

# DECISION NOTICE

**To:** Barclays Bank PLC (Company No: 01026167)

**Address:** 1 Churchill Place  
London  
E14 5HP  
United Kingdom

**Date:** 1 December 2022

## 1 ACTION

**1.1** For the reasons given in this Decision Notice ('Notice'), for a failure to comply with Article 12 of the EU Interchange Fee Regulation 2015/751 ('IFR') the Payment Systems Regulator ('PSR') hereby:

- a. imposes on Barclays Bank PLC ('Barclays') a financial penalty of **£8,400,000** pursuant to Regulation 6 of the Payment Card Interchange Fee Regulations ('PCIFRs')
- b. has decided to publish details of Barclays' compliance failure, pursuant to Regulation 5(a) of the PCIFRs, and
- c. has decided to publish details of the financial penalty, pursuant to Regulation 5(b) of the PCIFRs

**1.2** Barclays agreed to settle at an early stage of the enforcement decision-making process. Barclays has therefore qualified for a 30% early settlement discount under the PSR's settlement procedures. Were it not for this discount, the PSR would have imposed a financial penalty of **£12,000,000**.

## 2 SUMMARY OF REASONS

**2.1** Since 9 December 2015, Article 12(1) of the IFR has required payment service providers that contract with merchants to accept and process card-based payment transactions on their behalf ('acquirers') to provide merchant customers with specified payment level transaction information following each payment transaction (see paragraphs 4.5 to 4.7 below). This is to enable merchants to identify each individual card-based payment transaction and view underlying charges that relate to that transaction ('Article 12 Information'). With the merchant's prior and explicit consent, this information may be aggregated.

**2.2** Article 12(2) of the IFR states that Article 12 Information may be provided, or alternatively, made available periodically in an agreed manner, provided that the contract between a merchant and acquirer reflects such an agreement.

## Failure to comply

- 2.3** Between 9 December 2015 and 13 December 2018 inclusive (the ‘Relevant Period’), Barclays did not comply with the requirements of Article 12 for two reasons.
- 2.4** First, between 9 December 2015 and 23 May 2018, Barclays did not provide Article 12 Information to merchants (with the exception of three merchants who expressed an interest in receiving it between June and September 2016, and seven in 2017).
- 2.5** Second, although Barclays could produce Article 12 Information from 23 May 2018, it did not actively provide that information to its merchant customers, and it was not until 14 December 2018 that it effectively made such information available to them (see paragraph 2.5(c) below). Instead:
- a. On 4 June 2018, Barclays made Article 12 Information available to a small group of merchant customers (96) who had expressed an interest in receiving it in 2016 and remained Barclays’ customers. At this stage, Barclays did not advise its other merchant customers (approximately 147,000) that Article 12 Information was now available and how to request it. Neither did Barclays amend its contractual terms with merchants to allow for information to be *made available* periodically under Article 12(2) rather than *provided* after the execution of each payment transaction.
  - b. On 20 November 2018, Barclays amended its merchant procedure guide to state that Article 12 Information could be requested and provided instructions on how to obtain it. The merchant procedure guide formed part of the underlying contractual agreement between Barclays and each of its merchants. This change constituted agreement between Barclays and its merchants that Barclays could make Article 12 Information available periodically, under Article 12(2), to all its merchant customers who subsequently requested it. The amended merchant procedure guide was made available on Barclays’ website. However, because the change was not communicated to its merchant customers until 14 December 2018, Article 12 Information was still not effectively made available by Barclays up to 14 December 2018.
  - c. Barclays’ merchant customers were all notified on 14 December 2018 that Article 12 Information was available for them to request, and merchants were advised how to request it, when reference to its availability was included in a ‘Business Essentials’ newsletter sent to all merchants.

## The nature and impact of Barclays’ compliance failure

- 2.6** Prior to Article 12 coming into force, Barclays was aware from at least July 2015 that there was a risk that there would be a short delay before it was able to provide Article 12 Information from the systems it used at that time. A significant upgrade of several of Barclays’ systems had been underway for a considerable time via an ongoing transformation programme called ‘bPaid’. This included the development of a new settlement and billing platform which Barclays aimed to use to comply with Article 12. However, it was apparent to Barclays in July 2015 that the bPaid programme might not be completed before Article 12 came into force in December 2015. This was confirmed in September 2015 when the expected completion date for bPaid was delayed until January 2016.
- 2.7** In late 2015 and early 2016, Barclays made attempts to mitigate its failure to comply with Article 12 by seeking to implement an interim solution using its legacy systems. However, as Barclays had anticipated, the interim solution it proposed did not meet the requirements

of Article 12 as it could not be produced to include a unique transaction reference number (which can be used by merchants to reconcile transactions). The PSR notes that the interim solution did include some identifying information (transaction time, date and partial card number). Even if it had used the interim solution to provide reports, Barclays still would not have been compliant with its overall obligations under Article 12 because it failed to ensure its chosen method of making the information available was effective.

**2.8** From April 2016, Barclays' senior management were aware that delays to the bPaid programme had resulted in non-compliance with Article 12, that Barclays' attempts to mitigate the issues had been largely unsuccessful, and that there was a risk this may lead to regulatory interventions and sanctions (see paragraphs 4.30 to 4.31 below). No further or alternative steps were taken by Barclays to try to resolve the issues ahead of the delivery of bPaid.

**2.9** Barclays' non-compliance with Article 12 was prolonged in nature, lasting over three years in total. For two and a half of those three years, only ten merchants received Article 12 Information. Barclays' compliance failure undermined the purpose of Article 12, which as part of the overall IFR is to contribute to conditions that enable or increase competition. Failure to provide Article 12 Information for a prolonged period has the potential to impede transparency and thereby merchant customers' understanding of the transaction fees associated with particular types of cards (albeit that Barclays did provide merchants with less detailed fee information, including in relation to interchange fees, as required under Article 9 of the IFR). This in turn could inform a merchant's decision on whether to accept particular types of card payment and which types of card products to steer consumers to use.

**2.10** During the Relevant Period of non-compliance, Barclays was one of the largest acquirers in the UK, processing approximately one in every three payment card transactions. The impact of its failure to comply with Article 12 is therefore significant.

## 3 DEFINITIONS

**3.1** The definitions below are used in this Notice.

'acquirer' means a payment service provider that is contracting with a merchant to accept and process card-based payment transactions, which result in a transfer of funds to the merchants.

'acquirer's margin' is a fee paid by the merchant directly to the acquirer. This represents the MSC minus the interchange fees and scheme fees.

'the Act' means the Financial Services (Banking Reform) Act 2013.

'Article 12 Information' means individual payment transaction information which is compliant with Article 12 of the IFR in that it contains:

- a. the reference enabling the payee to identify any card-based payment transaction
- b. the amount of the payment transaction in the currency with which the payee's payment account is credited, and
- c. the amount of any charges for the card-based payment transaction, indicating separately the MSC and the amount of the Interchange Fee

'Barclays' means Barclays Bank PLC, which also trades as Barclaycard.

'bPaid' means Barclays' technology transformation programme which ran between 2012 and 2018, culminating in, amongst other technical upgrades, the introduction of a new merchant settlement and billing platform called BankWORKS.

'FCA' means the Financial Conduct Authority.

'GPA' means Global Payments Acceptance, the business unit within Barclays which encompasses payment services and acquiring.

'IFR' means Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

'IFR Guidance' means the PSR's guidance on its approach as a competent authority for the IFR, the final version of which was published in October 2016, and updated in June 2020 and September 2021.

'interchange fee' means a fee paid for each transaction, either directly or indirectly (i.e. through a third party) paid to an issuer by an acquirer.

'issuer' means a payment service provider that is contracting to provide a consumer with a payment instrument to initiate and process the consumer's card-based payment transactions.

'legacy platforms' means Barclays' legacy systems for merchant settlement and billing.

