

This Decision Notice has been referred to the Upper Tribunal to determine what (if any) the appropriate action is for the Authority to take, and remit the matter to the Authority with such directions as the Tribunal considers appropriate.



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DECISION NOTICE

To: Barclays Bank plc ("Barclays Bank")
FRN: 122702
Address: One Churchill Place, London E14 5HP
Date: 23 September 2022

ACTION

1. For the reasons given in this Notice, the Authority has decided to impose on Barclays Bank a financial penalty of £10 million pursuant to section 91 of the Act.

SUMMARY OF REASONS

2. Barclays Bank is a UK retail bank with securities admitted to listing on the Official List of the Authority and admitted to trading on the London Stock Exchange. It is a subsidiary of Barclays plc. Barclays plc is a global banking and financial services

company headquartered in London. Barclays plc has securities admitted to premium listing on the Official List of the Authority and admitted to trading on the Main Market of the London Stock Exchange. It is also quoted on the New York Stock Exchange. At the end of June 2008, it had a market capitalisation of just over £19 billion. In this Notice, except where the Authority considers it is necessary and/or helpful to specify the relevant entity, the term "Barclays" is used to refer to Barclays plc and/or Barclays Bank.

3. In June and October 2008, Barclays undertook two capital raisings pursuant to which it intended to raise up to £4.5 billion and £7.3 billion respectively.
4. As part of the capital raising in October 2008, Barclays Bank issued certain financial instruments and published associated prospectuses. The capital raisings took place against the background of the global financial crisis, which increased dramatically in severity during this period culminating in the collapse of Lehman Brothers in September 2008 and the UK Government's £37 billion injection of capital into certain major UK banks in October 2008.
5. In each of Barclays' capital raisings, a small number of 'anchor investors' agreed to participate, including the Qatar Investment Authority, via its investment arm Qatar Holding LLC ("QH"), and a Qatari investment vehicle, Challenger Universal Limited ("Challenger") (together the "Qatari entities"). In each capital raising, the Qatari entities agreed to participate for up to £2.3 billion, representing over 50% of the total capital raised in June 2008 and over 31% of the capital raised in October 2008. The anchor investors were paid certain fees and commissions in connection with their participation in the capital raisings.
6. At the same time as the capital raisings:
 - (1) in June 2008, Barclays plc; and
 - (2) in October 2008, Barclays Bankentered into advisory agreements with QH (the "Agreements").
7. Pursuant to the Agreements, QH was to be paid fees amounting to a total of £322 million, of which £42 million was to be paid pursuant to the advisory agreement entered into in June 2008 (the "June Agreement") and £280 million was to be paid

pursuant to the advisory agreement entered into in October 2008 (the "October Agreement"). In return, the June Agreement provided that QH was to provide various services to Barclays over a period of three years in connection with the development of Barclays' business in the Middle East. The services to be provided by QH were not specified or explained in the June Agreement, which stated that their type and scale would be refined as the relationship developed. The October Agreement provided that QH, possibly in association with Challenger, would provide various services in addition to those provided under the June Agreement over a period of five years, and listed six specific services that these would include. The Agreements formed part of the basis on which the Qatari entities agreed to participate in the capital raisings.

8. In its announcement and prospectus associated with the June capital raising, Barclays plc disclosed the existence of the June Agreement. In the prospectus, Barclays plc also disclosed the commission that the Qatari entities and the other anchor investors would receive in consideration for their participation in the June capital raising. Barclays plc did not disclose the fees to be paid to QH under the June Agreement, nor their connection to the Qatari entities' participation in the June capital raising.
9. The announcement by Barclays plc and, between them, the three prospectuses associated with the October capital raising (two of which were published by Barclays Bank, with the other published by Barclays plc), and Barclays plc's circular to shareholders seeking approval of that capital raising, disclosed the commissions that the Qatari entities and the other anchor investor would receive in consideration for their participation in the October capital raising. They also disclosed that QH would receive an arrangement fee. The existence of the October Agreement was not disclosed in the announcement, the prospectuses or the circular. Thus, Barclays did not disclose the fees to be paid under the October Agreement or their connection to the Qatari entities' participation in the October capital raising.
10. The disclosure of the fees to be paid under the October Agreement and their connection to the Qatari entities' participation in the October capital raising would have had a material impact on the terms of the capital raising as disclosed. The disclosure of the fees under the October Agreement as payments associated with the capital raising would have more than tripled the disclosed level of payments due to the Qatari entities in connection with their participation in the October

capital raising. This would have been highly relevant information to shareholders, investors and the wider market in October 2008 when the capital raising required approval by shareholders, the disclosed costs were already perceived to be very expensive and there was financing available from the UK Government.

11. Accordingly, Barclays' failure to disclose these matters in the prospectuses associated with the October capital raising rendered the information in them misleading, false and/or deceptive and meant that it omitted matters likely to affect its import. Barclays Bank failed to take reasonable care to ensure that the information contained in the prospectuses that it published was not misleading, false or deceptive and did not omit anything likely to affect its import, in breach of LR 1.3.3R.
12. Barclays received legal advice that the October Agreement did not need to be disclosed providing it was satisfied that the value it could expect to receive from services pursuant to the October Agreement fully justified the fees to be paid to QH. However, notwithstanding this advice, Barclays Bank failed to take reasonable care to comply with its obligations under LR 1.3.3R because:
 - (1) Barclays Bank did not consider its obligations under LR 1.3.3R, or seek, or obtain, specific legal advice regarding those obligations.
 - (2) When advising on disclosure, Barclays' external lawyers were not fully informed, and Barclays Bank did not take reasonable care to ensure they were fully informed, of the connection between the October Agreement and the capital raising. In particular, they were not aware that the genesis of the October Agreement was QH's requirement for additional fees for participating in the capital raising, that the Qatari entities would not participate in the capital raising if QH did not receive these additional fees, that the October Agreement was connected to the capital raising and was not a separate commercial transaction, and that the fees payable under the October Agreement were calculated by reference to the value required by QH.
 - (3) Barclays Bank did not take reasonable care to ensure that the value Barclays could expect to receive from services pursuant to the October Agreement fully justified the fees to be paid to QH under the October Agreement:

- (a) No reasonable attempt was made by Barclays Bank to assess the value of the opportunities that the October Agreement offered before it was entered into. Instead, a Barclays senior manager made a rapid and informal judgement, which they later described to the Authority as a “*commercial bet*”. There was no systematic assessment, no documented assessment and no coherent effort at valuation. There was also no assessment before the October Agreement was entered into of the value it added over and above the opportunities Barclays would in any event have had in the Middle East, and any additional benefit that would have flowed from the Qatari entities’ participation in the October capital raising, and there was no assessment of the value the October Agreement added in excess of Barclays’ existing opportunities under the June Agreement. In addition, there was no assessment of the gross income, related costs and hence net profit that needed to be generated to justify the fees.
- (b) The fees were calculated by reference to what QH required (which was financially equivalent to QH having invested in both the June and October capital raisings at 130p per share) in return for its investment in the October capital raising, rather than by reference to an assessment of the value of the services that the Qatari entities could provide. No assessment of the value was undertaken when QH made a late requirement for a significant increase in the fees due to adverse movements in Barclays plc’s share price and warrant valuations.
- (4) Neither the Board of Barclays plc nor the Board Finance Committee, which was given authority by the Board to take decisions on behalf of the Board in relation to the October capital raising, was fully informed of the full facts in relation to the October Agreement. In particular, the Board’s approval was required for the £280 million fee payable to QH under the October Agreement, but neither the Board nor the Board Finance Committee was made aware of the £280 million fee or how it was calculated. They were also not informed of how Barclays senior managers had satisfied themselves that Barclays could receive value at least equal to the £280 million fee.
13. The Authority considers that Barclays Bank, including a senior manager (whose state of mind the Authority attributes to Barclays Bank in the circumstances) acted recklessly, in unreasonably approving the prospectuses that it published in

circumstances where Barclays Bank must have been aware that it had not taken reasonable care to ensure that the value Barclays expected to receive from services pursuant to the October Agreement fully justified the fees that Barclays was required to pay the Qatari entities under it, amounting to £280 million over five years, and was therefore aware of the clear risk that the omission of any reference to the October Agreement, the fees to be paid to QH under the October Agreement and their connection to the October capital raising from the prospectuses published by Barclays Bank associated with the October capital raising rendered the information contained in those documents misleading, false and/or deceptive and meant that it omitted matters likely to affect its import.

14. The Authority therefore has decided to impose a financial penalty on Barclays Bank in the amount of £10 million pursuant to section 91 of the Act for breaching LR 1.3.3R.

DEFINITIONS

15. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000

"Agreements" means the June Agreement and the October Agreement

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

"Barclays" means Barclays plc and/or Barclays Bank

"Barclays Bank" means Barclays Bank plc

"Board" means the board of directors of Barclays plc

"capital raisings" means the June capital raising and the October capital raising

"Challenger" means Challenger Universal Limited, a Qatari investment vehicle

"Conditional Places" has the meaning set out at paragraph 17 of this Notice

"DEPP" means the Decision Procedure and Penalties Manual, part of the Handbook

"Handbook" means the Authority's Handbook of Rules and Guidance

"HBOS" means Halifax Bank of Scotland

"June Agreement" means the advisory agreement entered into by Barclays plc and QH in June 2008

"June capital raising" means the capital raising undertaken by Barclays in June 2008

"MCN" means Mandatorily Convertible Note

"October Agreement" means the advisory agreement entered into by Barclays Bank and QH in October 2008

"October capital raising" means the capital raising undertaken by Barclays in October 2008

"PCP" means PCP Capital Partners LLP

"Project Tinbac" means the potential oil price hedging transaction discussed by Barclays and the Qatari entities in October 2008

"Qatari entities" means QH and Challenger

"QC" means Queen's Counsel

"QH" means Qatar Holding LLC, the investment arm of Qatar Investment Authority

"RBS" means Royal Bank of Scotland

"RCI" means Reserve Capital Instrument

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below)

"Senior Manager A" means an individual who was a senior manager and a director at Barclays plc and Barclays Bank

"SFO" means the Serious Fraud Office

"SPV" means special purpose vehicle

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

“the Warning Notice” means the warning notice given to Barclays Bank plc dated 13 September 2013

FACTS AND MATTERS

Background to the June capital raising

16. Barclays’ capital raising in June 2008 took place against the backdrop of the financial crisis that had engulfed the global financial system from August 2007 onwards. RBS and HBOS had announced large rights issues in April 2008. It was generally expected that Barclays would also need to raise capital in order to improve its Core Tier 1 capital ratio, a key measure of a bank’s financial strength.
17. In mid-May 2008, Barclays proposed to raise between £3 billion and £4.5 billion in capital. The proposed structure of the capital raising would involve a significant proportion of shares being placed at a discount with certain anchor investors on a conditional basis (the “Conditional Placees”), subject to giving existing shareholders the right to “claw back” those shares via an open offer. This meant that the Conditional Placees would effectively underwrite the capital raising since they would be committed to subscribe for all shares not taken up by existing shareholders in the open offer.
18. It was determined by Barclays that the Conditional Placees would be paid a commission of 1.5% of their potential maximum subscription in return for this commitment.

Negotiations with QH concerning commissions

19. In late May and early June 2008, discussions were held between Barclays and QH about its potential participation in the June capital raising as a Conditional Placee.
20. On 3 June 2008, QH rejected Barclays’ proposal for a 1.5% commission and required a fee of 3.75% for its participation in the capital raising. (This also applied to Challenger when it subsequently agreed to participate in the June capital raising.) After exploring whether a different mechanism could be used so that QH received the additional value it had required, Barclays identified an advisory agreement as a mechanism by which this could be achieved. The proposed use of

an advisory agreement for this purpose was considered and approved within Barclays.

