

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email: openfinance-callforinput@fca.org.uk

Dear Tracy-Linn,

Call for Input: Open finance

The Financial Services Consumer Panel welcomes the opportunity to respond to this Call for Input. It is important that the FCA does all that it can do to ensure it is at the forefront of the changes in financial markets brought about by the increasing use of data and technology. All innovations, new products and business models, and the changing ways firms engage with their customers, must develop in the interests of consumers.

The Panel would like to see the FCA challenge the narrow technology-driven approach that many incumbents and start-ups are taking, in favour of one where regulators and providers alike focus on delivering solutions that have consumers at their heart. We support the work of Fair by Design and Money Advice Trust on Inclusive Design, which promotes the practice of designing products and services to ensure they are accessible to, and usable by, as many people as possible.¹ Firms and regulators should consider whether their approach to open finance is as inclusive as it can be.

Consumer protection and better consumer outcomes should be at the heart of open finance as it develops. The promise of the Digital Markets Unit, the Treasury's review of the wider payments landscape and BEIS's Smart Data Review all provide vehicles through which open finance can be set on the right path. We would also encourage the FCA to monitor and, where possible, include data ethics in its work to ensure there is no place for mis-use of personal data, financial exclusion, or biases in algorithms or other decision-making tools. We are concerned that data issues will continue to fall through regulatory gaps without swift action in this area. We have already seen consumer harm through slow/inadequate responses to online financial promotions where there seems to exist a dangerous responsibility vacuum. There is relevant work already underway around data and data ethics, and the FCA should ensure it is aligned with this work to avoid mixed messages or duplication.²

In taking forward work on open finance, the FCA should also recognise that it is in no way inevitable that consumers will benefit from technological advances. Indeed, the only certain

¹ <https://fairbydesign.com/news/inclusive-design-in-essential-services/>

² See ICO work on algorithm explainability with the Alan Turing Institute and Ada Lovelace Institute new programme Rethinking Data

thing is that greater use of technology and data has the potential to change the balance of power between firms and consumers, and how competition works, in unpredictable ways. Until regulators and legislators are confident that risks to consumers can be mitigated, they must adopt a 'safety first', precautionary stance and use their existing powers to authorise and restrict activities to safeguard consumers.

Failure to take the necessary steps to protect consumers during the formative stages of open finance will increase the likelihood of conduct and data scandals. These are in no one's interests, and will ultimately slow the development of nascent markets which are based on greater usage of data. Taking an open-minded but more cautious approach has been advocated elsewhere (e.g. in the Bank of England's approach to Libra³), and is also consistent with the structure of the FCA's objectives.

There is some hope that open banking, the pensions dashboard and other data-driven and fintech-based competition remedies may help drive a better deal for all consumers. But while these services will undoubtedly produce certain benefits, it is debatable whether they will deliver solutions to address the harm to consumers of staying in poor value products when better ones are offered by their existing providers. There is an emerging new market in automated shopping around and switching services, but new generation services based on old-style business models will not serve consumers any better.

Speed matters online. This is something that app and service providers are keen to exploit, often in the guise of making the customer journey slicker. Reading and understanding lengthy and complex legal documents has little place in this world. Moreover, these are non-negotiable contracts: users must accept all the terms and conditions if they want access to the app or service. There is also clear evidence that it is not possible for consumers to understand how their data might be used (or by who) because of the complex and opaque market for consumer/personal data which has major implications in terms of giving informed consent.⁴ The Panel feels strongly that consumer financial education alone is not an answer to these issues.

Our answers to the questions posed in the Call for Input are set out below.

