

Submission to the Green  
Paper on Modernising  
Consumer Markets

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## Introduction

Barclays welcomes the opportunity to input into the Government's Consumer Markets Green Paper, 'Modernising Consumer Markets'. We have explored the Consultation with interest, and welcome the clear focus on a number of integral themes, each of which aim to support the strength and resilience of modern consumer markets.

### Introducing Barclays

As a transatlantic consumer and wholesale bank, we offer products and services across personal, corporate and investment banking, credit cards and wealth management. We are headquartered in London and New York, operate in over 40 countries and employ 85,000 people globally. However, despite our global reach, our longest consumer markets experience has been in the UK. Barclays has been part of the fabric of the UK for over 327 years, and our success as a business has always been inextricably linked to the progress of the people and the businesses we serve.

Today we have a relationship with 24m individuals in the UK, which provide us with a strong understanding of modern consumer behaviour, and the changing trends in their behaviour which are dictating how modern consumer markets must evolve and adapt. In addition, we have a relationship with one in every four UK businesses, with over 50 industries benefitting from dedicated relationship teams across Barclays Group. In 2017 we supported UK SMEs with £2.8bn of new lending and helped over 98,000 start-ups establish themselves, thrive and grow. We are also the UK's largest provider of services to UK merchants – with over 1m relationships, representing over c.20% of the UK's retail market. Whether it is a partnership, medium or large business, multinational corporation or financial institution, Barclays works to support business owners and leaders to realise their ambitions.

Moreover, we are one of the largest long-term lenders to the public sector in the UK, last year raising over £600m for universities, colleges and schools, adding £13.6bn to the UK economy overall.

It is from this unique vantage point – as a large and experienced modern consumer services company, a champion of the UK consumer, and a provider of services to so many other businesses that also succeed by serving the UK consumer well – that we seek to support this Consultation.

### Approach to Consultation

In our response we have worked to answer the questions openly, bringing the entirety of our breadth of experience with consumers across the UK to the fore.

To place our responses to the Consultation's questions in context, we have also explored some of the macro themes and challenges that this paper presents, including: how to ensure consumers remain safe online as modern consumer markets increasingly digitise; how data portability can benefit consumers across all markets; and how the public and private sector should work together to build a fair and competitive landscape for all participants.

While our insights, expertise and experience is broader than that of a UK headquartered “bank”, we have largely used that as our starting lens, to best illuminate how we believe UK consumers can thrive moving forward. We hope that these insights are valuable, and would of course be happy to discuss them further if that would be helpful.

## Macro themes and challenges

### 1. Embedding Digital Safety and Security within Consumer Markets

The digital evolution continues at pace, and with that the movement of goods, services, customers and increasing amounts of data online. The increasing interdependence of financial and digital inclusion has been exemplified by the growth of mobile banking, which over 80% of consumers now rely on as their primary method of managing their personal finances. Barclays has witnessed and participated in this change directly, with (for example) services such as Pingit, our Mobile Banking app and Barclaycard Business Solutions (BBS) all supporting customers and clients, in different ways, to utilise the benefits of digital banking in a safe and secure way. Our data shows that this trend is widespread and shows no signs of abating, with our average customer now using mobile banking more than 28 times a month (some as many as that in a single day), while visiting their branch less than two times a month. Technology, for those who feel comfortable and safe using it, has transformed the access that individuals have to their own money.

However, as highlighted by our Digital Safety Campaign last year, numbers of digital fraud and scams continue to rise, now making up nearly half of all reported crime. Fraud soared by as much as 53% in 2016, as fraudsters discovered new and creative ways to convince consumers that they are someone else and then take advantage of them. This trend highlights that while the transition of consumers and consumer markets towards digital technology provides many benefits to consumers, it also creates new risks (or exacerbates existing risks), which consumers and consumer markets must mitigate accordingly.

#### *Consumer awareness and understanding*

We would firstly highlight that consumer awareness and understanding of the risks of digital fraud and scams, and how to mitigate such risks, are both key to tackling this growing problem. As our Digital Safety adverts sought to highlight throughout 2017/18, digital fraud and scams come in a variety of different forms, from someone being duped into providing confidential information to a faux bank teller, to an individual inadvertently sharing too much personal information on social media (which can later be used by someone to convince them that they know them when they do not). It is therefore important for consumers to be cognisant, at all times, of the risk of digital fraud and scams (including phishing, smishing, vishing, and social engineering, to name a few), and of the many practical ways that people can better protect themselves online.

It is also important to note that as data sharing becomes more widespread, with the advent of so-called “open data” (of which “open banking” is just one manifestation), the ease with which consumers will be able to share and transfer data to an increasing number of recipients will be even greater. With greater consumer control comes a greater need for consumers to understand and take accountability for the access and movement of their data (especially their

financial data), so that any choice they make to share is done knowingly. This shift in consumer accountability and understanding will be critical to harnessing both the benefits that open data will bring, while ensuring the associated risks remain suitably managed.

### *Investing in cyber fraud prevention*

Another critical method of protecting consumers from the intentions of fraudsters is to ensure businesses and consumer markets providers are investing in cyber and digital fraud prevention. The advent of Open Banking has reiterated the significance of investing in infrastructure as a method of protecting consumers from those who intend harm.

As data sharing becomes more common across sectors, it is vital that the digital and technical infrastructure created firmly prioritises the protection of consumer data, and promotes awareness of the digital risks. We welcome the Department's view that: *"We want to make sure that the markets of the future are designed to encourage competition and innovation, and at the same time ensure that consumers are treated fairly, their data is held securely and used appropriately, and their privacy is respected"*.

## **2. Harnessing Data Portability for the benefit of all Consumers**

Data portability (the creation of data that can be shared in an appropriate and safe way) and data sharing (the actual transmission of portable data between different data controllers on behalf of the data owner) have the potential to provide significant benefits to society. In considering how to best ensure that these benefits are realised, Barclays believes that deliberate action is required by Government to ensure that they are extended to the markets where they can offer the most benefit to consumers, and are built on infrastructure that protects consumers' data and leaves them firmly in control of it.

The potential benefits of data portability and open data more generally are currently being seen most clearly in the UK through the Competition and Markets Authority's Open Banking remedies. As data portability and data sharing initiatives become more common, it is crucial that they are built on safe and secure infrastructure. The Open Banking framework is designed on this basis, using a common standard adopted by all, supported by so-call "Application Programming Interface" (or API) technology, as a safe and secure mechanism for data sharing between parties. As the open data era started in earnest with one of the harder classes of data to share – people's financial data – it was absolutely vital that the means through which that data was to be shared was as safe and secure as possible, so that the foundations could be created to facilitate the sharing of other data through time on the same standards.

As we explain in more detail in our response, it is our belief that the three specific lessons that can be learned from Open Banking with respect to extending data portability across markets are:

1. The need for common standards across sectors, to allow the simple and easy porting of data (both in terms of the format in which data is shared, and the data which is shared);
2. The need for a centrally coordinated and commonly-used infrastructure (which all market participants are encouraged or required to make use of); and

3. The need for this infrastructure to be safe, secure and truly put customers in control of their data (it is our strong belief that this can only be achieved through the use of Application Programming Interfaces, or 'APIs', alongside a number of other non-technical interventions to ensure that consumer "trust" in the system is maximised).
4. The importance of technical infrastructure being underpinned by strong customer understanding of the risks and opportunities associated with data and data sharing.

