# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# FINANCIAL SERVICES BILL

*Seventh Sitting*

*Thursday 26 November 2020*

*(Morning)*

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PBC (Bill 200) 2019 - 2021

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**not later than**

**Monday 30 November 2020**

**The Committee consisted of the following Members:**

*Chairs:* † PHILIP DAVIES, DR RUPA HUQ

† Baldwin, Harriett *(West Worcestershire)* (Con)
† Cates, Miriam *(Penistone and Stocksbridge)* (Con)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Davies, Gareth *(Grantham and Stamford)* (Con)
Eagle, Ms Angela *(Wallasey)* (Lab)
† Flynn, Stephen *(Aberdeen South)* (SNP)
† Glen, John *(Economic Secretary to the Treasury)*
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† McFadden, Mr Pat *(Wolverhampton South East)* (Lab)
† Marson, Julie *(Hertford and Stortford)* (Con)
† Millar, Robin *(Aberconwy)* (Con)
† Oppong-Asare, Abena *(Erith and Thamesmead)* (Lab)
† Richardson, Angela *(Guildford)* (Con)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Williams, Craig *(Montgomeryshire)* (Con)

Kevin Maddison; Nicholas Taylor, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Thursday 26 November 2020*

*(Morning)*

[PHILIP DAVIES *in the Chair*]

## Financial Services Bill

11.30 am

**The Chair:** Before we begin, just a few reminders: please switch electronic devices to silent; no tea and coffee during sittings; and, again, I thank everybody for observing the social distancing regulations. As you have seen, the spaces are marked and now cannot even be moved, so there is no excuse for not social distancing. The *Hansard* reporters would be grateful if Members emailed any electronic copies of their speaking notes to hansardnotes@parliament.uk.

We continue now with line-by-line consideration of the Bill.

### Clause 8

REVIEW OF WHICH BENCHMARKS ARE CRITICAL BENCHMARKS

**Mr Pat McFadden** (Wolverhampton South East) (Lab): I beg to move amendment 28, in clause 8, page 7, line 38, at end insert—

'(7) In reviewing critical benchmarks in accordance with Article A20 of the Benchmarks regulation as amended by this Act the FCA must have regard to—

(a) ensuring a benchmark is based on actual trades or contracts;

(b) preventing a benchmark from manipulation for the benefit of anyone submitting information to that benchmark; and

(c) robust sanctions up to and including custodial sentences for anyone found to be engaged in manipulation or attempted manipulation of a benchmark.'

*This amendment would require the FCA to have regard to ensuring a benchmark is based on actual trades or contracts, that it is not open to manipulation and that robust sanctions are in place for those who manipulate, or attempt to manipulate, a benchmark.*

Thank you for your chairmanship today, Mr Davies. Perhaps with your indulgence I may, as I did the other day, explain how I shall try to approach this morning's sitting. I believe that within a sometimes impenetrable Bill the clauses we are to debate this morning may be the most impenetrable. That is often the case when clauses change provisions elsewhere, as in this instance. I shall, as I go through my remarks on the provisions, ask the Minister some questions. The real meat will come at about clauses 13 to 16, and I will speak for a bit longer. I just want to give the Committee the shape of my approach.

To return to the amendment, it begins, I guess, with LIBOR. I want by way of illustration to ask the Committee to think about the price of bread. If we were all asked what the benchmark price of a loaf is, it would be easy to establish it. We would go to a supermarket, look on the shelf, and see the price of a loaf. If we were keen shoppers with a good eye for a bargain, we might go to two or three supermarkets and compare the price of a loaf. I could pop-quiz the Committee, but I shall not put anyone through that.

The price of a standard loaf in one of our supermarkets is roughly £1.10, give or take; people who want to go for one of those sourdough loaves can pay a bit more if they want, but for what I would call a normal brown loaf it is about £1.10. That is the benchmark price of a loaf, dictated by the supply and demand of a competitive supermarket environment.

Now I want Members to imagine a different way of setting prices, where we were setting the price of a loaf and could all submit our opinion on what the price of the loaf might be—and we owned bakeries, and were selling loaves. We would have a debate every day to set the price of bread. Perhaps the Minister and I would converge on about £1.10, but someone else might say, "Look, could we just edge that price up? Could you do me a favour and make today's price £1.11 or £1.12? It would be a really good favour and, by the way, if you do it I might send you a case of champagne at Christmas."

The trader might be saying those things in the knowledge that they had a lot of loaves to sell that afternoon—maybe millions. The penny difference in price could make a great difference to the profit. Alternatively, a benchmark price of £1.09 instead of £1.10 could mean that they would lose a lot of money on the bread they had to sell. That is basically what was happening with LIBOR. That is the problem that was unveiled.

The problem is exacerbated where there is not a liquid market for bread and where the benchmark relies more and more on what our oral witnesses last week called "expert judgment". That is one phrase for it, but we could also call it opinion, and if we did not have supermarkets selling millions of loaves every day and the price of bread was down to the opinion of only the bakers, we can see there would be the potential for price manipulation.

That is what was happening with LIBOR and what was uncovered as traders around the world shaved tiny proportions off the daily rates. The volume of money being traded meant that even a tiny proportion—0.01% or something like that—could make a huge difference to their own trading account over the course of the year. That is the problem that this set of clauses is trying to deal with.

How do we deal with the problem? We focus a lot on what the Bill calls the representativeness of the benchmark, because there is not really a problem when millions of loaves are being sold and there is a competitive environment; if I do not like the price at Tesco, I can go to another supermarket and try my luck elsewhere. But when wholesale markets were not very liquid and relied more and more on expert opinions, there was the potential for—indeed, the reality of—manipulation. That is what happened.

That matters because this benchmark underpins trillions of pounds'-worth of trades, yet was found to be vulnerable to the kind of manipulation I have just tried to illustrate. I have tried to show that even the tiniest movement in the daily benchmark could make a big difference to traders because of the volumes of money that they were trading. The benchmark's flaws were exposed a number of years ago, yet its use to underpin trading has persisted because of the volume of contracts linked to it.

One of the problems in the complexity of this set of clauses is that it takes us into the area of contract law, which is both complex and, in this case, international. Huge volumes, contract law and international jurisdictions are involved, so—to be fair to the regulators and the Treasury—it is not easy to get this right. Our amendment does not try to get into the contract issue, which we will come to later when we debate a few clauses further on, but rather tries to set out some ground rules for the regulator in establishing and sanctioning successor benchmarks to LIBOR.