21. Around 11 June 2008, a conference call took place between two Barclays senior managers and a Barclays senior internal lawyer, the outcome of which was that it was agreed that Barclays could enter into an advisory agreement to meet QH's requirement for fees in excess of 3%, provided that Barclays "*could get full value for services*". One of the Barclays senior managers informed the Authority in interview that subsequently the other Barclays senior manager, having talked to them and a "*number of the product chiefs at Barclays Capital*", was satisfied that Barclays could get full value for services.
22. In the afternoon of 11 June 2008, during telephone calls between two Barclays senior managers, concerns were expressed about entering into an advisory agreement in circumstances where the subscription agreements associated with the capital raising expressly provided that Barclays had not entered into any other agreements with, or paid additional fees to, QH in connection with the capital raising, and whether it might be said that a payment to QH under the advisory agreement was "*just a fee in the back door*".
23. On 13 June 2008, a Barclays senior manager sent a memorandum to other Barclays senior managers and two Barclays senior internal lawyers. According to the Barclays senior internal lawyers in interview, the memorandum recorded the Barclays senior manager's discussions with QH, pursuant to which they understood that QH had accepted a commission of 1.5% for the capital raising and that QH's requirement for additional fees would be met by means of the advisory agreement.
24. Later that day, a Barclays senior internal lawyer sent an email to members of Barclays senior management and another Barclays senior internal lawyer setting out the type of disclosure wording that would need to be put in the prospectus for the June capital raising in respect of the advisory agreement. The proposed wording referred to the existence of the advisory agreement, but not the amount of fees payable under it. The email stated that this wording reflected "*The acceptance by [QH] that the placing commission is 1.5% only and that additional value must be provided for any additional payment*", that "*The advisory services agreement will be for 36 months at a fee of £1m per month payable in advance*" and that "*[QH] will deliver value for money by providing introductions, connections, local cultural advice etc to facilitate expansion of our business in the [Middle East]*."

We believe real and valuable opportunities will arise as a result. There will also be secondments and other items which may deliver more direct value back to us as well."

25. The Barclays senior internal lawyer said in the email that they had discussed the disclosure with Barclays' external lawyers, who were content with it in the circumstances described above. Barclays' external lawyers, however, had not been fully informed of the connection between the advisory agreement and the capital raising. In particular, they had not been made aware that the genesis of the advisory agreement was QH's requirement for additional fees for participating in the capital raising, that the Qatari entities would not participate in the capital raising if QH did not receive these additional fees, and that the agreement was connected to the capital raising and was not a separate commercial transaction.
26. It was subsequently agreed by Barclays that the Qatari entities would be paid an additional fee of 1.75% of their maximum commitment in the capital raising (a figure amounting to just over £40 million). This fee was in addition to the 1.5% commission that Barclays was paying to anchor investors. Barclays' external lawyers received an email sent on behalf of the Qatari entities on 16 June 2008 which mentioned this additional fee. However, Barclays' external lawyers did not understand that this was a reference to the fee to be paid to QH in respect of the advisory agreement and did not realise that the fee payable to QH under the advisory agreement was calculated by reference to the Qatari entities' maximum commitment in the capital raising. Barclays' external lawyers forwarded the email to Barclays, including to a Barclays senior internal lawyer who commented to two Barclays senior managers *"The fee is fixed at 1.5% as for the other investors. Any additional payment must be in exchange for additional value delivered and be independently justifiable"*.
27. Concerns were expressed within Barclays on 18 June 2008 that the calculation of the advisory fees as described above would *"look like 3.25%"*, which reflected the risk that they could be seen as payments to the Qatari entities for their participation in the capital raising.

The June Agreement

28. The June Agreement was signed by Senior Manager A on behalf of Barclays plc on 25 June 2008. It comprised a one-page letter from Barclays plc to QH, which

provided that QH would provide Barclays with "*various services ... in connection with the development of [Barclays'] business in the Middle East*" for three years, in return for payment of £42 million in four equal instalments during the first nine months of the agreement.

29. The figure of £42 million was calculated as described above by reference to 1.75% of the maximum potential amount of the Qatari entities' participation in the capital raising, plus interest from the effective date of the June Agreement on the basis that the Qatari entities would not receive these fees immediately. This resulted in a figure of £41,685,000, which was rounded up to £42 million. The figure of £42 million was inserted into the June Agreement in manuscript.
30. The services to be provided by QH were not further specified or explained in the June Agreement, which stated that the "*type and scale of services*" would be refined as the relationship developed.
31. In the early hours of 25 June 2008, the Qatari entities agreed to exchange the subscription letters in return for receipt of the signed June Agreement.
32. Also on 25 June 2008, Barclays plc announced the capital raising and published an associated prospectus. The prospectus disclosed that the Qatari entities and the other anchor investors would receive a commission of 1.5% in consideration for their participation in the capital raising. The announcement and prospectus referred to the June Agreement, stating "*Barclays is also pleased to have entered into an agreement for the provision of advisory services by Qatar Investment Authority to Barclays in the Middle East*", but did not disclose the fees paid under it, nor their connection to the Qatari entities' participation in the capital raising.
33. After the June capital raising, there were no discussions between Barclays and QH regarding the "*type and scale*" of services to be provided under the June Agreement. More generally, the existence of the June Agreement was largely ignored in Barclays' subsequent efforts to develop its business with QH, in Qatar or in the Middle East generally.

Background to the October capital raising

34. The global financial crisis had severely deepened by early October 2008, with Lehman Brothers announcing its bankruptcy and the US Government rescue of AIG in mid-September 2008.
35. On 22 September 2008, Barclays plc announced that it had acquired Lehman Brothers' North American investment banking and capital markets business. At around this time, Barclays contemplated obtaining further investment from the Qatari entities in support of this acquisition. It appears that Barclays offered the Qatari entities a fee of USD 39 million to obtain this further investment, which led to Barclays considering how they could justify paying this fee.
36. The possibility of using another advisory agreement was initially seen as unattractive. A Barclays senior manager expressed concern that *"it may raise questions about what they actually got last time round [in the June capital raising]"*, whilst a Barclays senior internal lawyer stated, *"we can't use a similar advisory arrangement because after all, how much advice do we need?"*.
37. Despite these concerns, an extension to the June Agreement was proposed in early October 2008 in order to meet the Qatari entities' fee requirements. On 6 October 2008, a Barclays senior manager was sent an email which set out the *"benefits of the advisory agreement to date"*. These benefits comprised providing assistance with Barclays' application to open a branch in Doha, an introduction to Qatar Telecom in connection with a potential transaction, discussions about a possible role on a transaction involving a UK listed company and help with Barclays' strategic thinking around expanding its franchise in the Middle East.
38. On 7 October 2008, a Barclays senior internal lawyer sent a copy of the draft extension to the June Agreement to Barclays' external lawyers. Barclays' external lawyers advised the Barclays senior internal lawyer that it would be *"defensible"* not to disclose the extension on the basis that (amongst other things) *"There is, we are informed, (a) demonstrable fair value from the first tranche of services and (b) good reason to believe that there will be demonstrable fair value to be had from the additional services"*. In an email summarising this advice, the Barclays senior internal lawyer informed other Barclays senior internal lawyers that *"The above is subject to the rider that, were the original and proposed supplemental agreements to cease to be held in confidence, we may be called upon to justify and explain the agreements, including their proximity to the July and proposed new [QH] subscriptions including the issue price discount relative to market value in each*

case. It would assist us then to have evidence of the value of services both contemplated at the outset and received."

39. A Barclays senior internal lawyer confirmed they would speak with a Barclays senior manager about the "*relevant evidence*". Subsequently, the proposed subscription relating to the Lehman Brothers' acquisition did not take place and the concept of an extension to the June Agreement was not considered again until later that month, in the context of the October capital raising.
40. On 8 October 2008, the UK Government announced measures "*to ensure the stability of the financial system and to protect ordinary savers, depositors, businesses and borrowers*". This included a requirement for UK banks, including Barclays, to increase their capital position by £25 billion. The Government would make available £25 billion for drawing as preference share capital and an additional £25 billion as preference or equity capital if required. At a Board meeting that day, the Board expressed "*a clear preference ... not to accept the offer of government capital*", noting that "*there would inevitably be constraints placed on the bank relating to dividends, operational flexibility and executive compensation*".
41. On 9 and 10 October 2008, global stock markets fell sharply. The Japanese, American and UK markets all closed down approximately 20% on the week. Barclays plc's shares fell by 44%.
42. On 13 October 2008, the UK Government announced that it was injecting £37 billion of capital into certain major UK banks (not including Barclays).
43. On the same day, Barclays plc announced that it was "*well capitalised, profitable and had access to the liquidity required to support its business*". However, it also referred to a "*need to maximise capital resources in the current economic climate*" and stated that "*taking into account the new higher capital targets which [the Authority] has set for all UK banks*" Barclays expected to raise £6.5 billion "*without calling on ... Government funding*". It was envisaged that this would be achieved via a mixture of preference shares and equity.

Early discussions with the Qatari entities

44. A Barclays senior manager met with representatives of the Qatari entities on 12 October 2008 to discuss their participation in the October capital raising. Those

representatives expressed interest in a structure involving the issue of preference shares and warrants.

45. There was a further meeting over dinner between Barclays senior managers (including Senior Manager A) and representatives of the Qatari entities on 21 October 2008. Those representatives confirmed their interest in investing £2 billion in Barclays and introducing certain other investors. It was clear to the Barclays senior managers that the Qatari entities would be very demanding on “economics” (i.e. the financial terms for investing), with the value of their investment in Barclays having reduced significantly since the June capital raising, but they were generally supportive of Barclays’ strategic development. There was also discussion around appointing Barclays to manage a large oil price hedging contract, known within Barclays as Project Tinbac, which Senior Manager A commented “*offers lots of upside to us*”.
46. The proposed structure of the capital raising at this stage involved the issue by Barclays Bank of Reserve Capital Instruments and in due course Mandatorily Convertible Notes. The RCIs were securities that provided for payment of annual coupons and were redeemable at the option of Barclays Bank after a specified date. The MCNs would operate for nine months as a bond with a coupon payable, and then mandatorily convert to equity shares at a pre-agreed discount at the end of that period. The capital raising subsequently included for nominal consideration warrants exercisable at any time for a five-year period (to be issued by Barclays plc) in association with the issue of RCIs.
47. On 22 October 2008, Barclays plc’s Board Finance Committee, which the previous day had been given authority by Barclays plc’s Board to take decisions on behalf of the Board in relation to the capital raising, received an update from Senior Manager A on the progress of the October capital raising. The minutes recorded that the Qatari entities would be seeking significant fees, expected to be £325 million. (Manuscript notes of the meeting recorded that the Qatari entities had firmly rejected Barclays’ proposal of £120 million and were seeking £600 million.) One Board Finance Committee member is recorded as stating that fees in excess of £325 million would be “*hard to justify*”. Project Tinbac was also discussed, with it being said that it might contribute USD 250 million to Barclays.
48. On the same day (22 October 2008), two Barclays senior managers were informed by the Qatari entities of their financial requirements in order to participate in the

October capital raising. The Qatari entities would have to be provided with sufficient “value” in the October capital raising that it would be financially equivalent to them having invested in both the June and October capital raisings at 130p per share. This represented a very significant challenge given that the Qatari entities had subscribed for shares at 282p per share in June 2008, and Barclays plc’s share price on 22 October 2008 was 224.5p.