The Open Banking framework is a positive first step in harnessing the power of data portability for consumers. We now recommend that the Government consider how these lessons from Open Banking can be extended beyond the nine largest banks in the UK, for the benefit of all consumers, and how consumer benefit will be achieved by introducing similar frameworks for other sectors. As we consider in our response to question one, we believe there to be huge benefit in broad data portability and data sharing, so these principles should be embraced across the consumer markets, to provide consumers the full range of benefits that this digital revolution has to offer.

### **3. Providing a fair and competitive landscape for all Consumer Market participants**

Traditionally the consumer markets landscape was characterised by a series of discrete and distinct products and services, offered by companies that specialised in their provision. This model has been disrupted over the past couple of decades, predominantly as a result of digitalisation. The result has been that the boundaries between markets are being challenged - if not outright removed - resulting in the potential for a more integrated and competitive landscape, which drives innovation, and therefore consumer choice and benefit.

However, these improvements to customer outcomes are far from guaranteed. As consumer markets reshape, there is a pressing need for regulation to reflect the reality. As a broader range of firms seek to engage with and offer products in a diverse range of sectors, there is a requirement for a level regulatory playing-field, whereby all who operate in a market are subject to the same regulatory requirements. Without this, competition will be hampered, and consumers will not enjoy the protections they benefit from when engaging with traditional firms. This is not to mention the potential uncertainty consumers would face if providers were subject to different levels of regulation for providing the same product or service.

This will become an increasingly pressing issue as open data puts consumers firmly in charge of their data and allows them to seamlessly connect once disparate markets, driving the provision and aggregators of services from increasingly diverse providers. This is already becoming apparent within financial services, as Open Banking (alongside the Payments Service Directive 2) provides the basis for technology firms to seek to provide or aggregate financial products. In order to ensure that consumers have full transparency and understanding over the protections they should be guaranteed, we would suggest that Government and Regulators give thought to how they can ensure that there is a level regulatory playing-field, initially within financial services but more broadly across the economy.

It is important to note that digitalisation and the advent of open data will continue to modernise consumer markets at pace, reshaping competition and customer service as they go. As such, regulation will need to be quick-footed in recognising, understanding and reacting to such changes.

## Better outcomes in regulated markets

***Q1. In which regulated markets does consumer data portability have the most potential to improve consumer outcomes, and for what reasons?***

### *Open Data*

Across the world, there is an increasing momentum behind the idea that technology may finally herald an era of truly “open data” – the principle that publicly funded data should be openly available for the public to access and use.

In parallel, the ideas that underpin open data are increasingly being adopted in private sector consumer markets, with a similarly widely held belief emerging that consumers ought to be able to leverage their personal data, created in partnership with certain private or public organisations, to realise further benefits with other private or public organisations.

Surprisingly, the financial services sector has already made significant progress in embracing the spirit of open data, with the introduction of the Competition and Markets Authority’s new Open Banking framework, which has the potential to revolutionise how consumers manage their personal finances. While still in its infancy, Open Banking is already showing signs of providing tangible benefits to consumers in the banking sector, and is proof that Open Data principles can be leveraged within the private sector to improve consumer markets. Our conclusion is therefore that if financial data can be shared safely and securely on the basis of consumer consent, then it ought to be feasible to share any personal data on a similar standard.

While somewhat limited in its immediate application, the concept of Data Portability, introduced in the EU General Data Protection Regulation (GDPR), further builds on the ideas underpinning open data. Both GDPR Data Portability and the data sharing model of the Open banking framework are explored further below.

### *GDPR Data Portability*

The GDPR overhauled the data protection framework across the EU, ensuring a harmonised regime across the 28 Member States, significantly strengthening the rights of EU consumers. One of the new consumer rights enshrined within GDPR is the right to data portability.

The concept of data portability provides consumers the right to receive personal data that they have provided up-front or over time to a “data controller” (a firm) in a structured, commonly used and machine-readable format. Consumers may also request that the controller transmits their data directly to another controller. In principle, Data Portability therefore allows consumers to switch service providers without losing the benefit of data provided and accumulated with their existing supplier.

Data portability is best placed to provide consumer benefit in sectors where consumers provide data over time, enabling them to develop an extensive data profile that providers can use to anticipate future behaviour, thereby simplifying or making more personalised an individual’s experience with that organisation. Through data portability, consumers can port their data profile from their existing service provider to a competitor, which the competitor can then use

to provide a personalised service that matches their needs. Alternatively, consumers could port their data profile to an intermediary to help them to identify better services available elsewhere.

A consumer may be discouraged from switching to a new service provider if, in so doing, they are unable to take their data history with them, and therefore have to begin creating a new data profile from scratch, which may disadvantage them – either in terms of outcome or experience. Data portability offers the potential to remove this barrier to changing service, therefore encouraging greater competition and enhanced social and economic outcomes.

### *Ensuring Ported Data is Useful / Useable*

Key to the success of data portability is the extent to which data provided to consumers by firms is actually ‘portable’ to other providers, i.e., whether the data to be shared is properly readable and, crucially, immediately useable by different providers. Any friction involved in preparing the data for use upon receipt will naturally limit the benefits of the sharing. Therefore, it is vital that appropriate standards are created, maintained and adhered to.

While GDPR dictates that data shared under the data portability framework has to be in a commonly used format, if there are significant differences in what is provided by different service providers, the benefits available will be limited.

### **Recommendation:**

1. Ensuring data is shared in as uniform a way as possible would contribute to the benefits of data being fully realised across the digital economy. As the relevant useful data may differ between sectors, we recommend that standardised data “templates” are developed and agreed within sectors to ensure ‘ported’ data can be used without hesitation by different providers.

### *Transmission of Ported Data*

While the content and format of data shared is important, equally important is the how the data is transferred between entities, i.e., the mechanisms used to share the data.

Whilst still a new phenomenon, Open Banking has inspired a number of lessons for how to make a success of data sharing moving forward, and should be noted by stakeholders interested in extending Open Data principles beyond banking.

### **Recommendation:**

1. Prime amongst these is the importance of having a common standard that is adopted by all, supported by safe and secure technology, e.g., Application Programme Interfaces (APIs). A common standard such as this ensures that providers of new services have reasonable and consistent expectations over the data they will receive and the mechanisms by which this will be translated, preventing the need to build individual and bespoke interfaces to each data provider (for example, avoiding the iOS vs. Android dual app creation issue).

A safe and secure technology standard – specifically the use of APIs, alongside appropriate security protocols and standards – ensures that customers’ data is safely transmitted between data users and, most importantly, that the customer always has real time control over what data is shared with whom. Importantly, this negates the need for consumers to provide their login credentials to third parties (known as screen scraping). Barclays strongly believes that the API-based solution provides the safest and most secure way of allowing consumers to share their data, and that any future data portability initiatives should be designed on this basis.

