

Retail Banking Market Investigation**CMA's Consultation on Draft Order, 23 November 2016****Response on behalf of Barclays Bank PLC****23 December 2016**

[X]

1. Introduction

1.1 This submission is made on behalf of Barclays in response to the CMA's consultation on its draft Order ("**Draft Order**") and drafting Explanatory Notes associated with the Draft Order ("**Explanatory Notes**") published by the CMA on 23 November 2016.

1.2 As previously stated,¹ Barclays is generally supportive of initiatives that will increase transparency, give customers more control and help them in making informed decisions. Barclays has identified a number of points which should be clarified or amended in the Draft Order for the benefit of both providers and customers.

2. General (Part 1)

Commencement dates

2.1 Barclays suggests that Article 2.9 of the Draft Order be amended to state that Part 3 (other than Article 16) enters into force on 1 August 2018, for consistency with the dates set out in Part 3.

De minimis exemption

2.2 Article 4.7 of the Draft Order sets out the de minimis threshold for Part 6 which is to be calculated by reference to the number of active PCAs, excluding Basic Bank Accounts. Notwithstanding that Part 6 does not apply to Basic Bank Accounts, Barclays suggests that for the purposes of simplifying implementation the de minimis threshold should refer to the number of active PCAs only, to avoid referring to different definitions across different remedies.

De minimis exemption in relation to Barclays International BCAs

2.3 As the CMA is aware, the Financial Services (Banking Reform) Act 2013 (the "**Act**") specifies that certain deposit taking and related activity must be conducted within a 'ring-fenced' company. Specifically in relation to business customers, the Act requires that defined activities for customers meeting certain criteria must be conducted within the ring-fenced company. The criteria are:

2.3.1 Turnover less than £6.5m;

2.3.2 Balance Sheet less than £3.26m; and

2.3.3 Employees less than 50.

¹ See Barclays' response to Provisional Decision on Remedies of 17 May 2016, dated 7 June 2016 ("**Barclays' Response to the Provisional Decision on Remedies**"), paragraph 1.3.

- 2.4 The Act provides some flexibility to use larger thresholds.² As announced on 1 March 2016, Barclays is restructuring the management of its business customer base to meet the requirements of the Act. Small business customers meeting the requirements of the Act will be managed by a new Business Banking unit based within Barclays UK, while larger business customers will be managed by a separate division, Barclays International.
- 2.5 [X]³
- 2.6 Barclays agrees with the CMA that there are certain remedies that are only relevant for businesses with a turnover of less than £6.5 million. For example, the remedy to prompt customers to consider their banking arrangements is likely to be of most benefit to small businesses that do not have the additional financial or accounting support that larger businesses have at their disposal. Similarly, the remedy requiring the provision of five years of transaction history is unsuitable for larger businesses that have numerous systems in place to monitor and record transaction history already. Lastly, for the remedy concerning the release of product information via APIs, the Implementation Entity chose the turnover point of £6.5 million⁴, as those above this threshold often have bespoke or negotiated tariff rates. Barclays considers that there is merit in drawing a distinction between these types of business customers for whom a remedy may not be effective, and smaller business customers for whom the remedies are designed to benefit.
- 2.7 Barclays considers that it would be disproportionate for Barclays International to have to establish new systems or amend existing systems required to implement certain of the remedies - namely prompts, transaction history and the provision of product information via APIs - for a very small number of customers who are unlikely to benefit from the remedies (or for whom, given the nature of the product set that the customers have, the remedies are unsuitable). Barclays therefore requests an exemption for the customers within Barclays International from the remedies outlined above. The volumes covered by this exemption⁵ will be [X] the de minimis requirement set for brand participation in the other remedies⁶. In addition, Barclays requests that the CMA consider putting in place a method by which Providers (who may have similar concerns for other reasons) can obtain a direction from the CMA that business with turnover below £6.5 million can nevertheless be exempted from the application of certain remedies that would otherwise apply, in the same way as is currently envisaged in relation to High Net Worth Individuals. Barclays would welcome a discussion with the CMA on this point.

Private banking customers

² Turnover less than £25m and/or Balance Sheet less than £12.5m and/or Employees less than 250.

