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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 13 September 2017

3 pm

Prayers—read by the Lord Bishop of Birmingham.

Brexit: Negotiations

Question

3.06 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government whether they will publish a comprehensive timetable for Brexit negotiations with the European Union; and whether they will make publicly available all position papers and all other documentation and correspondence relevant to those negotiations.

The Minister of State, Department for Exiting the European Union (Baroness Anelay of St Johns) (Con): My Lords, the UK and EU teams have agreed a broad timetable for the Brexit negotiations, which has been published on the GOV.UK site. This provides indicative dates for negotiation rounds and acts as a framework rather than a hard timetable to progress discussions as effectively as possible. All published information about the negotiations is being made available on the DExEU website, at www.gov.uk.

Lord Foulkes of Cumnock (Lab): I am really grateful to the noble Baroness for her helpful answer. She will agree with me that it is the European Union Select Committee of this House that does the detailed work on this issue, but does she share my disappointment that the Secretary of State is not going to give regular reports to that Select Committee on the progress of the negotiations? Is it not a double disappointment that he also refuses—as he said to me again yesterday—to allow the noble Baroness to stand in on his behalf to give reports on the negotiations? Will she ask him to think again on this? As far as we are concerned in this House, we have faith in the noble Baroness doing that job properly.

Baroness Anelay of St Johns: My Lords, both the Secretary of State and I have made clear our commitment to the value of parliamentary scrutiny. Last night, in the excellent debate that we had in this House, I was able to put on record our commitment and to make it clear that there is, perhaps, a little bit of misinformation and misunderstanding about the way in which Ministers have been appearing before Select Committees. What has happened is that, when Ministers—whether it is the Secretary of State, me or another—appear in front of a Select Committee, the officials supporting us are the negotiators. Therefore, it was important that not only are we responsible to Parliament but we ensure that the negotiations can proceed. It is that balance that we have sought to maintain, which is why the Secretary of State has made it clear that, having appeared once just recently in July, he will be appearing again fairly shortly before the Select Committee of this House and before the Brexit committee in another House. There have also been 14 other ministerial appearances—all to make sure that we keep our position and that parliamentary support is properly carried out.

Lord Spicer (Con): Will my noble friend confirm what she implied, I think, at the end of her speech last night, that there would be a valuation of all our assets held by the European Union as part of the calculation of what is owed in net terms?

Baroness Anelay of St Johns: My Lords, I was alluding to the fact that there are indeed obligations from the EU as well as obligations from the UK to the EU. As part of that process it will be important to have a valuation of assets.

Baroness Ludford (LD): My Lords, in the debate last night, one of the most interesting contributions was from the noble Baroness's predecessor as Minister, the noble Lord, Lord Bridges of Headley. He said:

"We must be honest about the task we face—its complexity and scale. We must be honest about the need to compromise and about the lack of time that we … have to come to an agreement on our withdrawal".—[*Official Report*, 12/9/17; col. 2431.]

Are the Government going to take his advice?

Baroness Anelay of St Johns: My Lords, we listened to his advice when he was a Minister; we still listen to it now.

Lord McConnell of Glenscorrodale (Lab): My Lords, on 4 July, the noble Lord, Lord Bates, in reply to a Question from me confirmed that 10.9% of the UK's overseas development assistance is spent through the two main funds of the European Union, and that that totals £1,327 million. He also gave an assurance to your Lordships' House that the transition period would be handled in such a way as to ensure that all the many projects protected by these funds, many of which save lives around the globe, would not fall off a cliff. There is no mention of either these funds or that commitment in the position paper launched yesterday by Her Majesty's Government. Can the Minister give us that assurance here again today?

Baroness Anelay of St Johns: My Lords, there are, of course, several streams through which funds available for international development are derived. Although the Department for International Development holds the ring in that regard, clearly this goes through many different portals. The noble Lord is right to point to the importance of the work being done on international development through the EU. We have given our commitment and made it clear that we are not going to devalue that. I am afraid it is, as ever, a matter for negotiations how we are able to fulfil that commitment, not only while we continue to be a member of the European Union but as we leave.

Lord Watts (Lab): My Lords, does the Minister believe it would be a good idea for the Select Committee to invite the Commission to brief it so that at least it can find out what is going on in the negotiations?

Baroness Anelay of St Johns: My Lords, the person in charge of the negotiations at the Commission, Michel Barnier, has, I think, spoken twice to the European Parliament. He does have confidential meetings with a self-selecting group. This House has been much better served for information than has the European Parliament by a country mile.

Lord Dykes (CB): My Lords, will the Minister at least give a preliminary indication of how the Government will solve the Irish border problem?

Baroness Anelay of St Johns: My Lords, last night I was able to answer a significant question from the noble Lord, Lord Jay, about what happens next. I set out a couple of points where there are technical issues to be resolved but also pointed out that after the last round of negotiations we were able to provide a whole area where there is convergence. However, when I asked where there was no convergence between the position of the EU and the UK, the answer was none—we are converging.

Lord Wigley (PC): My Lords, the position papers so far published have not clarified the Government's position with regard to the Interreg funds, which are of considerable benefit to the western part of Wales as well as to the Irish Republic. Is it the Government's intention to publish something? Can the Minister give any indication of thinking on this?

Baroness Anelay of St Johns: The noble Lord is right to raise the issue of funding for these matters. We are keenly aware of the importance of the position of the economies of all parts of the United Kingdom, and that is being taken into account. Further papers are coming forward. I am not in a position to say which ones at this stage as they are published in relation to the negotiations as they proceed. However, I certainly take the noble Lord's point seriously.

Lord Hain (Lab): My Lords, is the noble Baroness aware that the Leave Alliance is briefing that the Prime Minister is going to use her speech on Europe next week to announce that she is giving formal notice to leave the European Economic Area, and, in an attempt to bypass the Commission, extend an invitation to all EEA member states—the European Union ones and Lichtenstein, Norway and Switzerland—to enter into direct talks with the UK to create some sort of new EEA agreement? Surely this bonkers idea cannot possibly be true?

Baroness Anelay of St Johns: My Lords, I am intrigued to hear that the noble Lord has leave publications. It is a side to him that I never knew before, and no I have not seen it.

Breeding: Dogs and Cats

Question

3.14 pm

Asked by ***Lord Black of Brentwood***

To ask Her Majesty's Government what steps they are taking to address concerns about the breeding of dogs and cats.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, my department has already announced proposals to enhance the welfare of animals in relation to the breeding of dogs and the commercial selling of all animals. The proposals include lowering the number of litters under which a dog breeder needs a licence, prohibiting the sale of cats or dogs under eight weeks of age and the introduction of up-to-date statutory minimum welfare conditions for all licensees.

Lord Black of Brentwood (Con): My Lords, I thank my noble friend very much for that Answer. Will he join me in paying tribute to all the charities and their armies of volunteers who care for cats and dogs in distress? Is he aware that an issue of growing concern to them all is the unregulated breeding of brachycephalic animals such as pugs or Scottish fold cats, which are bred—genetically modified—for cosmetic purposes to have flat faces, but as a result often spend a life in intolerable pain, unable to breathe properly? Will he take action to introduce regulation, such as now exists in Switzerland, to put an end to the torture breeding of animals that are literally born to suffer?

Lord Gardiner of Kimble: My Lords, undoubtedly I acknowledge the exceptional work of the charities and volunteers, and indeed it is my privilege often to work with them. I share my noble friend's concern. Only yesterday, I met representatives of the British Veterinary Association and the Kennel Club to consider how best we can resolve this issue of genetic defects. We will be working with interested parties on how the issue can be effectively tackled and how best we can frame this in regulations.

Lord Trees (CB): My Lords, I support the noble Lord, Lord Black, in what he said. Many people—well-meaning people—keep certain breeds, which, because of their conformation, are so deformed that they will suffer ill health and stress throughout their lives. The popularity of breeds such as the French bulldog and the Scottish fold cat is increasing, partly endorsed by advertising, celebrity endorsement and social media. While it may be difficult to introduce legislation, does the Minister agree that we should do all that we can to persuade people that the keeping of such breeds is not cool?

Lord Gardiner of Kimble: My Lords, it is important that we respect our animals as they are in their native state. It is important that we address this point; it is not reasonable, and in fact it is self-indulgent, to breed animals with these genetic defects. So we want to deal with it, and it is important that we do so. This crosses a number of breeds whose conditions we need to improve. This is why we are working in particular on things such as pet advertising—we want to raise standards on the online side of these things. We are working on this because we recognise how important it is for the welfare and health of these animals.

Lord Redesdale (LD): My Lords, the Minister has mentioned online sales of animals. Will he take the recommendations of the Pet Advertising Advisory

Group, which is chaired by the Dogs Trust, to make it obligatory—not just voluntary—for websites to make sure that the picture of the pet that is on sale is of the animal itself? Many pets are advertised with beautiful pictures of healthy animals, but when the prospective owner comes to pick up their pet they find a sickly, badly-bred animal and of course feel sorry for it and therefore pay for it, which increases the trade in this way.

Lord Gardiner of Kimble: My Lords, the noble Lord is absolutely right; the Pet Advertising Advisory Group is driving up standards, and we support that. However, this takes us back to one of our problems, which is that of demand from the public who want to buy a puppy. One of the most important things they should think about is whether they can go to a rehoming centre to buy a dog or cat. If they want to buy a pedigree puppy or kitten, they should look to responsible breeders and in particular see the animals in the environment of the mother. It will become illegal to buy a puppy under eight weeks old, so I hope that we will make some progress on this.

Lord Winston (Lab): My Lords, I congratulate the noble Lord, Lord Black of Brentwood, on his humanity and his important question on the care of animals, and I respect the Government's response. However, will the Government take into account that genetically modified animals are extraordinarily important for medical research—for example, in the treatment of cancers? It is important that we must not muddle the two issues if it comes to legislation and regulation.

Lord Gardiner of Kimble: My Lords, the noble Lord has probably hit on some of the issues that I was discussing with these organisations. How do we best frame in regulations the very things that your Lordships feel strongly about, yet also the advances that we can have in not only medical but veterinary science? It is important that we get that right.

Lord Lexden (Con): My noble friend's comments on the Government's intention to strengthen the Animal Welfare Act will be widely welcomed. When will the Government introduce training for local authority inspectors of animal breeding establishments, as foreshadowed in an announcement which the Government made in February?

Lord Gardiner of Kimble: My Lords, my noble friend has remarked on another very important point. Under these proposals we will seek to improve the ability of local authorities to, as I said, root out the bad. We want to train and work with local authorities so that they have the experience to ensure that, when they license an establishment, they are confident that it adheres to the high animal welfare standards that we all desire.

The Lord Bishop of Chester: Do the Government have any concerns about the breeding of those Members of your Lordships' House who wear dog collars?

Lord Gardiner of Kimble: I hope that the right reverend Prelate knows very well that I am very fond of dogs. I have very good relations with many right reverend Prelates and work very closely with the rural Bishops on many issues concerning the countryside.

Lord Clark of Windermere (Lab): My Lords, I was very pleased to hear the Minister refer to the rehoming of dogs, because that is very important. People do not always need a pedigree; they are after a pet for love, affection and various other things. However, even if people want pedigrees, can the Minister publicise the fact that most breeds, whether Border collies, Labradors or Alsatians, have their own specialist rehoming facilities? The more that is known, the better.

Lord Gardiner of Kimble: My Lords, I entirely agree. We need to work on increasing awareness on a number of fronts. Much of this is about heightening awareness of members of the public who wish to find pets, whether through breed societies or breed rehoming or through the excellent charities for dogs, cats and other animals, of which I have visited a number. At my meetings yesterday, I specifically talked about how, in the prelude to Christmas, we can all work together to ensure that animals are for life and that we respect them.

Children: Refugees

Question

3.21 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government when they plan to implement their commitment to bring 480 unaccompanied child refugees from Europe to the United Kingdom.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government are committed to transferring a specified number of eligible children to the UK under Section 67 of the Immigration Act 2016 as part of our broader response to the migration crisis. All transfers need to take place in line with member states' national laws. Last year, we transferred over 200 children under the scheme. We have accepted further referrals in recent weeks and we expect children to arrive in the UK in the coming weeks.

Lord Dubs (Lab): My Lords, does the Minister agree that the figure of 200 to date is disappointing? If that is the fault of the Greek, Italian and French authorities, that is very disappointing. If it is the fault of the British Government, it is shocking. Which is it?

Baroness Williams of Trafford: My Lords, first, I say to the noble Lord that we continue to work with our partners in Europe under the scheme to transfer children where we can. However, as he will know and as I have said to the House before, we cannot just go into countries and take children. It might be helpful to explain the broader context in which we operate.

[Baroness Williams of Trafford]
In 2016 the UK settled more refugees from outside Europe than any other EU state. According to Eurostat figures, over a third of people resettled in the EU came to the UK. We have granted asylum or another form of leave to over 9,000 children in the past year—over 42,000 since 2010.

Baroness Butler-Sloss (CB): My Lords, what are the Government doing about children who have a right under the Dublin III agreement, particularly in the Calais and Dunkirk areas?

Baroness Williams of Trafford: My Lords, we continue to work with the French Government to ensure that those children are also transferred.

Baroness Hamwee (LD): My Lords, the UK's homegrown family reunion rules, as it were, are much narrower than the Dublin III convention in that families are defined much more narrowly—limited to parents under the UK's rules. What will happen to the Dublin III convention when we leave the EU?

Baroness Williams of Trafford: My Lords, when we leave the EU the Dublin convention will need to be reassessed under our own laws. Noble Lords will appreciate that this country has been a welcoming and safe haven for refugees and asylum seekers over the years—I have just given the staggering figure of more than 42,000 children since 2010—and we will continue to meet our commitment to those who need our help.

Lord Alton of Liverpool (CB): My Lords, does the Minister accept that there has been a major problem in Europe with unaccompanied children going missing, a subject about which I have written to her on numerous occasions? Does she also accept that, in the context of Dublin III and whatever may come next, we should at least look at the right of unaccompanied children to go to the nearest embassy or consulate in order to register their interest in reunification, rather than having to travel miles from anywhere in order to go through that process?

Baroness Williams of Trafford: I agree with the noble Lord that we remain concerned about unaccompanied children across Europe. It is pleasing that in recent months, through our assistance, as well as financial assistance from across the EU, the EU relocation scheme has been far more firmly established. We will continue to work with our EU partners on the plight of children.

Lord Gordon of Strathblane (Lab): In considering applications for asylum, will the Government pay particular and sensitive attention to children from minority religious groups, such as Yazidis and Christians, who in many cases, regrettably, face as much threat of persecution within the camps as they did within the countries they were forced to leave?

Baroness Williams of Trafford: The noble Lord raises an important point, as has my noble friend Lady Berridge in the past in regard to the Yazidis and the Christians. We have widened the vulnerable persons resettlement scheme in the region. Ultimately, the best way to safeguard these groups is to establish lasting peace in the region, and that means defeating Daesh, promoting a peaceful transition in Syria and helping to deliver political reform and reconciliation in Iraq.

Lord Green of Deddington (CB): My Lords—

Lord McConnell of Glenscorrodale (Lab): My Lords, along with many others I met a group of young teenage boys who had survived the capsize of a boat in the Mediterranean and will live with the image—

Noble Lords: Order!

The Lord Privy Seal (Baroness Evans of Bowes Park): My Lords, we will hear from the Cross Benches.

Lord Green of Deddington: My Lords, does the noble Baroness agree that the Government are to be congratulated on the large number of child refugees they have taken? Does she further agree that we need to proceed with care in that if we take refugee children who have already arrived in Europe, we will tempt other families to send their children off at great risk? It is a much better course to do what the Government are doing: take them from the region itself and deal with Christians in a fair and sensible way.

Baroness Williams of Trafford: I totally agree with the noble Lord and I am very proud of what we have done. We have done better than any other EU state in taking people from outside Europe. In addition, the noble Lord referred to what I think he described as the pull factor to Europe. The sums involved in helping people in the region are staggering. For what it would cost to help 3,000 people here, we could help 800,000 in the region. Those figures are worth bearing in mind.

Child Sexual Abuse

Question

3.28 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what assessment they have made of the lessons to be learned from recent police investigations into allegations of child sexual abuse in the past.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government have done more than any other to tackle child sex abuse, declaring it a national threat and investing millions of pounds to enable officers to actively seek out and bring offenders to justice. Investigations are operational matters for the police and must be free of political involvement. It is also the responsibility of the College of Policing to set the standards for policing.

Lord Lexden (Con): Can action be taken by means of strengthened codes of practice or other measures to ensure that police forces throughout our country conduct themselves with absolute propriety and honour when investigating allegations which, if mishandled—and some have been—can ruin the lives of innocent people and besmirch the reputations of the innocent deceased?

Baroness Williams of Trafford: My noble friend makes the crucial point that where people are falsely accused and have their names in the media, their lives can literally be ruined. Noble Lords may have seen things in the paper over the weekend. The College of Policing guidance provides that, where an investigation identifies a false allegation, it may be appropriate to support a prosecution for attempting to pervert the course of justice. Steps should be taken to test the validity of statements and corroborative accounts and to establish an accurate picture. The decision to support a prosecution would be an operational matter for the relevant chief officer.

Lord Paddick (LD): My Lords, Sir Richard Henriques did an independent review of the Metropolitan Police's conduct in these matters. His conclusion was that:

"Until anonymity is enforced by statute, it is inevitable that many accused will lose their anonymity at an early stage of an investigation".

Why will the Government not legislate?

Baroness Williams of Trafford: My Lords, we touched on that extensively on the then Policing and Crime Bill; the noble Lord was part of that debate. The police's decision on whether to name a suspect is a matter for the chief officer, who must authorise any such disclosure. Following some of the debate, and ongoing with the College of Policing's authorised professional practice guidance on relationships with the media, the College of Policing recently undertook a consultation on a fresh iteration of the guidance. That guidance is clear that the rationale for naming an arrested person before they are charged must be authorised by the chief officer, and that the authorising officer must also consult the Crown Prosecution Service if considering the release of a name.

Lord Tugendhat (Con): Does my noble friend agree that one of the most disturbing aspects of the way in which Operation Midland was conducted is what might be termed the malicious gullibility of the police, and that that has done a great deal to undermine public confidence in the Metropolitan Police? I think it would be appropriate in these circumstances for her to show a little more indignation and a little less calm in the face of what has been a very grave injustice.

Baroness Williams of Trafford: My Lords, I do not disagree that it has been a grave period. I apologise if I appear too calm but the police are, rightly, operationally independent of the Government. It would be a matter for the relevant chief officer to consider whether to commission any similar review of how forces' investigations were conducted.

Lord Morris of Aberavon (Lab): My Lords, while I value the independence of each police force, will the Government consider asking the inspectorate to assess the propriety and cost of some of these investigations?

Baroness Williams of Trafford: My Lords, the Government will leave it up to the inspectorate to determine the use of funds and whether they are proportionate; they should be.

Lord Armstrong of Ilminster (CB): My Lords, the noble Baroness recently told me that it was absolutely right to commission an independent review of Operation Midland, the operation by the Metropolitan Police to which reference has already been made. Does she agree that it would be no less absolutely right to commission an independent review of Operation Conifer, Wiltshire Police's investigation of allegations relating to the late Sir Edward Heath, given the concerns expressed about the conduct of that operation?

Baroness Williams of Trafford: My Lords, I hear those concerns and I recall the comments that the noble Lord has previously made and written to me, and to the Home Secretary. I am sorry to reiterate the point but the police are independently operational of the Government, so it would not be appropriate for me to comment on a particular case. We are absolutely clear that, where allegations are made, they should be thoroughly and professionally investigated so the facts can be established.

Lord Campbell-Savours (Lab): My Lords, why are the people who make allegations that turn out subsequently to be untrue not required to pay back the compensation they receive from the Criminal Injuries Compensation Authority, as has indeed happened in the Heath case?

Baroness Williams of Trafford: My Lords, I think I have gone through the process for what happens with false allegations. It will be up to the determining bodies to decide whether compensation is payable.

Lord Hunt of Wirral (Con): Does my noble friend agree that the principle of someone being innocent until proven guilty dates back to Magna Carta and must be inviolable for the dead as well as the living? Surely the evidence must be assessed rigorously, independently and fully.

Baroness Williams of Trafford: I could not agree more with my noble friend.

Lord Lea of Crondall (Lab): My Lords, will the noble Baroness take on board the fact that on a recent case to which reference has been made, a Wiltshire village police station seemed to approach it in a most amateurish way? The standards of intelligence and training required for a major question such as this need to be considered.

Baroness Williams of Trafford: It is obviously for the local chief officer to determine the answer to the noble Lord's question.

Data Protection Bill [HL]

First Reading

3.36 pm

A Bill to make provision for the regulation of the processing of information relating to individuals; to make provision in connection with the Information Commissioner's functions under certain regulations relating to information; to make provision for a direct marketing code of conduct; and for connected purposes.

The Bill was introduced by Lord Ashton of Hyde, read a first time and ordered to be printed.

Financial Guidance and Claims Bill [HL]

Committee (4th Day)

3.37 pm

Clause 16: Transfer to FCA of regulation of claims management services

Amendment 69A

Moved by ***Lord Hunt of Wirral***

69A: Clause 16, page 12, line 38, at end insert—

"(ba) arranging the provision of temporary replacement motor vehicles,"

Lord Hunt of Wirral (Con): My Lords, these amendments in my name seek to extend the scope of regulations in the sphere of personal injury claims. Before speaking to them, I remind the Committee that regulation should always remain proportionate—something on which the Government have always been very clear and which I strongly support.

