



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Peter Grant MP
House of Commons
London
SW1A 0AA

2nd December 2022

Dear Peter,

Thank you for your contributions during the Committee stage of the Financial Services and Markets Bill. During the debate, I committed to respond in writing on some matters you raised, due to their legal complexity.

Clause 18 of the Bill inserts new sections 312L to 312W into FSMA 2000. These new sections enable the FCA, the PRA and the Bank of England to oversee the services provided by critical third parties to the UK's financial services sector. You asked whether the immunity provisions in new section 312N would prevent a critical third party who complies with the legislation from being sued by an overseas party in court.

The government's intention is that, where a critical third party takes action (or refrains from taking action) to comply with a direction from the regulators, that critical third party is immune from liability in damages unless such action (or inaction) by the critical third party is taken in bad faith or in contravention of section 6(1) of the Human Rights Act 1998.

Clauses 18 and 19 (the critical third party measures) apply to the laws of the UK.

Liability in damages would most likely arise in the context of a contract. Parties to a contract will generally make express provision as to which law should govern their contract. It is common for parties that are located outside the UK to choose that their contract or arrangement is governed by English law, given the renown of the English courts. Established practice provides that courts will generally respect the law of the contract. This means that if a contract is governed by English law, a foreign court hearing a claim on the contract will often stay the case and refer it to the English courts.

In that case, if an overseas party and a relevant critical third party had a contract governed by English law and a dispute was referred to the English courts, then the immunity from damages conferred by section 312N would be relevant.

In the unusual instance where there is no clear choice of governing law and in the event of a dispute, the court would look to the jurisdiction with the closest connection to the contract to determine the governing law (for instance, the jurisdiction where the services were provided, or the intentions of the parties when entering the contract).

There are exceptions. Courts in the UK cannot control overseas courts that, contrary to convention, refuse to recognise the law of the contract or the country with the closest connection to the contract.

I hope this letter is helpful in answering the matters you raised in the debate. I look forward to further engagement with you on the Financial Services and Markets Bill. I am copying this letter to all members of the Public Bill Committee, and depositing a copy of this letter in the Library of the House.

Yours sincerely,

A handwritten signature in black ink that reads "Andrew Griffith". The signature is written in a cursive, flowing style.

ANDREW GRIFFITH MP