The criteria that we have set out ought to be uncontroversial. The first is that the benchmark should be based on actual trades in the market for which real prices were paid. I confess I have been away from the issue for a while, although I served on parliamentary inquiries into it some years ago, but we learned last week that those so-called expert judgments are still being used to set LIBOR prices. That is someone's opinion of what a trade might cost, not necessarily what it does cost in a real marketplace. That use of expert judgments has created the potential—and, as we have seen, more than the potential—for manipulation.

We also learned that SONIA, the sterling overnight index average and the favoured successor to LIBOR in the UK, is based on much more liquid markets. That is a good thing, but there is also a potential problem. LIBOR is an internationally used benchmark. While we are debating this legislation, the United States is also legislating, the European Union has parallel legislation and the Swiss have parallel legislation—and they have all gone for slightly different successors. That raises the problem, which the Minister and I will get into discussing: how to take contracts based on an internationally used benchmark and try to ensure fairness to those who signed up to contracts under it when the countries legislating for successors to it are all choosing slightly different overnight rates for those successors.

The amendment, therefore, goes with the grain of how trades are moving. We all agree that a benchmark based on large liquid markets will be more accurate than one based on opinion. The second and third elements of the amendment give the regulator a duty to prevent manipulation by those submitting information to the benchmark and to have robust sanctions, including custodial sentences, when that occurs.

We will get back to debating that elsewhere in the Bill. When the LIBOR scandal unfolded some seven or eight years ago, I remember that both the Treasury Committee and the Parliamentary Commission on Banking Standards heard evidence from chief executives of the major banks. Often, their defence was, "I had no idea what my traders were doing. I did not know that they were doing this." There was a constructive ignorance built into the system. Although that did not make the chief executive look good, it was far better than the chief executive admitting that they knew what the trader was doing but they looked the other way because it was making more profit for the bank and the trader. The sanctions and the responsibility up through the institution are very important.

All that is hugely important for trust in the system. The average constituent probably does not know much about LIBOR or what it does, but the truth is that the financial products they buy are often related to this benchmark, so it does have an impact in the real world. No matter how esoteric the financial products are—they have become too esoteric—in the end there is a customer, and the customer should only pay a fair price. The imbalance of information should not result in the customer being fleeced or the trader being unfairly enriched, and it is the job of the regulator and the financial institution for which that trader works to ensure that is the case. That is the intention behind our amendment: to set that as a clear goal for the regulators before we get into the meat in the clauses of how we will transition from LIBOR to other kinds of benchmarks.

**The Economic Secretary to the Treasury (John Glen):** It is a pleasure to serve under your chairmanship again, Mr Davies. I appreciate the opening remarks of the right hon. Member for Wolverhampton South East and his compelling attempt to contextualise the complexity of the scrutiny of the clauses that we will undertake this morning. In that spirit, it might be helpful if I contextualise for the Committee what benchmarks are, what the LIBOR benchmark is and where we are with the EU benchmarks regulation before I respond to the Opposition amendment.

A benchmark is a standard against which the performance of a fund can be measured or by reference to which payments can be calculated. They are most commonly found in financial instruments, but are used to compare a variety of products, from commodities—oil, gold and diamonds—to the weather. The most widely used benchmarks are interest rate benchmarks, such as LIBOR, the Euro Interbank Offered Rate and SONIA. They reflect interest rates for inter-bank lending and borrowing. They are regularly calculated and made publicly available. As was mentioned, they are used in a wide array of financial instruments used in global financial markets. They also have a use in trade, finance, valuation, accounting and taxation.

11.45 am

The LIBOR methodology is designed to produce an average rate that is representative of the rates at which large international banks could fund themselves in the wholesale and secured funding market. It is produced by ICE Benchmark Administration. It is calculated based on submissions made to the administrator each day by a number of major global banks known as the panel banks. They use a methodology that requires, to the greatest extent possible, submissions based on or derived from actual transactions. LIBOR is internationally used and systemically important. It is available in five currencies and published over seven time periods, known as tenors, ranging from overnight, up to one.

The FCA has regulated LIBOR since 2013, initially under the Financial Services and Markets Act 2000 and subsequently under the benchmarks regulation. The benchmarks regulation aims

> "to ensure the accuracy, robustness and integrity of financial benchmarks"

providing participants in the market with confidence in their use. The benchmarks regulation places requirements on administrators, supervised entities and supervised contributors relating to governance, transparency and methodology requirements.

The right hon. Gentleman mentioned his involvement in the Parliamentary Commission on Banking Standards, set up following the LIBOR scandal. The commission's focus on LIBOR was around the scandal itself and the inadequate governance and scrutiny that the financial sector was under. The right hon. Gentleman referenced that and the inadequacies of the defence of the executives whom he encountered during that work. The commission's report highlighted the fines levied to the perpetrators of the scandal. That is an encouraging example of a more appropriate penalty, highlighting that fines had not previously provided a sufficient deterrent.

It is worth mentioning the importance of this issue and why we are legislating today. The panel banks that contribute to LIBOR had previously colluded with each other to manipulate the rate, which came to light in the 2012 LIBOR scandal. In light of the LIBOR scandal and subsequent investigations, significant improvements have been made to the administration and governance of LIBOR, particularly around the quality of the governance and controls around submission, and the administration of the rates—that pricing of bread process.

However, the scandal also brought to light an inherent weakness in LIBOR: the underlying market that LIBOR seeks to measure and the unsecured wholesale term-lending markets that are no longer very active. This means that LIBOR has increasingly been based on expert judgments rather than actual transactions. Given that LIBOR is referenced in $400 trillion globally of financial contracts, it is a serious risk to financial stability for those not to be grounded in real transactions. On that basis, in 2014 the Financial Stability Board recommended the identification of alternative rates that could be used in place of interbank offered rates, or IBORs, and that market participant transactions should move from IBORs to these rates.

That is the context for what we are doing today. We are here to ensure that we have a mechanism for the FCA to manage the process of moving away from LIBOR going forward. The Government are committed to operating a fair and effective market and ensuring consumers are protected from all forms of market abuse, including manipulation of a benchmark. The amendment proposed by the right hon. Member for Wolverhampton South East—although provided, as ever, with the best of intentions—does not advance these goals.

First and foremost, the review process in article 20 of the benchmarks regulation, which requires the FCA to review critical benchmarks, concerns whether or not a benchmark meets relevant criteria to qualify as a critical benchmark and is subject to more stringent oversight. It is not an assessment of the benchmark's input data, or of the legislative framework that applies to the benchmark.

