# The Financial Services and Markets Bill

# Public Bill Committee: Call for Evidecne

## Barclays Submission

### About Barclays

Barclays is a universal consumer and wholesale bank with global reach, offering products and services across personal, corporate and investment banking, credit cards and wealth management. With over 330 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.

We welcome the opportunity to the Public Bill Committee with our perspective on the Bill, and we would be happy to discuss any element further if that would be of interest.

### Barclays Perspective

Barclays warmly welcomes the Financial Services and Markets Bill (FSM Bill). The Bill is a landmark piece of legislation that will make significant and far-reaching reforms to the financial services landscape in the UK. As the UK adapts to life outside the European Union, it is right that the government seeks to capitalise on its new-found freedoms to ensure the regulatory framework is best suited to meet UK needs, and enhances the UK's position as leading global financial centre. The Bill represents a major and positive step forward that will strengthen and enhance the UK financial services sector, and we would encourage its passage through Parliament as soon as possible.

While we welcome the Bill, we do have a number of recommended amendments to further strengthen and hone the Bill.

#### New Approach to Financial Services Rulemaking

We support the government's objective to ensure development of financial services regulation in the UK follows the 'FSMA model', i.e., Government and Parliament setting objectives and establishing a high-level policy framework, with the development of detailed regulatory rules then delegated to the regulators.

We welcome that, under these proposals, UK rules would be developed by appropriate subject matter experts in the UK regulators, and therefore would be tailored specifically for the UK market. We also welcome that the new autonomy and responsibility for regulators in developing financial services rules will ensure they are well placed to respond to emerging challenges, and embrace new opportunities presented by technology, innovation, or developing areas such as green finance.

We note that under the new approach to rulemaking, HM Treasury (HMT) is empowered to require the regulators to conduct reviews of existing rules, where they consider it to be in the national interest. Proper review and scrutiny of regulatory rules and interventions is an important check and balance within any regulatory framework, and we therefore support HMT being able to require rule-reviews by the regulator. However, we note that under the Bill's current provisions, this rule-review

power can only be exercised by HMT. Under this approach, it is likely that HMT would receive a high volume of representations from various external stakeholders (industry, consumer groups etc) requesting that they trigger a rule-review by the regulator. We consider that this could compromise the independence and transparency of the framework and create significant operational burden for HMT to assess and respond to such requests.

We therefore believe the Bill should be amended to also enabling an industry representative body (designated by HMT) to request a rule-review by the regulators – a so called 'super-complaint mechanism'. While there should be a sufficiently high bar and prescribed conditions to be satisfied before such requests could be made, such a mechanism would provide a clear and transparent channel enabling regulated firms to appropriately raise concerns with regulatory rules.

- ***Recommendation 1 – Section 27 (Review of Rules) should be amended to introduce an industry 'super-complaint mechanism' whereby a designated industry body can request the regulator to undertake a rule review.***

**Intervention Powers**

Building on the powers for HMT to request a rule-review, we note that government has announced its intention to introduce at Committee stage an 'intervention power' enabling HMT to '*direct a regulator to make, amend or revoke rules where there are matters of significant public interest*'.

We recognise that government may naturally wish to have a formal mechanism to ensure public policy considerations are reflected in the development of rules by regulators, and that there may be a democratic justification for such powers. However, we note that historically the UK has benefited from a global reputation for having a strong, stable and predictable regulatory framework, developed by effective institutions with clear roles and responsibilities. It is critical to ensure any new intervention powers do not risk or undermine this reputation.

To this end, it is vital that any proposed intervention powers are introduced with great caution, are properly considered and come with clearly defined parameters setting out how they should be used, and the circumstances in which their use would be appropriate. It should be clear that such a power should only be used sparingly, transparently and for good reason. Further should HMT choose to direct the regulators to take a particular action, it should be a requirement that such action is based on a full understanding of the issue, following appropriate consideration and analysis by relevant experts and consultation with industry.

- ***Recommendation 2 – The Bill should ensure that any intervention powers introduced by government come with clearly defined parameters setting out how they should be used, and the circumstances in which their use would be appropriate.***

New Secondary Objective for Regulators

As the UK looks to forge its position outside the European Union, it is critical that the Government looks to ensure the UK financial services sector remains competitive and attractive, in order to maintain and enhance our position as a leading global financial centre. Barclays therefore welcomes the proposal to provide the FCA and PRA with a new secondary objective to facilitate the 'international competitiveness of the UK economy (in particular the financial services sector), and its growth in the medium to long-term'.

We strongly support this proposed objective, which represents clear recognition and a signal of intent from government on the need for competitiveness and agility in our sector. This new objective should become a key tenet of the regulatory framework and ultimately the lens through which the regulators consider future reform proposals. Indeed, the Bill should be strengthened further to set out how the regulators should adhere to this new objective. Firstly, when developing new rules going forward, regulators should be required to consider, document and publish how the new rules contribute to achieving international competitiveness and/or growth of the sector, and these assessments should be open to consultation before rules are finalised. Further this requirement should also apply where the regulators are simply replacing EU Retained Law in regulatory rules, as per Part 1, Chapter 1 of the Bill.

