# Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR)

**Consultation Paper**
CP21/29*

September 2021

# How to respond

We are asking for comments on this Consultation Paper (CP) by **20 October 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-29-response-form

**Email:**
cp21-29@fca.org.uk

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# 1 Summary

## Why we are consulting

1.1 On 20 May 2021 we published a consultation on our proposed policies on the exercise of 2 new powers introduced through amendments to the Benchmarks Regulation (BMR) under the Financial Services Act 2021 (FS Act). That consultation closed on 17 June and we have published our Feedback Statement and final Statements of Policy. We are now seeking views on our proposed decision to use these powers in respect of certain LIBOR settings.

1.2 The new powers under Article 23C(2) and Article 21A of the BMR relate to the use of critical benchmarks where this use is within scope of the BMR ('use of a benchmark' is defined at Article 3(1)(7)). They were introduced as part of a wider package of amendments to the BMR. This package was intended to ensure that the FCA has the appropriate regulatory powers to help reduce risks to market integrity and consumer protection in the wind-down period before LIBOR ceases permanently.

### Article 23C legacy use power

1.3 Article 23A of the BMR grants us the ability, in certain circumstances, to designate a critical benchmark as an Article 23A benchmark. This designation will result in a prohibition on supervised entities using the benchmark, under Article 23B(1) of the BMR.

1.4 However, Article 23C(2) gives us the power to permit some or all legacy (ie existing) use of the benchmark to continue. We call this the 'legacy use power'.

1.5 The FCA has designated the following LIBOR settings as Article 23A benchmarks:

- 1 month sterling
- 3 month sterling
- 6 month sterling
- 1 month yen
- 3 month yen
- 6 month yen

1.6 These designations – and the prohibition on their use – will take effect on 1 January 2022.

1.7 These designations also unlock our power under Article 23D of the BMR, which enables us to require LIBOR's administrator to determine these LIBOR settings under a changed methodology (ie on a 'synthetic' basis). We have now confirmed that we will require ICE Benchmark Administration (IBA) to continue publication of these 6 LIBOR settings using a synthetic methodology.

1.8 This consultation sets out, and seeks views on, our proposed decision on which legacy use of the 1m, 3m and 6m sterling and 1m, 3m and 6m yen synthetic LIBOR settings we will permit to continue after end-2021.

### Article 21A new use restriction power

1.9 Article 21A of the BMR gives us the ability to prohibit some or all new use of a critical benchmark when we have been notified by its administrator that it will cease to be provided. We call this the 'new use restriction power'.

1.10 IBA notified the FCA that it intends to cease providing the US dollar LIBOR settings (and all other LIBOR settings), subject to any rights of the FCA to compel IBA to continue publication. On 5 March 2021, we announced that the US dollar LIBOR settings will either cease to be provided by any administrator or will no longer be representative:

- immediately after 31 December 2021, in the case of the 1 week and 2 month US dollar settings
- immediately after 30 June 2023, in the case of the remaining US dollar settings

1.11 We propose to exercise our new use restriction power for the US dollar LIBOR settings that will continue until mid-2023. These US dollar LIBOR settings are:

- overnight
- 1 month
- 3 month
- 6 month
- 12 month

1.12 We refer to these settings collectively as 'the continuing US dollar LIBOR settings' for the purpose of this paper.

1.13 This consultation sets out and seeks views on how we will prohibit new use of the continuing US dollar LIBOR settings.

## Who this applies to

1.14 While the proposed use of powers on which we are consulting will directly affect only entities and contracts within scope of the BMR, non-supervised entities such as non-UK firms, non-financial corporations or retail consumers may be, or become, party to contracts that rely on the relevant LIBOR settings. We expect this consultation will be of interest to users of the relevant sterling, yen and US dollar LIBOR settings, whether those users are regulated or unregulated. This includes:

- banks and building societies
- investment managers
- life insurance and pension providers
- mortgage lenders and intermediaries
- non-financial corporates of all sizes who refer to LIBOR in financial or other contracts
- consumers who have mortgages or other consumer loans that use LIBOR

## What we are consulting on

### Our proposed decision on whether and how to permit legacy use of 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR from 1 January 2022

**1.15** We propose to permit legacy use of these 6 LIBOR settings in all contracts except cleared derivatives (whether directly or indirectly cleared).

**1.16** Chapter 3 sets out how we have had regard to our Article 23C Statement of Policy.

### Our proposed decision on whether and how to prohibit new use of overnight, 1m, 3m, 6m and 12m US dollar LIBOR

**1.17** We propose to prohibit new use of these 5 US dollar LIBOR settings from end-2021, except:

- market making in support of client activity related to US dollar LIBOR transactions executed before 1 January 2022
- in transactions that reduce or hedge a supervised entity's or any client of the supervised entity's US dollar LIBOR exposure on contracts entered into before 1 January 2022
- novations of US dollar LIBOR transactions executed before 1 January 2022
- transactions executed for purposes of participation in a central counterparty auction procedure in the case of a member default, including transactions to hedge the resulting US dollar LIBOR exposure
- for the purpose of interpolation within contractual fallback arrangements for the ceasing US dollar settings (1 week and 2 month)

**1.18** Chapter 4 sets out how we have had regard to our Article 21A Statement of Policy.

## Next steps

**1.19** We are seeking responses to this consultation by 20 October 2021.

**1.20** You can respond using one of the forms described on page 2 'how to respond'.

**1.21** Following this consultation, we will consider and take into account any feedback when finalising our decision. We will confirm our final decisions as soon as practicable.

**1.22** We will publish Notices setting out our decisions, and the reasons for them, in line with the relevant requirements under the BMR.

## What you will need to do

### Legacy use power

1.23 It is important that users of 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings take all necessary steps to ensure that they understand how their contract terms interact with our proposed decision.

1.24 Contracts that include fallbacks that operate only when the relevant LIBOR setting ceases permanently are not likely to be triggered at the end of 2021 (after which the relevant LIBOR setting continues to be published as an Article 23A benchmark for a wind-down period). This may, however, depend on the precise wording of individual contracts. Rather, these fallbacks are likely to operate only when the relevant LIBOR setting ceases to be published in any form. So, our decisions regarding the legacy use power may be relevant to such contracts.

1.25 Some contracts may contain provisions that will move the contract away from a LIBOR setting as a result of permanent unrepresentativeness. This is likely to mean that the contract moves away from the LIBOR setting at the time, or before, its designation as an Article 23A benchmark comes into effect. So the prohibition on use (and any decision to exercise our legacy use power) would not be relevant to these contracts.

