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Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill

HL Bill 55 of 2021–22

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On 19 October 2021, the second reading and remaining stages of the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill is scheduled to take place in the House of Lords.

The bill consists of three clauses and would make provision for compensation for two separate issues.

Clause 1 of the bill would allow the Treasury to incur costs to establish a compensation scheme for bondholders of London Capital & Finance plc (LCF), a company which went into administration in January 2019. LCF sold non-transferable debt securities, also called 'mini-bonds'. Whilst the firm was authorised by the Financial Conduct Authority (FCA), the LCF's issuance of mini bonds was not a regulated activity. When LCF went into administration the majority of its investors were not eligible for compensation from the Financial Services Compensation Scheme (FSCS) because the issuance of LCF's minibonds was not a regulated activity. Following an investigation into the company by Dame Elizabeth Gloster, a former Court of Appeal judge, the Government decided to establish a compensation scheme for bondholders the FSCS does not cover. The compensation scheme would provide 80% of the LCF bondholders' initial investment, up to a maximum of £68,000.

Clause 2 would provide a power to the secretary of state to make a loan to the board of the Pension Protection Fund (PPF) and for that loan to form a part of the funds of the Fraud Compensation Fund (FCF). The FCF pays compensation to trustees or scheme managers of eligible occupational pension schemes where the employer has become insolvent and scheme assets have been reduced due to an offence involving dishonesty. The FCF is funded by a levy on eligible pension schemes. The PPF said that it was not clear whether a particular form of fraud called 'pension liberation fraud' fell within the remit of FCF. This kind of fraud involves people being persuaded to transfer their pension savings from legitimate schemes to fraudulent ones, with the promise of high investment returns. It initiated court proceedings to test this. In November 2020, the High Court ruled that these kinds of claims were eligible for compensation from the FCF. Clause 2 would enable the secretary of state to loan money to the board of the PPF to cover the costs of compensation. This loan would be repaid by the FCF levy on eligible pension schemes.

The bill had cross party support and was unamended in the House of Commons. However, some concerns were raised by the Opposition about wider issues such as the performance of the FCA and combatting online fraud.

The Speaker of the House of Commons has certified it as a money bill.

1. Introduction

The Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill is a government bill. It passed third reading in the House of Commons on 22 September 2021. In the House of Lords, it is scheduled to have its second reading and remaining stages on 19 October 2021.

The bill has two separate purposes:[1]

- To establish the financial authority to enable the Treasury to incur expenditure in relation to the payment of compensation to customers of London Capital & Finance plc (LCF).
- To provide a power to the secretary of state to make a loan to the board of the Pension Protection Fund (PPF) and for that loan to form a part of the funds of the Fraud Compensation Fund (FCF). This follows the high court case of *The Board of the PPF v Dalriada*.[2]

The bill consists of three clauses.

The Speaker of the House of Commons has certified the bill as a money bill. Money bills contain "only provisions dealing with national, but not local, taxation, public money or loans or their management".[3]

The House of Lords is not debarred from amending money bills as long as they are passed within a month. However, the House of Commons is not obliged to consider any of the Lords' amendments. The *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* notes that "on a few occasions minor amendments have been made by the Lords to such bills and have been accepted by the Commons".[4]

2. Background to the bill

This section provides an overview of the background to both of the bill's substantive clauses.[5]

2.1 London Capital & Finance plc

LCF was a firm that issued non-transferable debt securities, also called 'minibonds'.[6] Whilst the firm was authorised by the Financial Conduct Authority (FCA) the issuance of minibonds by the LCF was not a regulated activity.

LCF entered administration on 30 January 2019 following regulatory action by the FCA in December

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[1] Explanatory notes, p 2.

[2] *The Board of the PPF v Dalriada* [2020] EWHC 2960 (Ch).

[3] House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2017, para 8.195.

[4] ibid.

[5] For a further discussion of the background to the bill see: House of Commons Library, *Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021–22*, 17 September 2021.

[6] Explanatory notes, para 1.

2018.[7] When LCF went into administration the majority of its investors were not eligible for compensation from the Financial Services Compensation Scheme (FSCS) because the issuance of LCF's minibonds was not a regulated activity.[8] At that point LCF had over 11,000 investors who had invested £237 million in total.