Adding additional considerations to this process could, in fact, weaken our regulatory regime, potentially preventing certain benchmarks that are, legitimately, not wholly based on transaction data, from being classified as critical, therefore greatly reducing the oversight powers that the FCA has over them. Even if we did consider these suggestions appropriate for all critical benchmarks, it is not clear how requiring the FCA to have regard to them would factor into the clear criteria outlined in the benchmarks regulation. That would damage the clarity of the review and designation process.

Furthermore, such requirements are unnecessary. The UK benchmarks regulation already contains this requirement:

"the input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure."

It also says:

"The input data shall be transaction data, if available and appropriate."

It is therefore important that there be some flexibility for an administrator in choosing appropriate input data. For example, where a benchmark measures an illiquid market, such as the value of large infrastructure projects, it may be inappropriate to have a benchmark methodology that is solely reliant on transactions. The use of expert judgment enables the continued calculation and publication of such benchmarks.

I listened carefully to what the right hon. Member for Wolverhampton South East said. The risk of inappropriate use of estimations that was inherent to the previous scandal is a live concern. That is why the calibration of those inputs in all circumstances needs to be carefully governed.

Separately, I note that there is already clear legislation that covers manipulation or attempted manipulation of a benchmark and provides sanctions for such activities. Under the Financial Services Act 2012, it is a criminal offence to make misleading statements in relation to benchmarks. In fact, in the Bill, as the right hon. Gentleman also rightly mentioned, there are measures that increase the maximum sentence for such a crime to 10 years.

**Stella Creasy** (Walthamstow) (Lab/Co-op): It is wonderful to serve under your chairmanship, as ever, Mr Davies. The Minister is explaining that there is a process for enforcement. We all know that this issue is very specialist. If he thinks the current regulations and sanctions are appropriate, could he set out how they are being enacted and monitored? Frankly, it requires someone with a specialist understanding of how these rates can be manipulated to enact them in the way he outlines. If he does not want to add the amendment, could he explain how these issues can be investigated, and what resources there are to do that?

**John Glen:** I thank the hon. Lady for her point. These matters are administered by the FCA. I have set out the framework under which it operates. Its resourcing is a matter for it, and I speak on a six-weekly basis to the chief executive about that. The sanctions available to the FCA vary considerably according the nature of the breaches. Some will be small, modest technical breaches.

**Stella Creasy:** The Minister has set out the criminal sanction. I am interested in whether there is support and resourcing expertise in relation to the criminal element, as opposed to the regulatory element.

**John Glen:** At this point I cannot give her chapter and verse on the exact attribution of resources to this measure, but I can look into that and come back to her.

**Stephen Flynn** (Aberdeen South) (SNP): It is a pleasure to serve under your chairmanship, Mr Davies. I will be brief. The Minister has made a compelling case, but perhaps not as compelling as that made by the right hon. Member for Wolverhampton South East, who made illuminating remarks on the potential price of bread, although I encourage him to go to Aldi, where he will get it for a lot cheaper than £1.10.

What is proposed here is a common-sense approach that would give the wider public confidence that the Government are taking this matter seriously, notwithstanding the Minister's remarks thus far. In general terms, I do not think there is a huge difference between the two positions, but looking at both sides, I think the common-sense approach would be to tighten this process and make it more robust; that would provide the public with the confidence they feel they need on these matters, particularly given the scale of past scandals.

**Mr McFadden:** I listened carefully to what the Minister said. I do not think anyone looking at the issue would conclude that the responsibility for these actions had been fairly allocated, so there is an issue. I am not saying we want to go around looking to put people's heads on spikes—we do not want that sort of politics—but it does rankle with our constituents when certain types of crime that are, candidly, easier to understand are met with heavy punishments while somebody who does a very complex crime that is more difficult to understand can somehow get away with it.

Having said that, I accept that legislation for criminal offences, and particularly for custodial sentences, needs to be very carefully drafted in exactly the right way, and I cannot say that I am 100% certain that my amendment is, so I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Question proposed,* That the clause stand part of the Bill.

**John Glen:** Clause 8 is the first of 14 clauses that amend the benchmarks regulation in order to provide the FCA with the powers it needs to oversee the orderly wind-down of critical benchmarks such as LIBOR. Critical benchmarks are benchmarks that meet certain criteria—for instance, they are used in a significant volume of transactions, or the benchmark is based on submissions by contributors, the majority of whom are located in the UK. A number of powers in the benchmarks regulation are limited to the oversight supervision of critical benchmarks or the administrators of such benchmarks.

Clause 8 adds new criteria for what may be designated as a critical benchmark. As a result, a benchmark will be considered critical if its cessation would cause significant and adverse impacts on market integrity in the UK, even where the benchmark has market-led substitutes, provided one or more users of the benchmark cannot move on to a substitute. The new test means that, as a critical benchmark winds down, the value of contracts that use the benchmark diminishes. The powers available to the FCA to manage the wind-down of critical benchmarks will remain available, provided that the benchmark meets the relevant tests to remain designated as a critical benchmark.

In addition, one of the existing tests for what may be designated as a critical benchmark has been changed. The test originally stated that a benchmark would be designated as critical where it met either both a qualitative and quantitative threshold of use in more than €400 billion-worth of products, or the qualitative threshold only. The quantitative threshold has now been removed, as it has become redundant. This measure has been welcomed by industry as an important development in managing LIBOR transition, and will ensure that the FCA has the powers it needs to manage the orderly wind-down of this critical benchmark.

I am aware, as a result of my engagement with industry—indeed, the Committee heard evidence of this last week—that there is support among market participants for additional safe harbour provisions to complement the provisions in this Bill. I can assure the Committee that we are committed to looking into that further issue and providing industry with the reassurance it needs. That conversation is ongoing and, I think, is to the satisfaction of the industry; we are working to a conclusion with it. However, given what I think the Committee will concede is the complexity of the matters involved, I cannot commit to an outcome, and I think the industry recognises that.

**Abena Oppong-Asare** (Erith and Thamesmead) (Lab): I want to go back to what happens if moving to another benchmark is "not reasonably practicable". I note that the Minister is looking into that and seeking reassurance. One thing that we are particularly concerned about in this clause is the question of whether "one or more users", if it is reasonable and practicable, can switch to a market-led substitute benchmark. How do the Government define what is reasonably practicable in this case? Will he explain that to me, please?