'merchant' means a party contracting with an acquirer for the supply of card acquiring services.

'MIF' means multilateral interchange fee; when used in Barclays' internal documents referred to in this Notice, the term sometimes refers to the IFR.

'MSC' means merchant service charge, which is a fee paid by the merchant to the acquirer in relation to the processing of card-based payment transactions. The MSC is made up of three components: the interchange fee, the scheme fee, and the acquirers' margin.

'PCIFRs' means the Payment Card Interchange Fee Regulations 2015 that came into force on 9 December 2015.

'PSP' means payment service provider, which under EU IFR Article 2(24) included any natural or legal person authorised to provide the payment services listed in the Annex to the European Parliament and of the Council Directive of 13 November 2017 (Directive 2007/64/EC) or recognised as an electronic money issuer in accordance with Article 1(1) and the Directive 2009/110/EC. Under UK IFR Article 2(24), it has the meaning given by regulation 2(1) of the Payment Services Regulations 2017. Under both the EU IFR and UK IFR, a payment service provider can be an issuer or an acquirer or both.

'PSR' means the Payment Systems Regulator Limited.

'Relevant Period' means 9 December 2015 to 13 December 2018.

'scheme fee' means a fee paid by the acquirer to the relevant card scheme and which is reflected in the MSC.

'UK' means United Kingdom.

## 4 FACTS AND MATTERS

### The IFR and the PSR's role as a main UK authority

- 4.1** The IFR is a European Union regulation that entered into force on 8 June 2015. Some IFR articles, including Article 12, took effect on 9 December 2015, and others took effect on 9 June 2016. It formed a package of European legislation in the field of payments together with the first and second Payment Services Directives. At 23.00 on 31 December 2020, it was incorporated into UK law as retained EU law.
- 4.2** The primary purpose of the IFR is to “*lay down uniform requirements for card-based payment transactions and internet and mobile payments based on cards*”. The IFR includes caps on the interchange fees charged by issuers on individual payment card transactions. Although Barclays is also an issuer of payment cards, as this case concerns its separate role as an acquirer, nothing within this notice should be understood to mean that Barclays was not compliant with the regulations concerning caps. Recital 10 of the IFR states that interchange fees form “*a main part of the fees charged to merchants by acquiring payment service providers for every card-based payment transaction. Merchants in turn incorporate those card costs, like all their other costs, in the general prices of goods and services... [Capping interchange fees] would improve the functioning of the internal market [for payment services] and contribute to reducing transaction costs for consumers*”.
- 4.3** As well as capping interchange fees, the IFR introduced business rules regarding the provision of charging information to merchants by acquirers and the labelling of different types of payment cards, amongst other things. These measures intended to address historical practices that have kept merchants and consumers ignorant about fee differences between different acquirers, reducing market transparency and the ability of merchant customers to make informed choices as to which acquirer they contract with. This range of business rules, of which Article 12 is one, may lead to increased transparency and provide conditions that are capable of leading to increased competition, from which merchants and consumers might ultimately benefit through increased choice and/or lower prices.
- 4.4** Regulation 3 of the PCIFRs designates the PSR as the body responsible for all functions of a “main authority”, as provided for under the IFR (in some cases alongside the FCA). The PSR's IFR Guidance explains its approach as the main authority for the IFR and explains how it will monitor compliance with the requirements of the IFR and take action where it identifies non-compliance.

### Article 12 of the IFR

- 4.5** Article 12(1) requires, after the execution of each individual card transaction, the acquirer must provide the merchant with specified information about that transaction. Article 12 Information must include: the reference enabling the merchant to identify a particular card transaction; the amount of that transaction in the currency with which the payment account is credited; and the charges associated with that transaction.
- 4.6** Under Article 12(1), information on the associated charges should be provided with the MSC and the interchange fee indicated separately. Acquirers are required to provide Article 12(1) Information on an individual payment transaction basis, unless an acquirer obtains the prior and explicit consent of its merchant customers to aggregate the

information by brand, application, payment instrument categories, and rates of interchange fee.

- 4.7** Article 12(2) provides that “*Contracts between acquirers and payees may include a provision that the information referred to in the first sub-paragraph of paragraph 1 shall be provided or made available periodically, at least once a month, and in an agreed manner which allows payees to store and reproduce information unchanged*”. Article 12(2) therefore permits acquirers to derogate from the obligations of Article 12(1) to a limited extent, in specific circumstances.
- 4.8** First, it enables acquirers to make Article 12 Information available to their merchant customers rather than providing it to them. For Article 12 Information to be provided to a merchant, it must be actively communicated by the acquirer without further prompting by the merchant. For Article 12 Information to be made available to a merchant, the acquirer must ensure that access to the information is possible so that the information is in fact available. Article 12(2) information is not made available if there is anything which hinders merchants’ access to it (or deters merchants from obtaining it), or if merchants are not made aware of it and how it can be requested.
- 4.9** The PSR has issued guidance about the steps an acquirer should take when making Article 12 Information available to merchants. It states that the information must be easily accessible, and the acquirer should clearly explain to the merchant that the information is being made available and how to obtain it.
- 4.10** Second, Article 12(2) enables an acquirer to either provide or make available Article 12 Information periodically, rather than after the execution of each relevant individual card transaction. The frequency of the provision/making available of the information must be at least once a month.
- 4.11** Finally, Article 12(2) only permits an acquirer to make transaction information available to a merchant, and to provide or make it available periodically, if there is an appropriate provision in the contract between the acquirer and the merchant. If an acquirer has not included an appropriate provision in its contracts with merchants, then Article 12(2) does not apply, and the acquirer must, under Article 12(1), provide Article 12 Information to merchants after the execution of each transaction without any prompting by the merchant.

## Barclays

- 4.12** Barclays is a UK bank that, amongst other things, provides payment services, such as the execution of payment transactions made using a payment card. As of June 2020, Barclays had over 147,000 UK merchant customers.

## Barclays’ initial approach to its Article 12 obligations

- 4.13** Before the IFR came into force in 2015, Barclays operated two legacy platforms for billing and settlement, which were used to provide information to merchants on the billing of Barclays’ acquiring services and the settlement of payment transactions.
- 4.14** Barclays had been carrying out a significant transformation programme since 2012 called ‘bPaid’, which at its peak involved 1200 people. The programme was aimed at upgrading its legacy platforms. bPaid had multiple components but included the creation of a single billing and settlement platform and a new strategic management information data architecture. One of the deliverables, among many, of the bPaid programme was to provide Article 12 Information in the form of customer reports.