LCF has been the subject of a number of investigations. For example, the Serious Fraud Office (SFO) announced an investigation into LCF on 18 March 2019 and the FSCS has carried out an investigation into how LCF operated.[9] On 19 April 2021, the FSCS said that it had identified and contacted all LCF customers who it believed were eligible for FSCS compensation. This amounted to £57.6 million, paid to 2,871 LCF bondholders who held 3,900 LCF bonds. The FSCS said that initially it did not think it would be able to pay compensation to any bondholders, but it was pleased that it could help some:

> We initially thought that FSCS may not be able to pay compensation to any LCF bondholders, so we are pleased that we have been able to help some of them get their lives back on track, but understand there are many more who we haven't been able to pay. We now know that these customers will be able to receive compensation under the government's one-off scheme.[10]

Gloster report

In May 2019, the Economic Secretary to the Treasury, John Glen, issued a direction to the FCA "that it is in the public interest that the FCA should undertake an investigation into the relevant events relating to the regulation of LCF".[11] Dame Elizabeth Gloster, a former appeal court judge, was appointed to undertake it. The investigation considered issues connected with the regulation of LCF by the FCA from 1 April 2014 to 30 January 2019.[12] Specifically, its remit included whether the FCA discharged its functions regarding LCF "in a manner which enabled it effectively to fulfil its statutory responsibilities".[13] The remit of the investigation did not cover whether individual bondholders would be entitled to compensation; the location or recoverability of any investments following the collapse of LCF; or whether any criminal or civil liability attached to those involved in the events of LCF.

The report (the Gloster report) was published in December 2020.[14] As part of its conclusions, the Gloster report stated that "the FCA did not discharge its functions in respect of LCF in a manner which enabled it effectively to fulfil its statutory objectives".[15] The report examined the FCA's approach to its regulatory perimeter, in other words, what matters fall within the FCA's regulatory purview. It concluded that the FCA's approach was "unduly limited" and that it did not consider activities that fell outside of that perimeter:

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[7] London Capital & Finance Investigation, 'What is the investigation', accessed 4 October 2021.

[8] Explanatory notes, para 1.

[9] Serious Fraud Office, 'SFO opens investigation into London Capital & Finance plc', 18 March 2019; and Financial Services Compensation Scheme, 'London Capital & Finance plc (LCF)', accessed 4 October 2021.

[10] Financial Services Compensation Scheme, 'London Capital & Finance plc (LCF)', accessed 4 October 2021.

[11] HM Treasury, 'Direction to the FCA to investigate London Capital & Finance', 23 May 2019.

[12] London Capital & Finance Investigation, 'Remit of the investigation', accessed 4 October 2021.

[13] ibid.

[14] Elizabeth Gloster, *Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc*, 23 November 2020 (revised 10 December 2020).

[15] ibid, p 31.

> In general, the FCA did not sufficiently encourage its staff to look outside the perimeter when dealing with FCA-authorised firms such as LCF. This made it possible for LCF to use its authorised status to promote risky, and potentially fraudulent, non-regulated investment products to unsophisticated retail investors.[16]

The report went on to state that this approach "resulted in LCF being able to use its FCA regulated status to present an unjustified imprimatur of respectability to the market, even in relation to its non-regulated bond business".[17] The report made nine recommendations for the FCA's policies and practices and four for the regulatory regime. Recommendations for the FCA included:

- The FCA should direct staff responsible for authorising and supervising firms, in appropriate circumstances, to consider a firm's business holistically.[18]
- The FCA should provide appropriate training to relevant teams in the Authorisation and Supervision Divisions on: (i) how to analyse a firm's financial information to recognise circumstances suggesting fraud or other serious irregularity; and (ii) when to escalate cases to specialist teams within the FCA.[19]
- The FCA should have appropriate policies in place which clearly state what steps should be taken or considered following repeat breaches by firms of the financial promotion rules.[20]

Recommendations for the regulatory regime included:

- The Treasury should consider the optimal scope of the FCA's remit.[21]
- The Treasury and other relevant Government bodies should work with the FCA to ensure that the legislative framework enables the FCA to intervene promptly and effectively in the marketing and sale through technology platforms, and unregulated intermediaries, of speculative illiquid securities and similar retail products.[22]

The FCA said it accepted, and would implement, the nine recommendations made in the Gloster report.[23] In a written ministerial statement made on 17 December 2020, John Glen, Economic Secretary to the Treasury, said that the Government accepted the four recommendations for the Treasury on the regulatory regime.[24]

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[16] Elizabeth Gloster, *Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc*, 23 November 2020 (revised 10 December 2020), pp 31–2.

