FINANCIAL CONDUCT AUTHORITY

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FINAL NOTICE

To: **Barclays plc**

Address: **One Churchill Place, London E14 5HP**

Date: **25 November 2024**

ACTION

1. For the reasons given in this Notice, the Authority hereby imposes on Barclays plc a financial penalty of £30 million pursuant to section 91 of the Act.

SUMMARY OF REASONS

2. Barclays plc is a global banking and financial services company headquartered in London. It 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. Barclays Bank plc ("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, and is

a subsidiary of Barclays plc. 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. 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.

4. 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.

5. At the same time as the capital raisings:

   (1) in June 2008, Barclays plc; and

   (2) in October 2008, Barclays Bank

   entered into advisory agreements with QH (the "Agreements").

6. 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.

7. 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.

8. The announcement by Barclays plc and, between them, the three prospectuses associated with the October capital raising (one of which was published by Barclays plc, with the other two published by Barclays Bank), 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.

9. The disclosure of the fees to be paid under the Agreements and their connection to the Qatari entities' participation in the capital raisings would have had a material impact on the terms of the capital raisings as disclosed. The disclosure of the fees under the Agreements as payments associated with the capital raisings would have:

   (1) more than doubled the disclosed level of payments due to the Qatari entities in connection with their participation in the June capital raising; and

   (2) 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, especially in October 2008 when Barclays' 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.

10. Accordingly, Barclays' failure to mention these matters in the announcements and prospectuses associated with the capital raisings rendered the information in them misleading, false and/or deceptive and meant that it omitted matters likely to affect its import. Barclays plc's failure to mention these matters in the circular that it sent to its shareholders in connection with the October capital raising meant that it did not contain all information necessary to allow its shareholders to make a properly informed decision as to the voting action required of them, in breach of LR 13.3.1R(3).

11. Barclays plc failed to take reasonable care to ensure that the information contained in the announcements and prospectuses associated with the capital raisings 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 it did not need to disclose any further information regarding the June Agreement, and 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 June Agreement and the October Agreement respectively fully justified the fees to be paid to QH thereunder. However, notwithstanding this advice, Barclays plc failed to take reasonable care to comply with its obligations under LR 1.3.3R because:

    (1) In respect of both of the Agreements, Barclays plc 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, in respect of both of the Agreements, Barclays' external lawyers were not fully informed, and Barclays plc did not take reasonable care to ensure they were fully informed, of the connection between the Agreement and the capital raising. In particular, they were not aware, in respect of each Agreement, that the genesis of the 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, and they were not aware that the fees payable to QH were calculated by reference to the Qatari entities' maximum commitment in the June capital raising (under the June

Agreement) and by reference to the value required by QH (under the October Agreement).

(3) In respect of both of the Agreements, Barclays plc did not take reasonable care to ensure that the value Barclays could expect to receive from services pursuant to the Agreement fully justified the fees to be paid to QH thereunder:

(a) No reasonable attempt was made by Barclays plc to assess the value of the opportunities that the Agreements offered before they were entered into. In respect of the June Agreement, the only attempt at assessment was an informal exercise undertaken by a Barclays senior manager before the terms of the Agreement were known. In respect of the October Agreement, a Barclays senior manager made a rapid and informal judgement, which they later described to the Authority as a "*commercial bet*". In respect of both Agreements, there was no systematic assessment, no documented assessment and no coherent effort at valuation. There was also no assessment before each Agreement was entered into of the value the Agreement 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 capital raising. Further, in respect of the October Agreement there was no assessment of the value the Agreement added in excess of Barclays' existing opportunities under the June Agreement. In addition, in respect of both Agreements, 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, in respect of the June Agreement, was an additional 1.75% of its maximum commitment plus interest, and in respect of the October Agreement, 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 capital raisings, 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 asked for a significant increase in the fees due, in respect of the June Agreement, to Challenger's participation in the capital raising, or, in respect of the October Agreement, 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 capital raisings, was fully informed of all relevant facts regarding the Agreements. In particular, they were not aware of the connection between the June Agreement and the June capital raising, and, although the Board's approval was required for the £280 million fee payable to QH under the October Agreement, 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 fees payable under the Agreements.

13. The Authority considers that, 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, Barclays plc did not act with integrity towards its actual and potential shareholders, in breach of Listing Principle 3, as follows.

14. The Authority considers that Barclays plc, including a senior manager (whose state of mind the Authority attributes to Barclays plc in the circumstances), acted recklessly, in unreasonably approving the announcement, the prospectus that it published and the circular associated with the October capital raising, in circumstances where Barclays plc 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 to QH under it, amounting to £280 million over five years, and was therefore aware of the clear risk that:

(1) 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 announcement and the prospectus published by Barclays plc 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 the import of that information; and

(2) the omission of those matters from the circular sent by Barclays plc to its shareholders in connection with the October capital raising meant that it did not contain all information necessary to allow its shareholders to make a properly informed decision as to the voting action required of them.

15. The Authority therefore has decided to impose a financial penalty on Barclays plc in the amount of £30 million pursuant to section 91 of the Act for breaching LR 1.3.3R, LR 13.3.1R(3) and Listing Principle 3.

16. This Notice is further to the Decision Notice issued by the Authority to Barclays plc on 23 September 2022. Barclays plc referred the matter to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal") on 19 October 2022 but, following settlement discussions with the FCA, notified the Tribunal of the withdrawal of the reference on 22 November 2024. The Tribunal gave its consent to this withdrawal on 22 November 2024.

DEFINITIONS

17. 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

"CDB" means China Development Bank, a financial institution in the People's Republic of China which provides funding for national projects and facilitates China's cross-border investment and global business co-operation

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

"Conditional Placees" has the meaning set out at paragraph 18 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

"MOU" means Memorandum of Understanding

"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 plc dated 13 September 2013

FACTS AND MATTERS

Initial stages of the June capital raising

18. 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.

19. 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.

20. 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.

21. From mid-May 2008 onwards, Barclays engaged in discussions with a number of potential anchor investors. One such investor was QH, with whom Barclays had a pre-existing relationship.

Early negotiations with QH

22. On 23 May 2008, senior representatives of Barclays met with representatives of QH to discuss the proposed capital raising. At the meeting, Barclays expressed its desire that QH's participation in the capital raising would lead to a strategic partnership as well as a financial one. This reflected Barclays' preferred approach of entering into strategic partnerships with anchor investors alongside their investments in Barclays in the form of MOUs or similar agreements, as it had done with CDB in July 2007.

23. Subsequent negotiations with QH over the next few days focussed almost exclusively on the capital raising and proceeded more slowly than anticipated, with QH negotiating harder than Barclays had expected.

24. Barclays plc's Board was updated as to the progress of the capital raising on 28 May 2008. It was reported that the amount of capital expected to be raised had increased to between £4 and 5 billion, with QH being one of the largest proposed investors, and that the commission to be paid to the Conditional Placees was 1.5%.

25. In advance of the Board meeting, the Board members were provided with a "Memorandum on Directors' Responsibilities and Liabilities for public documents" by Barclays' external lawyers dated 22 May 2008, which included a reference to the requirement for Barclays plc's directors to ensure that the prospectus "*must not omit any information or contain information which is incorrect or misleading*". On 28 May 2008, the Board members signed Director Responsibility Letters confirming, amongst other things, their responsibility for the prospectus.

QH's payment requirements and the June Agreement

26. On 3 June 2008, a meeting took place between senior representatives of Barclays and QH. In the meeting, QH required a fee of 3.75% for its participation in the capital raising. According to a Barclays senior manager, when this was reported to Senior Manager A after the meeting, they commented that they "*could live with 3.5 if [they] had to*".

27. Following the meeting, and in light of QH's requirement for a fee of 3.75%, Barclays conducted an analysis of different commission levels above 3% in connection with QH's potential investment of £2 billion. When discussing the additional fees required by QH with another Barclays senior manager, a Barclays senior manager made clear that the fees would not be given to other investors and would "*have to be on the side*".

28. On 9 June 2008, a Barclays senior internal lawyer emailed members of Barclays' senior management, copied to Barclays' external lawyers, and explained that another Conditional Placee was "*in full neurosis regarding parity of treatment*" and required comfort that "*no firm or conditional place has any fee, commission etc not recorded in its subscription agreement*".

29. By no later than 11 June 2008, 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 by Barclays senior managers.

30. Around this time, 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.

31. 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"*. They also discussed the extent to which disclosure of the existence of the advisory agreement as "*just another MOU*" would ensure that Barclays was "*completely protected*", without the need to disclose the fees payable under it.

32. Also on 11 June 2008, Barclays plc's Board was updated as to progress in the capital raising. The minutes of the meeting and a Board presentation referred extensively to the prospect of MOUs with certain anchor investors, pursuant to which no fees would be paid. There was no mention of a MOU or advisory agreement with QH, which was described only as a new potential investor.

33. On 13 June 2008, QH requested Barclays' guidance as to *"the best way to deal with the additional fees"*. This was a reference to QH's requirement for fees in excess of 3%, about which QH was still awaiting Barclays' substantive response.

34. In telephone calls on that day, members of Barclays senior management discussed the need for the capital raising to be "*disassociated*" from the proposed mechanism by which QH's additional payment requirement would be met. This would be achieved

by reference to Barclays' assessment of the commercial value of the proposed arrangement that would in due course become the June Agreement.

35. Also 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.

36. 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.*"

37. 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.

38. At a meeting between a Barclays senior manager and QH the next day (14 June 2008), the prospect of Challenger also participating in the capital raising was discussed. Contemporaneous notes of the meeting recorded Barclays' intention that

"extra fees" would be paid for Challenger's participation by means of the *"same mechanism"* (i.e. an advisory agreement).

39. On 16 June 2008, an email sent on behalf of the Qatari entities to Barclays' external lawyers recorded their understanding that they 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. Although they received this email, 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*". A further email to Barclays sent on behalf of the Qatari entities on the following day referred to the *"Fees arrangement as agreed"*.

40. Concerns were expressed in a telephone call between two Barclays senior managers 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.

Negotiation of the June Agreement

41. On 16 June 2008, a Barclays senior internal lawyer circulated a draft of the June Agreement internally within Barclays, copied to Barclays' external lawyers. They noted in their covering email that the draft was longer than originally contemplated in part because "*we need demonstrably to be getting our money's worth otherwise there is a risk that the fees could be perceived as a disguised commission*". The draft was subsequently amended following internal discussions, amongst other things, to shorten it and put it into letter form. Further discussions took place during 17 June 2008 around the proposed payment terms. The Qatari entities had initially wanted immediate payment of the fees, but had accepted payment over 12 months on the basis that they would also receive interest. This was agreed by a Barclays senior manager, with the period of the services remaining at 36 months.

