Legal risks for Banking Challengers and FinTechs

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The banking market is being shaken up by digital innovation. New entrants, whether they are designated as FinTechs or challenger banks, are beginning to make their mark. At the same time, the established banks are responding rapidly with their own digital platforms and collaborations with innovators. Among the factors that can be used to predict the winners are how they are able to respond to the current legal challenges - including the following key questions.

How widely can customer data be used?

To be truly successful, banks and FinTechs will need to deal with a particular dilemma - to balance the need to maintain trust in their products and services, with the need to use personal data in a new way to drive customer acquisition and revenue. Banks face a unique challenge in this regard - due to the particular relationship we all have with money. In the absence of bricks and mortar to demonstrate "stability", trust is more vulnerable. Pushing the boundaries of data use too far could be a quick way to destroy it. At the same time, the ability to use data to enable predictive and tailored marketing, in the way most obviously exploited at the moment by Facebook and Amazon, will be a key differentiator. The challenge is made all the greater because of the current "shifting sands" in relation to data sharing between UK and US, and the new Data Protection Regulations in Europe. Steering the correct path through these will be crucial.

It is possible to be fully digital?

As soon as banks digitise the customer experience, any break with that - whether the need for a face to face meeting, a telephone call or printing a document - runs the risk of degrading the process and turning off customers. For example, it is possible to have the vast majority of processing work in relation to mortgages done on-line, but regulation in many jurisdictions still requires paper based records to be kept and physical documents to be signed. At present there is a disconnect between the app based systems and the traditional processes which will act as a brake on the ability to maximise cost savings.

Are regulatory changes a threat or opportunity?

Europe's new payment services directive, PSD2, has accelerated something that is already underway - the move to develop a business model around the use of APIs. APIs are the links between banking systems and apps. In practical terms, customers will soon be able to control accounts at different banks, move money and conduct banking business through a single app. PSD2 will require banks to open up their systems using APIs. Europe (and indeed the UK through the Open Banking Working Group) is at the forefront of this, and there is a clear opportunity for the industry here to take a lead in development of the technical processes which the regulations require. At the same time, there is a real challenge for those who derive value through being the primary account holder - no
longer will this give primacy of data use and control. Both the established banks and challengers will be competing to come up with the best strategy to deal with this issue.

In the UK alone there are anywhere between 50 and 100 organisations staking a viable claim that their approach to delivering banking services will result in a leading market position. Finding a way to manage these legal risks and turn them into opportunities will be vital for success.

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