- 4.15** In 2013, Barclays appointed a firm of consultants to lead the programme, with mid-2015 targeted as the go-live date. These consultants were replaced in 2014. The new consultants recommended that Barclays plan to deliver the bPaid programme by March 2016 (whilst challenging itself to try to do so by January 2016). However, in January 2015, Barclays again replaced the programme lead, this time with an internal team, which identified a need to reconsider and validate its bPaid delivery plan.
- 4.16** In July 2015, Barclays “*established an initial framework for the proposed changes Barclays required to implement the IFR, including Article 12*” and set up a steering committee to manage that implementation (‘MIF SteerCo’). MIF SteerCo reported to the Global Payments Acceptance Executive Committee (‘GPA ExCo’), which met in a number of different capacities for different purposes, including as the GPA Performance Board where it had oversight of issues of regulatory compliance. Barclays confirmed, in a response to a PSR information requirement notice dated 7 March 2019, that:
- “The MIF SteerCo reported up to the GPA ExCo, which was the leadership team responsible for payment services at Barclays and was comprised of Directors or Managing Directors from across the business, including Sales, Product, Strategy, Technology, Operations, Risk, Legal and Compliance.”*
- 4.17** Accountable executives for the “MIF Project” sat on both MIF SteerCo and GPA ExCo. Monthly board meetings of the GPA Performance Board were held, during which issues and risks related to Article 12 and Barclays’ compliance were raised. GPA ExCo members in turn reported to the bPaid Senior Governance Panel, which oversaw and met fortnightly to discuss the progress of bPaid, and key risks arising from its development. From this panel, there was an upwards reporting link to Barclays’ Executive Committee. The panel’s terms of reference indicate that its responsibility was to escalate risks occurring within the bPaid programme to higher levels within the wider Barclays organisation.
- 4.18** As Barclays was aware from the outset of its preparation for IFR compliance that its new settlement and billing platform would not be in place in time to deliver Article 12 Information from 9 December 2015, it began to explore alternative options that would enable it to provide Article 12 Information to merchants from its legacy platforms. Barclays also considered that it might need to take further additional mitigatory actions to comply with Article 12, such as seeking prior and explicit consent to provide customers with aggregated information, although it subsequently decided not to do this.
- 4.19** Both before and after the coming into force of Article 12, Barclays’ merchants received some of the information required by Article 12 in aggregated form, by way of monthly statements. The level of information available to merchants in those statements depended on the type of contract they held with Barclays. All UK merchants received information about the total fees charged in monthly statements. Barclays also produced a detailed explanation of interchange rates and scheme fees in its June and December 2016 editions of the Business Essentials newsletter, together with the ranges within which those rates would be charged (although it is important to note that these ranges could be broad and provided information only by brand and type of card).
- 4.20** IC++ customers received a more detailed breakdown of information which included:
1. the interchange fee
  2. the scheme fee, and
  3. the acquirer fee

IC++ customers tended to be larger UK merchants processing more than 1 million transactions per annum. Merchants processing under 1 million transactions per annum could opt to become IC++ customers, but there was a one-off cost of £500 to do so. The key difference between IC++ pricing and Article 12 Information was that IC++ pricing did not provide a breakdown of interchange and scheme fees on a transactional level, which Article 12 Information did. While those receiving IC++ information represented approximately 0.5% by number of merchants, they represented approximately 85% by volume of transaction. Barclays did not take the route of complying with Article 12 by seeking prior and explicit consent from its customers to provide aggregated information as required by Article 12(1). In a response to a PSR information requirement notice, dated 7 February 2019, Barclays stated:

*“The provision of Monthly Statements to UK Merchants by Barclays preceded the implementation of the IFR and, as set out in section 3 of our letter of 20 December 2018, did not represent Barclays’ intended method of compliance with Article 12 of the IFR”.*

In any event, Barclays did not have the capability to provide aggregated information required under Article 12 of the IFR until the bPaid programme had been completed.

**4.21** Instead, from the outset, Barclays intended to comply with Article 12 of the IFR by making information available to merchants who requested it pursuant to the provisions in Article 12(2). In June and July 2015, Barclays identified that its legacy platforms were unlikely to be capable of providing Article 12 Information to its merchant customers from 9 December 2015 (the date Article 12 came into effect) and that carrying out the necessary work to enable the legacy platforms to produce the required information would likely not be feasible *“due to costs and timescales implications”*.

**4.22** While an interim solution was initially explored, Barclays later decided that in line with this expectation, using the legacy platforms to produce reports systematically was not going to be viable. During a meeting on 16 September 2015, Barclays explained to the PSR that trying to build the functionality into the legacy platforms so that Article 12 Information could be produced would jeopardise the launch of the new settlement and billing platform and threaten the stability of the legacy platform. At this point in time Barclays believed that the likely timing for delivery of bPaid would still be January 2016 rather than a later date. As such, pending completion of the bPaid programme, Barclays noted that it would not proactively provide Article 12 Information to merchants, and instead would provide it on a *“best endeavours basis”* through manually generated transaction information to those merchants who requested it. The PSR advised that merchants would need to be informed of Barclays’ obligations under Article 12. Notes taken by Barclays of the meeting state:

*“PSR were informed of the challenges facing Barclaycard. PSR advised that the customers would need to be informed. PSR were informed that Barclaycard would not be informing customers of any obligations in relation to Article 12 prior to bPaid foundation go live.”*

**4.23** Meanwhile, Barclays’ internal development team had identified *‘several technical challenges resulting from invalid design assumptions and gaps’*, which meant that in October 2015 the go-live date was revised to April 2016.

**4.24** Barclays met with the PSR again on 19 November 2015. It explained that the launch of bPaid was being delayed to April 2016 and as a consequence it was working on a manually intensive interim solution which was being tested and validated. However, by that date, a risk of the deadline for the bPaid delivery slipping further to July 2016 had



already been identified, as shown by an internal update to the MIF Steering Group dated 5 November 2015.

- 4.25** During November and early December 2015, a prototype Article 12 report from the legacy platforms was tested. This was referred to by Barclays, internally and in communications with the PSR, as “*the interim Article 12 solution*”. However, there were various issues with the reports produced from the legacy platforms and the reports did not fully comply with the requirements of Article 12. The issues were:
- a. The data contained in the reports did not always reconcile with the information contained in other monthly statements provided to merchants and therefore required manual checking to ensure consistency with those statements to avoid customer confusion.
  - b. The reports did not contain the unique transaction reference number needed to enable the merchant to identify individual card-based payment transactions, as required by Article 12(1).
- 4.26** Barclays therefore knew by November 2015 that, given the size and complexity of the bPaid programme, there would potentially be delays to its completion (from the planned delivery date of January 2016 to at least April, and potentially July 2016), which together with the limitations of the interim Article 12 solution could significantly delay Barclays’ compliance with Article 12. On 9 December 2015, that risk was realised when Barclays was not able to provide merchants with, or make available to them, compliant Article 12 Information. In its response to the PSR’s information requirement notice, dated 7 February 2019, Barclays stated:
- “As at 9 December 2015, no UK Merchants received disaggregated payment transaction information. Barclays was unable to make Article 12 Reports available to all UK Merchants until full functionality across the bPaid programme had been completed.”*
- 4.27** In light of the problems with the interim reports produced from the legacy platforms, Barclays was unable to provide its merchant customers with information that satisfied the requirements of Article 12 and concluded that compliance with Article 12 would have to be postponed until its customers had been migrated to the new settlement and billing platform. Barclays did not actively notify merchants of the availability of Article 12 reports from the legacy platforms, due to the ongoing concerns about the robustness of the data within them.
- 4.28** In the beginning of 2016, the overall bPaid upgrade was experiencing significant difficulties with testing and system integration. Work undertaken to address this at the time was insufficient to resolve the problems. Around early March 2016, Barclays considered making a change to its terms and conditions with merchants to refer to the availability of the Article 12 Information it intended to offer once the bPaid delivery was complete.
- 4.29** Barclays met with the PSR on 18 April 2016 and provided a further update, stating that the launch of the new settlement and billing platform would be delayed until, potentially, September 2016. It also explained that it had built a manual solution to provide information to merchants in the interim, but this could not be offered on a widescale basis as it required significant manual work to produce and would contain “*slight inaccuracies*”.
- 4.30** On 19 April 2016 a bPaid delay risk assessment was presented to the GPA Conformance Board. The assessment included a reference to inability to deliver “*MIF changes*”, which consisted of “*interchange rates*” and “*provision of info, enabling choice*”. “*Provision of info*” is a reference to Article 12 of the IFR. The assessment had

been reviewed by the bPaid Senior Leadership Group and tabled at the bPaid Senior Governance Panel. The assessment categorised the potential impact of the risks (if not mitigated) relating to the inability to deliver the MIF changes as high.

**4.31** Subsequently, papers submitted to the bPaid Senior Governance Panel meeting on 10 May 2016 referred to Barclays' continuing inability to comply with the 'MIF regulations', identifying the risk as "*Regulatory fines/intervention*". The risk was described as "*major*" and of "*moderate severity*". A note of this meeting circulated by email on 10 May 2016 confirms that the 'bPaid Delay Material Risk Assessment' was discussed.