[17] ibid, p 33.

[18] ibid, p 293.

[19] ibid, p 295.

[20] ibid, p 297.

[21] ibid, p 305.

[22] ibid, p 306.

[23] Financial Conduct Authority, *Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc – The FCA Response*, December 2020, para 1.1.

[24] House of Commons, 'Written Statement: Financial Services Update', 17 December 2020, HCWS678.

Compensation scheme

In the December 2020 written ministerial statement responding to the Gloster Report, John Glen said the Government recognised that the failure of LCF had a "significant and distressing" impact on bondholders.[25] He said that any investment carried risk and some investors may lose money. He argued that even with regulators "doing everything right" they would not be able to "and should not be expected to, ensure a zero-failure regime". Mr Glen said the Government "cannot, and should not be expected to, step in to compensate for every failure and every loss". However, he said in the case of LCF there were "multiple, complex reasons why people lost money". The Government recognised, he added, that there would be variation in how much money bondholders would be able to recover. Mr Glen said that because of the "specific and complex set of circumstances" around the collapse of the LCF, the Treasury would establish a compensation scheme.[26]

John Glen provided an update on the compensation scheme in a written ministerial statement made on 19 April 2021.[27] At the same time, Mr Glen announced a consultation on bringing the issuance of mini bonds into FCA regulation.[28] Mr Glen said for some investors LCF would have formed part of a portfolio but for others "it will have represented a significant portion of their savings". He said that LCF had a highly unusual business model. Particularly that it was authorised by the FCA "despite generating no income from regulated activities".

Mr Glen argued that LCF's sale of mini bonds benefited from what he called a 'halo effect' of being issued by an authorised firm. He said that a "complex range of interconnected factors" had contributed to the losses for LCF bondholders. Whilst individuals had responsibility for choosing investments, he expressed concern that "LCF's disclosure materials and marketing strategy may have led others to believe they were investing in a product that was far safer than it was". Mr Glen said that whilst bondholders had been let down by LCF itself, they had also been let down by the regulatory system "designed to protect them". He described regulatory failings as a significant factor in the Government deciding to establish the compensation scheme, but that he had not seen evidence that they were the primary cause of losses:

> While I have not seen evidence that would indicate that the regulatory failings at the FCA were the primary cause of the losses incurred by LCF bondholders, they are a significant factor that the government has taken into account when deciding to establish this scheme. Indeed, the government does not ordinarily step in to pay compensation to consumers in relation to allegations of fraud, investment losses, mis-selling or mis-buying of investments.[29]

Mr Glen said the Government had decided to establish the compensation scheme in the "extraordinary circumstances", but it wanted to avoid any misconception that it would stand behind future bad investments, even where FSCS protection did not apply.

The compensation scheme would provide 80% of the LCF bondholders' initial investment, up to a

[25] House of Commons, 'Written Statement: Financial Services Update', 17 December 2020, HCWS678.
[26] ibid.
[27] House of Commons, 'Written Statement: London Capital and Finance', 19 April 2021, HCWS922.
[28] HM Treasury, 'Regulation of non-transferable debt securities (mini-bonds): a consultation', 19 April 2021.
[29] ibid.

maximum of £68,000.[30] If a bondholder had received interest payments from LCF or distributions from the administrators, Smith and Williamson, these would be deducted from any compensation. The scheme would be open to bondholders who had not already received compensation from the FSCS. It would represent 80% of the compensation they would have received had they been eligible for FSCS protection. The limit for eligible claims to the FSCS is £85,000.[31]

The explanatory notes to the bill state that the upfront cost of the compensation scheme is expected to be around £120 million.[32]

2.2 Pension Schemes (Fraud Compensation Fund)

The Fraud Compensation Fund (FCF) was established under the Pensions Act 2004. It is run by the board of the Pension Protection Fund (PPF). The FCF pays compensation to trustees or scheme managers of eligible occupational pension schemes "where the employer has become insolvent and scheme assets have been reduced due to an offence involving dishonesty".[33] The FCF is funded through a levy on eligible pension schemes.[34] The Pension Protection Fund itself is a separate fund to the FCF although both are administered by the board of the Pension Protection Fund.[35]

In March 2021, the House of Commons Work and Pensions Committee published a report into pension scams.[36] In written evidence submitted to the committee, the PPF expressed concern that there was uncertainty as to whether a certain form of pension fraud was eligible for compensation from the FCF:

> In the context of pension scheme transfers, the FCF was set up to cover circumstances in which members might transfer to a legitimate occupational pension scheme which itself was then scammed. However, the form of pension scam in which individuals were enticed to transfer their savings into a scam pension scheme, from which the fraudsters could then extract the money, was not prevalent when the legislation written. As a result, the legislation (the Pensions Act 2004) was not designed with such scams on individual members in mind.[37]

The explanatory notes to the bill describe this as pension liberation fraud, stating that it "involves members being persuaded to transfer their pension savings from legitimate schemes to fraudulent schemes with promises of high investment returns".[38]

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[30] HM Treasury, 'London Capital & Finance Compensation scheme', 19 April 2021.

[31] House of Commons Library, *Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021–22*, 17 September 2021, p 7.

[32] Explanatory notes, para 34.

[33] Fraud Compensation Fund, 'Who we are', accessed 4 October 2021.

[34] Explanatory notes, para 9. For further information on the levy see: House of Commons Library, *Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021–22*, 17 September 2021, pp 22–3.

[35] House of Commons Library, *Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021–22*, 17 September 2021, p 21. See also: House of Commons Library, *Pension Protection Fund*, 28 October 2020.

[36] House of Commons Work and Pension Committee, *Protecting Pension Savers—Five Years On From The Pension Freedoms: Pension Scams*, 28 March 2021, HC 648 of session 2019–21.

[37] Pension Protection Fund, *Written evidence from the Pension Protection Fund (PPF) [PPS0055]*, September 2020, p 4.

[38] Explanatory notes, para 8.

The PPF said it was progressing and reviewing ten claims, but the legislation was not clear as to whether they were eligible for FCF compensation. To provide clarity, the PPF explained that it had initiated legal proceedings to test "ambiguities" in the legislation:

> With the overriding aim of providing some form of clarity for affected members, last year we initiated a legal process seeking clarity on the ambiguities in the legislation. This was done in collaboration with Dalriada Trustees, independent trustees appointed by TPR [the Pensions Regulator] to oversee some of the applicant schemes, and DWP [Department for Work and Pensions].[39]

On 6 November 2020, the High Court ruled on how the legislation governing the FCF should be interpreted.[40] The court confirmed that these kinds of claims were eligible for compensation from the FCF.[41]

The PPF has estimated that compensation arising from the ruling would be estimated at £350 million.[42] At the time of the judgment the FCF had assets of £26.2 million. The explanatory notes state that "even with future levy income, the expectation is that there will be unfunded liabilities in the region of £200 million to £250 million".[43]

As a result, the bill would allow the secretary of state to provide a loan to the board of the PPF, estimated to be within the range of £200 million to £250 million.[44] This loan would be repaid by the FCF levy on eligible pension schemes. The explanatory notes state that the levy rates and repayment period would be subject to public consultation "which is timetabled for autumn 2021".[45] The repayment period is estimated to be between 10 and 15 years. Giving evidence during the public bill committee in the House of Commons, David Taylor, General Counsel at the PPF, said that cases for which the loan would be required were "predominately historical in nature".[46] He said that a number of measures had meant that "cases like the ones we are talking about here are less likely to happen in the future".[47]

3. Overview of the bill

Clause 1 of the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill would establish the financial authority to enable the Treasury to incur expenditure in relation to the payment of compensation as part of the scheme.[48]

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[39] Pension Protection Fund, *Written evidence from the Pension Protection Fund (PPF) [PPS0055]*, September 2020, p 4.

[40] *Board of the PPF v Dalriada* [2020] EWHC 2960 (Ch).

[41] Pension Protection Fund, 'Fraud Compensation Fund eligibility criteria confirmed', 12 November 2020.

[42] Explanatory notes, para 8.

[43] ibid, para 9.

[44] ibid, para 36.

[45] ibid.

[46] Public Bill Committee, Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill (First sitting), HC *Hansard*, 15 June 2021, col 12.

[47] ibid, col 13.

[48] Explanatory notes, p 2.