³ [X]

⁴ Open Banking Technical Working Group, Open Banking Implementation Entity Programme Approach, 29 September 2016

⁵ Barclays' figures are based on the number of businesses / legal entities.

⁶ 20,000 active BCAs in Great Britain. See Draft Order, Articles 4.1, 4.6.2, 4.8, 5.6.2

- 2.8 Barclays is supportive of the private banking exclusion relating to customers with assets of not less than £250,000 and their family members.

Expiry of certain provisions and sunset clauses

- 2.9 Barclays welcomes the CMA's proposal to "sunset" the BCA account opening remedy after five years. Consideration should also be given to the inclusion of sunset clauses or provision for review for other remedies,⁷ to ensure that remedies do not remain in force where they are no longer necessary and in line with the CMA's recent guidance on sunset provisions.⁸

Interpretations, definitions and interaction with other regulations

- 2.10 Article 30.5 confirms that in the case of a conflict between the provisions of Part 8 of the Order and rules under the Consumer Credit Act 1974 or the Financial Services and Markets Act 2000, the rules under those two statutes shall prevail. However, Barclays suggests that the CMA expands Article 30.5 to require the rules of CONC to prevail over the Order in the event of a conflict between the two.
- 2.11 Barclays suggests that, for the sake of clarity and consistency, the CMA considers aligning its definitions with those set out in CONC.⁹ In particular, Barclays requests that the CMA considers and clarifies the following definitions with reference to CONC / the Consumer Credit Act ("CCA"):
- 2.11.1 The definitions of "Arranged Overdraft" and unarranged "Overdraft" in the Draft Order are inconsistent with the equivalent definitions in CONC.
- 2.11.2 Barclays considers that there is a need for further clarity in relation to the definition / use of the terms "individual", "consumer", "business" and "SME". Under the CCA, references to an "individual" can refer to a sole trader or a partnership, but would exclude incorporated bodies however, Barclays understands that the CMA intends all SMEs sole traders and partnerships to fall within the definition of SMEs and therefore be considered BCA customers, which may cause confusion in the use of "individual" in places. Barclays considers that this could be clarified by specifying that BCAs are products used wholly or predominantly by customers for their business (i.e. including sole traders and partnerships).
- 2.11.3 Barclays has made some comments in respect of the inclusion of commercial credit cards at paragraph 3.2 below; however, if the CMA does include such cards within the scope of the Order, Barclays considers the current definition needs further consideration. The definition of "credit cards" in the Consumer

⁷ [X]

⁸ Paragraph 4.14 et seq of the CMA's Market Studies and Market Investigations supplemental guidance dated September 2015.

⁹ [X]

Credit Act would not include credit cards provided to SME customers who are incorporated. Barclays therefore suggests that the CMA amend the definitions of “Commercial Credit Cards” and “Credit Cards” in the Draft Order to provide a more general definition, without reference to the CCA definition.

- 2.11.4 Similarly, Barclays suggests that the definition of “charge cards” in the Draft Order be amended to provide a more general definition.
- 2.12 Barclays also notes that the Draft Order diverges from the rules set out in CONC. While CONC does not often apply to business lending advertising, Barclays considers there would be a number of benefits in ensuring a consistent approach is taken; for example, ensuring that providers take a consistent approach to calculating and presenting the APR, which in turn ensures that it is meaningful to customers. Some particular points include:
- 2.12.1 Barclays considers that there may be inconsistencies between Articles 30 and 31 of the Draft Order and the requirements of CONC rule 3.5.5. In particular, Barclays considers that there is a risk that the definitions become misaligned if concepts, such as prominence, and which are already defined in CONC and updated from time to time, are defined in the Draft Order.
- 2.12.2 CONC and the Consumer Credit Directive defines representative APR as being based on a particular financial promotion whereas Article 30 of the Draft Order requires lenders to “continuously publish and display” a representative APR. The Draft Order therefore removes the key assumption used to calculate representative APRs under CONC: the link with a financial promotion. An APR is calculated with a specific purpose within a financial promotion, as it is an indicative rate. Once the customer has an agreement, the representative APR is no longer relevant as they will have a personalised rate. Using the representative APR outside the context it is designed for would be confusing as the rate displayed may not, in all likelihood, be the rate that is applied. Whilst Barclays supports the desire to give more information on indicative rates to SME customers, this does not appear to be the most appropriate way of doing it, and risks extending the scope of CONC and raising customer expectations of entering into a regulated agreement when this will not be the case. Corporate card products also often include a fee (which must be factored into any representative APR under the CCA regulations). This could give the impression that the interest rate is higher than is actually applied and make comparisons more complex for customers.
- 2.12.3 Under Article 31 of the Draft Order, providers can set, and must publish, their underlying assumptions meaning that these must be continuously evaluated and refined and therefore could be different for different providers.
- 2.12.4 The Draft Order also requires a provider to create a representative APR across its whole range of products, not just the advertised product, which may be misleading, for example, if a customer is considering taking out a niche product or there are different charges applying to different products. Article