The problem we face and the reason why extension of regulation should be considered at all is that we continue to be in the grip of what the Government themselves describe as a "rampant compensation culture". Noble Lords may recall that I set out a brief history of the regulation of claims management companies during the debate on Second Reading. The reason why we are back debating, and I hope supporting, more effective regulation of CMCs is that this insidious, divisive and potentially ruinous problem continues to grow. There is a serious danger that our civil justice system, which has long been the envy of the world, could be overrun and reduced to a laughing stock by the waves of claims generated by these cynical and ruthless companies.

I will return to this point on another amendment to refer the Committee to the latest phenomenon of holiday sickness claims. For now, perhaps I may just quote from the decision of Lord Justice Jackson last week in the Court of Appeal case, Thomas v Hugh James. It stated:

"The civil justice system exists to enable injured parties to recover compensation for genuine wrongs. It does not exist to service artificial claims stirred up by advertisements".

Lord Justice Jackson, who has done so much brilliant work producing recommendations for containing legal costs and whose latest proposals on fixed costs in cases up to £100,000 in value were published on 31 July, struck right to the heart of the matter with characteristic precision and candour. Noble Lords will know that I have long been an insurance solicitor, having started life as a solicitor for the Transport and General Workers' Union, so I have quite a history and declare my interests in this matter. This growing culture of artificial claims really is the tail wagging the dog.

When we first dealt with the regulation of CMCs in 2006, we were very conscious of the effect of the self-serving mantra of the CMC sector: "Where there's blame, there's a claim, and it won't cost you a penny". I am keen to establish that where there is a claim, there should be proportionate and effective regulation in the public interest. Many participants in the injury claims industry are already regulated: solicitors, insurers, brokers, doctors, even claims management companies. The amendments would close loopholes to ensure that control by regulation extends to all those with a financial interest in the damages and legal costs pursued in the name of injured claimants.

This is not just about controlling the cost of insurance claims, although ultimately that restraint is good for society as a whole as well. It is also an essential part of consumer protection. Amendment 69A would address something known as "credit hire"—I have used the term "temporary replacement … vehicles" because that is a term understood within the industry to cover all relevant arrangements.

A motorist whose vehicle is damaged through the fault of another may recover damages for the loss suffered as a result of their vehicle being out of use. That may, where reasonable, involve recovering the cost of a hire vehicle. This straightforward concept has spawned an industry of "credit hire organisations". "Credit hire" allows customers to hire on "credit" terms, which are offered with the expectation that a recovery will be made from the at-fault driver's insurer. The hire rate charged by the credit hire organisation is usually much higher than the prevailing rate on the high street. This is, in effect, the cost of the credit risk, but it is not badged as a charge for credit and therefore is completely unregulated. Nor is the customer told how much of the price might represent the cost of credit.

The whole concept has been the subject of much litigation over the years and formed a major part of an investigation by the Competition and Markets Authority into the cost of private motor insurance in 2014. The CMA actively considered greater regulation as a solution, but ultimately decided it lacked the authority to impose such a remedy.

Many credit hire providers are already FCA authorised and all are likely to be licensed by the FCA for provision of consumer credit. This core activity of credit hire is, however, delivered through the use of exemptions which circumvent the consumer credit regime. This market affects many people. Consumers often sign up to credit hire without understanding that they had other options. They are all too frequently unaware

that, when they agree to accept a credit hire vehicle, they are signing a contract that makes them bound to pay the full price for the vehicle. They are not protected from unclear terms for payment or cost.

Amendment 69A would make all the activities of such organisations subject to regulation by the Financial Conduct Authority. Not all the attendant problems can be addressed by extending the scope of regulation but it would be a positive step in the right direction. These companies provide a consumer service but it should be done in a properly controlled environment.

3.45 pm

Amendment 69B, in my name, seeks to extend regulation to all involved in the personal injury claims food chain. In such claims, the claimant is required to obtain and serve a medical report. It might be thought that this would simply involve the claimant's solicitor contacting—as I used to—a reputable medical specialist and commissioning a report direct. Unfortunately, in the world of high-volume, low-value personal injury claims, this is now a long way from the truth. A whole market has developed for intermediaries to organise the provision of medical reports for solicitors. The solicitor will contact one of these medical reporting organisations, known as MROs, which will have contracts with medical experts all around the country. The MRO then manages the medical appointment, vets the report and invoices the solicitor. These are commercial organisations which take a fee from the system for what they do. That has led to considerable concerns as to their independence and the quality of reports generated. Some solicitor firms have even set up or required their own MROs.

These concerns led to the Ministry of Justice deciding to set up something called MedCo in 2015. MedCo provides a system that solicitors must use when obtaining a medical report in low-value road traffic accident claims. Solicitors, MROs and medical experts sign up as users. The MedCo system generates a random selection of MROs and medical experts with whom the solicitor has no financial links, and the solicitor must then pick a provider from the list to prepare the report. Since going live in April 2015, MedCo has had to deal with many attempts to wriggle round the controls imposed by the system. One more serious issue was the creation of shell companies by the big MROs to ensure that they featured more regularly in search results. In November last year, MedCo had to suspend 134 of these shell companies.

MedCo now finds itself obliged to attempt to regulate the activities of these MROs without possessing the necessary regulatory powers. This takes up a significant amount of MedCo's time and resources, which would be much better spent focusing on its original purpose of improving the quality and objectivity of medical reporting in these low-value claims. MROs are unregulated but sit in the middle of a process where all other parties are regulated. Their track record since 2015 provides ample evidence that regulation of their activity is sorely needed—again, very much in the public interest. That job cries out for an experienced regulator with appropriate enforcement powers. Hence this amendment, which seeks to bring the activities of these MROs within the remit of the FCA.

We are making progress but the world of claims management is live, creative and fleet of foot. No sooner is one loophole closed than another is found and exploited. I just hope my amendments might help us propel the regulators one step ahead of all those constantly undermining the civility and stability of our society by setting people against one another purely for their own financial gain. I beg to move.

Baroness Kramer (LD): My Lords, this is not an area that I knew about before the noble Lord, Lord Hunt of Wirral, got to his feet, but he has thoroughly persuaded me and I hope that he has thoroughly persuaded the Government.

The Earl of Kinnoull (CB): My Lords, as usual, the noble Lord, Lord Hunt, is right on the money and I do not disagree with a word that he said. I would add one tiny little thing: the net effect of the MROs and the CHCs is that they add to the cost of motor insurance in this country so that poorer people who struggle to pay their motor insurance will find it further away from them. For that solid reason, I strongly support the noble Lord's two amendments.

Viscount Trenchard (Con): My Lords, I, too, offer my support to my noble friend Lord Hunt. I agree with his two amendments, which seek to attack one of the major menaces of the spurious claims activity in our society at present. Does my noble friend the Minister think that the FCA is qualified and able to take on all these extra tasks? Will there be a new category of authorised person within the FCA? The skills required to regulate CMCs of various kinds may not be exactly the same as, for example, those required to give financial advice. It is also worth checking that there are not any other areas of spurious activity or the encouragement of spurious claims which are already being practised by unscrupulous people.

Lord McKenzie of Luton (Lab): My Lords, as we have heard, these amendments would add two types of services to be brought within the definition of claims management services and hence within the regulatory provisions provided for in the Bill. The amendments were introduced with some passion. We support both of them.

We heard from the noble Lord some of the unacceptable behaviours of those delivering these services which warrant such inclusion. As part of the rampant compensation culture, we have heard about holiday sickness claims, which we will come on to debate, and artificial claims being stirred up by advertisements. Of course, medical reporting organisations and credit hire companies are involved in the claims process for road traffic accidents, providing medical reports and temporary replacement vehicles—an important service, perhaps, but it should be undertaken and conducted properly.

By way of background, we make it clear that we support the provisions in the Bill which enable the regulation of CMCs to transfer to the FCA but need to be reassured that it will be properly resourced to meet the totality of its new tasks—a point touched on

[LORD MCKENZIE OF LUTON]
by the noble Viscount, Lord Trenchard. The FCA currently regulates around 56,000 authorised financial services firms.

At present there is an exemption, which the noble Lord, Lord Hunt, touched on, from the regulation for claims management companies which employ solicitors on the grounds that such entities are under the jurisdiction of the Solicitors Regulation Authority—which, incidentally, bans cold calling. However, it is suggested in some quarters that the SRA regulation is less rigorous than the current MoJ regulation of CMC activity and as a consequence some CMCs are changing their business structures to take advantage of this. Is the Minister satisfied that there is no weakening of the regulation through this route?

There is another, tangential matter I would like to raise, of which I have given notice to the Minister—frankly, seeking a meeting rather than a detailed answer to an amendment. This is to do with tax refund companies. These are businesses which help people who have had too much tax deducted at source from their wages complete and submit the paperwork required by HMRC to claim back the overdeducted tax. There is absolutely nothing wrong with that—it is a vital service. This will include employees who have spent their own money on tax-deductible employment expenses; for example, care workers who do mileage in their own cars. Tax refund companies generally make their money by making high volumes of low-value, simple claims that they charge fees for. While some of these tax refund companies make sensible claims and charge proportionate fees for the service they provide, others are less scrupulous. It is these which we want to focus on. It is worth noting that tax refund companies' bread-and-butter activities—refunds based on unused personal allowances—have recently been curtailed by HMRC's auto-reconciliation service, which makes it harder for them to stay in business.

How do the companies work? There are some similarities with the points made by the noble Lord, Lord Hunt. They are mainly online businesses, typically with fun and appealing websites that contain eye-catching claims such as "Let us maximise your refund" or "We make claiming your refund easy". They may somehow imply that they have an inside track with HMRC. They often pay for advertising space so that they appear at the top of search engine results, where their ads are not necessarily distinguishable from organic search results by those who are not IT-savvy. The costs vary but there can often be two elements: a minimum admin fee—the Chartered Institute of Taxation says that it has recently seen a minimum fee of £90—and a charge based on a percentage of the refund, such as 20%. Percentage fees of up to 40% for relatively straightforward claims have been seen, which are a scandal. The company will normally mandate the refund back to itself in the first instance and collect its fee before transferring the balance to the individual. Often, the two fee elements taken together will outweigh the tax refund if it is small. Sometimes the companies add on charges for transferring money to a bank account, which they are not always transparent about. The pricing structure incentivises poor practices such as putting in inflated or fraudulent claims.

Who do these companies target? It can be workers who are unaware of or confused by the rules around when a refund might be due. The work-related travel expense rules are a particular example. It can be people who may have an inkling that they are due a refund but who lack confidence or knowledge of the tax system to initiate a claim themselves, or those who could probably organise a claim but do not have the time or the inclination.

Some tax refund companies meet a genuine need in the market and operate according to appropriate standards but the area is unregulated, like the issue we have just been debating, and there is a huge spectrum of providers. The Chartered Institute of Taxation's report on tax refund companies identified a range of consumer protection issues with some of the more exploitative agents and made pages of recommendations. While some of these were taken up, many were not. We acknowledge that HMRC has invested in improvements in certain areas by offering online channels to apply for refunds, restricting agent access to taxpayers' pay and tax details, and dealing with refund agents who gave the impression that they were in some way affiliated to or approved by HMRC. However, tax refund companies continue to proliferate, which suggests that things are still too complex or that taxpayers are still being swayed because of things such as overinflated promises or misleading information as to fees.

I apologise for taking the Committee's time to focus on this issue. I was not quite sure how to address it otherwise. My purpose is to give this an airing and to seek from the Minister the opportunity of a meeting in due course, together with the Chartered Institute of Taxation and the Low Incomes Tax Reform Group, to delve further into the issue. Having said that, I reiterate that we support the two amendments proposed by the noble Lord, Lord Hunt, and do so enthusiastically.

Lord Mackay of Clashfern (Con): My Lords, I very much support the amendments proposed by my noble friend Lord Hunt of Wirral. I just wonder whether regulation should sometimes encompass outlawing these activities altogether. It is probable that the amendment is sufficiently broad for that to happen but some of these activities may well be best outlawed rather than regulated.

4 pm

Lord Young of Cookham (Con): My Lords, Amendments 69A and 69B, which my noble friend Lord Hunt has put forward, seek to include credit hire agreements and the commissioning of medical reports within the scope of claims management regulation. He seeks to do that by amending the definitions in Clause 16. The Committee is grateful to him for the powerful way in which he put forward his case. I am sure we all agree with his quote from Lord Justice Jackson about artificial claims.

I understand my noble friend's concerns and agree there are links, as the noble Earl, Lord Kinnoull, said, between these issues, not least in terms of the impact they can have on the cost of insurance premiums and other fees for consumers. However, credit hire and medical reports are separate from the issue of claims management regulation. They are important issues

which are being considered through other government work, taking into account the broader context of the market. In both cases, CMCs are a very small part of the overall market. To revert to my aeronautical analogy, they are on a separate flight path from the measures in the Bill, but they are none the less important.

As my noble friend explained, credit hire is the supply of a like-for-like replacement hire vehicle on a credit basis to a not-at-fault vehicle owner following a road traffic accident. This can, of course, be part of the overall insurance claim process, but it is not in itself a claims management activity. Similarly, some CMCs are involved in medical reporting, but the market is far broader than CMCs, with most reports sourced by claimant lawyers and/or insurers. Medical reporting organisations provide services organising the provision of medical reports, as my noble friend explained, for personal injury claims, but they do not pursue claims themselves.

That is not to say that these issues are not important. It is clear from the interventions of noble Lords on all sides of the Committee that they are. They should be addressed, and the Government will address them. The Government are considering what more can be done on credit hire. We sought views on this issue in the call for evidence section of the whiplash consultation that closed in January 2017. Responses are being considered, and the Government will make an announcement in due course.

With regard to commissioning medical reports, as my noble friend noted, MedCo is an industry-owned, not-for-profit company that was established to enhance the quality and independence of initial medical reports in support of whiplash claims. As my noble friend said, attempts to subvert government policy in relation to the introduction of greater independence in medical reporting have resulted in firm enforcement action by MedCo against medical experts, lawyers and medical reporting organisations who have breached MedCo's user agreements. Good-quality medical evidence supported by the MedCo system is, and will continue to be, an integral part of the Government's whiplash reforms going forward.

I shall pick up some of the points made in this debate. My noble friend Lord Trenchard asked whether the FCA is qualified and resourced to take on the responsibilities in CMCs. The independent review, which I will refer to again in a moment, concluded that stronger regulation is necessary in order to deliver a step-change in the regulation of the sector. It recommended transferring regulatory responsibility for claims management companies to the FCA. All the costs of regulation will be borne by the CMC market through the FCA's levy-raising powers, which we discussed at our previous session.

The noble Lord, Lord McKenzie, asked whether firms might get round the regulation by turning themselves into another body, such as a solicitor. Currently, the CMRU, which is in the MoJ, regulates CMCs while the Solicitors Regulation Authority regulates firms of solicitors that conduct claims activities. The full scope of claims management services for the purposes of FCA regulation, including the extent of any exemptions, will be defined through secondary legislation. We want to make sure that there is a tougher regulatory regime and greater accountability for CMCs while ensuring that solicitors are not burdened with unnecessary regulation. The scope and nature of exemptions will be drafted to reflect these priorities, and we will, of course, take on board the point which the noble Lord made.

The noble Lord, Lord McKenzie, then mentioned tax refund companies. I think we all believe that too much tax is being deducted from our income. He is quite right to say that tax refund services are currently unregulated, but they will be subject to trading standards. I can tell the noble Lord that we will further consider and consult on secondary legislation to ensure that the definition of claims management activities is both proportionate and relevant. I would like to reflect on the points that he made about tax refunds and perhaps write to him in more detail.

The thrust of the Government's case in response to these amendments goes back to the independent review of claims management, which recommended the transfer of claims management regulation to the FCA—that is the foundation of the Bill. However, the review did not consider the extension of scope to credit hire and medical reporting, as suggested by the amendment. CMCs are only part of a larger market in the case that my noble friend has raised, and this wider context needs to be considered, as credit hire and the commissioning of medical reports are separate issues to those under consideration within the Bill. As they are being dealt with separately by Government, I would encourage my noble friend to withdraw his amendment. If he wants a further discussion about the action the Government are taking on this, I would be more than happy to meet him.

Lord Hunt of Wirral: My Lords, I accept the offer of a further discussion. I am very grateful to the noble Baroness, Lady Kramer, the noble Earl, Lord Kinnoull, the noble Viscount, Lord Trenchard, and the noble Lord, Lord McKenzie of Luton. I am intrigued by the idea of my noble and learned friend Lord Mackay of Clashfern that perhaps we ought to go a step further and find out ways to stop all this happening in the first place by making it impossible to bring such claims. No doubt we will be delving further into how we control what I have described as this insidious, nasty part of the marketplace when we come to the civil liability Bill and through various other opportunities. I know my noble friend has said that this Bill is on a separate flight path, but I am dealing with drones, and these drones are criss-crossing all the flight paths and creating new flight paths. With that acceptance of the offer of a further meeting, I have no hesitation in saying this problem will not go away and that we have to sort it out. But in the meantime I beg leave to withdraw the amendment.

Amendment 69A withdrawn.

Amendment 69B not moved.

Clause 16 agreed.

Amendment 70

Moved by ***Lord Holmes of Richmond***

70: After Clause 16, insert the following new Clause—

"Regulatory principles to be applied in respect of claims management services

(1) In relation to the regulation of claims management services, the FCA must act according to the principles that—

(a) where appropriate, authorised persons should act honestly, fairly and professionally in accordance with the best interests of consumers who are their clients; and

(b) where appropriate, authorised persons should manage conflicts of interest fairly, both between themselves and their clients, and between clients.

(2) In this section, "authorised person" has the same meaning as in the Financial Services and Markets Act 2000, and "authorised persons" shall be construed accordingly."

Lord Holmes of Richmond (Con): My Lords, I am pleased to bring forward this amendment, and in doing so I express thanks to all the organisations that have offered me advice and guidance on preparing it. Perhaps, in the light of the Bill we are discussing, I should not have used either term, advice or guidance, but just thanked them for the briefing in the spirit in which it was offered. Not least among those organisations was Macmillan Cancer Support, which demonstrates brilliantly how a charity can operate in 21st-century Britain not only by offering superb palliative care, nursing services and the like, as we would expect, but by fundamentally understanding just how important financial services are and how people are affected when they get a cancer diagnosis.

I am pleased to speak to Amendment 70 not least because we have gone over the ground of the SFGB at Second Reading—which takes me back to a previous life, when SFGB stood for the Swimming Federation of Great Britain. Bearing in mind my previous life, it seems only appropriate that I should dive straight in.

The purpose of Amendment 70 is to create a duty of care on claims management services to act for all customers, not least those who find themselves in a vulnerable situation. My desire in Committee was to bring forward an amendment that would impose a duty of care across the whole financial services sector but, sadly, that was deemed to be outside the scope of the Bill, so this amendment is far more limited and relates just to claims management services. However, I hope that, within that, noble Lords can see the potential and the need for wider application and an amendment at a future date that will address duty of care across the whole financial services sector, not least when we look at where financial services came from.

At one stage there was truly a sense of a relationship between customer and provider. In many ways we need to get back to that, not least because there is so much that financial institutions can do to assist people. Indeed, many financial institutions and claims management services may well do things to assist people, particularly when they find themselves in a vulnerable situation—not least if they have had that most awful news of a cancer diagnosis. But when we look at the evidence, only one in nine people who receive a cancer diagnosis reveals it to whichever financial institution they are dealing with. The reasons for that are pretty clear. But if that were not enough evidence, survey data illustrate that of the small number who did declare to their financial provider, 23% said that they had a wholly unsatisfactory experience. We can deduce from that that there is a really low level of declaration but, even within that small number, almost one-quarter have a negative experience after declaring.

I believe that Amendment 70 will go some way, in the specific claims management arena, to demonstrating the need for such an amendment and the benefit it can have on claims management services. There is a lot more for the Financial Conduct Authority to consider in terms of this duty and, indeed, the general duty of care. We know that the FCA is considering putting out a consultation paper on a duty of care across financial services, but we also know that it has stated that there will be no change at least until 2019. Consultation could last until 2019, then there would be a proposal, then pre-legislative scrutiny and then the process of implementation. I think we can all agree that there has been more than enough delay already in making sure that vulnerable consumers get the level of service that they should expect to receive from claims management services and the entire financial services industry.

I ask the Minister to support Amendment 70. Will he also say something about the Government's view on placing a general duty of care on the FCA across the whole financial services sector? This would bring benefits not only to consumers but to financial institutions and the nation. Amendment 70 and a general duty would both in their own way clearly help to deliver a financial services sector and a nation that work for everybody. I beg to move.

Baroness Meacher (CB): My Lords, I support Amendment 70 tabled by the noble Lord, Lord Holmes. As he indicated, what we really need is a wider power, but it is outside the scope of this Bill. I want to challenge that, at least for the moment. I refer to Clause 2(3), which makes it clear that:

"The single financial guidance body may do anything that is incidental or conducive to the exercise of its functions".

This is an attempt to build on the powers that that subsection suggests.

The fact is that the prevention of debt is even more important than helping people once they fall into debt. In terms of preventing debts arising, the duty of care is particularly important to people with serious health conditions and disabilities, for whom financial problems can quickly become overwhelming, as the noble Lord, Lord Holmes, has indicated. I want to concentrate on the particular plight of sick and disabled people. For example, 400,000 people in the UK with cancer struggle to pay their household bills because of their diagnosis. Banks and building societies have a vital role to play in helping such people; it makes a huge difference if a bank or building society offers flexibility in mortgage and other payments or interest freezes on credit cards and other loans. Although the Bill highlights the importance of early help, there is a growing consensus that greater leadership is needed from the Government to make it clear that providing this support to vulnerable customers must be a priority for financial institutions.

