Financial Services Future Regulatory Framework Review: Regulatory Coordination

Submission by Barclays

Barclays is a transatlantic consumer and wholesale bank with global reach, offering products and services across personal, corporate and investment banking, credit cards and wealth management, with a strong presence in our two home markets of the UK and the US. With over 325 years of history and expertise in banking, Barclays operates in over 40 countries and employs approximately 85,000 people. Barclays moves, lends, invests and protects money for customers and clients worldwide.

Barclays Perspective

Getting the right approach in the way financial services is regulated is fundamental for the strength of the UK and its economy. It is one of the primary reasons the UK has been able to develop its position of strength as a global leader in finance and it remains a point of genuine competitive advantage for the UK on the world stage. The UK Government's commitment to reviewing the effectiveness of the current regulatory architecture, manifest in this public consultation, is therefore an important exercise and Barclays' warmly welcomes this opportunity to comment.

UK regulatory institutions are often at the forefront of regulatory excellence and are viewed internationally as examples of best practice and global leaders. The financial services market is evolving with increasing speed and, as made clear by this review, there is a need for the regulatory framework to evolve in order to keep pace with future changes. Certain aspects of the current framework were in place prior to post-crisis reforms which could be due for reassessment, while the rapid digitisation of financial services and the entry of non-banks provides a new challenge to be addressed. UK based banks like Barclays are now subject to a broader array of rules and a greater number of regulatory supervisors than ever before. A risk implicit in a greater proliferation of rules and regulations is a potential for fragmentation or duplication. It is right that the UK Government is taking this step to ensure the architecture is as coordinated and effective as possible.

Below, in answer to the specific questions posed, we set out some examples where this type of coordination might be improved. More broadly, there are also some wider questions it might be beneficial for the UK to consider:

1. **<u>How best to balance institutional mandates of regulators.</u>** UK regulatory bodies are organised according to their mandate. These mandates provide an institutional focus and expertise, and form the basis by which they develop, respond to and regulate policy. When discussing the role of regulatory coordination, it is therefore important to address regulatory balance. For instance, if a policy is developed by one regulator with market stability in mind, should priorities of other regulators (e.g. conduct, competition or consumer protection) also be considered? Without some kind of consideration of balance of these occasionally

conflicting mandates, there is a risk that regulatory policy can end up competing against itself. The challenge then is how to balance independent agents working on their understanding of their own individual mandate.

2. **How to guarantee sufficient regard for economic growth.** The US Federal Reserve and the Bank of England both have missions to maintain monetary and financial stability, but the Federal Reserve also seeks to "promote optimal macroeconomic performance." A topic for consideration is whether an equivalent explicit mandate for the UK economy would be beneficial – not only for prosperity but for our global competitiveness. Australia, Hong Kong, Singapore, Japan, Malaysia and Canada all have similar objectives to ensure the regulatory regime supports the domestic sector and locally domiciled companies in competing in other markets. As the UK leaves the European Union, the economic competitiveness of the UK will become more important to maintain.

3. **How to continue to ensure the strength of the UK's legal system as a point of competitive advantage.** A fundamental feature of why the UK is considered one of the best places to do business worldwide is our reputation for and commitment to the rule of law. The cornerstone of the UK legal system is integrity, independence and expertise; the predictability and certainty business accrues from the legal system is crucial for the long-term success of the UK economy. Government and regulatory bodies have an important responsibility to uphold that reputation. A necessary element of this is the need for institutions to be transparent in their processes and ensure they are predictable and bound by the law. A historically important foundation of UK institutional bodies is that they are underpinned by accountable hierarchies and operate according to set missions or mandates. Coordination is an important facet of this to ensure that bodies operate in a predictable and transparent fashion, and thereby build business confidence in their policy development. The UK regulatory architecture has a multiplicity of institutions, some not always strictly regulatory in remit, who make decisions with overlapping and far-reaching consequences.

4. **Evolution of the financial sector.** When announcing the Future of Financial Services Review the then Chancellor noted that its relevance at this moment in time was due to both the UK's departure from the EU as well as because a significant proportion of post-crisis regulation has already been implemented. While these two represent significant shifts in the financial services sector, the role of digitisation and technological change could end up being of far greater systemic importance to the sector. Much akin to sector disruption in the high street to online commerce, in the taxi industry to app-based services, or in the television industry to subscription-based streaming services, the financial industry is evolving. New players have entered the market without being subject to the same regulations that consumers or market participants expect; be that not being subject to the Client Assets Sourcebook or fulfilling broader sectoral responsibilities to vulnerable customers. As stated in the Bank of England's Future of Finance review: "new business models are disrupting industries – and allowing the unbundling of business models with profound consequences." The review later states that such systemic changes raise fundamental challenges to traditional models of regulation, economic modelling and central banking. The shift to digitally enabled services has begun and will accelerate. We agree with the Bank of England's

statement and believe that this review should bring into scope the significant disruption of the financial services sector and how this impacts the regulatory architecture.