1.26 Notwithstanding our proposed decision, we discourage the use of permanently unrepresentative benchmarks where appropriate alternatives are available. Users should seek to move away from using them, wherever practicable and fair to all parties. This informs our current supervisory approach to the use of benchmarks by firms.

1.27 It is up to parties to take their own legal advice on the exact wording of their contracts.

### New use restriction power

1.28 Current users of overnight, 1m, 3m, 6m and 12m US dollar LIBOR settings whose use is not covered by the exceptions to the new use prohibition must ensure they have identified an alternative rate to use from 1 January 2022.

1.29 Those intending new use of the continuing US dollar LIBOR settings must take steps to ensure that this use is covered by one or more of the exceptions mentioned above, to avoid breaching the BMR. It is up to parties to take their own legal advice on their intended new use.

# 2 The wider context of this consultation

## LIBOR transition

2.1 We, alongside the Bank of England, other regulators internationally, and industry working groups in LIBOR currency jurisdictions, have been encouraging transition away from LIBOR to alternative Risk-Free Rates (RFRs). We have also been encouraging adoption of robust fallbacks into all new and, wherever practicable, legacy contracts, so they continue to operate if and when LIBOR ceases or becomes permanently unrepresentative.

2.2 On 5 March 2021, after IBA notified us of the dates on which it intends to cease providing the various LIBOR settings, we announced that all LIBOR settings will either cease to be provided by any administrator or will no longer be representative:

- immediately after 31 December 2021, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1 week and 2 month US dollar settings
- immediately after 30 June 2023, in the case of the remaining US dollar settings

2.3 As US authorities have made clear, the 5 US dollar LIBOR settings that will continue beyond end-2021 are intended for use in legacy but not new transactions after end-2021.

2.4 Publication of most of the LIBOR settings will cease immediately after these dates. However, we expect that there will be a pool of outstanding legacy contracts that cannot practicably be amended to transition away from the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings by end-2021. So we will require IBA to continue to publish these 6 LIBOR settings on a 'synthetic' basis from end-2021, to reduce the risk of disruption to holders of these legacy contracts.

2.5 We have not yet made a decision on whether it is desirable to require IBA to continue publication of any US dollar LIBOR settings after end-June 2023. The proposals in this paper about permitted legacy use are made in respect of synthetic sterling and yen LIBOR and not in respect of US dollar LIBOR. There is no legal restriction on legacy use of those US dollar LIBOR settings that continue to be published between 1 January 2022 and 30 June 2023. However, users of US dollar LIBOR are encouraged to transition away from legacy US dollar exposures where practicable.

2.6 Our overview document sets out more detailed background on LIBOR transition and our powers under the BMR as amended by the FS Act.

## Further legislation

2.7 The Critical Benchmarks (References and Administrators' Liability) Bill was introduced to the UK Parliament on 8 September 2021. This legislation should address any remaining risks to contractual certainty, or of disputes, in respect of legacy contracts referencing LIBOR, where we have exercised the powers (including the Article 23D(2) powers) given to us in the FS Act.

## How it links to our objectives

**2.8** The BMR stipulates that we may only exercise our legacy use and new use restriction powers if we consider it desirable to do so to advance either or both our statutory objectives to:

- secure an appropriate degree of protection for consumers
- protect and enhance the integrity of the UK financial system

**2.9** More information on how these powers support our objectives can be found in our overview document and the relevant Statements of Policy.

## Equality and diversity considerations

**2.10** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.

**2.11** Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010.

## Information we use to inform our decision-making

**2.12** Our proposed decisions to use our legacy use and new use restriction powers for LIBOR are based on the data and information that are available to us. This includes information provided to us by market participants and their representatives, LIBOR users, national working groups and overseas authorities. The extent and quality of the data and information available varies and is incomplete in places. Where this is the case, we may have applied assumptions and estimates, by using available information on a 'best efforts' basis. We will take into account further information as it becomes available to us, including through this consultation.

**2.13** We welcome further views, information and data from market participants and all relevant stakeholders, including LIBOR users, in response to this consultation.

# 3 The Article 23C legacy use power

## Our proposed decision

3.1 We propose to permit legacy use of these 6 synthetic LIBOR settings in all contracts except cleared derivatives (whether directly or indirectly cleared).

3.2 We do not propose to apply any limitations or conditionality to the above permissions, at least before the end of 2022.

**Q1: Do you agree with the manner in which we propose to exercise our legacy use power?**

**Q2: Do you have any other views or comments on our proposed exercise of our legacy use power?**

## Why we are proposing to use the Article 23C power in this way

3.3 We set out below whether and how we have taken account of the factors set out in our Statement of Policy.

### Potential risk to consumer protection and market integrity

3.4 Our policy is to consider first the scale and nature of legacy contracts that do not have adequate provisions to deal with a prohibition on use. This group of contracts are those that reference an Article 23A benchmark, are within scope of the UK BMR and do not contain workable fallbacks or other provisions that are triggered by any of the following:

- permanent unrepresentativeness of the benchmark
- material change (where this is either not defined or is defined in a manner that includes permanent unrepresentativeness)
- a party to the contract being prohibited from using the benchmark

3.5 We set out below the groups of contracts referencing the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings that we think are unlikely to contain such provisions. We have used data and information currently available to us to estimate the number and value of these exposures. We have made assumptions in some areas based upon these data and this information.

3.6 **Derivatives:** We are confident that cleared derivatives (whether directly or indirectly cleared) have adequate fallback provisions due to rule changes that will be implemented by clearing houses. Uncleared derivatives covered by ISDA's IBOR Fallback Protocol also now contain adequate provisions that will move them away from LIBOR upon permanent unrepresentativeness. However, we think there are, or are likely to be, unworkable fallback provisions in the remaining set of uncleared derivatives.

3.7 **Bonds:** We understand that most (although not all) bonds issued after November 2019 are likely to contain adequate fallback provisions. This is because market practice evolved to include fallbacks triggered by permanent unrepresentativeness around this time. Moreover, issuers moved away from using sterling LIBOR in new bond issuance from 2019. However, we understand all or most bonds issued before this, and likely some issued since, will not contain adequate provisions.

3.8 **Mortgages:** We understand from lenders that very few or none of these contracts contain fallbacks of the type described at 3.4.

3.9 **Investment funds:** We think it is unlikely that much, if any, fund documentation that uses LIBOR to measure performance for the purpose of calculating performance fees includes fallbacks of the type described at 3.4 to deal with a prohibition on use.

**Q3: Do you agree that we have identified correctly the main groups of contracts that do not currently contain adequate provisions to deal with a prohibition on use?**

3.10 We have considered the scale and nature of legacy contracts across asset classes, and have sought to gauge the extent to which they contain adequate provisions to cope with prohibition. We have concluded that, in relation to all of the LIBOR settings we have designated as Art 23A benchmarks, ie 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR, there is sufficient number and volume of contracts that do not contain these provisions that there is a potential risk of both market disruption that would threaten market integrity, and a threat to consumer protection, arising from prohibition.