Yours sincerely,

Wanda Goldwag
Chair, Financial Services Consumer Panel

³ Mark Carney, Governor of the Bank of England, said in his '[Enable, Empower, Ensure: A New Finance for the New Economy' Speech](#) at the Lord Mayor's Banquet on 20 June 2019 "*The Bank of England approaches Libra with an open mind but not an open door. Unlike social media for which standards and regulations are being debated well after they have been adopted by billions of users, the terms of engagement for innovations such as Libra must be adopted in advance of any launch*"

⁴ See recent work by the Norwegian Research Council on online advertising <https://fil.forbrukerradet.no/wp-content/uploads/2020/01/2020-01-14-out-of-control-final-version.pdf>

Answers to questions – we have only answered those questions where we have substantive comments to make.

1. What action can we take to help ensure the potential of open banking is maximised, for instance to support the development of new open banking services?

A distinction must be drawn between delivery of the CMA Open Banking Order (CMA Order) and the delivery of open banking. Delivery of the CMA Order is the responsibility of the CMA9 financial institutions which are bound by it. The CMA Order does not have sufficient breadth and depth of scope to deliver open banking in full. For example, it is primarily limited to current accounts so that some of the desired outcomes referred to in the CMA Order and accompanying report, such as maximising interest income, cannot be comprehensively delivered without all types of savings accounts being within scope.

We believe that the FCA must work with the CMA and HM Treasury to ensure the delivery of the CMA Order. In parallel, those same organisations must find ways of delivering open banking in the wider sense envisioned by the CMA Order and report. Open banking enabled products and services must also offer solutions to real consumer problems, rather than trying to find uses for things that developers have designed in the absence of any user input or insight.

2. We are interested in your views on what open banking teaches us about the potential development of open finance.

Open banking is much more than a technology delivery project and progress to date shows that it is far more complex than originally imagined. More than three years on from the formation of the Open Banking Implementation Entity (OBIE), much remains to be done to achieve delivery of the CMA Order despite the project benefiting from regulatory compulsion on major financial services firms. Delivery of open banking will require more still.

Trying to stimulate competition in the interests of consumers by mandating tech solutions has yet to be proven effective. Regulators should therefore be wary of putting too much weight on extending these tech solutions without learning the lessons from open banking and OBIE.

A key lesson is that sufficiently broad scope and appropriate levels of compulsion and standardisation will be required to allow open banking, once delivered, to be developed into open finance.

A large and costly infrastructure has been developed for open banking, and it is important that key elements from that infrastructure, such as the Directory and authentication mechanism, are not lost in the transition to open finance.

Whilst there are some encouraging signs, two years on from the launch of the open banking standards, individuals and small businesses remain wary of the data sharing required to enable open banking-driven propositions. In part, this is attributable to lack of knowledge and confidence among consumers, with the latter compounded by some very high-profile data breaches and operational glitches among big financial services firms, on top of the constant risk of, and concerns about, fraud and scams.

It will be important to assess over-arching consumer communications about open finance. It was proven with the introduction of open banking that firms saw their communications as a compliance measure, and not a method to communicate the benefits and/or risks to consumers. Some simply used it to describe a 'narrow' technology solution.

Open banking still requires a coordinated campaign of communications from all relevant stakeholders and something similar should be designed into open finance from the outset. We believe the FCA could take a leadership role here to ensure consistency of messages from all parties. Trusted third parties such as Citizens Advice and other charity/consumer organisations can help with cascading messages and putting pressure on incumbent firms to communicate meaningful messages to their customers.

As we have set out above, the funding of open banking, by the CMA9, has had limitations. A whole of market solution with appropriate central organisational, governance and funding structures should be established in a way that will ensure open finance can be developed to benefit consumer outcomes.

We are concerned to see that adequate and appropriate governance is put in place for open finance from the outset. The governance of open banking is unusual in that it derives from the CMA Order giving power to the CMA and the Open Banking Trustee appointed by it. The Open Banking Implementation Entity is a creature of the CMA Order and its Steering Group, whilst helpfully having a wide range of stakeholder representatives (including two representing consumers), is only able to advise the CMA and the Trustee.

Whilst the open banking governance structure is adequate for its purpose of seeing the CMA Order implemented and open banking delivered, it is plainly not appropriate for open finance where we would like to see the FCA initiating and leading a debate about future governance.