Consultation Questions

1. **How UK bodies, including the Treasury and regulators with jurisdiction over the financial services sector, work together to coordinate regulatory interventions for financial services firms ('regulatory interventions' includes regulatory changes, regulatory initiatives, publications, consultations and data/information requests):**

The Government is right to seek to take stock of how the UK regime is working and to what extent the regulators work together to ensure the best outcomes for the financial services sector, consumers of financial services, and the UK as a whole. In addition to the specific sub-questions posed (a, b and c below), there are also broader issues around the operation of the current regulatory architecture.

<u>A Digital Financial Ecosystem – Reviewing the Regulatory Framework and Perimeter</u>

Barclays recognises the need for regulators to ensure timely regulatory action in order to protect consumers. Against this context, it is important to ensure that the regulatory framework, and the perimeter of the regulators, remains fit for purpose to regulate a digital financial ecosystem.

In the UK, we have seen the retail financial services ecosystem evolve over recent years, as digitalisation has enabled a wide range of new service providers to enter the market. These new digital service providers range from highly specialised fintechs operating in a specific area of the market, to large scale digital technology platforms operating away from their primary sector.

Barclays welcomes the positive outcomes that this increased competition is driving, in particular the rapid innovation that is transforming the financial services sector. However, these new digital providers often offer bank-like products and services similar to those provided by traditional financial services providers, without being subject to the same comprehensive regulatory framework as those traditional providers.

As a result, consumers can face a situation whereby similar products and services offered by different providers are afforded different levels of customer protection and regulation. For instance, deposits held with online payment service firms or E-money providers are not covered by the FSCS in the way that bank deposits are. This can be bewildering for consumers who are often unaware of the reduced level of protections and the greater risks to which they are exposed.

Barclays believes strongly that equivalent levels of protection should be provided to consumers regardless of the type of firm providing the service, or their license to operate. To this end, and to ensure that financial regulators in the UK continue to be able to regulate the sector effectively and protect consumers, the current regulatory framework, and indeed the regulatory perimeter, should be reviewed to ensure they remain fit for purpose in a digital financial ecosystem. This recommendation is reinforced by reports from the Bank of International Settlements[1] and the Bank of England[2] which explicitly state a need to re-evaluate the regulatory perimeter, both internationally and domestically. Ensuring consumers can benefit from similar protections when accessing similar products and services seems like a standard which should be aimed for when reviewing regulatory architecture.

Similarly, equivalent prudential risks should be addressed through equivalent prudential regulation. In the current environment retail banks will currently hold more capital than a third party provider whilst conducting the same payment activity [we would be happy to discuss evidential data if needed]. Aside from issues of 'fairness' and consistency, there are also, potentially, consequences for financial stability. Moral hazard may result if tech firms, for example, invest less in screening projects and creditors. This can be exacerbated if firms fund the loans which they also originate thereby having less incentive to minimise the downside risk.

A new regulatory framework should be underpinned by the approach that any firms undertaking the same activity or providing the same product, generating the same risk should be subject to equivalent regulation on a proportional basis. It is important that market integrity is prioritised within any framework.

Regulatory Cooperation - APP Scams and Data Sharing

The need for regulators to review their perimeter, and consider activity outside their traditional remit is also highlighted by the issue of Authorised Push Payment scams. Initial regulatory and industry efforts to tackle fraud and scams have focused on the financial services sector, even though the actual deception of consumers in APP fraud and scams is often effectively enabled by others in the wider ecosystem – i.e. firms beyond financial services such as online digital platforms.

Organisations which enable scams to take place should be held responsible for increasing their protections for customers. To this end, financial services regulators should look to work with regulators in other sectors to take a holistic approach to tackling scams, rather than taking a sector-by-sector approach. Barclays welcomes the emerging collaboration between regulators (FCA, PSR, Ofcom) on this issue, which we believe could provide a model for future cross-sectoral regulatory/industry interventions to protect consumers. HMT could use this momentum to formalise the coordination of regulatory activity between multiple sectors on key, pan-market issues. Data-sharing, for example, offers clear opportunities for a whole of government initiative that could be taken forward in this cooperative manner.