### *Promoting Data Portability across Consumer Markets*

Barclays strongly considers that all consumer markets could benefit by embracing an Open Data approach. As identified in the Consultation document, both energy and telecommunications are sectors in which consumers could clearly benefit from data portability, with consumers being able to leverage their usage profiles to find better tariffs or contract deals with other providers. When considering other consumer markets which may be well positioned to take advantage of the opportunities provided by data portability (see our response to Question eight below), Barclays suggests that markets which meet some or all of the following criteria would benefit:

- Markets that are rich in personal data, either from detailed initial data collection at the point of on-boarding, or through regular consumer activity;
- Markets where consumer data can be used to provide a tailored, personalised or cheaper service;
- Markets in which there are multiple service providers.

Based on these criteria, and if the Government is in search of high priority markets against which to move sooner rather than later, Barclays considers the below sectors as having potential to benefit immediately from data portability:

- Pensions: Customers build up (often multiple) pension pots over their lifetimes, meaning that they are rich in personal data. However, they are often not-well understood, presenting significant opportunities for innovation in customer education and engagement, which in turn should drive competition. Putting customers in control of their pension pots should add much-needed understanding and transparency to this important product class.
- Insurance: In purchasing an insurance product consumers are required to provide a range of data in order to receive their bespoke price quote. Once this data is provided, the product is then rolled over (with an annual increase in premiums often made by the provider). Whilst remaining with their existing provider may therefore result in a more expensive cost, the need to ‘recreate’ their data profile with different providers acts as a disincentive to switch. Data portability in the insurance market would remove this barrier, making it easier and simpler for consumers to switch providers to achieve the best cover at the best price.

### *Open Banking*

While not necessarily based on GDPR data portability, the new Open Banking framework embraces an Open Data style approach, providing consumers with the ability to share their financial data with a number of providers, rather than ‘port’ it between providers, whilst continuing to retain the underlying relationship with their bank. If consumers choose to utilise

this ability, they provide consent for each Third Party Provider (TPP) that they wish to share their data with, with the data then shared between their bank and the TPP safely and securely through Application Programming Interfaces (API) technology.

Open Banking provides a range of benefits to consumers. The initial use cases are based around 'aggregation', which is an experiential benefit whereby consumers will be able to view their current accounts from different providers in one place, and in the near future will be able to initiate payments from their accounts. Looking into the future, consumers can expect to receive detailed analyses of their financial situation, along with personalised services and rewards. Open Banking represents the most significant change in retail banking in a generation, and has the potential to revolutionise how consumers manage their personal finances over the long-term.

## ***Q2. How can we ensure that the vulnerable and disengaged benefit from data portability?***

Barclays believes that a data-driven economy has the potential to deliver more proactive and holistic support for consumers who are most vulnerable. However, as this Green Paper recognises, such an environment could also pose risks for this group, either because a service provider could use data indicating potential vulnerability to unfairly exclude a consumer from its service, or because vulnerable consumers are unable to access and utilise the broader benefits that data portability will bring.

### *Ensuring vulnerable consumers are not left behind*

Alongside the benefits for mainstream consumers, increased data sharing and portability also has the potential to enable greater support for vulnerable customers. Broadly, banks find out about vulnerability via one of three ways. Firstly, with customers telling us, secondly, with customers going through a process that implies potential vulnerability (e.g. bereavement or collections) or thirdly, banks identifying potential vulnerability from customer behaviour. It is on the third of these that data portability could play a role in ensuring customers get the support they need.

At present, banks may be able to identify signs of potential vulnerability from a customer's behaviour in relation to their products e.g. reduction in income and bounced bill payments. In these instances, we have processes in place to alert customers and proactively engage with offers of support. Financial services firms are looking to do this at earlier stages, using data to intervene before consumers' experience significant detriment. Allowing data portability across industries could potentially allow a broader set of data to be used, enabling earlier identification and support for vulnerable consumers and a more joined-up approach across sectors.

It is, however, important to recognise that data analysis is not a panacea to identifying vulnerability. It has not yet been proven that vulnerabilities such as mental health problems or dementia can be identified reliably from data. The margin of error is potentially wide, with some customers being missed and other 'false positives' being identified. A service provider implying to a customer they think they are vulnerable when they are not could cause significant offence and damage trust.

Additionally, such an approach raises a number of ethical questions and may itself pose a risk of detriment to vulnerable consumers, unless appropriately managed.

### *Ethical dilemmas*

Firstly, as outlined in our response to question one, it is vital that consumers have trust in the collection and use of their data. This means that those using and collecting data must be clear with consumers about what they are requesting, how it will be collected, for what purpose(s) it will be used, and by whom. On data transmission, we believe the safest and therefore best way for data to be shared is via APIs. Ensuring the safe transmission and use of data is critical for this consumer group, given that we understand from Which?'s recent report on data collection and use 'Ctrl, Alt or Delete? The future of consumer data', that vulnerable consumers are more nervous than other consumers about data collection and use by large companies.

This report highlights that vulnerable consumers are especially nervous about their personal data being used by large companies and recent unpublished research that Barclays has commissioned from GfK reveals that both groups – vulnerable and non-vulnerable consumers - feel anxious about firms using their data to make targeted interventions. In qualitative interviews and focus groups with both customer sets, all participants reacted negatively to hypothetical examples of banks using data to identify detriments ranging from mental health issues, gambling problems, dementia and fraud and scams. Many questioned why banks would be analysing customer behaviour, and were nervous about the potential for banks to use any such conclusions to the detriment of customers.

Secondly, improving data sharing and data portability between industries could lead to industries being in possession of very significant data on consumers. This could lead to companies gaining sensitive insights on customers that they themselves may not be aware of or admit to their providers. For instance, it is conceivable that firms could be able to identify challenges such as gambling problems from transactional behaviour or potentially spot memory problems from customers failing ID&V or other account behaviour. This raises significant ethical questions as to whether and how firms may use any insights in their interactions with consumers and whether regulators wish to encourage firms to do so.

Whilst firms may be able to offer targeted support to consumers, our qualitative research suggests that consumers would be very sceptical about firms doing so. Crucially, across industries, firms and regulators will need to be mindful of the balance between safeguarding and privacy and taking account of consumer attitudes towards data in regulations and expectations of firms.

Finally, there is a risk that via data sharing, the identification of a customer's vulnerability may inadvertently contribute to that customer's financial exclusion. For example, if a firm identifies a vulnerability, such as gambling, there is a risk that the firm may be minded to take action to limit detriment to that customer, which may include potentially limiting access to credit. Industry and regulators must be mindful that this constitutes a withdrawal of service, and however well intentioned, may lead to effective exclusion of certain customers from certain products.

## Recommendations

Given the importance of harnessing the power of data portability for the benefit of all consumers, including those who are vulnerable, we would make the following recommendations:

1. Strengthening broadband coverage and speed: The Government should invest to ensure that the UK's broadband coverage and speed is comparative with our European neighbours. Currently the UK drags behind Europe in both, hindering the ability of consumers' UK wide to act confidently and securely online.
2. Prioritising Digital Inclusion: Government should re-prioritise the digital inclusion of all UK consumers, setting an ambitious target of 100% digital inclusion by 2020, based on the explicit acknowledgement that digital inclusion is vital to achieve broad economic prosperity.
3. Promoting ease and accessibility of digital services: Promote the benefits and safety of using digital services, and encourage all organisations to do the same. Barclays has an 18,000 strong network of Digital Eagles that works with individuals and businesses to help grow their confidence in using digital technology. Other organisations, both public and private, could similarly prioritise the promotion of digital services to their consumer-base.
4. Building a safe Open Data world: Ensure the systems which underpin Open Data are safe and transparent – truly putting consumers in control of their data whilst preventing them from harm. This can be achieved through: the establishment of secure and resilient infrastructure (APIs); common standards for data sharing across platforms and markets; and by making the environment as hostile as possible for fraudsters to operate in.