3. Do you agree with our definition of open finance?

Yes.

4. Do you agree with our assessment of the potential benefits of open finance? Are there others?

Yes, but it is important to bear in mind that both individuals and small businesses stand to gain from open finance. Productivity improvements for small businesses from open banking and, in the fullness of time, open finance have the potential to improve the United Kingdom's economic performance.

It is possible that other benefits may arise over time. For example, the splitting of data and processing from the presentation layer could allow third parties to develop presentation layers that bring a wide array of information together (such as all a clients' accounts and balances), not for the purpose of 'sales' but to deliver enhanced presentation - such as a dashboard for short sighted/blind clients, or those with learning or comprehension difficulties.

5. What can we do to maximise these benefits (given the considerations set out in paragraphs 3.12 to 3.17)?

6. Is there a natural sequence by which open finance would or should develop by sector?

7. Do you agree with our assessment of the potential risks arising from open finance? Are there others?

Open finance has the potential to give firms access to far more consumer data, which could lead to poor consumer outcomes if firms do not use the data only to act in consumers' best interests. To address this risk, use of data should be limited to specific, clearly stated purposes. The FCA should be very clear about the problems and harms it is hoping open finance will address, and not simply open up access to data to see where it leads.

Most people don't understand the value of the data they own, nor do they appreciate the ways in which those data, either alone or in combination with other data, can be used by firms to make money, and what might be the consequences.

We believe there should be a coordinated public campaign between all relevant stakeholders to ensure that all consumers, both individuals and small businesses, understand the value of their data and their rights in respect of them.

Consumers may be rejected from products/services unless they give access to their wider financial information and data. Those consumers choosing not to share their data, should not find themselves excluded from certain products or be subject to unfair pricing as a result.

8. Do you consider that the current regulatory framework would be adequate to capture these risks?

The FCA should be alive to the risks of firms developing open finance products and services that circumvent existing rules, such as those that apply to high-cost short-term credit. Even if a credit product doesn't look like a traditional payday loan, it can still have similar features that lead to high charges and poor consumer outcomes.

The rise of data-driven services sits alongside the growth in artificial intelligence. The risks associated with big data and AI have still yet to be fully understood – but valid concerns have been raised about its potential to exploit or discriminate against individuals. Government should introduce a regulatory regime for AI to ensure that firms adhere to robust standards for the use and analysis of people's data.

There needs to be clearer communications about protections and access to redress. How consumers engage with open finance products and services should not dictate what protections they may be entitled to. Consumers must be protected, and seeking redress should be straightforward. Further, we believe that a cross-sector approach should be taken to ensure that where consumers are using Third Party Providers (TPPs) for services across multiple markets, the protections remain the same.

The current 'patchwork' of regulation and consumer protection in relation to data is a matter of serious concern for us. It is highly likely to give rise to increasing gaps and inconsistencies in consumer protection and result in dangerous 'responsibility vacuums' where consumer harm is able to continue unchecked. All parties, including the Department for Business, Energy and Industrial Strategy, the Department for Culture, Media and Sport (responsible for the Information Commissioner's Office), HM Treasury, the FCA and the CMA, must prioritise the development of an appropriate regulatory framework that is fit for a data economy. In the face

of increasingly extensive use of consumers' data, a suitable framework seems to be a long way off. This should include the development of adequate and appropriate governance structures.

9. What barriers do established firms face in providing access to customer data and what barriers do TPPs face in accessing that data today?

As we know from the Pensions Dashboard, not all data is available in an appropriate digital format and this is likely to cause problems. A lack of commercial incentivisation may also hold back established firms from making data available where they are not required to do so.

From the TPP point of view there are clearly issues with the consistency and quality of data being made available by firms. This is of particular concern in relation to payment initiation services. It appears that these problems are significantly hampering TPPs in coming forward with payment services and other services requiring payments functionality.