4.15 pm

An amendment to the Bill that would have the effect of requiring the Financial Conduct Authority to set out a reasonable duty of care for financial services

firms is needed, albeit we have to work out how it can be fitted within this Bill. The exact detail of how any duty of care would translate into financial conduct rules would be decided by the FCA, based on consultation with the industry, consumers and other stakeholders. But it will need to be clear that a duty of care would require banks and other institutions to act with the best interests of their customers in mind. The great benefit of the duty of care is that, by avoiding people falling into unrepayable debts, the financial institutions as well as customers would benefit.

The amendment proposed by the noble Lord, Lord Holmes, relates only to claims management services—and I understand the good reasons why he tabled it in that way. However, I very much hope that we can go further and would be very grateful if the Government would give serious consideration to the issue that I am raising. They have argued that the amendment is unnecessary because the FCA has previously committed to publishing a discussion paper on the duty of care. This would be part of its review of the handbook that sets out the financial conduct rules and guidance that authorised firms must comply with. However, the FCA has stated that this review will not take place at all until after we depart from the EU. Given the strong consensus on the need for a duty of care and the significant number of people with long-term conditions facing financial difficulties now, we believe this decision should not wait. Also, we understand that a discussion paper would only start a dialogue, exploring the need for a duty of care rather than formally consulting on its introduction. Assuming, at the end of a lengthy consultation process, that it was decided that a duty of care was needed, legislation would then be required which would then be translated into financial conduct rules. In other words, there would be a whole sequence of events that could take years to complete. So I would strongly urge the Government not to go down that very long-term route.

Of course, such a significant regulatory change needs due consideration—there is no doubt about it. However, experts from the Financial Services Consumer Panel and the Lords Select Committee on Financial Exclusion have already examined the issue and endorsed the call for a duty of care. Also, if the Government agree to an amendment to achieve a duty of care as set out, the FCA would, of course, consult on the detail of how such a duty would be translated into regulation, providing a full opportunity to ensure that the duty would work for consumers and the industry. I hope the Government will be sympathetic to this important amendment and to the points raised here.

Baroness Drake (Lab): My Lords, I, too, rise to support the noble Lord, Lord Holmes of Richmond. I congratulate him on using the opportunity of the Bill as it opens up the issue of how the FCA regulates claims management companies to seek to introduce the regulatory principle that an authorised person should act more in the best interests of consumers, particularly vulnerable customers. Consistently, not just today but previously, the noble Lord has put a powerful and informed case, particularly with regard to people with serious health conditions, including cancer, who have to cope not only with their illness but the financial impact of their diagnosis. That impact is felt not only in loss of income but in loss of access to or poor treatment by financial services companies. This, in turn, compounds their financial difficulties. The evidence of that negative experience is increasingly documented but people just know it themselves, intuitively. As Macmillan confirmed, and as referred to by the noble Lord, 90% do not even tell the bank when they have a problem, because they know that either it will be held against them or that there is little or no prospect that the firm will assist or offer support to mitigate the problems that their ill-health diagnosis has triggered. Not only will they face prejudice but they will be competing with customers who present a more attractive commercial prospect.

This growing problem will not be addressed simply by exhorting firms to behave better; the Government need to take much more of a lead. The Government have also been urged to take such an initiative by the Lords Select Committee on Financial Exclusion and the Financial Services Consumer Panel itself. A regulatory principle, as proposed by the noble Lord, Lord Holmes, would place an expectation on firms to support customers at times of vulnerability, change corporate culture towards the vulnerable and enable vulnerable customers to have the confidence to ask—and to ask earlier—for support, thereby enhancing their ability to manage their financial affairs.

As other noble Lords have mentioned, the FCA has committed to publishing a paper on duty of care but, by resting on that, the Government are kicking this problem into the very long grass. As the noble Lord, Lord Holmes, commented, the FCA has stated that it will not prepare such a paper until after our withdrawal from the EU. The paper will, as has also been said, only just start a very long process of dialogue, consultation, response, drafting and so forth. There will be a lot of people diagnosed with serious ill health in that time for whom the environment will not support them. There really is an urgency for those 4 million or more people who are expected to be diagnosed with cancer within the next 15 years.

The Government should seize the moment by taking the opportunity of this Bill to embrace the intent of the amendment of the noble Lord, Lord Holmes. I am sure the Minister will say that the amendment is either too extensive in its expectation or creates regulatory uncertainty, but it allows for the detail of how the regulatory principle of duty of care can be translated into the financial conduct rules by the FCA. Through its supervision, the FCA can identity and assess firms' conduct that may affect consumers' access. It has the power to make firms change their behaviour, but only where this is within its remit. Unfortunately, the FCA has no specific duty relating to consumers' access to financial services. The noble Lord's amendment strengthens the FCA's remit in respect of claims management companies by introducing that regulatory principle, which begins to define how and when those companies should act in the best interests of consumers.

Baroness Altmann (Con): My Lords, I, too, rise briefly to support my noble friend's amendment and congratulate him on laying it in the way he has. I certainly sympathise with him about wishing to put in

[Baroness Altmann]
measures which might originally seem out of scope and the need to be rather convoluted about it. I also echo the words of the noble Baroness, Lady Drake: these are issues that have been recommended by the Financial Services Consumer Panel, highlighted by the Lords Select Committee on Financial Exclusion and would go some way to help change corporate culture to support those who are going through serious, perhaps unexpected, illness and need time to adjust to their circumstances or to cope with their treatment.

The cancer charities are rightly raising this issue and it would be very helpful if the FCA were able to encourage firms to introduce some kind of special measures or special help in recognition of the circumstances that people will from time to time find themselves in—not only to help those people when they apply for that help but to encourage somebody who has had a cancer diagnosis, for example, to ask for help, which very often right now they do not even think of doing. Therefore, I hope my noble friend will take this matter to heart and take this opportunity to address an issue that could have serious and important social benefit.

Baroness Kramer: My Lords, I was a member of the Parliamentary Commission on Banking Standards, which looked at the duty of care issue. In the end, the commission made the decision not to pursue the matter and to empower the FCA to take up regulation and play a role. I thought at the time that was not a good decision but the argument was very much based on the idea that the remit of the Parliamentary Commission on Banking Standards was to do with banking, and that the new banking standards body would tackle many of these culture issues, of which duty of care is obviously an inherent part. Looking at the work of that banking standards body, I do not think most of us think it has followed that direction. I do not see any significant change in pressure from the various bodies, whether applied to banks or financial institutions, to make them become much more conscious of the needs of their customers, especially vulnerable ones.

I have never understood why the industry has resisted this duty. Frankly, it is akin to constraints on mis-selling as behaving in the wrong way towards any individual, providing them with an inappropriate service and not giving them adequate support to understand whether that is the service they need surely falls into that mis-selling category. Expanding the powers of the FCA to allow it to provide a more general approach through the mechanism of duty of care would make the FCA's job on issues such as mis-selling significantly easier. Therefore, I hope very much that the Government will take this on board. Frankly, the long-grass decision is very frustrating. Whenever I hear that an important piece of legislation is being postponed because we have the Brexit Bill, I begin to wonder whether we recognise appropriately the needs of the country.

Lord McKenzie of Luton: My Lords, this is an important amendment and we should congratulate the noble Lord on its introduction. It goes to the heart of what the regulation of claims management companies should be about, although I think we recognise that it is a surrogate for a broader duty of care issue. It is understood that there will anyway be a consultation around the regulatory principles that the FCA should adopt. Others have commented on the timing of that. Perhaps the Minister will let us have his view on whether the current timescale attached to that is appropriate.

The issue takes us back in part to our debates on earlier sections of the Bill, and to the current position of the FCA and the CMRU. As the Brady report sets out, the primary objectives of the CMRU are protecting and promoting the interests of consumers, protecting and promoting the public interest and improving standards of competence and conduct of authorised persons. This is quite different from the operational objectives of the FCA, which are to secure appropriate protection for consumers, protect and enhance the integrity of the UK financial system and promote effective competition in the interests of consumers.

Some of the "ideal organisational objectives" for claims management regulation proposed by the Brady review co-mingled some of this but included empowering consumers to choose a value for money service as well as maintaining adequate and effective access to justice.

While I support the noble Lord's proposals, I quibble the inclusion of "where appropriate". Where is this not appropriate? Certainly, the proposed new subsection (1)(a) places a strong and proper focus on consumers, which we support. It addresses dealing with conflicts of interest, and although it is implicit in the noble Lord's amendment, it seems desirable that transparency should feature in the requirements. However, the noble Lord has given us at least a starter for 10 on this important topic, and we look forward to the Minister's reply.

4.30 pm

Lord Young of Cookham: My Lords, this amendment, tabled by my noble friend Lord Holmes of Richmond and the noble Baronesses, Lady Meacher and Lady Greengross, seeks to include in the Bill a set of regulatory principles to be applied by the FCA in respect of claims management services. It has reopened one of the discussions which have run through the debates on the Bill about the interface between the SFGB and the FCA and the overall responsibilities of the FCA so far as the consumer is concerned.

I am grateful to my noble friend for the way he proposed his amendment, which would require that authorised persons act and manage conflicts of interests honestly, fairly and professionally. I do not think that anybody who has spoken in this debate—I am grateful to all noble Lords who have taken part—would disagree that these are worthy principles for the FCA to adhere to. I am sure that my noble friend is aware that the FCA already applies these principles in the way it regulates the conduct of business.

The FCA will give careful consideration to the appropriate design of the precise rules that apply to claims management services and how they fit together as an overall regime. Noble Lords may have looked up the FCA's principles for businesses. They already include the requirements to act with integrity, to,

"pay due regard to the interests of its customers and treat them fairly",

and to,

"manage conflicts of interests fairly".

There is a degree of overlap between those and the principles set out in my noble friend's proposed new clause. If one drills down and looks at the conduct of business rules, they say:

"A firm must act honestly, fairly and professionally in accordance with the best interests of its client".

Those three adverbs are exactly the same as the ones in my noble friend's proposed new clause.

When designing new rules for claims management companies, the FCA must take into account its statutory operational objectives, including its objective of securing an appropriate degree of protection for consumers. The FCA will consult publicly on the proposed rules for claims management companies. Here, I may get into trouble with air traffic control. I am not quite sure whether there was an implication that it was going to wait until after we had left the EU before consulting publicly on the rules for claims management companies. As far as I am concerned, there is no need to wait at all: it should get on with it—"Lights touchpaper and retires."

I therefore hope that I have allayed concerns that there will be an unreasonable delay. It will consult, and when it does, I am sure that it will take on board the points made in this debate. I noticed that the words "duty of care" do not appear in the proposed new clause, but I hope they can be embraced in some of the principles that we have been discussing.

We have every expectation that the FCA will create appropriate rules for claims management companies that will extend existing principles in FCA rules regarding integrity and the interests of customers to claims management companies. I touched on those principles a moment ago. Therefore, our debate this afternoon is not so much about the destination—on which we agree—but about the vehicle. The Government's view is that there is an existing framework for the FCA to set out its principles—I referred to that. As there is an existing framework for conveying its objectives and its principles for businesses, the regulatory principles do not need to be enshrined in the Bill, which is what my noble friend suggested. The Government are sympathetic—they always are—but this is not a necessary way forward. For that reason, I hope that I can persuade my noble friend to withdraw his amendment.

Lord Holmes of Richmond: I thank my noble friend for that response. It would certainly be a courageous Back-Bencher who sought to push an amendment this afternoon when his Whip is on the Front Bench. But—I thank all noble Lords who participated in the debate.

I am grateful to the Minister for taking us through some of the rules set out in the handbook. Indeed, much in there is worthy of note. I wish to put on the record in *Hansard* that I believe that the FCA does an extraordinary job in a number of ways, not least—departing slightly from this issue—in its regulation of fintech, which leads globally in London and the UK and is always worth a mention in your Lordships' House.

Having said that, despite what was read from the handbook, it is pretty clear that there is a need to consider a duty of care. On the specific issue of claims management services, which we are discussing this afternoon, and indeed in general terms, I am grateful to my noble friend for, as he put it, lighting the blue touch paper. I hope that it does indeed burn bright and that there is action on a consultation on these points by the FCA sooner rather than later, in 2019.

The Minister says that it is not about the destination; we are merely discussing the vehicle. It seems clear that from his point of view, the vehicle would be an aeroplane. However, we are probably not just talking about the vehicle but discussing the timetable and having a timely duty of care in respect of claims management services and generally across all financial services. It would be excellent for the FCA to have that additional remit, which would sit alongside all its other services.

I am grateful to my noble friend the Minister but I will certainly look at what we can potentially bring back on Report. However, for the time being—certainly as he was formerly a Chief Whip in the other place and, even more significantly, as he is my Whip in this place—I beg leave to withdraw the amendment.

Amendment 70 withdrawn.

Schedules 4 and 5 agreed.

Clause 17: Power of FCA to make rules restricting charges for claims management services

Amendment 70ZZA

Moved by ***Baroness Altmann***

70ZZA: Clause 17, page 14, line 29, at end insert—

"(1A) The power of the FCA to make general rules includes the power to make rules that the losing defendant to any claim brought by a claims management company shall, subject to subsection (2), be liable for any charges payable under or in connection with a regulated claims management agreement."

Baroness Altmann: My Lords, Amendment 70ZZA seeks to give the FCA the power to direct providers who are found liable for compensation to pay the claims management company's fees direct, rather than the CMC taking money out of the customer's compensation award. The aim of this change is to drive different behaviour in the market and bring about better outcomes for customers by making it more expensive for providers to pay redress to customers who use a CMC than it is in respect of those who claim direct.

It is clear that claims management companies are extremely profitable, with the National Audit Office reporting in February 2016 that CMCs are estimated to have earned between £3.8 billion and £5 billion just from PPI mis-selling compensation between April 2011 and April 2015. That means that consumers could have had billions of pounds more to spend but, instead, some of their compensation has gone to firms that have done very little work for the payments. Indeed, most people could have claimed compensation on their own, particularly if it was made much easier for them to do so. If providers were required to pay the CMCs directly rather than customers funding them, there would be an incentive for providers either to

[Baroness Altmann]
proactively contact customers to offer compensation or to make the process of applying for compensation much simpler, thereby encouraging more people to claim directly and saving the extra costs to the provider.

Claims management companies exist because the process of claiming compensation is not straightforward. Again, PPI is a good example of this and it highlights that the current redress practices are not working well enough for consumers. Therefore, as well as helping consumers keep every penny of their compensation, the amendment could also help to improve the redress system overall. I venture to suggest that it could be an alternative and possibly achieve better overall outcomes for consumers than banning claims management companies from charging fees at all.

Clearly, if the CMCs cannot charge for their services they will not remain in operation. However, simply doing this would address only one part of the problem: it would still not give firms any incentive to make it easier for people to claim compensation themselves, nor would it encourage the firms proactively to offer compensation in cases where there is a clear entitlement. Therefore, the risk would be that customers entitled to compensation would not receive their redress.

This measure would still benefit from being combined with a reasonable cap on claims management companies' charges. I beg to move.

Lord Young of Cookham: My Lords, the amendment tabled by my noble friend Lady Altmann would, in effect, give the FCA a power to make rules requiring firms at fault rather than consumers to pay the costs associated with claims management services and she explained why this would a popular step. The FCA would be able to use such a power only in respect of firms it regulates.

I understand why this idea might seem appealing. The approach could, for example, incentivise those firms that the FCA regulates to be more proactive in offering compensation and dealing with consumer complaints, although this would be a rather indirect way of trying to do this. There are risks that such measures would lead to an increase in speculative and unmeritorious claims by CMCs, which could in turn have an adverse impact on consumers by burdening consumer redress schemes such as the Financial Ombudsman Service. Hopefully consumers will be helped by the ability to cap the fees in certain circumstances, therefore reducing the risk of the consumer not getting as much as they would otherwise be entitled to.

We are not ruling out the possibility that in some circumstances, the FCA might consider it appropriate to make a rule which has the effect that my noble friend seeks. This is within the FCA's existing rule-making powers—subject of course to the normal principles and procedures which govern the FCA's rule making, including public consultation and the preparation of a cost-benefit analysis.

However, as I mentioned earlier, such a rule could only apply in respect of defendants which are firms that the FCA already regulates. Claims management services include personal injury cases, and certain housing disrepair and employment cases. The FCA does not regulate defendants in that wide range of cases, so its rules could not apply to them.

Given the possibility of the FCA, within its existing rules, moving in the direction my noble friend has suggested, I hope she might withdraw her amendment.

Baroness Altmann: I thank my noble friend for his courteous and helpful reply.

I have been working with the consumer group Which? and it has been very forthright in explaining that it believes this would help the market and consumers overall. However, in light of my noble friend's saying that the FCA already has the powers and may even be considering such a measure in certain circumstances—I am delighted that we have aired this issue in Committee—I beg leave to withdraw the amendment.

Amendment 70ZZA withdrawn.

Amendment 70ZA

Moved by ***Baroness Greengross***

70ZA: Clause 17, page 14, line 30, after "subsection (1)" insert "by the end of the period of two months beginning with the day on which this Act is passed"

Baroness Greengross (CB): My Lords, the noble Baroness, Lady Meacher, apologises to the House that she is unable to be in her place. However, we both support the objectives of the Bill to protect people from unscrupulous practices by CMCs.

The spirit behind the amendment, as we are all aware, is to ensure that transitional provisions are in place in time to safeguard people who face the risk of a significant detriment as a result of the mis-selling of payment protection insurance. It is of the utmost importance that plans are in place as soon as possible, to respond to the Financial Conduct Authority's campaign to inform people about the deadline for compensation claims for the substantial numbers of people affected.

4.45 pm

Currently, consumers incur fees of 30% or more when using a claims management company, when they could achieve the same results by claiming directly from lenders without charge. Citizens Advice continues to see people with problems caused by CMCs. Half of all those cases refer to complaints about up-front or final fees. Last year, the average up-front fee paid by CAB clients was £477. Many clients have been misled about whether they had to pay fees at all; others paid fees up-front, only to be told they did not have a valid claim and therefore they received no refund.

We understand that, as the Bill stands, the FCA may not be in a position to comply with the duty to address CMCs' bad practices before early 2019. However, the FCA has already begun its campaign to alert consumers to its deadline of August 2019 to make complaints about PPI. Can the Minister advise the House on whether our understanding of the early 2019 date is correct?

We hope the Government will agree that it would be helpful for the transitional arrangements that could be put in place within two months of the passage of this Bill to give the Claims Management Regulator the power to cap CMC fees before regulation is transferred to the FCA. We would be very grateful if the Minister would comment on the possibility of introducing such a provision. We understand the CMR is well prepared to do that. The Ministry of Justice consulted on introducing such a cap for financial claims in February 2016. It would appear that the work within the CMR to implement its proposals had reached an advance stage by the time the general election was called.

There is a legislative precedent to transfer the power to the CMR in the interim. The Financial Services Act 2012, which transferred consumer credit regulation from the Office of Fair Trading to the FCA, included an interim power for the OFT to suspend consumer credit licences, under Section 108. The OFT exercised that power twice before its abolition. We regard the interim protection provided by our amendment to be crucial.

Before ending this short contribution, can I ask the Minister to assure the House that the FCA will have powers to regulate the activity of CMCs, even when they employ a solicitor to make claims, thus bringing it under the regulation of the Solicitors Regulation Authority? If that does not happen, we may need to return to the issue on Report.

I realise that the amendment, as it stands, does not achieve its intended aim, due to a tabling error, but I would be grateful to the Minister and the House if the issues behind the spirit of the amendment could be explored further. I beg to move.

Baroness Kramer: My Lords, I support the amendment. We all understand that the amendment has drafting problems, but the intent behind it is an important one: to avoid delay in taking action against pernicious behaviour by some of these companies.

Lord McKenzie of Luton: My Lords, I will be brief in a similar vein. We support the thrust and spirit of the amendment, which is to make progress on the cap before we get to the stage where PPI claims have all gone through the system. It would be a tragedy if people continued to lose significant amounts of money from claims management companies when there is a clear remedy available.

This also partly picks up the issue, which we touched on earlier, regarding SRA regulation being less rigorous than MoJ regulation of CMC activity. The noble Lord felt that that was not a problem, but as I understand it a thematic review of solicitors who undertake claims management activities has been commenced, with the intention of strengthening their approach to regulation on this activity. The noble Lord may be able to confirm that or help us, but it seems to be a clear worry of some whether being able to escape CMC regulation because a solicitor is on board—albeit that brings in a different form of regulation—is a fair way to proceed.

However, the substantive point is to have the opportunity to get that cap in place well before the PPI claims have run their course.

Lord Young of Cookham: My Lords, the amendment tabled by the noble Baroness, Lady Greengross, seeks to require the FCA to make rules restricting fees relating to claims for financial services within two months of the Bill receiving Royal Assent. I agree wholeheartedly with what the noble Baroness and others who have taken part have said on the need to ensure consumers are not charged excessive fees by companies offering claims management services. I also appreciate the Committee's wish to ensure this protection is given to customers of CMCs as soon as possible. However, it will not be possible for the FCA to make all the necessary rules within two months of Royal Assent. That is indeed an ambitious target.

The Bill puts a duty on the FCA to make rules restricting charges for regulated claims management activity relating to financial products or services. The duty is broad so as to give the FCA the flexibility to design an appropriate cap relating to a wide range of claims for financial products and services. Conceivably, different types of claim might require different levels of cap. To ensure the cap is appropriate, the FCA will need to obtain evidence from across the sector, analyse that information to develop suitable proposals, prepare a cost-benefit analysis and consult on draft fee cap rules. This will, necessarily, take some time. I am sure noble Lords will agree that we need a robust cap, developed on the basis of sound evidence and consultation.