### ***Q3. How can we ensure these new services develop in a way which encourages new entrants rather than advantaging incumbent suppliers?***

Barclays strongly supports open competitive markets and believes consumers benefit most, in terms of outcome and experience, when firms are forced to fairly compete to succeed, whether through price or differentiation in offering.

To ensure a fair and competitive market, all participants should be subject to the same rules. Any new regulatory framework should not be designed to benefit either incumbents or new entrants, but be designed solely to achieve the best outcomes for consumers. The focus should not be from where innovation originates, but the benefits it provides to consumers. Increasing competition is not achieved simply by increasing the number of players, but by making all players work harder to satisfy their customers.

The boundaries delineating traditional consumer markets are becoming increasingly blurred. For example, financial services are increasingly provided through digital platforms, and digital technology platforms are starting to explore providing financial services. Traditional firms offering financial services are subject to a strict regulatory and supervisory regime for the protection of consumers. To ensure the best outcomes for consumers in this increasingly blurred environment, it is vital that any new non-traditional firms offering financial services are subject to the principle of '*same activity, same risk, same rules, same supervision*'. Without

such equal treatment, there is a risk that non-regulated service providers increasingly enter the market as part of an unregulated shadow banking sector, with increased risk to consumers.

Furthermore, under the data sharing model of Open Banking, banks are required to share consumer data with third parties, if consumers wish them to do so. If major digital technology firms decide to become authorised TPPs for the purposes of Open Banking, and are able to access consumers' financial data, there is a risk they are increasingly handed an advantage given their access to a considerable amount of non-financial data as well as the consumer's financial data. Combined, these data sets have the potential to provide huge insight into consumers lives.

### **Recommendations:**

Given the potential benefits to consumers, we would propose the following recommendations:

1. Reciprocal data-sharing: As banks are required to share consumer financial data, a similar regime should be introduced for major digital technology firms, to require them to provide reciprocal access (with consent) to non-financial data, and ensure a level playing field in this data sharing environment. There is potentially significant value that could be provided to consumers if their non-financial data e.g. search data, or social media data were accessible by other firms.
2. Extending Open Banking beyond the CMA9: For the benefit of consumers, Government should consider extending the Open Banking regime beyond the CMA9 – the largest nine banks in the UK, subject to the CMA's Open Banking remedies – to cover all banks. While we recognise this will take time and resource, it will provide the most potential for consumer benefit. Currently, smaller challenger banks who become TPPs can make use of the Open Banking regime to allow their customers to view an account held with a CMA9 via their platform. There is no equivalent capability to allow CMA9 customers to view non-CMA9 accounts via their platform. There is likely a significant number of CMA9 customers who also hold non-CMA9 accounts who would value this capability. The value and benefit that could potentially be provided to these consumers is not currently being received.

***Q4. What is the best way to publish performance data so that it incentivises firms to improve and can be used by consumers when taking decisions? Should firms also offer discounts or compensation for poor performance?***

It is important to appreciate that there is vigorous provision of non-official quantitative and qualitative performance data for all of the consumer markets considered by the Green Paper. The various review sites, whether by drawing together the views of individual consumers or presenting those of more experienced contributors, form an extension of more traditional 'word of mouth' assessments of products and services.

Before any new stipulations for sharing are considered, Barclays believes it is vital to establish when official or 'encouraged' performance data will be likely, in practice, rather than principle, to add to consumer understanding of a particular firm – or help support a consumer in choosing between two or more firms in their consideration set. Barclays would suggest that this is most likely to be the case when (i) the data reflects reasonable measures of key consumer experiences (expressed in terms to which a consumer can immediately relate) and (ii) there are clear benefits to standardisation across suppliers (which, more often than not,

relates to the more “commodity” elements of services, rather than those which differentiate between two or more firms).

In the banking sector, for example, standard data on complaints have been published for some time and, on publication, receives broad coverage. However, the extent to which individual customers engage with this data or are influenced by it remains unclear. More recently, the development of a range of new banking performance data to be published is underway as a result of the CMA’s *Retail banking market investigation*. One part of this is the creation of new, independent service quality surveys for both personal and business banking customers, covering all but the very smallest providers in the UK. The first results from these will be published in August 2018 through a variety of channels – (i) in branch, (ii) online and (iii) via APIs for use by third parties. Complementing these will be additional service information specified by the FCA in their latest BCOBS addition, including: service availability by channel, account opening timings and data on ‘service incidents’. Again, however, while the intentions behind the publication of this are inherently good, it remains to be seen whether or not the mere fact that it is published will lead to any material benefit to consumers or markets that wouldn’t have come about otherwise.

It is unlikely that there is a single ‘best way’ to publish such data. Their effectiveness will depend on the market and products under consideration. The use of APIs provides the potential for a greater range of presentation approaches for any given data, in contrast to a prescribed approach set by regulators or agreed through trade bodies. Those APIs also ensure that published data is more easily consumed, so that it can be leveraged more extensively and, therefore, potentially have more influence over consumer perceptions, considerations and choices. However, even for these, the preparatory work can be significant, with a variety of presentation styles bringing their own issues. Linked to this is the need to evaluate whether given performance data is actually being used by customers to influence their choices. Such reviews can reveal if the range of data and/or their presentation needs to be modified or, in some cases, if they should cease to be published.

#### *Driving better practice across the market*

Regarding the financial impact of poor performance, Barclays would note that we – and other banks – already compensate customers who suffer losses due to errors or failures on our part. In addition, we provide discretionary payments in some cases of poor service short of financial loss. However, we would strongly suggest that this issue be left to the judgement of individual firms, albeit within an overall framework, e.g. the FCA’s ‘Treating Customers Fairly’.

More broadly, we would also suggest that the transparent and well-promoted improvement of standards across the financial services industry is the best mitigant of poor performance. When an individual firm pays compensation to an individual for an incidence of poor performance, the learnings from that experience is shared only between those two parties. Given the need for the whole financial services industry to be striving for better practice in consumer outcomes and service, it is important to promote the standards expected, to ensure greater awareness of, and likelihood of achieving, such standards across the board.

#### *Case study – complaints data*

Both the Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS) collate and publish performance data on volumes and quality of complaints handling by financial sector firms, every six months, capturing the following metrics:

FCA:

- Total complaints received split by product category
- Total complaints closed split by no. of days taken to resolve brackets
- Volume of complaints upheld as a %.
- Main causes of complaints

FOS:

- Number of new referrals to FOS
- Uphold rates
- Number of cases resolved using the Early Consent process (where FOS involved prior to complaint closure).

Publication of complaints data ensures transparency, provides valuable insight to consumers to inform their choices and also enables firms to benchmark performance against their peers. However, the method by which data is shared is key to driving the right behaviours, both at an organisation level and by consumers.