These are critical issues which need to be addressed because we believe that, if the data is made available, there will be firms and TPPs keen to develop compelling consumer propositions along the lines of those which the FCA has identified in its Call for Input. We also believe that, subject to the kinds of safeguards and communication strategies to which we refer elsewhere in this response, people and small businesses would be very likely to adopt those propositions.

10. Do you think the right incentives exist for open finance to develop, or would FCA rules, or any other changes be necessary?

We question whether there are sufficient commercial incentives for established firms to provide open access voluntarily to the kinds of data that would be required for open finance. This would suggest that compulsion will be required.

11. Do you have views on the feasibility of different types of firms opening up access to customer data to third parties?

It will be possible for consumers' financial data to be shared with non-financial services providers and vice versa. It needs to be clear to consumers how they can make a complaint or claim redress if their financial services data is breached by a firm not covered by the Financial Ombudsman Service (FOS). The process for redress through the Information Commissioner's Office (ICO) needs to be more accessible and should not require consumers to have to take their claim through the courts.

12. What costs would be involved in doing so? We are interested in views on the desirability and feasibility of developing APIs?

13. Do you have views on how the market may develop if some but not all firms opened up to third party access?

14. What functions and common standards are needed to support open finance? How should they be delivered?

15. What role could BEIS' Smart Data Function best play to ensure interoperability and cohesion?

16. To what extent should the standards and infrastructure developed by the OBIE be leveraged to support open finance?

17. Do you agree that GDPR alone may not provide a sufficient framework for the development of open finance?

Yes, we are concerned that GDPR alone will not provide consumers with adequate protection and that this in turn will inevitably hamper the development of open finance. We would encourage the FCA to look at international policy and practice such as the Consumer Data Right being developed in Australia.

The intention of GDPR is to enable people to have more control over their data. It is questionable whether this aim has been achieved. However, we should not find that it is enabling the use of unfair data profiling to exclude consumers with particular characteristics from certain products, or offer them less attractive deals.

18. If so, what other rights and protections are needed? Is the open banking framework the right starting point?

Consumers need to feel comfortable sharing their data if open finance is to develop well. We do not believe that the current open banking framework alone is sufficient although it does present an obvious starting point.

19. What are the specific ethical issues we need to consider as part of open finance?

Data ethics are crucial in the context of open banking and open finance. Without them, appropriate consumer trust will be very hard to establish, which in turn will mean that mass adoption is unlikely to follow. Deliberate or inadvertent abuse of data is likely to result in consumer harm, especially in the context of a global data market that is complex, opaque and unknowable to consumers (as well as, possibly, to firms).

20. Do you have views on whether the draft principles for open finance will achieve our aim of an effective and interoperable ecosystem?

We believe that the draft principles set out in the Call for Input represent a good starting point but we would like to see an additional principle about the nature of regulatory and legal protections available to consumers sharing their data.

It is important to be clear how these principles will interplay with the existing FCA Principles for Businesses, as well as any new Consumer Duty, and the potential overlap with the responsibilities of the ICO.

21. How should these set of principles be developed? Do you have views on the role the FCA should play?

As we say above, the FCA must be clear how it will deal with the interplay between any new open finance principles and the existing Principles for Businesses.

The FCA should recognise other ongoing work related to data such as that conducted by the Ada Lovelace Institute, and ensure that it learns from evidence and good practice. Even where the work is taking place outside of financial services, it is likely to still be relevant.

We believe that there is a role for the FCA in relation to open finance communications and governance as stated in our response to question 2 above.

22. Do you have views on whether any elements of the FCA's regulatory framework may constrain the development of open finance? Please provide specific examples.

As the Call for Input acknowledges, some areas that will benefit from open finance will fall outside the Regulatory Perimeter. It is important that firms are clear with their customers what protections may be available to them dependent on the services offered. Open finance should not encourage ease or speed, at the expense of consumers understanding what they are signing up to.