**John Glen:** I am grateful to the hon. Lady for her question. In terms of the benchmark's being classed as critical and the appropriateness of substitutes, certain contracts face barriers to moving off a benchmark. While some contracts are bilateral and that renegotiation may be possible, many contracts are multilateral and involve the consent of multiple parties before a change can be made. Therefore, in some cases, achieving consensus on the changes is likely to be difficult or impossible, due to the absolute number of parties that will be involved, or due to the threshold at which consent would be achieved. In those situations the existence of an appropriate substitute is not relevant, as users will not be able to move on to it. The complexity of what they are on means that there is not anything substitutable.

12 noon

If there are still enough contracts using a benchmark for it to mean that the benchmark's cessation would have an adverse effect on market integrity in the UK, and parties are unable to move away from that benchmark, it is appropriate that the benchmark should be recognised as critical.

In truth, this is a complex judgment made by the regulators in the context of what is happening in the market, the readiness of the alternatives, and what I have just described. The Government will make a direct evaluation of that, but here we are setting out the context in which that power will be used by the FCA.

**Abena Oppong-Asare:** On the point about the Government making a direct evaluation, if the benchmark user argues that it would not be reasonably practical to

*[Abena Oppong-Asare]*

move to a market-led substitute, but the Treasury disagrees with that, what recourse does the user have to challenge this decision?

**John Glen:** These matters will be governed by protocols with the industry. The industry would have a dialogue with the FCA, through which these matters would be resolved. There would be a dispute, I would imagine, about the number of contracts, the number of people involved in those contracts, and the readiness of an available alternative. Usually, these matters would be resolved through dialogue and consultation.

**Abena Oppong-Asare:** That is really helpful, in terms of the dialogue with the FCA. Will a process be followed to ensure a fair system is applied with regard to substitutes that disagree with the Treasury process, or will how it is done be judged at that time?

**John Glen:** The complexity of these contracts and their reference to these benchmarks necessitates ongoing dialogue. There is a significant team in the FCA that deals with this work. The industry has been very concerned about this. This is a live, ongoing conversation. Given the context, and the history that the right hon. Member for Wolverhampton South East and I set out, and how appalling this situation was previously, there is wide consensus that this should be done in an open and collaborative way. This regulation will be used in that spirit.

**Alison Thewliss** (Glasgow Central) (SNP): Paul Richards from the International Capital Market Association, who gave evidence last week, said there were around 520 legacy bond contracts to be moved over, and only 20 had been converted in the market so far, because it is a difficult and time-consuming process. Is there more the Government could be doing to reassure and help? Does the Minister envisage bringing forward any amendments to make this any easier? It sounds like this process will cost the markets money.

**John Glen:** I thank the hon. Lady for her question. The evidence from the ICMA last week underscored the ongoing complexity and challenges of this. It may be that legislation will be required in a future Session, but that would be subject to a resolution. There is no point of crystallisation from the industry; it is not compelling us to bring something forward. There is no resistance on the part of the Treasury to doing that; it is a question of working out what would be appropriate for the market. That dialogue will continue, and the Government will respond in the appropriate way in due course. I think the gentleman who gave evidence last week was appropriately making the Committee aware of that ongoing additional dialogue regarding that safe harbour provision. But there is no point of conflict between the Treasury and the industry on this matter.

**Mr McFadden:** The questions asked by my hon. Friend the Member for Erith and Thamesmead expose the potential for litigation if the Government and regulators are moving contracts from one basis to another; some of the people involved will have deep pockets and expensive lawyers. The Minister tells us that it will all be sorted out—thrashed out—and I hope he is right; but I am not sure that we can guarantee that.

I have a couple of questions about the clause and those clauses that follow. First, is it all about LIBOR, even though it talks about critical benchmarks, or is it more general? For example, might the provisions be used on a benchmark related to the price of a particular metal, or something like that? For our understanding of the matter, should we, wherever the provisions refer to a critical benchmark, just be thinking about LIBOR—because that is what we really mean; and is there some parliamentary drafting reason why the Bill does not say that?

Secondly, the clause deals with a review of which benchmarks are critical benchmarks. The Minister said, and the clause says, that that seems to be a benchmark for which a market-led substitute exists, although for some reason it is not practical to transfer activity to such a market-led substitute. That is what is confusing about the clauses. We are told that the policy decision, and the regulatory decision, is to move away from LIBOR and to cease using it by the end of 2021. That is my understanding. Yet it seems that the clauses both facilitate that and facilitate the continued use of such benchmarks.

My reading of the clause and the one that follows is that the FCA will retain the power to compel organisations to submit information to a critical benchmark, even though the policy decision has been made to move away from that benchmark. The question then is why the regulator would want to do that, and what the power means for the 2021 LIBOR end date. Does the power mean that the FCA could compel submitters to keep submitting information to LIBOR, and is that because so many contracts depend on it? Is that really why the power to continue submitting information to critical benchmarks is engaged in this? What I am really asking is whether the clause is putting the brakes on LIBOR or, in some ways, continuing a facilitation of LIBOR after the end of 2021, for some things.

**John Glen:** In the UK, LIBOR is the only critical benchmark. However, for reasons that the right hon. Gentleman has alluded to, we do not want the provision to be on just the LIBOR benchmark. For reasons to do with the type of legislation that that would mean—private legislation referring to something specific—a different process would be created. We have to use benchmark legislation—benchmark regulations; but LIBOR is what it pertains to. That is the only critical benchmark in the UK.

A mechanism to compel panel banks to continue to submit data beyond the end of 2021 does not exist. We have to be able to wind down in an orderly way and make provision for continuity, which is needed for the tough contracts that continue to exist and will need some reference point. We need to do that in a way that satisfies the market and maintains stability. It is in that context that we are giving the FCA the powers.

*Question put and agreed to.*

*Clause 8 accordingly ordered to stand part of the Bill.*

### Clause 9

Mandatory administration of a critical benchmark

*Question proposed,* That the clause stand part of the Bill.

**John Glen:** Clause 9 amends article 21 of the benchmarks regulation, which concerns the mandatory administration of a critical benchmark.

Article 21 gives the FCA the power to compel the provision of a critical benchmark where the administrator notifies the FCA of its intention to cease providing the benchmark. Clause 9 amends article 21 to increase from five to 10 years the maximum period for which an administrator can be compelled by the FCA to continue to provide the benchmark. This will increase the time which the FCA has to manage the wind-down of a critical benchmark.