Barclays notes the Government's recent proposals to introduce 'Smart Data' Initiatives and we are supportive of the idea of a cross-sectoral Smart Data Function to coordinate activity centrally. With bodies such as HMT, BEIS, DCMS, the Centre for Data Ethics and Innovation, CMA, and FCA all engaged in related projects, such as the proposal to launch a Digital Market Unit, the need for clarity and coordination is clear. Government should ensure that all parties are maximising the use of their resources on clear deliverables without duplication of effort. Clarification on the remit and

[1] Bank of International Settlements (2019) Big tech in finance: opportunities and risk, https://www.bis.org/publ/arpdf/ar2019e3.htm
[2] Bank of England (2019) The future of finance, https://www.bankofengland.co.uk/report/2019/future-of-finance

responsibilities of these organisations would also be an initial positive step towards a collaborative approach.

When considering data sharing, and the use of data, it is important to ensure a coordinated regulatory approach with the ICO. Data is becoming increasingly intrinsic to the business models of firms that offer financial services products, both within and outside of the current financial services regulatory perimeter. For example, Open Banking has enabled consumers to share their financial data with third parties. This will grow in importance as the FCA considers additional Open Finance opportunities for the sector. It is therefore crucial to increase coordination between Financial Services regulators (including the CMA in relation to cases in the financial services sector) and the ICO. Firms that are direct recipients of Open Banking data do fall under the regulation of the FCA (TPPs), and yet onward sharing (e.g. by TPPs to other 3rd parties, through contractual arrangements) is possible. This means that financial services transaction data can increasingly be held, processed, stored and used by firms that fall outside of the financial services regulatory perimeter – albeit under the remit of the ICO.

As outlined in customer research commissioned by Barclays, participants 'place a special value on their financial data'[3], in part due to social norms that encourage people to keep their financial data private. Additionally, customers were concerned about what could be inferred from their financial data, including what it could reveal about their circumstances, behaviour and personality. Therefore, we would encourage close coordination between the FCA and the ICO regarding matters of data loss or misuse, when it comes to financial services data.

Furthermore, we would recommend coordination between regulators and Government in the development from Open Banking to Open Data (e.g. through the Smart Data Initiatives, and the proposed establishment of a cross-sectoral Smart Data Function), to achieve the benefits of interoperability, consistency and standardisation as more sectors are brought into scope.

Liability for Third Party Data Breaches

Barclays also believes Government and regulators should consider whether the liability regime for data breaches remains fit for purpose in a world where third parties have access to data traditionally held only by a primary service provider. With data likely to be distributed across a greater number of providers, there is a risk that certain providers may have lower data security standards than others.

To avoid the risk that primary data holders are liable for breaches at third parties, the Government, ICO, and other regulators should review the liability framework for data breaches to ensure that firms that allow data losses bear the full costs of those losses, including any costs of other parties that can be accurately associated to their data loss. Otherwise, the parties that suffer the data breach will never have a full incentive to prevent them in the first place. A formal review of the liability framework would also provide much needed clarity to consumers; it is important that they know who is responsible and who to approach in the event of a data breach or if their data has been misused.

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[3] Open Banking Data Sharing Dilemmas, Ipsos Mori, Feb 2018

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Regulatory perimeter – Implementation Concerns Outside Regulatory Perimeter

There may be instances where delivery of the outcomes sought by new regulation depend on changes being made by firms outside of the financial services regulatory perimeter. These firms do not have a regulatory requirement to complete that delivery, particularly within a specific timeframe. A bank would, therefore, have to balance their own regulatory requirements, whilst seeking to minimise detriment to their customers. For example, for certain online payments, the Second Payment Services Directive (PSD2), requires banks to ensure that transactions comply with new Strong Customer Authentication requirements. For these standards to work effectively, e-commerce merchants are required to upgrade to the latest payments acceptance technology (e.g. Visa 3D Secure).

Merchants fall outside of the financial services regulatory perimeter, and therefore should they choose not to upgrade, or are not able to invest within the given timescale, then the banks will be in the position of either not meeting the regulation, or declining the payment. In this case, the FCA has worked with industry to facilitate a transition period, to allow more time for industry and merchants to prepare for SCA[4]. Without this interaction between regulators and industry, significant customer detriment could have occurred, through multiple declined payments causing disruption to customers' ability to transact online. When considering the volume of payments that would fall in scope of SCA requirements, and therefore the number of transactions that would have been declined, this could also have had a knock on effect on the wider economy. It is worth noting that the challenge of needing merchants to invest in upgraded technology, without a regulatory mandate to do so, remains. Therefore, continued coordination between industry, merchants, and the regulators, will be required. A similar challenge is also exhibited with the introduction of SCA rules for contactless payments, which requires merchants to invest in upgrading to the latest POS terminal technology.

