

FCA Call for Input: Open finance

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UK Finance is the collective voice for the banking and finance industry.

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

We welcome the opportunity to respond to this Call for Input. Open Finance is a key initiative as part of a wider move to an Open Data Economy that offers great opportunity for customers and the economy. Through Open Banking and regulatory intervention, the UK is already part way on that journey and the key challenge now is to nurture commercial developments and coordinate with broader open-data initiatives. Industry is well placed to deliver the next wave of innovation. To help foster this this phase UK Finance would encourage the FCA to:

- Work with industry on a timeline of activity.
- Conduct a post-implementation review of Open Banking.
- Conduct a review to establish which gaps should be completed and filled with appropriate legislation.

UK Finance would also welcome the opportunity to play a role in assisting the FCA and wider industry in establishing how the proposed set of principles should be developed, and the opportunity to participate in the Advisory Group on Open Finance.

If you have any questions relating to this response, please contact Jonathan Middleton, Principal Digital and Innovation (jonathan.middleton@ukfinance.org.uk) and Austin Elwood, Manager Payments Policy (Austin.elwood@ukfinance.org.uk)

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Summary

1. The UK now has a world leading open banking infrastructure with the potential to deliver great customer outcomes. For the last three years, the banking industry has been working with the OBIE and regulators to enable the industry to meet the joint requirements of both the CMA Order and the wider requirements of PSD2.
2. With the release of BEIS' Next Steps for Smart Data¹, there is an opportunity for the UK to further enable consumers to securely make best use of their data.
3. Customer benefit will grow as emerging providers offering Account Information Services, Payment Initiation Services and Card Based Payment Instruments build out their competitive offerings and create innovative combinations of the available services. There are already 1 million customers using open banking². This empirical usage, and the customer and commercial benefit that flows, should now shape the development of the ecosystem.
4. UK Finance welcomes the leadership role that the FCA is taking in considering the best way to develop open banking, extending it into open finance. We also value the role it played as the NCA to provide an Open Banking Adjustment Period extending to 14th March 2020 to allow industry to implement the new API infrastructure³ and to resolve the current issue on eIDAs certificates.
5. It is clear that whilst the UK has a world leading open banking infrastructure, there is still work to be done to improve the technical performance of the open banking ecosystem, the usage of all the functionality including payments and the production usage by third party providers. A significant proportion of third party providers registered on the open banking directory have yet to deploy service using the open banking APIs.
6. So; whilst the UK has a world leading open banking infrastructure, and industry has invested £1.5-2 billion in developing and implementing it, the customer adoption and benefit is only beginning to emerge.
7. It is important that this work is sustained and UK Finance is working across its membership and with stakeholders to consider the end state operating model of open banking, looking at how best to maintain the functions and services provided by the Open Banking Implementation Entity and the way in which they could be re-purposed/extended to enable open finance. Our report in association with Accenture *Open Banking Future State* sets out the direction of travel towards an industry service company that maintains OBIE's residual functions but which can extend into open finance, providing the services that promote competition and innovation. We looking forward to working with the CMA, FCA and other stakeholders to take it forward shortly.
8. PSD2 and the CMA order have provided the catalyst for industry investment and the short-term priority is to ensure that customer benefit emerges and the current infrastructure is resilient. The key question provoked by the debate on Open Finance is how to extend the progress and potential of open banking into other aspects of customer's financial lives.
9. In particular regulatory intervention has been useful in the establishment of the categories of industry participants, the services that they can offer and of an industry body that has enabled industry to co-ordinate in their development of the directory, authentication

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915973/smart-data-consultation-response.pdf

² <https://www.openbanking.org.uk/about-us/latest-news/open-banking-adoption-surpasses-one-million-customer-mark/>

³ <https://www.fca.org.uk/firms/strong-customer-authentication>

protocols and API technical standards. These interventions are the foundation on which a self-supporting ecosystem can then develop through industry led and voluntary initiatives. An example of this can be seen in the SWIFT domain where voluntary collaboration between banks, merchants and technology providers led to publication of a new API standard for the 'Pay Later' payment model⁴. We would argue that the FCA can best drive Open Finance by providing a suitable structure for and expectation of these foundational pieces, and then allowing industry to develop a self-support ecosystem around them.

