's vision for the council is one of close co-operation, monitoring and co-ordination, ensuring that the bodies are aligned in pursuing their objectives. That model respects the independence of the Bank and the Financial Services Authority.
>
> The amendments, by contrast, would change that model completely, subserviating the power of those institutions and the Treasury to the new council. [...]

---

[28] Ibid c234
[29] Ibid c236

> I do not agree with the model proposed, for a number of good reasons, but at heart is the fundamental difference that we see the council as a body with a monitoring and co-ordinating role to ensure that authorities with distinct responsibilities for financial stability continue to work effectively and closely together. In the Government's view, the council is a forum for the effective co-operation of the three authorities. It is not about a power hierarchy, which is what the amendments would establish. There will be no votes. It is not for the Government to impose their will on an independent Bank or financial services regulator, which is why I hope that the hon. Gentleman will withdraw his amendments.

3.2 Clauses 2-4: Council for Financial Stability - proceedings and definitions

The debate focussed on the balance between transparency of the CFS's proceedings and the need for commercial or market confidentiality. An Opposition amendment called for more than what was currently proposed in the Bill, namely publication only of minutes of its quarterly meeting. The Minister rejected this approach. His was that the quarterly meetings would have a broad agenda and have a greater likelihood of being made public, whereas, interim meetings were more likely to happen in response to events at an individual institution and hence would be more likely to be kept confidential anyway. The proposer of the amendment, Mr Breed, doubted whether in today's age anything could be kept confidential, but accepted that without seeing the minutes first it was hard to form a judgement on their worth. The amendment was withdrawn. Further discussion about the publication of information; the role of the Chairman (the Chancellor); the composition of the Council and the lack of a definition of 'commercially confidential' followed.

3.3 Clause 5: Financial stability objective

A general debate on the need for an explicit objective for the FSA ensued. Mr Hoban noted that the need for such an objective had been rejected by the Government during Committee proceedings on the Banking Bill on the grounds that it was already included in the existing FSA objective of market confidence.[30] The Opposition amendment would give primacy to financial stability as an objective. The Minister's justification was that clause 5 provided extra clarity and that it provided 'express legal authority' for FSA action taken to protect it.[31]

3.4 Clause 6 & Schedule 1: Enhancing public understanding of financial matters

The Clause replaces the FSA's public education and delivery objective with an obligation to establish a new separate body – the Consumer Financial Education Body (CFEB) – to take forward its obligations. Members acknowledged the breadth and depth of financial ignorance amongst the population and the Clause was broadly welcomed. However, some wondered about the effectiveness of the current programmes (a 'hose of money being pointed vaguely at what we think the problem is').[32] They also questioned the role of the CFEB – was it a commissioning body or an information provider in its own right. Comments made by witnesses during the Committee's evidence sessions had suggested a degree of confusion within the industry.[33]

The Minster promised that the new body would have a better focus on 'outcomes' than the FSA has had. It would focus on the most financially vulnerable and would have a broader mandate than previous initiatives have had.

Further amendments discussed the obligations of the FSA to promote consumer interests and the boundary between 'generic advice' and 'regulated advice services'. An amendment

---

30 Ibid c265
31 Ibid c268
32 PBC 7 January 2010, ninth sitting, c280
33 See evidence session in second sitting c66-

to Schedule 1 had the purpose of including two members of consumer groups on the board of the new CFEB body. This was something requested by the Consumer Association. The amendment was defeated on a vote.[34] Further discussion of the role of the CEFB (was it simply an education body or an advocacy body) brought the following clarification from the Minister:[35]