Under the clause, if the FCA decides to compel an administrator to continue publishing the benchmark, the FCA must assess the capability of the benchmark to measure the underlying market or economic reality and inform the administrator in writing of the outcome of this assessment. The FCA's assessment that a critical benchmark is no longer representative of its underlying market, or is at risk of becoming unrepresentative, is the first step in providing the FCA with its wider powers to manage the wind-down of such a benchmark. We therefore wish to ensure that the FCA can take steps towards starting the managed wind-down of a critical benchmark in circumstances where the benchmark administrator itself proposes to cease the benchmark. I recommend that the clause stand part of the Bill.

**Mr McFadden:** The clause takes us, in a sense, to the next step after a review. Again, I have a couple of questions. First, subsection (2) refers to a period of 10 years. The Minister made clear a few minutes ago that LIBOR is definitely winding up by the end of 2021, so to what does 10 years refer? With something that is supposed to be winding up in one year, I still cannot quite understand why we are giving the regulator powers to continue it in a form for up to 10 years. I am confused about that, and I do not know if I am the only one.

Secondly, subsection (3) refers to an assessment of a benchmark. That assessment revolves around the question of the representative nature of the benchmark. It says that the FCA will always give either

"a written notice stating that it considers that the benchmark is not representative of the…economic reality"—

perhaps it has become too illiquid, in the way we discussed, or too reliant on expert opinion—or

"a written notice stating that it considers that the representativeness of the benchmark is not at risk."

In other words, we have a good competition going here for the price of the bread. Does the 10-year period of extended mandatory information apply when the FCA has judged that the benchmark is not representative, or could it apply in cases where it is judged that it is representative as well? Subsection (3) seems to indicate that the assessment could go either way. I am trying to get at what this 10-year power is for and to which kind of benchmark it applies.

**John Glen:** I thank the right hon. Gentleman for his entirely reasonable and appropriate questions. The compulsion period of 10 years is about having a timely period to continue with the revised methodology of the synthetic LIBOR. One of the main aims of the Bill is to provide an appropriate mechanism for the wind-down of LIBOR and to reduce the risk of contractual frustration in the event of an unplanned or sudden cessation of LIBOR. To enable a managed wind-down of LIBOR, it may be necessary for the FCA to compel the benchmark administrator to continue to provide the benchmark for a period of time, to allow a portion of LIBOR-referencing contracts to mature and end. We expect a significant number of outstanding LIBOR legacy contracts at the end of the five-year compulsion period, and those outstanding contracts will still pose a material financial stability risk, as the Financial Stability Board noted in 2014.

12.15 pm

Extending the maximum compulsion period to 10 years means that there is potentially more time for tough legacy contracts to mature or to move to that alternative rate before the administrator is no longer required to produce LIBOR, therefore reducing the risks of mass contract frustration and subsequent litigation. The 10-year period is the maximum for which a critical benchmark such as LIBOR might be compelled. The compulsion direction issued by the FCA will have to be reviewed and renewed on a 12-monthly basis, so each year the FCA will have to review the use of the power and consider whether the decision to compel its use in compliance with the requirements of the benchmarks regulation is still appropriate, and it will need to act rationally in doing so.

If the compulsion powers were to be used, there is no guarantee that the FCA would sustain a critical benchmark for a 10-year period. Again, that would depend on the circumstances at the time, what the operating reality was with contracts in the market, and what the expectation and needs were. Parties should therefore continue to make attempts to transition away from LIBOR.

The right hon. Gentleman asked me about the representative nature of the benchmark and the mechanism by which it will be deemed unrepresentative. I cannot say that I am absolutely certain on that point, but my assessment would be that the dialogue with the market actors, and what was actually happening with the live transactions and the material evidence they were submitting to provide the basis for the benchmark to be constructed, would inform the decision on the need for an alternative—basically, whether it was functioning properly. That would not be a matter of a market-driven outcome; it would be clear from a regulatory and market security need, and that would be a conversation the FCA would have with the industry. However, we are getting into territory that I would need to look into further if I was going to give more satisfaction to the right hon. Gentleman, which he absolutely deserves.

**Mr McFadden:** The Minister's phrase, "synthetic LIBOR", helps us to understand this. I think it might mean something like this: that the regulator has the power to designate a benchmark as critical when it is unrepresentative of market reality, but in a way LIBOR is not really ending at the end of 2021, because we have synthetic LIBOR—the ghost of LIBOR, we might say—and the ghost of LIBOR is necessary because of those legacy contracts.

Where I still get confused is that the reason LIBOR is being wound up, and the reason that the FCA can designate it in this manner, is that it is unrepresentative—yet for the ghost of LIBOR, or synthetic LIBOR, to have

*[Mr McFadden]*

any validity, the FCA has to continue to compel submitters to submit information to it. I do not know what the implications of that are for the quality of the ghost of LIBOR; we must remember that the reason it has been designated in the first place is that it is failing the market representativeness test. How is it, therefore, that for up to 10 years we can compel submitters to submit information to something that the regulator has judged invalid?

**John Glen:** The right hon. Gentleman has accurately summarised the issue around synthetic LIBOR, but we are getting into suppositions about the time period for which that synthetic LIBOR would be necessary. The FCA recently published a paper on this. It is about evolving circumstances in the market. It is very difficult to be prescriptive, hence the 10-year provision. We are now getting into the realm of market operating realities at some point in the future. We have to have something that references the fact that we have a considerable volume of contracts that reference the historical LIBOR and we have to have a reference point going forward. I hope that is helpful.

*Question put and agreed to.*

*Clause 9 accordingly ordered to stand part of the Bill.*

## Clause 10

PROHIBITION ON NEW USE WHERE ADMINISTRATOR TO CEASE PROVIDING CRITICAL BENCHMARK

*Question proposed,* That the clause stand part of the Bill.

**John Glen:** Clause 10 inserts article 21A to the benchmarks regulation. This article provides the FCA with the power to issue a notice prohibiting some or all new use of a critical benchmark by supervised entities. The FCA may use this power where the administrator has stated that it wishes to cease providing the benchmark and the FCA has assessed the administrator's plans to cease the benchmark or otherwise transfer it to a new administrator.

The FCA can exercise this power only if it considers that it is desirable to advance its consumer protection objective or its integrity objective under the Financial Services and Markets Act 2000. The notice will contain the reasons for the prohibition, the date when it is to take effect and any further information that the FCA considers appropriate to allow supervised entities to understand the decision. The FCA's ability to prohibit new use in circumstances where the administrator is seeking to cease to provide the critical benchmark is an important step in preventing the pool of contracts referencing a benchmark from growing ahead of its possible cessation. I therefore recommend that the clause stand part of the Bill.