We believe that a move away from volume-based data to contextualised metrics would provide a more accurate and reflective performance information. Currently larger organisations are more likely to be top of complaint volume tables because of the size of their consumer base, detracting from a realistic perception of the service delivered. This method also hides some poor performers who are lower down the table in terms of volumes.

**Recommendations:**

1. Complaints per '000' consumer accounts: While this data is available and referenced, a greater emphasis should be placed on “complaints per '000 consumer accounts” as a more reflective and contextualised metric than total complaint volumes.
2. Differentiating data by type: Data should be broken down by provider type e.g. banks, building societies, insurance companies, pay day lenders to provide a more like-for-like comparison.
3. Promotion of best practice: The exploration of an industry benchmark for what one should expect to see in terms of average numbers of complaints, FOS referrals and uphold rates per '000 accounts, for each of the industry players above.
4. Publishing qualitative data: We believe the publication of compliments or customer reviews, alongside complaints data, would provide a more complete picture of the consumer experience, to inform consumer choice. While complaints data is a useful metric, it will not always be a key driver of consumer choice, which will be influenced by a number of factors, including brand loyalty and ease of use, among other things. Consumer choice is therefore likely to also be driven by customer feedback – good or bad, rather than simply the volume of complaints.
5. Simplifying definitions: We believe that simplifying the definitions and recording principles within complaints data would encourage greater capture and support

more robust and effective publication. Industry collaboration for a consistent approach, with guidance from the regulators, is critical to achieve this.

*Compensation payments for poor service:*

Compensation payments for poor service are common across the industry and some information on payments is made available by the FCA and FOS, including:

FCA:

- A view of total amount paid in compensation at an overall industry level split into product areas is shared every six months.

FOS:

- General guidance on FOS approach to assessing and awarding compensation is available on their website
- Technical Notes in certain areas of compensation are also available on their website
- Ombudsman News is used to focus on specific themes and share relevant case studies as appropriate

If a complaint is made regarding poor performance, it is important to put the customer back in the position that they would have been had the error not occurred (in line with FOS approach). However, this should never be used as a substitute for fixing the issue for the customer.

A key challenge is ensuring a level of consistency, while treating every case on its own merits. Determination of levels of Distress, Inconvenience, Trouble or Upset can be subjective and can also be open to vexatious claims. While FOS provide some level of guidance and insight into their decisions on compensation, these are still fairly generic. In order to manage this effectively, clear guidance for colleagues, relevant and appropriate empowerment limits and robust governance is essential.

## Digital markets that work for consumers

### ***Q.6. How can the Government support consumers and businesses to fully realise the benefits of data portability across the digital economy?***

For consumers and businesses to fully realise the benefits of data portability and other data sharing frameworks, the concepts need to become well established, be fully understood by consumers, and enjoy high levels of public awareness and trust. Consumer benefit will be limited if few consumers are aware of their right to data portability and the benefits that this can bring. The Government should therefore seek to maximise consumers' awareness of their data portability rights. Service providers could be encouraged to ensure consumers are aware of their rights and fully understand that they can request their personal data to share with other firms if they choose to.

However, as with any form of data sharing, it is of paramount importance that consumers are clear about how their data is being used, the potential risks associated with sharing their data, and the steps they can take to avoid any potential negative consequences. Increasing consumer awareness of digital fraud and scams has been a key focus for Barclays, as noted in the introduction, and in 2018 we launched the second phase of our Digital Safety Campaign which focusses on data, as well as digital safety. This includes a focus on the importance of personal data, by shining a light on how consumers may be unwittingly sharing more data than they think, and highlighting how they can take a level of control that is right for them. We have launched a multimedia advertising campaign – a new DataSmart TV advert (search Barclays Root Vegetables), and public billboards across the country - that we hope will go some way to raising public awareness of data sharing to help people take control of their data.

***Q7. As technology continues to develop, how do we maintain the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights?***

Barclays strongly believes there is huge potential for consumers to benefit from an Open Data style approach across consumer markets. However, if data is not shared or ported securely, there is significant risk both to consumers in terms of data security, and also to the Open Data concept more broadly, as a major data breach may risk undermining data sharing initiatives before they have demonstrated their potential.

As the technological revolution continues at pace, it is critical to balance innovation in the data-sharing landscape with strong data protection and privacy rights. Ensuring appropriate infrastructure and mechanisms are in place to share data is the best solution to facilitate data sharing, while limiting any risks to data privacy.

The framework in place for data sharing within Open Banking is an appropriate model and a good example as to how to share consumer data safely and securely. Consumers sharing data with third parties through API technology provides much greater control for consumers in as secure a way as possible, compared to consumers sharing data by providing third parties with their login credentials (screen scraping). See question one.

As data sharing becomes more commonplace, it is important that consumers continue to feel confident in their privacy and that their data is secure. Barclays takes the protection of customer data extremely seriously and we are actively looking to boost public awareness of Open Banking as a safe and secure method for consumers to share their data. To ensure consumers are comfortable and confident that their data remains safe, Barclays has also created a new Third-Party Permissions Centre – a one stop hub providing consumers with clear and simple control over whether they share their data, and with whom. This would also provide the ability for consumers to amend their permissions easily and instantly.

***Q8. What challenges do digital markets pose for effective competition enforcement and what can be done to address them?***

Barclays does not consider that digital markets necessarily give rise to any more competition enforcement issues than traditional markets with regard to likely infringements. What is different is the need to ensure that competition authorities and regulators work together with consumers and industry, as the consumer and their data becomes central to the services being

offered. By getting the parameters for the use of such data right, competition can flourish to benefit the consumer in a secure manner.

As mentioned above, we suggest that consideration is given to the potential to expand the obligations for the sharing of data (with informed and considered customer consent) beyond financial services firms. We believe that there are a number of sectors where companies hold data on behalf of their customers where the sharing of this data could bring valuable benefits to customers.

Third party providers of goods and services with access to customer data generated or stored across multiple platforms could tailor their offerings to a customer or bring to a customer's attention cheaper, more tailored or otherwise attractive offerings, which the customer would not have actively sought. Such benefits would accrue to customers across a wide range of goods and services if data sharing obligations are extended beyond the Open Banking initiative and PSD2 to various other sectors of the economy (especially technology). Giving third parties access to such customer data, with suitable legislative and customer focused control framework standards, would also facilitate the identification of vulnerable customers and advance financial inclusion.

We note that the Government is already considering the potential to expand Open Data principles to firms in the energy, water, and telecommunications sectors, and suggest that strong consideration be given to expanding beyond this, in particular to technology firms, which hold a large volume of customer data. Frequently these technology companies use this data to analyse the habits of their customers: with suitable control safeguards and frameworks this data can be used to benefit these consumers too. The combination of data sets from this combined group of companies and industries has the potential to radically transform, for the better, - the manner and content of products and services used by customers. Barclays considers consumers need to be put in a position to control their various data within frameworks which provide them with reassurance and ease of use.