10. This approach of intervening on the foundational elements across Open Finance would also drive data reciprocity which will be an essential component of Open Finance and an Open Data Economy. It will not be self-supporting if benefits flow in one direction along the value chain. We therefore welcome the recent proposals from BEIS on smart data and extending data sharing to other industries.
11. In this way Open Finance should also be seen as one facet of a wider data economy. We therefore believe there is a need to link in with BEIS' smart data initiative and a wider UK Data Strategy but also keep in mind global developments. For example, the July 2020 CPPI Report on enhancing cross-border payments⁵ and the accompanying Technical Report highlight the importance of harmonising API protocols for data exchange as one of nineteen essential building blocks. We welcome the application of the principles from open banking and PSD2 into other sectors – including technology platforms and companies. This would enable the UK to build on the clear benefits and consumer protections of open banking (including successfully developing a world leading fintech ecosystem, standards, frameworks, empowering consumers with how they can use their data and positioning the UK as a global leader), maintain the infrastructure and drive it forward commercially.
12. We welcome the work underway on the Pensions Dashboard and by TISA on open savings and investments. In other sectors and in other aspects of customer's financial lives, open finance is beginning to take shape. This paves the way for the financial sector to move beyond the regulatory minimums and build out API specifications for the full range of wholesale and retail financial services. It is clear, given the complexity of financial markets and providers, that there isn't a single solution to open finance.
13. There are already use cases being proposed for extending open banking. Some of these have been put forward by the Implementation Trustee who sees the need for reverse payments (which sits outside PSD2) to drive usage of the payments functionality.
14. New use cases outside the PSD2 perimeter will flourish within a customer led, commercial environment. One of the main pillars of the UK open banking eco-system is that there is now an open banking community - working practices that have been developed to create industry standards in response to regulatory initiatives, but which can now develop to shape commercial APIs and the associated liability and contractual frameworks, consent management tools and other enablers.
15. We welcome the FCA's initiative in convening the national debate on open finance. This year will provide empirical evidence on the way the marketplace and customers are benefitting from open banking. There are risks too, around data-sharing, resilience and security, that will need carefully monitoring too; alongside the work of other initiatives. These empirical inputs will be integral to the debate and how to create a world leading open finance framework that drives competition and innovation across the UK.

⁴ <https://www.swift.com/news-events/news/news-overview/swift-launches-new-pay-later-api-standard-increasing-payment-choice-consumers>

⁵ <https://www.bis.org/cpmi/publ/d193.htm>

16. UK Finance suggests as a priority that the FCA works with industry to develop a timeline of activity, and would welcome the opportunity to work with the FCA on the matter.