30.3.3 is particularly problematic as it may require the representative APR to be published where it is not related to the advertised product.

Definition of payment transaction history

- 2.13 Barclays queries whether the definition of “payment transaction history” in the Draft Order is intended to capture the same information as the definition under the Payment Services Regulations 2009. Barclays does not consider the current definition covers the transactions which the CMA intends to capture and the definition currently refers to information contained in the regular statement referred to in BCOBS 4.2.1, which does not apply to current accounts (BCOBS 1.1.3). Barclays therefore invites the CMA to consider the interaction between the Payment Services Regulations 2009 (in particular, the definitions and regulations 45 and 46), BCOBS and the scope of the transaction history remedy.

Definition of PCA

- 2.14 Article 9 of the Draft Order appears to define “PCA” using the definition of “payment account” from the Payment Accounts Directive (“PAD”) / Payment Accounts Regulations, which Barclays considers to be problematic as the definition in PAD may capture savings accounts or e-money accounts that have similar functionality to PCAs. Barclays therefore requests that the CMA clarifies that savings accounts are excluded from the definition of PCAs.

Definition of Pre-agreed credit limit

- 2.15 Barclays suggests that the CMA amends sub-paragraphs (a) and (c) of the definition of “Pre-agreed credit limits” to read (as appropriate): “a **PCA** with [a single][more than one] arranged overdraft limit, the point at which the limit agreed for that facility [or part of the facility] is exceeded”.

3. Open API standards (Part 2)

Definitions

- 3.1 Article 12.4.1(f) of the Draft Order states that youth accounts are included within the definition of PCAs for the purposes of Article 12, however, no definition of youth accounts is provided. [X]

Commercial credit cards

- 3.2 Article 12.4.3 of the Draft Order states that commercial credit cards¹⁰ are within the scope of the open API remedy. As Barclays has previously stated, credit cards and charge cards should not be included within the scope of the remedies, particularly as the CMA did not suggest that credit cards were a specific area of focus during its

¹⁰ Defined as “credit cards [i.e. a credit agreement which is a credit-token agreement within the meaning of the Consumer Credit Act 1974, other than a Store Card] that are intended for use by SMEs for business purposes”.

investigation or receive evidence from parties¹¹. The CMA also acknowledged this in its Final Report and considered that there would be risks attached to broadening the range of products for which open data is mandatory, particularly given the challenging timetable for implementation.¹²

- 3.3 Barclays does not therefore consider that commercial credit cards should be included within the scope of the open API remedy, at this stage, and their inclusion would not be proportionate in view of the challenging timetable for implementation. In any event, commercial credit cards may be included at a later stage in view of the Second Payment Services Directive (“**PSD2**”).¹³

Release of product and reference information

- 3.4 Article 12.1 of the Draft Order requires providers to make the reference and product information set out in that Article available continuously. Barclays suggests that the CMA includes a carve-out to allow for standard systems maintenance and reasonable down-time.

Interaction with SME lending remedies

- 3.5 As previously stated, Barclays requests that the CMA reconsiders the order of each constituent part of the SME lending remedies. In its current form, SME lending product information would need to be made available via an API (Article 12 of the Draft Order) before the banks have had an opportunity to restructure the pricing for a standardised, understandable format of APR / EAR (Article 30 of the Draft Order).¹⁴ Barclays therefore requests that the CMA amends the Draft Order to make clear that providers are not required to make SME lending product information available via an API until Article 30 has been implemented.
- 3.6 Barclays also notes that Article 12 comes into force on 31 March 2017 whereas Part 8 (including Article 32) comes into force 6 months after the day on which the Order is published.¹⁵ If the CMA does not implement Barclays' suggestion set out in paragraph 3.5 above, Barclays would welcome confirmation from the CMA that Article 12.1.2(b) does not require APR or EAR information to be made available as open data from 31 March 2017¹⁶. Barclays would also welcome confirmation that the CMA does not require Barclays to supply data at a time when such data does not yet exist, and that the provision of data applies only from when relevant data is available.