- ***Recommendation 3 – The new secondary objective (Chapter 3, Section 24) should be strengthened to require regulators to consider, document and publish how any new, amended or replacement rules contribute to achieving international competitiveness and/or growth of the financial services sector.***

PSP Liability for Fraudulent Transactions (Reimbursement of Scam Victims)

The UK is in the midst of a scams epidemic, creating devastating consequences for individuals, businesses and the economy as a whole. Indeed, 2021 was a record year for the number of financial scams, with victims losing more to criminals than ever before.

When a customer falls victim to financial scam, it is right that banks are liable for reimbursing the customer where the bank is at fault. Over recent years, reimbursement of APP scam victims has been governed by a voluntary industry code known as the Contingent Reimbursement (CRM) Code. While this Code represented a significant step forward in the reimbursement of scam victims, there have been significant challenges which undermine the Code's effectiveness. Firstly, as the Code is voluntary, not all banks are currently signatories meaning some consumers do not benefit from its protections. Secondly, those providers that are signatories to the Code are interpreting its requirements inconsistently, resulting in a wide range of reimbursement rates amongst signatories. In summary, the CRM code is resulting in inconsistent customer outcomes, and a patchwork of protections depending on the provider.

Barclays therefore supports the Government's intention to introduce a firm legislative basis for reimbursement of APP scam victims. We note that the Bill enables the Payment Systems Regulator to require participants in the Faster Payments Service (FPS) to reimburse APP scam victims. While we support the government's intention, we consider that these powers should be expanded if they are to properly address inconsistent levels of protection for APP scam victims. The powers given to the PSR in the Bill specifically relate to payments made over the Faster Payments Scheme. While it is positive that all payments made over the FPS are covered by this new protection, we would note there are other relevant commonly used payment schemes and systems that should benefit from the same protection – for example, the CHAPs payment scheme, and 'on us' payments (made between two accounts held within the same bank). The Bill should therefore be amended to give the PSR power to require participants in other payment schemes to reimburse scam victims.

- ***Recommendation 4 – Section 62 (Liability of payment service providers for fraudulent transactions) should be amended to expand the reimbursement protections beyond just Faster Payment Scheme payments, to also cover payments made over other relevant Payment scheme or systems.***

While the Bill is an important milestone in protecting customers against financial scams, it is important to recognise that reimbursement of scams victims is not a long-term solution to the growing problem of scams - rather it is simply treating the financial impact. Alongside the financial cost, victims often suffer significant emotional trauma and lasting mental health impacts following a scam. Further, while victims may be reimbursed of their losses, the criminals still benefit from the proceed of their crimes, which are often then reinvested in further activity to defraud others. This creates a vicious cycle that must be broken. It is critical therefore that, alongside reimbursement, policymakers take necessary action to stop scams ever succeeding at the outset.

However, the challenge of scams is not a simple problem to solve; scams often involve criminals exploiting multiple technologies, channels, and infrastructures across multiple sectors (e.g., online platforms and telecoms), meaning scams cannot be solved by action or intervention in one sector alone. It will only be through considered cross-sectoral intervention led by government, regulators, and law enforcement, working closely with industry, that meaningful action can be taken to prevent scams. Government should appoint a high-profile individual to undertake a review of the scams landscape and make recommendations for government intervention to tackle scams in the UK.

- **Recommendation 5 – Section 62** ***(Liability of payment service providers for fraudulent transactions) should be amended to require Government to appoint a Scams 'Tsar' to undertake a review of the financial scams landscape and make policy recommendations to reduce the levels of scams in the UK.***

FOS and Regulator Co-operation on Issues with Wider Implications

As the approved alternative dispute resolution provider for financial services, the Financial Ombudsman Service (FOS) plays an important role in customer protection, support and recourse, and allows easy, cheap and reliable resolution based on 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 the vast majority of issues, this role is executed with skill and delivers a positive impact to the wider market.

We note that the Bill introduces a statutory duty for the FOS, the Financial Services Compensation Scheme (FSCS) and the FCA to cooperate in line with the 'Wider Implications Framework' that currently exists between these organisations on a voluntary basis. The Bill requires that these organisations: publish a statement of policy setting out how they will comply with this duty; put in place arrangements for stakeholders to provide representations on their compliance with the duty; and publish an annual report on compliance with the duty. We welcome that the Bill is strengthening the current voluntary arrangements, providing a legal underpinning that will drive collaboration and cooperation between these key statutory organisations, and will ensure such behaviour will be maintained going forward.

However, there remain challenges relating to the operation of the FOS. In certain circumstances, there is a risk that decisions taken by the FOS can unintentionally extend beyond a specific consumer dispute being considered, into broader areas such as the adequacy of product construction, or the fairness or terms of implementation. As a result, individual decisions taken by the FOS can inadvertently lead to significant and widespread change within firms and across the industry to avoid similar disputes going forward. This unintended consequence is tantamount to the FOS acting as a

quasi-regulator, setting and potentially changing standards and requirements for the industry, beyond its remit, and without consulting with relevant expert policymakers in HMT or the FCA, or undertaking appropriate consultation with industry.