**Mr McFadden:** I thank the Minister for his explanation. This clause is about the prohibition of the use of benchmarks. Again, I have a few questions. Is it the case that prohibition can take place only after the kind of assessment of the representative nature of the benchmark that we discussed under clause 9(3), or are there other grounds for issuing a notice prohibiting the use of a benchmark, such as suspected criminal activity or manipulation in some other way?

My second question is about use. New article 21A prohibits "new use" of a benchmark. I think the Minister is saying that there should not be new use of a benchmark, but there may be continued use for the reasons that we have discussed—for legacy reasons. Could the Minister confirm that existing contracts referenced in the benchmark would not be covered by this "new use" provision?

My third question is about paragraph 4 of new article 21A, which says that the FCA must have regard to effects outside the UK of any decision to cease use of a benchmark. I can see why such a provision would be there, because LIBOR is used to underpin contracts all over the world. However, what can the regulator, which only has jurisdiction in the UK, do to stop the use of a benchmark elsewhere in the world? To what degree does this require work with other regulators through, for example, the Financial Stability Board, or is the judgment that action by the FCA alone would be enough, even though that action might have international effects, because of the importance of UK benchmarks? I suppose it is as if some jurisdiction has a particular influence in a sport, so when they change the rules, everybody else has to change the rules, too.

I assume that those criteria about the protection of the consumer and so on that the Minister referred to are in the Bill to protect the FCA from litigation risk by making clear that in acting on this, it was doing so in line with its statutory objectives, because the danger of litigation risk runs right through this.

**John Glen:** The right hon. Gentleman raises a number of questions, and I should start by making it clear that we in the UK cannot stop use overseas. The provision applies to UK-supervised entities working with international partners. He is right to say that there is interconnectedness between those institutions, and the FCA has a significant role in terms of LIBOR.

The simple purpose here is that, where a benchmark is to be ceased, the pool of contracts referencing that benchmark should stop growing. The prohibition power that the right hon. Gentleman referenced is available only at the point at which the benchmark administrator has informed the FCA that it is planning to cease to publish it and the FCA has considered whether it is realistic for the benchmark to be ceased or transferred to a new administrator. Clearly, it would not be desirable for the pool of contracts that reference the benchmark to continue to grow in circumstances where it is likely that that benchmark is on a pathway to ceasing to be used. It is therefore appropriate at that stage to stop supervised entities entering into new contracts that reference the relevant benchmark.

In terms of the rules broadly governing the FCA in exercising this power, it can do that only if it is desirable to do so in order to advance this FSMA consumer protection objective or the integrity objective, so it would have to be confident that it would secure an appropriate degree of protection for consumers or advance the integrity of the market, and it would have to publish a statement along those lines. I recognise that this is complex, but we are really trying to give an appropriate toolkit to the FCA to do what is necessary not only to safeguard the appropriate ongoing construction of benchmarks, but to ensure that it has the authority to justify the management of the wind-down in circumstances where that is necessary.

*Question put and agreed to.*

*Clause 10 accordingly ordered to stand part of the Bill.*

### Clause 11

Assessment of representativeness of critical benchmarks

*Question proposed,* That the clause stand part of the Bill.

**John Glen:** Clause 11 introduces two new articles to the benchmarks regulation. New article 22A requires the administrator of a critical benchmark to undertake,

"an assessment of the capability of the benchmark to measure the underlying market or economic reality".

The administrator must undertake such an assessment when a contributor to the benchmark is proposing to withdraw, when the FCA requires the administrator to undertake a review of the benchmark, or every two years as part of a biannual review process. New article 22A also requires that:

"If a supervised contributor…intends to cease contributing input data to a critical benchmark",

it must provide written notification to the administrator at least 15 weeks ahead of the date it intends to cease contributing. That replaces the existing four-week notice period, which is insufficient.

New article 22B requires that the FCA must conduct its own representativeness assessment of the benchmark once it receives an assessment from a benchmark administrator under article 22A. The FCA may also proceed with its assessment where the administrator has failed to provide an assessment within the timelines specified by the legislation. After making its assessment under this article, the FCA must provide the benchmark administrator with a written notice setting out its findings, which could be that it considers that the benchmark is not representative of the economic reality it is intended to measure, that it is at risk of not being representative, or that the representativeness of the benchmark is not at risk.

Those assessments play a crucial role in the process we have designed for managing the wind-down of a critical benchmark. A finding that a benchmark is no longer representative or that its representativeness is at risk is the first step in activating many of the new powers that are being granted to the FCA. I recommend that the clause stand part of the Bill.

*Question put and agreed to.*

*Clause 11 accordingly ordered to stand part of the Bill.*

### Clause 12

Mandatory contribution to critical benchmarks

12.30 pm

*Question proposed,* That the clause stand part of the Bill.

**John Glen:** Clause 12 amends article 23 of the benchmarks regulation, which concerns the mandatory contribution to a critical benchmark by supervised entities. Article 23 already provides the FCA with certain compulsion powers over the administrator and supervised entities, which contribute to a benchmark, including the power to compel supervised contributors to continue to contribute to a benchmark. These powers were previously only available where the representativeness of the benchmark was judged to be at risk.

The clause amends the article to ensure that it works with the new representativeness assessments we are introducing under the Bill, and that these powers are available either where the benchmark is at risk, or where the benchmark has actually become unrepresentative. The changes mean that, for instance, the power to compel a contributor will now become available whenever the FCA has made a finding that the benchmark is unrepresentative, or its representativeness is at risk.

The clause also extends the compulsion powers to supervised third country contributors and requires that if a contributor gives notice that it intends to withdraw on a specific date, it may not cease contributing on that date without written permission from the FCA. It also clarifies that the FCA's compulsion powers and other powers in paragraph 6 of article 23 are available specifically for the purpose of restoring, maintaining or improving the representativeness of a benchmark.

These powers are important in ensuring that a critical benchmark does not simply cease in circumstances where the representativeness of the benchmark could reasonably be maintained or restored through appropriate FCA action. I recommend that the clause stand part of the Bill.

**Mr McFadden:** I have one or two questions to the Minister. The clause gives the FCA the power to mandate contributors, including those outside the UK—it will be interesting to see how that works—to continue to submit information to a benchmark for up to five years. However, clause 9 states that synthetic LIBOR—the ghost of LIBOR—can be kept going for up to 10 years. Why is it five years in this clause but 10 years in clause 9?