> The consumer financial education body will have one sole function and objective, which is to increase consumers' understanding and knowledge of the financial system and help them to manage their financial affairs more effectively. As has been pointed out, the Bill also requires the new body to have regard to the importance of maintaining confidence in the stability of the financial system. Let me emphasise that the CFEB's consumer financial education remit will always be its primary consideration, and it will be accountable for delivering that function.
>
> In contrast, the have-regards in the legislation are designed to inform that function, so that the CFEB considers wider market issues when performing its functions. The have-regards allow it to consider the issues on its own terms, protecting its operational independence while also ensuring that the body links into the wider financial architecture. The have-regards will give the CFEB a broader and rational frame of reference when making policy, which we think is important. They will allow it to legitimately take into account any broader market consequences of its actions, as of course a stability crisis could ultimately have far profounder consequences for consumers. However, I strongly want to emphasise again that the primary obligation for the new body will be to consider how to help consumers better manage their financial affairs. It is designed to do what it says on the tin; it is about consumer financial education.
>
> The have-regards also give the new body a duty to raise any potential issues that it identifies that could affect market confidence or stability with the FSA and others as appropriate. Hence it could potentially act as an important source of market intelligence for the regulator. That flagging role should complement its consumer awareness function, not compromise it, and is a useful addition. The Government are clear that the requirements to consider financial stability and market confidence are an important counterbalance to the CFEB's overall objective. We are very clear about the primacy of the overall objective.
>
> The hon. Member for Fareham again raised the issue of whether the new body will be neutral or a voice for consumers. He will be aware that the majority of respondents to the "Reforming financial markets" consultation said that they thought that the new body should focus on consumer education, and not pursue consumer advocacy. There are other bodies, such as Consumer Focus, that already act as consumer advocacy organisations, and they are playing their role effectively at the moment. Obviously, the CFEB will want to work with them where appropriate. It will also liaise and work with other bodies, such as the Office of Fair Trading, and it will want to work in a collaborative way.

On the stand part debate on Schedule 1, the main topic was the financing of CEFB. The Minister referred to money going from the reclaim fund – established under the *Dormant Bank and Building Societies Act 2008* he said 'The intention has always been that money from the Reclaim fund will go to CEFB'. This may be thought to be stretching policy development a little. CEFB had not been proposed at the time the dormant funds bill was published (November 2007) and in committee debates then the Minister hinted that the

---

34 PBC 7 January 2010, ninth sitting, c307

35 Ibid cc309-310

inclusion of the financial education objective, the second priority for reclaim funds, was done more at the behest of the banks than government: [36]

> He will recognise also that we are dealing with money that is certainly not the Government's, but is private. Therefore, we needed to negotiate desirable outcomes with the organisations concerned. One priority is improving financial literacy, which has a role to play.

3.5 Clauses 9 - 11: Executive Remuneration

Concern was expressed that no copy of draft regulations supporting Clause 9 were available to the Committee and to an extent this hampered its deliberations. Attention was also drawn (on Clause 11) to the ongoing work by the FSA in devising the application of its Code on remuneration and how that work has to dovetail with the other ongoing work being done at the international level on exactly the same issue. This is not the only current example whereby national regulators and international bodies are having to co-ordinate their work. Another referred to later is work on resolution plans.

The first issue was the coverage of the Clause which would extend the requirement to prepare reports on the remuneration of people with a 'prescribed connection' with a firm. The Minister said that the requirements were part of a wider reform of governance in financial services.[37] Such efforts were supported by the recommendations of the ongoing Walker Review although the Government would go further in respect of the thresholds above which it would apply (currently proposed at £1 million). In terms of the impact on non-directors, disclosures would be aggregated and banded and thus will not reveal details of an individual's remuneration because 'from the perspective of shareholder oversight, it is valuable to know the structure under which remuneration is paid out by a firm, but not to whom it is paid'.[38] The Minister also said that:[39]

> I reassure the hon. Gentleman and the Committee that it is not the Government's intention to impose disclosure requirements on individuals with little or no impact on the risk exposure of the regulated firm, such as auditors or independent advisers. I am happy to clarify that. Regulations made under the powers will be drafted to ensure that firms are required to provide information only on the remuneration given to consultants who fulfil the same role as an employee of the firm. They will not be required to provide information on fees paid to independent consultants such as auditors or legal advisers who are not performing an employee's role.