49. The Barclays senior managers calculated that, in order to meet this requirement, the October capital raising would have to provide economic value to the Qatari entities equivalent to £600 million or more. This was broadly consistent with the amount that the Qatari entities had, on the previous day, stated that they were seeking.
50. The Barclays senior managers analysed ways of providing additional value to the Qatari entities within the structure of the capital raising. They concluded that it would be impossible to provide sufficient value to the Qatari entities in the capital raising to meet their requirements, even on improved terms (see below). Meeting the Qatari entities’ requirements would draw unfavourable comparisons with the cost of capital available from the UK Government and was considered likely to be unacceptable to Barclays’ existing shareholders. This left a significant “value gap” of about £200 million between what the Qatari entities were seeking and what Barclays could offer within the confines of the capital raising. The October Agreement subsequently became the mechanism by which Barclays bridged this value gap.
51. On 23 October 2008, the Qatari entities temporarily pulled out of the October capital raising. This jeopardised the entire capital raising. In response, Barclays improved the terms of the capital raising, including offering warrants for nominal consideration with the RCIs.
52. The improved capital raising terms did not resolve the issue of the value gap. From 24 October 2008, Barclays began to include an advisory fee payable to QH as part of its calculations of the cost of the October capital raising.

Legal advice obtained in relation to the October capital raising

53. On 24 October 2008, Barclays’ external lawyers instructed a Queen’s Counsel to advise on various issues relating to, amongst other things, financial assistance, the

payment of commissions and possible shareholder challenges arising from the proposed capital raising. The Instructions to Counsel made reference to a "*co-operation agreement*" with the Qatari entities, pursuant to which the parties would agree to further their mutual business interests in a particular region, and asked the QC to advise on whether it would be irrelevant for the purposes of unlawful assistance or commissions, provided that it was on normal commercial arm's length terms and provided a bona fide corporate benefit to Barclays. The Instructions to Counsel did not refer to any fees payable under the agreement or request advice on any disclosure issues associated with it.

54. The QC provided their advice the same day. They did not specifically advise on the issue of disclosure of the "*co-operation agreement*", but emphasised the "*need for full disclosure*" generally to minimise the risk of successful shareholder challenge, adding that "*The financial terms of the capital raising arrangements, and in particular fees payable to investors, would need to be fully transparent*".
55. Following receipt of the QC's advice, Senior Manager A confirmed to a Barclays senior internal lawyer in a telephone call that any additional payments to the Qatari entities (beyond what would be paid within the structure of the capital raising) would be for other commercial services and at market rate. The Barclays senior internal lawyer subsequently spoke with a Barclays external lawyer, informing them that, in recognition of the overall relationship between Barclays and the Qatari entities, Barclays intended to pay approximately £120 million in fees to the Qatari entities via a separate and "*not connected*" commercial arrangement, and that this would be "*a commercial trans'n and not for the capital raising*". According to the Barclays senior internal lawyer's notes of the discussion, the Barclays external lawyer "*agreed this was fine and had been confirmed by Counsel*", and commented that, as no equity prospectus was being produced, there was no need to consider whether the separate transaction needed to be disclosed. The Barclays senior internal lawyer told the Authority in interview that they were relying upon Senior Manager A's confirmation mentioned above when characterising the proposed arrangement in this way to the Barclays external lawyer. The Barclays external lawyer told the Authority in interview that they were not aware that Barclays was considering entering into an advisory agreement in response to a requirement by the Qatari entities for additional value in the October capital raising. This was consistent with the interview evidence of the other senior external lawyer advising Barclays in relation to the October capital raising.

Meetings of the Board and the Board Finance Committee on 26, 27 and 28 October 2008

56. Barclays plc's Board met on 26 and 27 October 2008. By this stage, the key terms of the October capital raising were broadly as they would be announced on 31 October 2008.
57. Manuscript notes of the Board meeting on 26 October 2008 refer to a "*broader arrangement*" with the Qatari entities and "*co-operative actions*" for which it appears the Board understood an additional fee of £115 million would be paid.
58. A paper circulated in advance of the Board meeting on 27 October 2008 referred in a footnote to the cost of the October Agreement as part of the cost of the October capital raising.
59. At the Board meeting on 27 October 2008, the Board approved the proposed terms of the capital raising and confirmed that the delegation of authority by the Board to the Board Finance Committee at the meeting on 21 October 2008 remained in effect. The following day, in order to avoid delay in implementing the capital raising, the Board Finance Committee delegated authority to finalise all arrangements in connection with the capital raising to a non-executive director and Senior Manager A, acting jointly.

The draft October Agreement

60. A draft of the October Agreement was sent on behalf of a Barclays senior manager to a Barclays internal lawyer on 30 October 2008, the day before the capital raising was announced. It was almost identical in content to the June Agreement, but was expressed as providing "*various services ... in addition to*" those set out in the June Agreement. It did not include a figure for the amount of fees to be paid.

Final negotiations with the Qatari entities

61. On 30 October 2008, a representative of the Qatari entities expressed concern to two Barclays senior managers that the terms of the October capital raising would not satisfy their requirement for value equivalent to 130p per share for their investments across the June and October capital raisings.

62. At a meeting later that day, representatives of the Qatari entities reiterated their view to two Barclays senior managers that they were not being provided with sufficient value for their participation in the capital raising. Manuscript notes taken by one of the senior managers at the meeting referred to a requirement by the Qatari entities for value equivalent to £758 million (an increase from the £600 million previously sought due to movements in Barclays plc's share price and warrant valuations). The notes went on to value each element of the proposed capital raising, estimating a total value of £452 million for the Qatari entities. This left a value gap of £306 million. According to further notes taken by the senior manager after the meeting, this value gap was only partially met by the proposed fees under the October Agreement, which had by that stage increased to £185 million.
63. This late requirement for additional value by the Qatari entities was considered by Barclays senior managers (including Senior Manager A). An increase in the amount of fees payable under the October Agreement was approved by Senior Manager A in order to meet the requirement. Senior Manager A described this as a "*commercial bet*" in interview with the Authority. As a result, the fees payable under the October Agreement increased to £280 million. According to Barclays' internal governance procedures, Barclays plc's Board was required to approve any transaction which exceeded £150 million in size. However, neither the Board nor the Board Finance Committee, nor the non-executive director to whom, together with Senior Manager A, authority was delegated by the Board Finance Committee on 28 October 2008, was aware of this level of fees or how it was calculated. They were also not informed of how Barclays senior managers had satisfied themselves that Barclays could receive value from services under the October Agreement at least equal to the £280 million fee.

Signing of the October Agreement

64. A Barclays senior manager signed the October Agreement on behalf of Barclays Bank on 31 October 2008. It comprised a two-page letter from Barclays Bank to QH, which started by saying that it was an extension of the June Agreement and was being entered into "*in recognition of the great success of the agreement to date, and the enormous benefits we have derived from your assistance and introduction to business opportunities*". The letter clarified that the terms and conditions of the June Agreement "*continue in full force and effect, subject to the variations set out in this letter*". The letter then stated that QH would provide

Barclays with "*various services ... in addition to*" those provided under the June Agreement and that QH may provide some or all of the services in association with Challenger. Unlike the draft circulated on the previous day, it specified that those services would include:

- (1) The development of Barclays' business in the Middle East;
 - (2) The furtherance and execution of Barclays' emerging markets business strategy;
 - (3) The expansion of Barclays' global commodities business;
 - (4) Referral of opportunities in the oil and gas business sectors;
 - (5) Introduction of infrastructure advisory and financing opportunities; and
 - (6) Introduction of potential investors, clients or counterparties interested in conducting a variety of business with Barclays.
65. The services were to be provided over a period of five years, in return for which Barclays Bank would pay 20 equal quarterly instalments of £14 million, a total of £280 million.
66. Similarly to the June Agreement, the existence of the October Agreement was largely ignored in Barclays' subsequent efforts to develop its business with the Qatari entities, in Qatar or in the Middle East generally. For example, a briefing note prepared in advance of a meeting between senior Barclays personnel and representatives of the Qatar Investment Authority and QH on 6 June 2011 described in detail Barclays' relationship with Qatar since 2008, but did not mention the Agreements. By contrast, the note did mention the Qatari entities' investment in Barclays.

Disclosure of the October capital raising

67. On 31 October 2008, Barclays plc announced the October capital raising. Significant concerns were raised by market analysts at the time, amongst other things, regarding the high cost of the October capital raising (including fees) and comparisons to the cost of capital available from the UK Government.

68. On 7 November 2008, Barclays plc issued a shareholder circular seeking the approval of Barclays plc's shareholders for the October capital raising. A general meeting took place on 24 November 2008, at which Barclays plc's shareholders gave their approval.
69. The following day (25 November 2008), Barclays plc published the prospectus relating to the issue of warrants and Barclays Bank published the prospectuses relating to the issue of RCIs and MCNs. The warrants prospectus confirmed that Barclays plc and its directors accepted responsibility for the information contained in the prospectus and stated that to the best of their knowledge, "*(having taken all reasonable care to ensure that such is the case), the information contained in this Prospectus is in accordance with the facts and does not omit anything to affect the import of such information.*" The other prospectuses contained similar wording in respect of Barclays Bank.
70. The announcement, the shareholder circular and, between them, the three prospectuses associated with the October capital raising disclosed the commissions that the Qatari entities and the other anchor investor would receive in consideration for their participation in the October capital raising. They also disclosed that QH would receive an arrangement fee. Neither the announcement, the shareholder circular nor any of the prospectuses published by Barclays disclosed the October Agreement (and thus did not disclose the fees paid under it, nor their connection to the Qatari entities' participation in the capital raising).

Judgment of Waksman J in the PCP case¹

71. On 26 February 2021, Mr Justice Waksman issued his judgment in the PCP case. PCP was the original owner of three SPVs which agreed to invest in the October capital raising, but lost control of the SPVs on 20 November 2008, one week before the subscriptions were completed by the payment of the monies due by the investors. PCP claimed that, in October 2008, a Barclays senior manager had falsely represented to the principal of PCP that, amongst other things, the SPVs were getting the "same deal" in respect of the investment as the Qatari entities,

¹ *PCP Capital Partners LLP & PCP International Finance Limited v Barclays Bank plc*¹ [2021] EWHC 307 (Comm)

and that it relied upon this representation (and other false representations) by causing the SPVs to subscribe a total of £3.25 billion in the October capital raising. Further, PCP alleged that if the misrepresentations had not been made, it would have negotiated with Barclays for the same deal, *pro rata*, for the SPVs and would have obtained significant additional value.

72. Waksman J found that the “same deal” representation was made as alleged by PCP and that PCP relied on it. Further, he found that the representation was false because the October Agreement was clearly part of the price required by and paid to the Qatari entities for their investment in the October capital raising and was part of the deal. He also found that the Barclays senior manager (who had signed the October Agreement on behalf of Barclays Bank) made this false representation knowingly; in other words, they knew that the SPVs were not getting the same deal as the Qatari entities. As for causation, Waksman J found that, had PCP known the truth, it would have negotiated with Barclays for the same deal, *pro rata*, as the Qatari entities, and would have obtained additional value of £615 million (subject to the approval of Barclays’ shareholders, of which Waksman J considered there was a 60% chance).
73. In his judgment Waksman J considered the June Agreement to be important context for the events in October 2008. He commented that the June Agreement “*was clearly part of the package deal for [the Qatari entities] along with the subscription agreement*” and that “*the documents do not appear to have received much if any detailed consideration at the time in terms of what particular services would be offered and how they could be valued at £42m over 3 years*”.
74. In respect of the October Agreement, Waksman J noted that the “*commercial reality was that there was a connection*” between it and the October capital raising and that the October Agreement “*was clearly designed as a mechanism to enable [the Qatari entities] to obtain their blended entry price of 130p*”. He also stated, “*If [the October Agreement] had not been made and there was no mechanism to pay the £280m, [the Qatari entities] would not have invested, as Barclays well knew*”.
75. For the avoidance of doubt, in this Notice the Authority makes no criticism of any of the investors.