¹¹ [REDACTED]

¹² See paragraphs 13.24 and 13.25 of the CMA’s Final Report of 9 August 2016 relating to the Retail Banking Market Investigation (“**Final Report**”).

¹³ [REDACTED]

¹⁴ [REDACTED]

¹⁵ Draft Order, Articles 2.8 and 2.6 respectively.

¹⁶ [REDACTED]

- 3.7 Barclays notes the CMA has asked for views on the minimum increments for lending data. Barclays considers that the use of ranges of loans for the purposes of displaying the representative rate is a more appropriate method than a fixed loan amount and would be more beneficial to customers. Article 32.3 of the Draft Order states that providers shall make lending data available using certain loan increments as a minimum i.e. £5,000, £10,000, £15,000, £20,000 and £25,000. Barclays considers that a less prescriptive approach would yield better results for customers. For example, it may be preferable to produce representative rates in ranges, i.e. displaying all the critical product information for SME loans such as £5,000-10,000 and £10,000-15,000, as this means that businesses could get some comfort around the indicative price for a loan anywhere within the published range, rather than only at specific price points. If only specific price point is used, a small business customer may wish to find out how much an £8,000 loan would cost, but would be unable to find the correct information. A situation could also arise where banks display one rate for a specific point, e.g. £5,000, but different rates for a range of loans (e.g. £5,000-10,000) on aggregators, resulting in customer confusion. Accordingly, Barclays requests that the CMA consider using ranges for representative rates instead of specific price points, in order to give customers as much confidence as possible in the relevance of information available.

Release of service quality indicators

- 3.8 Article 13.1.2 of the Draft Order includes a provision for survey results relating to providers who are not subject to the open API remedy to be made available as an API. Barclays queries who would build the API which would display the data of these providers (as they are not otherwise required to build and provide APIs). For example, Barclays will build APIs according to industry standards that contain data relating to Barclays' products and services. However, it is unclear how data relating to, for example, Virgin or Metro, would be made available. There is no central architecture envisaged to do this, as each institution will be responsible for its own APIs. It would seem disproportionate to ask providers who are covered by the open API standard remedy to build and provide ongoing support for an API that contains data relating to other providers. Maintaining an API (e.g. responding to development queries) requires resource and ongoing focus.

Implementation Trustee

- 3.9 Barclays notes the CMA's reasoning for the short time period but Barclays queries whether the ten working days provided for in Article 11.3 of the Draft Order is a sufficient period of time for providers to agree upon and appoint a replacement Implementation Trustee.¹⁷

¹⁷ [8<]

- 3.10 Barclays suggests that Article 11.4 of the Draft Order be amended to refer to “the termination and / or appointment of an Implementation Trustee” to ensure that it provides for the resignation of the Implementation Trustee.¹⁸
- 3.11 Barclays also considers it would be helpful to have greater clarity on when the open API remedy is considered to have been delivered. The Implementation Trustee’s functions currently include both being accountable for the delivery of the standards and monitoring compliance by the providers. Barclays assumes that the intention is for the Trustee to ensure the standards for the open APIs required under the Order are finalised but it would be helpful for this to be clarified in the Order.

4. **Service quality indicators (Part 3)**

Collection of service quality information

- 4.1 Barclays welcomes the approach in Article 16.4 of the Draft Order to only require providers to provide contact details as required by the data sampling, data collection and survey methodology approved by the CMA.¹⁹ However, Barclays requests that the CMA expressly limits the requirement to a reasonable and proportionate sample size, consistent with the sample size of the previous PCA survey in January 2015.