FCA Questions

- 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. UK Finance suggests it will take several years to see the full extent of market entry and innovation achieved by open banking. There are a number of important activities already in train in the industry:
 - Closure of the CMA order once the implementation phase of open banking has been successfully implemented
 - The full impact of PSD2 has not been fully realised as TPPs are still building their product offerings
 - UK Finance's work on Open Banking Futures to ensure the maintenance and development of open banking
 - Work on the SEPA API Access Scheme (which is currently paused)
 - b. Given all of these activities, which will all take a number of years to fully resolve, we believe a period of stability to allow the ecosystem to further develop would be helpful. We are seeing promising levels of interest in open banking from technology firms, incumbents and innovators in and outside the UK. The suggested period of ecosystem stabilisation will enable customer trust to build and further use cases and providers to emerge through industry led initiatives. In this period, the FCA will be able to perform a significant role in ensuring these industry led initiatives have appropriate regulatory oversight and controls as the UK builds towards a wider Open Data Economy.
 - c. In particular regulatory intervention has been useful in the establishment of the directory, authentication protocols, API standards and decision-making bodies. We would argue that these interventions are the foundation on which a self-supporting ecosystem can then develop through industry led and voluntary initiatives. We would argue that the FCA can best drive Open Finance by intervening on these foundational pieces, and then allowing industry to develop a self-support ecosystem around them.
 - d. This approach of intervening on the foundational elements across Open Finance would also drive data reciprocity which will be an essential component of Open Finance and an Open Data Economy. It will not be self-supporting if benefits flow in one direction along the value chain.
 - e. There is now a great opportunity for voluntary and industry-led initiatives to drive development in a way that is closely tied to customer and industry needs as they emerge. We believe it is better not to anticipate further potential developments for the moment and to let customer demand drive developments forward based on service take up.
 - f. One of the most difficult barriers to the uptake of open banking services is the public perception of the services available and to what extent these services are covered by relevant regulation. UK Finance considers that the FCA could look to assist the industry in clarifying the level of their oversight of TPPs and helping the industry in building clear messaging to consumers as to how they are protected in their use of open banking and open finance based services.
 - g. UK Finance would recommend that the FCA should respond to specific regulatory barriers to use cases that the industry believes will deliver value to customers. We

- would also suggest there is a clear need for an adjustment in the regulatory perimeter based on existing use cases being pushed by the industry.
- h. For real benefit to be maximised open banking should be seen as one facet of a wider data economy. As such there is a need to link in with other sector initiatives, particularly with BEIS' Smart Data as part of a wider UK National Data Strategy, both released recently but also keep in mind other European or global developments (e.g. the previously mentioned CPMI Report). UK Finance would recommend the proportionate application similar principles into other sectors, including technology platforms and companies, recognising that 'same risk, same regulation'.
 - i. UK Finance would advocate looking at Australia as a model of developing an Open Data Economy extending across industries, and would recommend close sector regulator and government cooperation within the UK and also via international cooperation to enable this so that the UK is not leap-frogged as a global leader in developing an open API economy.

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

- a. We note that in this case regulation has provided a useful way to galvanise the industry to meet certain delivery requirements; however, in the longer term we would suggest it is not good at responding to changes in perceptions of market need or adapting to innovation.
- b. While regulation has spurred industry to deliver requirements as noted above, it hasn't necessarily proved the most efficient method of deploying technical capabilities. In contrast to the static nature of regulation, a customer centric and open competitive market is more agile and, we would suggest, better suited at incentivising change.
- c. Open banking has also raised questions that policy needs to be aware of going forward, such as the potential unforeseen consequences of enabling the level of data sharing proposed, and the need for education on data. For example, provision of data does not necessarily provide a way for a customer to interpret the data.
- d. Open banking has highlighted challenges in meeting different, and in places divergent, regulatory frameworks (PSD2 and GDPR on the one hand, and the OBIE standard under the CMA Order on the other) which can lead to confusion and fragmentation. Any future regulation of Open Finance should be under a single regulatory framework.
- e. This wider environment is something we believe to be a key component. In Canada for example, the language around open banking was user tested to raise customer understanding of how it would impact them. There are many lessons we could learn in the UK from international peers such as Australia and developments in Europe, including the SEPI API Access Scheme and EU proposals around data sharing.
- f. More widely we would advocate that to truly learn lessons from open banking, a comprehensive Post Implementation Review should be held. This should include an assessment of the impact on smaller firms who will find it harder to justify the cost associated with developing suitable technical features, resulting in two-tier system and, depending upon customer choice, further centralisation of the banking industry
- g. A transparent and means based process for understanding the potential impacts of further industry implementation costs could allow for an effective cost-benefit analysis. This would allow for a holistic review of open finance potential costs in conjunction with other industry and regulatory priorities.

- h. Given that the open banking ecosystem is yet to fully mature, we expect there to be further risks materialising and lessons to be learnt to help our understanding in the development of open finance.