The Government are giving the FCA the tools it needs to start that work as soon as possible. Schedule 5 to the Bill gives the FCA the information-gathering powers it will need to do the work, and Clause 19 provides that those powers will come into force on Royal Assent. However, the scale of the work that needs to be done means it cannot do it all within a two-month window.

Noble Lords have quite rightly raised the current campaign on PPI and how it impacts on the proposals in the Bill that may not come into force for some time. They have asked what might be done in the meantime, which is a very good question. The Government remain committed to establishing a tougher regulatory regime for CMCs. We are considering further the nature of any fee controls that could be introduced before the FCA's new powers are switched on, using the helpful and comprehensive range of responses to the Ministry of Justice's consultation. Indeed, this could include a ban on up-front fees. To that end, the Claims Management Regulator is working with the FCA. We are taking the opportunity in the Bill to incorporate a duty on the FCA as the new regulator to develop and implement a fee cap for financial services claims. As that debate get under way I am sure those concerned will take on board the concerns expressed in the debate to make sure CMCs do not use the benefit of any hiatus to unduly disbenefit—

Baroness Kramer: Will it be possible for the Government to bring forward some appropriate language that achieves that when we get to Report so it becomes a locked-in proposition rather than one that has various legislative stumbles before it can be achieved?

Lord Young of Cookham: I will do what I can to shed some more light on those issues. As I said, discussions are going on to see whether we can bring

[LORD YOUNG OF COOKHAM]
those proposals forward. We will certainly update the House when we come to Report.

In response to the noble Lord, Lord McKenzie, this is a similar point to one he raised earlier, and the answer is very similar. The CMRU regulates CMCs, while the Solicitors Regulation Authority regulates solicitors firms conducting claims activities—I think that I am reading exactly the same note as I received earlier. The full scope of claims management services for the purposes of FCA regulation will be defined through secondary legislation, including the extent of any exemptions. The Government want to ensure that there is a tougher regulatory regime and greater accountability for CMCs, while ensuring that solicitors are not burdened with unnecessary regulation—the more I read, the more familiar the sentences become. Both the scope and the nature of exemptions will be drafted to reflect these priorities.

Against a background of what I have said about the Government seeing whether, if we cannot—as we cannot—implement the full Act within two months, something can be done in the meantime, and against an undertaking to update noble Lords by the time we get to Report, I hope that the noble Baroness might be able to withdraw her amendment.

Baroness Greengross: I thank the Minister and the noble Baroness, Lady Kramer, and the noble Lord, Lord McKenzie, for their support on a matter which obviously they and, I hope, others feel sympathetic about. I hope that we can discuss the issue with Ministers before Report and make sure that we can in some way protect these very vulnerable consumers, as everybody has agreed is necessary. On that basis, I beg leave to withdraw the amendment.

Amendment 70ZA withdrawn.

Amendment 70A

Moved by ***Lord Hunt of Wirral***

70A: Clause 17, page 14, line 33, at end insert ", and claims for personal injuries, within the meaning of the Civil Procedure Rules 1998."

Lord Hunt of Wirral: My Lords, I declare my interests as set out in the register.

Who does not enjoy a holiday in the sun? But your Lordships should be warned, for the ingenious claims farming industry has us all in its sights—or at least those noble Lords who take package holidays to Spain or other more exotic destinations. ABTA, the Association of British Travel Agents, records that, since 2013, its members have reported an increase of more than 500% in the number of holiday sickness claims, with no corresponding rise in reported sickness levels in resort.

We now hear stories of CMCs targeting holidaymakers while still in resort to make claims, and of claims being made long after the holiday—the time limit is up to three years—when no real verification of the facts is possible. No doubt many such claims are the result of cold calling, although I suppose touting for business in a Spanish resort might more properly be dubbed hot calling. At the heart of this new surge of claims is the ability of CMCs to obtain a commercial return from a combination of deductions from the claimant's damages and from side arrangements with solicitors and medical report providers.

Amendment 70A proposes to extend Clause 17 to cap the fees that CMCs can charge in claims for personal injury, as well as in claims for PPI and financial mis-selling. Most of Part 2 of the Bill deals with transferring existing powers to the FCA, but Clause 17 represents an extension of those powers. It gives the FCA power to cap the fees charged by CMCs in certain types of claim.

Clause 17(2) requires the FCA to make such rules to cap fees only in respect of claims relating to financial products or services. I respectfully suggest that that is not wide enough and we should extend that now. This amendment would extend the requirement to cap fees to claims for personal injuries—beyond holiday sickness claims, which is wholly intentional, as I will explain.

5 pm

Over the last 10 years, we have seen significant rises in claim numbers for, first, whiplash, then noise-induced hearing loss, then clinical negligence and now holiday sickness. All have been driven by often quite distasteful and misleading advertising setting out the claims from CMCs. Indeed, you can pick up leaflets in the waiting rooms of hospitals and GPs' surgeries telling you how to bring a clinical negligence claim. Such advertising campaigns are expensive and can run only if the revenue they generate is substantial and lucrative. My noble friend the Minister may say, "Well, you have the Advertising Standards Authority". I agree: it is sometimes called in to intervene. However, it can address only the adverts themselves. Its remit cannot run to controlling the flow of money from the claims that ultimately pays for the advertisements. Action is urgently needed to cap the amount these CMCs can take from consumers to fuel such campaigns.

Amendment 70B, in my name, seeks to tackle a different part of the same problem. In an earlier debate, my noble friend the Minister mentioned that comprehensive review of the claims management industry taken forward by the amazingly effective Carol Brady. She notes in paragraphs 6.5 and 6.6 that:

> "Current rules state that, before seeking to enter into a contract with a client, CMCs 'must make reasonable enquiries as to whether the client has alternative mechanisms for pursuing a claim and must advise the client unambiguously of ombudsman schemes or other official means of redress.' … Stakeholders from the CMC industry feel this is sufficient requirement for CMCs to inform consumers of alternatives. However, Citizen's Advice research (2014) found that 39% of people who had used a CMC to make a claim didn't know that they could have made the claim themselves, and almost half said that they if they had been aware of the free alternatives, then they would not have used a CMC".

That is all a direct quote from Carol Brady's report. She went on to recommend that:

> "CMCs should signpost consumers to alternative claim resolution channels (e.g. direct to the firm/ombudsman) at the appropriate times when communicating with consumers".

I have no sense that this problem has improved or that the recommendation has been acted upon, although it has been cited by Ministers from time to time in meetings.

I have just had the opportunity of meeting with ABTA and was told that it recently set up its own free service for resolving holiday sickness claims. I am sad to report that take-up is slow. The revenue available to CMCs by pushing claims in another direction remains all too alluring. My amendment seeks to give the requirement teeth. In my opinion, the only threat effective in compelling compliance by CMCs is to denude them of their right to charge for their services. A robust approach of this kind would naturally require substantial safeguards to be put in place. My amendment aims simply to probe the Government's intentions on this important point. Does my noble friend the Minister intend to implement this vital recommendation from the Brady report? I would be happy to outline what I believe is the right approach if he were, once again, kindly to agree to meet me and allow me to persuade his officials and him of this. I beg to move.

The Earl of Kinnoull: My Lords, again, I support the noble Lord, Lord Hunt of Wirral, and agree with every word he said. I thought it would be helpful to give a few figures for just how raging this fire is.

The first figure comes from CEHAT, the Spanish hotel and apartment trade body, which estimates that over the past three years the Brits have cost its members €100 million in claims. That is just Spain and just members of that trade body. The second is a wonderful statistic, which comes from an unnamed big tour operator in the *Guardian* on 31 July. It said that from July to August 2016 it took to Europe 750,000 British customers, 800,000 German customers and 375,000 Scandinavian customers. The Scandinavians lodged 39 claims, the Germans lodged 114, and the British lodged around 4,000. One can see just from those facts how much of a fire is burning here and what an important issue the noble Lord, Lord Hunt, has zeroed in on. I can say only that I support his thinking wholeheartedly and hope he is feeling very persuasive, providing he gets to see the Minister and the officials.

Baroness Altmann: My Lords, I, too, support my noble friend's Amendment 70A. He has highlighted a very important issue. It is right that in Clause 17 the Government are looking to cap the charges made by claims management companies, but this should apply to personal injury claims as well as those for financial products and services. The cap on charges is also important because there will be problems in future associated with the increased use of the small claims track when it is extended to cover cases up to £5,000 for personal injury claims.

I was going to quote the same figures as the noble Earl, Lord Kinnoull, but I have also heard from a number of holiday operators and other representatives of the travel industry that resorts are now threatening to sharply increase prices for British holidaymakers or even withdraw all-inclusive packages from the UK market altogether. This situation is damaging the reputation of British holidaymakers and I support my noble friend's amendment.

Viscount Trenchard: My Lords, I, too, strongly support my noble friend Lord Hunt's amendments. I was completely horrified to hear the statistics relayed by the noble Earl, Lord Kinnoull. It does not surprise me because I travelled to Spain last summer—not on a package tour but they nevertheless somehow know where you are and I started to receive unsolicited texts and emails from people inviting me to make claims for the bad food or being sick. I just deleted them, of course.

I also agree with my noble friend Lady Altmann that, where possible, the cap on fees should be broadened because I would have used a CMC to pursue a claim against an airline. This was not this summer but the summer before, when our flights were cancelled and I tried to get refunded by an airline. My daughter had booked on the same flights through a different travel agent, but in the end neither of us has made a successful claim, although we are both entitled to. It was too difficult because the airline had contracted the flight to another airline. When you are entitled to a refund for a service that was contracted but not delivered—as in the cancellation of a flight—then, as the Committee is well aware, it is made extremely difficult for you to receive reimbursement. When I received an unsolicited email from a CMC about cancelled flight claims, I was quite tempted to use it. But even though I had virtually given up on the claim against the airlines, I decided not to because a quick examination of the company made me suspicious. I also thought it would absorb in fees most of what it might get back, so I decided not to proceed.

Once such companies are capped in what they can charge, I will feel much happier about using their services because of what they specialise in and because it is made extremely difficult for individuals to pursue refund claims themselves. In many areas there may be a route whereby the individual can do the same thing as a CMC, and do it for free, but it is often made so difficult. It is intended that people will get bored or be too busy to go on waiting, while listening to music and pressing "1" or "2".

Lord Stevenson of Balmacara (Lab): My Lords, I support the amendments in the name of the noble Lord, Lord Hunt. Once again, he has made his case brilliantly and without having to resort to metaphors about drones or anything else. He seemed this time to be firing a set of missiles rather closely to his right. I am sure progress can be made on this important issue and want to make two points.

First, to pick up on the point made by the noble Baroness, Lady Altmann, in the representations that many of us have received there was a slightly larger package than just the question of claims management companies. There was a question about the small claims limit going from £1,000 to £5,000 and I would be grateful if the Minister, when he responds, could give us some better information about how that impacts on this issue. There is also a narrower question about an amendment to the public liability protocol, which I do not fully understand. But I hope the Minister will rise up in his helicopter, or whatever he is currently riding in to get to his scenic views, to give us a view of what this is about. There is an exception for claims arising overseas in these areas, which seems a little unfair because if a claim is genuine then it should be possible to mount it in whichever jurisdiction. If the

[LORD STEVENSON OF BALMACARA]
package travel regulations are UK law and need to be resolved in that way, it seems odd if an exception is made for those who want to claim from an overseas position.

My other point would be that while I think we are all in the same place in wanting to see this issue resolved, I hope it will not be at the expense of genuine illnesses. The Minister might want to make sure that there is an avenue open when he comes to respond. Rather like the noble Viscount who has just spoken, I had a problem with a holiday—not a package holiday but one booked through an agent. It was in Italy, at a villa which was a nice place to be, but it became overrun with rats; I think this was on day three. So numerous were these creatures, and of such an extraordinary puissance, that they climbed up on to the veranda and entertained us while we tried to eat. They then ran round the bedroom while we tried to sleep, knocking over our toothpaste and other things in our bathroom. We eventually had to retreat to the top floor of the villa and barricade ourselves in.

The response from the locals was that they were "ratti", which I think is the Italian for rats. We were therefore fairly clear what they were. At one point the locals produced some materials to capture these rodents. It consisted of a large plane of wood, about the size of the Dispatch Box, on which was placed some translucent gooey substance. They did not want to kill these things—they were very eco-friendly and against that—but just wanted us to capture them. But the blooming things were so strong that when one ran up and landed on that sticky substance, it could not quite get all four legs off at once but it got one limb up and then just hopped off. It was not very effective.

We sued the company that let us this property. The interesting thing about suing holiday companies—I am sorry, this is a long way into my point—is that holidays exceptionally attract damages because holidays are not repeatable instances. In other words, under English law you can claim for exemplary damages for a holiday lost in a way that you cannot for other damage. That is an issue that need not detain us in the Bill, but given that that particularity exists in the law, I hope that the sense of the amendments would not damage genuine claims. Illness does occur on holiday, and sometimes rats invade, and we would want to make sure that people can sue properly and, given that it was a holiday that was spoiled, get the additional money available without any recall or loss.

5.15 pm

Lord Young of Cookham: My Lords, I am sure the noble Lord, Lord Stevenson, will find himself on "Yesterday in Parliament" because I am not sure there is much else to report from your Lordships' House today apart from that moving explanation of a very unfortunate holiday.

My noble friend's Amendment 70A seeks for the duty on the FCA to cap fees on financial services claims to include personal injury claims. I am grateful to my noble friend for outlining the reasons behind his amendment and to all noble Lords who have taken part and shared with us their various experiences on holiday. It has given us the opportunity to discuss the different types of claims management services that the FCA will be responsible for regulating.

Like other noble Lords, I am irritated by the advertisements on some radio stations encouraging me to recollect what happened three years ago and to apply for compensation. Other noble Lords made it clear that they are against this claims culture and want to see action taken.

CMCs manage claims in different ways. Those dealing with personal injury claims, such as holiday sickness claims, typically focus on marketing activities—we have heard how people are approached overseas—and refer clients to lawyers. They do not usually charge consumers directly, so the opportunity to provide customers with poor service and charge high fees is greatly reduced. To that extent, they are different from some of the activities that we have been talking about.

In the financial services claims sector, CMCs tend to represent clients through the claims process and charge them directly for this service. Evidence suggests that the average completion fee for financial services claims is 28% of the claim value, despite there being very little work involved in processing many financial services claims. The most common example, as we have heard, is PPI, where the consumer only needs to complete and submit a form to the lender. In 2015-16, 95% of complaints about CMCs related to financial services claims; only 2% related to personal injury. However, I recognise that markets and business plans can change. That is why the Bill provides the FCA with a broad power to restrict fees across the range of claims management services it will regulate. It will be up to the FCA to decide whether to exercise this power, based on evidence about how the market is operating, so it could extend it to holiday sickness, which we have heard about in this debate.

My noble friend and other noble Lords referred specifically to holiday sickness claims and the apparent propensity of Brits to be ill overseas more than other Europeans. The Government are concerned about the apparent recent increase in this type of claim. Tackling fraudulent claims is a key priority, and the claims management regulator and the Solicitors Regulation Authority have taken significant steps to deal with abuses in this area. I recall reading in the press that a case is imminent in this country regarding an alleged fraudulent claim, and I also read that prosecutions are taking place in Spain, I think.

The Claims Management Regulation Unit recently cancelled the licence of a CMC responsible for pressuring people into making holiday sickness claims. On top of this, the Solicitors Regulation Authority recently issued a warning making it clear that any solicitor handling holiday sickness claims must carry out proper due diligence. They must make sure they advise clients properly and are dealing with a genuine case where the client is seeking legal help of their own accord.

There is a difference between personal injury and financial services claims management services, so it is logical to impose a duty on the FCA to cap fees for financial services CMCs only. As I said a moment ago, it does have a broad power to restrict fees across the range of claims management services that it regulates.

Amendment 70B provides a useful opportunity to discuss some of the recommendations put forward in the *Independent Review of Claims Management Regulation*. My noble friend's amendment would provide for a 0% cap where free alternative claims routes are available, except if it can be shown that the claimant was provided proper information on alternative free methods to claim.

As the Committee is aware, and as my noble friend reminded us, we accepted the recommendations of the Brady review, including the one my noble friend refers to, which was to ensure better signposting to alternative claims resolution channels in order to enhance consumer awareness and help consumers make informed decisions. I am confident that the FCA will take the independent review's recommendations into account as it develops the new regime.

I would also note that the FCA already has the power to make rules requiring firms to signpost customers to free alternatives, and that power will be available, when the Bill hits the statute book, in relation to claims management companies. It has already made rules to that effect in relation to debt counselling, debt adjusting and the provision of credit information services. In each of these cases, firms must indicate that free services are available and that customers can find out more by contacting the Money Advice Service in their first oral or written communication with their customers. In addition, their websites must provide a link to the Money Advice Service. The FCA already has the power to make rules that would signpost customers to free alternatives, as well as substantial powers to enforce those rules.

I return briefly to the issue of the small claims threshold, which was recently changed. I think it best to write to the noble Lord on the impact of the change to that limit. On overseas claims, the Bill gives the Treasury a power to define when a person should be treated as carrying on claims management activity in England and Wales. The intention is that CMCs approaching consumers in England and Wales and taking forward their claims will be subject to FCA regulation as far as possible. In relation to holiday sickness claims, a CMC carrying out all of its marketing and advertising in Spain is outside of the England and Wales jurisdiction, but if it refers the details on to a UK law firm, that action would be captured by CMC regulation. I hope that answers the noble Lord's query.

Against the background of what I said earlier, I repeat my acceptance of my noble friend's offer of a meeting and hope he might feel able to withdraw his amendment.

Lord Hunt of Wirral: My Lords, I am grateful to all those colleagues who participated in this debate. I always want the noble Earl, Lord Kinnoull, to participate in debates in which I have spoken because he supplies all the information which I lack. His statistics were staggering and worrying, and once again an indication that something has to be done. I am also very grateful to my noble friends Lord Trenchard and Lady Altmann. I would just say to the noble Lord, Lord Stevenson of Balmacara, that his story will follow us for a long time to come. It is the sort of nightmare from which fresh and better laws are born.

We must find ways of ensuring that genuine claims are dealt with properly. ABTA would say that is has now set up this free service which will deal promptly and well with that sort of situation. No doubt the Minister is overwhelmed by the Cross-Bench, Liberal Democrat, Conservative and Opposition support that has come today for the amendments I have had the honour to move. I detect that there is already a willingness on his part to find a solution, which is why, in anticipation of the many meetings we will hold between now and Report, I so readily beg leave to withdraw the amendment.

Amendment 70A withdrawn.

Amendment 70B not moved.

Amendment 71

Moved by ***The Earl of Kinnoull***

71: Clause 17, page 15, line 6, at end insert—

"(6A) The FCA must provide reasonable assistance in the interpretation of the rules under this section for those providing claims management services."

The Earl of Kinnoull: My Lords, I declare my interests as set out in the register of the House, particularly those relating to the non-life insurance industry.

At Second Reading I commented on the vital nature of access to justice. It is of central importance that those who are not in a position to get legal or other assistance towards making valid claims can do so via no-win no-fee arrangements with professional firms and at reasonable cost. The very excellent claims management regulation review already referred to by noble Lords, led by Carol Brady, is very firm on this point. I remind the House that her executive summary says:

"The overwhelming majority of stakeholders, including the banking and insurance industries which have been hardest hit by CMC misconduct, argued that there is a legitimate need for CMCs and that the Government should not seek to regulate them out of existence".

The central role of the FCA is clear. Its regulation must be proportionate and helpful.

Regulators in financial services generally charge the cost of their regulation back to those whom they regulate. So one way of assessing how heavily you are regulated in any jurisdiction, and the burden, is simply to compare the relative costs of the regulation. The British Insurance Brokers' Association, using London School of Economics numbers, supplied me with some data earlier in the week. It reports that the UK—for insurance broking, which is just one of the very large number of areas that the FCA regulates—is more than twice as expensive as Ireland, Hong Kong and Bermuda, and that that multiple is bigger again for France and Germany.

It is not just the cost or weight but the fact that, in the insurance space at least, you cannot ring up the FCA and get help in interpreting what for our industry is 1,000 pages of regulations on a situation-specific basis. It simply will not answer the question but will refer you to the regulation and say, "Go and get some advice from somebody else if you need it". That is

[The Earl of Kinnoull]
completely different from how regulators in other jurisdictions around the world operate, as being helpful to those whom they seek to regulate helps a jurisdiction become competitive internationally. This amendment seeks to ensure that there is a cultural change for the FCA where the CMCs are concerned. I fear that an unhelpful regulator would act as a deterrent to the formation of new small CMCs. It is vital that new CMCs can be born to maintain that access to justice that I started with, just as it is vital that a proportionate regulator deals with unsatisfactory CMC behaviour.

I would point out one more thing—that if you get regulation wrong, the FCA can reach through the corporate veil and get at the regulated persons connected with the firm concerned. They can be fined and sanctioned generally in all sorts of ways. If a regulator is unhelpful it is quite a disincentive for individuals who might be thinking of forming a small charitable CMC to help people with certain things, and that disincentive would impede access to justice. I am concerned, accordingly, that good firms providing access to justice might be handicapped or worse, and yet the bad firms may be able to cope with the regulatory burden. In short, this is a vital role for the FCA. This amendment is aimed at ensuring a cultural change in the FCA, and helping CMCs to interpret what I am sure will be complicated and long regulations. I beg to move.