While the statutory duty to cooperate is welcome, we believe the Bill should go further to resolve these challenges, by returning the FOS to its original purpose and rationale and thereby ameliorating the unintended consequences.

More specifically, the Bill should be amended to revise the operation and jurisdiction of the FOS such that it:

- Requires FOS decisions to be made in line with and not go beyond extant law and regulation, thus ensuring consistency and certainty for firms;
- Prevents the FOS from straying into a quasi-Regulator role whereby single decisions (which themselves may not reflect existing law or regulation) can have market wide and potentially retrospective effect where no consultative process has been completed; and
- In conjunction with or in the absence of the foregoing, expands the obligation on FOS to consider aspects of a decision beyond what is "fair and reasonable in the circumstances of the case" to include prudential impact on firms and wider market/regulatory impacts of a decision before that decision is made.

- ***Recommendation 6 – Section 37 (Duty to co-operate and consult in exercising functions) should be amended to clarify the role of the FOS, specifically: i) requiring that FOS decisions be made in line with and not go beyond extant law and regulation; 2) preventing the FOS from straying into a quasi-Regulator role whereby single decisions can have market wide and potentially retrospective effect; 3) expanding the obligation on FOS to consider market and regulatory impacts of decisions.***

Furthermore, we also note that the current inability for regulated firms to effectively challenge decision making is an issue in need of reform. While legal action, and in particular Judicial Review (JR) is technically an option available to firms, in practice, JR is not often used as a method of challenging a decision. There are various reasons for this: JR is immediately adversarial between a regulated entity and a regulator – a situation that firms look to avoid; further JR is primarily concerned with the legality of the decision-making process, rather than the substantive merits of the decision itself. An alternative, less binary and less adversarial method for raising issue with a decision is therefore required. We would suggest that a new appeals process be established, enabling firms to formally raise concerns regarding a decision, facilitate nuanced discussion concerning the principles underpinning a decision, and provide opportunity to address the substance of a decision. By way of an example, a formal channel for appeal/approach to the FCA could be established, enabling firms to raise concerns regarding a decision taken by the FOS which may have 'wider implications'.

- ***Recommendation 7 – The Bill should be amended to establish a new appeals process enabling* firms to formally raise concerns regarding a regulatory decision, facilitate nuanced discussion concerning the principles underpinning a decision, and provide opportunity to address the substance of a decision.**

**Access to Cash**

Barclays supports the legislative proposals to ensure consumers and SMEs across the UK have access to cash withdrawals and deposits. While there is good existing cash access in the UK – recent FCA

mapping shows 95.5% of the UK population are currently within 2km of a free-to-use cash point – it is important that access is safeguarded for those who really need it now and into the future.

Industry has already made extensive progress to achieve the legislation's objectives, and prevent 'cold spots', including:

- A joint-bank agreement that all communities affected by bank branch closures will have their needs independently assessed (by LINK), with services provided to fill any unmet needs.
- Establishment of a new Banking Hub company to deliver sustainable shared cash services to communities (e.g., banks hubs, cash deposit solutions), with a mandate to innovate to wider services as required.
- In addition, recent innovation like cashback without purchase (CWP) is able to provide convenient cash access, including small and non-round amounts, in thousands of retailers across the UK.
- Firms have also stood up 'last-mile' solutions (i.e., free at home cash delivery services) for a small minority of customers with exceptional cash needs who can't access the range of alternative solutions.

We believe the framework proposed in the Bill is the right one. Importantly it is channel agnostic to allow cash solutions that are tailored to a variety of customer and local community needs. For example, while face-to-face or in-person access is required by some customers, there is no one-size-fits-all approach. Today less than 4% of cash withdrawals (on Barclays' estate) happen inside a branch, with the majority of customers choosing the convenience of an ATM device. Likewise, research shows small businesses prioritise speed and privacy[1] when accessing cash services, which may be best provided by an automated deposit solution in a secure location. As such, it is vital that legislation does not 'bake-in' any prescriptive method of accessing cash, which will also help innovation to flourish and ensure that the solutions reflect and are proportionate to evolving customer needs.

The Bill will also give the FCA responsibility for oversight of the new coordinating body LINK, to ensure cash solutions are effective to match cash needs. While this is a positive development, it is important that the regulator itself is subject to appropriate checks and balances to ensure its decisions are proportionate and reasonable.

We also note that HMT will subsequently publish a Policy Statement setting out specific geographic requirements to underpin the Bill's obligations. Although the Statement will not be debated as part of the Bill, it is critical that these requirements are proportionate and flexible to reflect existing and evolving cash needs and are subject to regular review and consultation to ensure a range of expertise is considered in the setting of specific cash targets.

- ***Recommendation 8 – Section 47 and Schedule 8 of the Bill (Cash Access Services) should be delivered in its current form, maintaining the flexibility to deliver cash solutions tailored to different customer and local community needs.***

[1] https://www.communityaccesstocashpilots.org/wp-content/uploads/2021/12/Community-Access-to-Cash-Pilots-Report-December-2021.pdf (pg.77-79)