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

- a. UK Finance agrees with the definition provided. We would urge the FCA to identify ways it can help customers be well placed to understand how they 'own and control' their data and what this means when they utilise third parties, and potentially 'outsource' their data management and sharing privileges.
- b. Providing open finance access through APIs along with the associated liability and contractual frameworks would provide the best platform to support innovation. We believe and agree with the FCA that an efficient way to deliver this would be through use of standard APIs through a collaborative structure such as an industry scheme. UK Finance members are of the view that APIs need to be based on specified use cases so as to ensure that the customer has appropriate control over their data, and an informed understanding of how their data is being utilized. A broad based API that is not use case based may see, for example, consumers opening up access to their data for one purpose, and that data may ultimately end up being used for a different purpose than what was originally consented. Use case APIs also can ensure that control tools are provided to customers so they can revoke access when they wish.
- c. It should be noted that TPPs can already access customer data in the unregulated market (i.e. outside of PSD2) via screen scraping and there are several propositions that already work on that basis.

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

- a. The case for open finance should be based on establishing that particular features of open finance are likely to achieve overall benefits that outweigh (the potentially considerable) costs and risks, rather than simply establishing that open finance will allow a new use case for a particular customer or product segment.
- b. If open finance is linked to a wider industry consumer data consultation, we believe this would provide wider benefits as it would allow customers to access use cases that go beyond financial services.
- c. An analysis of the potential benefits in conjunction with potential risks should be conducted before the introduction of open finance, taking into account potential benefits and risks for consumers and firms, noting what benefits are anticipated, for whom and at what cost.
- d. With the potential for new entrants into the market, the FCA may wish to consider more tangential and less finance related benefits which could include other players. The likelihood of these benefits will take place in the context of questions around asymmetrical data rights and commerciality which will need to be addressed to mitigate any risk of market distortion.
- e. These potential benefits could be:
 - Cross selling (advertising via a direct channel)
 - Switching fees/rewards
 - Advertising
 - Access to data in order to enhance other services
 - Charging for use
 - 'Earning interest' (capital and savings balance/liquidity benefits/obligations)

- Payment fees
- f. More specifically, we recognise the benefits in table two, but would suggest that many of the benefits listed do not meet the definition of 'open finance'. We would suggest the FCA should draw a difference between company/product-based information and customer data. Some services envisaged would require the availability of certain different data sets other than customer data sets to be available to perform the necessary functions.
- g. In respect of the 'product information' listed in table 2, UKF notes that a distinction should be drawn between product information that is proprietary in nature, and information that is not property in nature. The call for input notes that under the concept of open finance, 'TPPs could access the same information...available digitally to the customer'. However, some of the information available to a customer 'digitally' will be proprietary to a financial institution and may be tailored by the firm as part of its investment into a specific customer relationship (as an example, the provision of a firm's net worth calculator). While we are supportive of empowering customers to take ownership of their own data, we note that financial institutions should be able to retain control over their propriety product or service information.
- h. The 'benefits' referred to in paragraph 3.14 of the Cfl and Annex 1 refer to the potential use cases of open finance, for example holistic advice or services, TPPs executing transactions on behalf of customer, they are not necessarily 'benefits in themselves'. **What can we do to maximise these benefits (given the considerations set out in paragraphs 3.12 to 3.17)?**
 - a. A viable market requires customers to take advantage of services that give them benefit, and a healthy commercial environment that encourages the suppliers to invest in better services.
 - b. UK Finance believes the best balance, and most likely way to help maximise these benefits, is to enable firms to drive forward industry led initiatives in a customer centric and commercially viable way.
 - c. Prescriptive requirements may prevent use cases from emerging. The regulatory framework should facilitate investment in APIs including through the removal of barriers to innovation such as a regulated framework enabling the transfer of data in compliance with GDPR, enhancing the regulatory framework for TPPs, standardising API feeds and data sets, mitigating against data misuse and linking to data associated bodies/ other industries.
 - d. It is not necessary or proportionate to mandate what data must be shared, rather a natural process of competition, which will cause providers to supply data in API format where the benefits are greatest.