**John Glen:** I thank the right hon. Gentleman for his question. He draws attention to the discrepancy between the provision for five years in clause 12 and 10 years elsewhere. It is important to remember that the powers in the Bill are not just for LIBOR but will be relevant to benchmarks that are designated as critical in the future. The changes in the clause ensure that the existing compulsion powers work with the amendments made to the wider regulation. Where we have a benchmark that is unrepresentative or is at risk of being unrepresentative, the FCA should have access to these powers.

With respect to LIBOR, the amendments ensure the FCA will have the required time to implement the various processes that we are introducing, to access their new powers, and to mitigate the risk of the rate simply ceasing due to insufficient input data. The 10-year provision is a contingency about the ongoing use of the benchmark. The timeframes are constructed with respect to both the LIBOR provision and the wider needs of benchmarks and have been constructed in consultation with the FCA over quite a long period.

**Mr McFadden:** I am not sure that that is entirely convincing, because neither clause refers specifically to LIBOR, for reasons that the Minister has explained. They both refer to benchmarks in general.

The different timescales used throughout this section are somewhat confusing. There are reviews every two years; other timescales of three months are mentioned here and there. I am genuinely confused about why clause 9 gives the power to compel contributions for up to 10 years, yet here we are a few clauses on talking about five years. I accept that the Minister says that the 10 years might be a maximum, but if these powers are to deal with the issue of legacy contracts, I am still not sure why we have this discrepancy. It could be that I am not understanding something or that I am missing something. That is certainly possible. Is this an arena where the Government may come forward with an amendment during the later stages of the Bill's passage?

**John Glen:** I am always open to looking at the possibility of amendments, as I have demonstrated during the sittings we have had so far. The 10-year reference was under the revised methodology for LIBOR to be produced by the administrator. It will probably be useful for me to reflect on this exchange, and to write to the right hon. Gentleman and the Committee to clarify the apparent discrepancies and rationale for this. I recognise that this is genuinely complicated. I want to bring satisfaction to the Committee and I am happy to do that.

**Julie Marson** (Hertford and Stortford) (Con): It is a pleasure to serve under your chairmanship, Mr Davies. The shadow Minister is obviously concerned and quite rightly scrutinising the detail of every clause. Does my hon. Friend agree that it would be apposite to recall from the evidence from the regulators, including the Prudential Regulation Authority, the FCA, and specifically the LIBOR transition director for UK finance, how supportive they are of the provisions of this Bill? The LIBOR transition director said explicitly in his evidence:

> "These powers, in preventing all those negative outcomes for both customers and market integrity, are absolutely critical as part of the transition."—[*Official Report*, Financial Services Public Bill Committee, 17 November 2020; c. 18, Q30.]

That plays back into the consultation and regulators' support for the Bill.

**John Glen:** I appreciate my hon. Friend's intervention. It demonstrates that there is widespread concern for this legislation to be passed. The right hon. Gentleman is pressing me, quite appropriately, on these apparent anomalies, and I am happy to submit to his questions. The issue is that synthetic LIBOR is related to the 10-year provision, but the five-year provision is for other critical benchmarks, which do not have the same context in terms of their contractual longevity. As I said in my response to the right hon. Gentleman, I will write to him and to the Committee to bring clarity on this matter. It is an important matter that needs clarifying.

*Question put and agreed to.*

*Clause 12 accordingly order to stand part of the Bill.*

## Clause 13

Designation of certain critical benchmarks

*Question proposed,* That the clause stand part of the Bill.

**John Glen:** The clause inserts a new article into the benchmarks regulation that, in essence, provides the FCA with the power to designate a critical benchmark as an article 23A benchmark, if they consider that the representativeness of the benchmark cannot reasonably be restored, or there are not good reasons to restore and maintain its representativeness. This designation allows the FCA to use a number of the new powers that are set out later in the Bill, such as the ability to require that the administrator change the benchmarks methodology.

Given the significant impacts of making such a designation, we have included a number of safeguards to the designation power. First, if the FCA considers it appropriate to designate a benchmark, they must inform the administrator and allow 14 days for the administrator to make representations before proceeding with the designation. If the FCA decides to proceed with the designation, they must publish a notice. That should include, among other things, the reasons for their decision, the date it takes effect and any further information that the FCA considers appropriate to assist supervised entities in understanding the effects of the designation.

In summary, clause 13 sets out the procedure by which the FCA can designate a benchmark and access the powers detailed later in the Bill. I therefore recommend that the clause stand part of the Bill.

**Mr McFadden:** I am grateful to the Minister. Before I begin, I say to the hon. Member for Hertford and Stortford that we are under a duty here to try to understand what we are doing. It is in that spirit that I am asking these questions. I was reminded by a colleague about a different kind of Standing Committee, which some years ago was considering the Hunting Bill. He told me that after a month they were still on clause 1, which was about the title of the Bill, so I do not think we have gone over the top in asking these questions.

With your and the Minister's indulgence, Mr Davies, I would like to make a few points about the next few clauses; I think they go together and get to the heart of what this area of the Bill is about. As I said, the Opposition understand why LIBOR is being wound down; we have gone over the history of the manipulation and so on. It is why the Bill rightly places such an emphasis on benchmarks being representative of market activity: so far, so uncontroversial.

However, there is a problem in the transition from LIBOR to SONIA or other new benchmarks. As we have referenced several times, there will clearly be some impact on the value of LIBOR-based contracts. That impact is openly acknowledged by the FCA when it says:

> "Where parties to contracts referencing LIBOR cannot reach agreement on how those contracts would operate in the event of LIBOR's cessation, discontinuation could cause uncertainty, litigation or loss of value because contracts no longer function as intended. If this problem affects large volumes of contracts it could pose risks to wider market integrity of contracts/financial instruments."

Remember that, given the volume of money involved—we are talking about not millions or billions but trillions—this is a systemic risk, as well as a risk to individual parties to contract.

My understanding of the provisions in clause 13 and a few that follow is this. When the FCA feels that a benchmark is no longer representative of the market to which it relates or that that representativeness is at risk, it can designate the benchmark under article 23A of the benchmark regulation. Then there are various provisions about notices being published, reasonable fees being charged and so on; we can leave those aside. When such a benchmark is designated by the FCA, that can only be done in line with the statutory duties, to which the Minister referred, of consumer protection and market integrity. When a benchmark is designated in that way, new use of the benchmark is prohibited, but—this is the critical "but"—the FCA can mandate continued legacy use of that benchmark. The Minister may come back to me about timescales—five years, 10 years or whatever it is.