Clause 1(1) would allow the Treasury to incur expenditure for the payment of compensation to customers of LCF adversely affected by matters identified in the Gloster Report.[49]

Clause 1(2) would apply clause 1(3) where the Treasury requires the FSCS manager to exercise functions in relation to a scheme for payment of compensation as mentioned in clause 1(1).[50]

Clause 1(3) would allow the existing rules for the FSCS to be applied to the compensation scheme without the FCA having to undertake a public consultation and impact assessment. The explanatory notes state that this reflects the "fact that existing rules have already been consulted upon and to avoid any unnecessary delays to compensation payments".[51]

Clause 2 would allow the secretary of state to lend money to the board of the Pension Protection Fund by inserting a new section 115A into the Pensions Act 2004. New section 115A would allow money to be lent to the board for "the purposes of the exercise of the board's functions under chapter 4 of this part [of the Pensions Act 2004] and any corresponding provision in force in Northern Ireland". Loans under section 115A would be made on such terms as the secretary of state may determine. Occupational pensions are a transferred matter in Northern Ireland.[52] The explanatory notes states that the Government sought a legislative consent motion for Northern Ireland. This was agreed by the Northern Ireland Assembly on 28 June 2021.[53]

In addition, clause 2(3) would amend section 115 of the Pensions Act 2004 to "clarify that the borrowing cap applied to the board is limited to any borrowing that takes place under section 115".[54] Clause 2(4) would amend section 188(1) of the 2004 act to broaden the list of the contents of the fund to include money borrowed by the board under new section 115A. It would also allow the repayment of money borrowed by the board from the secretary of state by extending the type of payment allowed from the fund.[55]

Clause 3 gives the bill's short title.

The bill would come into force on the date it receives royal assent.[56]

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[49] Clause 1(4) gives the definition of the Gloster Report based on its official title: Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc, as revised on 10 December 2020.

[50] Within the meaning of Part 15A of the Financial Services and Markets Act 2000 (power to require FSCS manager to act in relation to other schemes).

[51] Explanatory notes, para 12.

[52] ibid, para 22.

[53] Clerk to the Northern Ireland Assembly, 'Letter to John Benger, Clerk of the House of Commons: Legislative Consent Motion', 29 June 2021.

[54] Explanatory notes, para 30.

[55] ibid, para 31.

[56] ibid, para 33.

4. Commons stages

4.1 Second reading and committee stage

Speaking at the bill's second reading, Guy Opperman, Parliamentary Under Secretary of State for Work and Pensions, described the bill as "necessary, urgent and important".[57] He argued the Government's role was to ensure that the regulation of financial investment was robust. However, he said that no system of regulation could completely eradicate the risk of firms failing or "bad actors" committing fraud. He said that the bill was aimed at two areas "where it is necessary for the Government to step in".[58]

Speaking to clause 1 of the bill, Mr Opperman argued that the circumstances around LCF were "unique and exceptional", and that the Government would not stand behind "every failed investment firm".[59] He said that the scheme would be available to all LCF bondholders who had not already received compensation from the FSCS. The compensation would represent 80% of what they would have received under the FSCS. Mr Opperman said that "around 97% of LCF bondholders invested less than £85,000 and will not reach the compensation cap under either the Government's scheme or the FSCS".[60] He said that the Government expected to pay approximately £120 million in compensation to around 8,800 bondholders and was committed to doing so within six months of the bill receiving royal assent.

On clause 2, Mr Opperman stated that, when the PPF and the FCF were established in 2004, it was not envisaged that pension liberation schemes would be in scope for FCF payments. He said that the Government had decided to "fully accept" the High Court's judgment that pension liberation schemes were covered by the FCF and was committed to ensuring that victims of fraud would be able to claim through the FCF. He argued the provisions of clause 2 were required because it was estimated that claims would exceed £350 million (greater than the £26.2 million held in the FCF at the time of the judgment).

The bill received cross party support, but MPs raised several issues related to it. Speaking for Labour, Pat McFadden, Shadow Economic Secretary, argued that the Government was legislating on creating a compensation scheme for FCF bondholders "because of the litany of regulatory failures" set out in the Gloster report.[61] He argued that "had the FCA acted earlier far fewer people would have invested through this firm, losses would have been lower and the taxpayer would not be faced with the £120 million we are talking about today".[62] Mr McFadden asked the minister a number of questions including why compensation was being capped at 80% of the FSCS level. On clause 2, Mr McFadden expressed concern that levies raised to pay for pension compensation would be borne by schemes not involved in fraud and argued that government reforms to pension freedoms may have increased people's exposure to fraud:

[57] HC *Hansard*, 8 June 2021, col 906.
[58] ibid, col 904.
[59] ibid, col 905.
[60] ibid, col 906.
[61] ibid, col 907.
[62] ibid.