On Clause 11, the Minister responded to widespread concerns about the powers given to the FSA and how they would affect existing remuneration contracts:[40]

> With regard to amendment 54 and Government amendment 56, I recognise that there has been some confusion over the impact and powers given to the FSA under the clause, but I assure the Committee that it was never the Government's intention that the power should be used by the FSA to invalidate provisions in existing contracts, nor does the clause include a provision giving the FSA retrospective powers. As the Committee is aware, the Joint Committee on Human Rights recently recommended that the lack of retrospective effect should be made clear in the Bill, and the hon. Gentleman has made a noble attempt to do that with the amendment.

---

36 HL GC 15 January 2008, c496
37 Ibid c329
38 Ibid c331
39 Ibid c332
40 PBC, 12 January 2010, eleventh sitting, c345

A Government amendment to reinforce the non-retrospective nature of the Bill was agreed to. It is shown below:

> *Amendment made:* 56, in clause 11, page 9, line 17, at end insert—
>
> '( ) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (9)(b) unless it is subsequently amended so as to contravene a prohibition under subsection (9)(a).'.— *(Ian Pearson.)*
>
> *This amendment makes it clear that the general rules about remuneration may not render void any provision which is already in an agreement when the rules are made (so long as the provision is not subsequently amended in a way that contravenes the rules).*
>
> *Clause 11, as amended, ordered to stand part of the Bill.*

This was the only amendment made to the Bill during Committee.

3.6 Clause 12: Recovery and resolution plans

An amendment addressed the subject of institutions that were 'too big to fail' and proposed that the FSA might order the breaking up of a bank instead of leaving the banks and FSA to negotiate a mutually acceptable RRP. The subsequent debate went on to look at the large question whether the financial sector in the UK is too big in relation to the size of the economy. The Minister rejected the view that the financial services sector should be structurally altered on Glass Steagall lines. He said that RRPs 'will create regulatory incentives' and 'an important means of reducing moral hazard'.[41] The amendment was withdrawn.

3.7 Clauses 14-16: Enhanced powers for the FSA

The Bill would give the FSA greater disciplinary powers, in particular the power to suspend authorisation. The Opposition examined the need for an expansion of such powers, their proportionality and whether they could be applied fairly between all firms. For example, suspension of a small independent adviser is one thing, suspending Barclays' banking licence for a year would be something else. At a practical level, quoting evidence from the insurance industry, if something was done that would justify suspension of authorisation, it would be thought likely to justify its complete removal.

The Minister replied that following the FSA's internal review following acknowledged supervisory shortcomings, its new, more proactive, 'enhanced supervisory approach' required enhanced disciplinary powers 'to assist its credible deterrence strategy'.[42] Further:[43]

> We believe that in certain circumstances suspension will be a more appropriate punishment than a fine, and many firms will consider the threat of suspension as potentially more disruptive than a fine. The threat will therefore encourage compliance.
>
> Suspension is also a different type of deterrent, as it has a more direct effect on the offending firm by restricting its ability to do business. It is more visible and creates a direct link between the misconduct and the disciplinary measure.

---

41 Ibid c358
42 PBC 15 December 2009, fifth sitting, c121
43 Ibid c122

The Minister distinguished between disciplinary powers, which these clauses were, and preventative measures, which they were not. For example, suspension would not be an option for the FSA under these powers if it saw an authorised person offering what it saw as 'risky' products. The example of Northern Rock's 125% mortgage was given.

