



# **JROC Proposals for the Future Entity**

UK Finance response

## **Overarching Points**

It is clearer than ever before that the CMA Order should be revoked, which would allow a transition to the Future Entity. Instead, as a direct result of the CMA Order still being in place, an Interim Entity is necessary to take forward non-Order work, so that Open Banking Limited (OBL) is limited to Order-only activity.

The pathway from OBL to the Interim Entity, and then to the Future Entity, is costly and complex, with no clear plan or timeline, and risks delay (as interim funding is sought) in the delivery of workstreams.

JROC needs therefore to play a lead role in simplifying and accelerating the pathway to the Future Entity, noting (as set out in the Future Entity Working Group Report) that the requirement for a Future Entity needs to be confirmed by the Department for Business & Trade given open finance, and all variants of smart data, falls under its remit. The focus should be on delivering a streamlined and cost-effective standards body designed to deliver today's requirements. Any role for the Future Entity in other markets, whether they are financial services or beyond, should be postponed until such time as this has been achieved.

Other services, beyond CMA Order/PSRs 2017 requirements, for example the directory and certificates, could be reviewed for consideration as to whether they could be delivered through other models e.g. transitioned to the market where competitive offerings could be considered (as has occurred in other jurisdictions) which may be more cost efficient.

Although not strictly in the remit of this paper, we nevertheless recommend JROC considers if there is any opportunity to streamline the regulation of open banking in a wider sense. For example, ensuring that the Future Entity and Long-Term Regulatory Framework will enable the timely revocation of Part 2 of the CMA's Retail Banking Investigation Order 2017, with the CMA sufficiently engaged in this work to ensure this outcome can be achieved.

Funding should be on a fair and equitable basis, based on a methodology that addresses the complexity of business models in the ecosystem.

We encourage JROC to consider how to accelerate to a sustainable, low-cost Future Entity and avoid the risk that the Interim Entity arrangements entails, and ensure the associated uncertainty prevails for no longer than is necessary.

## **Delivering a commercially sustainable model**

The industry has spent considerable resource on the development and implementation of open banking to date. Given the long-term nature of the proposals, it is critical that the Future Entity is run on a basis that is not unduly costly, and provides genuine value for money. This is critical not just from a fair and equitable perspective, but it is a necessity if open banking is going to retain support and succeed in the long term.

The best way of ensuring the long-term sustainability of the Open Banking ecosystem is by regulators creating the conditions for a competitive and innovative market that responds to consumers' and merchants' needs, and creates value for all participants in the value chain.

One of the best routes to achieving this outcome is to ensure the promotion of market led approaches, for example, in the delivery of solutions and services. In this context, the governance framework needs to ensure that it promotes competition and that there are no conflicts of interest to ensure the best outcome for industry and customers.

For example, we do not believe it is appropriate for the Future Entity Board to decide the outcome of the provision of Certificates and Services or the design and delivery of Multi-Lateral Agreements. There should be a fair and transparent approach in the Future Entity decision making on the provision of services that is open to challenge, and requires a clear business case and justification for any related outcomes. This would also support JROC's objectives of supporting innovation and competition. We would also encourage that decisions being taken are underpinned by clear evidence, and are supported by a cost-benefit analysis

The framework needs to be suitably lean, and JROC should proactively consider how costs can be kept reasonable and value for money be delivered. While we agree the provision of certain standards is a key element of the Future Entity, all other services should be open to delivery by the market.

Although we acknowledge that JROC has throughout the process considered the need for commercial sustainability, given the above, we are not yet comfortable that the Future Entity will be run on a commercially sustainable basis, which is a critical outcome for the industry and customers.

### **Open Finance and Smart Data**

While we agree with the principle that the Future Entity "needs to be scalable for open finance scenarios", JROC must not lose sight of the fact open finance is not open banking, and it is not for the banking and finance industries to decide governance or funding for other markets. This includes open finance and other examples of smart data activity, which should only be considered strictly in the context of open banking. This builds on the point above, that the requirement for a Future Entity needs to be confirmed by the Department for Business & Trade given open finance, and all variants of smart data, falls under its remit.

### **Process**

The industry (including JROC) has put considerable resource into developing this next stage of open banking, including the SWG process in late 2022, the very intensive activity JROC activity over the summer of 2023, as well as numerous other industry dialogues, feedback etc. Despite this, there are still a number of areas which are yet to be decided, for example, the modelling necessary to determine the future funding and need to be addressed with

urgency. This was called in the Summer 2023 JROC process and has been called for by UK Finance on a number of occasions, including our report published in 2021<sup>1</sup>.

Having an Interim Entity for 18 months and the Future Entity on January 2026 feels unduly complex, cumbersome and costly. We would have also expected to see the Future Entity before 2026.

We should also note that we believe there are pro-competitive ways that firms could develop multilateral agreements, which would include commercial terms that provide value for all parts of the payment chain.