## Actual risk to consumer protection and market integrity

3.11 The potential risk to consumer protection and market integrity arising from the prohibition can be avoided if parties to the contracts described at 3.4 above can remove their reliance on LIBOR before or when the prohibition comes into effect. So once we have established that there is potential risk to market integrity and/or consumer protection, our policy is to consider whether and to what degree it is feasible for parties to amend these contracts, or to otherwise remove their reliance on LIBOR, in a way that delivers fair outcomes. We have considered the following factors in order to do this.

### *Availability of appropriate and fair alternative benchmarks*

3.12 International authorities have expressed the view consistently over several years that RFRs are robust and appropriate rates for most forms of contract that reference LIBOR. These rates are now sufficiently used to ensure liquidity and market confidence. Some authorities and/or national working groups have identified limited cases in which there is a case for use of a forward-looking rate. In these cases, forward-looking term rates based on the relevant RFR are available. Other rates, such as central bank policy rates, can also be referred to in contracts. In our view, with appropriate adjustment (eg through the addition of an appropriate spread) these rates provide suitable alternatives to 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings. Other rates may also be appropriate for some contracts.

### *How easy it is to amend these contracts*

3.13 The ease of amending these contracts varies from one asset class and contract type to another. It depends on the number of contracts affected, the number of parties to the contract and how many of them must consent to change it, the ease of identifying the relevant parties, and the type of legal, regulatory and operational procedure(s) required for the relevant parties to consent.

**3.14** Derivatives are reasonably straightforward to amend. They are bilateral agreements between clearly identified parties. Moreover, there are industry-agreed mechanisms available by which amendments to most of these contracts can be made with relative ease.

**3.15** Bonds are often widely held, and the consent of a high percentage of bondholders (typically around 75%) is usually required for amendments to be made. It can be difficult to identify and locate all bondholders to seek their consent. The process by which consent must be obtained takes time. Success can't be guaranteed. Where issuers, originators or sponsors no longer exist or are insolvent or inactive, there may be an absence of leadership to initiate, and assume the costs of, this process.

**3.16** Some mortgage contracts that reference LIBOR can be amended by the lender without borrower agreement in certain circumstances (ie 'unilateral variation clauses'). These circumstances sometimes include a prohibition on use of a benchmark coming into force – but not always. Sometimes it can be unclear whether they do so. Where such unilateral variation clauses do not exist or are not triggered, the consent of borrowers is likely to be required to amend the contract, and the process for obtaining consent can take time and be difficult.

**3.17** We expect Investment funds' documentation can be amended to use another benchmark to measure performance for the purpose of calculating performance fees. For authorised funds the process may entail gaining board and trustee consent, completing an FCA approval process and providing reasonable notice to investors of the change. Overall, the amendment process is straightforward but can take several months.

### *Available mechanisms for changing large volumes of contracts without making bespoke amendments*

**3.18** Industry practices sometimes provide standard documents or mechanisms (or both) to allow multiple contracts to be amended without having to repeat the action separately for every single contract.

**3.19** A very large proportion of LIBOR-referencing derivatives are cleared, and the relevant clearing houses set their terms and can amend them – including the benchmark used to calculate payments – in bulk with relative ease. Uncleared derivatives' documentation is very often (though not always) standardised using industry-agreed standard templates, which can be relatively easily updated in bulk via a 'Protocol' mechanism.

**3.20** Bond contracts are not standardised. Also, unlike derivatives, there is not a standardised approach to amending large volumes of bond contracts with a unique action. They all have to be considered and renegotiated individually through a consent solicitation process (see 3.15). If large volumes of consent solicitations are required to take place within a short time window this will add to the challenge of complying with this process.

**3.21** Mortgage documentation does not follow an industry standard and even a single lender may have several different forms of contract in existence at any one time given the long duration of mortgage contracts.

**3.22** Investment funds require individual approval for amendments to fund documentation in many instances.

### *The nature of the parties to the contract*

**3.23** The parties' awareness, knowledge and understanding of LIBOR transition, and of the process for amending their contract(s), will likely affect their willingness to engage with efforts to amend the contract and agree to any amendments. For instance, retail consumers, or SMEs, may not be familiar with the need to transition away from LIBOR or may not be aware that a legal prohibition on its use will come into force soon.

**3.24** Derivatives are widely used by large banks and other financial organisations that are likely to have been engaged with, or at least aware of, LIBOR transition over a long period and understand the need to engage with contract amendments. Derivatives are also used by mid-sized and larger non-financial corporates, whose awareness may be more limited. However, these firms should also often be able to acquaint themselves relatively quickly with the relevant issues.

**3.25** Bonds are widely used by large banks and other financial organisations (such as asset managers). However, there will be some non-financial bondholders whose awareness may be more limited.

**3.26** Mortgage borrowers are usually retail consumers (non-retail mortgages are out of scope of the BMR) and are unlikely to have engaged with or to understand LIBOR transition, the process involved in amending their contracts, or the reasons why it is important to do so. Mortgage lenders report very limited responses to their attempts to engage with customers to explain the context and seek consent to amendments. They suggest that past evidence of customer contact exercises for mortgages leads them to expect low response rates.

**3.27** The Board members and depositaries of funds whose consent may be required to amend documentation are likely to be either familiar with the need to transition away from LIBOR, or in a position to acquaint themselves relatively quickly with the relevant issues. To the extent investor consent is required (see para 3.32), some of these will be institutional investors who will be familiar with LIBOR transition. However, we recognise there may also be retail investors, whose awareness is likely to be more limited.

### *The effect of the prohibition on parties who must consent to, or be involved in, amending the contract*

**3.28** If a prohibition on use of LIBOR affects parties differently, then it could create misaligned incentives to amend contracts on fair terms. For example, only some of the parties may be subject to the prohibition (eg only one might be a UK supervised entity), and the contract terms may penalise these parties if the prohibition means they are unable to fulfil their obligations under the contract.

**3.29** Derivatives contracts will often be between a UK supervised entity and a firm supervised overseas. Or, between a UK-supervised entity and a non-financial firm. In such cases, only one party will be subject to the prohibition. Some more complex derivatives may require the consent of a third party not subject to the prohibition, eg in some instances where the contract is explicitly and/or structurally linked to another contract.

**3.30** Some bond holders may hold out for advantageous terms from issuers. Bonds sometimes form part of complex transactions such that the consent of a third party not subject to the prohibition is required to amend the bond.