Subsequent Opposition amendments on Clause 14 proposed that the FSA make early public disclosure of enforcement actions. A feature of the current disciplinary and investigative system is that it is hard for complainants against an authorised person to discover what the FSA has done about the matter. This is an issue that has surfaced regularly in constituency complaints referred by Members. On a broader point, the degree of transparency in the enforcement and supervisory process in the UK was contrasted with that in the United States, where the sight of company officers in handcuffs is not uncommon.[44]

Arguing against greater transparency and early disclosure was the principle of innocent until proved guilty. Mr Hoban admitted that getting the balance right was not easy:[45]

> In new clause 1, I seek to provide that section 348 does not prevent the disclosure of information by the authority and that an authorised person is subject to action under part 14 of the Act—of course, I use its definition of approved person: the institution that is undertaking the work—or be an approved person subject to separate actions taken under section 66. I seek to provoke a debate, as I think I have succeeded in doing to an extent, on how much information about the enforcement process should be in the public domain before the final conclusion has been reached.
>
> The issue is important for consumer protection; consumers should know which firms are under investigation. It is also important to help change the culture of the financial services sector and to have much more public disclosure of information. I also acknowledge that it is not a straightforward issue. We need to think very carefully about the impact legislation might have on a business. We need to think about what is the right step in a process where it may be possible to publish more information than is currently the case, but a process that is entirely private until the conclusions of the financial markets tribunal could potentially be to the detriment of consumers, which is why I have tabled new clause 1.

The following exchange between the Minister and Mr Tyrie, outlines the interaction between the formal system and the practicalities of supervision:[46]

> **Ian Pearson:** Let me explain the Government's position and how it has developed. I can do that helpfully by specifically referring to the new clause, which seeks to remove the relevant section of FSMA, preventing the FSA from disclosing whether it has taken action against a firm or an individual. The Committee should be aware that the legal restriction contained in section 348, which the new clause switches off, is a restriction on disclosing information received from the authorised firm or from the approved person. However, a statement such as, "The FSA has issued a warning notice to firm X" or "The FSA has begun disciplinary proceedings against person X" does not constitute information received from the firm. That means that section 348 is not engaged, therefore disapplying it is unnecessary, so the new clause does not work.
>
> In fact, section 391 of FSMA would be the relevant provision. It provides that "Neither the" FSA "nor a person to whom a warning notice or decision notice is given...may publish the notice or any details concerning it." It also provides that the FSA "must publish such information about...a final notice...as it considers appropriate". [...]

---

44 Ibid c131
45 Ibid c133
46 Ibid cc141-142

> I recognise that section 391 does not require the FSA to disclose the fact that someone is subject to investigation, it simply gives the option of doing so. However, as can be seen from the section—the hon. Member for Chichester will no doubt remember this—Parliament was clear at the time that publication should happen only at the end of the process, after the firm has had a chance to make representations and the option of referring the matter to the tribunal. The Government's position is that that is reasonable, given—again—that UK law is based on the principle that people are assumed to be innocent until found guilty.
>
> **Mr. Tyrie:** I hesitate to come to the defence of the Treasury Bench—indeed, I think this must be a precedent—but there is another reason why the position that the Government took, after a lot of persuasion all those years ago, is probably correct. What the FSA really wants and needs is informal contact from the firm asking about a product that might have a potential problem. If it thinks that merely by supplying that piece of information it may find itself suddenly put at high reputational risk, it will take a more strictly legal position and disclose only the minimum. It is the informal relationships that are created through ARROW visits, through the period in between those investigations, that is the best way to secure the public and protect the customer. That is quite independent of the separate issue, which is about what the public has the right to know. Has ex post taken place? The public must be informed in reasonable time about an investigation where a referral has been made to a tribunal. As I understand it, those provisions already exist in the Bill to enable that to take place.
>
> **Ian Pearson:** The hon. Gentleman makes some relevant and pertinent points. The Treasury Committee was concerned about the issue, as my hon. Friend the Member for Edmonton rightly pointed out. That Committee felt that the balance between disclosure to the public and the need to protect firms before they had been found guilty of wrongdoing was tilted too far towards the needs of industry. In its response to the Treasury Committee report, the FSA made the point about fairness to those accused of wrongdoing but who had not yet had the chance to defend themselves, as I mentioned. In addition, the FSA helpfully responded that it can and sometimes does publicise whether it is investigating a particular case. It tends to do that only in exceptional cases—for example, where it is desirable to do so to maintain confidence in the financial system or to protect consumers or investors. On the important issue of consumer protection, I think hon. Members would expect the FSA to have the ability to publicise whether it is investigating a particular case. Given the fact that that can happen, the FSA stated, and I agree, that the current framework allows a balance to be struck between achieving its objectives—in particular, consumer protection—and fairness to firms and individuals. It is a question of striking the appropriate balance and we believe that that balance has been struck in this case, which is why we will not support the new clause.