Finally, to help ensure good customer outcomes, as well as timely delivery of regulatory implementation, multiple actors are often required to work together in lockstep. For example, to deliver Confirmation of Payee, a tool which will ultimately provide benefit to customers, many players are required to align and work together including Pay.UK, industry and the OBIE, to ensure that clear and consistent delivery requirements are defined, and realistic implementation timelines are committed to. These interdependencies must be recognised, as the final outcome will be dependent upon all parties agreeing and committing to the overall plan, and the parts that they each play.

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[4] https://www.fca.org.uk/news/press-releases/fca-agrees-plan-phased-implementation-strong-customer-authentication

Conclusion

- Government should ensure the regulatory framework is underpinned by the approach that any firms undertaking the same activity or providing the same product, generating the same risk should be subject to equivalent regulation.
- Financial services regulators should work with regulators in other sectors to take a holistic approach to tackling online fraud and scams, rather than taking a sector-by-sector approach.
- Government should clarify the remit and responsibilities of all parties exploring data sharing in the UK, and ensure strong collaboration between sector regulators and the ICO.
- Government and regulators should jointly review the liability framework for data breaches to ensure that firms that allow data losses bear the full costs of those losses, including any costs of other parties that can be accurately associated to their data loss.
- Greater consideration should be given to the impact of regulation on firms outside of the financial services regulatory perimeter.

a. How UK bodies balance the benefits to consumers of financial services (both individual and businesses) of timely regulatory action against the impact on firms of meeting potentially challenging timeframes on requirements.

Appropriate Time for Implementation of Regulatory Change

It is important that industry is provided with an appropriate period of time to implement any regulatory changes, when the final proposals have been determined by policymakers. Unfortunately, there have been examples where the implementation deadlines set by policymakers have been unrealistic. For example, the seven largest institutions were initially provided a deadline of less than a year to implement the Confirmation of Payee initiative. This required significant systems changes across every channel of delivery in both retail and corporate banking. The impact across the industry can be extensive. The implementation timeframe suggested was therefore insufficient and had to be changed. Regulators should engage with industry to understand timeframes to ensure that the positive customer outcomes being sought by the regulatory change can be met in a safe manner that maintains stability and resilience.

Furthermore, in the development of EU legislation and regulation, final details of requirements are often not confirmed until shortly before the implementation deadline, making implementation by industry even more challenging. For example, some Regulatory Technical Standards under the Markets in Financial Instruments Directive (MiFID) remained in negotiation until the month before the implementation deadline. In some cases, final details may not be confirmed until after the implementation deadline, for example when a Q&A is finalised which changes the interpretation of regulations theoretically already implemented. Whilst we appreciate that interpretations of law will invariably develop over time, a high degree of certainty should be required before there is an expectation of implementation of the rules by firms.

Insufficient time for implementation, as well as overlap and multiple change requirements on the same systems mentioned elsewhere, creates greater risks that firms may fail to meet the deadline, or are forced to rush their implementation to avoid missing the deadline. Rushing to implement regulatory change risks sub-optimal outcomes for consumers and greater risk of operational incidents. Regulatory change should take place within a firm in a safe manner, with sufficient time to ensure appropriate testing and implementation has taken place. Pressures on this process serves only to increase risk. For example, Barclays makes roughly 25,000 tech changes each month, all of which carry with them a degree of operational risk (although we implement with a 99.8% success rate). Approximately half of these changes are driven by the need to implement Government / regulatory requirements, with recent examples including the implementation of ring fencing, Open Banking and Cheque imaging.

b. How UK bodies understand and assess the overall impact of simultaneous regulatory interventions on firms, particularly in the way these are sequenced and how they consider the wider regulatory landscape.

The complexity of topics that regulators cover means that some level of overlap in regulatory coverage is inevitable, but this also can help in producing more rounded policy. A system that encourages greater regulatory cooperation should seek to ensure that the combined regulatory pipeline is appropriate and does not put undue burden on firms. This is especially important given the requirement for firms to test and ensure infrastructure and systems are ready, following regulatory change programmes.

Examples of Effective Coordination in the UK

There are various examples of effective coordination between regulators on policy issues. On climate change and sustainability, for instance, there are various regulators with overlapping responsibilities: the PRA is responsible from a financial stability perspective; the FCA from a market integrity and consumer protection perspective; and the Pensions Regulator from a pension beneficiaries' protection perspective. There was clear, effective coordination between regulators in relation to the PRA's climate financial risk consultation and the FCA's sustainable finance consultation. The PRA, FCA and the Pensions Regulator also published a joint statement demonstrating their alignment with each other, and with the Government, regarding its Green Finance Strategy. This close cooperation and coordination allowed firms to engage more effectively, developing one response that could be used for two consultations.