> The promise of pension freedoms being matched with good, trustworthy financial advice has not been kept, and these levies, which will have to be paid by the pension schemes that have been nowhere near fraud and are trying to offer a good service to their members, are being put in place at least in part as a result of the Government's own pension reforms, which have left more pensioners exposed to fraud and scams. That conclusion was endorsed by the Work and Pensions Committee in its recent report.[63]

Mr McFadden said that what united clause 1 and 2 was the issue of people being subject to fraud, often through online advertising. He urged the Government to think about adding provisions on financial crime and online advertising to the Online Harms Bill: "To proceed with that bill without tackling online financial harm would be an enormous lost opportunity to protect consumers against this type of crime".[64] He said that it was critical that the law kept up with "innovations in fraud and financial crime that are taking place", arguing that "for that to happen, it will take a lot more than the two clauses on compensation in this bill".

Speaking for the SNP, Peter Grant, SNP Shadow Deputy Treasury Spokesperson, said that the SNP would not oppose second reading. However, Mr Grant argued that "most parts of the legislation are only necessary because of a catalogue of failures of Government, of legislation and of regulators".[65] He said that he wanted to see legislation that would make schemes similar to the proposed LCF compensation scheme available to victims of other pension and investment scams "without them having to wait for a public inquiry and a new act of Parliament for every single one".

Responding for the Government, John Glen, Economic Secretary to the Treasury, said that the Treasury, working with the FCA, had looked at each mini-bond issuer known to have failed in the past eight years. He said that following that work, the Government were satisfied that the circumstances around LCF were "truly exceptional".[66] He said that the Government could not step in and pay compensation in the case of every failed financial services firm because that would fall outside of the FSCS and could lead people to choose unsuitable investments, thinking the Government would provide compensation in all cases. Mr Opperman also noted comments by members on the "ongoing challenge of dealing with the evolving nature of financial services firms and the sophistication of scams".[67] He said that he and the Parliamentary Under Secretary of State for Work and Pensions were "working across Whitehall to bring an effective resolution to this matter".

In response to questions about the Government's confidence in the FCA, Mr Glen said that the new chief executive was undertaking a transformation programme "at pace […] designed to empower the organisation at all levels to hear the representations that the right hon. Member for Wolverhampton South East made [Pat McFadden], to act on them, and to deal proactively with the cases that are raised".[68]

In his written statement announcing the compensation scheme, John Glen indicated that a cap had been set because of the circumstances leading to the establishment of the scheme:

[63] HC *Hansard*, 8 June 2021, col 910.

[64] ibid.

[65] ibid, col 912.

[66] ibid, col 918.

[67] ibid, col 919.

[68] ibid.

> [I]t is imperative to avoid creating the misconception that government will stand behind bad investments in future, even where FSCS protection does not apply. That would create a moral hazard for investors and potentially lead individuals to choose unsuitable investments, thinking the government will provide compensation if things go wrong. The ultimate responsibility for choosing suitable investments must remain with individuals.
>
> To avoid creating this misconception, and to take into account the wide range of factors that contributed to the losses that government would not ordinarily compensate for, the government will establish a scheme that provides 80 percent of LCF bondholders' initial investment up to a maximum of £68k.[69]

Mr Glen has said that the compensation was capped at £68,000 "to reflect the unregulated nature of the LCF product".[70]

The bill passed second reading without division.[71]

Committee stage

The bill's committee stage took place in two sittings. The first sitting consisted of the public bill committee asking questions to witnesses.[72] Witnesses included representatives from the FCA, FSCS and PPF.

Several amendments were debated during the committee's second sitting, but none were divided upon and none were made to the bill.[73]

For an overview of the debate at committee see:

- House of Commons Library, *Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021–22*, 17 September 2021, pp 34–9.

4.2 Report stage

Only one amendment was debated at the bill's report stage. This was tabled by Peter Grant, SNP Shadow Deputy Treasury Spokesperson.

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[69] House of Commons, 'Written Statement: London Capital and Finance', 19 April 2021, HCWS922.

[70] Public Bill Committee, Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill (Second sitting), HC *Hansard*,15 June 2021, col 50.

[71] *HC Hansard*, 8 June 2021, col 919.

[72] Public Bill Committee, Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill (First sitting), HC *Hansard*, 15 June 2021.

[73] Public Bill Committee, Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill (Second sitting), HC *Hansard*, 15 June 2021; and House of Commons, *Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill (Committee Stage Decisions)*, 15 June 2021.