3.8 Clauses 18-26: Collective proceedings

The Opposition asked why the new legal procedure of collective action was being introduced in the financial services sector first, a sector with a greater degree of regulation than almost any other. Further, what was the relationship between new legal action and the Ombudsman service? The Minister made the point that the Ombudsman service was not and should not be a legal process and yet 'financial services have a history of mis-selling and other scandals'.[47] He commented on fears that the UK would develop a US style litigation culture:[48]

---

[47] PBC, 12 January 2010, twelfth sitting c376
[48] Ibid c377

> We do not want to see the development of a US-style litigation culture, and there are a number of major differences between the US and UK legal systems which lead me to conclude that that is not likely to happen. In the UK, it is not the case that parties normally bear their own costs. The "loser pays" principle applies in the UK, which is an effective deterrent to spurious claims. There is no provision for US-style punitive awards or treble damages, and the legal system is not used as a sort of private regulator to allow individuals to hold companies to account. There is no burden of extensive up-front disclosure, no provision for lawyers to take a share of the damages, and no jury trials in which juries can make awards that are exceptional.

There was a lengthy contribution from Mr Hoban about the relative merits of the 'opt-in' (requiring consumers to actively associate themselves with a case) procedure against an 'opt-out' system.[49]

> On the one hand, consumer groups say that opt-out is necessary and not something to be feared, while on the other hand, industry claims the opposite. So what is the case for a purely opt-out situation? Those who argue in favour of the opt-out must make the case for moving away from the flexibility.
>
> One criticism of restricting the measures to opt-in is that it does not move us very far from the existing set-up. There is already provision to bring a group litigation order; to the minds of some, that is already an opt-in procedure. The Courts Service says:
>
> "A group litigation order can be made in any claim where there are multiple parties or claimants to the same cause of action. The order will provide for the case management of claims which give rise to common or related issues of fact or law."
>
> Indeed, it was a group litigation order that Which? used to initiate proceedings against JJB for the price-fixing of football shirts. That gives rise to a further possible argument: in such cases, the amount lost per customer is so minimal as to discourage any complainant from actively becoming involved, and that allows the company to escape justice. The loss per person might be relatively small, although a large number of people are involved. In situations where it is not worth pursuing the case, organisations such as JJB would escape justice. Provided that the authorised person is properly approved, is there any reason why they could not draft more complainants in on an opt-out basis?

At the end of his speech he accepted that the current balance of checks on procedure were 'about right'.

Again debate on these clauses and on subsequent clauses (20 -24) were circumscribed by the impending publication not only of Treasury Regulations, but also of court rules which would govern procedures. In the absence of a significant hinterland of legal guidance many points that were raised by Members were answered with reference to these forthcoming documents. For example, Mr Marris raised a point on clause 24 about counter claims and the interaction between them and the opt-out procedure:[50]

> The issue involves the opt-out procedure. If someone fails to opt out, they are party to the action and are a claimant. If the defendant successfully counter-claims, there will be a costs order in the usual manner against the claimants. We now have someone who never went near the action but who did not read the blurb and did not opt out, so they are part of the claim; there is a successful counter-claim against them and, lo and behold, someone comes knocking on their door asking for costs. Could the Minister