**3.31** Mortgages that are within scope of the BMR are retail mortgages and as such, the borrower will not be a supervised entity – creating an asymmetry.

**3.32** Investors in funds are not impacted by the prohibition even if they are supervised entities, and they are only required to give consent where the change is a fundamental change for the purposes of compliance with our Handbook requirements (see COLL 4.3.4R). This is a matter for the fund manager to decide, but it is unlikely to be the case where the change being made is to replace references to LIBOR with references to an appropriate alternative rate (that is a fair approximation of LIBOR's expected value), rather than a more radical re-structuring of the fund.

### *Evidence that similar contracts have been amended*

**3.33** Similar contracts having been amended successfully to deliver fair outcomes could indicate that amendments to a contract are feasible.

**3.34** However, documentation, terms and provisions, and processes relating to contracts referencing LIBOR vary significantly – even within asset classes, and sometimes even across a single firm's products within an asset class.

**3.35** We have also considered whether there are subsets of contracts within asset classes that could be said to be similar. Within derivatives, we have identified cleared contracts as a relevant subset, as cleared contracts share standard terms set by the relevant clearing house. We have not identified any other subsets of contracts within an asset class that could easily be defined as being sufficiently similar that successful amendment of 1 contract would indicate reliably that others in the same subset could also be amended.

### *How much notice parties have had of the prohibition*

**3.36** In July 2017, we warned the market that LIBOR could cease to be published at the end of 2021 or soon after. In some cases, this led to contracts being amended to include fallback clauses triggered by cessation, or to firms checking that their existing provisions – such as unilateral variation clauses in mortgages – would be triggered in such circumstances.

**3.37** The Government announced its intention to bring forward legislation to provide us with the necessary power to require changes to LIBOR's methodology – enabling publication of a 'synthetic' LIBOR rate – in June 2020. This legislation, which set out both the power and the prohibition that would take effect at the point the power became available, was published in September 2020 and came into force in July 2021.

**3.38** Market participants have had a year's notice of the possibility of some LIBOR settings continuing on a synthetic basis, and a prohibition on use coming into effect.

### *Whether the contract is structurally and/or explicitly linked to other use of the benchmark, and this creates a barrier to amending the contract*

**3.39** In some circumstances, even though it might be practicable to make amendments to a contract referencing 1m, 3m or 6m sterling LIBOR or 1m, 3m or 6m yen LIBOR, links between it and another use of a LIBOR setting – eg in another linked contract – can present an obstacle, if the linked use has not yet moved to another benchmark. Sometimes it is important to ensure that the same replacement benchmark is used in the linked uses, eg to maintain precise cashflow where a derivative is embedded within a structured transaction.

**3.40** Respondents to our policy consultation provided several examples of linked contracts where they consider that the linkage is a barrier to transition to a fair alternative. We do not agree that all these examples are structural or explicit linkages (we set out our reasoning in our Feedback Statement). However, we know that LIBOR is used in complex transactions involving interconnected products (eg securitisations, and collateralised loan obligations) where the links between the products are clearly structural and/or explicit.

## Summary of the actual risk to consumer protection and market integrity

**3.41** Appropriate alternative rates to the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings are available, with sufficient use to ensure liquidity and market confidence.

**3.42** However, there are considerable barriers to removing reliance on these LIBOR settings in many of the contracts referencing them. Many of these barriers – such as gaining consent from bondholders or borrowers – can likely be overcome given enough time, but this will not be achieved by the end of 2021 in most instances. Given the extent of LIBOR use, even very considerable notice to users might not have been sufficient for them to complete all necessary changes to remove reliance on it in all contracts.

**3.43** We consider that most of the contracts described at 3.10 above will face considerable barriers to removing their reliance on LIBOR settings by the end of 2021 when the prohibition on use of 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings will take effect.

**3.44** We conclude that the risks to market integrity and consumer protection are real, if we do not, at least in the first year after the end of panel bank LIBOR, allow a relatively wide legacy use of the synthetic rates. As a result, we consider that there are grounds to exercise our legacy use power at least for the duration of 2022. This is to advance both our market integrity and our consumer protection objectives.

### Further considerations

**3.45** We have considered several other factors in arriving at our proposals.

### *The effect of permitted legacy use on the robustness and/or the sustainability of any benchmark used as an input to the Article 23A benchmark*

**3.46** As set out in the Financial Stability Board's (FSB) report 'Reforming Major Interest Rate Benchmarks' (pp.13-14), a high volume of use of a benchmark may create financial stability risks. These risks are particularly acute when combined with low levels of activity in the markets that underpin the benchmark. This is often referred to as the 'inverted pyramid' issue – a large base balancing on a small point.

**3.47** We have published our decision to exercise our power under Article 23D(2) of the BMR to require LIBOR's administrator to change the methodology used to calculate the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings. The replacement methodologies for all these settings (often referred to as 'synthetic LIBOR') will be formed by adding the relevant fixed spread adjustment that applies as part of ISDA's IBOR Fallbacks, to an RFR-based forward-looking term rate.

**3.48** This means that, once this change of methodology has taken place, use of these LIBOR settings is also indirect 'use' of the relevant RFR-based term rate. Permitting legacy use of any of the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings increases the volume of use of the relevant RFR-based term rate and increases the top of the inverted pyramid for those term-rates.

**3.49** The obvious and in most cases most appropriate alternative rate to which derivative contracts should move when transitioning away from LIBOR is the relevant overnight RFR, compounded in arrears.

**3.50** The bulk of the sterling LIBOR derivatives market – around 85% per cent – is cleared. A large proportion of derivatives referencing yen LIBOR settings is also centrally cleared. We understand that clearing houses intend to use the standardised mechanisms available to them to move all cleared derivatives contracts onto relevant overnight RFRs in advance of a prohibition taking effect. This bulk of contracts moving to the overnight RFRs, and continued hedging of those outstanding RFR positions, as well as new business moving in earnest to RFRs, should help provide a significant stable and robust base for the RFR-based term rates.

**3.51** In addition, we know that a significant majority of uncleared derivatives have been amended through adoption of the ISDA Protocol, the fallback provisions of which will move the contracts away from the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings to compounded overnight RFRs, when the prohibition takes effect.

**3.52** Overall, we estimate that around 97% of the sterling LIBOR derivatives market is now covered by either the ISDA Protocol or clearing house conversion mechanisms and will transition to compounded SONIA at the end of the year. A large proportion of yen LIBOR derivatives is also covered by either the ISDA protocol or clearing house conversion mechanisms. This very high level of preparedness for prohibition in the derivatives market significantly reduces the risk of any 'inverted pyramid' effect, and any resulting financial stability risk, for the RFR-based term rates.