Timing for publication of data

- 4.2 Barclays welcomes the CMA’s revised approach to timing for publication of data under Article 15.4 of the Draft Order. However, the proposed publication date (1 August 2018) is still very ambitious as it only allows four weeks for (i) the research agency (or agencies) to deliver the data, (ii) the data to be quality checked, assembled and made available in a publishable format in a range of media, and (iii) posters to be distributed and displayed in all relevant branches.
- 4.3 Barclays considers that it could take up to six months to onboard a new supplier if the agency chosen for this work is one with which Barclays does not currently have an appropriate data-sharing contract. Further, it is unclear how much time the agency would need to identify the initial sample and put the survey in place.
- 4.4 Article 15.4 further provides that the first set of service quality indicators should incorporate results from 1 July 2017, meaning that providers would only have two months between the selection of the research agency and the launch of the survey to onboard a new provider. As set out above, Barclays does not consider this to be sufficient. Barclays suggests that it would be more appropriate to launch the survey in Q4 2017 (October 2017) and that the same sample size could be achieved by conducting approximately 33 additional interviews per month per brand.

¹⁸ [REDACTED]

¹⁹ [REDACTED]

- 4.5 The Final Report required publication in Q3 2018.²⁰ Barclays requests that the CMA reflects this timing in the Order and requires a proposal for the timetable for publication (of the first and all subsequent results) to be submitted to the CMA by 1 May 2017. This approach would be consistent with provisions in Article 16.1 of the Draft Order which are similarly dependent on the working arrangements still to be agreed between providers and research agencies.

Format of published service quality indicators

- 4.6 Article 16.5 sets out the formula by which costs will be allocated to Providers. It is not clear to Barclays whether cost allocation will be based on the number of Barclays PCAs in the survey as a percentage of the total number of PCAs in the survey. If that is the case, Barclays queries whether the formula in the Draft Order is correct.
- 4.7 Articles 17.1 and 17.2 of the Draft Order and Schedule 2 to the Explanatory Notes set out the format, presentation and content of the published service quality indicators. Barclays considers that it would be beneficial to postpone publication of the format, presentation and content specifications to allow the CMA the opportunity for pilot testing and further consideration. Additionally, this would benefit customers as it would allow customers sufficient time to understand the categories. To ensure that providers have sufficient notice, Barclays suggests that the specifications be published at least six months prior to the date on which the service quality indicators must be published.²¹ Further, the current work undertaken by Research Works in relation to service quality indicators has only sought the views of PCA holders and has therefore not considered the views of BCA holders.
- 4.8 As previously stated,²² Barclays cautions that a ranking system could be extremely misleading. It could give the impression that there is a great difference between providers even where the data may not support this, as the difference between providers may not be statistically significant. For example, if Bank A scores NPS of +60 and Bank B scores the lowest of all providers at +55, customers might assume on a ranking basis that Bank A (ranked number one) is vastly better than Bank B (ranked number 10). Barclays strongly encourages the CMA to reconsider this approach and replace it instead with a ‘star’ system which resonates well with customers. Research carried out for the CMA found that customers have experience of star ratings from other markets and find them to be “quick, easily comparable and easy to meaningfully sort information by”.²³
- 4.9 Barclays reiterates its previous comments that the branch-based literature requirements should be reconsidered as branches continue to decline in relevance²⁴

²⁰ Final Report, Summary of remedies by Orders and Undertakings, page lii.

²¹ [X]

²² Barclays’ Response to the Provisional Decision on Remedies, paragraph 3.3.

²³ Optimisa Research, “Informing the development of communication tools designed to increase consideration of switching among PCA and SME customers”, March 2016, section 5.3, page 101.

²⁴ See Barclays’ Response to Provisional Decision on Remedies, paragraph 3.9; [X]

and considers that the same comments apply to the requirement in Article 17.1.4 to publish the service quality indicators in information leaflets likely to be seen by prospective PCA and BCA customers. In particular, the service quality data included in branch-based literature would need to be tailored to the branch's location to ensure that it is relevant to local customers which imposes an additional burden on providers. For example, there would be little customer benefit in promoting banks which do not have operations in the region (e.g., promoting [X] in branch-based literature in Scotland). Further, Barclays considers that it would be disproportionately costly to revise the literature every six months to reflect the latest results. Barclays would therefore suggest that Articles 17.1.1 and 17.1.4 of the Draft Order are reviewed to ensure that the requirement is appropriate and proportionate.