**4.32** In June 2016, Barclays re-appointed the first set of consultants they had originally replaced, to reassess the viability of the programme. A decision was taken to adopt a phased delivery approach. The consultants advised that the likely go-live date for bPaid was now June 2017. June 2016 was also the first time Barclays communicated with its merchant customers about the future availability of Article 12 Information. It explained in its June 2016 Business Essentials newsletter to merchants that, because of IFR requirements, it was planning to offer detailed transaction reports. Barclays has informed the PSR that the same notification was also available on the Barclaycard website from June 2016, and was repeated in the September 2016 Business Essentials newsletter:

*"Because of the Interchange Fee Regulations that came into effect from 9 June 2016, we're planning to offer detailed transaction reports. These reports will give a full breakdown of all your transactions including our charges and the Interchange we've paid on your behalf for each card transaction... If you think this is something you may be interested in receiving in the Future then please let us know by emailing us, stating your Merchant name and address, Merchant ID and contact details to transactionreport@barclaycard.co.uk."*

**4.33** On 12 September 2016, Barclays met with the PSR to discuss its compliance with the IFR, ahead of the publication of the PSR's final IFR Guidance. A brief update was given about Barclays' communication (via the above-referenced newsletters) to merchant customers as to the availability of Article 12 Information. Barclays confirmed that, as of that date, three requests for information had been received and information had been sent in response, using the interim solution.

**4.34** Despite the previous indication that it would be able to deliver Article 12 Information to merchant customers via the new settlement and billing platform from September 2016, Barclays remained unable to do so. During the meeting with the PSR on 12 September 2016, Barclays failed to notify the PSR that, since the previous meeting in April 2016, the expected bPaid delivery date had again moved, from September 2016 to June 2017. Barclays provided no further updates to the PSR in respect of its ability to provide Article 12 Information until after the PSR made a formal request for information in respect of Barclays' IFR compliance in December 2017.

**4.35** Barclays received a further 110 expressions of interest for reports containing Article 12 Information following the September 2016 Business Essentials newsletter. In November 2016, Barclays' internal documentation communications shows that it had not told the PSR about these. Barclays determined that no immediate action should be taken to fulfil the expressions of interest, unless the customer insisted or complained:

*"Article 12 Expression of Interest- Actions / agreements arising from meeting on 19/10/16...No immediate fulfilment action to be taken unless a merchant is insistent / complains."*

- 4.36** Around November 2016, Barclays described the output from the interim Article 12 solution as being “*not [of] production quality*” and that fulfilment would be “*onerous*” given Barclays had agreed a process to check the first report for each new merchant. Barclays calculated that fulfilling all 110 requests using the interim Article 12 solution would require 110 hours of work. Barclays articulated various options on how to fulfil the expressions of interest. It RAG-rated (Red Amber Green) its current approach (of not providing information to the merchants who had expressed an interest in receiving Article 12 Information when it became available) as red, but the interim Article 12 solution was RAG rated as green.
- 4.37** The PSR does not accept that Barclays would have been compliant with Article 12 simply by fulfilling these 110 requests alone, because the reports did not contain a unique transaction reference number (the absence of a unique transaction reference number was one of the residual risks identified at the last MIF SteerCo meeting on 24 November 2016). In any event, the obligation was to provide Article 12 Information to **all** merchants, or to have a contractual provision in place to make information available to merchants if relying on Article 12(2) – which Barclays did not put in place until November 2018.
- 4.38** Throughout the period of bPaid development there was upwards reporting within Barclays of the continued inability to deliver a compliant Article 12 solution on several occasions. For example, a bPaid delay risk assessment from October 2016, titled “*Refreshed for 2018 Delay*”, was tabled before the GPA Conformance Board meeting on 4 November 2016. The assessment acknowledged that technical constraints were impacting on compliance with the PSR’s ‘MIF regulations’. On 24 November 2016, the final MIF SteerCo meeting was held, at which four ‘residual risks’ were noted. These residual risks were logged with the BPS Conformance Board (formerly the GPA Conformance Board) in January 2017. By July 2017, 110 expressions of interest had been received. In October 2017, one of those UK merchants contacted Barclays to receive an update on the status of their request for an Article 12 report. Barclays has not been able to ascertain how it dealt with that request.

### Barclays’ approach post-delivery of bPaid

- 4.39** According to the phased delivery approach, all Barclays’ merchant customers were fully migrated to the new platform by November 2017. However, Barclays did not begin to produce Article 12 Information via the new platform until several months later. This included a period of testing the reports containing Article 12 Information produced by the new settlement and billing platform in January 2018, towards the end of a “*stabilisation period*” for the platform. However, due to ongoing issues with the platform’s data and strategic analytics, as well as the secure email delivery system, reports containing Article 12 Information from the new platform were not signed off for release by Barclays’ Value Management team until 23 May 2018.
- 4.40** On 21 December 2017, Barclays received the PSR’s information requirement notice under section 81 of the Act (as applied by the PCIFRs) that contained questions relating to its compliance with Article 12. Barclays’ response to the information requirement notice, dated 15 February 2018, outlined that it remained non-compliant with Article 12.
- 4.41** On 23 May 2018, 96 out of the 110 merchants (i.e., those who remained with Barclays) who had expressed an interest in receiving Article 12 Information after receiving the June and September 2016 Business Essentials newsletters were notified that Article 12 Information was now available. Barclays sent Article 12 Information reports to the merchants on 4 June 2018 (the second working day of the month, as planned).

In Barclays' response to the PSR's information requirement notice, dated 7 March 2019, it stated:

*"On 4 June 2018, 96 UK Merchants (being each of the UK Merchants that had expressed interest in receiving Article 12 Reports less those UK Merchants that had closed their accounts with Barclays in the interim) started to receive Article 12 Reports at the frequency requested."*

**4.42** At this time, Barclays did not inform those merchants who had not responded to the 2016 newsletters of the availability of Article 12 Information. This meant the vast majority of Barclays' merchants (circa 147,000) were not aware of the newly available Article 12 reports or advised as to how to request them.

**4.43** Barclays did not notify the remainder of its merchants about the newly available reports until 14 December 2018, when it included a reference to the availability of Article 12 Information in its December 2018 Business Essentials newsletter. As at this date, Barclays satisfied the requirements of making Article 12 Information available (see paragraph 4.46 below), as there was contractual agreement to do so, and all merchants had been advised that Article 12 Information was available, and how to request it. This occurred one month after Barclays was notified of the opening of the PSR's investigation into its potential non-compliance with Article 12.

**4.44** In its response to the PSR's information requirement notice in February 2019, Barclays accepted that it was non-compliant with Article 12 up until 14 December 2018:

*"Barclays considers that it was not compliant with Article 12 of the IFR from 9 December 2015 to 14 December 2018 as during that period it did not provide or make available disaggregated payment transaction information to all of its UK Merchants".*

**4.45** Following the Business Essentials newsletter in December 2018, Barclays included further reference to the availability of the reports containing Article 12 Information in the Business Essentials newsletters sent quarterly throughout 2019. Barclays did not send any Business Essentials newsletters to its merchant customers during 2020 due to the Covid pandemic. Barclays resumed publication of this newsletter in February 2021.

## Barclays' contracts with its merchant customers

**4.46** Initially, Barclays did not make any changes to its contracts with merchants as a result of Article 12. Therefore, whilst Barclays was in a position to make Article 12 Information available to any merchants who requested it from 23 May 2018, it did not have a provision allowing for this in its merchant agreements at the time.

**4.47** Article 12(2) provides that contracts between acquirers and merchants may include a provision that Article 12 Information shall be provided or made available to them periodically (as opposed to providing it after each transaction) and in an agreed manner (see paragraph 4.7 above).