### *International consistency*

**3.53** There is consensus across international authorities that use of LIBOR needs to cease and firms should transition their legacy contracts to appropriate alternative rates wherever practicable. While the tools to achieve this may differ across jurisdiction, we are seeking consistent outcomes in ensuring an orderly wind down of LIBOR by minimising market disruption and consumer harm.

### *Whether contracts are required by law or regulation to contain suitable fallback provisions such that they should not be adversely impacted by the prohibition*

**3.54** Contracts within scope of the BMR should contain fallback clauses that operate in the event of either the cessation of the benchmark or a material change to it.

**3.55** This provision of the BMR came into force on 1 January 2018. Many LIBOR-referencing legacy contracts were originated before this date. Guidance (published in December 2017) states that firms should seek to amend these contracts 'where practicable and on a best-effort basis' to make them compliant with the BMR.

**3.56** We recognise that firms faced obstacles and uncertainty in trying to comply with these requirements early on. For much of 2018 there was not consensus in the market on the design and content of appropriate fallback language – but there was clear value in achieving consistency of approach rather than fragmentation.

**3.57** We have concluded that there is sufficient number and volume of contracts that do not contain 'material change' provisions (in line with BMR requirements), that there is a potential risk of market disruption and a threat to consumer protection if we do not permit these contracts to continue using the 1m, 3m and 6m sterling and yen LIBOR settings.

### *The degree to which we can set out clear and practicable criteria for the market*

**3.58** Market participants have suggested that it would be extremely difficult to distinguish with certainty those classes, categories, types or other subsets of legacy contracts that can be amended before the prohibition comes into force from those that cannot be amended.

**3.59** In most cases we are sympathetic to this argument. Even in cases where, at first, it appears possible to differentiate between a category of contracts that can cope with prohibition and another that cannot, on closer inspection we find that the distinction between the two is less clear.

**3.60** For instance, we might expect that mortgages containing unilateral variation clauses can be amended with ease and so would not require permission to continue using the relevant LIBOR settings. However, closer analysis suggests not all such clauses can be relied upon to be triggered by prohibition. Some are clearly not triggered. Whether some others can be used is not clear.

**3.61** A respondent to our policy consultation suggested that where mortgage amendments require the consent of borrowers, we should distinguish between situations in which there is clear evidence that borrowers would not accept transition terms, and other cases. That would, however, require a robust definition of what constitutes 'clear evidence', or to define what steps must be taken by lenders to show that they have met a minimum threshold in terms of their attempts to engage borrowers.

**3.62** Another example of a category that is harder to define than might be expected is a bond that has used standard 'type 3' drafting (as defined by ICMA), which provides a 'pre-cessation' fallback that would be triggered by permanent unrepresentativeness. In practice, our understanding is that bonds are rarely drafted entirely on a standardised basis because parts of the contract are necessarily bespoke. Bond-by-bond analysis would be required to identify whether this fallback clause had been included in the contract without adjustment, so the term 'type 3 bond' is not likely to identify a clear subset of bonds.

**3.63** With the exception of certain derivatives, which are discussed below, we do not consider that we can distinguish with clarity and certainty the classes and characteristics of contracts where we think it is beneficial to allow legacy use of the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings, from those where we do not think this is the best outcome.

**3.64** For derivatives, as set out at 3.50, all cleared derivatives will move away from use of these LIBOR settings before the prohibition comes into effect. So cleared derivatives are an identifiable subset of contracts for which permission for legacy use of the 1m, 3m and 6m sterling and 1m, 3m and 6m yen LIBOR settings is not necessary.

**3.65** For non-cleared derivatives, we see few obstacles to amendment on fair terms. These are bilateral arrangements for which standardised contract terms and benchmark-specific amendments and fallback provisions are available. They are not retail contracts and as such, parties to them should generally be capable of understanding the issues and able to engage with efforts to agree amendments. Even where there is an asymmetry, in that both parties to the contract are not impacted equally by the prohibition, we think that there will be many cases where fair and mutually acceptable conversion is achievable.

**3.66** We do not agree with those market participants who argue that in every situation in which a derivative is being used to hedge a cash product that is permitted to use synthetic LIBOR, the derivative must necessarily be permitted to use synthetic LIBOR as well. Where conversion to a compounded RFR is unsatisfactory because an exact hedge is needed for risk management or to fulfil the terms of a covenant or similar obligation – we think there could be other routes to achieving this, eg via an additional basis swap. Or, it might be practicable to convert the cash contract too.

**3.67** However, a small proportion of derivatives are linked to other contracts or uses of LIBOR in a structural or explicit manner such that transition must be to the same alternative rate, at the same time, in order to maintain the economic terms of the transaction. Derivatives used in securitisation structures are an example.

**3.68** It has not been possible for us to identify how much of the around 3% of the derivatives market not covered by the transition mechanisms described at 3.52 is comprised of these structurally or explicitly linked derivatives.

**3.69** We consider that of this 3%, only uncleared legacy derivatives that are structurally or explicitly linked to other uses of the relevant LIBOR settings need to be permitted to continue to use these LIBOR settings. However, given the relatively small number and value of derivatives that will remain referencing these LIBOR settings when the prohibition has taken effect, we think it would be unwise for us at this point to undertake the complex task of attempting to delineate this group of contracts from the remainder that do not. To do this in a manner that provides sufficient clarity for derivatives users to have confidence that they understand whether their use is permitted may be achievable but would be complex. We consider that it would take a considerable amount of time, expertise and research for such a delineation to be both accurate and clear. The prohibition, however, is expected to come into force in a matter of weeks. So we are inclined to permit continued legacy use by all uncleared derivatives, at least for the duration of 2022. We think this is the best way to provide clarity and certainty for the market in a timely manner.

## Limitations on permission and/or conditionality

**3.70** Many contracts simply need more time to transition. However, there are some long-dated contracts that face very high (possibly in a few cases, insurmountable) barriers to transition. It would be challenging (though not necessarily impossible) to delineate this latter group in a manner that provides sufficient clarity for users on whether a time limit applied to them or not.

**3.71** In any event, in the context of LIBOR we have confirmed we will use our power under Article 21(3) of the BMR to compel IBA to continue publishing the synthetic sterling and yen LIBOR rates. This power is subject to annual review, so continued availability of synthetic LIBOR cannot be guaranteed on an ongoing basis.

**3.72** Where contracts are not BMR-compliant – as discussed at 3.54 to 3.57 – we could grant permission to continue use on a transitional basis, with conditionality that requires firms to take steps to make these contracts compliant. Instead, given the mitigating factors identified as to why there may be non-compliance, for the moment we have used our Statement of Policy to set out very clearly the requirements of Article 28(2). We expect firms to address any non-compliance promptly and appropriately.