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

- a. UK Finance suggests as a priority that the FCA works with industry to develop a timeline of activity, and we would welcome the opportunity to work with the FCA on the matter. UK Finance would also welcome the opportunity to join the Advisory Group on Open Finance to facilitate this and to contribute to the development of Open Finance.
- b. UK Finances believes that any sequenced development should be commercially and end user needs driven. Focusing on the net benefits, with supporting empirical data will be the surest way to ensure customers benefit, that effort is spent on the areas which warrant it, and that services are delivered in an order that develops the overall ecosystem.

- c. The scope of open finance should expand in support of industry developments, firstly to cover non-complex retail and small business products serving UK customers. It is our view that this phased expansion through market led initiatives will provide the industry with logical incremental ecosystem developments. For example, AIS for non-payments savings accounts being a focus before say SME secured lending.
- d. Any timeline should also bear in mind the principle of proportionality, understanding the implications for small to medium sized firms.

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

- a. UK Finance notes the potential risks listed in the call for input. Given the complexity of trying to predict all risks, UK Finance would advocate that the FCA consider how its work in each of these areas can be proportionate and flexible to deal with whatever way open finance and the wider open data economy develops.
- b. Liability needs to be a key consideration across all future innovation, particularly around insurance and pension/investment. The level of data being made available is potentially riskier for consumers than current account data on a data protection level – additionally, these are areas that have typically required specialist knowledge in order to interpret and advise on the best way forward.
- c. More generally, there could be concerns from an operational resilience perspective if firms were required to make significant changes to their IT systems to support open finance. This could result in firms being more susceptible to system outages. This would depend on the changes required.
- d. In sectors with a large number of small firms and established intermediaries and advisors, the high cost of compliance could cause some providers to cease to provide services in the UK or lead to increased costs for consumers.
- e. The FCA would also be encouraged to consider bank liquidity risk / funding risks from extending coverage and access to savings accounts coupled with the growth in AI functionality and use of realtime payments.
- f. The potential fraud and liability risks associated with the Open Finance proposal need to be considered as part of the Open Finance strategy. Consumers need to have trust and also have confidence in the security surrounding these new payment services and that the providers of these services are legitimate and have taken the necessary steps to keep customers and their data safe from online criminals.
- g. Open banking functionality as it develops has the potential to exacerbate fraud. One member informed us that the fraud type their firm predominantly encounters in Open Banking is through social engineering victims and are of the view that if this carries forward to Open Finance, the potential value of loss is much higher given the scope of products involved. Therefore, it will be necessary for TPPs and ASPSPs to develop and implement effective fraud mitigation strategies. This could include a fraud liability model that provides a clear and easily identifiable route for customers to contact (or be contacted) when fraud has occurred i.e. does the customer contact their Third Party Provider (TPP) or bank in the first instance. To our understanding, provisions in the revised Payment Services Directive (PSD 2), set out how fraud liability is ascertained. However, these provisions do not appear to extend to Open Finance, therefore creating a scenario that could lead to confusion between TPPs and ASPSPs and customers which could then provide opportunities for fraud to be committed.