42. A Barclays senior internal lawyer summarised the outcome of these discussions in an email sent that afternoon to, amongst others, two Barclays senior managers, copied to Barclays' external lawyers. The Barclays senior internal lawyer confirmed that the other details remained as set out in their email of 13 June 2008 (see paragraph 35 above) and that Barclays' external lawyers agreed that the June Agreement was not a material contract requiring disclosure. However, as mentioned in paragraph 36 above, Barclays' external lawyers had not been fully informed of the connection between the advisory agreement and the capital raising.

43. A draft of the June Agreement was sent by a Barclays senior manager to QH on 17 June 2008. The draft provided for certain services (albeit drafted in general terms) to be provided by QH over a period of three years in return for which Barclays would pay £36 million, payable in four equal quarterly instalments during the first 12 months of the agreement.

44. Further draft agreements were exchanged over the following two days (18 June and 19 June 2008). The main proposed changes related to the scope of services to be provided (which the lawyers for QH sought to reduce significantly) and an increase in the proposed fee to £47.5 million plus interest. A termination provision was also inserted requiring the balance of any outstanding fees under the agreement to become payable if Barclays terminated the agreement without valid cause.

45. A Barclays senior internal lawyer circulated an email to two Barclays senior managers on 18 June 2008 regarding the changes being discussed. They explained that the increase in the proposed fee from £36 million to around £47 million was prompted by the need to pay additional fees to Challenger, as a result of Challenger's proposed participation in the capital raising, and had been discussed with Barclays' external lawyers. The Barclays senior internal lawyer explained that, in order to justify this increase in the fee, the scope of the services needed to be increased. They concluded "*We must reiterate that the agreement needs to have real substance not only in its words – our board needs to be satisfied that the services will justify the fees – but also in its implementation. [QH] must genuinely be prepared to provide valuable services to us for 36 months.*" The following day the Barclays senior internal lawyer sent an email to the lawyers for QH which stated, "*Our prospectus will refer only to the attached agreement for advisory services, and will not disclose the fees, nor summarise the attached as a material contract."* The lawyer forwarded the email, and the attached draft of the June Agreement, to Barclays' external lawyers, among others.

46. On 19 June 2008, there was a meeting of Barclays plc's Board Finance Committee, at which the draft of the June Agreement referred to above was considered and approved. The Board Finance Committee was a sub-committee of the Board and on 28 May 2008 the Board had delegated authority to it to deal with all matters relating to the capital raising. Also on 19 June 2008, there was a board meeting of Barclays Bank at which the same draft of the June Agreement was also considered and approved. Minutes of both meetings noted that under the June Agreement, QH *"would provide advisory services to [Barclays] with a view to developing [Barclays'] business in the Middle East and [Barclays] would pay to [QH] certain agreed fees in respect of value received under these arrangements"*. The minutes of the Barclays Bank board meeting also noted that the June Agreement was *"to be entered into in conjunction with a subscription agreement between Barclays plc and [QH] pursuant to the Placing and open Offer."*

47. At a meeting on 23 June 2008, Barclays plc's Board was informed that two major anchor investors' participation in the capital raising had significantly reduced. This significantly increased the importance of the Qatari entities' participation in the capital raising. Neither at the meetings on 19 and 23 June 2008, nor at any other time, were either Barclays plc's Board, its Board Finance Committee or the board of Barclays Bank fully informed of the connection between the June Agreement and the June capital raising. In particular, they were not informed that an additional 1.75% fee had been agreed with QH or that the June Agreement was the means by which it would be paid. They were also not informed of how Barclays senior managers had satisfied themselves that Barclays could receive value at least equal to the fees payable under the June Agreement.

48. Further drafts of the June Agreement were exchanged on 22 and 23 June 2008. These drafts were less detailed than previous drafts because QH did not wish *"to take on detailed obligations which it could later be argued by Barclays that [QH] had breached"*. In one draft of the agreement produced by QH, the proposed fee of £47.5 million was replaced by a reference to *"[(1.75% x X) plus LIBOR]"*.

49. In the evening of 23 June 2008, having received the latest draft of the June Agreement, a Barclays external lawyer sent an email to colleagues in which he stated: *"I do not like the lack of detail in this agreement which is now an agreement to agree re services, yet contains detailed payment provisions. I have discussed with the client that this could expose them to suggestions that it represents disguised commission re the placing, but am assured that the services which are being agreed*

are genuine and valuable and the payments being made are justified by the benefits to be received. [Barclays' internal lawyers] have received firm assurances on this from the BarCap negotiators, as they have emphasised the need for this to be appropriate remuneration for relevant services."

50. On 24 June 2008, Barclays calculated the fees payable under the June Agreement 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 June Agreement as signed

51. 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. The figure of £42 million was written in manuscript. The services to be provided by QH were not further specified or explained in the letter, which stated that the *"type and scale of services"* would be refined as the relationship developed.

52. 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.

Disclosure of the June capital raising and June Agreement

53. 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. The prospectus noted that the directors and Barclays plc accepted responsibility for the information contained therein and confirmed that, to the best of their knowledge, having taken

all reasonable care to ensure that such was the case, such information was in accordance with the facts and did not "*omit anything likely to affect the import of such information*".

Events between July and September 2008

54. 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. For example, no plan for actions under the June Agreement was developed, and the existence of the June Agreement was ignored in various Barclays presentations relating to its business in Qatar and the Middle East.

55. In August 2008, QH sought payment of the first instalment of fees payable under the June Agreement, which had not been paid on time. There was uncertainty within Barclays as to the process by which the fees should be paid and the cost of them accounted for, and to which services the fees related. It was ultimately decided that the fees should be charged to Barclays Group, not to the business divisions within Barclays plc which were supposed to be the beneficiaries of services under the June Agreement. It was also Barclays Group that had covered the costs associated with the June capital raising. In the Authority's view, the fact that the fees payable under the June Agreement were ultimately borne by Barclays Group, along with the accounting treatment applied, is indicative that they were considered to be a cost incurred in connection with the June capital raising.

56. Shortly after the capital raising was announced on 25 June 2008, a Barclays senior internal lawyer highlighted to two Barclays senior managers the need to keep a record of services provided and value received. From September 2008 onwards, Barclays began to log by email the services purportedly being provided under the June Agreement. The emails only referred generically to periodic and ad hoc communications with individuals at QH and their broad subject matter, without regard to whether or not they arose from or in connection with the June Agreement.

Background to the October capital raising

57. 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.

58. 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.

59. 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?*".

60. 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.

61. 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."

62. 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.

63. 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*".

64. 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%.

65. On 13 October 2008, the UK Government announced that it was injecting £37 billion of capital into certain major UK banks (not including Barclays).

66. 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

67. 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.

68. 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*".

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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

76. 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.

77. 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*".

78. 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

79. 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.

80. 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.

81. 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.

82. 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

83. 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

84. 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.

85. 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.

86. 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, the Board was required to approve any transaction which exceeded £150 million in size. However, neither the Board nor the Board Finance Committee was aware of the £280 million fee or how it was calculated, and nor was the non-executive director to whom, together with Senior Manager A, authority was delegated by the Board Finance Committee on 28 October 2008. 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

87. 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.

88. 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.

89. 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

90. 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.

91. 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.

92. 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.

93. As in June 2008, the directors of Barclays plc (including Senior Manager A) also signed Letters of Responsibility which confirmed their responsibility for the warrants prospectus and stated that they "*accept responsibility for the information contained in the Prospectus and confirm that to the best of [their] knowledge, having taken all reasonable care to ensure that such is the case, the information contained in it is in accordance with the facts and does not omit anything likely to affect the import of such information*".

94. 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 case[1]

95. 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, 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.

96. 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).

97. 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*". In respect of the

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

meetings on 19 June 2008, he stated, "*On the face of it, there is no evidence that the [Board Finance Committee] or the [board of Barclays Bank] was told that there had been an additional 1.75% fee agreed with [QH] or that the [June Agreement] was the means by which it would be paid*".

98. 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*".

99. For the avoidance of doubt, in this Notice the Authority makes no criticism of any of the investors.

FAILINGS

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

LR 1.3.3R

101. For the reasons set out in paragraphs 101 to 106 below, the Authority considers that Barclays plc failed to take reasonable care to ensure that the information contained in the announcements and prospectuses that it published associated with the capital raisings was not misleading, false or deceptive and did not omit anything likely to affect its import, in breach of LR 1.3.3R.

102. The Agreements formed part of the basis on which the Qatari entities agreed to participate in the capital raisings. Barclays plc was aware of this, but did not disclose the fees paid under the Agreements, nor their connection to the Qatari entities' participation in the capital raisings.

103. The Qatari entities agreed to participate for over 50% of the total capital raised in June 2008 and over 31% of the capital raised in October 2008. Disclosure of the fees payable under the Agreements as payments in connection with the Qatari entities' participation in the capital raisings would have more than doubled the disclosed level of payments due to the Qatari entities in connection with their participation in the

June capital raising from £34.5 million to almost £77 million; and more than tripled the disclosed level of payments to the Qatari entities in connection with their participation in the October capital raising from £128 million to more than £408 million. This would have been highly relevant to shareholders, investors and the wider market.

104. Disclosure of the fees payable under the Agreements 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 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.

105. Accordingly, the omission of these details from the announcements and prospectuses associated with the capital raisings rendered the information in them misleading, false and/or deceptive and meant that it omitted matters likely to affect its import.

106. In respect of the June capital raising, Barclays received legal advice that the wording in the announcement and prospectus was acceptable and that it did not need to disclose any further information regarding the June Agreement, providing it was satisfied that the value it could expect to receive from services pursuant to the June Agreement fully justified the fees to be paid to QH. However, notwithstanding this advice, Barclays plc failed to take reasonable care to comply with its obligations under LR 1.3.3R because:

    (1) Barclays plc 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 plc did not take reasonable care to ensure they were fully informed, of the connection between the June Agreement and the capital raising. In particular, they were not aware that the genesis of the June 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 Agreement was connected to the capital raising and was not a separate commercial transaction,

and that the fees payable to QH under the advisory agreement were calculated by reference to the Qatari entities' maximum commitment in the capital raising.

(3) Barclays plc did not take reasonable care to ensure that the value Barclays could expect to receive from services pursuant to the June Agreement fully justified the fees to be paid to QH under the June Agreement:

(a) No reasonable attempt was made by Barclays plc to assess the value of the opportunities that the June Agreement offered before it was entered into. The only attempt at assessment was an informal exercise undertaken by a Barclays senior manager before the terms of the June Agreement were known. There was no systematic assessment, no documented assessment and no coherent effort at valuation. There was also no assessment before the June 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 June capital raising, and 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 (an additional 1.75% of its maximum commitment plus interest) in return for its investment in the June capital raising, rather than by reference to an assessment of the value of the services that QH could provide. No assessment of the value was undertaken when QH asked for a significant increase in the fees on account of Challenger's participation in the capital raising.