**3.73** Overall, taking account of all the circumstances and the limited time available before the prohibition comes into effect, we do not consider it necessary or proportionate to move immediately to applying limitations to our proposed permission of legacy use.

**3.74** However, if assumptions about the ability to rely on synthetic LIBOR over a long period mean that market participants continuously postpone effort to remove reliance on the 6 LIBOR settings that is otherwise practicable and beneficial, then we may need to reconsider whether limitations are necessary, eg applying a time limit for permitted legacy use for some asset classes.

**Q4: Do you have any views or comments on the rationale for our proposed legacy use decision?**

# 4 The Article 21A new use restriction power

## Our proposed decision

4.1 We propose to prohibit new use of the overnight, 1m, 3m, 6m and 12m US dollar LIBOR settings from end-2021, except:

- market making in support of client activity related to US dollar LIBOR transactions executed before 1 January 2022
- in transactions that reduce or hedge the supervised entity's or any client of the supervised entity's US dollar LIBOR exposure on contracts entered into before 1 January 2022
- novations of US dollar LIBOR transactions executed before 1 January 2022
- transactions executed for purposes of participation in a central counterparty auction procedure in the case of a member default, including transactions to hedge the resulting US dollar LIBOR exposure
- for the purpose of interpolation within contractual fallback arrangements for the ceasing US dollar settings (1 week and 2 month)

**Q5: Do you agree with the manner in which we propose to exercise our new use restriction power?**

**Q6: Do you have any comments on the proposed exceptions to the new use prohibition?**

**Q7: Do you have any other views or comments on our proposed decision to exercise our new use restriction power?**

## Why we are proposing to use Article 21A power in this way

4.2 We set out below whether and how we have taken account of the factors set out in our Statement of Policy.

### Assessing the potential risk to consumer protection and market integrity

4.3 Our policy sets out factors that could mean new use of a ceasing critical benchmark poses potential risks to consumer protection and market integrity. We have applied these to the 5 US dollar LIBOR settings continuing to be published from January 2022 to end-June 2023.

**a. Resilience – system wide operational risk**

4.4 New market ecosystems take time to develop and rely on concerted actions from a range of market participants, as we have seen in both sterling and US dollar markets in the transition from forward-looking LIBOR rates to backward-looking RFRs. We have observed through LIBOR transition that markets can face significant amounts of inertia in the face of change. This is in part driven by the attractiveness of using products that are familiar and have more liquidity.

**4.5** In absence of restrictions to stop new use of the continuing US dollar LIBOR settings, we think there is a risk that some market participants delay shifting their new business activity to SOFR in earnest.

**4.6** If firms encounter delays or backlogs in their transition programmes, this creates the potential for operational risks to crystallise on a greater scale around a single deadline, especially as such risks may be faced for a firm's front and back-book, rather than just the latter. This risk may be heightened where firms rely on third party suppliers who may have their own resource constraints. If this occurs across many firms at the same time, it creates potential systemic risk.

**4.7** Undertaking a phased transition, whereby new business moves to alternative rates first, helps market participants gain experience in operating with these alternative rates. It also establishes a path to switch legacy contracts.

**4.8** Our experience in sterling markets is that having clear dates for stopping new LIBOR business has helped firms manage their LIBOR transition programmes in 2 main ways:

- From an internal standpoint, it has supported their project management process including approval for resources.
- From an external standpoint, it has proved helpful for firms to have specific dates to reference when dealing with clients.

**4.9** Finally, continuing to create new exposure referencing the continuing US dollar LIBOR settings increases the volume of legacy contracts that need to be remediated by mid-2023. Even where firms have implemented clear, robust fallbacks (which supervised entities are required to have under the BMR), there will still be steps needed to operationalise the fallbacks. Increasing the volume of legacy contracts referencing the continuing US dollar LIBOR settings increases the pressure on firms' systems and processes and in turn increases operational risk.

### b. Financial stability – the nature and/or degree of activity in the market(s) underpinning the benchmark

**4.10** As set out in the FSB's report 'Reforming Major Interest Rate Benchmarks', a high volume of use of a benchmark may create financial stability risks, and these risks are particularly acute when combined with low levels of activity in the underlying market. We refer to this as the 'inverted pyramid' issue. This inverted pyramid is the fundamental reason for concern about the sustainability of LIBOR.

**4.11** Ongoing use of the continuing US dollar LIBOR settings in new contracts increases the impact to financial stability if a dislocation occurs. While we are confident that the 5 US dollar LIBOR settings will be maintained in a representative manner until end-June 2023, risks attached to LIBOR are higher if the number of contracts using the continuing US dollar LIBOR settings continues to grow.

**c. Orderliness – whether the benchmark is expected to remain representative for the entirety of the wind-down period**

**4.12** When applied to the continuing US dollar LIBOR settings, this factor does not pose market integrity or consumer protection risks as we do not expect the continuing US dollar LIBOR settings to become unrepresentative until mid-2023.

**d. Orderliness and consumer protection – risk that consumers or the market face unexpected changes such as volatility or liquidity impacts in either the ceasing benchmark itself, or the market(s) using it**

**4.13** There are likely to be changes in liquidity in US dollar LIBOR markets and users may face increased costs in dealing products linked to the continuing US dollar LIBOR settings as the transition progresses (particularly the closer we get to mid-2023).

**4.14** In addition, there is a risk that consumers do not fully understand the impacts of US dollar LIBOR ending. While the inclusion of robust fallback provisions may help reduce this risk, it does not always eliminate it. From a conduct perspective, we have been clear that the best way to avoid the complications of calculating and explaining fallbacks from LIBOR to fair replacement rates is to avoid new LIBOR contracts.

**4.15** We do not think there is a risk that the continuing US dollar LIBOR settings themselves face unexpected volatility purely due to the fact they are ceasing. We expect the panel banks will continue to submit until mid-2023 and do not expect the quality of their input data materially to change in this relatively short period.

**e. Adequate confidence and liquidity in alternative benchmarks and market preparedness to use them.**

**4.16** Where alternative benchmarks are available but not widely used, new use of a ceasing benchmark could prevent the necessary liquidity from developing in these alternatives.

**4.17** Equally, preventing access to ceasing benchmarks prematurely (ie where the level of liquidity in alternatives is very low) could also have adverse impacts, such as higher costs for market participants.

**4.18** In the case of the continuing US dollar LIBOR settings, we think there is now adequate confidence and liquidity in SOFR to avoid material or widely occurring adverse impacts from restricting new use of US dollar LIBOR (also see 4.41 to 4.42).