FAILINGS

76. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.

LR 1.3.3R

77. For the reasons set out in paragraphs 78 to 82 below, the Authority considers that Barclays Bank failed to take reasonable care to ensure that the information contained in the prospectuses for RCIs and MCNs that it published in connection with the October capital raising was not misleading, false or deceptive and did not omit anything likely to affect its import, in breach of LR 1.3.3R.
78. The October Agreement formed part of the basis on which the Qatari entities agreed to participate in the October capital raising. Barclays Bank was aware of this, but did not disclose the fees paid under the October Agreement, nor their connection to the Qatari entities' participation in the October capital raising.
79. The Qatari entities agreed to participate for over 31% of the capital raised in October 2008. Disclosure of the fees payable under the October Agreement as payments in connection with the Qatari entities' participation in the October capital raising would have more than tripled the disclosed level of payments to the Qatari entities in connection with their participation in the capital raising from £128 million to more than £408 million. This would have been highly relevant to shareholders, investors and the wider market.
80. Disclosure of the fees payable under the October Agreement would have increased the total disclosed payments in connection with the Qatari entities' participation in the October capital raising from just over £256 million (3.5% of the total capital due to be raised) to more than £536 million (7.34% of the capital due to be raised). These matters would have been particularly relevant in circumstances where there were concerns about the high cost of the October capital raising and the availability of capital from the UK Government.
81. Accordingly, the omission of these details from the prospectuses published by Barclays Bank associated with the October capital raising rendered the information in them misleading, false and/or deceptive and meant that it omitted matters likely to affect its import.
82. Barclays received legal advice that it did not need to disclose any information in respect of the October Agreement, providing that it was satisfied that the value it could expect to receive from the October Agreement fully justified the fees to be

paid to QH thereunder. However, notwithstanding this advice, Barclays Bank failed to take reasonable care to comply with its obligations under LR 1.3.3R because:

- (1) Barclays Bank did not consider its obligations under LR 1.3.3R in respect of the October Agreement, or seek, or obtain, specific legal advice regarding those obligations.
- (2) When advising on disclosure, Barclays' external lawyers were not fully informed, and Barclays Bank did not take reasonable care to ensure they were fully informed, of the connection between the October Agreement and the October capital raising. In particular, they were not aware that the genesis of the October Agreement was QH's requirement for additional fees for participating in the capital raising, that the Qatari entities would not participate in the capital raising if QH did not receive these additional fees, that the October Agreement was connected to the capital raising and was not a separate commercial transaction, and that the fees payable under the October Agreement were calculated by reference to the value required by QH.
- (3) Barclays Bank did not take reasonable care to ensure that the value Barclays could expect to receive from services pursuant to the October Agreement fully justified the fees to be paid to QH under the October Agreement:
 - (a) No reasonable attempt was made by Barclays Bank to assess the value of the opportunities that the October Agreement offered before it was entered into. Instead, Senior Manager A made a rapid and informal judgement, which they later described to the Authority as a "*commercial bet*". There was no systematic assessment, no documented assessment and no coherent effort at valuation. There was also no assessment before the October Agreement was entered into of the value it added over and above the opportunities Barclays would in any event have had in the Middle East, and any additional benefit that would have flowed from the Qatari entities' participation in the October capital raising, and there was no assessment of the value the October Agreement added in excess of Barclays' existing opportunities under the June Agreement. In addition, there was no assessment of the gross income, costs and hence net profit that needed to be generated to justify the fees.

- (b) The fees were calculated by reference to what QH required (which was financially equivalent to QH having invested in both the June and October capital raisings at 130p per share) in return for its investment in the October capital raising, rather than by reference to an assessment of the value of the services that the Qatari entities could provide. No assessment of the value was undertaken when QH made a late requirement for a significant increase in the fees due to adverse movements in Barclays plc's share price and warrant valuations.
- (4) Neither the Board nor the Board Finance Committee, which was given authority by the Board to take decisions on behalf of the Board in relation to the October capital raising, was fully informed of all relevant facts regarding the October Agreement. In particular, the Board's approval was required for the £280 million fee payable to QH under the October Agreement, but neither the Board nor the Board Finance Committee was made aware of the £280 million fee under the October Agreement or how it was calculated. They were also not informed of how Barclays senior managers had satisfied themselves that Barclays could receive value at least equal to the £280 million fee.

Recklessness

83. The Authority considers that Barclays Bank, including Senior Manager A (whose state of mind the Authority attributes to Barclays Bank in the circumstances), acted recklessly, in unreasonably approving the prospectuses for RCIs and MCNs associated with the October capital raising, in circumstances where Barclays Bank must have been aware that it had not taken reasonable care to ensure that the value Barclays expected to receive from services pursuant to the October Agreement fully justified the fees that it was required to pay to QH under it, amounting to £280 million over five years, and was therefore aware of the clear risk that the omission of any reference to the October Agreement, the fees to be paid under the October Agreement and their connection to the October capital raising from the prospectuses that it published associated with the October capital raising rendered the information contained in those prospectuses misleading, false and/or deceptive and meant that it omitted matters likely to affect its import. The Authority therefore considers that Barclays Bank's breach of LR 1.3.3R was committed recklessly.

SANCTION

Financial penalty

84. The Authority's policy on the imposition of financial penalties is set out in DEPP. Barclays Bank's misconduct occurred prior to 6 March 2010, the date on which the Authority's current penalty regime came into force. In determining the financial penalty proposed, the Authority has had regard to the guidance in force at the time the misconduct occurred. The Authority considers the following factors to be particularly important.

Deterrence (DEPP 6.5.2G(1))

85. Given the circumstances of the case, the Authority considers it necessary to send a robust message to listed companies regarding the fundamental importance of complying with an issuer's obligations regarding prospectuses. Listed companies must make appropriate disclosures. When they fail to do so, in particular when they act recklessly, it is important that the Authority imposes a financial penalty that acts as a credible deterrent.

86. It is essential that listed companies disclose all relevant information in connection with capital markets activities such as capital raisings. This was particularly important in the October capital raising where the activity required approval by shareholders.

Nature, seriousness and impact of the breach (DEPP 6.5.2G(2))

87. The Authority considers the breaches in this case to be particularly serious for the following reasons:

- (1) The October capital raising was an extremely significant and high-profile transaction undertaken against the backdrop of the global financial crisis in October 2008. The capital raising and the terms on which it was transacted was important for Barclays, its shareholders and the wider market in circumstances where there were widespread concerns about the financial stability of the UK's major banks, large rights issues had been announced by RBS and HBOS in April 2008 and the UK Government had announced

unprecedented capital injections into certain major UK banks in mid-October 2008.

- (2) Unlike those banks, Barclays had obtained capital from strategic and other investors by means of its capital raisings. This differentiated Barclays from its competitors and in October 2008 demonstrated that Barclays was able to raise capital without needing or seeking assistance from the UK Government. These were very significant messages for Barclays to send to the market at the time.
- (3) Disclosure of the fees payable under the October Agreement and their connection to the capital raisings would have tripled the disclosed payments to the Qatari entities in connection with the October capital raising. It would have revealed that there was a significant discrepancy in the level of payments to different investors.
- (4) Investors were entitled to receive all relevant information regarding the October capital raising, particularly given the unusual circumstances and extreme uncertainty in the market in October 2008, in circumstances where alternative capital was available from the UK Government.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2G(3))

88. The Authority considers that Barclays Bank acted recklessly in respect of its failure to disclose the fees to be paid to QH under the October Agreement and their connection to the October capital raising.

Size, financial resources and other circumstances (DEPP 6.5.2G(5))

89. The Authority has had regard to the size of the financial resources of Barclays Bank.

Disciplinary record and compliance history (DEPP 6.5.2G(9))

90. The Authority has taken into account the fact that it has previously, on several occasions, taken disciplinary action against Barclays Bank, albeit not for breaches of the Listing Rules.

Other action taken by the Authority (DEPP 6.5.2G(10))

91. The Authority has taken into account penalties imposed by the Authority on other listed companies. The Authority has also had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct.

Conclusion

92. The Authority considers in all the circumstances that the seriousness of the breaches merits a substantial financial penalty.

93. The Authority has therefore decided to impose a financial penalty of £10 million.

REPRESENTATIONS

94. Annex B contains a brief summary of the key representations made by Barclays Bank in response to the Warning Notice and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made, whether or not set out in Annex B.

PROCEDURAL MATTERS

95. This Notice is given to Barclays Bank under section 92 and in accordance with section 388 of the Act. The following statutory rights are important.

Decision maker

96. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/who-we-are/committees/regulatory-decisions-committee>

The Tribunal

97. Barclays Bank has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Barclays Bank has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

98. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. It should be sent to Bob Beauchamp at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

99. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

Access to evidence

100. Section 394 of the Act applies to this Notice. The person to whom this Notice is given has the right to access:

- (1) the material upon which the Authority has relied in deciding to give this Notice; and
- (2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Confidentiality and publicity

101. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

102. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Barclays Bank should therefore be aware that the facts and matters contained in this Notice may be made public.

Authority contact

103. For more information concerning this matter generally, contact Bob Beauchamp (direct line: 020 7066 5302 / email: bob.beauchamp@fca.org.uk) at the Authority.

Tim Parkes
Chair, Regulatory Decisions Committee

Annex A

Relevant statutory and regulatory provisions

Legislation

1. The United Kingdom Listing Authority ("UKLA") is the part of the Authority that acts as the competent authority under Part VI of the Act. Under that Part, it has responsibility for making and maintaining the Listing Rules, the Disclosure and Transparency Rules and the Prospectus Rules.
2. The Authority is authorised pursuant to section 91 of the Act, if it considers that an issuer of listed securities has contravened a requirement imposed by or under the Listing Rules or the Disclosure and Transparency Rules, to impose on the issuer a penalty in respect of the contravention, of such amount as it considers appropriate.

Regulatory provisions

3. Listing Rule 1.3.3R, in the UKLA listing rules in the Handbook, provides that: "*An issuer must take reasonable care to ensure that any information it notifies to a RIS or makes available through the [Authority] is not misleading, false or deceptive and does not omit anything likely to affect the import of the information*".

Policy/guidance

4. When considering imposing any financial penalty under the Act, the Authority follows the policy set out in DEPP (and which is being applied as it stood prior to 6 March 2010, for the reasons set out in the body of this Notice). The Authority will also have regard to Chapter 7 of the Enforcement Guide, which forms part of the Handbook.
5. Under DEPP 6.2.1G, the Authority will consider the full circumstances of the case when determining whether or not to take action for a financial penalty.
6. Under DEPP 6.5.2G, when determining the level of the financial penalty the Authority will consider all the relevant circumstances of the case and will have regard to the following non-exhaustive list of factors which may be relevant:
 - (1) *Deterrence;*
 - (2) *The nature, seriousness and impact of the breach in question;*
 - (3) *The extent to which the breach was deliberate or reckless;*
 - (4) *Whether the person on whom the penalty is to be imposed is an individual;*

- (5) *The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;*
- (6) *The amount of benefit gained or loss avoided;*
- (7) *Difficulty of detecting the breach;*
- (8) *Conduct following the breach;*
- (9) *Disciplinary record and compliance history;*
- (10) *Other action taken by the [Authority] (or a previous regulator);*
- (11) *Action taken by other domestic or international regulatory authorities;*
- (12) *[Authority] guidance and other published materials; and*
- (13) *The timing of any agreement as to the amount of the penalty.*

Annex B

Representations

1. A summary of the key representations made by Barclays Bank, and the Authority's conclusions in respect of them (in bold), is set out below.