(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 June capital raising, was fully informed of the connection between the June Agreement and the June capital raising. They were also not informed of how Barclays senior managers had satisfied themselves that Barclays could receive value at least equal to the fees payable under the June Agreement.

107. In respect of the October capital raising, Barclays received legal advice that it did not need to disclose the October Agreement 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 plc failed to take reasonable care to comply with its obligations under LR 1.3.3R because:

(1) Barclays plc 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 given complete and accurate information, and Barclays plc did not take reasonable care to ensure they were fully and accurately 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 plc 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 plc 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, 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 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.

LR 13.3.1R(3)

108. For the reasons set out at paragraphs 101 to 104 above, the Authority considers that Barclays plc's failure to include details of the fees payable to QH under the October Agreement, and their connection to the October capital raising, in its shareholder circular issued on 7 November 2008 meant that the circular did not contain all information necessary to allow its shareholders to make a properly informed decision as to the voting action required of them in connection with the October capital raising, in breach of LR 13.3.1R(3).

Recklessness and Listing Principle 3

109. The Authority considers that Barclays plc, including Senior Manager A (whose state of mind the Authority attributes to Barclays plc in the circumstances), acted recklessly, in unreasonably approving the announcement, the warrants prospectus and the circular associated with the October capital raising, in circumstances where Barclays plc 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:

(1) 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 announcement and the prospectus published by Barclays plc and 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 the import of that information; and

(2) the omission of those matters from the circular sent by Barclays plc to its shareholders in connection with the October capital raising meant that it did not contain all information necessary to allow its shareholders to make a properly informed decision as to the voting action required of them.

110. The Authority therefore considers that Barclays plc's breaches of LR 1.3.3R (in relation to the October capital raising) and LR 13.3.1R(3) were committed recklessly and considers that, 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, Barclays plc did not act with integrity towards its actual and potential shareholders, in breach of Listing Principle 3.

SANCTION

Financial penalty

111. The Authority's policy on the imposition of financial penalties is set out in DEPP. Barclays plc'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))

112. 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 regulatory announcements,

shareholder circulars and prospectuses and acting with integrity. Listed companies must make appropriate disclosures. When they fail to do so, in particular with a lack of integrity, it is important that the Authority imposes a financial penalty that acts as a credible deterrent.

113. 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))

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

(1) The misconduct described in this Notice in respect of the October Announcement demonstrates a lack of integrity by Barclays plc towards its shareholders and potential investors.

(2) The June and October capital raisings were extremely significant and high-profile transactions undertaken against the backdrop of the global financial crisis, most notably in October 2008. The capital raisings and the terms on which they were transacted were 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.

(3) 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.

(4) Disclosure of the fees payable under the Agreements and their connection to the capital raisings would have doubled and tripled the disclosed payments to the Qatari entities in connection with the June and October capital raisings

respectively. It would have revealed that there was a significant discrepancy in the level of payments to different investors.

(5) Shareholders and other investors were entitled to receive all relevant information regarding the June and October capital raisings, particularly given the unusual circumstances and extreme uncertainty in the market. This would have been particularly relevant in October 2008 when Barclays plc's shareholders approved the October capital raising without being properly informed as to the terms of the Qatari entities' participation, 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))

115. The Authority considers that Barclays plc 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))

116. The Authority has had regard to the size of the financial resources of Barclays plc. Barclays plc is a FTSE 100 UK listed company and one of the UK's largest banking and financial services companies, with a market capitalisation at the time of between £15 billion and £19 billion.

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

117. 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

118. The Authority considers in all the circumstances that the seriousness of the breaches merits a substantial financial penalty. The Authority has reassessed the level of this financial penalty in light of the seriousness of the breach and determined that it should be reduced.

119. The Authority has therefore decided to impose a financial penalty of £30 million.

REPRESENTATIONS

120. Annex B contains a brief summary of the key representations made by Barclays plc 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

121. This Notice is given to Barclays plc under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

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

Manner and time for payment

123. The financial penalty must be paid in full by Barclays plc to the Authority no later than 9 December 2024.

If the financial penalty is not paid

124. If all or any of the financial penalty is outstanding on 10 December 2024, the Authority may recover the outstanding amount as a debt owed by Barclays plc and due to the Authority.

Publicity

125. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to

you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

126. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contact

127. For more information concerning this matter generally, contact Ross Murdoch (direct line: 0207 066 3999 / email: ross.murdoch@fca.org.uk) or Bob Beauchamp (direct line: 020 7066 5302 / email: bob.beauchamp@fca.org.uk) at the Authority.

Ross Murdoch
Head of Department
Financial Conduct Authority, Enforcement and Market Oversight Division

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"*.

4. Listing Rule 13.3.1R(3), in the UKLA listing rules in the Handbook, provides that: "*Every circular sent by a listed company to holders of its listed securities must:… (3) if voting or other action is required, contain all information necessary to allow the security holders to make a properly informed decision*".

5. Listing Principle 3, which applies to listed companies with a premium listing, provides that: *"A listed company must act with integrity towards holders and potential holders of its listed equity shares"*.

Policy/guidance

6. 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.

7. 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.

8. Under DEPP 6.5.2G, when determining the level of the financial penalty, the Authority will consider all the 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 plc, and the Authority's conclusions in respect of them (in bold), is set out below.

Representations relating to both of the Agreements

Summary of Barclays plc's position

2. Barclays plc denies any wrongdoing and denies that it acted with a lack of integrity. At all times Barclays sought and received internal and external independent legal advice, from lawyers who were fully sighted on all aspects of the developing transactions between Barclays and the Qatari entities, and acted in accordance with that advice.

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 plc 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 plc misleading, false and/or deceptive.

5. The allegations against Barclays plc 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 101 to 106 of this Notice, the Authority considers that Barclays plc failed to take reasonable care to ensure that the information contained in the announcements and prospectuses that it published associated with the capital raisings was not misleading, false or deceptive and did not omit anything likely to affect its import, in breach of LR 1.3.3R. As explained in paragraph 107 of this Notice, the Authority considers that Barclays plc breached LR 13.3.1R(3) by issuing a circular on 7 November 2008 that did not contain all information necessary to allow its shareholders to make a properly informed decision as**

to the voting action required of them in connection with the October capital raising. For the reasons set out in paragraphs 108 to 109 of this Notice, the Authority also considers that Barclays plc did not act with integrity 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, in breach of Listing Principle 3.

7. **Although Barclays sought and received legal advice from its internal and external lawyers in relation to its disclosure obligations with respect to the Agreements, this advice did not specifically cover its obligations under LR 1.3.3R and Barclays' external lawyers gave their advice in circumstances where they had not been fully informed of the connection between the Agreements and the capital raisings. Further, Barclays did not act on the advice given as, despite it being consistently stressed by Barclays' internal and external lawyers that Barclays needed to be satisfied that the Agreements would generate real value to justify the fees to be paid to QH thereunder, it failed to carry out adequate valuation assessments.**

8. **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.**

9. **The Authority is satisfied that the evidence supports its conclusions. The Authority acknowledges the context in which decisions were made regarding the capital raisings, but does not consider that this excuses Barclays plc for failing to comply with its regulatory obligations. 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 assessments carried out, supports its conclusion that Barclays plc failed to take reasonable care to comply with its regulatory obligations.**

Barclays' disclosure decisions

10. The June Agreement was disclosed because Barclays was keen to publicise the fact it had established a strategic relationship with the Qatari entities at the same time as the latter was investing in Barclays. The October Agreement was not mentioned in any announcement, prospectus or circular because it was an extension to the June Agreement and so the same commercial rationale for its disclosure did not apply.

11. **The fact that the existence of the June Agreement was disclosed does not affect the Authority's conclusion that the announcement and prospectus associated with the June capital raising were misleading, false and/or deceptive and that the disclosed information omitted matters likely to affect its import, as neither the fees paid under the June Agreement, nor the nature of the commercial connection between it and the June capital raising,**

were disclosed. For similar reasons, the failure by Barclays to disclose any information at all regarding the October Agreement in the announcement and prospectuses associated with the October capital raising means that those documents were also misleading, false and/or deceptive and that they also omitted matters likely to affect the import of the information disclosed.

Knowledge and advice of Barclays' lawyers

12. Barclays sought legal advice from its internal and external lawyers on all aspects of the Agreements. That advice encompassed the appropriateness of the Agreements and whether or not Barclays was obliged to disclose them. In giving their advice, both Barclays' internal and external lawyers were aware of the following:

    (a) the genesis of the Agreements;

    (b) the importance of the Agreements to the Qatari entities' subscription: the lawyers were aware that the Qatari entities saw the Agreements as a means to delivering the additional value they were seeking;

    (c) how the fees under them had been calculated. In June, Barclays' internal and external lawyers exchanged drafts of the June Agreement which showed how the fee had been calculated. In October 2008, Barclays' lawyers knew that the October Agreement was used because the Qatari entities were seeking greater overall value than Barclays could lawfully deliver by way of fees within the October capital raising;

    (d) the timing and drafting of the Agreements. Barclays' lawyers were involved in drafting the terms of the Agreements and in negotiations with QH's lawyers; and

    (e) the nature and scope of the services and the level of discussions with the Qatari entities. The lawyers in charge of drafting the Agreements were briefed by a Barclays senior manager in both June 2008 and October 2008 as to the services which the Qatari entities were going to provide following discussions between the Barclays senior manager and the Qatari entities. They advised that, once the June Agreement was entered into, the services could be refined by mutual agreement and there was no need to detail them in the agreement.

13. Barclays was advised by its internal lawyers, who themselves had been advised by its external lawyers, that if Barclays was satisfied that the Qatari entities could offer business opportunities to the value of the amounts payable under the Agreements (and Barclays was so satisfied) then: (1) the arrangements were appropriate; and (2) the fact of the Agreements and the advisory fees payable thereunder did not need to be disclosed. Barclays duly followed that advice, although for commercial reasons Senior Manager A made the decision to disclose the fact of the June Agreement. Barclays' internal and external lawyers were aware of this decision and advised on the language to be included in the announcement and prospectus.