Furthermore, in today's data economy, where boundaries between sectors are increasingly blurred, and as market structures evolve, it is important to ensure that a level regulatory playing field is maintained for all those who operate within the market. As a broader variety of organisations begin to operate within the financial services sector – through the opportunities created by Open Banking and PSD2 for example – we suggest that Government consider how to put the consumer at the centre of these opportunities. This should be done by ensuring common secure standards are developed across industry participants, and crucially ensuring they provide the same protections to their customers. The use of API standards in Open Banking indicates how such standards can be used to provide data in this way and promote third parties to offer innovation to assist consumers in making informed choices.

***Q9. Is the legal framework that covers consumer-to-consumer transactions appropriate to promote consumer confidence?***

The rise of consumer-to-consumer transactions (often known as the gig or sharing economy) has been closely tied to technological advances. Uber, for example, could not be sustained without APIs, regular and reliable internet coverage (broadband, WiFi or 4G), smartphones and GPS technology. It is evident that these technological advances are now a permanent part of

consumers' lifestyles and therefore the broader consumer marketplace. It is also evident that such advances and developments will continue to impact and influence those marketplaces. As such, review of legal treatment of consumer to consumer transactions is timely and needed.

#### *Difference between consumer-to-consumer transactions and business-to-business transactions*

We agree that there are differences in the legal treatment of consumer-to-consumer transactions as compared to business-to-consumer transactions (because a significant amount of consumer protection legislation only applies to “traders” or non-consumers). We also agree that it is highly unlikely that most consumers using platforms to purchase goods or services are aware of those differences, and even if they were, be in a position to identify whether an individual was acting as a “trader” or in a personal capacity when providing goods or services. This aspect of the market was not reflected in the consultation paper.

For example, many eBay sellers are in fact commercial merchants using the platform as a channel, and likewise a significant amount of the money lent through peer-to-peer lending platforms is lent by businesses or institutions as opposed to individuals. There are, therefore, three separate categories to consider:

1. Business-to-consumer transactions
2. Consumer-to-consumer transactions, and;
3. Business-to-consumer transactions made using platforms.

The fact that the latter two categories can be found on the same platform (so a consumer could almost simultaneously buy a set of chairs from a consumer and a table from a furniture supplier) may increase the risk that consumers will not appreciate the difference in protection provided by the suppliers.

However, our view is that any attempt made to reform the legal framework to reduce or remove these differences needs to be based on clear evidence of specific potential harm to consumers. Further, any such proposals for reform must be balanced against the impact such measures could have on innovation and the “sharing economy” policy objective. It is important not to assume that the technical legal differences equate automatically to a real problem that needs to be fixed. Rather than looking immediately to close the gap that exists, the focus now should be on increasing consumers' understanding of their rights when entering into consumer-to-consumer transactions and ensuring that consumers are made aware of whether they are transacting with another consumer or a trader. This is another aspect of the need to support the level of digital literacy and confidence – it isn't purely about spotting ‘scams’ or social engineering online. Of course, consumers' personal responsibility for their actions in entering into a commercial transaction – irrespective of the counterparty - is also an essential aspect of this equation and one which we feel is sometimes overlooked.

#### *Work to date and considerations going forward*

As paragraph 119 recognises, the market has itself evolved to produce a number of possible solutions to the transparency issue, and technology has the capacity to transform this further (use of APIs for instant information exchange and identity verification, for example). It is conceivable in the future that we conclude that platforms and indeed markets should adopt –

provided sufficient time and resource is available to build and integrate such technology within existing infrastructure - a similar approach on transparency. Some work being done by the Payments Service Regulator on push payment scams and the metrics for poor service as noted above are useful comparators.

This reference across to innovation in financial services is instructive: the development of these platforms to inform the consumer as to their counterpart can go hand in hand with, and replicate the innovation being seen in financial services specifically, especially in payments. Further, this links to Open Banking more broadly, where there is a risk of consumers unknowingly losing protections as a result of new regimes. Payments made using credit cards, for example, will generally be covered by section 75 of the Consumer Credit Act (which gives customers an ability to claim against their card issuer where there is a breach of contract or misrepresentation by the seller), and certain payments made using debit cards can be “charged back” under the card scheme rules. By contrast, payments made by an account-to-account transfer are unlikely to be covered by either section 75 or the chargeback rules. Open Banking and PSD2 are likely to see a marked increase in non-card payments (Payment Initiation Services being one of the new regulated payment services introduced by PSD2). While there is a mechanism for assigning liability in PSD2, there is currently no requirement to make the different models depending on payment method clear to customers. As such, additional consumer education may merit some consideration. Regardless, tools for information sharing and aggregation of financial services information delivered by Open Banking may present a useful model to adopt in the consumer to consumer marketplace.

In summary, although we acknowledge that the UK currently has one of the world’s strongest business to consumer protection regimes, it is not yet apparent that those protections should be replicated for transactions between consumers.

#### **Recommendations:**

1. Education about different models: In our view the policy objective should be to educate consumers better about the different protections offered by b2c versus c2c transactions and mandate that c2c platforms prominently display whether the seller/provider is a consumer or trader. This will allow a consumer to make an informed decision as to who they wish to do business with on the basis of the marketplace infrastructure, and the varying consumer protection regimes. This can be supplemented by information sharing between the parties to a transaction along similar lines to that presented by Open Banking and the CMA service quality indicators.

This approach could result in additional benefits as it should encourage consumers to pay closer attention to the identity of online sellers. This should therefore reduce the potential for scams, and make the different rights that apply in different contexts more apparent, helping consumers to decide which type of payment – or marketplace - to use in any eventual transaction.

***Q10. In what circumstances are personalised prices and search results being used? In which circumstances should it not be permitted? What evidence is there on harm to consumers?***

Personalised prices – where individuals are charged differing prices for products or services depending on relevant factors – are a positive feature of many markets, and can help ensure

that the price paid by an individual reflects the ‘cost’ of its provision, ensuring a fairer and more efficient consumer and market outcome.

For example, an insurance product will provide the same features and coverage to all who own it. However, customers will be charged a different price (or “premium”) in accordance with their particular risk profile. Those customers who are more likely to make a claim (and therefore have a higher cost associated with the product’s provision) pay an accordingly higher price. Those customers who are less likely to make a claim (and therefore have a lower cost associated with the product’s provision) pay an accordingly lower price.

Such pricing techniques are beneficial to consumers as they allow providers to offer their products and services to a wider market through more accurate pricing of their risk. Without this ability firms would be required to be more risk averse – assuming more consumers to be of a higher risk than they actually are - and therefore take a more conservative position with respect to the distribution of their products.

Separately, personalised prices may be utilised where a product provider wishes to segment their customer base in accordance with their willingness to pay. For example, the use of OAP and Student discounts for cinema tickets, or special offers for those who self-select through the use of offer apps.

Barclays has no comment with respect to the use or appropriateness of personalised search results.

***Q11. Should terms and conditions in some sectors be required to reach a given level of comprehension, such as measured by online testing?***

At this stage we don’t think that the case has been made for there to be a mandatory comprehension threshold that some terms and conditions should meet, and it seems to us premature to pre-empt the output of the Behavioural Insights Team.

Deciding on what the threshold should be and how that should be assessed would be a very significant undertaking. Instead, our view is that firms are highly likely to continue to compete and innovate to improve their presentation of terms and conditions, driving up the standard of terms and conditions across the industry. Focusing purely on “could the average 14-year-old understand these terms?” may actually hinder such innovation.