**4.48** On 20 November 2018, Barclays updated its *"Getting Started Guide"* and *"Procedure Guide"* to inform new merchant customers of the availability of reports containing Article 12 Information. The Procedure Guide forms part of the contractual agreement between Barclays and its merchants for acquiring services. Under the terms and conditions, Barclays is entitled to replace, or make amendments to, the Procedure Guide from time to time, without notice where the changes are due to regulatory requirements. New merchant customers are directed to read the Getting Started Guide and Procedure Guide in the welcome pack they receive from Barclays during the onboarding process.

- 4.49** This amendment of the Procedure Guide had the effect of establishing a contractual agreement between Barclays and its merchants to make Article 12 Information available, from 20 November 2018.

## 5 FAILINGS

- 5.1** The regulatory provisions relevant to this Notice are referred to in **Annex A**.

- 5.2** Based on the facts and matters described above, the PSR has found that Barclays has failed to comply with Article 12 over the Relevant Period.

- a. As a PSP providing acquiring services to merchants, Barclays was required to comply with Article 12 on and from 9 December 2015 by either providing or, where it met the conditions for doing so under Article 12(2), making available Article 12 Information to all its merchants.
- b. Over the Relevant Period, Barclays failed to provide the vast majority of its merchant customers with the Article 12 Information to which they were entitled. Barclays only made such information available to its merchants from 14 December 2018 in accordance with the requirements of Article 12(2).
- c. From 9 December 2015 to 23 May 2018, before reports with Article 12 Information were produced from its new settlement and billing platform, Barclays could not produce compliant and accurate Article 12 Information for its merchant customers from its legacy platforms. Therefore Article 12 Information was not accessible to merchants even if requested.
- d. Barclays knew when Article 12 came into force that it could not provide Article 12 Information to its merchant customers via its legacy platforms and decided that compliance with Article 12 would have to be postponed until its new settlement and billing platform was implemented as a part of its bPaid transformation programme. At the time that Barclays began planning for the implementation of the IFR it was aware that bPaid would be delivered no sooner than January 2016 and, therefore, knew that it would not enable Barclays to achieve compliance with Article 12 prior to its coming into force. In fact, the delivery suffered further delay, with the projected deadline pushed back on several occasions. Barclays' customers were not migrated to the new platform until November 2017, and it was not capable of producing Article 12 reports until May 2018.
- e. Barclays could have used the interim Article 12 solution to provide Article 12 Information to the 110 merchants who had expressed an interest in receiving it. Barclays identified this option as being compliant but manually intensive. It decided instead not to provide the information (except where a merchant complained or was insistent). The PSR does not accept that Barclays would have been compliant with Article 12 simply by fulfilling these 110 requests alone. This is because the reports would not be compliant with Article 12 as they did not contain a unique transaction reference number (the absence of a unique transaction reference number was one of the residual risks identified at the last MIF SteerCo meeting on 24 November 2016). In any event, the obligation was to provide Article 12(1) Information to **all** merchants or to have a contractual provision in place to make information available to merchants if relying on Article 12(2), which Barclays did not have until November 2018.
- f. At the points when further delays to the bPaid programme were identified as inevitable, in spring and summer 2016, no further or alternative steps were taken by

Barclays to address its non-compliance with Article 12. Alternative options that could have enabled compliance, such as seeking prior and explicit consent from merchants to provide them with aggregated information, were not pursued. In any event, as noted above, Barclays did not have the capability to provide aggregated information required under Article 12 of the IFR until the bPaid programme had been completed.

- g. When Article 12 Information could be produced from the new platform, from 23 May 2018, it was provided only to those merchants who had previously expressed an interest in receiving it. Barclays had over 147,000 other merchants (see paragraph 4.42) who were not informed at this stage that reports were now available. The first Article 12 Information reports were sent on 4 June 2018 to the 96 merchants who had expressed an interest and were still with Barclays.
- h. Until 20 November 2018, there was no provision in Barclays' contracts with its merchants (as required by Article 12(2)) that permitted Article 12 Information to be made available to them, as opposed to being provided.
- i. It was not until 14 December 2018 that Barclays clearly explained to all of its merchant customers that Article 12 Information was available. It did this via the Barclays Business Essentials newsletter.

## 6 SANCTION

- 6.1 The sanction to be imposed for Barclays' non-compliance is a financial penalty along with publication of the compliance failure and the financial penalty imposed.

### Whether to impose a financial penalty

- 6.2 In determining whether to impose a sanction, including a financial penalty, the PSR is required by Regulation 6(4)(d) of the PCIFRs to apply the IFR Statement of Penalty Principles that was in force when the compliance failure occurred. This is the [Penalty Statement](#) set out in Chapter 8 of the PSR's IFR Guidance dated October 2016 ('the Penalty Statement').
- 6.3 The PSR considers the full circumstances of each individual case when determining whether or not to impose a financial penalty, including where relevant, the factors contained in paragraph 8.8 of the Penalty Statement.

### The nature and seriousness of the compliance failure

- 6.4 Despite the requirements of Article 12 of the IFR being clear and unambiguous, over the period of non-compliance the information that Barclays was required to provide or make available to merchants pursuant to Article 12 was neither provided, nor made available, as Barclays could not produce it using its legacy platforms. Barclays chose, prior to the coming into force of Article 12, to wait until the completion of the bPaid transformation programme before delivering a solution for compliance with Article 12. Barclays was aware, before and during the Relevant Period, that as a consequence of waiting for the delivery of bPaid it would be non-compliant with the Article 12 requirements.

## The potential impact of the compliance failure

- 6.5** The IFR introduced caps on interchange fees and also aimed to promote competition through the creation of greater fee transparency. Increased transparency provided by Article 12 may assist merchants in understanding whether they benefited from the caps. Recitals 34 and 35 of the IFR make clear the desire to reduce merchant ignorance around fee differences and improve overall market transparency. Article 12 is one of the provisions of the IFR which contributes to an environment that encourages competition. Article 12 does this by furnishing merchants with more detailed information about the fees and costs they incur and enabling them to make informed choices about which acquiring services they use.
- 6.6** Failure to comply means that any intended beneficial impact of Article 12 of the IFR could not have materialised during the Relevant Period. The PSR also considers that it is relevant that Barclays is one of the biggest acquirers in the UK market, as, during the Relevant Period, Barclays processed a third of all payment transactions in the UK. As such, there was a risk during the Relevant Period that there was reduced transparency to a large number of merchants, particularly those who were not IC++ customers, affecting a large number of transactions. If merchants are not fully aware of the fees they pay, they cannot effectively compare prices of card services, shop around to find cheaper deals, or negotiate the best deal. As a result, Barclays' failure to make Article 12 Information available to all merchants has the potential to impact on the transparency objectives and, consequently, the competition objectives of the IFR.

## The duration of the compliance failure

- 6.7** The non-compliance was prolonged, starting from 9 December 2015 (which is when the Article 12 of the IFR requirement came into force) and lasting just over three years until 13 December 2018 (inclusive).

## Barclays' behaviour after identifying the compliance failure

- 6.8** Despite Barclays being aware in advance that there were likely to be some delays to its compliance with Article 12 of the IFR, Barclays chose primarily to focus on the delivery of the bPaid programme as its solution to becoming Article 12 compliant. No further or alternative steps were taken by Barclays to address its non-compliance with Article 12 once it was established that the proposed interim Article 12 solution would not be effective in providing merchants with some of the Article 12 Information. Alternative options were not pursued. Instead, Barclays opted to wait for what ultimately became a significant time, due to an incremental series of delays, for its new settlement and billing platform to produce compliant Article 12 reports, whilst knowingly failing to respond to merchant requests for the information. Even after Barclays could produce compliant Article 12 reports, it remained non-compliant as it did not obtain contractual agreement to make the reports available until 20 November 2018 and did not tell its merchants that the reports were in fact available until 14 December 2018.