5.30 pm

Lord Stevenson of Balmacara: I rise briefly to support the noble Earl, Lord Kinnoull, in his quest for a more equitable arrangement with the powers that be in terms of the FCA. I think he would be the first to admit that this is a recurring theme in many of his contributions to debates around financial guidance and similar issues. On the surface, it seems extraordinary that a body so well resourced and organised as the FCA should be so diffident in coming forward with helpful advice to get people to work better and more constructively within the sector it is regulating.

This amendment has had to be framed to get it into a debate around claims management but it touches on a much wider issue about all the aspects of the FCA that we are talking about. Indeed, it is about an attitudinal and possibly a conduct approach, which is also part of it. I hope that there is a way to get this matter resolved one way or another because it is part and parcel of the other issues we have talked about in terms of duty of care and responsibility for consumers and the vulnerable. If the FCA—and indeed, by implication, the SFGB—took a more interactive and supportive stance, we would all be better off.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, it is my turn to rise to my feet to support my noble friend Lord Young, who has been more than a co-pilot for this part of the Bill. Perhaps I see myself more as flight observer.

The amendment moved by the noble Earl, Lord Kinnoull, aims to ensure that the FCA helps firms to interpret the FCA rules. I absolutely accept and understand his reasons for tabling this amendment in terms of the importance of that interpretation and in order to be helpful. I agree that ensuring that firms understand the FCA's rules will be vital to the success of this new regulatory framework, and I would like to draw the noble Earl's attention to the steps the FCA already takes to ensure that firms are well informed of regulatory requirements.

The FCA undertakes a range of communications activities, including monthly e-newsletters summarising all the main changes that have taken place over the previous month and a programme of regional events across the UK for firms to discuss regulatory issues. The FCA holds round tables and other briefings on specific issues with trade associations and firms to help them better understand how new policy may impact their business models. It also maintains a smaller business practitioner panel which represents smaller regulated firms which may not otherwise have a strong voice in policy-making. I have noticed that the noble Earl has, quite rightly, throughout our debates in Committee focused on those smaller businesses that may not have their own strong voice.

On top of this, the FCA is aware of the need to engage with firms about new regulatory provisions. Building on the approach taken in the consumer credit transfer, the FCA will develop a clear communications strategy to engage with firms as a key part of the transition process. The FCA is committed to alerting firms to changes in regulation that affect them and has several well-established channels to support this—for example, in its regulation round-up, which is a monthly e-newsletter sent to more than 50,000 recipients summarising all the main changes that have taken place over the month. That will have links to further information on the FCA website. There is a programme of monthly regional events called "live and local", across the UK, for firms to discuss the changes, and round tables and other briefings on specific issues. In addition, the FCA sends over 500 speakers each year to talk at industry conferences and events to discuss regulatory issues, and maintains regular relationships with trade associations.

These actions will help to support CMCs through the authorisation process as they work to meet the FCA's regulatory requirements in the provision of claims management services. The FCA's strategic objective is to ensure that the relevant markets function well, which will ensure that the market for CMCs' services functions well. Communication on that basis is vital. The FCA also has a competitive objective, which requires it to have regard to the ease with which new entrants can enter the market. Of course, being able to understand the rules is critical to that.

I hope that the actions that I have set out help to support CMCs through the authorisation process. This short debate with the noble Earl and the noble Lord, Lord Stevenson, will, I hope, give a nudge to the FCA that it is of critical importance that it undertakes this important issue with care to make sure that the process works. For those reasons, I hope the noble Earl will withdraw his amendment.

The Earl of Kinnoull: I am very grateful to the Minister for her words, which I shall have to read a bit more carefully in *Hansard*. I also thank the noble

Lord, Lord Stevenson of Balmacara, for his generous words. I am sorry that he has had to listen to me a number of times on the FCA.

The list of things that the FCA is doing, which the Minister told us about, is much more to do with transmitting than receiving. You do not want to turn up to a round table as a business and talk about a new idea; you want to be able to talk about the new idea with your regulator and say, "Will this new idea work? I am thinking of doing it. Does it fall within section 772B on page 956 of your regulations?". That is the sort of helpful thing that other regulators around the world have been able to do. In trying to fine-tune our honey trap for UK financial services, we are out of step with the rest of the world—and good regulation is one way in which we will attract more businesses in future to come to British markets.

I hear what the Minister says about that issue and wonder whether it might be possible for her to reflect a bit further about what I am saying, which is a different thing from all the various round tables and letters to 50,000 people and so on. It is about having the ability to have a hotline and to ring up and go to see your regulator to chat through a business issue in relation to the interpretation of blooming complicated regulations. It would be a great step change, and it would be a good opportunity to begin here; they will have to design a whole new system for regulating CMCs, and they could begin by building into the design from day one this element of something that would be very helpful to the small, good firms which I hope will grow up in the CMC space. I think the Minister is saying that she would agree to have a chat in the period before Report. If there were no progress, I might want to bring it back at Report. But on that basis, I am happy to withdraw the amendment.

Amendment 71 withdrawn.

Clause 17 agreed.

Amendment 72

Moved by ***Lord Sharkey***

72: After Clause 17, insert the following new Clause—

"Ban on unsolicited direct approaches by, on behalf of, or for the benefit of, companies carrying out claims management services

The FCA must, within the period of six months beginning with the day on which this Act comes into force, introduce a ban on unsolicited direct approaches to members of the public carried out by whatever means, including digital, by, on behalf of, or for the benefit of, companies carrying out claims management services."

Lord Sharkey (LD): My Lords, as I mentioned on day 2 of Committee, there has been an enormous increase in the number of cold calls—180% in the last 10 months. There are now 2.6 million cold calls every month, which is an absolutely enormous number. No noble Lord disagreed when I described cold calling as an "omnipresent menace". It turns out that the menace is even more omnipresent than I had thought. It has even reached the Bank of England. I have the transcript of a cold call received by one of the Bank's regional offices. The bank official answers the phone and says, "Bank of England, hello", the cold caller says, "Hello, can I speak to the business owner?". The official asks, "Of the Bank of England?", the cold caller says, "Yes". The official says, "No". The cold caller says, "Well, do you want to sell the business?". The official says, "What, the Bank of England?", the cold caller says, "Yes". The official says, "No". The cold caller then says, "Oh all right, bye bye". Not all cold calls are as harmless as that turned out to be.

The Bill acknowledges and tries to remedy some of the problems with the claims management companies and the associated cold calling. We believe that the transfer of regulatory authority to the FCA is a very desirable move, as is the transfer of the complaints procedure from the Legal Ombudsman to the Financial Ombudsman Service. The impact assessment to the Bill lists some of the problems with the CMCs that will be addressed by these regulatory changes. It notes that, in 2014-15:

"23% … of all CMCs faced some sort of regulatory intervention".

In addition to what were rule breaches, an independent review identified poor practices among many CMCs. One example of poor practice was poor value for money services offered by the CMCs. The impact assessment noted that evidence from the FOS showed that CMCs do not in practice achieve higher-value redress settlements than consumers complaining directly. The second example was the misrepresentation of services offered to consumers and a reliance on nuisance tactics, such as unsolicited calls or texts. A third example was the progression of speculative and/or fraudulent claims by CMCs. That last point is developed in the report of the Insurance Fraud Taskforce of January last year. The report says that,

"unscrupulous CMCs … play a role in encouraging fraudulent claims. As well as causing a social nuisance through their reliance on cold calls, also known as 'claims farming', CMCs have been reported to pressurise otherwise honest people to exaggerate or make up claims".

This is all pretty unsavoury and the Government are to be congratulated on doing something about CMC practices in this Bill.

The impact assessment also lists the expected benefits brought by the measures in the Bill to consumers. It notes about cold calling that:

"Consumers are expected to benefit from reduced demand from CMCs for leads sourced through nuisance calls and text messages",

but it does not estimate the reduction and clearly does not expect the cold calling problem to vanish. The question is whether this expected reduction will be significant and whether third-party claims farmers will really be affected by the regulatory changes.

But there is a better question than that: why should we tolerate CMC cold calling at all? After all, we do not allow it for mortgages, and the Government have promised to ban it for pensions. Banning cold calling has been debated many times in this House. On every occasion there has been universal dissatisfaction with the practice and, I believe, a universal desire to put an end to it. Cold calling not only is a profound social nuisance but also does real damage. Whiplash claims are an obvious case in point—I have lost count of the number of times that I have been called by someone saying that I was entitled to recompense because I may

[LORD SHARKEY]
have been in a car accident. But speculative and fraudulent whiplash claims are reducing, largely because of the welcome provisions in the civil liabilities Bill. It looks as though one consequence of this is that CMC activity has moved in bulk to holiday sickness claims. The UK travel industry has seen a huge and dramatic increase in claims for food poisoning, essentially. As the noble Lord, Lord Hunt, has already explained, these claims have risen 500% since 2013 and they show a 600% increase year-on-year for 2016 alone. Such claims now represent over 90% of all personal injury claims.

ABTA is aware of the dubious marketing tactics used by CMCs. As we have already been told, they include UK holidaymakers being approached by CMC reps in their resorts and at ports of arrival back in the United Kingdom. Then, of course, there is cold calling. All this adds up to a major problem. This is not just damaging the travel industry, although it is doing that; it is also persuading people to commit fraud on a massive scale. As I have mentioned, we have reached the point where more than 90% of all personal injury claims are for alleged food poisoning. ABTA is campaigning for a ban on cold calling on behalf of, or for the eventual benefit of, CMCs. That is no wonder. The situation is clearly out of control. It again raises the question of why on earth we allow cold calling to go on. Here is our opportunity to ban it for CMCs. That is what our amendment sets out to do. It simply says that the FCA must, within six months of this Act coming into force,

"introduce a ban on unsolicited direct approaches to members of the public carried out by whatever means, including digital, by, on behalf of, or for the benefit of, companies carrying out claims management services".

5.45 pm

It would be up to the FCA to determine the exact mechanisms of this ban and to define all the terms needed to make it work. The FCA knows how to do all that and how to make it work. The impact assessment notes that the FCA is a high-quality, effective regulator. I agree with that assessment. That is why our amendment mandates a ban but leaves the details to experts at the FCA. We can use this Bill to ban cold calling for CMCs. It is within scope. We can get rid of a huge public nuisance, protect consumers and the travel industry and prevent people being lured into fraud.

On the second day of Committee, I was very impressed by the Minister's passionate desire to ban cold calling for pensions and her obvious frustration at being unable to do so in this Bill. This amendment would enable us to ban cold calling for CMCs. I hope that she will seize the opportunity to do just that. I beg to move.

Lord Deben (Con): My Lords, I support this measure. This industry has become huge. I emphasise the very simple point to my noble friend that it is an industry which encourages fraud and leads people to do things which they would never have done without this pressure. I do not believe we want that kind of thing in our society. It is expensive for decent people, holidaymakers and everybody, and the people who do it are among the most unpleasant people in our society. They are leeches on our society. My noble friend the Minister has treated this Committee extremely well and has spoken most charmingly about many things. I do not think this is something we can just pass off with good words. We have to tackle this. If we do not do that, we will fail the public as a whole. Above all, this is something we can do about morality. We should not have a society in which people are led astray in this way. This is not an industry that we need to encourage and the way to kill it is simply to say, "You can't impose yourself on other people". There is too much imposition anyway. This is something we could do.

Baroness Altmann: My Lords, I support this amendment and speak to my Amendment 73 on the same topic, which seeks to achieve the same aim as Amendment 72. The scale of nuisance calls is of great concern, as has been expressed in previous debates on this Bill from noble Lords on all sides of the House. The Association of Personal Injury Lawyers states that an estimated 51 million cold calls or texts are received each year from regulated claims management companies for personal injury claims. Although such nuisance calls are supposed to be prevented by existing regulations, current measures are clearly ineffective.

Reforms of claims management companies are clearly urgently needed. I congratulate my noble friend on introducing the Bill. Carol Brady's excellent independent review of the regulation of claims management firms recommended moving responsibility to the FCA, which is what the Bill does, and I wholly support that. However, it is also important to protect the public from nuisance calls and texts, which the claims management companies often plague people with; to reduce the level of speculative and even fraudulent claims, which cause added costs for companies and end up costing other consumers extra money; and to stop customers being fooled into paying up-front fees to unscrupulous claims management companies, which they then never recover after they discover that they did not have a valid claim in the first place.

FCA regulation of CMCs will help toughen the oversight of nuisance calls, but that move alone is not sufficient to properly protect consumers. The FCA has powers of enforcement that are better than the current regime; it can strip those found to be flouting the rules of their ability to operate and can hold directors personally liable. But a ban on unsolicited approaches would add much more protection. It would be clear to consumers that they should not engage with firms which contact them and encourage them to make spurious claims. Currently, the claims management companies act with impunity to entice people to make easy money. But of course this has the effect of imposing higher costs on the wider public, as we have already heard this afternoon, because firms will charge more to cover the risks of such claims. We have seen this clearly with whiplash injuries and we are seeing this with holiday sickness claims. Indeed, the Law Society has also written to me to support the banning of cold calls. ABTA cites the problems that we have already discussed about the dramatic rise in speculative and fraudulent claims. This will cause detriment to the wider public if we do not make sure that we take the opportunity in the Bill to retain effective measures to address the issue.

The Minister has already said how much she wishes that she could ban cold calling for pension companies, and there was support across the whole House for that measure, but it is questionable; we hope that we might be able to find a way to get that into the Bill. However, cold calling for claims management companies clearly is in scope of the Bill. When defining "claims culture" in a Parliamentary Answer on 19 April 2016, my honourable friend in another place, Dominic Raab, said:

"The Autumn Statement referred to the cost to society of the substantial industry that encourages claims through cold calling and other social nuisances and which increases premiums for consumers".

Therefore the Government have clearly equated claims culture with cold calling, and the logical and fair action would surely be to ban cold calling for personal injury claims rather than restrict the rights of people who have been injured through no fault of their own, which the Government are expected to do in the forthcoming civil liability Bill. These proposals perhaps aim slightly at the wrong target, but the Bill gives the Government the opportunity to aim at the right target and ban cold calling, which they state encourages a claims culture.

As the Government recognise that there is a problem, and there is both industry and public support, the Bill could be amended to include this ban on cold calling. Whether it is through Amendment 72, in the name of the noble Lord, Lord Sharkey, and the noble Baroness, Lady Kramer, or Amendment 73, in my own name and that of the noble Earl, Lord Kinnoull, I hope that we might take this opportunity to protect the public in this manner by banning cold calling.

The Earl of Kinnoull: My Lords, I strongly support the noble Baroness, Lady Altmann, and I thank her for allowing me to add my name to her amendment. Obviously, I also strongly support the thinking behind the amendment in the names of the noble Lord, Lord Sharkey, and the noble Baroness, Lady Kramer, and I just wish to add one or two points.

There was a very helpful *Which?* report in November 2016 detailing the full horror of nuisance calls in the UK. For the report, telephone calls in 18 cities were sampled. In 17 of the cities—the survey took place over a long period—more than a third of all the private phone calls were nuisance calls, and in Glasgow, which topped this terrible table of nonsense, more than half of the calls in the sample were nuisance calls. The top type of nuisance call was about PPI, which of course is firmly a CMC nuisance. In commenting on the November 2016 report, Keith Brown MSP, the relevant Scottish Minister, was quoted as saying:

"These calls are a serious problem that can cause both emotional and financial harm, particularly to some of our most vulnerable citizens".

A very horrible statistic in the report was that four in 10 people in Scotland who had received these calls felt intimidated by them. It is barbaric behaviour.

I was delighted to read in their manifesto what the Conservatives are going to do about cold calling on pensions. Like, I think, every other noble Lord in the House, I feel that we must use this opportunity to extend the ban to this area as well. I suppose that it is the businessman in me who does a quick upside/downside analysis. My upside analysis has a reduction of emotional and financial harm and intimidation, and my downside analysis has nothing. Perhaps the Minister could tell me whether she agrees with that analysis. I hope that she feels as I do—that it is a social necessity that we carry through one or other of these amendments and put it in the Bill.

Viscount Trenchard: My Lords, I too express support for both the amendment proposed by the noble Lord, Lord Sharkey, and that proposed by my noble friend Lady Altmann, supported by the noble Earl, Lord Kinnoull. I ask my noble friend the Minister to consider both amendments sympathetically. I expect that she is likely to say that she agrees with the amendments in principle but that this is not the time or the place for such a measure. However, surely it would be popular with the public to introduce a complete ban on unsolicited cold calling across a broad range of activities.

The Law Society and the ABI have both called for a crack-down on nuisance calling of all kinds. ABTA has also suggested that the Bill provides an opportunity to introduce an outright ban. As noble Lords are aware, solicitors, who are more tightly regulated than CMCs, are already banned from making unsolicited calls.

What I find particularly annoying is that if you answer your phone when you are overseas, you have to pay. I get so angry when this happens to me that I am sometimes more likely to start a conversation with the cold caller than I am to just hang up, which would obviously be the sensible thing to do. I say, "Do you know it's three in the morning and I'm in Japan, and this is costing me money?", but I find that the cold callers are not a very nice type of person in general and they are not sympathetic. My noble friend Lady Altmann mentioned that every year there are 51 million cold calls in respect of personal injury claims. In that case I am getting many more than my share, because I get about one a week.

It is a difficult area because, as noble Lords have pointed out in earlier debates, the FCA is not necessarily the most sympathetic regulator, and I agree with the noble Earl that we should look more closely at equivalent regulators in other countries. I had the privilege of serving under the noble Lord, Lord Burns, on the Joint Committee on Financial Services and Markets in 1999, which set up the FSA. We talked at great length about getting the balance right between protecting the industry and protecting the interests of the consumer. We did not necessarily get it right in the sense that the culture needs to evolve in a direction which is more sympathetic to the consumer.

6 pm

When the Minister refers to cold calling in her reply, will she say whether telephone cold calling, SMS messages, emails and letters—the old-fashioned snail mail—all fall into the same category or whether it is right to differentiate between them? If you make it impossible in all circumstances for a consumer to have access to a CMC of any kind, it may be counterproductive. It has to be reasonable. The Government have to do

[VISCOUNT TRENCHARD]
many things that are not popular, but if they were to act quickly to outlaw cold calling and nuisance calling, it would be extremely popular.

Baroness Stowell of Beeston (Con): My Lords, I am sorry that I was not in the Chamber earlier to hear my noble friend Lord Hunt of Wirral make his contributions on earlier amendments on a similar theme. I should declare that I have recently become a member of the board of ABTA.

I know that the explosion of claims for holiday sickness has been mentioned already, and I am grateful to the noble Lord, Lord Sharkey, and my noble friend for highlighting the way in which cold calling is encouraging people to commit fraud. However, we need to recognise that in encouraging this kind of fraudulent behaviour—which, in itself, is very bad for all the obvious reasons—false holiday sickness claims are also affecting our reputation abroad. We might like to make fun sometimes about the Germans and their towels, but we Brits are now gaining a reputation not only for having dicky tummies and not being able to weather the food overseas but, much worse than that, as a nation of people who are now willing to commit fraud.

This goes more broadly than the narrow way in which we are debating it today, and I want to lend my support in principle to the efforts to tackle a growing and serious problem.

The Earl of Lytton (CB): My Lords, I would not normally deign to interpose in this debate but, having listened to a number of the arguments that have been put forward, I feel compelled to voice my support, but with a word of warning.

I was looking at my private emails and found that since half-past two this afternoon I have had four spurious emails from an outfit called Metro Bank, with which I have no business, telling me about the suspicious activity on my account and suggesting that I might like to click on a link. The fact that such messages usually contain spelling mistakes and start off "Dear Customer" without any other personal identifying information, and the fact of the sheer number of these repeated emails, probably tells its own story, but never mind. The reason I raise that is because in my experience—along with that of probably everybody in this House who has received on their mobile phone something to do with PPI or a personal accident—I frequently gets messages that tell me my claim has been settled in the sum of £4,275.80, or something like that, and ask me to click on a link so they can process the claim. I have had no such incident and made no such claim; the process is led by a completely bogus and fraudulent promise of something for nothing.

In my experience, these things are increasingly moving from a posse of anonymous, but still identifiable, 0800 telephone numbers of one sort or another to people's mobile numbers and landlines. In particular, the mobile numbers may well be a pay-as-you-go account: completely anonymous and possibly passed on in a pub, complete with its ticket. Nobody can track down where these things are coming on. So, if somebody makes a cold call from a pay-as-you-go mobile phone, and having made contact then pass that live contact back to a claims management company of perhaps no great repute and even less good intent, is that still a cold call? If not, then straightaway the whole process of what these amendments are designed to deal with is bypassed. I would like to make sure it is not.

Lord Sharkey: Could I try to provide a little clarity, perhaps even a partial answer? The amendment is worded so that cold calls, or the result of them, cannot be used for the benefit of claims management companies. It is not just about the cold call itself—information cannot be passed on in a way that benefits CMCs.

The Earl of Lytton: My Lords, I am grateful for that. The nub of what I am getting at is whether we have a problem with enforcing that. These people are clever and devious and will basically stop at nothing because it is a free bet—they seem to be able to weave their way in and out of our virtual world of technology to con people and mislead them. I would be absolutely in favour of anything that can reliably prevent that happening. That was the only point I really wished to make.

Lord Elystan-Morgan (CB): My Lords, these debates endorse the fact that we dealing with a social nuisance of massive proportions. There are, I suppose, situations where a few cold calls might possibly be justified on some grounds, for example where a person has rights but is not conscious of how those rights can be carried out and brought to fruition. Those instances are in a small minority. The vast majority of cold calls are fraudulent and disgraceful. If there is an agreement between the two parties, then that amounts to an agreement to pervert the course of justice. I think I am right, as a proposition of law, to say that every agreement to pervert the course of justice is of itself a perversion of the course of justice. It is as serious as that.