- h. Similarly, PSD 2 covers what fraud prevention measures/ controls need to be in place and how fraud is monitored and reported by firms. It is not apparent whether these provisions will be required to be followed by the providers of Open Banking products and services.
- i. The industry continues to monitor the current Open Banking threat landscape and whilst the volumes of fraud are currently relatively low, this is expected to increase as the number of TPPs and consumers in this market grow. It should also be considered how criminals could exploit TPP services to enable fraud in other parts of the industry. Therefore, all parties operating in the market should have a responsibility and role to play towards creating a hostile environment for criminals.
- j. Separately, the European Banking Authority (EBA) has recently consulted on draft Guidelines for anti-money laundering and countering the financing of terrorism (AML/CFT) Risk Factors (<https://eba.europa.eu/regulation-and-policy/anti-money-laundering-and-e-money/reviced-guidelines-on-ml-tf-risk-factors>). This includes new sector-specific Guidelines for AISPs and PISPs which identifies some AML/CFT risks arising from AISPs and PISPs as defined PSD2. The EBA draft Guidelines also state that AISPs and PISPs are also obliged entities under EU Anti-Money Laundering Directives, that the ML/TF risk associated with their activities is limited, and that in most cases simplified due diligence will be the norm.
- k. Opening up/widening the Open Banking ecosystem to include a wider range of payment products and sectors may introduce new fraud vulnerabilities not previously encountered and it will certainly heighten existing fraud risks as criminals will treat this environment as a new attack surface to deploy their tried and tested fraud techniques.
- l. There are unresolved economic crime concerns associated with the Open Banking ecosystem and these will also apply to Open Finance. Below are some key examples:
 - Perception around TPP fraud controls and response to threats being relatively immature compared to more established firms in the market (e.g. TPPs are out-of-scope for the Voluntary Code of Conduct for preventing and reimbursing APP fraud)
 - Varying interpretations of anti-money laundering and countering terrorist financing (AML / CFT) requirements on TPPs, with the potential that is unclear/interpretations differ with the risk of some TPPs believing that they do not need to conduct any themselves relying instead on ASPSPs' KYC / Customer Due Diligence checks and not performing their own.
- j. A full assessment will need to be undertaken to properly understand what the threat landscape is predicted to look like and where the biggest vulnerabilities/weak points for fraud will be and what effective mitigation measures would look like.
- k. Open Banking creates the opportunity for innovative products that could change the payments landscape. For example, there could be a shift of transactions away from debit cards and merchant acquiring activity to open banking based payments . This has cost benefit potential for both consumers, merchants and to encourage competition. However, an implication may be that certain data points which institutions may use for transaction monitoring purposes could no longer be available. One of our members is of the view that agreed standards on information to be provided as part of open banking payment messages will be needed.

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

- a. UK Finance would suggest that a review to establish gaps should be completed and filled with appropriate legislation.
- b. For example, there are limitations with the existing framework, in that it doesn't cover the breadth of services and propositions that are being considered within the scope of Open Finance. All TPPs would ideally need to be subject to a similar regulatory regime. Under the PSRs, all TPPs have to be authorised or registered with the FCA. If this model isn't followed with Open Finance we could have unregulated TPPs entering the market with potential detrimental impacts on consumers.
- c. Further, Open banking is supported by the Payment Services Regulations (PSRs) which do not extend to the products proposed to be introduced in open finance.
- d. Ensuring a sufficient and robust data protection and operational resilience (including information security, cyber etc.) framework applies to TPPs (which also provides a legal basis on which ASPSPs can share data with TPPs) would mitigate misuse of data risks.

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

- a. UK Finance would draw the FCA's attention to the technical obstacles in providing access to customer data. This includes upgrading legacy systems, managing complex and inconsistently defined data sets, along with managing API infrastructure.
- b. Once the right regulatory framework referred to in response to Q8 is in place there are then additional barriers including; cost of implementing new delivery components and ongoing run costs, security checks on TPP (if there are insufficient regulatory oversight / operational resilience obligations), and the need to factor in a timeline for implementation where a large live service exists, which can put excessive operational risk upon existing customer services.

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

- a. UK Finance suggests that the correct incentives exist, and indeed the FCA can see this from the voluntary and industry-led development and partnerships that are occurring.
- b. Once the right regulatory framework referred to in response to Q8 is in place then structural impediments could be addressed via commercial conversations. If this is not enough, then the need to create an incentive for standardised optional elements may be required but this may not become apparent until after the suggested period of stabilisation.