**4.19** The CFTC has recently recommended a 'SOFR first' initiative to encourage liquidity in SOFR derivative markets. Since this initiative began on 26 July, in the interdealer market we have consistently seen at least 85% of notional in new US dollar linear swaps reference SOFR.

## Does exercising our new use restriction power potentially advance our objectives?

### The consumer protection objective

4.20 Our policy sets out that we would be able to intervene if any consumer was affected by new use of the ceasing benchmark, such that it posed a potential risk to an appropriate degree of consumer protection. This risk could be particularly acute for business involving retail consumers, who may not understand the risks attached to US dollar LIBOR.

4.21 We are not aware of any evidence or data to suggest that UK supervised entities use or offer the continuing US dollar LIBOR settings in retail contracts that are within the scope of the BMR.

4.22 However, if supervised entities did start offering retail products based on the continuing US dollar LIBOR settings, that would pose a risk to an appropriate degree of consumer protection because there is a risk that consumers don't fully understand the implications of the benchmark ceasing (see 4.14 above).

### The integrity objective

4.23 For the integrity objective, there would need to be enough potential new use for the relevant factors (set out in a. to e. above) to cause possible disruption to relevant markets or risks to financial stability.

4.24 While we cannot predict with certainty the amount of new use of a benchmark, we have used data and information currently available to us on recent new use of the continuing US dollar LIBOR settings to estimate the potential new use that could occur before mid-2023. We have made assumptions in some areas based upon these data and this information.

4.25 As older legacy contracts referencing the continuing US dollar LIBOR settings mature, they will likely be replaced. Without restrictions on new use of these settings, it is possible that a significant proportion of these contracts would be replaced by further LIBOR-referencing contracts. That would exacerbate risks at the point the publication of these US dollar LIBOR settings ceases.

4.26 In the overnight market, we understand existing practice is already to use SOFR (or Fed Funds) rather than US dollar LIBOR, given these are very close substitutes. As set out in points a. and e., use of alternative rates in new contracts helps the necessary ecosystem and liquidity to develop in advance of the relevant benchmark ceasing. It is important to make sure users of overnight rates continue to use alternatives such as SOFR rather than LIBOR, to support the development of RFR-based US dollar markets.

4.27 We have concluded that there is a potential risk of market disruption and risks to financial stability if we do not intervene to restrict new use of the 5 continuing US dollar LIBOR settings.

**Q8: Do you agree that we have identified correctly the potential risks of new use of US dollar LIBOR?**

4.28 Our policy says that we may consider whether a limited form of restriction is appropriate.

4.29 The official sector has made clear for some time the risks of financial markets' continued reliance on LIBOR and the need to transition to alternative rates. We have said that the most effective way to avoid LIBOR-related risk is not to write LIBOR-referencing business.

4.30 In this context and given the nature of the risks associated with new use of the continuing US dollar LIBOR settings, we see no compelling need to restrict new use for only certain contract maturities or types of product or user. However, there are some limited exceptions to restrictions on new use that we think are necessary to improve the overall transition away from US dollar LIBOR and therefore support our integrity objective (see 4.33 to 4.40).

## Further considerations

4.31 Our Statement of Policy sets out other factors that we consider could be relevant to a decision to exercise our new use restriction power.

### Whether not restricting some or all use of the ceasing benchmark might support our objectives

4.32 We think there are 2 main considerations that are likely to be relevant when deciding whether not restricting some or all new use of the ceasing benchmark might support our objectives.

**a. Reducing exposure to the ceasing benchmark**

4.33 To achieve an orderly wind down of US dollar LIBOR, existing contracts using US dollar LIBOR must transition to alternative benchmarks such as SOFR – whether that be through amending the contract to reference SOFR before mid-2023, or through a fallback that takes effect when US dollar LIBOR ceases or becomes unrepresentative.

4.34 A particular feature of derivatives is that new transactions referencing the ceasing benchmark can be used in some cases to reduce legacy exposure. For example, derivative positions can be 'unwound' by entering an equal and opposite trade and typically 'compressing' those trades down to zero. This would require new use of US dollar LIBOR.

4.35 Equally, parties may enter into other risk reducing trades that are not compressed, and therefore don't reduce the overall notional amount, but nevertheless reduce the economic exposure of the parties, either to zero or at least partially.

4.36 If this type of activity is prevented, then market participants may not be able to unwind or reduce their existing derivative portfolios via these mechanisms. That would not be in line with our overall transition objectives.

4.37 In addition, where firms or their clients have existing exposures linked to US dollar LIBOR, new derivative transactions may also be needed to ensure this exposure can be risk managed appropriately (ie through adequate hedging arrangements). This process may involve banks 'market making' (ie providing prices) to support their clients in entering these transactions. Removing market participants' ability to manage risk associated with existing US dollar LIBOR exposure would undermine the effective and orderly functioning of markets, and potentially increase trading costs.

**4.38** Where trades are cleared, there may be procedural requirements that arise, such as participating in CCP auction procedures in case of member default. To ensure the effective and safe functioning of CCPs, new transactions for this purpose would need to be permitted, along with new transactions that may be required to hedge the resulting exposure.

**4.39** Finally, we understand that some contracts have fallbacks that enable linear interpolation where a benchmark is ceasing, but other 'bookend' versions of that same benchmark are still available. For example under ISDA's IBOR Fallbacks, when the 1 week and 2 month US dollar LIBOR settings cease at the end of 2021, contracts referencing these settings will interpolate between the overnight / 1 month, and 1 month / 3 month US dollar LIBOR settings respectively, until mid-2023. To enable these contracts to be wound down in an orderly way, it is important that market participants can activate these fallbacks (which require 'new use' of the relevant continuing US dollar LIBOR settings under the terms of the BMR).

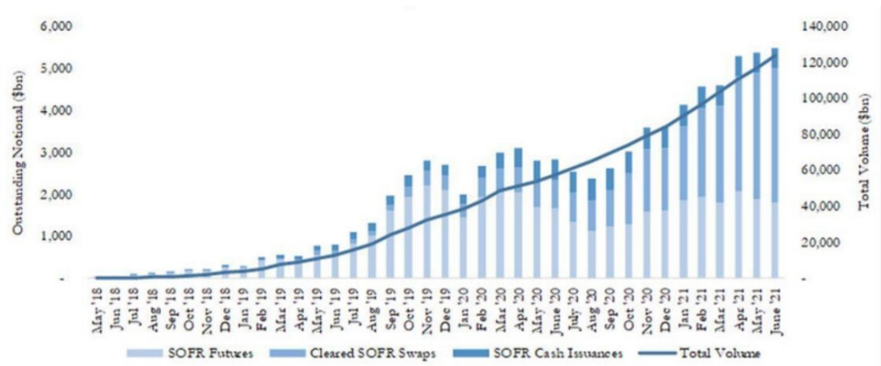
**4.40** We therefore consider that these sorts of limited exceptions from a prohibition on new use of the continuing US dollar LIBOR settings would support our integrity objective.