The GDPR, PSD2 and increasing digitisation of consumer markets will all operate to force firms to think more creatively about how they present terms and conditions (in many cases there is no inherent reason why all the information need be presented in one go to customers, for example). Open Banking, in particular, is likely to involve consumers making rapid decisions about financial services using smartphones and tablets. We believe that this will inevitably drive the industry towards a more sophisticated, customer-centric and technology-appropriate way of engaging customers with the information they need. This aligns with the FCA’s expectations of financial institutions, as outlined in their work on “smarter disclosures”. We would certainly endorse the view that many contracts include content that doesn’t have to be in the terms and conditions – historically firms in some sectors simply put information there for want of an obviously better location. The pressure not to do this is going to increase significantly.

Moreover, viable alternatives to a comprehension threshold already exist. A number of our terms and conditions across our product range have received a Crystal Mark from the Plain English Campaign. We have chosen to rewrite and reformat many of our terms and conditions to make them shorter and easier to understand over the last few years (for example, in 2013 we shortened our Retail Customer Agreement by approximately a quarter, as well as completely redrafting it).

It is also critical to bear in mind that many financial services contracts (and pre-contractual information) are subject to specific rules as to content and format (consumer credit agreements such as loans and cards are perhaps the best example). On any view they would need either to be exempt from such a requirement or covered by a different threshold. Given the amount of work that Barclays and other financial institutions have put into simplifying and streamlining more complicated financial services terms, our view is that contracts in simpler contexts (especially buying goods online) ought to be achievable without this type of intervention.

## Improving enforcement of consumer rights

### ***Q12. How can we improve consumer awareness and take-up of alternative dispute resolution?***

Within the banking industry, the FOS are the providers of ADR to consumers. This is enshrined in regulation and mandated through the FCA's rules on complaint handling. A requirement of the rules is that we make consumers aware that they can refer to FOS, and provide contact details on our website, in our complaint leaflets and our final responses to the consumer. In our complaint letters, we use specific wording informing consumers of the FOS, as prescribed by regulation, and highlight that if they remain unhappy with the bank's decision they can refer to the FOS within six months. We also supply a FOS consumer leaflet with our letter.

Supporting this promotion, FOS publish their MI and their Ombudsman decisions on their website and every six months detailing by business how many complaints they have received, resolved and overturned. This MI is often reported in the media. The FCA also frequently refer to and/ or make mention of the FOS in their publications.

In addition, we're signed up to use the EU platform for Online Dispute Resolution (ODR). While to date this hasn't been greatly utilised, the option for consumers is there. As part of this process, if a consumer has a dispute involving an online transaction across the EU, they can raise a complaint via the ODR platform which will then refer the complaint to the appropriate ADR authority in the relevant country. To support this process, we have a dedicated email account set-up to monitor any referrals to Barclays from the ODR platform.

In view of the above, we believe that consumer awareness of FOS in the UK is robustly managed, and sufficiently regulated.

### ***Q13. What model of alternative dispute resolution provision would deliver the best experience for consumers?***

From our experience of working with the FOS, we believe that a free, independent service for consumers whose decision-making process has fairness and integrity at the heart of it is the best model for consumers.

We would also argue that any successful ADR model must include the practice of firm's learning from their mistakes, in the instance that a decision is made against them. The sharing of information between the FOS and the industry is therefore critical, to ensure that firms are consistently learning about how to improve their customer service, preferably reducing the number of disputes making it to FOS over the long term. This would also ensure better practice across the industry as a whole.

***Q14. How could we incentivise more businesses to participate in alternative dispute resolution?***

Commercial alternative dispute resolution is currently under scrutiny from the Treasury Select Committee (TSC) and the FCA. This process should reveal any of the Government's sector-specific concerns, and produce recommendations to encourage business participation in ADR.

While Barclays is not under investigation nor faces dispute resolution concerns, the banking sector has responded to this scrutiny in an effective manner. Through UK Finance, an independent review of the dispute and alternative dispute resolution landscape has been announced alongside key stakeholders on both sides of the debate. The review seeks to provide quantitative evidence of industry-wide dispute resolution historically, while also taking into account current practices and the future landscape of dispute resolution. The review will recommend effective, practical solutions that aim to deliver fair outcomes for both SMEs and for the industry at large.

As the issues relating to dispute resolution in the banking industry have often related to individual firms, it is important that future reviews also take an industry-wide view. Furthermore, such reviews should be independently-led away from the industry in question, to ensure unbiased opinions and recommendations.

***Q15. Should there be an automatic right for consumers to access alternative dispute resolution in sectors with the highest levels of consumer harm?***

The FOS are currently empowered to deal with complaints between financial businesses and their customers, supporting with banking, insurance, PPI, loans, mortgages, pensions and investments. This means they have a wide remit and cover consumers where there may be financial harm. There is currently a consultation paper around extending FOS jurisdiction to SME's with turnover up to £6.5m (their remit currently extends to SMEs with a turnover up to £2m). This extension would provide an ADR route for businesses who currently are not eligible to use FOS as a route for disputes at present. We are supportive of the FOS jurisdiction being extended to include these businesses.

***Q16. What changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers?***

*On fraud and scams*

As mentioned above and recognised by Barclays Digital Safety Campaign launched last year, levels of digital fraud and scams continue to rise at a worrying rate, now amounting to almost half of all recorded crime. Given the increasing digitisation of consumer markets and individual behaviour, this is perhaps no surprise, however we believe that tackling fraud and scams must become a clear priority for both the Government, and local and national law enforcers, going forward.

From an industry perspective, the Joint Fraud Taskforce (JFT) is the primary means by which government and industry collaborate on the protection of customers from fraud and scams, and as discussed recently, if the JFT's purpose and objectives were slightly revised, it has the ability to play an even wider role in enabling and promoting fraud prevention.

There are also positive developments happening within technology and data science as a means to combatting economic crime, which we believe would benefit from targeted investment to drive improvements in consumer protection and financial fraud prevention. A good example is the work done with Faster Payments and the New Payments System Operator (NPSO) on the creation of a shared database to track fraudulent payments and identify criminal networks, and similarly the work of the industry to explore how this same technology might help repatriate more victims' funds to ensure that criminals don't profit from their activities. If pursued this may require changes to the law (Proceeds of Crime Act) and additional guidance from the ICO in due course.

Conversely, given the increasing scale of the challenge we are concerned that this issue is not being appropriately prioritised by the police, and that the fraud and scams which are reported (which is a minority of the overall number taking place) are not being followed up accordingly. This in turn leads to a lack of prosecutions and a proliferation of the crime. Given the increasing scale of fraud and scams, we recommend urgent attention to ensure this type of criminality is curtailed rather than exacerbated as time goes on.