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

- a. UK Finance believes firms would be able to develop suitable access where it is in their customers' and businesses' interest to do so.
- b. As shown by the payments industry, large and smaller institutions, complied with PSD2 requirements, firms in other sectors could follow suit to the extent the customer need and demand is proven. If some firms offer access and this is commercially valued by customers or TPPs, other firms are likely to have a financial and commercial incentive to provide access as well where it is efficient to do so, without it being made mandatory.

- c. UK Finance would urge the FCA to bear in mind the principle of proportionality, understanding the implications for small to medium sized firms.

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

- a. UK Finance would note to the FCA that the development of APIs and liability and contractual frameworks are not the only costs associated with open finance. For many firms legacy systems will need to be updated. This requires additional financial investment and introduces risk as change management is identified as the number one root cause of major technology outages in the FCA report 'Cyber and Technology Resilience: Themes from the cross-sector survey 2017/2018'.
- b. UK Finance estimates that the financial services industry has spent ~£1.5bn to deliver open banking. Open finance has the potential to cover a wider plethora of firms including; insurers, mortgage providers, non-bank lenders, asset managers, brokers, pension funds amongst others. Given they have not built the underlying open banking infrastructure, as they were not in scope of PSD2, costs could be significant and there could reside a range of currently unknown complexities.
- c. Technical development is costly and could draw investment away from activities that better drive benefit for customers; APIs should only be developed by those who will gain from doing so. Some providers have a significant proportion of digitally inactive members who are often vulnerable. Development of APIs should not be at the expense of better serving these customers.
- d. Education will also be important for any market to develop. Many SMEs have lower levels of understanding of open banking and have very low levels of awareness of the benefits and regard it as one of a series of initiatives, along with 'making tax digital' (for example), that claim to make life easier for small businesses, but may end up creating additional costs and concerns (especially around data use / protections).

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

- a. UK Finance would suggest that organisations that offer the best customer services and experiences are likely to survive long-term and shape the market. The nature of the market (e.g. in terms of the scope of access and 'reachability') would be impacted if some firms did not open up to third party access, however if customers are able to achieve clear benefits through open banking, it is likely more organisations will open up in order to meet their customers' needs and remain competitive.
- b. Markets do not typically develop on a uniform basis, and some differentiation within a market generally helps rather than stifles innovation. The need to remain competitive means that firms are likely to compete to give customers easy access to data where one firm is doing so and it is clear that this is a feature in demand by customers, taking into account the costs of providing the feature.
- c. In this context, UK Finance would urge the FCA to bear in mind the principle of proportionality, understanding the implications for small to medium sized firms.
- d. The FCA could consider an approach that unless firms open up to third parties, they themselves could not consume data – a 'pay to play' principle.

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

- a. Open banking has already delivered a robust set of functions and common standards. UK Finance would suggest that continuing to leverage the work done would use to best advantage the resources already invested as part of open banking. Specifically, the data and security standards are good examples of this.
- b. Regulatory intervention has been useful in the establishment of the directory, authentication protocols, API and technical standards and decision-making bodies. We would argue that these interventions are the foundation on which a self-supporting ecosystem can then develop through industry led and voluntary initiatives. We would argue that the FCA can best drive Open Finance by intervening on these foundational pieces, and then allowing industry to develop a self-supporting ecosystem around them.
- c. Depending on the use cases taken forward, there may be many more data points needed within these standards. As such, new standards may be needed, or the existing standards altered and expanded well beyond their original scope. Industry is well placed to take this development forward.
- d. UK Finance would caution that regulating such changes, rather than enabling industry led initiatives could also raise risks from an operational resilience perspective if firms were required to make significant changes to their IT systems to support open finance. This could result in firms being more susceptible to system outages, depending on the changes required and any associated timelines, particularly when set against other (non-open finance) regulatory, mandatory changes.
- e. UK Finance are already working with the industry and other stakeholders to establish a possible successor body and/or governance model for the Open Banking Implementation Entity. This latter entity has been instrumental in providing the market with a mechanism by which to co-ordinate and collaborate on the key standards and services necessary to enable the open banking ecosystem. UK Finance proposes that the successor to this organisation will be instrumental in assisting the industry in establishing appropriate standards and services to help drive the open finance ecosystem.