14. The evidence shows that the genesis of the Agreements was shared openly with Barclays' external lawyers. For example: (1) prior to the June Agreement, Barclays' external lawyers were party to discussions with Barclays about possible "*sweeteners*"

for anchor investors; (2) the Authority accepts that, at the time of the June Agreement, Barclays' external lawyers could have "*gleaned*" the genesis of the June Agreement from the written information that was made available to them by Barclays; (3) Barclays' external lawyers commented at interview that they would have given the same advice in relation to disclosure irrespective of their knowledge as to the genesis of the June Agreement; and (4) Barclays' external lawyers have accepted that they knew, at least in relation to the October Agreement, that if the Qatari entities did not get the deal they wanted in relation to the October Agreement then they would not participate in the capital raising (i.e. that there was a degree of interconnectivity).

15. Even if it could be said that Barclays' external lawyers somehow missed the significance of the genesis of the Agreements, it was reasonable for Barclays' internal lawyers, and therefore Barclays, to proceed on the basis that the external lawyers were aware of all the information they needed to know to provide fully informed advice, and therefore to rely upon that advice.

16. Barclays' internal lawyers provided detailed instructions to Barclays' external lawyers to provide advice on all aspects of disclosure, including the Listing Rules. As the Authority has accepted, Barclays' external lawyers considered LR 1.3.3R when giving advice. A Barclays internal lawyer's evidence to the Authority was that they "*both knew of the general disclosure obligations pursuant to the Listing Rules and believed that [Barclays' external lawyers] had taken them into account in advising the Bank on their disclosure obligations*". Barclays' internal lawyers' evidence makes it clear that Barclays' external lawyers worked closely alongside Barclays' employees in respect of the October capital raising. It is also clear from the evidence that anyone working on the transaction at the time would have known, and expected, that Barclays' external lawyers were engaged fully with every detail of the capital raisings.

17. **The Authority acknowledges that Barclays sought and received legal advice on whether the Agreements and the fees thereunder needed to be disclosed, and that the advice provided was that Barclays did not need to disclose any further information regarding the June Agreement, and that it did not need to disclose any information in respect of the October Agreement, provided that Barclays was satisfied that the value it could expect to receive from services pursuant to the Agreements fully justified the fees. However, Barclays plc did not seek, or obtain, specific legal advice regarding its obligations under LR 1.3.3R. Further, in respect of each Agreement, the Authority considers that the evidence shows that Barclays' external lawyers were not fully informed of the connection between the Agreement and the capital raising. Accordingly, the Authority considers that the fact that Barclays sought and received legal advice does not demonstrate that Barclays plc took reasonable care to comply with its obligations under LR 1.3.3R.**

18. **The evidence of Barclays' external lawyers in interview with the Authority is that they were not aware of how the Agreements were connected to the Qatari entities' participation in the capital raisings. There is also no contemporaneous evidence which clearly shows that Barclays' external lawyers were fully informed of this connection. Contrary to Barclays' plc's submissions, the Authority considers that the evidence supports the conclusion that Barclays' external lawyers were not aware that the genesis**

of each Agreement was the Qatari entities' 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, or that the fees payable to QH were calculated by reference to the Qatari entities' maximum commitment in the June capital raising (under the June Agreement) and by reference to the value required by QH (under the October Agreement).

19. **The fact that Barclays' external lawyers might have been able to infer the connection between the June Agreement and the Qatari entities' participation in the June capital raising from references in various emails that they received does not support Barclays' submission that it took reasonable care to comply with its obligations under LR 1.3.3R. Barclays' external lawyers' interview evidence is that they were not aware of how the June Agreement and the June capital raising were connected and that they did not appreciate the import of the relevant passages in these emails. In addition, in order to take reasonable care, it was not sufficient for Barclays to rely on its external lawyers inferring the connection from various pieces of information that they received. Instead, Barclays needed to take reasonable steps to ensure that Barclays' external lawyers had all the information they needed when giving advice. However, Barclays did not clearly and comprehensively set out the relevant facts in any document and there is no contemporaneous evidence that Barclays' external lawyers were aware of all relevant facts when giving advice.**

20. **The fact that Barclays' external lawyers commented at interview that, had they known the full picture regarding the June Agreement, they would not necessarily have advised Barclays to make additional disclosure, does not demonstrate that Barclays took reasonable care to comply with its regulatory obligations at the relevant times. Nor does it demonstrate that Barclays complied with its disclosure obligations in not mentioning the fees payable under the Agreements or their connection to the capital raisings in the published material relating to the capital raisings. For the reasons set out in paragraphs 102 to 104 of this Notice, the Authority considers that the omission of this information rendered the information in the announcements and prospectuses associated with the capital raisings misleading, false and/or deceptive and meant that it omitted matters likely to affect its import.**

21. **It was not reasonable for Barclays to proceed on the assumption that Barclays' external lawyers were fully aware of the connection between the Agreements and the capital raisings and that they had all the information they needed to provide fully informed advice. Barclays should have properly and fully instructed its external lawyers and ensured that they were aware of all relevant information, rather than relying on them to infer the true position for themselves.**

22. **Barclays' external lawyers did not refer to LR 1.3.3R in any advice that they gave on disclosure. However, the Authority acknowledges that, at least in relation to the June Agreement, based on answers given by a Barclays external lawyer in interview with the SFO, Barclays' external lawyers may have given some thought to the requirements of LR 1.3.3R, although the**

Barclays external lawyer did not state this explicitly. However, the advice that they provided was premised on what they had been told, which did not include the true nature of the connection between the June Agreement and the capital raising. Without such knowledge, Barclays' external lawyers could not properly advise on Barclays' disclosure requirements. Further, there is no evidence that Barclays' internal lawyers applied their minds to what effect the connection had on the specific disclosure requirements under LR 1.3.3R. There is no reference to the wording of LR 1.3.3R in the contemporaneous evidence and there was no attempt to justify non-disclosure through an explanation of what the rule requires. Instead, Barclays' internal lawyers appear to have concluded that any connection was irrelevant if the June Agreement was a lawful agreement. Therefore, the Authority considers it is reasonable to conclude that the legal advice provided did not properly consider LR 1.3.3R.

Assessments of value

23. Barclays gave proper consideration to the value of the opportunities which they could derive from the Agreements before they were entered into. Having made enquiries and considered the information available at the time, Barclays' representatives reasonably reached the conclusion that Barclays could receive value exceeding the amounts it was obliged to pay under the Agreements. This was a reasonable, commercially sound judgement call based on the consideration of several factors, including the high investment appetite of the Qatari entities, the expected growth of certain business sectors such as commodities and private equity, the scale of the business opportunities which had already been offered and the ambitions of Barclays in certain areas. That this was a reasonable judgement call was confirmed by Waksman J in his judgment in the PCP proceedings, who stated that the Agreements concerned the provision of business opportunities which could be "*extremely lucrative*" for Barclays.

24. The steps taken, including by a senior manager in June and by Senior Manager A in October, to be satisfied with the value Barclays could receive from the Qatari entities were entirely consistent with the scope of the Agreements. Barclays' internal and external lawyers did not advise that a detailed assessment of the value which the Agreements could deliver should be carried out before the Agreements were entered into and were content with the level of assessment carried out. In addition, Waksman J found that "*no extensive modelling and research*" was necessary in connection with agreements of the type of the Agreements and that "*[a]ssessments of value in this context are, to a significant extent, subjective matters*".

25. **The legal advice provided to Barclays by its internal and external lawyers throughout the capital raisings emphasised that the Agreements were only lawful arrangements which could be used to help meet the Qatari entities' requirements for additional value, if Barclays was satisfied that it would receive services to the value of the amounts payable thereunder, and that this was not an assessment that the lawyers themselves could make. However, despite this advice, Barclays did not reasonably assess the value of the opportunities that the Agreements offered before they were entered into. In respect of the June Agreement, the only attempt at assessment was an informal exercise undertaken by a Barclays senior manager before the terms of the Agreement were known. In respect of the October Agreement,**

Senior Manager A made a rapid and informal judgement, which they later described to the Authority as a "*commercial bet*".

26. **Barclays had the necessary resources to carry out a proper valuation of potential business opportunities. However, in respect of both Agreements, there was no systematic assessment, no documented assessment and no coherent effort at valuation. There was also no assessment of the value the Agreements added over and above the opportunities Barclays would in any event have had in the Middle East, and any additional benefit that it would have accrued as a result of the Qatari entities' participation in the capital raisings. Further, in respect of the October Agreement, there was no assessment of the value the Agreement added in excess of Barclays' existing opportunities under the June Agreement. In addition, in respect of both Agreements, there was no assessment of the net profit (considering the gross income and expected costs including capital required) that needed to be generated to justify the fees. The Authority therefore considers that the steps at assessment valuations carried out by Barclays were clearly inadequate.**

27. **In addition, there is no evidence that Barclays undertook a serious, concerted effort to track the performance of the Agreements after they had been entered into until there was regulatory interest.**

The business opportunities which derived from the Agreements

28. The Agreements have delivered value to Barclays over the years and contributed to the establishment of its strong reputation in the Middle East. This is consistent with the expectations of Barclays senior managers as to the nature and value of the opportunities which could be offered under the Agreements and supports Barclays plc's position that the conclusion reached by Barclays in this respect was reasonable.

29. As Waksman J found, the fact that contemporaneous evidence concerning the business opportunities did not specifically reference the Agreements does not mean that they "*did not play a role or, more importantly, that Barclays did not intend to take benefits under [the Agreements]"*. The fact that business opportunities were offered by the Qatari entities in the first place is consistent with the scope of the Agreements, regardless of whether the opportunities were subsequently secured.

30. **The Authority does not consider that there is clear evidence that the Agreements have delivered value to Barclays over the years. Instead, the evidence shows that the existence of the Agreements 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.**

31. **In any case, whether or not the Agreements have delivered value since the October Agreement was entered into has no bearing on whether the steps taken by Barclays to assess value prior to entering the Agreements were reasonable. In contrast, the Authority considers it is relevant that there is little evidence that the June Agreement had delivered value to Barclays by**

the time that the October Agreement was entered into. In particular, the Authority notes that any value that Barclays might have derived from the June Agreement was at that time far lower than the fees it had been required to pay to QH thereunder.

Approach to Waksman J's judgment in the PCP case

32. 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.

33. 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 June Agreement or 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, particularly as regards the June Agreement. In contrast, the advice of Barclays' internal and external lawyers is central to the allegations made by the Authority.

34. **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.**

35. **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.**

The June Agreement and the June 2008 capital raising

No breach of LR 1.3.3R

36. Barclays plc did not breach LR 1.3.3R in its disclosures in relation to the June capital raising. Barclays plc'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 plc 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.