### **Recommendations:**

We have put together some recommendations for Government on the specific issue of digital safety and fraud and scams, noted below:

1. **Police prioritisation:** We recommend that the issue of fraud and scams is appropriately and uniformly prioritised by local and national law enforcers throughout the UK, to take account of the rising threat of this type of criminal offence. From our experience, the issue is inconsistently managed across the police force depending on which part of the country you are in, and given its predominance across the UK, we feel that clear and appropriate prioritisation is key.
2. **Police resourcing:** We advocate for police resourcing to be bolstered to tackle this growing challenge, via the creation of a dedicated fraud and crime unit, responsible for significantly reducing levels of fraud and crime across the UK. While we appreciate the existing pressures faced by the police force at large, we are concerned that the issue is not being resourced accordingly, and recognise this as a key tenet of consumer protection both for now and in the future.
3. **Improved reporting and follow-up:** We recommend an improved and transparent process for the reporting of fraud. It is currently unclear, to both consumers and businesses, who they should report incidences of fraud to, and there is a severe lack of transparency around follow-up of those that are reported. The role of Action Fraud UK

is unclear, both in terms of their accountability to consumers, and the outcome of their work. In order for this rising crime to be halted and reduced, a clear and transparent reporting process must be understood by consumers.

4. Bolstered Central Financial Intelligence capability: We recommend that Financial Intelligence capabilities at the National Crime Agency are bolstered by continued investment in technology and expert data scientists who are able to extract maximum benefit from the central financial crime utilities being built as part of the new payment infrastructure.

## A regulatory and competition framework for the future

### *Q17. Do you agree with the initial areas of focus for the Consumer Forum?*

Barclays welcomes the creation of the Consumer Forum and the close interaction between government and regulators which we hope it will facilitate and strengthen. We fully support the three areas of focus drawn out, and would encourage the inclusion of an additional area of focus around digital and financial inclusion.

#### *Principles for regulatory action*

Barclays agrees that the Consumer Forum should look to develop principles to determine whether government or regulators should act in dealing with a particular consumer-related challenge. Many issues, including those that this consultation calls out, cut across social and regulatory policy boundaries, with responsibility to act sitting across regulators and government. Further, there is rightly a limit to the reach of regulators on social policy issues and this Consumer Forum could be a valuable means through which regulators can raise social policy barriers with the Ministers and officials. To enable the fullest consideration of such issues, we would encourage the Forum to bring in consumer and industry expertise to shape consideration and responses accordingly. This would enable the industry at large to ensure coordination on some of the most significant consumer challenges being faced, and enable collective action on such issues without requiring lengthy legislative or regulatory policy development.

#### *Vulnerability*

On vulnerability in financial services, Barclays has been at the forefront of industry work and thinking, working closely with the FCA, who have been effective in using regulatory policy and influencing to drive change in financial services. Such work includes:

- Establishing a vulnerability policy to which all parts of the business must be compliant. This policy means we consider vulnerability in all key decisions we make and has embedded our approach to vulnerability across the business
- Contributing significantly to industry thought leadership on vulnerability, including through CMA workshops, UK Finance working groups and sharing our thinking within financial services and with other regulated industries.
- Commissioning new research on consumer attitudes towards identifying vulnerability from data, fieldwork for which is currently ongoing. We would be keen to share the findings of this research with the Government.

We welcome the FCA's focus in this space and the flexible approach they have taken. This has left space for different approaches across industry and competition in meeting the needs of customers, whilst focussing on ensuring consumers have access to information. We would encourage the Forum to consider Vulnerability in its fullest sense, thinking broadly across health, disability, accessibility and financial detriment and not being prescriptive in requiring particular solutions but pragmatic in driving better outcomes.

#### *Portable data*

We are in complete agreement of the importance of portable data and the benefits this can bring to consumers. Barclays has led industry in helping consumers understand how to share data safely through our ongoing digital safety campaign and data safety messages within it. We have also carried out extensive research on data sharing, including our recent Open Data Dilemma's report, conducted by Ipsos-MORI, which found personality type and trust in provider were key factors in affecting consumers' decisions to share data.

As this consultation calls out, Open banking gives consumers the ability to take charge of their financial data and grant access to it in ways that help them manage their money better through new tools and features. However, it is vital that this is done through safe and secure means. We know consumers are concerned about the privacy of their data and the risks of data loss, misuse and data breaches could undermine faith in the opportunity of open, portable data, to the detriment of consumers, industry and the wider economy. To that end, we would encourage the use of APIs for data sharing and for regulators and government to work so these become the expected norm for how consumer data is shared across and within industries. We also believe Government should work with regulators, industry and the Information Commissioners Office to determine standards and approaches for sharing data on vulnerable customers, to ensure they are protected from detriment that could arise from data sharing and it is done in their best interests and within legislation (recommendation from Q2). This should be an early focus for this forum.

#### *Digital Economy and inclusion*

In addition to the areas above, we would encourage the Department to include a fourth issue around the digital economy and inclusion. Barclays has invested significantly in supporting the public to improve digital skills, with the work our 18,000 digital eagles and digital wings online platform and are committed to supporting the Government's digital strategy. In an increasingly digital world, the risk of detriment to consumers from not being digitally included and aware is increasing. Without digital access and inclusion consumers are restricted in their ability to choose, access and use products and services, including digital first government services. The pace of digital change and opportunities of services such as those possible through open banking risks creating new forms of financial exclusion as consumers who are digitally excluded don't have access to the same choice of products, services and features and digitally included consumers. However, providing digital access alone still leaves risks of significant consumer detriment - For example, despite our investment in improving the digital awareness and skills of our customers, they have continued to be exposed to and taken in by increasingly sophisticated social engineering, fraud and scams activities.

Digital inclusion and awareness cuts across industries and to fully address it action across government and regulators is required. However, given its pertinence to a functioning data

driven economy and ensuring vulnerable customers are not excluded, it could be argued that actually a single regulator needs to have responsibility for ensuring inclusion in the digital economy. We also believe the government may need to consider framing digital inclusion as an economic policy issue and reappraising its approach to digital inclusion to deliver the fully inclusive digital economy, and consumer safety within it. This forum could still play a key role in leveraging collective expertise and influence to support that regulator in enabling an inclusive digital economy.

## The Competition and Markets Authority's use of power

***Q18. Have the 2014 reforms to the competition regime helped to deliver competition in the UK economy for the benefit of consumers?***

***Q19. Does the competition regime provide the CMA and regulators the tools they currently need to tackle anti-competitive behaviour and promote competition?***

***Q20. Is the competition regime sufficiently equipped to manage emerging challenges, including the growth of fast-moving digital markets***

***Q21. Do you agree with the approach set out in the draft Strategic Steer to the CMA? Are there any other areas you think should be included?***

We will provide separately our comments on the specifics of the current competition law regime. In the response below we have focussed (with regard to paragraph 190 of the Green Paper) on whether the current system works for business.

In our view BEIS and the competition authorities should continue to be mindful of the impact of competition law inquiries on the businesses concerned. Market studies and market investigations, and particularly large requests for information and data, entail a significant burden on business, and can divert resources from innovation and other development that would ultimately benefit customers.

In some instances, the lack of clarity as to the timing of a particular review, or the time taken to carry out a review already announced, can be frustrating, and lead to uncertainty for business and difficulty in resource allocation, which may affect the speed at which we can respond to requests. The shorter deadlines for market investigations have also been extended which has had an impact in this regard.

Requests in relation to mergers can be particularly problematic to resource, especially if they are not sent to the competition team but rather a contact given by the merging parties.

We would also recommend that future remedy proposals in markets cases are tested more thoroughly in advance, in order to minimise questions of implementation for both businesses and the authorities, and to ensure that benefits for consumers are realised efficiently.