---

[49] Ibid c383
[50] Ibid c408

> elucidate that a little because, were that to be the case, it would not go down well with our constituents? In spite of the considerable detail in clause 24, that is not covered as far as I can tell.
>
> The obverse of that is that under 24(2)(f) there can be a representative counter-claim on an opt-out basis. There is a representative counter-claim on an opt-out basis against a bunch of claimants. The counter-claim fails, so the claimants who have successfully resisted that counter-claim in the normal course of events, seek their costs against those who made the counter-claim. Those who made the counter-claim included those people who failed to opt-out because it is not now a counter-claim, and therefore are part of that unsuccessful counter-claim. Because of counter-claims, they could end up with a costs bill for a case they never went near. Will the Minister at some point address the issues raised by those examples?

The Minister's reply was typical of many:[51]

> On this particular point, the comments I have made that these matters will be considered in the future as part of the process of determining the rules, should provide him with assurances that his expert views will be taken into consideration by some very eminent people, whom we have put in charge of drawing up the rules. I hope that provides sufficient assurances.

3.9 Clause 26: Consumer redress schemes

The debate on Clause 26 centred on why Section 404 of FSMA, which allows for groups of complaints to be heard if there is evidence of widespread failure on the part of a provider, has never been used. The procedure is cumbersome in the sense that the FSA has to apply for a Treasury Order to effect such a decision. An amendment from the Opposition to modify Section 404 and amend Clause 26 was proposed. The proposed scheme, it was argued, might have been applicable to the bank charges case.

The Minister outlined the past limitations of the Section 404 procedure:[52]

> The FSA already has powers to impose redress schemes on individual firms, but its power to deal with a widespread failure is insufficient. The hon. Member for Fareham pointed out that the existing power in section 404 of the Financial Services and Markets Act 2000 has never been used, and I can confirm that the FSA has not approached the Government with the intention of doing so. That is partly because the scope of the power is limited to compliance with regulatory rules, whereas failures often involve a mix of breaches of general law as well as FSA rules. The power also requires the approval of both the Treasury and Parliament, which sets a high threshold for action, as he noted.
>
> It is a shame that the hon. Member for Chichester is not here. I admit that I have not taken the opportunity to review the debates from 2000 on the Financial Services and Markets Bill, so I do not know whether he warned us at the time that the powers involved an incredible hurdle and would never be used. The practical reality is that we probably did not get it right in the Bill in 2000 and made the power unlikely ever to be used, thereby creating a gap. That emerged clearly in the responses to the consultation.

Having discussed the amendment, the Minister outlined the flexibility that the redress schemes could provide, by way of an alternative to compensation:[53]

---

51 Ibid c409

52 PBC, 14 January 2010, thirteenth sitting c420

> We want to ensure that the redress offered to consumers is the most appropriate for them. Payment of compensation or another remedy available in court is not always the best outcome for the consumer or the firm. I can give two examples of that from recent experience. First, in the case of personal pensions, there may be tax reasons and consumer protection reasons to require redress in the form of a top-up to the personal pension, rather than as a cash payment. During the pensions mis-selling of the 1990s, many consumers were wrongly advised to transfer out of an employer's occupational pension scheme into a personal pension. The pensions review went beyond the legal redress that would have been available to consumers. It required firms to negotiate with the employer's occupational pension scheme trustees to reinstate the consumer into that scheme. That would put the consumer back in the position they would have been in without the mis-selling. If that was not possible, the firm was required to top up the personal pension rather than pay compensation, thereby preserving tax benefits. Alternatively, it could provide a guarantee to do so in future if the customer's pension experienced a shortfall on retirement. Cash compensation was the last option.
>
> Secondly, in the case of the mis-sale of a single-premium payment protection insurance policy, the legal remedy for misrepresentation would normally be rescission of the contract. The premiums would be returned to the consumer with interest and the policy would be cancelled. However, it might not be in the interests of consumers to forfeit their protection. It might be preferable to keep the insurance cover, which may now be more expensive, or impossible, to obtain. The firm could be made to convert the single premium policy into a regular premium policy, and pay back the difference in cost. That approach might also cost firms less.
>
> We are trying to provide more effective forms of redress for consumers than those available through the courts. Although I would expect the FSA to be largely guided by the type of relief a court would grant, the examples I have provided show why it is important to be able to depart from them. Clause 26 provides that the FSA can do so where it is just, having regard to the nature and extent of the loss or damage. We are trying to ensure the best outcome for consumers and firms. I hope that that explanation has been helpful, and that the hon. Gentleman will withdraw his amendment.