Summary of Barclays Bank's position

2. Barclays Bank denies any wrongdoing and denies that it acted recklessly. Barclays Bank did not breach LR 1.3.3R in November 2008, when it published the prospectuses for RCIs and MCNs in connection with the October capital raising. Barclays Bank's disclosures were not misleading, false or deceptive, and did not omit anything likely to affect the import of the information disclosed. In addition, Barclays Bank took reasonable care to ensure that its disclosures were not misleading, false or deceptive and did not omit anything likely to affect the import of the information disclosed.
3. The purpose of the Agreements was as agreed between Barclays and QH: (1) Barclays would obtain valuable services from the Qatari entities which would help Barclays expand its presence in the Middle East; and (2) Barclays would avoid having to pay additional fees for the capital raisings which would not have delivered any additional value to Barclays.
4. Barclays Bank accepts that the Agreements helped Barclays meet the Qatari entities' requirement for additional value in connection with their participation in the capital raisings and that they were material to the Qatari entities' decision to invest and formed part of the commercial basis upon which they agreed to invest. However, this does not render the disclosures made by Barclays Bank in relation to the October capital raising misleading, false and/or deceptive.
5. The allegations against Barclays Bank are of the utmost seriousness and therefore the Authority needs to be satisfied that there is clear and cogent evidence of wrongdoing. There is no such clear or cogent evidence. When considered fairly and holistically, the picture the contemporaneous evidence shows is a bank involved in important capital raisings, working under significant pressures, and engaging numerous advisors, to assist it in complying with its legal and regulatory obligations. The context of the financial crisis is very important. Particularly in October 2008, decisions were made under huge pressure and at a pace that meant that some of the processes around decision-making, the evidence for decisions being taken and the underlying assessment may be less fulsome than would be the case in normal circumstances. The absence of particular documents, for example letters of advice or detailed notes of discussions, does not, in those circumstances, suggest a lack of reasonable care.
6. **For the reasons set out in paragraphs 78 to 82 of this Notice, the Authority considers that Barclays Bank failed to take reasonable care to ensure that the information contained in the prospectuses that it published associated with the October capital raising was not misleading, false or deceptive and did not omit anything likely to affect its import, in breach of LR 1.3.3R. Further, for the reasons set out in paragraph 83 of this Notice, the**

Authority considers that Barclays Bank acted recklessly in approving the prospectuses that it published associated with the October capital raising.

7. **In respect of the purpose of the Agreements, the Authority considers that, whilst it might have been the case that Barclays hoped to obtain valuable services from the Qatari entities pursuant to the Agreements which would help it to expand its presence in the Middle East, it was clearly the case that the Agreements were entered into as a way of meeting the Qatari entities' requirements for additional value and thereby ensure that they would participate in the capital raisings.**
8. **The Authority is satisfied that the evidence supports its conclusions. The Authority acknowledges the context in which decisions were made regarding the October capital raising, but does not consider that this excuses Barclays Bank for failing to comply with LR 1.3.3R. The standards to be applied were not lower because of the financial crisis and, although decisions were made under pressure and at pace, they had important consequences and Barclays had the resources to ensure that they were taken properly. The Authority therefore considers that the lack of documented records, particularly of the advice sought and given by Barclays' external lawyers, and of the valuation assessment carried out in relation to the October Agreement, supports its conclusion that Barclays Bank failed to take reasonable care to comply with its regulatory obligations.**

Approach to Waksman J's judgment in the PCP case

9. The Authority should not adopt a blanket approach of reliance on the findings in Waksman J's judgment in the PCP case. The issues Waksman J was being asked to consider were different and he was not shown all of the evidence that is now available to the Authority.
10. Waksman J had to decide whether the commercial connection between the October Agreement and the October capital raising meant that a Barclays senior manager had made a deceitful representation during a conversation with the principal of PCP. This was an oral representation upon which no legal advice was taken. Waksman J did not have to decide whether the extent of the commercial connection meant that the October Agreement had to be disclosed under the Listing Rules. The legal advice which was provided by Barclays' internal and external lawyers in relation to disclosure under the Listing Rules was not therefore something which had to be brought to Waksman J's attention. In contrast, the advice of Barclays' internal and external lawyers is central to the allegations made by the Authority.
11. **The Authority has not simply relied on the findings in Waksman J's judgment but has also had regard to the underlying evidence in reaching its conclusions. However, it does consider that it is appropriate and reasonable to have regard to, and place considerable weight on, Waksman J's findings, as they cover many of the facts and matters relevant to this case and were reached following a full trial, including witness evidence, cross-examination and lengthy submissions by Counsel.**

12. **The Authority acknowledges that the issues that Waksman J had to consider were different in certain respects, including that he did not have to consider whether Barclays complied with its disclosure obligations under the Listing Rules. However, he did have to consider the factual issue of the connection between the Agreements and the capital raisings, which is a key issue in this case. It is also apparent from his judgment that Waksman J was aware of the legal advice provided to Barclays and took it into account to the extent he deemed necessary to reach his conclusions. There is nothing to suggest that Waksman J was unaware of any legal advice which might have changed his conclusions regarding the connection between the Agreements and the capital raisings.**

Proposed extension to the June Agreement in early October 2008

13. The October Agreement should not be seen in the context of the proposed extension of the June Agreement in early October 2008. The October Agreement had its own genesis. The proposed extension was just a draft agreement which was never fully realised and not even raised with the Qatari entities.
14. Comments made by individuals at Barclays regarding the attractiveness of entering into such an extension did not relate to the propriety of such an arrangement, as the persons concerned all understood the June Agreement to be proper. Instead, the comments concerned whether an extension would work commercially.
15. The narrative around the proposed extension shows that the lawyers were tasked with finding a solution to provide additional value to the Qatari entities after the deal structure changed and the original concept could not be pursued. The situation is analogous to the October Agreement, in the sense that in the October capital raising the proposal to pay a £200 million arrangement fee was abandoned following legal advice and Barclays' external lawyers identified a possible alternative solution to enter into the October Agreement. However, Senior Manager A was not involved in the proposed extension.
16. **In the Authority's view, the proposed extension of the June Agreement in late September and early October 2008 provides important context for understanding the genesis and purpose of the October Agreement when it emerged as part of the capital raising at the end of October 2008.**
17. **The Authority considers that comments made in relation to the appropriateness of entering into an extension of the June Agreement in early October 2008, such as "we can't use a similar advisory arrangement because after all, how much advice do we need?" show that the justification for an extension was far from clear given the very short period of time that had elapsed since the June Agreement. This is also apparent from the email sent by a Barclays senior manager on 6 October 2008 which set out the "benefits of the advisory agreement to date". The limited benefits stated appear to fall far short of justifying the first tranche of fees under the June Agreement, amounting to £10.5 million, which had already been paid by Barclays at that point.**
18. **The Authority does not consider that, in giving advice in respect of the proposed extension of the June Agreement in early October 2008, this demonstrates that Barclays' external lawyers were aware of the**

connection between the June Agreement and the June capital raising or that, later that month, they must have been aware of the connection between the October Agreement and the October capital raising. There is no contemporaneous evidence of the information provided to Barclays' external lawyers which formed the basis of their advice. A senior Barclays external lawyer stated in interview that they were not aware of any inter-conditionality between the proposed extension of the June Agreement and the investment by the Qatari entities. In the Authority's view, whilst a Barclays external lawyer gave advice on disclosure in early October 2008, their involvement was limited and their advice was given without knowing of the link between the proposed extension and the Qatari entities' fee requirements.

Project Tinbac

19. The potential of the relationship with the Qatari entities was further confirmed on 12 October 2008, when Barclays was offered a deal which became known as Project Tinbac. Project Tinbac was a very significant opportunity for Barclays. It was estimated that, if Barclays won it, Barclays would make over \$250 million of profit in the first year. It was an opportunity under the June Agreement but was relevant to the October Agreement as, if such an opportunity could arise within three months of the June Agreement, it demonstrated the potential Barclays could achieve over five years.
20. The size and significance of this transaction is reflected in the fact that the Board was informed on the same day that "*Barclays Capital looked likely to be appointed to manage a very large oil price hedging contract for [QH] which had previously been given to [another investment bank].*"
21. Project Tinbac was a great example of the type and scale of opportunities which Barclays could derive from an ongoing strategic relationship with the Qatari entities. With the Qatar Investment Authority planning to invest in the oil sector for many years, Project Tinbac confirmed that the value of the business opportunities the Qatari entities could offer was much higher than the value of services QH had committed to provide under the June Agreement. Strengthening the strategic relationship with the Qatari entities would have helped Barclays achieve its plan to generate US \$1 billion per annum in the Middle East by the end of 2012. Barclays' desire to strengthen the strategic relationship with the Qatari entities informed its decision, a few weeks later, to extend the June Agreement and enter into the October Agreement.
22. The fact that Project Tinbac did not materialise in 2008, which was due to a significant fall in the oil price, should not be used to question the commercial judgement of those involved at the time.
23. **The Authority acknowledges that Project Tinbac was an opportunity which might have arisen for Barclays as a result of the June Agreement. However, any other such opportunity would also have arisen under the terms of the June Agreement in the three years after it was signed, and so Project Tinbac on its own did not justify an extension to the June Agreement so soon after the June Agreement had been entered into. Further, Project Tinbac had not been secured by Barclays at that point (and ultimately Barclays did not secure it), so it was wholly speculative of**

Barclays to place value on the possibility of obtaining future projects of similar scale.

24. **The fact that Project Tinbac did not materialise demonstrates that, in assessing whether the October Agreement would provide value which would justify the fees to be paid to QH under it, Barclays needed to have regard not only to the possible opportunities that could arise under the October Agreement, but also to the likelihood of the opportunities being realised. However, it does not appear that Barclays undertook any such assessment.**

Rationale for the October Agreement

25. The October Agreement was Barclays' chance to secure the Qatari entities' commitment to provide additional business opportunities to Barclays to a higher value and for a longer term as compared to the June Agreement. The arrangement also worked for the Qatari entities: offering business opportunities to Barclays would strengthen the relationship with Barclays whilst costing almost nothing to the Qatari entities, and in return the Qatari entities would receive value which, in addition to the fees and commissions under the October capital raising, would get them closer to the value they had asked for.
26. The Agreements were separate; they did not provide for completely overlapping services and time periods. The October Agreement was an extension of the June Agreement and incorporated some of its terms, but it did not merely repeat the scope of the June Agreement. The October Agreement provided for QH's obligation to provide additional business opportunities on a broader global scale, compared to the June Agreement which focussed on business generated in the Gulf region. The October Agreement also provided a longer term, five years instead of three years. Such a broader scope and the extended term suited Barclays' objectives to secure the Qatari entities' commitment for a longer period of time and to a higher value: it had become apparent that the Qatari entities were embarking on an ambitious investment plan and the scale of the opportunities the Qatari entities could offer was notably higher than £42 million, especially in light of Project Tinbac.
27. The October Agreement incorporated by reference the terms of the June Agreement and therefore, if the Qatari entities did not offer business opportunities to the value of the amounts payable under the October Agreement, Barclays could terminate it, refuse to pay the balance and claim back any amounts which had been paid for which there were no corresponding services of value.
28. **The October Agreement arose out of the Qatari entities' requirements for value in the October capital raising and formed part of the basis on which the Qatari entities agreed to participate in the October capital raising. The October Agreement was therefore inextricably linked to the October capital raising and the £280 million in fees payable to QH under the October Agreement was clearly material in size. As such, even if Barclays genuinely believed that the October Agreement would provide additional business opportunities to Barclays beyond those arising from the June Agreement, and even though the October Agreement was different in certain respects to the June Agreement, the fees payable to QH under the October Agreement, and their connection to the Qatari entities'**

participation in the October capital raising, needed to be disclosed in order for Barclays to comply with its disclosure obligations under LR 1.3.3R.

The disclosures in relation to the October capital raising were not misleading etc.