A further example of effective coordination and cooperation between regulators is the access to cash agenda. Instead of creating a new Cash Authority, the Government established a Joint Authorities Cash Strategy Group, bringing together HM Treasury, the PSR, the FCA and the Bank of England, avoiding potential duplication and overlap between existing regulators. We welcome this coordinated approach and would encourage government to replicate it going forward.

Another example of effective coordination has been in the development of a supervisory approach to recovery and resolution. The UK regulators have successfully established crisis management groups (CMGs) with overseas regulators in order to supervise G-SIBs for recovery and resolution purposes. The resolution of cross-border financial groups is, by its very nature, dependent on effective cooperation and coordination between home and host authorities. There is accordingly much to be learned from the UK regulators' experience of running CMGs. Operational resilience is another example of coordination between the PRA and the FCA.

Greater Air Traffic Control of Regulation Required

Barclays believes there should be greater levels of coordination between regulators to understand the overall impact on firms of simultaneous regulatory interventions. There have been instances where firms have been required to undertake multiple change programmes simultaneously, in order to comply with regulatory interventions and legislation from different institutions. While an intervention may be a key priority for one regulator and therefore have a tight implementation timeframe, other institutions may also have priority initiatives that have similarly tight, and potentially overlapping timeframes.

The impact of an uncoordinated approach can include:

- **Operational risk** - the challenge of implementing major change programmes from multiple regulators simultaneously could risk undermining firms' operational resilience. Many firms may run their systems and processes using the same underlying technology infrastructure.

Making multiple changes to these systems simultaneously, to deliver multiple regulatory interventions, creates unnecessary risk of operational incidents and potentially service disruption to customers.

- **Insufficient capacity** - the limited availability of human resources, i.e. expert staff, can make delivery of simultaneous change programmes challenging. These expert staff are required to design, deliver and ultimately test any changes before they can be formally launched. This process can be time intensive meaning there may be limited bandwidth to manage multiple programmes. It may not be possible to simply hire extra resource to meet this demand as change programmes require expert staff with experience in delivering significant technology change programmes as well as knowledge of the idiosyncratic infrastructure, operations and processes of the distinct institution they work for. Furthermore, regulatory change initiatives are industry wide, meaning multiple firms would likely be seeking to hire industry experts from a limited pool of talent.
- **Impact on innovation** - the ability for firms to innovate for the future is also inherently reliant on the same employees involved in regulatory or institutional change. As well as limited resource to manage and deliver the change, there are also limited release cycles, technical delivery slots, and finite budgets from which to fund change programmes. Regulatory deliveries will take priority over innovation and strategic investment, to ensure that firms meet their regulatory responsibilities. Hence, back-to-back and overlapping regulatory change programmes can inhibit a firm's ability to innovate for their customers, and develop or enhance the underlying infrastructure, of its own accord.

Barclays therefore believes that Government should look to introduce a system of 'air traffic control' to coordinate regulatory interventions from all regulators, and ensure the impacts of implementation on firms are fully considered. A potential solution could include a shared regulatory delivery calendar. This would outline periods of regulatory implementation across multiple regulators, including key deadlines, therefore demonstrating where firms will already face significant reliance on resource. Regulators and industry could work together to ensure that the calendar is up to date, and includes realistic delivery slots, so that this shared tool can be used when planning new regulatory delivery timeframes.

Market Studies and Remedies

The CMA, FCA, PSR and HMT could increase coordination in relation to markets cases and remedies in the financial services sector, to ensure that any duplications or overlaps are in the best interests of consumers and represent a proportionate intervention on firms. It is our view that the regulators should take a more holistic approach to both market studies and remedies, ensuring that such reviews consider more effectively any remedies in force, regulatory changes in train and changes to the competitive landscape.

Notwithstanding the amount of time and resource, for both regulators and firms, of reviewing remedies, if the CMA is in the future empowered to issue fines for non-compliance with its markets remedies, which often have no de minimis provisions, it will be all the more important to ensure that those remedies remain fit for purpose and continue to provide benefits for consumers, in the context of the rapidly changing competitive and regulatory financial services environment, without imposing an undue burden on firms.