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<sup>1</sup> <https://www.ukfinance.org.uk/policy-and-guidance/reports-publications/open-banking-futures-blueprint-and-transition-plan>

## Questions in the Proposals

### Future Entity

**1. Do you agree with JROC's preliminary recommendation of the Future Entity being a company limited by guarantee? If not, what corporate structure would you recommend and why?**

Some members do agree with the Future Entity being a company limited by guarantee. However, there are concerns re issues in the funding approach (e.g. being limited to an annual levy) which JROC should consider in more detail.

**2. Do you consider there to be a risk that the recommended funding model, and underlying principles, may unintentionally engender behaviours that are not in the best interests of the entire open banking ecosystem? If yes, how might these be mitigated?**

We believe the views represented in the funding section of the Future Entity Working Group Report broadly captures the thoughts of the industry on this question. However, while we agree there does need to be economic modelling, the longer uncertainty goes on, the greater the risk the uncertainty creates e.g. outlined above, we do not believe the scope should be expanded to open finance and other area. In time, once the Department of Business and Trade has confirmed the need for a Future Entity, given open finance, and all variants of smart data, falls under its remit, an assessment can then be made as to the role, if any, of the Future Entity.

There will also need to be clarity around the practicalities and implications of funding, for example, will there be mandatory funding of the Future Entity, should there be optionality in terms of funding certain services (i.e. so that participants only fund those that they use) and charging for relevant services. Please also refer to our points above on delivering a commercially sustainable model, which apply here. A detailed consideration of these issues is beyond the scope of this response, but JROC will need to be an opportunity for further analysis in the future.

In the context of value for money, the Future Entity should not view funding as a given, and be able to justify funding requests and related expenditure. The Board nomination process must ensure the best and right people are appointed, and suitably challenged and held to account once in post.

We also do not agree waiting for the Future Entity Board to determine the funding model is a good approach given the length of the wait and the uncertainty this will create.

More generally, grouping stakeholders into either ASPSPs or TPPs could lead to narrow perspectives, and JROC needs to ensure there is the incentive to ensure equality between both groups. In addition, where a firm operates as both ASPSP and TPP, they need to be offered the opportunity to provide perspectives from both approaches. Whichever group an

ecosystem participant is believed to belong to (i.e. ASPSP, TPP etc) they should be subject to the same requirements etc to ensure a level playing field.

## Interim Entity

### **3. Do you agree that the Interim Entity should be a subsidiary of Open Banking Limited? If not, what structure do you prefer? Please explain why.**

While we understand the reasoning for the approach of the Interim Entity being a subsidiary of OBL, there are potential concerns in relation to the independence, or perceived independence, of the Interim Entity and its autonomy in carrying out non-Order workstreams, which will need to be mitigated by appropriate governance. An example would be there need differentiation between open banking and open finance, as outlined above. There will need to be clarity on various safeguards, including:

- Arrangements that ensure Order funding cannot be used for non-order work.
- How any conflicts of interest of involving the OBL / Interim Entity Director would be managed.
- Robust restrictions on OBL giving any form of parent company guarantee or indemnity to any third party in respect of the Interim Entity's liabilities or OBL bearing any costs or liability should the Interim Entity fail and become insolvent.

In any case, this complication is a direct result of the failure to close the CMA order, driving cost and complexity the industry has to bear. The Interim Entity must therefore entirely separate to the CMA Order.

An essential outcome is that the Interim Entity must deliver value and be time limited, given the importance of progressing to the Future Entity as soon as possible.

### **4. JROC is seeking input on the method of obtaining appropriate advice for the Board in the interests of the entire ecosystem, including consumers and businesses. Would this best be achieved through advisory groups, or would directors representing certain areas of the ecosystem work better? Please set out your preference and if you believe another mechanism should be explored, please explain what and why.**

We are supportive of there being ecosystem representatives on the Board, but agree at a high-level that obtaining appropriate advice for the Board would be best achieved through advisory groups. However, more detail needs to be made available in order to fully understand the implications e.g. whether directors would solely dedicated to these roles in such a scenario this would likely be a high running cost and not necessarily provide the value for money outlined above.

Board Directors need to be suitably qualified, and be broad enough to represent the open banking ecosystem and have the expertise on the key areas (including the JROC

workstreams). JROC working level colleagues should be involved, and there must be input from the whole industry including end-users.

JROC must not be in a position where it could be seen to be having influence over the Interim Entity, so this should be considered in light of JROC having observer status or a dedicated advisory group to the Board.

We strongly recommend that there is a further discussion with industry as to the functioning of advisory groups to ensure they are fit for purpose and will deliver on wider objectives.

**5. Which option do you think is most appropriate for the appointment of the Board for the Interim Entity? Why do you think that option is preferable?**

We support in principal the use of an Appointments Committee to choose the Board of the Interim Entity, as proposed. However, there does need to be a further consultation with the industry, giving it sufficient time to consider the structure, role descriptions etc in order to achieve the best outcomes.