Finally, if the potential disruption brought about by the discontinuation of LIBOR—or a critical benchmark, if we want to refer to it in that way—is too great, it is suggested in the Bill that the FCA may compel its continuation, as we have discussed. How realistic is it for the FCA to continue to compel administrators to submit information to something that they have said they want to phase out in a year's time? The provisions are intended to allow the FCA to wind down a critical benchmark but in a way that protects these legacy contracts, which are based on the old benchmark. That brings us to those legacy contracts and what is or is not included, and to the potential legal risks.

As I understand it, there might be two issues. First, what is the definition of a legacy contract? Is it one where there has not been agreement between the two parties to transfer to the new benchmark, or is it something different? What are we talking about when we discuss legacy contracts? What would we do if there were a dispute between the parties about whether something should be treated as a legacy contract or not?

Secondly, how will the provisions cope with the potential legal action and/or market disruption as a result of parties feeling aggrieved, for one reason or another, about the switch from one benchmark to another or, in consequence, taking action that results in disorderly markets? In other words, to what degree is the process subject to disruption through legal action by the parties involved, which could feed into market operation, given the volume of money involved in these contracts?

12.45 pm

This situation is complicated even further by the fact that the UK is not the only jurisdiction passing such legislation. Both the European Union and the United States are passing similar legislation. Is it not the case that both contain the safe harbour provisions to which the Minister referred, and on which we had representations last week? In fact, I believe that legislation was introduced just a month ago in the New York Senate that contains these safe harbour provisions. New York law has particular influence over financial markets, given the volume of the US financial markets located in New York.

Given the international nature of the use of these benchmarks and the contracts based on them, if we legislate here and do not have a safe harbour provision, do we open up the potential for what some refer to as forum shopping or regulatory arbitrage, whereby parties gravitate to the jurisdiction that appears to offer the highest levels of protection? Let us remember that the firms that we are talking about are global in nature and highly international. It would not be unusual for someone involved in this area to have an office in London and New York, and maybe in other countries, too.

Is the absence of a safe harbour because the Government are against it, or might they make an amendment to that effect on Report in the Commons or in the other place? Does the Minister accept the point that, in the absence of a safe harbour provision in the UK but its inclusion in American or parallel European legislation, we could face the issue of forum shopping?

Finally, in the event of legal action, who gets sued? Is it for the parties to the contracts to sue one another, or is there a danger that these provisions create the potential for the FCA, through the act of designating and winding up a benchmark, to be sued by people who feel that they are caught on the wrong side of price changes?

I accept that that is a lot of questions to give the Minister at once.

**John Glen:** Thanks.

**Mr McFadden:** However, I thought it better to take these next few clauses together and raise those points with him in this way.

**Alison Thewliss:** I want to ask a quick question about what is perhaps neither synthetic nor ghostly LIBOR, but zombie LIBOR, because it seems to be lurching on and not quite dead.

I am curious about the monitoring of whether these critical benchmarks are becoming unrepresentative, how that practically would work and at which stage that happens. I also note that there is an obligation under clauses 13 to 16 to bring things to the attention of the public and the supervised entities, but no such requirement to bring them to the attention of Parliament. Will the Minister reflect on whether it would be useful to us as parliamentarians to hear about those things? We cannot necessarily be expected to monitor things on the FCA website as members of the public, and those things might be something that parliamentarians might usefully want to find out.

**John Glen:** I thank the hon. Lady and the right hon. Member for Wolverhampton South East for their questions, and I will do my best to address them.

On legacy use, this is broadly where a benchmark was used in specified existing contracts or instruments prior to its designation as an article 23A benchmark. The right hon. Gentleman went on to ask a series of questions about the concept of safe harbours, the different jurisdictions of legal process, and the compulsion process. The Government believe that the proposal is realistic. The administrators do not submit information; the contributors do. On safe harbours, which we picked up on from the evidence from the gentleman from the trade association last week, we recognise the challenges identified in that session, and the powers are designed to assist those contracts that cannot feasibly move away from LIBOR, as Paul Richards described. I am committed to looking to address the issue of safe harbour through further work with industry.

In practice, it will not be possible to table amendments during the passage of this Bill, but that is not down to my unwillingness to do so; it is a matter of the maturity of the conversation, and I think that will be acknowledged. A live productive conversation is going on.

**Mr McFadden:** Is the parallel legislation in the United States and the EU part of that consideration? When we received the oral evidence last week, I confess that I had not appreciated that parallel legislation on this subject, with safe harbour provisions, was going through in those two jurisdictions. Given the co-operation that already exists through the FSB, involving in the Federal Reserve Bank of New York and the Bank of England, is that part of the consideration?

**John Glen:** We are looking and working internationally. We have an active dialogue with the US through a regulatory working group, and we will be monitoring that. There is no question of us seeking to find some competitive advantage in this; there will be a need to find as much alignment as possible to give as much clarity and certainty to the market actors. However, the conversation is not at that stage yet here. There is no sense that that is jeopardising the integrity of this process. This is the first step, but we reserve the right to do other things further to the conclusion of those conversations.

As for accountability to Parliament, as raised by the hon. Member for Glasgow Central, the legislation requires the FCA to produce statements of policy and notices when exercising the powers. There is also a requirement to review the exercise of its methodology every two years and to publish a report following that review. The FCA is required to exercise its powers in accordance with the two statutory objectives: consumer protection and market integrity. That is the relationship to parliamentary accountability.

Turning to the other matters raised by the right hon. Gentleman around the administrator challenging a designation, if the FCA decides to designate a benchmark under this article, the benchmark administrator has the option of referring the matter to the upper tribunal. The FCA is required to inform the administrator of its right to refer the decision to the upper tribunal and the procedure for doing so.

As for the continued publication of a benchmark that has been deemed unrepresentative, in the case of a critical benchmark such as LIBOR, the benchmark is so widely used that its discontinuation would represent a risk to financial stability and create disruption for market participants. Therefore, this Bill provides the FCA with the power to require a change to how a critical benchmark is determined, including input data, to preserve the existence of the benchmark for a limited time period to help those contracts that otherwise would not realistically transfer to an alternative benchmark.

I hope I have done justice to most of what the right hon. Gentleman raised. I will seek to review what we have exchanged and, if there are outstanding matters, to write to him. I am relieved we have moved beyond clause 1.

*Question put and agreed to.*

*Clause 13 accordingly ordered to stand part of the Bill.*

*Ordered*, That the debate be now adjourned.—*(David Rutley.)*

12.56 pm

*Adjourned till this day at Two o'clock.*