- 4.10 Article 17.1.3 requires providers to publish the service quality indicators relating to PCAs on the main personal banking web-page. As the service quality indicators only relate to PCAs, Barclays suggests that publishing these on the main personal banking web-page could be misleading as to their scope. Barclays considers that it would be more appropriate to require the metrics to be published on the current account pages.
- 4.11 Notwithstanding the above, Barclays suggests that the CMA reviews this remedy following the completion of the Research Works review, particularly as the evidence from the qualitative research so far indicates that customers consider service quality indicators to be “nice to have” suggesting that they are not of great importance to consumers. This also suggests that the requirement to include service quality indicators in printed materials imposes a disproportionate burden on providers.
- 4.12 Barclays welcomes the statement in Article 17.4 of the Draft Order that modifications to the format, presentation or content of the published service quality indicators may only be made once in any 12 month period, which commences on the date that any previous Modification Notice enters into force.

5. **Transaction history (Part 5)**

- 5.1 Article 20.1 of the Draft Order requires providers to provide a PCA customer or BCA customer with annual turnover of less than £6.5 million who has closed their account with a copy of the payment transaction history free of charge, provided that the customer has not opted-out of receiving this information.
- 5.2 Barclays reiterates its previous comments that the measure should require PCA and BCA providers to ask customers at the point of account closure, with explicit customer consent required to release the data – i.e., an opt-in rather than an opt-out model. Barclays considers this appropriate from a practical and proportionality perspective, and in order to maintain security of sensitive information. This would ensure that customers have access to the information if they wish (and can ask for it even after this point) while ensuring that risks around document handling are reduced.²⁵ For example, an opt-out model may lead to sensitive information being sent to an out-of-date address if a customer has not recently updated their contact

²⁵ See Barclays' Response to Provisional Decision on Remedies, paragraph 7.4.

information which increases the risk that sensitive information is inadvertently shared with third parties.

- 5.3 In addition, Barclays suggests that the CMA includes an exception to the requirement to provide transaction history where a BCA is closed following the dissolution of a company with separate legal form (e.g., this exception would not apply to sole traders). This would mean that the remedy only applied to businesses that are switching BCA providers.
- 5.4 Barclays suggests that the CMA reviews this remedy in two to three years to understand how effective it has been (i.e., to assess the level of customer demand for transaction history) and to understand whether the objectives have already been achieved through the provision of open APIs.

6. **Automatic enrolment into a programme of alerts (Part 6)**

Automatic enrolment

- 6.1 Article 23.1 of the Draft Order requires providers to enrol all existing PCA customers into the Programme of Alerts within one month of Article 23 entering into force and all new PCA customers within three working days of account opening. Barclays requests that the CMA clarifies that the requirement to enrol new customers in the Programme of Alerts within three working days does not commence until one month after Article 23 enters into force (i.e. providers are not required to enrol new customers in the Programme of Alerts within three working days until after the obligation to enrol all existing PCA customers has entered into force).
- 6.2 Where a customer who had not previously provided a valid mobile number provides this information, Article 23.3 of the Draft Order requires that the customer be enrolled in the Programme of Alerts within five working days. Barclays considers this to require a complex and disproportionate operational process and therefore suggests that the CMA instead requires such customers to be enrolled in the Programme of Alerts within one month.

Definitions

- 6.3 The definition of “Near limit alert” in Article 24.7.4 of the Draft Order refers to “Charges” which has not been defined in the context of Article 24. Barclays therefore requests that the CMA specifies what is included within the definition of Charges for the purposes of Article 24.

7. **Monthly Maximum Charge (Part 7) and Communication of the MMC (Schedule 2)**

Exclusion of Basic Bank Accounts

- 7.1 Barclays welcomes the exclusion of Basic Bank Accounts and other accounts where an MMC would be zero or where overdrafts are not available from the requirement to specify an MMC under Article 28.2 of the Draft Order.

Interaction with other legal obligations

- 7.2 Barclays requests that the CMA considers and clarifies the interaction between the MMC and the payment accounts requirements in PAD, in particular the obligation for providers to use standardised terminology in a format set out in European Banking Authority Technical Standards expected to be finalised and introduced in 2017.