### b. Ensuring users have access to suitable replacement benchmarks

**4.41** Where adequate alternatives are not available, or are not widely used, the risks to consumer protection and integrity from shutting down access to the relevant markets by restricting new use of the ceasing benchmark might outweigh the risks set out at 4.16. However, we consider that there are suitable replacement benchmarks available for the continuing US dollar LIBOR settings.

**4.42** Since SOFR's publication began in 2018, approximately US $1 trillion notional in floating rate instruments tied to SOFR have been issued, of which about half is still outstanding. Figure 1 below demonstrates similar progress in other asset classes, indicating that SOFR is now a viable alternative for these products. There is also an active SOFR mortgage market in the US.

**Figure 1: SOFR – Outstanding Notional and Total Volume**




*As of June 30, 2021*
*Source: CME Group, LCH, ICE*
*Note: Cleared SOFR swaps figures represent one side of each transaction (single-sided)*

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## International consistency

**4.43** There is already consensus across international authorities that new use of the continuing US dollar LIBOR settings must cease as soon as practicable, and by end-2021 at the latest.

**4.44** In November 2020, US authorities issued supervisory guidance restricting new use of these US dollar LIBOR settings after end-2021. The guidance notes that new use of US dollar LIBOR after year-end and the associated consumer protection, litigation and reputational risks would create safety and soundness risks.

**4.45** This guidance also sets out 4 specific circumstances when it would be appropriate for firms to enter into new contracts referencing the continuing US dollar LIBOR settings after year-end (broadly speaking for 'risk management purposes', as described in 4.33 to 4.40.

**4.46** The FSB and IOSCO support this approach. Given the significant exposure of PRA / FCA regulated firms to US dollar LIBOR, we also set clear expectations for firms to cease new use of the continuing US dollar LIBOR settings as soon as practicable and no later than the end of 2021, in line with the US supervisory guidance. This was communicated through a Dear CEO letter published in March 2021.

**4.47** As a result, there is already a concerted and globally consistent supervisory expectation regarding stopping new use of the continuing US dollar LIBOR settings.

**4.48** As set out in the Feedback Statement to our policy consultation, we received significant feedback about the importance of international consistency when restricting new use of ceasing benchmarks, particularly in relation to US dollar LIBOR. Respondents said that differences in approach could create uncertainty, and that consistency is important to avoid fragmenting treatment across portfolios and potential regulatory arbitrage across jurisdictions.

**4.49** Therefore, we think it is appropriate – and important – to align the prohibition on new use of the continuing US dollar LIBOR settings and any exceptions with those in existing US supervisory guidance. This would minimise the risk of confusion and possible regulatory arbitrage, which could occur if one jurisdiction's exceptions are considered different from another's. While we are proposing an extra exception compared with US supervisory guidance – for interpolation within contractual fallbacks – this is because of the way the definitions of 'use' work under the BMR. We consider the outcomes would be aligned in practice.

## The degree to which we can set out clear and practicable criteria for the market

**4.50** US authorities have already set out criteria describing where they consider new use of the continuing US dollar LIBOR settings after year-end would be appropriate. A similar approach has been taken in sterling markets through the industry-led RFR Working Group milestones for stopping new use of sterling LIBOR derivatives. Our experience with the sterling LIBOR milestones demonstrates that such criteria can be implemented by the market, though we recognise that legal restrictions on new use are binding in a way which industry milestones are not.

## When would the restrictions apply?

**4.51** Our policy says that if we decide to exercise our new use restriction power, we would need to decide when the restriction would apply.

**4.52** Market participants have been aware since July 2017 of the need to transition away from the LIBOR benchmarks, and that their availability could not be guaranteed beyond end-2021.

**4.53** In November 2020, IBA announced it would consult on its intention that the overnight, 1m, 3m, 6m and 12m US dollar LIBOR panels would cease at end-June 2023. This date was subsequently confirmed by IBA and us on 5 March 2021. At the same time, US authorities issued their supervisory guidance on stopping new use of US dollar LIBOR at end-2021.The FCA also signalled its support for this approach and that we may consider exercising our new use restriction power. In March 2021, we set supervisory expectations that UK firms meet this deadline.

**4.54** We consider market participants have had enough notice of the need to stop using the continuing US dollar LIBOR settings in new contracts and should already be working towards an end-2021 deadline (in line with our supervisory expectations). Our proposed decision would provide further legal backing to this approach.

**4.55** To ensure a globally coordinated approach, we are proposing that the prohibition on new use of the continuing US dollar LIBOR settings would apply from 1 January 2022.

**Q9:** **Do you have any views or comments on the rationale for our proposed decision to restrict new use?**

# Annex 1
# Questions in this paper

**Q1:** **Do you agree with the manner in which we propose to exercise our legacy use power?**

**Q2:** **Do you have any other views or comments on our proposed exercise of our legacy use power?**

**Q3:** **Do you agree that we have identified correctly the main groups of contracts that do not currently contain adequate provisions to deal with a prohibition on use?**

**Q4:** **Do you have any views or comments on the rationale for our proposed legacy use decision?**

**Q5:** **Do you agree with the manner in which we propose to exercise our new use restriction power?**

**Q6:** **Do you have any comments on the proposed exceptions to the new use prohibition?**

**Q7:** **Do you have any other views or comments on our proposed decision to exercise our new use restriction power?**

**Q8:** **Do you agree that we have identified correctly the potential risks of new use of US dollar LIBOR?**

**Q9:** **Do you have any views or comments on the rationale for our proposed decision to restrict new use?**

# Annex 2
# Abbreviations in this document

| Abbreviation | Description |
|---|---|
| **BMR** | Benchmarks Regulation |
| **CCPs** | Central Counterparty clearing houses |
| **CFTC** | Commodity Futures Trading Commission |
| **FS Act** | Financial Services Act 2021 |
| **FSB** | Financial Stability Board |
| **IBA** | ICE Benchmark Administration |
| **IOSCO** | International Organization of Securities Commissions |
| **ICMA** | International Capital Market Association |
| **ISDA** | International Swaps and Derivatives Association |
| **OIS** | Overnight Indexed Swap |
| **PRA** | The UK Prudential Regulation Authority |
| **RFR** | Risk-Free Rate |
| **SOFR** | Secured Overnight Financing Rate |
| **SONIA** | Sterling Overnight Index Average |
| **RFRWG** | Working Group on Sterling Risk-Free Reference Rates |

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