29. Barclays was not obliged to disclose the October Agreement. The prospectuses did not even set out the overall return for the investors across the capital raising and therefore it cannot be the case that they should have included information about any broader commercial package agreed with the Qatari entities.
30. The October Agreement was not sufficiently large or unusual of itself to be required to be disclosed as a significant contract in the November prospectuses or the announcement, and the specific content requirements for the November prospectuses did not in any event include a requirement to disclose material contracts.
31. There is no requirement to disclose the specific details of (or fees payable under) all agreements that are connected, in the broad sense, to a capital raising which is the subject of an announcement. In any case, in the context of the October capital raising, the fees under the October Agreement were not material.
32. Had the Qatari entities not performed their obligations, Barclays would have had the option of terminating the October Agreement and clawing back the money it had paid thereunder without impacting the Qatari entities' shareholding in Barclays. It therefore follows that the fees under the October Agreement cannot properly be described as effectively tripling the payments to the Qatari entities for their participation in the October capital raising.
33. There is no evidence that any market participants would have been impacted if the October Agreement had been referred to in the announcement or prospectuses. Investors interviewed by the Authority do not support its case, but instead said that they would not have expected the fees payable under the October Agreement to have been disclosed.
34. This is also the view of the market expert instructed by Barclays in relation to these proceedings, who has explained that in the extreme market conditions prevailing in October 2008, the disclosed fees paid to the anchor investors were not in and of themselves a material factor in the assessment of the capital raising.
35. **As mentioned above, the October Agreement formed part of the basis on which the Qatari entities agreed to participate in the October capital raising. This conclusion is supported by findings made by Waksman J in his judgment in the PCP case. For example, he stated that the October Agreement "was clearly designed as a mechanism to enable [the Qatari entities] to obtain their blended entry price of 130p" and "It cannot be questioned that without [the October Agreement] the [Qatari entities] would not have done the deal. It was part of the price for their investment". The October Agreement was therefore an intrinsic part of the capital raising and so the fees payable thereunder, and their connection to the Qatari entities' participation in the October capital raising, should have been disclosed. The fact that the October Agreement was not even mentioned in the published documents associated with the**

October capital raising meant that they did not set out the materially complete commercial terms of the October capital raising.

36. **The fees payable under the October Agreement amounted to £280 million. The Authority considers that the evidence shows that it was never envisaged that the October Agreement would be enforced. A Barclays senior manager agreed in interview that they expected the payments to be made under the Agreements irrespective of the delivery of services. It is therefore accurate to say that disclosure of these fees would have more than tripled the disclosed level of payments due to the Qatari entities in connection with their participation in the October capital raising from £128 million to more than £408 million. The Authority considers that this level of fees was clearly material and that they would have been relevant to shareholders, investors and the wider market, particularly in October 2008 in circumstances where there were concerns about the high cost of the October capital raising and the availability of capital from the UK Government. Contrary to Barclays' submissions, this conclusion is supported by evidence regarding the market's likely reaction and publicly available information at the relevant time. For example, market analysts were almost unanimous that the cost of the October capital raising was extremely high and several analysts explicitly included the fees in their assessments of the cost of the capital raising.**
37. **In considering whether Barclays Bank complied with LR 1.3.3R, the Authority does not consider it to be relevant whether or not the fees payable under the October Agreement were large enough to constitute a "significant contract" or that there was no specific requirement to disclose material contracts in the prospectuses or the announcement, as LR 1.3.3R supplements other rules.**
38. **In the Authority's view, whether compliance with LR 1.3.3R required disclosure of the £280 million fees payable under the October Agreement is not assisted by the opinion of market experts. However, in any event, the Authority does not agree with the views of the market expert instructed by Barclays or with the way in which Barclays has characterised the evidence of investors interviewed by the Authority.**
39. **The Authority therefore concludes that, by disclosing that the Qatari entities had invested in MCNs, RCIs and warrants, and would receive "a commission of 4 per cent" on the MCNs, "a commission of 2 per cent" on the RCIs, and a "fee of £66 million for having arranged certain of the subscriptions", without also disclosing that QH would receive the benefit of an additional £280 million under the October Agreement as part of the same commercial deal, Barclays Bank disclosed information that was misleading, false and/or deceptive, and which omitted matters likely to affect its import.**

Knowledge of Barclays' external lawyers

40. Barclays' external lawyers understood the genesis of the October Agreement, including that it was part of the overall commercial deal with the Qatari entities and formed part of the basis upon which the Qatari entities agreed to participate. This conclusion is supported by evidence given by a senior Barclays external lawyer in

interview with the SFO, who explained that they were aware in October 2008 that the Qatari entities would not have invested without the October Agreement and that the October Agreement was considered by the Qatari entities to be part of their return for the investment. In addition, a senior Barclays internal lawyer told the SFO that Barclays' external lawyers knew about the connection between the October Agreement and the October capital raising.

41. On 23 October 2008, a meeting was held which was attended by Barclays' internal and external lawyers. At this meeting, various issues were raised, including that section 97 of the Companies Act 1985 imposed a 10% cap on the commissions which Barclays could offer the investors, and that probably the same cap also applied to an arrangement fee of £200 million which a Barclays senior manager had proposed should be paid to the Qatari entities to bridge the value gap. It was agreed that Barclays would instruct a QC to advise on these and various other issues.
42. Barclays' external lawyers drafted Instructions to Counsel which contained a reference to a "co-operation agreement". This is the earliest written reference to the proposed agreement that would become the October Agreement. The Instructions to Counsel were drafted at a time when Barclays' external lawyers knew that Barclays had entered into the June Agreement, and at a time when they knew that there had previously been discussions to extend the June Agreement. The Instructions to Counsel make clear that the October Agreement was part of the proposed deal as they refer to the co-operation agreement as part of the "Proposal".
43. On 24 October 2008, at a pre-meeting before the conference with the QC, there was a discussion between Barclays and its external lawyers about the agreement that would become the October Agreement. Barclays' external lawyers' notes of the meeting make reference to a proposed advisory agreement and note the link between the June Agreement and the October Agreement: "*Advisory agreement – already out there [therefore] no new co-operation agreement to be entered into [therefore] an [unlinked] document*". This discussion further supports the contention that Barclays' external lawyers were close to the discussions regarding the October Agreement.
44. The QC's advice confirmed to Barclays' internal and external lawyers that the co-operation agreement could be lawfully used to bridge the value gap with the Qatari entities' requirements in a way which the arrangement fee could not.
45. Following the conference with the QC, Barclays met with its external lawyers. A Barclays internal lawyer's notes of the meeting include a reference to value being paid to the Qatari entities and identify, after referring to various fees, the existence of a value gap: "*this only gives 140m to Q ... Extra 110 must be found to deliver Q 250m*".
46. At a discussion following receipt of the QC's advice, Barclays' external lawyers advised that the October Agreement did not need to be disclosed. Barclays' external lawyers gave this advice in the knowledge that the QC had recommended full disclosure. They must therefore have concluded, correctly, that the relevant payments were not part of the "*financial terms of the capital raising arrangements*" which the QC recommended should be fully disclosed. Barclays was

entitled to rely on Barclays' external lawyers' advice. Barclays' external lawyers were aware of the genesis of the October Agreement as a way to help Barclays meet the Qatari entities' requirements and knew, or must have known, that the Qatari entities would see it as part of the deal, yet they were content that, despite that genesis, disclosure of the October Agreement was not required.

47. There was no discussion with the Qatari entities of an extension of the June Agreement at this time. There is no evidence of any involvement of any Barclays senior manager in putting forward the idea of a co-operation agreement. In the circumstances, the only reasonable inference that can be drawn from the evidence is that Barclays' external lawyers, who were aware of the June Agreement and had advised Barclays internal lawyers in early October 2008 about a possible extension of the June Agreement, whilst preparing for the conference with the QC, discussed and/or agreed with Barclays' internal lawyers, or identified themselves, that an extension to the June Agreement would be a possible, lawful alternative way to provide the additional value required by the Qatari entities.
48. **The Authority considers that the evidence shows that Barclays' external lawyers were not given complete and accurate information, and that Barclays did not take reasonable care to ensure they were fully and accurately informed, about the connection between the October Agreement and the October capital raising. In particular, Barclays' external lawyers were not aware that the genesis of the October Agreement was QH's requirement for additional fees for participating in the capital raising, that the Qatari entities would not participate in the capital raising if QH did not receive these additional fees, that the October Agreement was connected to the capital raising and was not a separate commercial transaction, and that the fees payable under the October Agreement were calculated by reference to the value required by QH.**
49. **The Authority does not agree that comments made by a Barclays external lawyer in interview with the SFO demonstrate that they were aware of the connection between the October Agreement and the Qatari entities' participation in the October capital raising. In the Authority's view, the explanation given by the Barclays external lawyer to the SFO shows that they understood that two separate agreements were being negotiated in parallel with each other (i.e. the capital raising and the October Agreement), and that if the Qatari entities did not get what they wanted in respect of one of those agreements, they might not enter the other. That is not the same as admitting that they knew there had been a value requirement by the Qatari entities in respect of the capital raising and that they understood that Barclays' means of meeting that requirement was the October Agreement. In fact, the Barclays' external lawyer's evidence in interview with both the SFO and the Authority was that they were not aware that the October Agreement was being used to meet a value requirement by the Qatari entities in the capital raising.**
50. **The reference in the Instructions to Counsel to a co-operation agreement does not show that Barclays' external lawyers came up with, or were aware of, the idea that it would be a suitable way of meeting the Qatari entities' value requirements. The Instructions to Counsel did not refer to any fees payable under the co-operation agreement or request advice on**

any disclosure advice issues associated with it. They also did not refer to any connection between the proposed agreement and the Qatari entities' participation in the capital raising (about which Barclays' external lawyers were unaware). In addition, the fact that a Barclays senior internal lawyer told a Barclays external lawyer, following receipt of the QC's advice, that Barclays intended to pay approximately £120 million in fees to the Qatari entities via a separate and "*not connected*" commercial arrangement, and that this would be "*a commercial trans'n and not for the capital raising*", supports the Authority's view that Barclays' external lawyers did not originate the idea of the co-operation agreement as a device to replace an arrangement fee.

51. The interview evidence of a senior Barclays' external lawyer also does not support such a conclusion. They stated that they understood that the reference to a co-operation agreement reflected their understanding that "*there was an expectation there would be some sort of expanded advisory relationship because [the June Agreement] had been successful, because they were happy with it, and they wanted to consolidate the position with the Qatari entities*". They were not aware that the October Agreement was in response to a value requirement by the Qatari entities for an entry price blended across the June and October capital raisings or more generally in response to the Qatari entities' fee requirements in the October capital raising.
52. In respect of the Barclays internal lawyer's note that "*this only gives 140m to Q ... Extra 110 must be found to deliver Q 250m*", there are no such references in the notes of the Barclays external lawyer who attended that meeting. There is also no contemporaneous evidence that Barclays' external lawyers were informed about the Qatari entities' value requirement before this meeting on 24 October 2008. The Authority therefore considers it most likely that the Barclays internal lawyer's notes do not reflect discussions about these particular points during the meeting and that they are instead 'notes to self' recording their own thoughts during the meeting, informed by their understanding of the Qatari entities' value requirements.

Advice from Barclays' external lawyers

53. Barclays took reasonable care by instructing Barclays' external lawyers to advise on the October capital raising, who in doing so had regard to LR 1.3.3R.
54. Barclays' external lawyers, in the knowledge of the genesis of the October Agreement and its commercial connection with the October capital raising, advised that Barclays was not required to disclose the October Agreement. This advice was reasonable. As a senior Barclays external lawyer explained in interview with the Authority, it was not necessary for the October Agreement to be disclosed because it would have been immaterial to investors whether the Qatari entities would have participated in the capital raising with or without the October Agreement.
55. In any event, Barclays acted reasonably in following Barclays' external lawyers' advice, as it was entitled to rely upon their expertise.