A blanket overall prohibition, as the noble Earl, Lord Lytton, reminded us, is probably not appropriate. On the other hand, some very strict and practical steps have to be taken swiftly.

Baroness Drake: My Lords, I too rise to express my sympathy with the views articulated by the noble Lord, Lord Sharkey, and the noble Baroness, Lady Altmann. I also empathise with the point made by the noble Earl, Lord Kinnoull. I listen to what he says because he often makes some very wise nuggets on a point that warrant reflection.

We do not want to regulate CMCs out of existence, because people need access to redress where they have been poorly treated or have experienced a serious problem. Public policy has been pushing assisting people with access to justice out to the private sector, so we have to come up with a toughened regulatory system that does not deny that, in a well-regulated, well-run system where public policy itself is making it more difficult for people to pay for access to justice, well-regulated claims management companies have a role to play.

However, the way the CMC industry currently operates is clearly totally dysfunctional. It gives rise to three key problems. One that the noble Lord, Lord Hunt of Wirral, articulated in the previous debate is that it stirs up such an artificial level of claims without merit that it risks undermining that very protection regime for the genuine claimant. It raises the costs and charges faced by other customers for what they have to pay for products and services, often hurting those on lower incomes.

We know that the ease of entrance to the market means that claims management companies often do not treat claimants well. They give poor value to the claimant on fees and service; there is little inhibiting them doing so. I see that, a couple of years ago, 22% of claims management companies in one year lost their accreditation or received a formal warning—basically one-quarter of the industry having its card marked or forced out.

Also, we have a situation where new technology allows claims management companies to operating on a huge scale. They are harassing the public with very aggressive techniques, using new technology that allows such mass approaches. People are being bombarded with calls and texts; if you answer them by mistake, God are you hooked in. That triggers another series of harassing texts and calls. Very often the person does not even have the product or has not had the experience the call management company is targeting. These call management activities are one huge fishing trip that new technology allows which has got completely out of control. That trawling simply has to stop. There needs to be some appropriate intervention.

In supporting that, I go back to the reflective point that the noble Earl made. In a situation where assisting people with access to justice is increasingly being put into the private sector, we want a well-regulated claims management company that will help the genuine claimant get access to justice.

Baroness Kramer: My Lords, I intervene because it is important to stress that it is essential to ban cold calling, not give it a space. For example, those who are concerned about PPI claims can see advertising on the television. That is not cold calling or a sort of personal assault on your letterbox or your phone, whether by call, messaging or email. It is the personalised cold call that arrives. Often it is content that is intimidating and unless every phone call is recorded and checked there is absolutely no way to make sure it is not intimidating. It is the number of these things. If, for example, you say, "You can send five texts to every individual", you will simply have a much greater group of people all sending five texts. It becomes almost impossible to manage unless you go for the ban strategy.

There are many ways to communicate. For example, I look at the way the FCA is now communicating with the general public over PPI. It has some excellent ads on television making it clear that there is a free way to call. It provides a phone number and a website. The whole process is easy. We would all be offended if the FCA now started cold calling individuals across the country, even to provide a free service. It is an invasion of private space. We have to protect private space, and cold calling is a mechanism which violates it. I hope that, in the interests of making sure people remain informed about the options available to them, we do not require them to give up control of that private space.

6.15 pm

Lord McKenzie of Luton: My Lords, this has been an extensive and fascinating debate. We on these Benches support the call for a ban on cold calling, as laid out in Amendments 72 and 73. As to which is the right formulation, the answer is probably neither of them as they stand, but we can work on that between now and Report.

My noble friend Lady Drake argued for a well-regulated market and the need for access to justice. That is not inconsistent with a ban on cold calling; it seems to me entirely consistent. I hope that deals with the concern expressed by the noble Baroness, Lady Kramer.

We have heard some very powerful presentations. The noble Lord, Lord Sharkey, introduced the amendment with a range of statistics. His term was "omnipresent menace", which has been demonstrated extensively in this afternoon's debate. The noble Lord, Lord Elystan-Morgan, said that such cold calling was a social nuisance of massive proportions, and I agree. For me, it interrupts my slumbers on the sofa on the Sunday afternoon, but that may be a minor inconvenience.

The noble Lord, Lord Deben, said it was an industry we could do without. My noble friend Lady Drake dealt with that point: we need a well-regulated industry because we need a means of helping people reach justice.

Lord Deben: I am sorry; it was a slip of the tongue. It is a mechanism which we could do without from this industry.

Lord McKenzie of Luton: I take the noble Lord's point.

The noble Baroness, Lady Stowell, made the interesting point that some of the behaviours that the existence of cold calling has generated have an impact on our reputation not only here in the UK but around the world. Many other points were made, all in favour of a ban on cold calling.

We should reject the suggestion that we should shy away from such a move because the Government have perhaps set their face against it for the time being. Anybody from outside the Chamber who has listened to this debate would readily see the consensus reflected on all these Benches. We should test the democracy of this Chamber and bring forward amendments that are in scope but focus on claims management as a start. We realise that the Ministers are not unsympathetic, so it would help them in their cause of persuading Secretaries of State and the wider mechanisms of government to support the measure. The Government have done the right thing, although too slowly, on pensions; here is an opportunity to follow that up swiftly and ban cold calling for claims management operations as soon as we can. We should do that quickly.

Baroness Buscombe: I thank all noble Lords who have taken part in this important debate. I thank in particular the noble Lord, Lord Sharkey, the noble Baroness, Lady Kramer, my noble friend Lady Altmann, and the noble Earl, Lord Kinnoull, for tabling the amendments and prompting this debate about cold calling. I think we are all familiar with the nuisance calls and texts that noble Lords seek to address.

However, I fear I shall disappoint noble Lords, but will do my utmost to persuade the Committee that legislating for a ban on cold calling at this stage is not the right thing to do. The arguments against the amendments are twofold. I shall begin with what we are doing by way of this Bill. The Government have put on record their commitment to clamping down on rogue CMCs that bombard consumers with unsolicited nuisance calls and texts, or provide poor service for consumers, by transferring regulatory responsibility to the FCA. Strengthening the regulation of claims management services—good regulation, I might add—should reduce the number of unsolicited calls made by CMCs as they will have to comply with any additional rules that the FCA makes in relation to how CMCs obtain customers or pass their details on to others.

The FCA will consider unsolicited approaches to consumers in the wider context of rules around advertising and marketing. It is too early for the FCA to have decided on specific rules for CMCs. I make that point clear to all noble Lords who entered into the debate on this amendment: this is not something the FCA has had a chance to do before but now, through the Bill, it has the opportunity to decide on specific rules for CMCs. It will consult on its proposals.

There are already measures in place to tackle unsolicited calls. The Information Commissioner's Office enforces restrictions on unsolicited direct marketing. Unsolicited directing marketing calls to a person who has subscribed to the Telephone Preference Service or told the company they do not wish to be called is prohibited under the Privacy and Electronic Communications (EC Directive) Regulations 2003. In addition, organisations responsible for breaching these regulations can be fined up to £500,000 by the Information Commissioner. In 2016-17, the Information Commissioner's Office issued more civil monetary penalties for breaches of these regulations than ever before, issuing 23 companies over £1.9 million of fines for nuisance marketing.

There was reference to scams. Of course, scams fall into the sphere of fraud and are therefore criminal. Many cold calls are conducted by unauthorised businesses. CMRU increased its capacity to identify, investigate and take enforcement action against unauthorised businesses, including all call centres marketing unauthorised claims management services. Since these regulations began, CMRU has taken enforcement action against 1,280 unauthorised CMCs. Moreover, in May this year, a company behind 99.5 million nuisance calls was fined a record £400,000 by the ICO. Action is being taken now and the FCA will introduce tougher regulation in this area.

The noble Lord, Lord Sharkey, asked why, if we are able to ban calls for mortgages and pensions, we cannot ban them for CMCs. It is important to differentiate between the two types. The Government absolutely decided that cold colds in relation to, for example, pensions are a special case because the levels of consumer detriment are uniquely high. For some UK customers, especially inexperienced investors, pensions savings may be their largest financial asset. Often, CMC nuisance calls are just that—a nuisance. The potential for customer detriment is therefore also much less.

It is not that this is not an issue for the Government to consider. I say that with some feeling. Strengthening the regulation of claims management services should help reduce the number of unsolicited calls made by CMCs. As I said, there are already measures in place enforced by the ICO.

Baroness Kramer: The Minister talked about the current enforcement and recommended it with such vigour. Could she then explain why the number of calls is so great? I think the noble Baroness, Lady Altmann, cited a figure of 50 million and it is growing every year. To my mind, the two things do not tally.

Baroness Buscombe: I am trying to make the point that the transfer of claims management company regulation to the FCA will result, we believe, in tougher regulation and should reduce the number of unsolicited calls made by CMCs. What I am really saying is: can we please give the FCA a chance? While there are already measures in place to tackle unsolicited calls, enforced by the Information Commissioner's Office, unfortunately there is a minority of disreputable companies which flout the law. The ICO will take enforcement action where appropriate; as I have said, in 2016-17 it did so against 23 companies. We need to improve on this and we hope this will happen through tougher regulation.

I hope I have explained the difference between cold calling for CMCs and cold calling for pensions, which we are taking action on. I think my noble friend Lord Deben was suggesting, as indeed were other noble Lords, that we should have a wholesale ban on cold calling, but one has to be really careful what one wishes for. This point about access to justice is very important. Clearly, there are different routes to making unsolicited approaches. If we had a wholesale ban on cold calling, what would political parties do?

Lord Deben: I was not going to interrupt my noble friend but since she has mentioned it, the matter is very clear. We are talking about cold calling for a particular purpose. She has to accept that there are 50 million calls and the number is rising all the time, so the present system does not work. It is very simple: we just ban them. Why can we not do this? I do not understand.

Baroness Buscombe: I think I have just tried to explain that one of the reasons for transferring the regulatory role to the FCA is to take this forward through good regulation in the hope that it will work. As I was trying to say, we have to be careful what we wish for in terms of access to justice through the means of people being able to receive calls, which we can call unsolicited—such as those made by political parties. That is part of a wholesale ban on cold calling, which noble Lords have referred to.

Lord Deben: I am sorry to interrupt my noble friend again, but I specifically did not do that. Better regulation is to ban the calls. That is what better regulation is.

Baroness Buscombe: I thank my noble friend for his further response.

To respond to my noble friend Lord Trenchard's question about whether SMS, email and letters are all cold calling, this is an important point and I confirm that we differentiate between them. Cold calling is the solicitation of business from potential customers who have had no prior contact with the salesperson conducting the call, while unsolicited direct marketing is communication by any means, including email and text, of marketing and advertising material. We genuinely believe that the existing measures I have set out, alongside the new FCA regime, should help tackle CMCs conducting unsolicited direct marketing. I know there is a very strong feeling across the Committee, and we take this on board, but, for the reasons I have set out, the Government do not believe that the amendment is necessary. I hope that the noble Lord will withdraw his amendment.

Lord Sharkey: I am extremely grateful for the support of all noble Lords who have spoken. I am especially grateful to the noble Lord, Lord Deben, for his forceful reminder—several times—that this kind of cold calling activity should have no place in our society. It is not necessary, it is damaging, it lures otherwise honest people into crime and it is morally repugnant. Thinking about what the Minister said, I feel that she was right at the beginning: she did disappoint the House.

6.30 pm

I do not propose to restart the discussion but the question remains. I am wholly unconvinced by the disquisition on the fine differences between mortgages, pensions and cold calling for CMCs. I am sure the argument about that will continue. Since the Minister talked about letting the FCA deal with this in some timely manner, I also gently point out that our amendment does not force the FCA to do anything except to ban cold calling by the best means possible. It leaves it to the FCA to figure out what that is—that is all the amendment does. The strong feeling in the Committee is quite clear, so although I will withdraw Amendment 72 now, I am certain that we will want to return to this issue on Report. I beg leave to withdraw the amendment.

Amendment 72 withdrawn.

Amendment 73 not moved.

Clause 18: Extent

Amendment 74

Moved by ***The Earl of Kinnoull***

74: Clause 18, page 15, line 27, at end insert "and Scotland."

The Earl of Kinnoull: My Lords, this is not really the final furlong but the final approach, I suppose, if we are to keep the metaphor going. I shall also speak to Amendment 76, which is connected. I begin by thanking the Minister, who has been very helpful to me on this. He was even sending me lucid emails at 7.21 am today. I also thank the Association of British Insurers, which has been extremely helpful in the preparation of my remarks.

These probing amendments address two issues that I perceive. First, Scotland has a separate legal system and major differences concerning no-win no-fee. There are major differences, too, in its regulation of CMCs. In Scotland, CMC activities are not regulated and referral fees are allowed—unlike in England, where CMCs are regulated and the paying of referral fees is an offence. How wrong it would then be if a substandard CMC could camp in Dumfries and aim at English consumers, free from regulatory control. I am certain that any form of cross-border arbitrage would be wholly against the admirable intentions of the Bill.

It appears, however, that this is exactly what is happening. DWF, the respected Manchester-headquartered law practice, which has offices in Scotland and internationally, commented in February that,

"in recent years increased levels of fraud have been detected in Scotland, along with a significant rise in injury claims. In part, this is thought to be due to the effect of LASPO in England pushing claims management companies into Scotland, where their activities are not regulated and referral fees are allowed".

There must be a general principle that businesses must not be allowed to arbitrage the UK's regulatory and legal environments to the detriment of consumers. The FCA is, rightly, a UK-wide regulator in, for instance, non-life insurance. I feel strongly that it should be so here. Can the Minister comment on the position of the territorial scope of the Bill and whether this legal and regulatory arbitrage is acceptable to the Government?

My second point concerns CMCs in Scotland generally. I have already referred to the November 2016 *Which?* report and some of the rather horrifying position that it laid out. However, I note that three of the top five cities for nuisance calls were Scottish, and that in Scotland PPI calls were the number one type of nuisance call. In Glasgow, as I said, over half of the one million calls sampled were nuisance calls, according to the report.

This very week, Citizens Advice Scotland is running a campaign called Calling Time on Nuisance Calls to highlight the problem. I wish it well. It aims to reduce this pernicious problem, causing as it does, according to Keith Brown MSP, the responsible Minister, "emotional and financial harm" to Scottish citizens. This month the Scottish Government have put out a paper, *A Response to Scotland's Nuisance Calls Commission: An Action Plan*. Keith Brown is behind the paper. On page 5, when referring to the statistics from which I have been quoting, he writes:

"Faced with these statistics, we must take action now that will make a difference, even as we press the UK Government to do more".

What is that more where CMCs are concerned? Is the Bill not an ideal opportunity to deal with that and the regulatory and legal arbitrage problem to which I referred earlier? I strongly urge the UK and Scottish Governments to bring CMCs in Scotland under the experienced wing of the FCA. I beg to move.

Lord Stevenson of Balmacara: My Lords, we have Amendment 75 in this group, and I shall speak to it briefly. It is a gentle prod to the Government that in the clause that deals with commencement there is an extensive list of the various sections that come into play. Then at the top of the next page is just a general provision stating:

"The other provisions of this Act come into force on a day appointed by regulations".

No date is given for that. It would be helpful if the Government could urge themselves to do a bit a more than just leave it open that regulations will come forward at some future date. A lot of what we have been talking about in this area would be helped if there was urgent action, and the urgency should apply to the regulations that need to come forward as well. I hope that will be well received by the Government at this point.

The noble Earl, Lord Kinnoull, has done another good service to us in bringing forward a possible lacuna in the approach being taken by the Government. It fits in with the various sensible amendments that I have been tabling, asking the Government to look again at the way in which the financing arrangements for debt advice in Scotland, Wales and Northern Ireland operate. I sense that there is also an issue around CMCs that needs a response. I look forward to hearing from the Minister.

Lord Young of Cookham: My Lords, Amendments 74 and 76, tabled by the noble Earl, Lord Kinnoull, seek to extend Part 2 to Scotland. I am grateful to him for the way he set out the case for this extension. The Government carefully considered the scope of claims management regulation during the development of this policy. The current framework for claims management regulation, set out in the Compensation Act 2006, limits the extent of claims management regulation to England and Wales only and this will remain the case as we transfer regulation to the FCA. The matter is currently reserved, so we cannot simply make regulations to devolve the matter to the Scottish Government.

In reaching this decision, the Government had a dialogue with the Scottish Government to establish their view. Their view, as outlined in correspondence from the Scottish Business Minister, was that there is limited evidence of malpractice by CMCs in Scotland, and they concluded that extending the scope of claims management regulation would be unnecessary and disproportionate. That view is clearly challenged, and is about to be challenged again.

The Earl of Kinnoull: The Scottish Government have come out with a long paper—it is a dozen pages or so—in which they publicly state completely the opposite. We have been citing these terrific statistics from *Which?*. I do not know at what point in time their views are dated, but events have moved on and the old views are clearly wanting.

Lord Young of Cookham: I am very grateful to the noble Earl, who has been very influential, as I will explain in a moment, in persuading the Government to think about this again. I will not quote it again, but what I just quoted was the view at the time we consulted. The Scottish Government concluded that regulation would be unnecessary and disproportionate. It may well be that, from the evidence the noble Earl referred to, since then they have changed their view.

As for regulatory arbitrage, it should not mean that a firm can evade regulation by moving across the border. The Bill gives the Treasury a power to define when a person should be treated as carrying on claims management activity in England and Wales, which gives government the flexibility to adapt the definition should the market change. When exercising this power, the Government intend to capture CMCs approaching consumers in England and Wales, and CMCs taking forward their claims should be subject to FCA regulation. This mirrors the current regulatory framework, in which the requirement to be authorised is not dependent on where the CMC is located but based on where it carries out the regulated service.

With regard to nuisance calls in Scotland, the Government continue to build on a package of measures to tackle this problem across the UK. We have already delivered a number of actions, including: a measure in the Digital Economy Act 2017 making it a requirement for the Information Commissioner to issue a statutory code of practice on direct marketing; requiring all direct marketing callers to provide caller line identification; and increasing the maximum level of monetary penalty the ICO can issue to £500,000 for serious breaches of the regulations. In the light of what the noble Earl has said, we will re-engage with the Scottish Government on this issue and keep our position on claims management regulation under review.

Amendment 75, tabled by the noble Lords, Lord McKenzie and Lord Stevenson, seeks to establish a timescale within which the Government will commence the legislation relating to the single financial guidance body. I am not sure the amendment would do what the noble Lord wants: these regulations would have to be made within 18 months of Royal Assent, but the regulations could then provide for these sections to come into effect after 18 months have passed. I am sure that was not the intention, but that is the reading of the amendment as I have interpreted it. As indicated in our response to the consultation on the single financial guidance body, the new body will come into existence no earlier than autumn 2018. We want to ensure that we provide for the best possible transition from the existing services to the new body. We are conscious, though, that the process has already created some uncertainty for existing services and for consumers. For that reason, as well as those given by the noble Lord, we would like to move as quickly as is practicable.

We also want to provide time for the chair and chief executive to assess and contribute to the key set-up arrangements. In line with *Managing Public Money* principles, the Bill must have passed Second Reading in the House of Commons before a recruitment exercise for the chair and chief executive can commence. We anticipate starting this recruitment exercise as soon as possible after that point. We are working with existing services and other key stakeholders to ensure that we remain on track to establish the new body. Although I sympathise with what the noble Lord is seeking to achieve with this amendment, I assure him we have

every intention of establishing the new body as soon as is practically possible and ensuring that the body is able to deliver an improved, joined-up service to meet the needs of the public.

Against the background of the undertaking I have given to the noble Earl, and the assurances I have just given to the noble Lord, Lord Stevenson, I hope this amendment might be withdrawn and the others not pressed.

The Earl of Kinnoull: I am very grateful to the Minister for his typically courteous response and the courteous way in which he dealt with my rather not-so-courteous interruption, for which I apologise. What he said about my point on arbitrage sounded very good, although I want to read it again in *Hansard*, as did the undertaking. I would like to see how things progress from here, to see if there is anything left on these issues to discuss on Report. But it sounds as if progress is being made, for which I thank the Government very much indeed. On that basis, I beg leave to withdraw the amendment.

Amendment 74 withdrawn.

Clause 18 agreed.

Clause 19: Commencement

Amendments 75 and 76 not moved.

Clause 19 agreed.

Clause 20 agreed.

House resumed.

Bill reported without amendment.

Civil Procedure (Amendment) Rules 2017

Motion to Regret

6.45 pm

Moved by ***Lord Marks of Henley-on-Thames***

That this House regrets that the Civil Procedure (Amendment) Rules 2017 have been laid with insufficient regard to the overwhelmingly negative response to the proposed Rules during the consultation and to the lack of evidence that significant numbers of unmeritorious environmental claims are currently brought; that they may escalate claimants' legal costs and act against the intention of the Aarhus Convention that the cost of environmental litigation should not be prohibitive; and that they are likely to have the effect of deterring claimants from bringing meritorious environmental cases (SI 2017/95 (L. 1)).

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee, Session 2016–17

Lord Marks of Henley-on-Thames (LD): My Lords, this regret Motion raises three important matters of principle: first, the accountability of government and the rule of law; secondly, access to justice for the public and cost protection in environmental cases; and, thirdly, compliance by the United Kingdom with its international obligations.

Environmental cases are frequently brought by individual citizens and concerned organisations to challenge the executive action of government, national or local, which threatens the environment in which we all live and on which we all depend. Where government acts unlawfully, judicial review exists to enable such claimants to hold government to account. These cases are often complex and expensive. As a party to the Aarhus convention, entered into in 1998 under the auspices of the United Nations Economic Commission for Europe and ratified by the United Kingdom in 2005, enshrined in EU law, this country committed to guarantee in environmental cases to provide,

"adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive".