37. **For the reasons set out in paragraphs 101 to 105 of this Notice, the Authority considers that Barclays plc failed to take reasonable care to ensure that the information contained in the announcement and prospectus associated with the June 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.**

The disclosures were not misleading etc.

38. The June Agreement was a binding legal agreement and was legally separate to the capital raising. It was connected to the capital raising in the sense that it formed part of the overall commercial deal struck with the Qatari entities. However, the separateness of the June Agreement is clear from its terms. First, it was a standalone agreement and it would not have terminated, had the Qatari entities divested from Barclays plc. Secondly, the Qatari entities accepted that, if they failed to fulfil their obligations under the June Agreement, Barclays would have had the option of terminating the June Agreement and clawing back the money it had paid under the June Agreement without impacting the Qatari entities' shareholding in Barclays plc. It was therefore not necessary to disclose the June Agreement.

39. The level of fees payable to QH under the June Agreement was not large enough to make it a material contract requiring that amount to be disclosed. This was confirmed by Barclays' internal and external lawyers in June 2008. In addition, the evidence from institutional investors is that they would not have expected the level of advisory fees under the June Agreement to have been disclosed and that they regarded the level of those fees as immaterial. Further, the possibility of clawback means that the fees under the June Agreement cannot properly be described as more than doubling the payments to the Qatari entities for their participation in the June capital raising, which supports the view that they were not material to investors.

40. The market would not have expected the announcement or the prospectus published in June 2008 to disclose information about the total advisory fees payable under the June Agreement or about the way in which they had been negotiated and/or calculated, even though the total amount of those fees was determined by reference to the commercial demands made by the Qatari entities as part of agreeing to subscribe to the June capital raising. It is not market practice in the UK to describe the commercial negotiations that led to a particular price to be paid, or a particular level of consideration to be agreed, for a transaction. Those matters are regarded as commercially sensitive and confidential and it would be highly unusual for any details about those negotiations to be included in public announcements and documents.

41. The view of the market expert instructed by Barclays in relation to these proceedings is that, if the fees under the June Agreement had been disclosed, they would not

have had a material impact on the assessment of the June capital raising. At that time, the market, investors and shareholders were focussed on the collapse in the financial markets and on the urgency for additional capital, and there was little interest in the fee structure of the June capital raising or in the June Agreement.

42. None of those involved in the capital raisings, or expert witnesses instructed by Barclays in relation to these proceedings, have suggested that the non-disclosure of additional details regarding the June Agreement was unreasonable. This is on the proviso, which the Authority accepts, that the June Agreement was a legitimate agreement for valuable services. This suggests, at the very least, that the judgement call taken by Barclays at the time on what should be disclosed was not unreasonable.

43. The commercial connection between the June Agreement and the Qatari entities' participation in the June capital raising was, in any case, made clear by the language included in the announcement and prospectus published in June 2008. It was clear from these documents that the June Agreement was entered into at the same time as the subscription agreements and it was described in the context of the Qatari entities becoming new investors and being part of the new relationship with the Qatari entities resulting from that investment. In addition, the fact of the June Agreement was disclosed under the heading *"Reasons for the Firm Placing and the Placing and Open Offer".* It was therefore clear to any reader that the agreement was part of the overall commercial deal and that it was a sufficiently significant agreement to warrant such prominent disclosure.

44. The announcement in June 2008 did not set out any details of the terms of the capital raising or any fees payable. If it was misleading for failing to disclose the fees under the June Agreement then it would also be misleading for failing to disclose the 1.5% commission, which cannot be right. Therefore, Barclays plc cannot have breached LR 1.3.3R in respect of the contents of the announcement.

45. **Although the June Agreement was a legally separate contract, it was not commercially or in practical terms free-standing since, as Barclays accepts, it formed part of the commercial basis on which the Qatari entities agreed to participate in the June capital raising. Had Barclays not agreed to enter the June Agreement, the Qatari entities would not have participated in the capital raising or would have required the additional fees in the capital raising by other means. As such, the June Agreement was an intrinsic part of the capital raising. Accordingly, to ensure that the information contained in the published material associated with the June capital raising was not misleading, false or deceptive, and did not omit matters likely to affect its import, Barclays should have disclosed the fees payable under the June Agreement, and their connection to the Qatari entities' participation in the June capital raising.**

46. **The Authority considers that the evidence shows that it was never envisaged that the June 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. Therefore, the Authority considers it is accurate to say that disclosure of the fees payable under the June Agreement would have more than doubled the disclosed level of payments due to the Qatari entities in connection with**

their participation in the June capital raising from £34.5 million to almost £77 million. The Authority considers that this information would have been relevant to shareholders, investors and the wider market, and so disagrees with the view expressed by Barclays' experts and others that non-disclosure of this information was not unreasonable.

47. **The Authority does not consider it to be relevant whether or not the fees payable under the June Agreement were in themselves sufficient to make it a material contract requiring disclosure under the Authority's Prospectus Rules. The key point insofar as LR 1.3.3R is concerned is that the non-disclosure of the fees payable under the June Agreement meant that the information being disclosed in the prospectus regarding the terms on which the Qatari entities were said to have agreed to subscribe was misleading, false and/or deceptive and omitted matters likely to affect its import.**

48. **In respect of Barclays plc's claim that institutional investors "*would not have expected the level of advisory fees under the June Agreement to have been disclosed and that they regarded the level of those fees as not material*", the question whether information complies with LR 1.3.3R is not answered by asking particular investors what they would or would not expect. In addition, the statement is not accurate, as the evidence of an institutional investor was that they would not have expected the June Agreement to be disclosed "*if it was for something separate from the capital raising"*, which was not the case.**

49. **Barclays plc's submission that it "*is not market practice in the UK to describe the commercial negotiations that led to a particular price to be paid*" is also not relevant to an assessment of whether it complied with LR 1.3.3R. The relationship between the June Agreement and the June capital raising was not merely historical. Instead, the June Agreement, and the fees payable to QH thereunder, were an essential precondition of the investment, without which the Qatari entities would not have agreed to subscribe.**

50. **The Authority considers that the views of the market expert instructed by Barclays as to whether or not disclosure of the omitted information would have caused an investor to alter their investment decision are not relevant to an assessment of whether or not there has been a breach of LR 1.3.3R. Similarly, the Authority considers that it is also not relevant whether or not investors expressed any interest in the level of fees under the June Agreement; since the connection between the June Agreement and the June capital raising was not disclosed, there would have been no reason for investors to ask.**

51. **The Authority does not agree that the commercial connection between the June Agreement and the Qatari entities' participation in the June capital raising was made clear in the disclosed documents. Instead, the impression given was that the June Agreement represented a commercially desirable opportunity for Barclays that was distinct from the capital raising. In any case, the Authority considers that the fees payable by Barclays under the June Agreement was a material fact, the omission of which rendered the information in the announcement and prospectus associated with the June**

capital raising misleading, false and/or deceptive, and meant that it omitted matters likely to affect its import.

52. **In assessing whether Barclays plc breached LR 1.3.3R the Authority considers it appropriate to have regard to all the material that Barclays plc published in relation to the capital raising (i.e. the announcement and the prospectus). Neither the announcement nor the prospectus mentioned the fees payable by Barclays to QH under the June Agreement, or their connection to the June capital raising. The announcement was not intended to be read in isolation from the prospectus as it contained details of the share issue and made reference to the prospectus, stating "*The Placing and Open Offer will be on the terms and subject to the conditions set out in the Prospectus*". Accordingly, a person reading the material published by Barclays plc in relation to the capital raising would have been given the misleading impression that the only fees to be paid to QH in connection with its participation in the June capital raising were those mentioned in the prospectus. The Authority therefore considers that, by failing to mention the fees payable by Barclays under the June Agreement, and their connection to the June capital raising, in either the prospectus or the announcement, Barclays plc breached LR 1.3.3R.**

Barclays' internal lawyers' knowledge and advice

53. Barclays' internal lawyers: (i) were aware of the fact that the June Agreement emerged as a result of the Qatari entities' requirements for additional value; (ii) instructed Barclays' external lawyers to provide advice on all aspects of disclosure including the Listing Rules; and (iii) in reliance upon the advice they received from Barclays' external lawyers, advised that, provided that Barclays was satisfied that the Qatari entities could offer business opportunities to the value of the amounts payable thereunder, the June Agreement was a lawful agreement, and did not need to be disclosed in the announcement and prospectus connected to the June capital raising. This advice was reasonable and Barclays was entitled to rely on it, although for commercial reasons Senior Manager A made the decision to disclose the fact of the June Agreement.

54. **The Authority acknowledges that the evidence shows that Barclays' internal lawyers knew that the genesis of the June Agreement was the Qatari entities' requirement for additional fees, that it was a mechanism by which the requirement would be met, that the payment of those fees was part of the commercial bargain struck with the Qatari entities, pursuant to which they would participate in the capital raising, and that the amount of the fees payable under the June Agreement was calculated by reference to the amount of the Qatari entities' participation in the capital raising.**

55. **Barclays' internal lawyers, having such knowledge, advised that, as long as Barclays was reasonably satisfied that the services to be provided under the June Agreement fully justified the fees to be paid to QH thereunder, the June Agreement was a permissible means of meeting QH's fee requirements and could be treated as separate and unconnected to the capital raising for disclosure purposes. However, that does not mean it was reasonable for Barclays plc not to disclose the fees to be paid to QH under the June Agreement. Barclays' internal lawyers gave their advice in reliance upon the advice they received from Barclays' external lawyers. However,**

Barclays' external lawyers were not fully informed of the connection between the June Agreement and the capital raising. Further, the Authority has not seen any evidence that Barclays' internal lawyers considered what effect the connection between the June Agreement and the capital raising had on the specific disclosure requirements under LR 1.3.3R, and they did not specifically instruct Barclays' external lawyers to provide legal advice regarding Barclays' obligations under LR 1.3.3R, nor did Barclays' external lawyers do so. Therefore, in the Authority's view, the knowledge of, and advice given by, Barclays' internal lawyers does not mean that Barclays plc took reasonable care to comply with its obligations under LR 1.3.3R.

Knowledge of Barclays' external lawyers

56. Barclays' external lawyers were fully aware, before the announcement and the prospectus relating to the June capital raising were published, that the June Agreement helped meet the Qatari entities' commercial demands in connection with the June capital raising and formed part of the basis upon which the Qatari entities agreed to participate.

57. Throughout the negotiations with the Qatari entities, everyone involved, including Barclays' external lawyers, knew that the amount payable under the June Agreement was calculated by reference to the amount of the Qatari entities' participation in the capital raising. It was understood by Barclays at all times that this was not an issue, as long as any such payment was "*in exchange for additional value delivered and … independently justifiable*".