An example of this is the CMA's Retail Banking market investigation remedy of personal current account holder alerts. It was always envisaged that once the CMA's Retail Banking Order had come into force the FCA would work to see where it could support the outcomes of the CMA's review. As part of its High Cost of Credit: Overdrafts review, the FCA announced in December 2018 a set of alerts rules to come into force from mid-December 2019 (in parallel to other FCA mandated changes). In July 2019, the CMA began a consultation on amending its Order in relation to alerts, and issued a provisional decision in September stating that it would revoke the alerts section of the Order, although the final decision is not expected until November 2019. The FCA indicated it had been in dialogue with the CMA, but it was not clear for some time as to how a dual (and not directly overlapping) alerts regime would be avoided come December 2019, i.e. whether firms would be expected to comply with both the CMA and FCA rules, and whether this would cause confusion for firms and/or customers.

Supranational Institutions

Regulatory consistency is also essential in a global markets environment. Consideration of how regulation interacts in Europe, APAC and America is essential in order to ensure UK growth in a global economy. Coherence and coordination at the international level is crucial, especially given the UK's role as a hub of international finance and professional services. The UK should maintain its development and promotion of international standards abroad, both to preserve confidence in the UK financial services industry and minimise regulatory arbitrage. The risks of regulatory fragmentation have been well considered by the FSB and IOSCO, and is a G20 focus and we support many of their conclusions.

Enhanced UK Regulation

The UK has a strong tradition of going further than global standards set by international bodies, oftentimes demonstrating a rigorous approach to best practice and capturing activity or products that EU regulation or global standards have not sought to regulate more closely. This tendency can however lead to detrimental consequences as well, in particular for the competitiveness of UK firms.

In July for instance, the PRA issued final guidance on the capital treatment of limited and non-recourse margin lending under the revised Supervisory Statement SS17/13 – Credit Mitigation. The Supervisory Statement is applicable to UK banks, building societies and PRA designated investment firms that fall under the Capital Requirements Regulation (CRR). Therefore, it is not relevant to UK branches of firms established in non-EEA countries, hedge funds, private equity funds or insurance firms. It is also not applicable to foreign banks operating out of subsidiaries established outside of the UK. This will arguably put UK banks and investment firms at a competitive disadvantage as the firms which are out of scope will be able to extend limited recourse margin loans to UK counterparties with potentially more favourable capital treatment (and pricing) compared to foreign firms operating out of their UK branches.

It is important to note that the PRA made it expressly clear in its later policy statement that it did not consider that the issues (including competition concerns) raised by the UK banks in the responses to the Supervisory Statement warranted any further consultation. This is one example of the effect of gold-plating in putting UK banks at a competitive disadvantage to their foreign counterparts. It also demonstrates how this disadvantage can also impact the ability to compete with foreign banks who are operating out of UK branches servicing UK wholesale clients.

Dispute Resolution

The role of independent dispute resolution, for example through the Financial Ombudsman Service (FOS), plays an important role in customer protection, support and recourse, and allows easy, cheap and reliable resolution on the basis of what is "fair and reasonable in the circumstances of the case." Barclays supports this service: we consider it important customers have such an avenue to advance their complaints or issues. Further, we believe that for vast majority of issues, this role is executed with skill and delivers a positive impact to the wider market.

However, there is a danger that some decisions of these bodies can unintentionally extend beyond the specific consumer dispute under consideration, into broader areas such as the adequacy of product construction or the fairness or terms of implementation. As such, there is an opportunity for stronger alignment between these bodies and the peak industry regulator to ensure broader impact on the industry is in line with existing law and regulation. This should be a goal of the regulatory alignment this Consultation proposes and in doing so will ensure these bodies' unique perspective is formally included in the regulatory framework and the broader financial ecosystem, driving better customer outcomes.

c. Whether UK bodies request the right amount of information from firms as part of the policy-making process, and whether these processes provide an adequate opportunity for firms to highlight the impact of proposed changes.

Sufficient Time for Industry Consultation
As new legislation and regulation is being developed by policymakers, it is hugely important that industry has an adequate opportunity to consider and respond to the proposals. An industry standard for consultation periods has traditionally been 12 weeks, however, there are various examples of much shorter timeframes, some as short as four weeks. This is insufficient for industry to engage. Barclays believes that industry input is vital to the development of fully considered regulation. Regulators should therefore ensure they provide sufficient period of time for industry to consider the impact of any proposed changes and develop a response to government.

Traditionally, consultations have focused on the content of the policy under consideration, but as the importance of technology has increased, regulators are now additionally engaging with industry on the detailed and technical implementation of the regulatory delivery. Early engagement on both of these elements is of important.