## What the PSR said in its guidance or other published materials at the time of the compliance failure

- 6.9** The PSR published its draft Phase 1 guidance (which covered Article 12), along with its consultation paper on 2 December 2015. The draft guidance clearly set out how Article 12 Information should be "*made available*" to merchants (i.e., by way of a clear explanation that the information was available and with an explanation of how it could be accessed).

The PSR published its final Phase 1 guidance on 24 March 2016, which confirmed the position set out in the draft version. The PSR's expectations around "making available" Article 12 Information were clear to Barclays throughout the period of non-compliance, yet Barclays did not make Article 12 Information available in accordance with those expectations until 14 December 2018.

## Conclusion

- 6.10** The PSR considers that the above matters support the imposition of a financial penalty on Barclays for its non-compliance.

## Publication of the compliance failure and/or financial penalty imposed

- 6.11** As noted at paragraph 8.9 of the Penalty Statement, where the PSR imposes a financial penalty, its normal practice is to publish details of the compliance failure (including the financial penalty imposed in respect of the same) and it considers it is appropriate to do so in this case. Publishing the details of a case provides a deterrent effect, not only to the firm in question, but the wider industry. Only in exceptional circumstances would the PSR not publish details of a financial penalty (paragraph 8.11 of the Penalty Statement).
- 6.12** The PSR has considered whether it would be appropriate to publish details of the compliance failure alone instead of imposing a financial penalty, taking account of the factors listed in paragraph 8.10 of the Penalty Statement where relevant. The conclusion of the PSR is that publication alone would not reflect the relative seriousness of the compliance failure, nor would it achieve sufficient deterrent effect.

## The appropriate level of the financial penalty

- 6.13** As stated at paragraph 8.13 of the Penalty Statement, the total amount payable by a regulated person, subject to enforcement action, may be made up of two elements:
1. disgorgement of the benefit received as a result of the compliance failure, and
  2. a financial penalty reflecting the seriousness of the compliance failure

### First element: Disgorgement

- 6.14** Paragraphs 8.17 to 8.19 of the Penalty Statement relate to disgorgement. The PSR will seek to deprive a regulated person of the economic benefit derived directly from, or attributable to, the compliance failure, where it is practicable to quantify this.
- 6.15** While the PSR considers that Barclays may have derived an economic benefit from the reduction in fee transparency resulting from the compliance failure and may also have benefitted from choosing not to develop an Article 12 solution outside the confines of the bPaid system upgrade, the PSR considers that it is impracticable to quantify how much economic benefit it derived directly from the compliance failure in this case. Therefore, the disgorgement figure is calculated as **£0**.

### Second element: Financial Penalty

- 6.16** The PSR has applied the four-step process detailed at paragraphs 8.20 to 8.26 of the Penalty Statement to determine the appropriate level of financial penalty, as set out below.



### Step 1: The seriousness of the compliance failure (paragraphs 8.20-8.21 of the Penalty Statement)

**6.17** As paragraph 8.20 of the Penalty Statement explains, in many cases the amount of revenue generated by a regulated person from a particular business activity is indicative of the harm or potential harm that its compliance failure may cause. Where revenue is indicative of the harm or potential harm that a compliance failure may cause, paragraph 8.20 provides that the PSR will determine a figure which will be based on a percentage of the annual gross revenues derived by the regulated person from the particular business activity in the UK to which the compliance failure relates.

Annual gross revenue derived from the particular business activity to which the compliance failure relates

**6.18** The particular business activity carried out by Barclays, for the purposes of setting a penalty in this matter, is that of providing card-acquiring services, comprising the chain of services available to its merchant customers that enable the acceptance and processing of card transactions on behalf of merchants, resulting in a transfer of funds to the merchant.

**6.19** While it is acknowledged that only a limited number of merchants expressed an interest in receiving Article 12 Information during the Relevant Period and that the volume of merchants requesting it did not materially change even when Article 12 Information was made available, the PSR considers that a failure to comply with Article 12 may risk a lack of merchants' understanding of their acquiring fees. It is acknowledged that there may be various factors that affect competition in the market, of which price is one, and that Article 12 is one of a range of business rule measures under the IFR intended to increase transparency. However, decreased fee transparency may lead to reduced competitive market conditions, which in turn may reduce the benefits that merchants and consumers could obtain through increased choice and/or lower prices. This indicates that revenue is an appropriate starting metric for a financial penalty in this matter.

**6.20** In not providing Article 12 Information to merchants Barclays reduced merchants' ability to shop around or seek better deals. This may have allowed Barclays to retain revenue in the period of non-compliance for the provision of card-acquiring services (described in paragraph 6.18). Non-compliance may have maintained the level of acquiring revenue generated and the corresponding harm caused by Barclays' failure to comply with Article 12.

**6.21** As per the Penalty Statement, the annual revenues derived from Barclays' card acquiring business that form the basis for calculating a financial penalty in this matter are limited to those realised in the year prior to the termination of the relevant compliance failure.

**6.22** Barclays was non-compliant with Article 12 from 9 December 2015 until 13 December 2018 (inclusive). The relevant annual gross revenue from Barclays' card acquiring business received between 14 December 2017 and 13 December 2018 is **£1,129,000,000**.

Assessing the percentage to be applied to the starting figure

**6.23** Paragraph 8.21 of the IFR Guidance permits the PSR to take a number of factors into account when determining a level of financial penalty that reflects the seriousness of the compliance failure. The PSR considers the following factors relevant for the purposes of

deciding the percentage of the relevant annual gross revenue that should result in the Step 1 figure:

*The nature of the IFR obligation or prohibition imposed on, or the PSR direction given to, the regulated person which was not complied with*

- 6.24** The nature of Article 12 and the obligations it placed on acquirers was clear at implementation and certainly once clarifications were provided by the PSR in March 2016, and therefore Barclays' failure to achieve compliance, even once its platforms were technically capable of producing Article 12 Information, was unacceptable.

*The duration and/or frequency and/or repetition of the compliance failure*

- 6.25** (See paragraph 6.7) Barclays' failure to make Article 12 Information available to its merchants for an extended period may have delayed the potential benefits of greater transparency.

*The extent to which the regulated person's senior management were aware of the compliance failure, the nature and extent of their involvement in it, and the timing and adequacy of any steps taken to address it*

- 6.26** As set out in paragraphs 4.16 to 4.18 above, Barclays' senior managers within its GPA business division attended both the MIF SteerCo and GPA ExCo, and were aware of the significant risk that a fully compliant solution would not be available at the time that Article 12 of the IFR came into force. They were also aware, after Article 12 came into force, that the interim Article 12 solution proposed pending the completion of the bPaid upgrade was not capable of providing fully compliant Article 12 reports. The senior managers were also aware that delays to the implementation of bPaid, which were initially believed to be short, would impact on Barclays' ability to comply with Article 12. In addition, senior management who were members of the bPaid Senior Governance Panel and Barclays Executive Committee were aware of the compliance failure from at least April 2016. As set out in paragraph 6.8, despite its awareness of the compliance failure Barclays initially chose primarily to focus on the delivery of the bPaid programme as its solution to becoming Article 12 compliant, on the basis that delays to the implementation of bPaid would be short. Barclays failed to tell the PSR in September 2016 that there would be a further nine-month delay to the delivery of bPaid. No further or alternative steps were taken by Barclays to address its non-compliance with Article 12. Barclays also decided in October/November 2016 not to provide Article 12 Information to the merchants who had expressed an interest in receiving it, and not to inform the PSR of this decision.

*The impact, or potential impact, of the compliance failure on the aims of the IFR (taking into account the provisions of the IFR and its explanatory recitals)*

- 6.27** See paragraph 6.5 and 6.6.