In April 2013, finally and after much procrastination and an adverse decision of the Court of Justice of the European Union in a case called Edwards, the Government introduced rules to implement the convention requirement that costs should not be prohibitively expensive. They did so by establishing an environmental costs protection regime, which, among other things, limited the costs payable by claimants to defendants in environmental judicial review cases. Your Lordships may remember that, in the Criminal Justice and Courts Act 2015, although this House successfully secured amendments limiting the damage, the Government legislated to impose a number of harsh costs provisions on judicial review, but in that Act costs protection arrangements for Aarhus convention cases escaped attack. However, this February Liz Truss, then Lord Chancellor, laid before Parliament the Civil Procedure (Amendment) Rules 2017, to which this regret Motion is directed. I first tabled this Motion in March, but the sudden general election was called before it could be heard.

My first objection to the new rules is to the requirement that a claimant seeking costs protection must disclose,

"a schedule of the claimaint's financial resources".

That schedule must also disclose "any financial support" from others helping to fund the case. This requirement, I suggest, is invidious, offends against privacy and is likely—indeed, calculated—to deter potential claimants and their supporters. Supporters will be put off because they risk being ordered to pay costs. The European Commission, in a letter written in March, wrote that,

"a requirement for litigants to provide information of their own personal means is also likely to result in a chilling effect with many individuals not wanting to make their personal finances publicly known".

That must be right.

The costs limits are £5,000 for individual claimants or £10,000 for businesses or organisations. My second objection to the changes is that the new rules provide that multiple claimants will each be liable for a costs order in those sums. Before these changes, the general practice was that the overall cap would apply even if there were several claimants, but that was not invariable. The convention Compliance Committee considered this change and has said that it could see no basis for this amendment, which, it said,

[Lord Marks of Henley-on-Thames]

"removes an important possibility for members of the public to defray the costs of proceedings by sharing the cost burden with other concerned members of the public".

It said that it,

"substantially increases the likelihood of extensive satellite litigation to determine the costs cap per claimant, further increasing uncertainty".

However, the third and most important and powerful objection is that the new rules have driven a coach and horses through the whole principle of costs protection in environmental cases. That is because they provide that, at any stage of the case, the court may vary or remove all together the limits on the maximum costs liability of any party in an Aarhus convention claim. It is true that the rule pays lip-service to compliance with the convention by limiting the power to cases where removing protection would not make the costs of the proceedings prohibitively expensive. The rules define when proceedings are to be considered prohibitively expensive, which they may be if they,

"exceed the financial resources of the claimant; or … are objectively unreasonable"—

applying tests that roughly reflect those set out in the Edwards case, but which are extremely difficult to fathom. Any financial support of the claim by others must also be taken into account. I suggest that the overall effect is that any claimant may feel at risk unless his or her entire capital would be consumed by an adverse costs order. The reality is that costs protection which can be removed half way through a case is no costs protection at all. These rules undermine government accountability, diminish the rule of law and reduce access to justice in environmental cases for all but the very wealthy.

When the changes were first proposed, they were put out to consultation. The response was overwhelmingly negative. The Secondary Legislation Scrutiny Committee of your Lordships' House produced a report that can only be described as scathing on the proposed changes. On the consultation, it said:

"The analysis in the EM"—

the Explanatory Memorandum—

"simply states that the consultation exercise received 289 responses. It does not explain, as it should, that for most of the questions the number supporting the Government's proposal was less than ten: the vast majority of the responses received were against the proposed changes".

The Committee further noted the Government's policy aim of,

"discouraging unmeritorious claims which cause unreasonable costs and delays to development projects",

but the Committee found no evidence to support the Government's position. It also concluded that the Ministry of Justice had not addressed concerns and that,

"as a result of the increased uncertainty introduced by these changes, people with a genuine complaint will be discouraged from pursuing it in the courts".

These rules inevitably deter legitimate challenges to government decisions. To take one example of their chilling effect, the Liverpool Green Party recently wished to challenge permission for a car park in an air quality management area granted by the council without its first undertaking an air quality assessment. The party was advised that it had a strong claim for judicial review, and it wrote a letter of claim. In its response, however, the council did not address the substance of the complaint but wrote that,

"it is noted that the court now has discretion … to vary the limits on maximum costs liability for Aarhus Claims and the Council will therefore require confirmation of the financial resources of your client in the event that it seeks a protective costs order".

In the face of that letter, the party was unable to find an individual prepared to act as claimant, so the case was never brought.

I said at the outset that this Motion was about the rule of law. If the House passes this regret Motion, it will give the Lord Chancellor, who is widely held in high regard, an opportunity that he understands—better than his predecessor—the importance of government accountability, access to justice, the rule of law and of complying with our international obligations, in this case under the Aarhus convention. If he understands those things, he will withdraw these rules. I beg to move.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I do not usually find myself on the opposite side of the debate from the noble Lord, Lord Marks of Henley-on-Thames, but here I am. I make just two comparatively brief points—first, that the original 2013 rules to which he referred, which the 2017 rules that we are considering today have replaced, were drawn up before the CJEU gave the judgment in the Edwards case to which the noble Lord referred. That case was originally referred to the CJEU in 2011 by the Supreme Court, in which I was one of the five sitting, under the presidency of my noble and learned friend Lord Hope of Craighead.

The original 2013 regime provided simply for fixed-cost caps for claimants and defendants. The noble Lord mentioned that the caps are £5,000 and £10,000 respectively, depending on whether it is one or more claimant. It costs £35,000 for defendants in certain environmental law challenges—judicial reviews—with no account being taken under those rules of the particular claimant's financial position, whether they are a millionaire or a pauper, or of the strength of the challenge that they would bring.

The new rules were introduced after what seems to me an impeccable consultation process. It is true that, perhaps not unusually in this sort of situation, the great majority of those responding were unenthusiastic, to put it no higher, about certain aspects of the proposed changes, certain of which were changed following consultation. But the new rules take full account of the several factors set out by the CJEU in the Edwards case as being relevant to the proper approach to the Aarhus convention in this respect. It is true that the new approach is more complex and allows, as the old regime did not, for a variation of those default costs limits—variations, I should emphasise, in either direction, possibly in favour of a claimant, as access to justice might be thought to require, during and not merely at the outset of the legal challenge.

The measure, therefore, could be said to illustrate the age-old problem in the law of balancing the respective merits of certainty and flexibility—there of course being in all cases pros and cons of each. I, for my part,

do not accept that meritorious claimants are likely to be deterred and, certainly, I do not regard these new rules as manifestly contrary to the rule of law, or being unlawful and the rest.

7 pm

Any application to vary the initial costs cap will be in the judge's discretion. Perhaps I need to declare an interest: I have great faith in judges being given wide discretions and I have no doubt that they will be alive, as are of course the rest of us, to the importance of not exercising this new power in such a way as to give rise to the risk that future claimants will be deterred in proper cases from bringing the challenge.

The second point is this: the question of whether these new rules are unlawful is itself currently the subject of legal challenge. In proceedings heard by the High Court in July, three claimants—the Royal Society for the Protection of Birds, Friends of the Earth and ClientEarth—brought a full and detailed challenge against the Lord Chancellor to these rules. I have in fact read the 25-page skeleton argument that was submitted for the claimants in those proceedings and the 20-page response on behalf of the Lord Chancellor. I would suggest that the arguments are a good deal more nuanced than the noble Lord's opening might suggest. Judgment was reserved in July and it remains outstanding.

Lord Marks of Henley-on-Thames: My Lords, I should perhaps make it clear that I deliberately refrained from referring to that case because it is sub judice, a judgment not having been given. So I have not referred to it and have not dealt with it. I take no issue with the noble and learned Lord so doing, because this is a case about delegated legislation but, nevertheless, I did not do so.

Lord Brown of Eaton-under-Heywood: In so far as the sub judice rule would apply to a debate of this character, I respectfully do not for a moment accept that I am breaching it. I am suggesting that it is highly relevant to the present Motion to Regret, a Motion which, as the noble Lord said, was initially tabled in March and, therefore, before those proceedings. In so far as, for example, it is now said that we are in flagrant breach of the rule of law and all the rest of it, those issues fall to be decided properly in the context of full argument in those proceedings and not to be well-nigh pre-empted by a Motion to Regret today. For my part, I would not support a Motion to Regret without the benefit of the High Court's judgment on the legal issues arising.

Baroness Young of Old Scone (Lab): My Lords, I wonder if I might address the points made by the noble and learned Lord, Lord Brown, not from the point of view of his confidence in flexibility and the wisdom of judges but from the point of view of the people who regularly have to consider whether they are willing to put forward their personal assets and privacy and, indeed, of those organisations representing the public which are placed in that position. I should declare an interest: I am president, vice-president or chairman of practically half the conservation and environmental organisations that are involved in these cases.

I very much welcome the Motion to Regret of the noble Lord, Lord Marks, and I really do regret the way that the Ministry of Justice has barrelled on to implement the removal of the cap on claimants' costs in environmental cases, in spite of the criticism by virtually all consultees and the views of the Secondary Legislation Scrutiny Committee, which I thought issued its opinion in a rather more trenchant and stinging way than I have seen it operate in the past, which was interesting.

As a country we have been criticised for some considerable time by the United Nations and others for our lack of compliance with the Aarhus convention. I was interested to note that yesterday the noble and learned Lord, Lord Keen, in briefing Peers on the Brexit Bill, said that although we will lose recourse to the ECJ in relation to environmental issues, our responsibilities under the Aarhus convention will remain. Alas, our responsibilities under that convention are not being delivered on a regular basis and we continue to be criticised internationally. Therefore, I regret the MoJ's move as it takes us even further away from compliance.

I have personal experience of being involved with charities that have initiated judicial review in these circumstances. These charities are representatives of communities. The trustees of these bodies take very seriously their responsibility to represent communities on these important issues. However, they are now incredibly wary of committing to challenge the decisions of public bodies through judicial review as they can have no assurance—other than the sorts of assurances which the noble and learned Lord, Lord Brown, attempted to give on the judiciary—that costs will not escalate and that they will have no influence over that as the cap can be changed at any stage in the process.

For individuals or unincorporated public bodies contemplating initiating a judicial review against a public body, the unpredictability and possible scale of the costs, the need to demonstrate the ability to pay and the risk to their homes and other assets are, indeed, chilling. Therefore, we have a situation in which individuals are being placed in a position where they have to think long and hard about taking such a case, as do responsible, publicly focused charities.

We do not know how many cases fail to be taken and how many people are deterred by these new arrangements as those decisions are made by individuals, families and communities and, in the case of charities, made behind closed doors. As an ex-chief executive of several charities, I suspect that charities would have to have pretty brave boards of trustees to undertake what is likely to be expensive judicial review under the current circumstances. We are very much seeing communities being priced out of environmental justice. I therefore urge the Minister to reconsider this decision to remove the cap and I urge noble Lords to support a reversal of this measure.

Lord Cavendish of Furness (Con): Before the noble Baroness sits down, and for the sake of clarity, what exactly did she mean by charities being communities? What is the status of that?

Baroness Young of Old Scone: My Lords, I am delighted to explain that. In many cases our charities are the voice of the public and constitute the way in

[Baroness Young of Old Scone]
which the public organise themselves to have a voice in environmental challenges. As a nation we are blessed with a rich range of charities in the environmental field, which have operated for many years in hugely responsible ways to hold government to account on behalf of the communities in which they operate. I have much experience on both sides of this equation, having taken cases on behalf of charities such as the RSPB and having been on the receiving end of cases when I was chief executive of the Environment Agency. I value the role of charities, as do local communities.

Baroness Jones of Moulsecoomb (GP): My Lords, I congratulate the noble Lord, Lord Marks, on bringing this regret Motion. I am always conflicted by regret Motions, because they are extremely weak, which of course infuriates somebody like me. However, at the same time they do two things. First, they send a message to the Government—they have to sit and listen and, perhaps, do something good for a change; but secondly, they allow people like me to get up and rant, and I would like to rant for a minute, because I am furious about this. I cannot see how any Government can reduce justice for all, and that is the principle at stake here. The principle is that justice is for everybody, however rich or poor. The noble Lord, Lord Marks, raised a case where a political party wanted to bring an environmental case and did not have the money for it. This will happen more and more.

We can look at some of the things that the Government are doing at the moment—for example, HS2, which is the most incredibly wasteful, stupid, unnecessary piece of infrastructure they could possibly have devised. That will raise all sorts of issues. It is already steaming through sites of scientific interest, and there will be huge environmental problems. By removing the cap, the Government are reducing the hassle they will experience in pushing this through. I therefore urge the Lords to vote for this Motion and show the Government that what they are doing is completely wrong. This Chamber has a real opportunity to make life better for people—and of course, people who are on a low income, and charity and community groups who do not have the money, will suffer because of this.

Lord Thomas of Gresford (LD): My Lords, I will continue with the issue of community and talk about my community, Gresford, where I live. Many years ago, I was involved in a judicial review. There was an application for opencast mining at Gresford colliery. Members may recall that that was the scene of a terrible mining disaster in 1934, when 266 men lost their lives underground and only 12 bodies were ever recovered—the rest remain there. Therefore, the issue of opencast mining was clearly one of considerable concern. The county council, in considering a planning permission, did not adequately advertise it, and there was not proper consultation.

I appeared pro bono for the Gresford amenity society to take the county council to court to challenge its decision. The court of two judges decided that I was quite right—it had not been properly advertised and there had not been proper consultation. However, one judge was prepared to give us a remedy, which was to quash the decision, while the other judge was not. It is a question of discretion for each judge as to what remedy should be given, even if you are successful on the facts. When this small group, who were not wealthy, had to decide whether to pursue the matter and ask for a second hearing—with, of course, counsel involved on the side of the county council and possible liability for costs—they were not prepared to take the matter further. However, the county council properly readvertised and there was proper consultation, and as a result of submissions made by that group and others, proper safeguards were put into consent to the planning application. Today, one can see that at Gresford colliery the workings have all been renewed and it looks very pleasant. However, that was the limitation of judicial review as it was then.

Therefore, when in 2005 the United Kingdom ratified the Aarhus convention, I felt a sense of relief. As appears from the declaration made by the UK Government upon signature and confirmed on ratification, the United Kingdom recognised the right of every person to live in an environment adequate to his or her health and well-being. The United Kingdom guaranteed the right of access to justice in environmental matters by the declaration it made on ratification, yet only five years later, in 2010, the European Commission took the United Kingdom to the European Court of Justice to determine whether it was fulfilling its obligations under the convention, specifically on the obligation that its judicial proceedings must not be prohibitively expensive.

7.15 pm

In its judgment in February 2014, the court held that the United Kingdom was in breach of the convention. It held that the courts of this country did not appear to be obliged to grant protection where the cost of the proceedings was objectively unreasonable. Nor did protection appear to be granted where only the particular interest of the claimant was involved. The court concluded that in practice the rules of case law that had been applied did not satisfy the requirement that proceedings should not be prohibitively expensive.

So, although this declaration was made in 2005, it was not properly followed through. Then, there was the public consultation of September 2015, to which my noble friend referred, and the result was overwhelming opposition to the Government's proposals.

The real problem with the statutory instrument with which we are concerned is the possibility that an application can be made to the court to vary the cost cap, up or down, and that introduces uncertainty, which must affect the minds of the people in communities who wish to challenge a decision of an authority or of government. It is the job of lawyers such as myself to advise people never to go to court if they can possibly help it, but who would want to go to court with the threat that the cost cap which you can judge and expect under the convention might go up or down? That is not supportable, and I hope that all your Lordships will join my noble friend in regretting this statutory instrument.

Lord Hope of Craighead (CB): My Lords, I had not intended to speak in this debate but I have an interest in it for a variety of reasons. First, I should declare an

interest as a member of the RSPB, the Scottish Wildlife Trust and the Scottish Ornithologists' Club, and as the owner of a cottage, which happens to be called "Craighead", in an area of east Perthshire which is at risk of being surrounded by wind farms.

I am very conscious of the importance of the right of the public to challenge planning applications without undue cost where the proceedings would be unduly expensive. Therefore, in a sense I am very sympathetic to the point that the noble Lord, Lord Marks of Henley-on-Thames, has raised. On the other hand, as my noble and learned friend Lord Brown pointed out, I presided in the case of Edwards. That case raised a particular problem for us because we were sitting in the Supreme Court, where the environmental point was being taken not on the first appeal but the second. One reason that we were particularly anxious to refer the matter to the CJEU was to find out what the position is when cases reach the appellate stage and one has already had two hearings of the issue and is facing the cost of a third. Therefore, at the moment I am undecided as to which way to go.

There is a feature that is worth bearing in mind. It is very easy to take a blanket view about all the people who wish to challenge planning applications or other matters that affect the environment, and assume that they are all taking the proceedings in the most economical and responsible way possible. Judges are aware that human nature varies and applications vary, and that there may be circumstances in which the element of control which comes with the ability to vary the cap up or down, as has been pointed out, may be a useful method of controlling proceedings before they get out of control.

I will be interested to hear from the Minister about the background to this measure, and to understand and know whether it applies to appeals as well as to proceedings of first instance, before I decide whether I can support the Motion to Regret. I am in sympathy with it but not sure that I can carry it the entire way.

Baroness Jones of Whitchurch (Lab): I am grateful for the opportunity to speak briefly in support of the Motion and I thank the noble Lord, Lord Marks, for giving us the opportunity. I refer your Lordships to my entry in the register of interests.

I wish to make a wider point about the consequences of this legislation. I speak as a passionate environmentalist and as someone who has maintained a sceptical eye on the environmental claims of the party opposite because, sadly, time and again the practical realities of its actions have not lived up to its lofty claims about defending the environment.

I was intrigued when I heard Michael Gove's keynote speech setting out his own agenda to the WWF in July. He went further than the usual ministerial platitudes on these issues. He specifically praised organisations such as the WWF, the RSPB, the Wildlife Trust, Greenpeace, Friends of the Earth and so on. He said:

> "Their campaigning energy and idealism, while occasionally uncomfortable for those of us in power, who have to live in a world of compromise and deal-making, is vital to ensuring we continue to make progress in protecting and enhancing our environment".

He went on to say:

> "On everything from alerting us all to the danger posed by plastics in our oceans and nitrogen oxide in our air, to the threats posed to elephants by poaching and cod by over-fishing, it's been environmental organisations which have driven Governments to make progress".

It is therefore ironic that the organisations holding the Government to account—which Michael Gove was keen to praise—are the same organisations which have now written to noble Lords urging us to support this Motion to Regret.

I have a specific question to the Minister, which is: has Michael Gove, the new Secretary of State for Defra, been fully consulted about these changes and is the Minister confident that he supports them? If so, we on these Benches will have to revert to our cynicism about his true intentions about working with those organisations to protect the environment.

It is clear that the proposed changes to the court costs will discourage environmental charities, local groups and individuals from holding the Government to account when they fail to live up to their promises about protecting the environment. I refer noble Lords, for example, to the heroic and dogged legal case of Client Earth on holding the Government to account on the question of clean air, which has wide and enormous public consequences. The case has true public benefits and there are many other cases like it.

Like others I have read the Explanatory Memorandum, and I share the disbelief of the Secondary Legislation Scrutiny Committee that it does not make it clear why these changes are needed. There is no evidence of a flood of unmeritorious claims in court. The figure quoted of 153 cases in a year seems remarkably reasonable. It is also clear that a healthy number of those cases were successful, which rather underscores their validity.

I do not wish to prolong this discussion but the continuity and the streamlined thinking of the Government has been tested by this. I am not sure whether Defra and the justice department are thinking with like minds and I therefore urge the Minister to withdraw the proposals. In doing so, I make it clear that I will support the Motion if it is pressed to a vote.

Baroness Parminter (LD): My Lords, I thank the noble Lord, Lord Marks, for bringing forward this regret Motion and exemplifying what this House does so well—standing up for the democratic rights of citizens to challenge authority and, as in this case, do so in the face of what is clearly an attempt by the Government to price people out of the opportunity to get environmental justice.

As the noble Baroness, Lady Jones, said, we are at a time when there is mounting pressure on our precious environment and, frankly, when better lives in a better future for all of us can be achieved only by respecting the value and constraints of the natural environment. Like the noble Baroness, Lady Young, as a former chief executive of the Campaign to Protect Rural England, I saw how local groups saw going to judicial review as a last resort. Unlike companies, local groups do not have the right of appeal when a local authority approves a controversial application. Costs protection provided groups with a certainty: they could assess the likely expenditure over the duration of a challenge and they could agree to take it forward.

[Baroness Parminter]

I worry that there is not a clear rationale for the case the Government are making, as the Secondary Legislation Scrutiny Committee said. It is not as if the cases where the claimants sought to apply environmental costs protection rules were clogging up the courts—there were only 166 such cases in 2014-15 out of a total of over 20,000 judicial reviews launched. Equally, those cases had a markedly higher success rate than other types of cases going to judicial review, so they were not unreasonable.

There is evidence that, since the changes were introduced, there has been a chilling effect on the number of cases coming forward: environmental groups using Ministry of Justice data estimate a reduction of about a quarter since the introduction of the new regime. I ask the Minister for the ministry to clearly publish the data on the number of cases, so that the effects of the new regime can be fully evaluated.

Like the noble Baroness, Lady Jones, I find it very interesting to hear the fine words from last month of the Secretary of State for the Environment, Michael Gove, who said,

"we have an opportunity, outside the EU, to design potentially more effective, more rigorous and more responsive institutions, new means of holding individuals and organisations to account for environmental outcomes".