- When considering policy content, regulators should continue to use formal consultations, but should also engage more generally with industry to identify areas of potential focus. Firms are able to provide context, detailed information and supporting data, to help the regulator understand the issue in more detail. Firms should continue to be engaged prior to any final policy decisions being taken.
- When considering technical implementation, regulators should continue to work with industry to define requirements, whilst also considering the wider regulatory delivery landscape, as outlined in the previous responses. When introducing new technical standards, we would highlight the benefits of the consultative governance structure that has helped to shape the delivery of Open Banking. Established institutions, Third Party Providers (TPPs), and consumer and SME representatives worked with technology experts and a central organising entity to develop the standards, guidance and frameworks that facilitated the implementation of the initiative. Working Groups were established with specific focus areas, such as technical standards development, legal, data security and fraud, to bring together experts in these fields to rapidly problem-solve as new challenges were identified. Customer research was undertaken at key stages, to ensure that priorities such as consent, transparency and control were delivered to customers' expectations. This approach encouraged all players within the ecosystem, both current and new, to be involved in the development and delivery of the standards and best practices, which in turn led to better customer outcomes. This process demonstrated how industry can work with regulators and the wider ecosystem to consider the needs of all sections of the market, and develop a realistic, balanced and customer-outcome driven approach. It should also be noted that when establishing an approach such as this, it is equally important to consider and define upfront the scope of this work, to ensure that there is a clear end-point once the

deliverables have been implemented, to avoid any potential future scope-creep and work that falls outside of the regulation.

Increasing the Importance of Impact Assessments

Impact assessments play an important function in policy development and are a key means to determine regulatory outcomes and areas for improvement. We believe that the scope of impact assessments should be expanded to consider important factors such as market fragmentation, competitive impact of the rules, or divergence against other jurisdictions.

An example of a lack of comprehensive impact assessment with large buyside firms is in the policymaking process relating to the Mifid II safeguarding regime, and the Market Abuse Regulation.

- Under the MIFID II safeguarding regime, UK financial institutions were required to deliver client statements of assets under custody with increased frequency, and subject to specific formatting. In addition, under the Market Abuse Regime, UK firms were required to deliver investment recommendation histories and disclosures to institutional clients at the time a recommendation was made. These two regulatory requirements are good examples of the need to balance the regulatory efforts to increase investor protection and transparency, actual demands of end investors. Neither of these regulatory requirements permitted more sophisticated institutional investors to opt out of delivery of data which they repeatedly stated they did not require in the volumes, frequency or format in which the regulation required it to be delivered.

A more focused impact assessment with the institutional investor client base prior to the implementation of the legislation (and a post-implementation thematic review) would have identified some of the unintended consequences of these regulations which resulted, in certain circumstances, in an oversaturation of data. In addition to this, the technology spend and operational resources required to facilitate compliance with the reporting obligations should be assessed more closely with the value-add which that information provides to the investors for whom it is being provided.

Review Clauses in Regulation

We support the process of embedding review periods into new pieces of legislation to monitor for unforeseen impacts, commonly seen in EU legislation. MiFID was originally implemented in 2007, with review requirements built into the legislation. This allowed for a full review of the impact of the regulations around 2012, by which point policymakers were able to review the requirements in an ordered fashion with the new perspective of the financial crisis. This resulted in a vastly amended regulation in 2017, which now once again is undergoing a review process to determine the extent to which the regulation has achieved its objectives, and the extent to which the regulation has created unintended consequences or has created a burden without corresponding benefit. This hardwiring of review periods being built into the regulation has permitted a structured review and refinement of the rules, taking account of the changing macro environment as relevant, and ensuring that unintended consequences of regulation can be amended in relatively short order.

2. How firms and the regulators can work together to make authorisation, supervision and enforcement more efficient, including:

a) How might firms and the regulators take advantage of new technology to make supervisory reporting more efficient, flexible and less burdensome.

The regulatory environment is becoming ever more complex, with around 300 million pages of regulatory documents expected to be published by 2020. This poses challenges to firms' compliance departments and their ability to navigate the regulatory landscape, so creates a need for regulatory technology (or RegTech) solutions, which harness the use of applications on technologies (such as cloud computing and big data) to help firms meet their compliance and regulatory requirements as well as help regulators monitor and enforce their regulations. This need will only grow into the future. For example, between 2008-2016 there was a 500% increase in regulatory changes in developed markets, highlighting the need for scalable, reliable and efficient RegTech solutions.