The amendment was withdrawn.

Clauses 35-39 were not debated.

3.10 New Clauses

A number of non-government New Clauses were proposed on the final day: all were ultimately withdrawn.

New clause 3: FSA consumer protection

This New Clause, proposed by Mr Love, would make the treatment of complaints made to the FSA more open and transparent. He said:[54]

> The new clause sets out clearly that the FSA's enhanced role in protecting consumers should not be just about redress, as it is at the moment. The FSA must be able to spot growing or potential problems and halt their spread, and it should prioritise prevention and mitigation as well as redress. The new clause reflects those important issues. Although the FSA has wide powers to set rules, enforce its decisions and deal with consumer detriment, it does not have a duty to agree a time frame for action or to provide a comprehensive solution to problems that emerge. Although the FSA has, in

[53] Ibid c426
[54] Ibid c430

> essence, a consumer protection objective, it often does not deal with specific problems that emerge in the market, and there is nothing specific or explicit in the Financial Services and Markets Act 2000 to trigger the objective, so there is no real guarantee that the production of evidence of problems in the marketplace to the FSA will ensure that an investigation takes place.

The key to the New Clause would be the requirement on the FSA to 'remedy, mitigate or prevent' products or practices that could harm consumers and to do so publicly within a deadline. The wording was modelled on that of the super complaint procedure in the *Enterprise Act 2002* and it received cross party support in Committee.

Responding, the Minister said that the Clause would place consumer protection above the other objectives of the FSA, including that of financial stability, and would remove some flexibility of the FSA to act as it saw best. A criticism of the current system is that complaints made to the FSA can appear to the outside world as though they have disappeared into a 'black hole'. The Minister said that the discretion allowed the FSA to not have to take public action can cover for more effective, but informal, action being taken at a firm or industry level.

New clause 5 restrictions on credit limit increases

This New Clause, proposed by Mr Love, would mirror restrictions made on credit card cheques. Under the Clause, credit card limits could not be increased unless requested by the cardholder a measure designed to 'protect consumers against themselves'.[55] The Minister pointed to the current government review of legislation on credit and store cards and thought that the Committee should wait for that Report to be published.[56]

New Clause 6: Unfair terms in consumer contracts

This New Clause addressed the issue of bank charges, a case against which had been decided in the Supreme Court in favour of the banks. The Clause addressed the narrow legal point[57] upon which the Court found for the banks and would change the law in favour of the complainants in the case. The clause had been supported by consumer groups, but its proposer, Mr Breed, admitted that it would not be retrospective inn effect and thus would not help the thousands of outstanding cases against the banks. Replying, the Minister said that the clause went well beyond bank charges in its scope and pointed out that the banks were in discussion with the OFT and the Government about finding a voluntary solution to the issue. If no voluntary solution could be found, the 'Government would want to take action'.[58]

New clause 9: Maintenance of competition

Mr Tyrie introduced a New Clause that would add the 'maintenance of competition' to the FSA's regulatory objectives. He argued that regulation ran counter to competition since it acted as a barrier to entry to new firms and encouraged economies of scale and consolidation in the industry, something borne out by experience. Currently the FSA only had to have regard to the desirability of maintaining competition. The New Clause would give more weight to this consideration and act as a counterweight to excessive regulation. The competition authorities, in the form of the OFT, already had a role in reviewing the work of the FSA by virtue of Section 160 of FSMA 'so the principle is conceded; it is only a question of whether we make it a more broad-based power'.[59] He also pointed to the fact that competition policy had been overruled on occasions during the financial crisis – the

