

15<sup>th</sup> February 2008[www.barclays.com](http://www.barclays.com)

Martyn Taylor  
Secretary to the Review  
Data Sharing Review  
5<sup>th</sup> Floor  
Steel House  
11 Tothill Street  
London SW1H 9LJ

Dear Mr Taylor

Thank you for providing Barclays with the opportunity to contribute to the Data Sharing Review consultation produced by the Information Commissioner Richard Thomas, and Dr Mark Walport.

### **About Barclays**

Barclays PLC is a major global financial services provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services. We are one of the largest financial services companies in the world by market capitalisation. Operating in over 50 countries and employing 123,000 people, we move, lend, invest and protect money for over 27 million customers and clients worldwide. Barclays PLC has over 300 years of history and expertise in banking.

As an overriding comment, Barclays participated in and fully endorses the comprehensive response to the consultation submitted by the British Bankers' Association, which illustrates the thoughts of its members in relation to information sharing. Although we do not propose to submit a comprehensive response of our own, we do however wish to supplement the response with some general observations on particular issues of significance.

### **Overriding comment**

We are firmly of the view that the Data Protection Act 1998 ("the Act") is a worthwhile piece of legislation, which establishes a number of fundamental information handling practices as legal requirements, through its eight principles. However, as has been elaborated in the BBA response, there are sections of the Act which we think require further clarity and guidance (e.g. further guidance on when the section 29 crime and taxation exemption can be relied upon).

### **Responsible lending**

As a responsible lender, we give particular attention to the current legal uncertainty regarding our ability to share "non-consenting account information" with the credit reference agencies, which was

subject to the 2006/07 BERR (then DTI) consultation on the removal of barriers to the sharing of non-consensual credit data. This relates to lenders' hesitancy to share information with the credit reference agencies in relation to accounts that were opened a number of years ago, before the existence of credit reference agencies and the practice of sharing account performance information with other lenders.

Like our competitors, Barclays reviews its customer terms and conditions and other account opening literature on an ongoing basis, including the privacy notices given to our customers about how we will use and share their personal and financial information. The requirements of the Banking Code oblige us to notify customers of changes to terms and conditions.

Over time the privacy notices within our terms and conditions have changed significantly, in light of industry and organisational developments such as technological change and increased information sharing to combat risks to Barclays, our customers and shareholders, and to society as a whole, such as financial crime and over-indebtedness. As our privacy notices have evolved in order to accurately reflect the changing environment, our view is that our customers are "consenting by action" through fully informed acceptance of revised terms and conditions by continuing to operate their accounts.

Whilst we would welcome revised legislation to legitimise the sharing of non-consenting account information with the credit reference agencies, we do in any event believe that there is a strong argument that we have obtained "consent by action" in order to enable this information to be shared through our evolving terms and conditions. There is also we believe an argument to suggest that such data sharing is lawful under Paragraph 6(1) of Schedule 2 of the Act, on the grounds that it is "*necessary for the purposes of the legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject*".

We concur with the conclusion of the BBA that in many instances it is other legislation that is a barrier to data sharing (e.g. the common law of banking confidentiality) rather than the Act itself.

We hope that you find our comments to be constructive and helpful in informing the consultation. Should you wish to discuss any aspect of our response, please do not hesitate to contact me.

Privacy & Data Protection  
Legal & Compliance