Though RegTech clearly brings benefits for a number of areas, including onboarding, monitoring, detection and reporting, many regulated firms have yet to implement RegTech solutions throughout their institutions. The reasons are manifold, including: risks associated with use of new technologies (including lack of regulatory clarity and fragmentation with respects to regulation); differing education with regards emerging technologies and their applications; integration issues with a firms' legacy systems (although many RegTech firms recognise this challenge and where feasible try to adapt accordingly); and support by senior executives to invest in RegTech solutions given the numerous other costs that firms face. Lastly, one may instinctively question why an unregulated company is a key factor in compliance for a regulated firm.

It is worth noting that regulators globally are also supporting the development and uptake of RegTech solutions, as demonstrated by their creation or sponsorship of various RegTech initiatives, sandboxes and accelerator programs including the Financial Conduct Authority's and Bank of England's Digital Regulatory Reporting (DRR) initiative, TechSprints and the RegTech for Regulators accelerator.

The DRR initiative is focused on testing whether compliance with regulatory reporting requirements can be automated and exploring how technology could make providing data less dependent on human interpretation of their rulebooks and improve the quality of information they provide. The FCA, together with the BoE and various firms, including Barclays, are exploring how they can use technology to create machine-readable rules and link regulation, compliance processes, and firms' policies and standards together with firms' transactional applications and databases.

If successful, this opens up the possibility of a model-driven and machine-readable regulatory environment that could transform and fundamentally change how the financial services industry understands, interprets, and then reports regulatory information.

RegTech for Regulators (R2A) is an accelerator backed by the Bill & Melinda Gates Foundation, Omidyar Network, and the US Agency for International Development that partners with financial sector authorities, including the Philippines' central bank. One of R2A's aims is to evaluate the potential of technologies and data science to strengthen the capacity of the financial authorities to regulate, supervise and provide policy analysis, by improving and increasing the volume, variety, speed, and accuracy of data available to the financial authorities.

b) How might firms allow or facilitate data sharing between regulators to improve regulatory coordination.

In an era where data is key there are different frameworks and considerations with respects of data sharing between regulators.

The role of technology and the importance of international collaboration should not be underestimated. The FCA recently conducted a RegTech TechSprint in conjunction with international policymakers, including the US Treasury and FDIC that looked at anti-money laundering and Financial Crime. All the teams participating in the TechSprint were tasked with developing better technology to combat money laundering and look at how technology can help with data sharing.

In addition, it may be worth considering (a) the encrypted documentation held on a secure portal via web based platform/on the Cloud, subject to robust data security controls, or (b) the release of sensitive data through smart contracts triggered on distributed ledger technologies and (c) the Joint Money Laundering Intelligence Taskforce (JMLIT) model for sharing data/information.
JMLIT is an innovative model for public/private information sharing that has generated very positive results since its inception in 2015, and is considered internationally to be an example of best practice. Essentially it is partnership between law enforcement and the financial sector to exchange and analyse information relating to money laundering and wider economic threats. The taskforce consists of the FCA, over 40 financial institutions five law-enforcement agencies: the NCA, HMRC, the SFO, the City of London Police, and the Metropolitan Police Service and Cifas.

Furthermore, the way industry work with the Cyber Defence Alliance (CDA) could also be instructive. Barclays was one of the key founders and the CDA shares data with, for instance, the Police. Presumably, the methodology could also be applied to onward sharing with regulators.

c) How firms go about making sufficient investment in their systems and controls to ensure these are fit for the future.

As outlined in our response to question 1, the ability for firms to invest in innovation, for example to upgrade core systems, can be limited by significant and simultaneous regulatory change programmes. This is because firms have limited resource to manage and deliver the change, and there are also limited release cycles and technical delivery slots, and finite budgets from which to fund change programmes.

Therefore, inevitably, regulatory deliveries will take priority over innovation and strategic investment, to ensure that firms meet their regulatory responsibilities. Hence, back-to-back and overlapping regulatory change programmes can inhibit a firm’s ability to develop or enhance its underlying infrastructure, of its own accord, unless deemed a significant priority on par with regulatory delivery. This also highlights the importance of ensuring that all players offering bank-like products are regulated in the same way, to avoid an uneven playing field emerging whereby fully regulated market participants are not as able to innovate, due to the need to prioritise committing their resource and technical delivery slots to implementing multiple regulatory change programmes.

Within Barclays there is a Group Technology Office (GTC) that determines the Technical Strategy for all Barclays Technology and oversees and governs the implementation of the strategy including the invest and divest. The GTC sets the direction and guidelines for Technology Domains and oversees their operation. It also defines Technology Domains and assigns owners to each domain.

Lastly, Barclays would refer Government to the UK Finance/Ernst and Young response, which we support.