---

55 PBC14 January 14 sitting c447

56 Ibid c450

57 The issue was, were services such as overdrafts discrete services in themselves or were they indistinguishable from the overall package of bank services that come with having a bank account

58 Ibid c455

59 Ibid c466

takeover of HBOS and the merger of Bradford and Bingley and Santander – and that without a countervailing reaffirmation of the importance of completion policy 'once ministers get an appetite for intervention, they tend to do more'.[60]

Replying, the Minister said that although the arguments were 'finely balanced'[61] he rejected the New Clause because competition was not always the most important thing to maintain, and was not always helpful to consumers. Secondly, the strength and quality of the competition regime in the UK was sufficient to protect consumers.

[60] Ibid c468
[61] Ibid c472

Appendix 1 – Members of the Committee

Bain, Mr. William *(Glasgow, North-East)* (Lab)

Barlow, Ms Celia *(Hove)* (Lab)

Breed, Mr. Colin *(South-East Cornwall)* (LD)

Cable, Dr. Vincent *(Twickenham)* (LD)

Duddridge, James *(Rochford and Southend, East)* (Con)

Hoban, Mr. Mark *(Fareham)* (Con)

Howell, John *(Henley)* (Con)

Love, Mr. Andrew *(Edmonton)* (Lab/Co-op)

Marris, Rob *(Wolverhampton, South-West)* (Lab)

Mudie, Mr. George *(Leeds, East)* (Lab)

Pearson, Ian *(Economic Secretary to the Treasury)*

Roy, Lindsay *(Glenrothes)* (Lab)

Todd, Mr. Mark *(South Derbyshire)* (Lab)

Tyrie, Mr. Andrew *(Chichester)* (Con)

Walker, Mr. Charles *(Broxbourne)* (Con)

Watson, Mr. Tom *(West Bromwich, East)* (Lab)

Appendix 2: Witnesses and written submissions to the Committee

Oral evidence was taken at the first four sittings; the witnesses are listed below.

First sitting

- Ian Pearson, Economic Secretary to the Treasury
-

Second sitting

- Bank of England
- Financial Services Authority
- Financial Services Compensation Scheme
- Financial Ombudsman
- Which?
- Age Concern
- Citizen's Advice
- Financial Services Consumer Panel

Third sitting

- The British Bankers Association
- Building Societies Association
- Confederation of British Industry

Fourth sitting

- The City of London Law Society
- Simon Gleeson (Clifford Chance)
- Investment Management Association

The following written evidence was also submitted to the Committee:

FS 01	Financial Services Authority (FSA)	8 December 2009
FS 02	Financial Ombudsman Service (FOS)	8 December 2009
FS 03	Which?	8 December 2009
FS 04	Age Concern and Help the Aged	8 December 2009
FS 05	Personal Finance Education Group	8 December 2009
FS 06	UK Shareholders Association	8 December 2009
FS 07	British Bankers' Association (BBA)	10 December 2009
FS 08	Building Societies Association	15 December 2009
FS 09	City of London Corporation	5 January 2010
FS 10	Financial Services Authority (FSA) – additional Memorandum	5 January 2010
FS 11	Centre for Responsible Credit	12 January 2010
FS 12	Mr Alan Fiber	12 January 2010
FS 13	Herbert Smith LLP	14 January 2010
FS 14	Herbert Smith LLP - additional Memorandum	14 January 2010
FS 15	Association of British Insurers (ABI)	14 January 2010
FS 16	JWG	14 January 2010
FS 17	European Justice Forum (EJF)	14 January 2010
FS 18	The City of London Law Society - Litigation Committee (CLLS)	14 January 2010
FS 19	The City of London Law Society - Regulatory Law Committee (CLLS)	14 January 2010