Frankly, in the light of this, those words ring pretty hollow.

Lord Teverson (LD): My Lords, I have the privilege of chairing your Lordships' EU Sub-Committee on Energy and Environment. It is in that capacity that I make my comments.

Earlier this year, we took evidence for and produced a report called *Brexit: Environment and Climate Change*. We went through the normal areas of devolution and the complexity of bringing environmental legislation back into the UK, our influence on climate change policy, policy stability and a lack of EIB investment. What took all our members by surprise was that many of our witnesses felt the most important issue was that the Government's environmental action could be called to account—by the European Commission and the European Court of Justice—at present and that would disappear following Brexit. They also felt there were difficulties in replacing that authority. I quote our witness, Maria Lee, professor of law at UCL, who said of environmental legislation:

"It sounds so far-fetched to say that we might replace the Commission, but we have taken the Commission's role in supervising compliance completely for granted for 40 years, and that will go. We should think about whether it is feasible to replace that with a parliamentary body, a government body or some other sort of public body that will supervise government and agency compliance with the law. It sounds ambitious in the current climate, but we have had this for 40 years and we are about to lose it. It is important".

At the end of our evidence sessions, and when we wrote the report, we made two recommendations of the whole committee:

"The importance of the role of the EU institutions in ensuring effective enforcement of environmental protection and standards, underpinned as it is by the power to take infraction proceedings against the United Kingdom or against any other Member State, cannot be over-stated. The Government's assurances that future Governments will, in effect, be able to regulate themselves, along with Ministers' apparent confusion between political accountability to Parliament and judicial oversight, are worryingly complacent".

That was the conclusion of the committee. It went on to say:

"The evidence we have heard strongly suggests that an effective and independent domestic enforcement mechanism will be necessary, in order to fill the vacuum",

left by the Commission,

"in ensuring the compliance of the Government and public authorities with environmental obligations. Such enforcement will need to be underpinned by effective judicial oversight, and we note the concerns of witnesses that existing domestic judicial review procedures may be inadequate and costly".

That was before these measures came in.

The Government responded by saying:

"The UK has always had a strong legal framework for environmental protections, and will continue to have a system of judicial review by UK judges after EU Exit. The judicial review mechanism enables any interested party"—

any interested party—

"to challenge the decisions of the Government of the day by taking action through the domestic courts".

The committee felt that judicial review was a very weak substitute for current mechanisms, but it would certainly be disappointed if that judicial review procedure, which it sees as the right way forward post Brexit, has been weakened to this very considerable degree.

7.30 pm

Lord Mackay of Clashfern (Con): My Lords, I want to say one thing about this statutory instrument. It deals with a particular class of judicial review relating to the environment. It is special in this way: there are limitations of cost already in the system—of £5,000 where the claimant is claiming only as an individual, not as or on behalf of a business or other legal person, and £10,000 in all other cases. For a defendant, the amount is £35,000. In the previous arrangements that was fixed. It is certainly easy to think that, for a claimant, £5,000 might be a substantial amount in relation to his or her environmental interest.

These rules allow the court jurisdiction and discretion to alter these figures either up or down. It is important that the discretion is limited by this phrase:

"The court may vary such an amount or remove such a limit only if satisfied that … to do so would not make the costs of the proceedings prohibitively expensive for the claimant"—

that is the rule from the convention—and,

"in the case of a variation which would reduce a claimant's maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant".

The protection for the claimant is the jurisdiction and discretion of the court within the limits that that sets out. Is not in any way a damaging type of jurisdiction or discretion, but one that can help people who have a need for that. That must be taken into account in considering this instrument.

Lord Pannick (CB): My Lords, my response to the noble and learned Lord is that these rules remove the certainty that potential claimants previously enjoyed. That is the vice as I see it. It is essential in these cases that a person considering starting proceedings knows

at the outset the maximum liability they will incur. It is no answer to them, when they are thinking of bringing proceedings, that the cap may be reduced as well as increased. They want to know. If they do not know at the outset when considering bringing these proceedings what the maximum is, the likelihood is that many of them will be deterred from bringing these proceedings. That is the damage to access to justice.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords—

Lord Beecham (Lab): Noble Lords will have to wait a little longer for what I suspect will be the most enlightening speech of the evening.

I congratulate the noble Lord, Lord Marks, on tabling his Motion, which we on these Benches, and perhaps those who are not, will shortly support through the Lobbies. There are only two things wrong with the Government's policy in relation to the specific part of the Civil Procedure (Amendment Rules) we are debating: the process from which it emerged and the substantive effect of the policy it embodies.

On process, yet again the Secondary Legislation Committee, composed of highly experienced Members from all parts of the House, finds cause to be highly critical of the lack of information on or a clear understanding of the policy objective and intended implementation of the radical changes embodied in the rules. As we have heard, these are likely to deter challenges to decisions in the planning arena under the Aarhus convention by raising the cap on costs to be paid by unsuccessful applicants—very often, voluntary organisations or other groups of a non-commercial nature—to the benefit of the defendants, who are likely to be better endowed financially and, in this environmental area, may include the Government or public bodies. I concur with the rebuttal—if I may use as strong a term—made by the noble Lord, Lord Pannick, of the observations of the noble and learned Lord, Lord Mackay.

On process, the committee found that the Explanatory Memorandum accompanying the rules apparently forgot to report that fewer than 10 of the 289 responses—some them admittedly merely replicating answers provided by Friends of the Earth—supported the proposals. The vast majority of the respondents averred that the proposals failed to meet the principles emerging from the Edwards case, to which reference has already been made. The committee stated that the Government should have better explained their interpretation in the memorandum and identified any changes made following the consultation—they did not do so. It went on to point out that, whereas the consultation document pledged a review within two years, no such undertaking is mentioned in the Explanatory Memorandum supporting the statutory instrument we are debating. It called for clarification of the Government's intentions—no doubt the noble and learned Lord the Minister will provide such clarification.

The committee's conclusion was damning. It proclaimed:

"The Ministry of Justice has not addressed any of these concerns in its paperwork and we therefore draw the matter to the special attention of the House on the ground that the explanatory material … provides insufficient information to gain a clear understanding about the … policy objective and intended implementation".

That is a very severe critique by the committee.

Time and again, we have similar critical reports from the committee and still the Government proceed to adopt a cavalier approach to the process, which, at a time when Brexit is in train, is even more worrying than in the past. What undertakings will the Government make to improve their lamentable performance in the use of secondary legislation not merely in this area but across the whole range of secondary legislation?

It would appear that there is already evidence of the chilling effect of the new regime, to which some references have already been made. As we have heard, Friends of the Earth estimates that the number of cases has reduced by around 25% since the introduction of the new regime. Can the Minister, if not today then subsequently, publish the relevant data so that a proper assessment of the position can be made?

It is instructive to compare the different scenarios before and after the change. Friends of the Earth cites two cases under the old regime which exemplify the workings of the previous system. In one case, the Campaign to Protect Rural England Kent sought judicial review of a planning decision affecting an area of outstanding natural beauty. It succeeded in having the planning permission quashed by the Court of Appeal. Commenting on the case, CPRE Kent said that,

"the certainty of costs protection allowed Trustees and staff to assess the likely expenditure over the duration of such a challenge".

In another case, this time in Norfolk, residents of Norwich were much exercised over proposals to build a major road which they contended would irreversibly damage the environment, destroy areas of countryside, farmland and wildlife habitats, and increase noise and pollution. A local parish councillor sought judicial review on behalf of the Wensum Valley Alliance and the council, to its credit, accepted that the scheme was unlawful. It was quashed in the High Court. However, the salient point is that the councillor—Councillor Boswell, who was also involved in the case—stated that the local community group, the Wensum Valley Alliance, would have,

"found it impossible … to contemplate legal action without knowing the extent of their financial liability in advance".

We heard earlier the experience of the Liverpool Green Party, which again illustrates the chilling effect of the new regime. The net result of the changes seems likely to reduce significantly access to justice in this area of the law, in which applicants under the old system were 12 times more likely to succeed than fail. Given that under Brexit, there would be no recourse to the European Court of Justice, the recent developments are even more worrying.

As we heard from the noble and learned Lord, Lord Brown, and the noble Baroness, Lady Parminter, we await the outcome of a case brought by Friends of the Earth, the RSPB and ClientEarth contending that the changes already made are incompatible with the UK's obligations to provide access to justice as set out in European law. Can the Minister offer any assurances that, with or without Brexit, UK citizens will not be deterred from challenging authority by the potential exposure to large claims for costs?

[Lord Beecham]

I understand that we currently await a report from the compliance committee of the Economic and Social Council on the UK's compliance with its obligations under the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. I trust the Government will abide by the recommendations of the committee and thereby distinguish this country from some countries in, for example, eastern Europe which seem, alas, to be reverting to a more authoritarian mode of government whereby access to justice and the independence of the courts appear in danger of being undermined.

Lord Keen of Elie: My Lords, I begin by thanking the noble Lord, Lord Marks of Henley-on-Thames, for tabling this evening's Motion on this topic. I welcome the valuable contributions from noble Lords across the House.

The United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, generally known as the Aarhus convention, requires countries which have signed the convention to guarantee rights for their citizens of access to information, public participation in decision-making and access to justice in environmental matters. In particular, it requires those countries to make sure that the public has access to legal procedures to challenge relevant decisions taken by the countries' public authorities and specifies that those legal procedures should, among other things, not be "prohibitively expensive". Both the UK and the European Union are signatories to the Aarhus convention, and the convention has been incorporated—albeit in part—in EU law, including the requirement that the legal costs of relevant environmental claims must not be prohibitively expensive.

The costs regimes and the amendments made to them to fulfil this requirement in respect of claims within the scope of the Aarhus convention are similar as between England and Wales, Scotland and Northern Ireland. However, there are important differences. In the present context, I address the position in only England and Wales. In seeking to comply with the "not prohibitively expensive" requirement, successive Governments have taken steps to control the costs that a losing claimant may be ordered to pay a winning defendant. I will set out key recent events, although most of them have been touched on at various points during the course of this debate.

In April 2013, an environmental costs protection regime was introduced by amendment to the Civil Procedure Rules, which capped the amount of costs that a court could order an unsuccessful claimant to pay to other parties. Under this regime, the claimant's costs liability to a successful defendant was capped at either £5,000 for claimants who were individuals or £10,000 for other claimants, as alluded to by the noble and learned Lord, Lord Mackay of Clashfern. The defendant's costs liability to a successful claimant was similarly capped, but at the rather higher level of £35,000.

7.45 pm

The next important event was the handing down in February 2014 of a judgment by the European Court of Justice in infraction proceedings relating to the United Kingdom's compliance with the "not prohibitively expensive" requirement as at 2010. This concluded that the costs regime that had existed in 2010—before the new ECPR was put in place in 2013—was insufficient to comply with EU law and that specific provision giving effect to the "not prohibitively expensive" requirement was required; and it set out the essential requirements to be fulfilled by such provision. In the light of that ruling and related judgments by the European Court of Justice and United Kingdom Supreme Court in the Edwards case, which the noble and learned Lord, Lord Brown, referred to, the Government proposed amendments to the environmental costs protection regime. That consultation took place between September and December 2015, and the Government's response was published on 17 November 2016.

As was mentioned by the noble Lord, Lord Marks, 289 responses to the consultation were received, with the vast majority opposed to the Government's proposals. I note, however, that of the 207 responses from individuals, 103 of these used a template prepared by Friends of the Earth. It does not really help to advance an analysis of the consultation when that sort of behaviour is indulged in. It is fair to say that almost all the responses received were from those supporting the bringing of environmental claims. Of course, that was noted. But the Government had to balance the interests of claimants and defendants—including the Government and their agencies—in the light of the case law, while fulfilling but not necessarily going beyond the requirements laid down in the case law.

Following the consultation, the Government announced the way forward in November 2016. The changes, having been considered and agreed, with amendments, by the Civil Procedure Rule Committee, came into effect on 28 February this year. I will list them in a little detail because many of the changes are favourable to claimants and, indeed, were welcomed by claimant groups.

First, the scope of the costs protection regime was extended to cover a wider range of cases, including environmental reviews under statute engaging EU law, as well as judicial reviews. However, it has not been extended to private nuisance claims.

Secondly, the courts can now vary the level of the costs caps from their default levels; I will come back to this. This can be downwards, which is supported by claimant groups, or upwards, which is not. The court is required not to make a variation which would render the proceedings prohibitively expensive for the claimant and, conversely, not to decline to make a variation if the proceedings would without such a variation be prohibitively expensive for the claimant. As the noble and learned Lord, Lord Mackay of Clashfern, pointed out, the whole point of this was to ensure that claimants of very limited means could actually be brought down below the level of the cap, which previously was fixed. In determining what is prohibitively expensive, the court is required to have regard to the specific factors set out by the European Court of Justice for this purpose; for example, the prospects of success and whether the claim is frivolous, so there is some regard to the meritorious and the unmeritorious claim. I note in passing that this power

to vary upwards is confined to England and Wales and I accept that this is what is particularly opposed by claimant groups.

Thirdly, there is now an express provision that when considering an application to vary the cap, the court must take into account the amount of court fees payable by the claimant in determining whether the variation, or any failure to make it, would render the proceedings prohibitively expensive for the claimant; in other words, the costs to be incurred.

Fourthly, touching on a point raised by the noble and learned Lord, Lord Hope of Craighead, there is now a requirement for the Court of Appeal to grant costs protection in appropriate cases, applying the same criteria for determining what is prohibitively expensive as the court at first instance. So that is now addressed. Again, these last two changes are generally supported by claimant groups. I emphasise again that it is explicit in the rules that, when exercising its powers in relation to costs protection, the court must always make costs orders that allow claims to proceed without prohibitive expense to the claimants.

The revised costs protection regime came into effect via changes made to the Civil Procedure Rules and by way of an SI that was laid before Parliament on 3 February this year, and which came in to force on 28 February. That SI received scrutiny from both the House of Lords Secondary Legislation Scrutiny Committee and the Joint Committee on Statutory Instruments. The committees made some criticism, in particular of the Explanatory Memorandum attached to the SI, which I notice.

In addition, proceedings for judicial review were brought by a group of environmental NGOs, challenging these rules on certain limited grounds. There is nothing sub judice about the fact that the judicial review was brought, nor about the notes of argument, nor the pleading. I note that the proceedings were brought by the RSPB, Friends of the Earth and Client Earth. Those names will be familiar to all of your Lordships, particularly because it was those three groups that circulated a briefing note for the purposes of this debate. The briefing says that it is for the priced out of environmental justice debate on Wednesday 13 September in the dinner break. Fortunately, we managed to get in just ahead of that.

I will come back to that application for review but I notice that there has already been a hearing and that judgment is imminent. It is rather awkward timing that we have this regret Motion just before the High Court is about to opine on many of the points alluded to by the noble Lord, Lord Marks.

It is important to note that the revised environmental costs protection regime is not intended to make environmental justice less accessible. The new regime is, however, intended to be more proportionate so that, for example, very wealthy claimants should have the cap on what they should pay set at an appropriate level rather than at what, for them, may be a negligible level. Aarhus claims may be brought against local and central government, and we must have regard to the taxpayer's interest in the costs of legal claims, as well as the position of claimants.

I will touch on a number of points made by the noble Lord, Lord Marks, in opening the debate on this regret Motion. First, he referred to the requirement to produce a schedule of means. However, it would be difficult to set an appropriate cap if you did not have a schedule of means. I note that the judicial review brought by the three NGOs I referred to does not even attempt to suggest that the production of a schedule of means is in itself a breach of the requirements under the Aarhus convention. What they sought to argue was that there may be an issue as to whether the schedule of means should be produced in public or in private. That is a neat question, and one which the High Court is in the course of considering. It will opine on that and the Government and others will take account of what the High Court has to say on that simple point.

The second point raised by the noble Lord, Lord Marks, concerned the variation in the cap. Much was made of the fact this would produce uncertainty and have a chilling effect. The noble Lord, Lord Pannick, said that it removes certainty, suggesting that at any time a claimant could suddenly find that their liability for costs had materially altered without any change in circumstances. That is simply not the case. A good argument is never improved by being overstated. It is important to appreciate that while the court has the power—

Lord Pannick: My Lords—

Lord Keen of Elie: I am mid-sentence but the noble Lord may come in in a moment.

It is important to appreciate that while the court has the power to review the cap on a claimant's potential cost liability, it will be able to do so only on very limited grounds. Indeed, the only two grounds I am aware of are, first, that the claimant misled the court as to its financial position when the cap was originally fixed, which is hardly a sympathetic position, or secondly, that there has been such a material change in the claimant's financial position that the cap should be reviewed, whether downwards or upwards. The noble Lord, Lord Pannick, wanted to make an observation.

Lord Pannick: I do not want to overstate my case; I just want to be clear that I have understood the rules correctly. When considering bringing proceedings, the person concerned cannot know what the cap is and at any stage during the proceedings the cap can be increased, as the noble and learned Lord says, if the judge takes the view that circumstances have changed. That is my understanding.

Lord Keen of Elie: Let us be absolutely clear about what the position is. When a claimant begins the proceedings, there is a default cap, but on seeing the schedule of means, the court may vary that cap, downwards or upwards—downwards to the benefit of the claimant, upwards to the benefit of the defendant, potentially. Therefore, that is appropriate.

Lord Thomas of Gresford: The regulations as drafted suggest that there can be alteration depending upon the court's view of the merits or demerits of the case as it goes along. Am I wrong in that?

Lord Keen of Elie: I do not accept that. Quite apart from anything else, I again make the point that some of these matters have already been submitted in argument to the High Court. It has heard those arguments and will deliver judgment upon these points. I am quite clear in my own mind that the cap has a default position; it may be varied in light of the schedule of means, but once it is fixed there have to be identifiable and fixed circumstances, such that the claimant misled the court in the first place, before it will be reviewed on an application by the defendant. It is very clear, and the grounds upon which that can be done are patently very narrow.

Lord Marks of Henley-on-Thames: Perhaps the Minister will explain where those grounds are rigidly defined because they are nowhere in the rules, as I read them. The statement of financial resources has to be provided with the original application. It is not a question of there being a default cap which may then be varied on the basis of the statement of means. Rule 42 is absolutely clear that at the outset the statement of financial resources has to be provided.

Lord Keen of Elie: On the second point, I do not demur. The point is that there is a default position but, in the light of the schedule of means that is produced at the outset, that may be varied down or up. I have no difficulty with that whatever. As to the first point that the noble Lord alluded to, I commend to him a little patience because the High Court is about to opine on these matters, having heard argument. He will be familiar with the pleading that the NGOs submitted in their judicial review and with the notes of argument that were submitted on behalf of the claimants and on behalf of the defendants in that matter. They focus on the very issue of the limited circumstances in which any variation can take place at a later date. I have referred to two possibilities. They are the only two possibilities of which I am aware, and I put that into *Hansard*. If there were a third or fourth, I would have mentioned it.

The Government understand that, following the most recent changes in February, environmental claims continue to be brought. That said, the Government agree that it is too early to make a fully effective assessment of the impact of the changes to the environmental costs protection regime to date. We will keep the impact of the new environmental costs protection regime under review and will review it formally when we have sufficient data, so I seek to reassure the noble Baroness on that point.

The Government need to strike a balance between enabling appropriate claims to proceed and making sure that unmeritorious claims are not encouraged. Those who can pay towards the costs of unsuccessful claims should do so, subject always to the requirement that Aarhus convention claims should not be prohibitively expensive. Overall, the Government believe that the reforms that have been introduced are fair and reasonable and certainly comply with our international obligations. That is the subject of a current challenge on which the High Court is about to opine. I respectfully suggest that it would be premature for this House to anticipate the opinion of the High Court on these points and I hope that the noble Lord will withdraw his Motion.

Lord Marks of Henley-on-Thames: My Lords, I am very grateful to everyone who has spoken, particularly of course to those many noble Lords who have spoken in favour of my regret Motion. I will be very brief in closing, but will address the point made just now by the Minister and by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. They both mentioned —indeed the Minister relied upon—the High Court challenge to the legality of these regulations. This Motion is a parliamentary Motion and entirely independent of the High Court proceedings. If the High Court challenge succeeds, that will be the end of the matter and the rules will be quashed. The question in that case is whether the then Lord Chancellor could lawfully make the new rules; the question for this House is whether she should have made the rules or whether they offend against the principles which I mentioned at the outset.

The central point in this regret Motion is that the new rules reduce costs protection, for precisely the reason set out by the noble Lord, Lord Pannick. Costs protection comes from having the confidence that when you go into a case and have a costs protection order, you will be limited in your liability to £5,000 for individuals or £10,000 for organisations. It is the claimant's costs protection that is important in these cases. I invite noble Lords to remember that very often this is public interest litigation, where concerned individuals and concerned organisations—not all large, some of them small, often charities—go into litigation not for a personal interest but because they want to secure the public interest. Why would they go into that litigation with the risk that they are going to have their exposure radically increased during the case? I do not accept the Minister's interpretation of the arguments that were put in the current challenge on the circumstances in which a limitation can be removed—that is not in the rules and we have not had the judgment.

This is the kind of litigation that we are concerned with. Costs protection is a very important part of it and was the Government's response in 2013 to the Aarhus convention. This is what is necessary to comply with it, in terms of the politics of this House making sure that costs are not prohibitively expensive. I have heard nothing that persuades me to withdraw my regret Motion and I wish to test the opinion of the House.

8.02 pm

Division on Lord Marks of Henley-on-Thames's Motion

Contents 142; Not-Contents 97.

Motion agreed.

Division No. 1

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House adjourned at 8.14 pm.