56. No one at Barclays had any reason to question the reasonableness of the advice it received from its external lawyers in relation to the October Agreement, which was consistent with the advice Barclays' external lawyers had given in June 2008 in relation to the June Agreement and earlier in October 2008 in relation to the proposed extension to the June Agreement that did not take place.
57. **The Authority considers that the evidence does not show that Barclays sought advice from Barclays' external lawyers specifically in respect of its obligations under LR 1.3.3R, and that it does not show that Barclays' external lawyers gave advice regarding those obligations. A general instruction of Barclays' external lawyers was not sufficient to satisfy the requirements of reasonable care. Barclays should have considered for itself the specific obligations in question and, in seeking external advice, should have requested advice specific to those obligations. However, Barclays did neither.**
58. **The evidence seen by the Authority indicates that legal advice about disclosure of the October Agreement was sought from Barclays' external lawyers only in passing in the margins of another meeting on 24 October 2008 and expressly on the basis that the October Agreement had arisen "*quite separately and not connected*" with the capital raising and was "*a commercial arrangement and not for the capital raising*", which was not the case.**
59. **After the discussions between Barclays' internal and external lawyers following receipt of the QC's advice, no further legal advice was obtained in relation to the October Agreement and its disclosure. Neither Barclays' internal lawyers nor its external lawyers were involved with the drafting of the October Agreement, which was left to a lawyer from Barclays Capital who had not been involved in the drafting of the June Agreement and had no knowledge of discussions around the Qatari entities' requirement for additional value in the October capital raising.**
60. **The reference to the absence of an equity prospectus by a Barclays external lawyer when commenting, following the QC's advice, that disclosure was not required, suggests that disclosure was being viewed through the prism of the Prospectus Rules and not the broader standard imposed by the Listing Rules. No meaningful advice on whether the October Agreement ought to be disclosed in accordance with LR 1.3.3R was provided.**
61. **In addition, as mentioned above, Barclays' external lawyers were not given complete and accurate information, and were not fully and accurately informed, of the connection between the October Agreement and the October capital raising.**
62. **As a result, the Authority disagrees that, by instructing external lawyers, Barclays took reasonable care to ensure that it complied with its obligations under LR 1.3.3R. The comment by a Barclays external lawyer in interview that disclosure of the October Agreement might not have been necessary does not assist Barclays as it does not demonstrate that Barclays took reasonable care. Further, Barclays did not follow Barclays'**

external lawyers' advice as it did not take reasonable care to ensure that the value it could expect to receive from services pursuant to the October Agreement fully justified the fees to be paid to QH thereunder.

Assessment of value of the October Agreement

63. Before entering into the October Agreement and before the announcement relating to the October capital raising was published, Barclays took adequate steps to assess the value which it could receive under the October Agreement. Having satisfied itself as to the full value of the October Agreement, it was reasonable for Barclays to rely on the legal advice received as to the lawfulness of the October Agreement and whether it needed to be disclosed.
64. Senior Manager A understood that, before agreeing any payments under the October Agreement, they had to assess the value of this extended relationship with the Qatari entities against the value they were asking for. Senior Manager A therefore assessed whether Barclays would get value from the October Agreement and was satisfied that the contract was of value to Barclays:
- (a) Senior Manager A understood that the June Agreement had been assisting Barclays in successfully cultivating business in Qatar.
 - (b) In considering the potential value of the October Agreement, Senior Manager A took into consideration the additional opportunities which the October Agreement could provide over and above the June Agreement. These opportunities included emerging markets, global (non-Gold) commodities, global infrastructure, global (non-Gulf) oil and gas and other business referrals, over a five-year term. Senior Manager A did not know, and could not be expected to know, at the time they were undertaking their assessment, precisely which opportunities would be referred to Barclays under the October Agreement.
 - (c) At the time of Senior Manager A's assessment Barclays had been working on Project Tinbac, which was a highly lucrative business opportunity that had been introduced to Barclays by the Qatari entities, and which had an estimated income of US \$250 million in the first year. Senior Manager A's value judgement at the time was that if, over the course of five years, the Qatari entities gave Barclays access to just two deals of the size of Project Tinbac then the income from the October Agreement would exceed the advisory fees by a large margin. Senior Manager A also expected that the opportunities offered under the October Agreement would enable Barclays to cement a lasting relationship, as they did. Consistent with Barclays' position, in the PCP judgment, Waksman J agreed that Project Tinbac was relevant to Barclays' assessment of the value of the October Agreement.
 - (d) Senior Manager A considered that investing more money in a commercial relationship with the Qatari entities had the potential to return value to Barclays for many years to come.
 - (e) Senior Manager A was satisfied that the October Agreement was valuable to Barclays because they considered that the bank could generate more than £50-60 million a year from the Qatari entities under the October Agreement, and therefore they were willing to pay £280 million (i.e. £56 million a year).

Therefore, at the time of entering into the October Agreement, Senior Manager A's assessment was that the agreement would provide Barclays with value.

65. Senior Manager A did not consider that there was a mathematical way of arriving at a precise value to be placed on the October Agreement, and there was no requirement for Senior Manager A to follow any specific process or some type of systematic valuation exercise. The question Senior Manager A had to consider was whether the October Agreement was an agreement that Barclays could get value from. They decided it was and that was a decision they were entitled to make.
66. The legal expert instructed by Barclays in relation to these proceedings does not consider that Barclays' internal lawyers could have been expected to require Barclays' commercial team to undertake a detailed analysis of the value of the potential services before the announcement and prospectuses were published, or that Barclays' commercial team could have been expected to provide that detailed analysis, particularly given that the services were not capable of a formulaic value assessment. That would have been regarded as outside normal practice and would not have been realistic given the circumstances.
67. **The Authority considers that neither Senior Manager A nor Barclays took adequate steps to assess the value which Barclays could receive under the October Agreement.**
68. **The £280 million fees payable to QH under the October Agreement were approved by Senior Manager A on 30 October 2008, the day before the October Agreement was signed, after they made a rapid and informal judgement, which they themselves described as a "commercial bet". They did this after the Qatari entities had made a late requirement for a significant increase in the fees from £185 million to £280 million. This was clearly not a systematic exercise sufficient to enable Barclays to satisfy itself on the relevant point. The question was not whether it was a deal worthy of a "commercial bet", but whether, in the context of the legal advice obtained, it was a contract from which Barclays could be satisfied that it would receive value at least equivalent to what was to be paid, with potential penal consequences if it could not. There is no record of this assessment or of the assumptions used in the valuation. There is also no evidence that the potential benefits from the October Agreement were considered distinct from the existing relationship deal-flow and the deals the June Agreement could bring in, or that a calculation of the profit (considering the costs that would be incurred) that needed to be generated was carried out. Therefore, Senior Manager A and Barclays did not take reasonable steps in making the assessment.**
69. **Although it appears that there was an increase in the number of transactions discussed between Barclays and the Qatar Investment Authority between June 2008 and October 2008, no specific analysis of the performance of the June Agreement was carried out and there is no evidence that any value was actually provided under the June Agreement during this period. The amount of revenue received by Barclays from the Qatari entities in the calendar year 2008, including the period before the June Agreement was entered into, totalled approximately £3 million, far less than the fees of £21 million which Barclays was required to pay to QH**

by the time the October Agreement was entered into. Further, it is unclear how much, if any, of this revenue was paid to Barclays pursuant to opportunities which arose as a result of the Agreements. Whatever the amount, as Waksman J found, it is "very difficult" to see how the October Agreement could state that the June Agreement was a "great success", because "it had not gained any actual benefit in terms of completed deals".

70. **Although Barclays Bank submits that Project Tinbac influenced and justified the decision to enter into the October Agreement, the October Agreement did not commit the Qatari entities to going through with the deal or even to appointing Barclays, if the deal was to happen. In addition, in respect of Barclays Bank's comment that two further projects of the size of Project Tinbac could repay the October Agreement over five years, the Authority notes that Project Tinbac was described in terms which made it clear that it was an exceptional deal, which raises questions over whether obtaining two similarly sized projects in the lifetime of the October Agreement was a legitimate expectation. Further, if Project Tinbac could be obtained without the October Agreement, it is not apparent why the October Agreement was necessary to secure another such deal.**
71. **In respect of Senior Manager A's comment that they considered that Barclays could generate more than £50-60 million a year from the October Agreement, there is no evidence that they assessed the profit (taking into account the related costs that would be incurred) that needed to be generated to justify the fees, which was far higher than the revenue figures of £56 million a year and £280 million over five years which Barclays Bank submits Senior Manager A was satisfied could be generated. According to figures provided by Barclays to the Authority, Barclays Capital needed to generate total revenue of £431 million, or £86.2 million per year for five years, to cover the cost base of £280 million.**
72. **Given the large sums involved and in light of the legal advice obtained, it was unreasonable for Barclays not to have directed some of its extensive analytical resources to consider in an evidence-based way whether the October Agreement would provide value at least equivalent to what was to be paid, even in the context of the financial crisis. Barclays Bank therefore did not take reasonable steps to ensure that value would be received for the October Agreement or to ensure that the prospectuses it published complied with LR 1.3.3R.**

Knowledge of the Board and the Board Finance Committee

73. Although a draft of the October Agreement was not formally tabled at a Board meeting or recorded in the minutes as approved by the Board, the intention to enter into the October Agreement was mentioned to the Board on 26 October 2008 at a meeting attended by senior Barclays internal lawyers.
74. Whilst there is no evidence that the Board was specifically asked to approve payments of £280 million under the October Agreement, at its meeting on 26 October 2008 the Board was prepared to pay a nine-figure amount to the Qatari entities under a further agreement. The Board discussed payments to the Qatari

entities in the order of £250 million, consisting of (i) £135 million for commissions for the instruments issued in the October capital raising and for an arrangement fee; and (ii) £115 million for “*co-operative actions, an unconnected form of compensation*”, i.e. the October Agreement. The Board understood that the strategic relationship with the Qatar entities could be extremely valuable. Project Tinbac was cited as an example of the “*enormous*” opportunities which could derive from the co-operation with the Qatari entities. The Board would also have been aware from discussions on 22 October 2008 that the proposed October Agreement was in response to the Qatari entities requiring additional value in return for their investment and would have realised that, if the additional value sought was not achieved, the Qatari entities might not invest.

75. **The relevant decisions about what information should be provided in relation to the October capital raising were to be taken by the Board or the Board Finance Committee to whom authority had been formally delegated, so the Board and/or the Board Finance Committee needed to be fully informed about the true nature of the October Agreement. However, there is no evidence to suggest that either the Board or the Board Finance Committee was fully informed of the relevant facts in relation to the October Agreement. In particular, they were not aware of the £280 million fee or how it was calculated.**
76. **In addition, the evidence of the non-executive director who, together with Senior Manager A, was given authority by the Board Finance Committee to finalise all arrangements in connection with the October capital raising, is that they had not seen and were not aware of the October Agreement at the time of the October capital raising. The non-executive director stated that they did “*not know how [the £280 million] fee was calculated, or when it was agreed with the Qataris, or who agreed it for the Qataris or who agreed the fee for Barclays*”.**
77. **Therefore, although the Board was aware of the intention to enter into the October Agreement, and although the Board agreed on 26 October 2008 to pay a nine-figure amount to the Qatari entities under a further agreement, Barclays’ failure to ensure that the Board and/or the Board Finance Committee was aware of all material facts in relation to the October Agreement is a further reason for concluding that Barclays Bank did not take reasonable care to comply with its obligations under LR 1.3.3R.**

Barclays Bank did not act recklessly

78. The Authority is wrong to allege that Barclays Bank acted recklessly in relation to the October Agreement. Barclays took, and followed, legal advice throughout the October capital raising. That legal advice came from internal and external lawyers. The advice was that it was not necessary to disclose the October Agreement. At all times, Barclays followed that advice.
79. It is accepted that the amount payable under the October Agreement as originally envisaged on 24 October 2008 (£120 million) was subsequently increased to £280 million with the agreement of Senior Manager A. However, it is without merit to suggest that the steps taken by Senior Manager A in assessing value demonstrate that they were acting recklessly. As explained at paragraph 64 above, Senior Manager A undertook an assessment of the value to Barclays of the October

Agreement and concluded that the agreement did offer value. That was an assessment Senior Manager A was entitled to make. Even if there were reasonable grounds to complain about how Senior Manager A approached their valuation assessment, that would not support the contention that they acted recklessly, especially in circumstances where they had to make decisions at pace and under pressure.