The amendment would have inserted a new clause 1(5) which would have required the Government to publish a report on assessing the impact of paying compensation to customers of LCF within six months of the bill coming into force. The report would have to set out the following in light of its assessment:

> (a) an assessment of the regulatory failures that gave rise to the need to compensate the customers of London Capital & Finance plc;
> (b) measures the Government is taking to prevent such regulatory failures in the future;
> (c) the reasons why the Government is providing compensation to the customers of London Capital & Finance plc but not the customers of other failed investment firms;
> (d) criteria for when the Government should be expected to provide compensation following the collapse of investment firms; and
> (e) the reasons for the capping of compensation payments under this section at 80% of what customers of London Capital & Finance would have been entitled to under the Financial Services Compensation Scheme.[74]

Speaking to his amendment, Mr Grant said that his amendment would not change the compensation scheme itself, but it was designed to address what he called the "single biggest problem" with the bill, which he argued was that it "did not go far enough".[75] He argued that provision needed to be improved for those people who lose money through fraud:

> There has to be better provision for compensation for those who, through no fault of their own, see their pension, their plan for retirement and the future of their family's financial security wiped out by charlatans who right now are taking advantage of a regulatory environment that is open to abuse.

However, Mr Grant said that the SNP supported the bill and would support it at third reading.

Much of the debate on the amendment focused on issues raised by it rather than the amendment itself. Speaking for Labour, Pat McFadden, Shadow Economic Secretary, said that he wanted to raise a number of questions with the minister based on the amendment.[76] For example, he asked where the Government now "draw the line" having come up with the scheme for LCF investors.[77] Mr McFadden also referred to calls for the draft Online Safety Bill to offer greater protection against financial scams and fraud, arguing that it was "bound to be a major issue as the bill went through the House".

Responding for the Government, Guy Opperman, Parliamentary Under Secretary of State for Work and Pensions, said the FCA reports every six months on its transformation programme.[78] On references to online harms legislation, he said he had engaged with social media companies and Google and that "those individual companies need to step up to the plate, because it is very much in their domain to make real change".

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[74] House of Commons, *Report Stage: Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill (Amendment Paper)*, 21 September 2021.
[75] HC *Hansard*, 22 September 2021, col 313.
[76] ibid, col 323.
[77] ibid, col 324.
[78] ibid, col 325.

About whether the Government should look at compensation in cases other than LCF, Mr Opperman said that it would not "stand behind all bad investments in the future, where FSCS protection does not apply".[79] He said that the case of LCF was unique and that only three Government compensation schemes had been established in 30 years:

> We have carefully considered the issues and are satisfied that the individual circumstances surrounding LCF are completely unique. Other mini-bond firms have failed, but LCF is the only mini-bond firm that was authorised by the FCA and sold bonds in order to on-lend to other companies. As the House will know, only three Government compensation schemes have been established in the past three decades, for Barlow Clowes, Equitable Life, and now LCF, despite many firms failing over that period. This type of intervention is the exception, not the rule.[80]

Mr Opperman said that whilst the amendment was "legitimate and considered to be principled and practical", the FCA was already publishing reports and is held to account by the Treasury.

Mr Grant subsequently pushed the amendment to a division, where it was defeated by 292 votes to 52.[81]

4.3 Third reading

Speaking at third reading, Pat McFadden, Shadow Economic Secretary, said that Labour supported the bill because it wanted to see the compensation paid out, but he hoped that "the minister will consider some of the questions we have raised about the nature of scams and the need to do more to protect consumers".[82]

Peter Grant, SNP Shadow Deputy Spokesperson Treasury Chief Secretary, reiterated the SNP's support for the bill but said he was concerned about companies not publishing annual accounts "and other critical information on time".[83] He said that some of these problems went beyond the remit of the Treasury, but he hoped that proceedings on the bill would give the Commons Treasury Committee and the Business, Energy and Industrial Strategy Committee "new material to work on".

Responding for the Government, Guy Opperman said that he considered that the Government had taken steps "to making proper compensation and bringing the right people some recompense for a total injustice".[84]

The bill passed its third reading without division.[85]

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79 HC *Hansard*, 22 September 2021, col 325.

80 ibid, col 326.

81 ibid, cols 326–8.

82 ibid, col 329.

83 ibid, 331.

84 ibid, col 335.

85 ibid.