58. Barclays' external lawyers were aware of: (a) the connection between the June Agreement and the June capital raising; and (b) that the June Agreement was being used to meet the Qatari entities' requirement for additional fees. The evidence shows that Barclays' external lawyers were aware: (i) that since mid-May 2008, Barclays' internal lawyers had been discussing with Barclays' external lawyers possible "*sweeteners*" to be offered to some anchor investors in addition to the placing commissions; (ii) of the Qatari entities' original requirements for 3.75%; (iii) of Barclays' refusal to meet those requirements by way of higher commissions; (iv) that the June Agreement was the alternative solution identified within Barclays to fill the value gap; and (v) that the amounts payable under the June Agreement were calculated by reference to the Qatari entities' original requirements and corresponded to 1.75% of the maximum commitment of both QH and Challenger, rounded up to include the equivalent of LIBOR interest on that sum.

59. The evidence in support of Barclays' external lawyers having this awareness includes the written and oral evidence of Barclays' internal lawyers, contemporaneous documents recording the discussions which took place between Barclays and its external lawyers, the fact that there would have been no reason for Barclays' internal lawyers not to provide the full facts to Barclays' external lawyers, and the fact that the contemporaneous documents support Barclays' internal lawyers' evidence and undermine Barclays' external lawyers' evidence in interview with the Authority. It is much more likely that in interview Barclays' external lawyers failed to recollect events that occurred more than eight years previously, than that they were unaware at the time of these matters. In addition, a Barclays external lawyer told the SFO that whilst they did not know if the Qatari entities would only subscribe if the June Agreement was entered into, they did know that "*the package was negotiated and*

arrived at and included [the June Agreement]" and it was part of the deal struck with the Qatari entities.

60. The 16 June 2008 email sent on behalf of the Qatari entities to Barclays' external lawyers, which referred to the payment to the Qatari entities of "*an additional fee of 1.75% of the maximum commitment*", was forwarded by Barclays' external lawyers to Barclays' internal lawyers marked "*Fyi*". Barclays' external lawyers did not question this reference to an additional fee, which was not hidden away in the email.

61. On 17 June 2008, a Barclays internal lawyer emailed various individuals at Barclays, copying in a Barclays external lawyer, and set out Barclays' external lawyers' advice that the June Agreement did not need to be disclosed in circumstances which included the fact that, if the Qatari entities wanted additional payments beyond 1.5% commission, they would need to provide additional value. To any reasonable reader it should have been obvious that the Qatari entities were looking for additional value from their subscription.

62. **As mentioned above, the Authority considers that Barclays' external lawyers were not fully informed of the connection between the June Agreement and the capital raising. This conclusion is supported by the contemporaneous documentary evidence and by the interview evidence of senior Barclays external lawyers, who stated that they were not aware at the time that the June Agreement was a mechanism by which Barclays would meet the Qatari entities' requirement for additional fees.**

63. **One of these senior Barclays external lawyers stated in interview that they had "*never understood that was the rationale*" and that they had not been told at the time about the Qatari entities' requirement for additional fees or that the fees under the June Agreement had been calculated by reference to that requirement. They stated that they were not aware of the connection between the two transactions, and that they did not understand that the Qatari entities' participation in the June capital raising was contingent upon the fees payable under the June Agreement or that "*if this arrangement wasn't entered into the Qataris would potentially walk away from the investment*".**

64. **Another senior Barclays external lawyer stated that they were generally aware that investors, including the Qatari entities, wanted "*more than the bank was willing to pay*", but were not aware of the specifics of the Qatari entities' requirement, that the June Agreement was the means by which that requirement would be met or that the fees payable under the June Agreement had been calculated by reference to it.**

65. **In respect of the 16 June 2008 email, a Barclays external lawyer who received the email explained in interview that they did not realise that the reference to the additional fee represented an additional requirement of the Qatari entities. They stated that they considered anything to do with commission to be a commercial point and so did not focus on this fee. Another Barclays external lawyer stated that they assumed it was a mistake, that it was a commercial point that they could not have commented on, and that it appeared inconsistent with the fact that they had been told**

that all of the Conditional Placees were going to receive the same commission.

66. **The 17 June 2008 email from a Barclays internal lawyer which copied in a Barclays external lawyer was the final email in a chain of emails. That email did not mention that the Qatari entities accepted that they would receive commission of 1.5% and that additional value must be provided for any additional payment. Instead, this point was mentioned in the third email in the chain, which was an email which was just sent internally within Barclays and did not copy in Barclays' external lawyers. The Authority therefore does not consider that this email undermines Barclays' external lawyers' evidence that they were not aware of the connection between the June capital raising and the June Agreement.**

67. **Having regard to all the evidence before it, the Authority has concluded that Barclays' external lawyers were not fully informed, and that Barclays failed to take reasonable care to ensure that they were fully informed, of the connection between the June Agreement and the Qatari entities' participation in the June capital raising. In addition to the interview evidence of Barclays external lawyers mentioned above, there is no evidence that Barclays' external lawyers were provided with any document which clearly and comprehensively stated the relevant facts.**

68. **The fact that Barclays' external lawyers might have been able to infer a connection between the June Agreement and the capital raising, from being copied into email communications or because of discussions about "*sweeteners*" a month earlier, is not sufficient to undermine Barclays' external lawyers' interview evidence that they were not fully informed of the connection. Further, it does not amount to Barclays taking reasonable care to ensure its external lawyers were fully informed. Barclays cannot reasonably contend that it acted reasonably because it relied on legal advice in circumstances where it did not take adequate steps to ensure that the lawyers were fully informed of the relevant facts that they needed to know in order properly to provide that advice.**

Advice from Barclays' external lawyers

69. Barclays' external lawyers advised that: (i) the June Agreement was a lawful arrangement, as long as Barclays was satisfied that it could receive valuable services at least equal to the amounts payable under the June Agreement; and (ii) that whilst Barclays wanted to disclose the June Agreement for commercial reasons, the amounts payable under the June Agreement did not need to be disclosed. This advice was based on assurances from Barclays' commercial team that the services to be received were genuine and that the payments to be made under the June Agreement were expected to be justified by the benefits to be received by Barclays. In giving this advice, Barclays' external lawyers had regard to, amongst other things, LR 1.3.3R, as was confirmed to the Authority by senior Barclays external lawyers. Barclays' external lawyers are experts on disclosure and the Listing Rules, gave advice on the basis of their (correct) understanding of the facts and it was reasonable for Barclays plc to rely upon that advice.

70. There are a number of contemporaneous documents evidencing that Barclays' external lawyers gave disclosure advice on the June Agreement, including emails

from Barclays' external lawyers and emails summarising their advice which were copied or forwarded to them. In addition, due to the fast-paced and highly-pressured situation facing Barclays in June 2008, Barclays' external lawyers often advised orally, but that does not make such advice relatively informal. Had any of Barclays' external lawyers disagreed with how their disclosure advice on the June Agreement had been summarised, they would have replied and flagged any inaccuracies, but there is no evidence that they did.

71. **The Authority acknowledges that Barclays' external lawyers advised that Barclays did not need to disclose the amounts payable under the June Agreement providing that the value it could expect to receive from services pursuant to the June Agreement fully justified the fees to be paid to QH. However, as explained above, Barclays' external lawyers gave informal advice in circumstances where they had not been fully informed of the connection between the June Agreement and the capital raising.**

72. **Barclays' external lawyers did not provide any written advice about the June Agreement and the Authority considers it is reasonable to conclude that the advice they gave was relatively informal in nature. The contemporaneous evidence as to the involvement of Barclays' external lawyers is largely limited to some references in a Barclays' internal lawyer's emails and a senior Barclays external lawyer being copied into certain email communications.**

73. **There is no evidence that Barclays' external lawyers were specifically asked to advise, or did advise, on LR 1.3.3R in relation to the June capital raising. Whilst Barclays' external lawyers may have given some thought to the requirements of this rule, the advice they provided was premised on what they had been told, which, as mentioned above, did not include the true nature of the connection between the June Agreement and the capital raising. Without such knowledge, Barclays' external lawyers could not properly advise on Barclays' disclosure obligations.**

Assessment of value of the June Agreement

74. Barclays' internal and external lawyers made clear that Barclays needed to satisfy itself that it could derive value from the Qatari entities under the June Agreement which justified the total amount of the fees payable to QH thereunder. Barclays plc followed the legal advice it received. It made enquiries to assess the value of the June Agreement and was satisfied that the Qatari entities could offer business opportunities up to the value of the fees under the June Agreement.

75. A Barclays senior manager took steps to ensure that their views about the commercial value of the June Agreement were supported by others and that the agreement was commercially sensible. On 13 June 2008, the Barclays senior manager made enquiries with various Product Heads at Barclays to estimate the value the Qatari entities could provide to Barclays. The Barclays senior manager considered various products as part of their estimate, including loans, bonds, pre-export finance and commodities, and co-investments. They noted down their estimate, which totalled approximately £150 million. This confirmed that the June Agreement was going to create value well in excess of the amount payable thereunder.

76. The Qatari entities could provide services of real value to Barclays, so there is no reasonable basis to second-guess the judgement of the Barclays senior managers at the time as to the value which could be achieved under the June Agreement. In his judgment, Waksman J found that the Barclays senior manager referred to above was "*well placed*" to assess the value in the June Agreement and that Barclays senior managers believed in the value of the June Agreement.

77. The value of QH's commitment under the June Agreement to offer business opportunities to Barclays to the value of the amounts payable under the June Agreement was clear to everyone involved at Barclays, as well as to the Qatari entities, who recognised the significant advantage of the Qatar Investment Authority having a strategic relationship with a financial institution such as Barclays while it underwent a rapid development to become one of the most active sovereign wealth funds.

78. The legal expert instructed by Barclays in relation to these proceedings does not consider that Barclays' internal lawyers could have been expected to require the value of the potential services to be investigated and calculated through a detailed analysis before the documents 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. Barclays' internal lawyers did not advise the commercial team that they needed to undertake any such detailed assessment; this is because it would have been regarded as outside normal practice and would not have been realistic given the circumstances.

79. Barclays' legal expert considers it was reasonable for Barclays plc, when deciding on what to disclose, to rely on their understanding at that time that the June Agreement could provide services to Barclays which justified the fees to be paid.

