November 2026

MoneySavingExpert

Financial Services and Markets Bill: call for evidence

MoneySavingExpert (MSE) welcomes the opportunity to provide this evidence to the Committee.

Opposition to changes to the "fair and reasonable" test

MSE is strongly opposed to the proposals in the Financial Services and Markets Bill that would materially alter the fair and reasonable test (Clause 7).

The statutory duty for the Financial Ombudsman Service (FOS) to consider what is "fair and reasonable" when determining a complaint, taking into account relevant law, industry codes and regulatory rules, as well as good industry practice at the time, remains appropriate. To date this test has supported fair outcomes for consumers and we do not believe there is compelling evidence to suggest this duty has played a significant role in the larger redress challenges being rightly tackled by this Bill.

Clause 7 would restrict the FOS's ability to uphold complaints by placing compliance with Financial Conduct Authority (FCA) rules ahead of its wider assessment of what is fair and reasonable in the individual case. Moving away from the current broad test in favour of a stricter test risks harming consumers, especially where a nuanced approach is objectively fairer than a black-and-white approach usually found in the courts.

Briefly:

- The two-stage assessment weakens consumer protection and the role of the ombudsman as a valuable and practical alternative to court.

  The simple fact that a rule or regulation existed at the time and was complied with would leave the FOS unable to uphold a complaint, where currently it would also be able to consider what was fair and reasonable despite compliance. (While we appreciate the role of the Consumer Duty rules here, we remain concerned about this approach.)

- These changes risk creating a "protection lottery", where outcomes depend on whether a lender is signed up to voluntary codes – adding more uncertainty for vulnerable consumers.

  For example, victims of economic or financial abuse could receive fewer protections if their bank/lender isn't signed up to the Financial Abuse Code.

Throughout this process, we've raised concerns about the strength of evidence that the proposals are based on. His Majesty's Treasury, the FOS and the FCA have been unable to share a list of actual (not illustrative) cases where the proposed change to the fair and reasonable test would have led to a better, or more consistent outcome. We therefore

question what positive benefits consumers will see from this change and believe the most likely outcome is to reduce the effectiveness of the FOS as an independent and impartial service. We have shared our concerns with the FCA and the FOS at consultation stage, as well as in conversations with the Government as the Bill has progressed.

We strongly urge the Committee to amend the Financial Services and Markets Bill to leave the fair and reasonable test unchanged. As such, we support proposed amendment 2.[1]

Alongside this, we note amendments 46 and 47, which could be a sensible alternative to deal with a potential protection gap where harm may have occurred before the introduction of the FCA's Consumer Duty.[2] Given the Government position is that the Consumer Duty provides some substitute protections for complex and nuanced cases, we believe this is a fair concern and one the Committee should consider.

About MoneySavingExpert.com

MoneySavingExpert.com (MSE), founded and chaired by Martin Lewis, is dedicated to cutting consumers' bills and fighting their corner. It is the UK's biggest and most trusted consumer website. For 20 years, campaigning journalism has been at the heart of MSE's mission. The site is behind many notable campaigns, including student finance reform, reducing energy bills, mortgage help, scam ads regulation and helping consumers reclaim an estimated £1bn in bank charges and £12bn in PPI payouts.

With millions subscribing to receive the weekly MSE Money Tips email and visiting the site monthly, MSE ranks as YouGov's most recommended brand (all sectors) in the UK. It is also, according to *Press Gazette,* the UK's largest specialist online news publication, with more traffic than many national newspaper sites. In September 2012, the site joined the MoneySupermarket Group PLC (now MONY Group PLC). In the event of any queries, please contact the campaigns team: campaigns@moneysavingexpert.com.

[1] Amendment 2: *Page 10, line 18, leave out Clause 7.*

[2] Amendment 46: *Clause 7, page 10, line 22, after "(2)" insert "For complaints about acts or omissions that occurred on or after 31 July 2024."*

Amendment 47: *Clause 7, page 10, line 31, at end insert— _47 "(2A) For complaints about acts or omissions that occurred before 31 July 2024, a complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case."*