*The extent to which the compliance failure was deliberate or reckless*

- 6.28** Prior to 9 December 2015, Barclays was aware of the risk that bPaid may not be implemented in time to deliver a fully compliant Article 12 solution and, consequently, that it might result in a compliance failure. As such, Barclays took steps to consider whether any interim solution could be provided using its legacy systems. When bPaid's delivery was delayed to January 2016, and the date for Article 12 implementation had passed, that compliance failure became a reality, but Barclays continued to take steps to mitigate that by attempting to find an interim solution through various different legacy systems.

- 6.29** Both the PSR and Barclays' bPaid Senior Governance Panel were informed of these facts in April 2016. The implementation of the bPaid project then suffered a series of further delays (as described above), which ultimately led to Barclays only being able to provide Article 12 Information via bPaid in May 2018.
- 6.30** The PSR acknowledges that Barclays and/or its senior management intended to be compliant with Article 12 through the delivery of the bPaid programme, and that the bPaid project suffered a series of delays that were initially only expected to be short. However, as the delays increased, the PSR considers that more could have been done to alleviate the position, including by keeping the PSR informed and/or by taking additional steps to mitigate non-compliance. In particular, by September 2016 when bPaid was delayed by a further nine months (which Barclays failed to tell the PSR), Barclays could have alleviated the position, for example, by using the interim Article 12 solution. Barclays' failure to actively seek effective ways to become compliant and manage the risk of bPaid not being delivered in a timely fashion means its non-compliance was reckless.
- 6.31** Further, by the time that Barclays was in a position to comply with providing Article 12 Information in May 2018, it took until 4 June 2018 to provide it to those merchants who had expressed an interest in receiving it, it took until November 2018 before Barclays amended its contracts to make Article 12 Information available periodically, and only by December 2018 did it notify merchants of the newly available reports. As such, Barclays' conduct is regarded as more serious as time went on and reckless.
- 6.32** In assessing 'seriousness' at Step 1, the PSR has applied the following percentage scale in relation to breaches of the EU IFR:
- a. Level 1 – Lesser Seriousness: 0-20%
  - b. Level 2 – Moderate Seriousness: 20-40%
  - c. Level 3 – High Seriousness: 40-60%
- 6.33** Taking the above factors into account, the PSR considers this to be a case of Moderate Seriousness. Accordingly, the PSR considers that 30% is the percentage which reflects the seriousness of Barclays' compliance failure with Article 12 of the EU IFR. This should be applied to Barclays' particular business activity to which the compliance failure relates, between 14 December 2017 and 13 December 2018. As that period is almost coincident with the 2018 financial year, the PSR has used the figures from the financial year 2018 for convenience.

### Step 1 - Conclusion

- 6.34** Applying 30% to **£1,129,000,000**, results in a Step 1 figure of **£338,700,000**.

### Step 2 – Aggravating and Mitigating Factors

- 6.35** Pursuant to paragraph 8.22 of the Penalty Statement, the PSR may increase or decrease the amount of financial penalty arrived at in Step 1 (excluding any amount to be disgorged) to account for factors which may aggravate or mitigate the compliance failure. Paragraph 8.23 of the Penalty Statement contains a list of factors that may have the effect of aggravating or mitigating the compliance failure.

## Aggravating factors

**6.36** The PSR considers the following factors set out in paragraph 8.23 of the Penalty Statement have the effect of aggravating the compliance failure:

1. Aggravating Factor 1: *‘Whether adequate steps have been taken by the regulated person to achieve a clear and unambiguous commitment to compliance with the IFR obligations or prohibitions imposed on it, and with the PSR’s directions under the PCIFRs, throughout the organisation (from the top down) – together with appropriate steps relating to regulatory risk identification, risk assessment, risk mitigation and review activities’.*
  - a. The PSR considers that Barclays did not have a clear and unambiguous commitment to compliance with the obligations of the IFR. This is demonstrated by its failure to implement an effective compliance solution until bPaid could be delivered; its failure to ensure that appropriate contractual arrangements supported its approach to compliance (i.e., making Article 12 Information available); and its failure to communicate the availability of Article 12 Information to its merchants in a timely manner.
  - b. Whilst Barclays did have in place mechanisms by which its senior management could identify and assess risks around the activities being undertaken to achieve compliance with Article 12, non-compliance with Article 12 was considered primarily as a risk associated with the delay to bPaid rather than a risk in itself, and the acceptability of the risk being realised was assessed within that context.
  - c. Barclays could have made information available (albeit not in the format required by Article 12) to merchants who had requested it in November 2016, using its interim solution. Instead, Barclays chose not to do this (despite recognising that this was the non-compliant option). It was not until May 2018 that Barclays made the information available to the merchants who had registered an interest. This does not demonstrate a clear and unambiguous commitment to compliance, but the opposite.
2. Aggravating Factor 2: Previous disciplinary record and general compliance history
  - a. Barclays has a history of previous non-compliance with other regulatory requirements monitored and enforced by other competent authorities for the IFR (specifically the FCA). Between the establishment of the FCA and the date of this notice, the FCA has fined Barclays on five separate occasions. These penalties ranged between £783,000 and £284,432,000.

## Mitigating factors

**6.37** The PSR considers one factor could mitigate the non-compliance.

*The behaviour of the regulated person in bringing (or failing to bring) quickly, effectively and comprehensively the compliance failure to our attention (or the attention of other competent authorities, where appropriate)*

**6.38** Barclays communicated its difficulties with achieving Article 12 compliance to the PSR at an early stage, informing the PSR on 17 September 2015 that its compliance solution was reliant on the delivery of bPaid. Barclays would not proactively provide Article 12 Information to all merchants and would instead provide it reactively on a “best endeavours basis” through manually generated management information to those

merchants who requested it. Barclays continued to proactively update the PSR on its progress to compliance until September 2016.

- 6.39** However, whilst the effects of timely and proactive communication of compliance issues to the regulator can be mitigatory, Barclays' communications are of limited mitigatory effect in this case. When meeting with the PSR on 19 November 2015, Barclays was not as forthcoming, as to either the reality of the delay to the bPaid delivery or the inadequacies of its interim solution, as it could have been. In addition, there is no evidence to suggest that Barclays told the PSR that bPaid would be significantly delayed further, either during or after the last meeting Barclays had with the PSR (in September 2016) before the PSR began its compliance monitoring work for the IFR. Only once the PSR had specifically asked Barclays about Article 12 compliance as part of that monitoring work did it update the PSR and confirm its ongoing non-compliance.
- 6.40** Barclays also did not inform the PSR of the total number of merchants that had requested Article 12 Information, following the issuing of the September 2016 Business Essentials newsletter, until it provided its response to the PSR's monitoring and compliance team in early 2018. Nor did it inform the PSR, at any stage, that its intention was not to provide the requested information to those merchants unless they "*insisted or complained*". However, the PSR acknowledges that Barclays did accept its non-compliance with Article 12(2) at the earliest stage in the PSR's investigation.

## Step 2 : Conclusion

- 6.41** Having had regard to the effect of the aggravating and mitigating factors identified above, Barclays' actions have, overall, had an aggravating effect on the compliance failure. The PSR considers the appropriate percentage for an uplift due to aggravating circumstances in this matter to be 10%. 10% of **£338,700,000** amounts to **£33,870,000**. This results in an overall figure after Step 1 and 2 of **£372,570,000**.

### Proportionality

- 6.42** Paragraph 8.15 of the Penalty Statement explains that the PSR may decrease the penalty otherwise determined following Steps 1 and 2, if it is disproportionately high having regard to the seriousness, scale and effect of the compliance failure. The PSR recognises that the overall penalty arrived at pursuant to its penalty framework must be appropriate and proportionate to the relevant compliance failure. The PSR considers that the level of financial penalty resulting from Steps 1 and 2 in this matter is disproportionate and has therefore reduced the figure to **£12,000,000**. The PSR considers this figure is appropriate and proportionate having regard to the seriousness, scale and effect of the compliance failure.