80. **The Authority considers that the steps taken by Barclays to satisfy itself that the value it could expect to receive from services pursuant to the June Agreement justified the fees to be paid to QH under the June Agreement were inadequate.**

81. **Although a Barclays senior manager talked to a "*number of the product chiefs at Barclays Capital*", as a result of which they formed the impression that the Qatari entities could provide opportunities of sufficient value to Barclays, this was an informal exercise undertaken before the terms of the June Agreement were known and not a proper attempt at assessing the value of the opportunities offered by the June Agreement.**

82. **Barclays' internal lawyers appreciated and emphasised that a proper valuation assessment was required. On 16 June 2016, a Barclays internal lawyer noted in an email to Barclays senior managers, among others, that "*we need demonstrably to be getting our money's worth otherwise there is a risk that the fees could be perceived as a disguised commission*". However, the value assessment carried out by Barclays was not systematic and there was no coherent effort at valuation. Barclays has not provided the Authority with any details of any analysis performed before the June Agreement was entered into and it appears that no breakdown or calculation of the potential value of the services to be provided was ever attempted. As Waksman J commented, "*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"*.**

83. **There is also no evidence that Barclays considered not just income but the profit (including consideration of costs that would be incurred) that needed to be generated from the June Agreement to justify fees of £42 million, and it appears there was no assessment of what additional value the June Agreement provided on top of: (1) whatever opportunities Barclays would in any event have had in the Middle East, especially given the relationships developed between Barclays and the Qatari entities during the course of the June capital raising; and (2) any additional benefit that would have accrued from the fact that the Qatari entities were in any event subscribing materially in Barclays' shares and would therefore have an incentive as shareholders to co-operate commercially with Barclays.**

84. **In addition, the fees were not calculated following an assessment of the value of the services that QH could provide but by reference to what QH wanted in return for its investment in the June capital raising. When QH asked for a significant increase in the fees on account of Challenger's participation in the capital raising, Barclays agreed without carrying out any valuation assessment.**

85. **The Authority therefore considers it is clear that Barclays did not follow the advice given by its lawyers and that, contrary to Barclays' legal expert's views, Barclays did not take reasonable care to satisfy itself that the value it would obtain from the June Agreement justified the fees it was required to pay to QH thereunder.**

Knowledge of the Board and the Board Finance Committee

86. The Board and the Board Finance Committee did not need to be informed in any more detail regarding the background to the June Agreement than they were. Although the evidence of a Board member is that it would have been preferable to allow the Board an opportunity to consider the Barclays senior managers' judgement that Barclays could receive value at least equal to the amounts payable under the June Agreement, such a preference does not support the Authority's case that Barclays lacked reasonable care in respect of its decision not to disclose certain details of the June Agreement including those amounts. The Board member also considered that the fee was not very material and there is no evidence that the Board would not have agreed with the Barclays' senior managers' commercial judgement.

87. The minutes of the Board meeting of 19 June 2008 were drafted by Barclays' external lawyers, who also tabled a draft of the June Agreement. Barclays' external lawyers were aware of the connection between the June Agreement and the Qatari entities' investment, and the size of the fee. If Barclays' external lawyers had thought that more detail about the June Agreement should have been presented to the Board Finance Committee and the Board including as to the fee being paid, they could have included those details in the draft minutes. They did not, and Barclays was entitled to rely on their involvement to ensure the correct level of detail was given to the Board.

88. **The Board and the Board Finance Committee ought to have been fully informed of the connection between the June Agreement and the June capital raising, but were not. In particular, as Waksman J found, the Board and the Board Finance Committee were not informed that an additional 1.75% fee had been agreed with QH or that the June Agreement was the means by which it would be paid. They were also not informed of how Barclays senior managers had satisfied themselves that Barclays could receive value at least equal to the fees payable under the June Agreement. A Board member's subsequent view that the fee did not appear to be very material and the possibility that the Board might have agreed with the Barclays' senior managers' commercial judgement do not affect the fact that the failure to inform the Board and the Board Finance Committee of these matters meant that good process was not followed and the June Agreement was not properly scrutinised by Barclays. This failure therefore is a further indication that Barclays plc did not take reasonable care to comply with its obligations under LR 1.3.3R.**

89. **Barclays' external lawyers were not fully informed of the connection between the June Agreement and the June capital raising, and were not aware that the fees payable to QH under the June Agreement were calculated by reference to the Qatari entities' maximum commitment in the June capital raising. Therefore, the fact that Barclays' external lawyers drafted the minutes of the Board meeting of 19 June 2008 does not undermine the Authority's conclusion that Barclays plc failed to take reasonable care to comply with its obligations under LR 1.3.3R.**

Events between July and September 2008

Allocation of costs

90. It is not surprising that, given the different business units which would benefit to different degrees from the Agreements, there was more than one option about how the fees could be booked. The Authority cannot infer from the ultimate decision to allocate the cost of the June Agreement to Barclays Group that this was because it was considered to be a cost incurred in connection with the June capital raising. To the contrary, the evidence shows that the decision to allocate the cost to Barclays Group was reasonable, unrelated to the capital raisings and consistent with Barclays' intention to make the most of the Agreements in all its divisions during the course of their term.

91. **As Barclays Group also covered the costs associated with the June capital raising, the Authority considers it is reasonable to conclude that Barclays Group covered the cost of the June Agreement because it was considered to be a cost incurred in connection with the June capital raising and accounted for as such.**

New business opportunities

92. QH soon started presenting new business opportunities to Barclays after the June Agreement had been entered into. The June Agreement was recognised as one of the driving forces behind Barclays' relationship with Qatar at an offsite of Barclays Investment Banking Investment Management (IBIM) Middle East, which took place on 8 to 9 September 2008. Presentations at that offsite show that the June Agreement was seen by Barclays as instrumental in IBIM's plan to increase its yearly

income in the Middle East to over US $1 billion and that it was important for Barclays to make the most of the agreement to develop its relationship with Qatar. These presentations are indicative of the importance that Barclays was attributing to the relationship with the Qatari entities and to the June Agreement itself.

93. The Qatari entities also recognised their obligation to help Barclays under the June Agreement. For example, Barclays was invited in July 2008 to bid for the financing of a proposed investment of 500 million euros by Qatar in a utility company because the Qatari entities were of the view that no deal should be done without inviting Barclays to participate.

94. **The Authority considers that the evidence shows that, after the June Agreement was entered into, its existence was largely ignored in Barclays' subsequent efforts to develop its business in Qatar and the Middle East, including in presentations relating to such business.**

95. **The Authority does not agree that presentations given on 8 and 9 September 2008 show that the June Agreement was considered to be important and successful within Barclays. Only one presentation mentioned the June Agreement, and it did so only in passing and in the context of stating that there would be renewed focus on Qatar, among other places, going forward.**

Background to the October capital raising

Proposed extension to the June Agreement in early October 2008

96. 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.

97. 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.

98. 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.

99. **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.**

100. **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.**

101. **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

102. 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.

103. 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].*"

104. 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.

105. 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.

106. **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.**

107. **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.**

The October Agreement and the October 2008 capital raising

Rationale for the October Agreement

108. 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.

109. 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.

110. 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.

111. **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.**

No breach of LR 1.3.3R

112. Barclays plc did not breach LR 1.3.3R in October 2008, when it published the announcement regarding the October capital raising, or in November 2008, when it published the related warrants prospectus. Barclays plc'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 plc 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.

113. **For the reasons set out in paragraphs 101 to 104 and 106 of this Notice, the Authority considers that Barclays plc failed to take reasonable care to ensure that the information contained in the prospectus and announcement 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.**

The disclosures were not misleading etc.

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

119. 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.

120. **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.**

121. **The fees payable under the October Agreement amounted to £280 million. As with the June Agreement, the Authority considers that it was never envisaged that the October Agreement would be enforced and that this is supported by the interview evidence of a Barclays senior manager. 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.**

122. **In considering whether Barclays plc 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.

123. **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.**

124. **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 plc disclosed information that was misleading, false and/or deceptive, and which omitted matters likely to affect its import.**

Knowledge of Barclays' external lawyers

125. 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.

126. 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.

127. 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*".

128. 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.

129. 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.

130. 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"*.

131. 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 fulsome 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.

132. 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.

133. **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.

134. **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.**

135. **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.**

136. **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.**

137. **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

138. 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.

139. 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.

140. In any event, Barclays acted reasonably in following Barclays' external lawyers' advice, as it was entitled to rely upon their expertise.

141. 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.

142. **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.**

143. **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.**

144. **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.

145. **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 or LR 13.3.1R(3) was provided.**

146. **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.**

147. **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

148. 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.

149. 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.

150. 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.

151. 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.

152. **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.**

153. **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.

154. **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*".**

155. **Although Barclays plc 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 plc'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.**

156. **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 plc 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.

157. **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 plc therefore did not take reasonable steps to ensure that value would be received for the October Agreement or to ensure that the announcement and warrants prospectus complied with LR 1.3.3R.**

Knowledge of the Board and the Board Finance Committee

158. 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.

159. 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.

160. **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.**

161. **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 the non-executive director had not seen and was 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*".**

162. **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 plc did not take reasonable care to comply with its obligations under LR 1.3.3R.**

No breach of LR 13.3.1R(3)

163. Barclays did not breach LR 13.3.1R(3). In assessing whether there was a breach of LR 13.3.1R(3), it is necessary to consider whether the information that was not disclosed in the circular issued in November 2008 was necessary to allow Barclays plc's shareholders to make a properly informed decision as to the voting action required of them. The circular related to votes on shareholder resolutions. By that time the October Agreement had already been entered into and it was effective, with the Qatari entities obliged to provide services to Barclays and Barclays obliged to pay for those services. It therefore cannot have been relevant to the decisions required of the shareholders, which focussed on the disapplication of pre-emption rights and the terms of the instruments to be issued and sold in that context against the alternate backdrop of voting against the capital raising and accepting a 'bail out' from the Government, and who were not requested to approve the fees for the October capital raising.

164. In any event, the Authority has not produced any evidence to support the contention that information about the October Agreement would have been relevant to the relevant voting decisions. In fact, the evidence gathered by the Authority from institutional investors indicates that it would not have been relevant. This is consistent with the opinion of the market expert instructed by Barclays in relation to these proceedings. In the circumstances that existed at that time, information about fees that Barclays had already committed to provide under the October Agreement would not have been necessary for shareholders to make a properly informed decision as to the voting action required of them on the relevant shareholders' resolutions.

165. **The circular issued by Barclays plc on 7 November 2008 sought the approval of Barclays plc's shareholders for the October capital raising. It did not mention the October Agreement or anything about it. LR 13.3.1R(3) provides that such a circular must "*contain all information necessary to allow the security holders to make a properly informed decision*". The fees payable to QH under the October Agreement, which amounted to £280 million, and their connection to the October capital raising, was clearly information that would have been relevant to Barclays plc's shareholders when voting on the October capital raising, given that, had they been disclosed, they would have more than tripled the disclosed level of payments to the Qatari entities in connection with their participation in the October capital raising from £128 million to more than £408 million. This would have been relevant to the shareholders, who would not have been expected to approve Barclays' intended course of action without knowing what the investors were going to receive in return, and who were also aware of the alternative option of seeking capital from the UK Government.**

Accordingly, Barclays plc breached LR 13.3.1R(3) by failing to include such information in the shareholder circular.