80. The legal expert instructed by Barclays in relation to these proceedings does not consider that Senior Manager A acted recklessly. In their opinion, the evidence shows that Senior Manager A, at the time the October Agreement was entered into, believed that valuable services would be received by Barclays under the October Agreement which could justify the fees payable under it. The nature of the services meant that they were not capable of a formulaic value assessment and it was not reckless for Senior Manager A to rely on their own understanding of the value of the relationship and of the services to be provided under the October Agreement, and on the view of the relevant internal commercial team as to whether the October Agreement would provide valuable consideration to Barclays that justified the fees payable under it. Neither Barclays' internal lawyers nor its external lawyers advised Senior Manager A that such a detailed assessment needed to be undertaken in order to justify the disclosure treatment of the October Agreement.
81. **The Authority has concluded that Barclays Bank acted recklessly in approving the prospectuses that it published relating to the October capital raising, because of the actions of Senior Manager A. Senior Manager A was involved in the negotiation of the October Agreement and agreed the late increase in the fees payable under it to £280 million.**
82. **Senior Manager A was aware that Barclays had received legal advice that it needed to take reasonable care to ensure that the value it expected to receive from services pursuant to the October Agreement fully justified the £280 million in fees that it was required to pay to QH under it. They must also have been aware that, if it did not do so, this would give rise to the clear risk that the omission of any reference to the October Agreement, the fees to be paid under the October Agreement and their connection to the October capital raising from the documents that Barclays published in connection with the October capital raising, would render the information contained in those documents misleading, false and/or deceptive and/or would mean that it omitted matters likely to affect the import of that information. However, notwithstanding their awareness of that risk, Senior Manager A: (i) failed to take adequate steps to ensure that the value Barclays expected to receive from services pursuant to the October Agreement did fully justify the fees that it was required to pay to QH under it; and (ii) unreasonably approved the prospectuses for RCIs and MCNs in circumstances where they were aware that Barclays had not carried out an adequate valuation assessment. In giving such approval, Senior Manager A, and therefore Barclays Bank, acted recklessly.**
83. **The failure to carry out the valuation assessment properly meant that Barclays did not follow the legal advice given to it. The fact that Senior Manager A was acting at pace and under pressure, and was not advised to**

make a detailed assessment, does not excuse their conduct; Senior Manager A did not make a coherent attempt at valuation and instead made a rapid and informal judgement which they later described to the Authority as a “commercial bet”. There was certainly no reasoned basis for them to conclude that any value received after the October Agreement was entered into would be referable to it rather than to the still-extant June Agreement. By approving the prospectuses published by Barclays Bank in circumstances where they must have been aware that an adequate valuation assessment had not been carried out, Senior Manager A, and therefore Barclays Bank, acted recklessly. The Authority therefore disagrees with the views of Barclays’ legal expert.

Attribution

84. If Senior Manager A acted recklessly (which is denied), their conduct in that regard is not attributable to Barclays Bank.
85. To attribute Senior Manager A’s state of mind to Barclays Bank, the Authority must demonstrate that Senior Manager A represented the directing mind and will of Barclays Bank for the purpose of the activity in question, i.e. that Senior Manager A was acting as Barclays Bank rather than for Barclays Bank. The activity in question here is the omissions from the prospectuses published by Barclays Bank in relation to the October capital raising.
86. It is clear that Senior Manager A was not Barclays Bank’s directing mind and will for the purpose of the fees agreed and disclosures made by Barclays Bank in association with the October capital raising. At no point was authority delegated to Senior Manager A acting alone and so they had no actual or *de facto* ability to agree different terms for the October capital raising.
87. The circumstances surrounding the capital raisings and whose state of mind should be attributed to Barclays Bank has already been the subject of two judgments. First, Jay J in the Crown Court dismissed charges brought by the SFO against Barclays Bank, on the basis that certain of its senior managers who were alleged to have committed offences did not constitute Barclays Bank’s directing mind and will for the purpose of the issuance of the prospectuses and subscription agreements associated with the capital raisings. Secondly, Davis LJ in the High Court concurred with Jay J’s reasoning in dismissing the application by the SFO for a voluntary bill of indictment. The same reasoning applies here.
88. Although the Authority is considering attribution in the context of the Listing Rules, there is no good reason to depart from these judgments simply because the criminal courts considered the same conduct in the context of the Fraud Act 2006. It would be perverse for the Authority to conclude, contrary to the findings of the Crown Court and the High Court, that attribution to Barclays Bank should apply in such circumstances.
89. If Senior Manager A’s conduct was attributed to Barclays Bank, it would mean that with respect to the same conduct involving the same individuals and the same corporate governance, the bank could act with two different legal minds. Parliament’s intention and the statutory purposes would have to be overwhelmingly clear to create a situation where, for the same activity, there were two different

directing minds; but there is no such overwhelming rationale when regard is had to the Listing Rules.

90. **For the reasons set out below, the Authority considers it is appropriate and reasonable for Senior Manager A's reckless conduct to be attributed to Barclays Bank for the purposes of considering whether Barclays Bank's breach of LR 1.3.3R was reckless.**
91. **In the Authority's view, in considering whether Barclays Bank breached LR 1.3.3R recklessly, it is not necessary to determine whether Senior Manager A was the firm's "directing mind and will". Instead, the Authority considers it is necessary to consider Senior Manager A's role in the relevant decision, which in this case was whether the prospectuses issued by Barclays Bank in relation to the October capital raising should disclose the fees payable to QH under the October Agreement and their connection to the October capital raising. It is clear from the evidence that Senior Manager A was instrumental in this decision. Senior Manager A approved the wording of the prospectuses. They did so in the knowledge that Barclays had not taken adequate steps to ensure that the £280 million fee payable to QH under the October Agreement was justified, and that there was therefore a risk that the information contained in the prospectuses was misleading, false and/or deceptive and/or omitted matters likely to affect its import. The Authority considers that, in such circumstances, Senior Manager A's reckless conduct can be attributed to Barclays Bank.**
92. **The Authority does not agree that it would be problematic for Senior Manager A's actions to be attributed to Barclays Bank in the light of the judgments of the criminal courts. Davis LJ's judgment did not concern regulatory provisions. On the contrary, Davis LJ expressly pointed out that he was dealing with the application of common law principles, and not with matters of a "regulatory kind".**

Penalty

93. Barclays Bank did not breach its regulatory obligations and therefore no penalty should be imposed.
94. Alternatively, if the RDC considers that some, but not all, of the alleged regulatory breaches have been made out then the proposed penalty should be reduced to reflect the more limited breaches.
95. **The Authority's conclusions as set out in this Notice do not materially differ to those set out in the Warning Notice. Given the seriousness of Barclays Bank's failings as set out in this Notice, the Authority considers that it remains appropriate to impose a financial penalty of £10 million on Barclays Bank. In reaching that view, the Authority has had regard to the relevant penalty guidance, in particular the factors mentioned in paragraphs 85 to 91 of this Notice.**

Enforcement's unfair approach to the case

96. The approach of the Authority's Enforcement case team to this case has been unfair to Barclays and is in breach of fundamental rules of natural justice.

97. The case concerns events that occurred in 2008. The inherent difficulties in prosecuting historical cases has been unreasonably exacerbated in this instance by Enforcement's approach to its investigation, including: (i) its decision to materially revise its case theory following Barclays' written representations on the Warning Notices given to Barclays plc and Barclays Bank; (ii) its decision to make new, very serious allegations against various individuals in circumstances where those allegations were never put to the relevant individuals; and (iii) Enforcement's failure to obtain during the course of its investigation evidence in support of its new case theory.
98. Enforcement's case has evolved, for example when Barclays identified areas of the Listing Rules and the Listing Principles which had not been addressed in the case documents, and Enforcement had to construe the evidence to meet this evolving case.
99. Why Barclays is alleged not to have taken reasonable care was not set out in the Warning Notice or the Investigation Report, and Enforcement only explained why in response to Barclays' written representations.
100. Certain interviews took place at a time when Enforcement's case theory was different to what it is now, and before Barclays waived privilege in certain documents, and so some witnesses were not asked relevant questions or shown important documents. This is particularly the case for Senior Manager A, who was interviewed before Barclays waived privilege and was not re-interviewed.
101. To maintain its case theory, Enforcement relies on the evidence given by Barclays' external lawyers at interview eight years after the events in question. However, much of that evidence is inconsistent with the contemporaneous evidence to such a great extent that it should be obvious that their memories are unreliable. The contrary evidence offered by other witnesses, including Barclays' internal lawyers, is entirely consistent with the contemporaneous evidence. Enforcement has not offered an explanation for such a preference.
102. At interview, key questions were not posed to Barclays' external lawyers and key documents were not put to them.
103. New evidence was introduced at a late stage resulting in significant evidentiary gaps. Those gaps mean that, at the very least, there is significant uncertainty with the evidence upon which Enforcement seeks to rely such that: (a) it cannot discharge the burden of proof; (b) it cannot be satisfied that there is sufficient reliable evidence for such serious allegations; and (c) to the extent that there is any doubt, it should be resolved in favour of Barclays.
104. **The decision to give Barclays Bank this Notice has been made on behalf of the Authority by the RDC, whose members are separate to the Enforcement case team who conducted the investigation in relation to this matter and who recommended that action be taken against Barclays Bank. The RDC does not consider that Enforcement's approach to the case has resulted in Barclays being treated unfairly.**

105. **The RDC considers it was reasonable for Enforcement to decide not to re-interview Senior Manager A, since Senior Manager A had already made clear their position in relation to the relevant matters in this case, including after Barclays waived privilege. The RDC also does not consider that Enforcement acted unfairly in making criticisms of various individuals; Enforcement was entitled to make any points it considered relevant to the case, and the RDC has had regard to them, and Barclays' submissions in response, in reaching its conclusions as set out in this Notice.**
106. **The RDC does not agree that Enforcement's case against Barclays Bank materially changed following the issue of the Warning Notice given that the rule-breaches alleged by Enforcement have, at all times, been those that were set out in the Warning Notice. The only material developments in the case since the Warning Notice was given to Barclays Bank are: (a) that Barclays decided to waive privilege in order to put forward a defence that its conduct was lawful because it acted in accordance with its lawyers' advice; and (b) that criminal and civil litigation since then has brought additional evidence to light which Enforcement was required to analyse.**
107. **The RDC acknowledges that the reasons why Barclays Bank is alleged to have failed to take reasonable care were first set out in detail in Enforcement's response to Barclays' written representations, but does not consider that this caused any unfairness to Barclays as it was subsequently given the opportunity to make further representations.**
108. **The RDC recognises that the events described in this Notice took place a number of years ago, and that some of the interviews took place several years later. The RDC has taken this into account in reaching its decision to give this Notice, and is satisfied that its conclusions are supported by the evidence, including contemporaneous documents.**