## Step 3: Adjustment for deterrence

- 6.43** Paragraph 8.24 of the Penalty Statement explains that if the PSR considers that the figure arrived at after Step 2 is insufficient to deter the regulated person who committed the compliance failure, or others, from committing further or similar compliance failures, then it may increase the penalty.
- 6.44** The PSR considers that the figure reached after following Steps 1 and Step 2 of the Penalty Statement of **£12,000,000** represents a sufficient deterrent to both Barclays and other acquirers from committing further or similar compliance failures and does not propose to adjust the Step 2 figure for deterrence.

**6.45** The Step 3 figure is therefore unchanged from Step 2 at **£12,000,000**.

#### **Step 4: Settlement discount**

**6.46** Pursuant to paragraphs 8.34 to 8.40 of the Penalty Statement, the PSR and the regulated person subject to an enforcement action may agree: the fact that one or more compliance failures has occurred; the fact that a sanction should be imposed; the nature of that sanction; and, where appropriate, the amount of any financial penalty to be imposed. In recognition of the benefits of such agreements, the penalty that might otherwise be payable in respect of a compliance failure will be reduced to reflect the timing of early settlement.

**6.47** Barclays has agreed to settle this matter at the earliest possible stage, entitling it to a 30% discount on the Step 3 figure. The Step 3 figure is **£12,000,000**. The 30% reduction amounts to £3,600,000, meaning the Step 4 figure is **£8,400,000**.

#### **Penalty**

**6.48** The PSR therefore imposes a total financial penalty of **£8,400,000** on Barclays for its compliance failure in respect of Article 12 of the IFR.

## **7 PROCEDURAL MATTERS**

**7.1** This Notice is given to Barclays pursuant to Regulation 7 of the PCIFRs.

**7.2** The following statutory rights are important.

#### **Decision maker**

**7.3** The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

#### **Payment of financial penalty**

**7.4** The financial penalty must be paid in full by Barclays to the PSR no later than Thursday 15 December 2022.

#### **If the financial penalty is not paid**

**7.5** If all or any of the financial penalty is outstanding on Friday 16 December 2022, the PSR may recover the outstanding amount as a debt owed by Barclays and due to the PSR.

#### **Publicity**

**7.6** Regulation 5 of the PCIFRs provides that the PSR may publish details of compliance failures and penalties imposed on regulated persons under Regulation 6. The PSR intends to publish this Decision Notice, and such information about the matter to which it relates, as the PSR considers appropriate.

## Disclaimer

- 7.7** In this Notice the PSR makes no criticism of any person other than Barclays Bank PLC. Further, any facts or findings in this Notice relating to any function, committee or group of persons should not be read as relating to all the members of that function, committee, or group, or even necessarily any particular individual.

## PSR contacts

- 7.8** For more information concerning this matter generally, contact the PSR Case Lead (siobhan.caslin@psr.org.uk) or the Case Team (ProjectElm@psr.org.uk).

### **Simon Polito**

Settlement Decision Maker, for and on behalf of the PSR

### **David Thomas**

Settlement Decision Maker, for and on behalf of the PSR

## ANNEX A

### RELEVANT STATUTORY AND REGULATORY PROVISIONS

#### 1. EU Interchange Fee Regulations 2015/751 ('IFR')

*Article 12: Information to the payee on individual card-based payment transactions*

*Article 12(1): After the execution of an individual card-based payment transaction, the payee's payment service provider shall provide the payee with the following information:*

- (a) the reference enabling the payee to identify the card-based payment transaction;*
- (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;*
- (c) the amount of any charges for the card-based payment transaction, indicating separately the merchant service charge and the amount of the interchange fee.*

*With the payee's prior and explicit consent, the information referred to in the first subparagraph may be aggregated by brand, application, payment instrument categories and rates of interchange fees applicable to the transaction.*

*Article 12(2): Contracts between acquirers and payees may include a provision that the information referred to in the first subparagraph of paragraph 1 shall be provided or made available periodically, at least once a month, and in an agreed manner which allows payees to store and reproduce information unchanged.*

#### 2. Recital 34 of the IFR

*Scheme rules applied by payment card schemes and practices applied by payment service providers tend to keep merchants and consumers ignorant about fee differences and reduce market transparency, for instance by 'blending' fees or prohibiting merchants from choosing a cheaper card brand on co-badged cards or steering consumers to the use of such cheaper cards. Even if merchants are aware of the different costs, the scheme rules often prevent them from acting to reduce the fees.*

#### 3. Recital 35 of the IFR

*Payment instruments entail different costs to the payee, with certain instruments being more expensive than others. Except where a particular payment instrument is imposed by law for certain categories of payments or cannot be refused due to its legal tender status, the payee should be free, in accordance with Directive 2007/64/EC, to steer payers towards the use of a specific payment instrument. Card schemes and payment service providers impose several restrictions on payees in this respect, examples of which include restrictions on the refusal by the payee of specific payment instruments for low amounts, on the provision of information to the payer on the fees incurred by the payee for specific payment instruments or limitation imposed on the payee of the number of tills in his or her shop which accept specific payment instruments. Those restrictions should be abolished.*



#### 4. Payment Card Interchange Fee Regulations 2015 ('PCIFRs')

- a. Regulation 2 of the PCIFRs defines:
  - “regulated person” as a person on whom an obligation, prohibition or restriction is imposed by any provision of the interchange fee regulation
  - “compliance failure” as including a failure by a person to comply with an obligation, prohibition or restriction imposed by the Interchange Fee Regulation
- b. Article 3 of the PCIFRs states that the PSR is responsible in the United Kingdom for all functions of the competent authority provided for in the Interchange Fee Regulation and that the PSR must maintain arrangements that enable it to:
  - determine whether regulated persons comply in the United Kingdom with obligations, prohibitions and restrictions imposed on them by the interchange fee regulation, and
  - enforce compliance in the United Kingdom by regulated persons with those obligations, prohibitions and restrictions
- c. Regulation 6 of the PCIFRs states that the PSR may require a regulated person to pay a penalty in respect of a compliance failure.
- d. Article 5 of the PCIFRs permits the PSR to publish details of a compliance failure by a regulated person or the imposition of a penalty imposed under Regulation 6 of the PCIFRs.
- e. Exclusions include:
  - factors that PSR must have regard to in exercising these functions as set out in Regulation 3(4)
  - regulations incorporating provisions of the Act

#### 5. Guidance on the PSR's approach as a competent authority for the EU Interchange Fee Regulation ('IFR Guidance')

The PSR's IFR Guidance on its approach as a competent authority for the EU Interchange Fee Regulation (“the IFR Guidance”), published in October 2016 and updated in June 2020 and September 2021, explains how the PSR will monitor and enforce compliance with the IFR. The following paragraphs of the IFR Guidance dated October 2016 describe our expectations of firms in relation to Article 12:

- 5.62** The specified information may be either provided to merchants (sent or given directly to the merchant – for example, on paper or, where the contract provides, by email) or made available to them (so the merchant can obtain it when they choose – for example, by accessing a secure website).
- 5.63** The information must be in a clear and comprehensible form and in a medium that the merchant can store and reproduce whenever required.

**5.64** Where the information is made available, it must be easily accessible, and the acquirer should clearly explain to the merchant that the information is being made available and how to obtain it. Acquirers could, for example, write to merchants explaining the type of information that is available and how merchants can access it. Acquirers might also include information about accessing the information in their regular communications with merchants. The PSR would consider any requirements for merchants to call a certain number or email acquirers each time they wish to obtain the information as meaning that the information is not readily available to merchants.

## 6. The PSR's statutory objectives

- a. to ensure that payment systems are operated and developed in a way that considers and promotes the interests of all the businesses and consumers that use them
- b. to promote effective competition in the markets for payment systems and services – between operators, PSPs and infrastructure providers
- c. to promote the development of and innovation in payment systems, in particular the infrastructure used to operate those systems