166. **The circular included information about the other fees and commissions that were being paid in relation to the October capital raising. Therefore, if it was thought necessary to disclose such information, Barclays plc cannot reasonably contend that it was not necessary for shareholders to be aware of the fees payable under the October Agreement which were connected to the October capital raising.**

167. **The Authority considers that the evidence of institutional investors supports the view that information about the fees payable to QH under the October Agreement and their connection to the capital raising was necessary for their respective decisions to have been "*properly informed*".**

No breach of Listing Principle 3

168. The Authority is wrong to allege that Barclays plc lacked integrity 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.

169. 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 with a lack of integrity. As explained at paragraph 149 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 and in doing so they did not act recklessly. 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 with a lack of integrity, especially in circumstances where they had to make decisions at pace and under pressure.

170. The legal expert instructed by Barclays in relation to these proceedings does not consider that Senior Manager A acted recklessly and with a lack of integrity. 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.

171. A lack of integrity does not automatically follow from a finding of recklessness. To establish a lack of integrity, the Authority must establish a failure to adhere to ethical

standards. In this case, the Authority must show that an individual whose state of mind can be attributed to Barclays plc failed to adhere to ordinary ethical standards in circumstances where those standards were clear.

172. **The Authority has concluded that Barclays plc acted recklessly, and with a lack of integrity, in relation 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. They were aware of the legal advice that Barclays had received regarding disclosure of the October Agreement. They also signed a Letter of Responsibility which stated that they accepted responsibility for the information contained in the warrants prospectus and that they confirmed "*that to the best of [their] knowledge, having taken all reasonable care to ensure that such is the case, the information contained in it is in accordance with the facts and does not omit anything likely to affect the import of such information*".**

173. **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 announcement and the prospectuses that were associated 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 announcement, the warrants prospectus and the circular 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 plc, acted recklessly and with a lack of integrity.**

174. **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 material published by Barclays plc in circumstances where they must have been aware that an adequate valuation assessment had not been carried out, Senior Manager A, and therefore Barclays plc, acted recklessly. The Authority therefore disagrees with the views of Barclays' legal expert.**

175. **The Authority agrees that a lack of integrity does not automatically follow from a finding of recklessness. However, in all of the circumstances of this case, including Senior Manager A's awareness of the potential consequences of not carrying out a proper valuation assessment, the Authority is satisfied that Senior Manager A's reckless behaviour amounted to a lack of integrity.**

Attribution

176. If Senior Manager A acted recklessly (which is denied), their conduct in that regard is not attributable to Barclays plc.

177. To attribute Senior Manager A's state of mind to Barclays plc, the Authority must demonstrate that Senior Manager A represented the directing mind and will of Barclays plc for the purpose of the activity in question, i.e. that Senior Manager A was acting as Barclays plc rather than for Barclays plc. The activity in question here is the omissions from the announcement, the warrants prospectus and the circular in relation to the October capital raising.

178. There is no evidence that Senior Manager A was Barclays plc's directing mind and will for the purpose of the fees agreed and disclosures made by Barclays plc in association with the October capital raising.

179. The evidence shows that, on the facts of this case, only the Board had authority to agree such key terms of the October capital raising as the fees to be paid to the Qatari entities in return for their participation, and that the Board's decisions dictated the disclosure Barclays would make about those fees.

180. The evidence shows that the Board properly exercised that authority, and the terms it agreed in that capacity were then reflected in the resulting documentation. Therefore, in the circumstances of this case, the Board was the true directing mind and will of Barclays plc for the purposes of the alleged omissions in relation to the October capital raising.

181. Insofar as the Board had the power to delegate authority to finalise the material terms of the October capital raising and the accompanying documentation, such delegation could only extend as far as a committee of the Board. In respect of the October capital raising, such authority was delegated to the Board Finance Committee on 27 October 2008, which the following day delegated such authority to a sub-committee consisting of a non-executive director and Senior Manager A, acting jointly. According to the non-executive director, the scope of the delegation of authority over the material terms of the capital raising was in practice limited; any significant decision about, or amendment to, the fees to be paid to the Qatari entities for their participation in the capital raising were of such obvious significance that they would have to be approved by the Board. The final terms of the capital raising and the disclosures made about them merely reflected the decisions made by the Board. In any case, if they did not do so, as long as the Board acted with integrity then Barclays plc should not be found to have breached Listing Principle 3.

182. There is no evidence that the Board, as the directing mind and will of Barclays plc, was reckless or in any event lacked integrity. Senior Barclays internal lawyers attended Board meetings at which the October capital raising was considered but did

not flag to the Board the genesis of the October Agreement, its importance to the Qatari entities' subscription, the way in which the amount payable thereunder was calculated, the timing of the October Agreement and the terms thereto, or the level of discussion with the Qatari entities as to the nature and scope of the services or the analysis conducted within Barclays in this respect.

183. It is clear that, in accordance with the decision in *Tesco v Nattrass [1972]* AC 153, Senior Manager A was not the directing mind and will of Barclays plc. 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.

184. In the circumstances, it is not necessary or appropriate for the Authority to fashion a special rule of attribution in accordance with the principles in *Meridian Global Funds Management v Securities Commission* [1995] AC 500.

185. If matters were omitted from the relevant documents, Barclays plc can be held accountable and in breach of the Listing Rules. Therefore, if Senior Manager A's recklessness is not attributed to Barclays plc, this is not a case where the Listing Rules regime will be subverted or emasculated or where there would be an unjust result, and so there is no need to look for a special rule of attribution. This is supported by the fact that it was open to the Authority to take action against Senior Manager A in respect of their alleged recklessness.

186. The Authority's attempt to fashion a special rule of attribution is confusing and unworkable. If culpability for a breach of LP 3 extended to those individuals directly involved in and, for practical purposes, responsible for what should be said (in this case, in relation to the October capital raising and the October Agreement), there is a risk that a rule of attribution would be established that is far broader than it needs to be, or should be. Whilst it is accepted that if people involved in, and with responsibility for aspects of, capital raisings and the announcements associated with them, failed in their roles, that could in principle give rise to an issuer being liable under the Listing Rules, that would not be sufficient to give rise to a breach of LP 3.

187. The circumstances surrounding the capital raisings and whose state of mind should be attributed to Barclays plc has already been the subject of two judgments. First, Jay J in the Crown Court dismissed charges brought by the SFO against Barclays plc, on the basis that certain of its senior managers who were alleged to have committed offences did not constitute Barclays plc'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.

188. Barclays plc recognises that the Authority is considering who is the directing mind and will of Barclays plc in the context of the Listing Principles, a regulatory provision, albeit one that is akin to a criminal provision in that it results in the imposition of a penalty and requires a finding of recklessness and therefore *mens rea.* 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 plc should apply in such circumstances.

189. If Senior Manager A's conduct was attributed to Barclays plc, 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.

190. **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 plc for the purposes of considering whether Barclays plc complied with Listing Principle 3.**

191. **The Authority considers that it cannot be the case that Listing Principle 3 can only be breached if a firm's entire board acts without integrity. It would mean that Listing Principle 3 had little value in practical terms and would mean that the board had an incentive to pay little attention to what the firm's executives were doing.**

192. **In the Authority's view, in considering whether Barclays plc complied with Listing Principle 3, it is not necessary to determine whether Senior Manager A was the firm's "directing mind and will". Instead, the Authority considers that, in a regulatory case such as this, it is necessary to fashion a "special rule of attribution", having regard to the purpose of the relevant rule (i.e. Listing Principle 3) and the context in which the question of attribution arises, which requires an analysis of the facts of the case.**

193. **Listing Principle 3 imposes a positive duty on a firm to act with integrity, in the context of the firm's dealings "*towards the holders and potential holders of its listed securities*". Those dealings must be conducted by individuals on behalf of the firm. Therefore, the firm acts with integrity towards the holders and potential holders of its listed securities only if those to whom it delegates the role of managing those dealings act with integrity. In the context of what is said to investors, it is those directly involved in and, for practical purposes, responsible for what should be said who are the relevant persons. The question in this case is therefore whether Senior Manager A was such a person.**

194. **It is clear from the evidence that the relevant decision in this case, which was whether the announcement, prospectus and circular issued by Barclays plc 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, was one in which Senior Manager A was instrumental. Senior Manager A approved the wording of the announcement, prospectus and circular. 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 published material was misleading, false and/or deceptive and/or omitted matters likely to affect its import. In such circumstances, the Authority considers that it would not be appropriate to conclude that Barclays acted with integrity when Senior Manager A, to**

whom Barclays had delegated key responsibilities in relation to disclosures to shareholders and the market, failed to do so.

195. **The Authority does not consider it to be problematic for the rule of attribution applicable to Listing Principle 3 to be different to that applicable to the criminal charges that Davis LJ was considering. Davis LJ's judgment did not concern regulatory provisions such as Listing Principle 3. 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

196. Barclays plc did not breach its regulatory obligations and therefore no penalty should be imposed.

197. 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.

198. **The Authority's conclusions as set out in this Notice differ in certain respects to those set out in the Warning Notice. However, given the seriousness of Barclays plc's failings as set out in this Notice, which include a failure to act with integrity, the Authority considers that it remains appropriate to impose a financial penalty of £40 million on Barclays plc. In reaching that view, the Authority has had regard to the relevant penalty guidance, in particular the factors mentioned in paragraphs 111 to 116 of this Notice.**

Enforcement's unfair approach to the case

199. 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.

200. 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.

201. 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.

202. 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.

203. 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.

204. Enforcement is therefore seeking to hold Barclays plc directly liable for Senior Manager A's alleged lack of integrity that is said to arise from matters that have not been explored with them in evidence and in circumstances where they do not have third party rights in relation to the Warning Notices given to Barclays plc and Barclays Bank. Enforcement's approach in this regard is unfair to Senior Manager A and to Barclays plc.

205. 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.

206. At interview, key questions were not posed to Barclays' external lawyers and key documents were not put to them.

207. 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.

208. **The decision to give Barclays plc 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 plc. The RDC does not consider that Enforcement's approach to the case has resulted in Barclays being treated unfairly.**

209. **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.**

210. **The RDC does not agree that Enforcement's case against Barclays plc 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 plc 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.

211. **The RDC acknowledges that the reasons why Barclays plc 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 and did so.**

212. **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.**