Emergency Borrowing

- 7.3 Barclays has identified inconsistencies in the language used in Schedule 2 and in the text of Part 7 of the Draft Order. The Schedule refers to “unarranged overdraft[s]” and “arranged overdraft[s]” which would mean that Emergency Borrowing is outside the scope of the MMC remedy.
- 7.4 As Barclays has previously stated, Emergency Borrowing is an additional tier of an arranged overdraft which is agreed upfront with a customer in advance and should therefore be considered separately from the provision of unarranged overdrafts.²⁶ As such Barclays asks the CMA to confirm and clarify within the Draft Order (as per the current definitions) that Emergency Borrowing is out of scope of Part 7 and Schedule 2.
- 7.5 Barclays welcomes the current wording of the MMC in Schedule 2 of the Order as it appears to allow flexibility in setting out the relevant charges a customer could face if they exceed or attempt to exceed a pre-agreed credit limit. Notwithstanding Barclays' comments in paragraph 7.4 above, Barclays assumes that the wording is intended to allow a MMC to be presented in both scenarios of a customer having an emergency borrowing facility and not having one (where only unpaid item fees would be incurred) in relation to an account, given that emergency borrowing is not relevant in all circumstances. Barclays considers that such flexibility allows innovation and developments and ensures the MMC is accurately presented to customers. Barclays would welcome confirmation from the CMA that its understanding is correct.

8. Publication of rates for SME lending products (Part 8)

- 8.1 Barclays requests that the CMA specifies what additional information third parties can request under Article 32.1.3 of the Draft Order to ensure that this does not effectively result in providers being required to “personalise” data sets for third parties as this could impose a disproportionate additional burden on providers, notwithstanding that the requirement to supply such information is limited to the extent that it is “reasonably practicable for the Provider to provide”.²⁷
- 8.2 Barclays also requests clarification of the meaning of “standard tariff Business Overdrafts”.

²⁶ See Barclays' Response to the Provisional Decision on Remedies, paragraph 1.3.

²⁷ [X]

9. Tool offering indicative price quotes and eligibility indicator (Part 9)

9.1 Article 33.3 of the Draft Order requires providers to inform the customer, at the time of application, of the proportion of users who received an end quote that was the same or within a 10% range of the indicative quote. Barclays considers that, at least initially, it will be difficult to provide users with this information as providers will not have data available to calculate the proportion of customers who received a final quote within a 10% range of an indicative quote.²⁸

9.2 One possibility would be to ask the customer additional questions to enable providers to provide an indication of the proportion of customers with similar characteristics but who have not used the eligibility tool who received a final quote within 10% of their indicative quote. However, this would require users to provide additional information and may negatively impact the customer experience. Barclays therefore suggests that the requirement to provide this information be delayed until sufficient data has been gathered for a robust statistic to be provided to users.²⁹ The Draft Order currently provides that Article 33.3 will enter into force three months after the rest of Article 33. Barclays does not consider three months to be sufficient time to enable the collection of a sufficient pool of data to provide customers with a robust statistic and therefore suggests that the implementation of Article 33.3 be delayed by three months (e.g. to enter into force six months after the rest of Article 33).

10. Monitoring and compliance reporting (Part 12)

10.1 The Draft Order requires providers to submit annual compliance reports to the CMA as well as separate initial compliance reports for each remedy,³⁰ as well as compliance reports under the Northern Ireland Order until its disapplication is finalised. While paragraph 109 of the Explanatory Notes suggests that the annual compliance reports could be consolidated in a single compliance report, Barclays requests that the CMA states this explicitly in the Draft Order to ensure that the process for compliance reporting is as streamlined as possible.

10.2 In order to simplify implementation, Barclays suggests that Article 45.2.1(c) and (d) be amended to refer to *active* Basic Bank Accounts.

10.3 Article 56.1.2 of the Draft Order requires the compliance report certificate to be signed by a Director and a Non-Executive Director. Barclays suggests that it would be more appropriate for senior individuals within the relevant business unit to sign the compliance report certificate as such documents are not usually considered at Board level.

²⁸ [REDACTED]

²⁹ [REDACTED]

³⁰ Articles 45 to 56 of the Draft Order.