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

- a. UK Finance believes that the development of an Open Data Economy would be a key driver of better customer outcomes and help grow the British economy as a whole. This ambition should be the starting point of plans for open finance.
- b. By necessity this kind of economy will require strong coordination across sector regulators (and unregulated sectors). This pan-industry perspective is well suited to BEIS.
- c. UK Finance therefore recognises the commitment from BEIS to establish the Smart Data Working Group⁶ which includes representatives from DCMS and the FCA and others and see it as a useful forum to encourage alignment of initiatives, particularly with the release of the National Data Strategy. UK Finance would welcome the opportunity to support the Working Group in these discussions.

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

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916102/smart-data-working-group-tor.pdf

- a. Open banking has already delivered a robust set of common standards. UK Finance would suggest that continuing to leverage the work done would use to best advantage the resources already invested as part of open banking. Specifically, the data and security standards are good examples of this.
- b. UK Finance are already working with the industry and other stakeholders to establish a possible successor body and/or governance model for the Open Banking Implementation Entity. This entity has been instrumental in providing the market a mechanism by which to co-ordinate upon the key standards and services necessary to enable the open banking ecosystem. UK Finance proposes that the successor to this organisation will be instrumental in assisting the industry in establishing appropriate standards and services to help drive the open finance ecosystem (as mentioned in answer to question 14).

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

- a. UK Finance would note that from a customer's perspective GDPR provides a robust and wide ranging legal basis on the use of data. However, from the perspective of Open Finance, UK Finance would draw the FCA's attention to the fact that GDPR's right to 'data portability' only has a requirement to provide data within 30 days. Further, GDPR only provides access for certain types of data and does not set a framework for the setting of data standards.
- b. This is recognised in BEIS's Next Steps for Smart Data (p13) where they note that 'The General Data Protection Regulation (GDPR) provides the "right to consumer data", and there are existing statutory powers which could be used to mandate that firms participate in sharing consumer data. However we do not consider that these powers are enough to deliver the full benefits – and safeguards - we consider necessary. For example, existing powers do not include the sharing of product data, or the requirement for TPPs to be accredited. Both of these requirements have been highlighted by respondents as key aspects of a Smart Data initiative.'
- c. It would be helpful for the FCA to clarify whether it sees Open Finance as giving greater substance to the GDPR's right to data portability (i.e. is it a means by which firms can satisfy their GDPR obligation to provide data portability) or whether it sees these two data transfer frameworks as separate.
- d. We also note that GDPR does not provide comprehensive redress mechanisms, meaning that customers of many Open Finance players (executing payments) would not be protected to the same extent as under PSD2.
- e. We agree with the general statement that the GDPR is not – on its own – a sufficient framework for Open Finance. This does not *necessarily* mean that a new law is required, however. It might be that agreed industry standards and guidance from the ICO and FCA could be sufficient, though this should be explored further.
- f. Prescribed and consistent data sharing is required and customer authorisation for the transfer would need to be captured in order to ensure that all participants can meet all of their regulatory obligations. Providing for a framework that enables ASPSPs to rely on the authorisation / consent obtained by TPPs as a legal basis to share data would increase operating standards and facilitate compliance by ASPSPs, raising confidence. We build on these points below.

Potential areas of confusion

- g. In the consultation paper there is discussion of 'consent' and 'data processing'. It is important to be conscious of the difference between the term 'consent' in the GDPR

and its more conventional usage in other settings. It is also important to consider that the treatment of data transfers to TPPs from ASPSPs will not be treated the same way as the final processing / use of the data after it has been received.

Consent and GDPR 'bases for processing'

- h. We wish to highlight a special complexity around the GDPR / PSRs legal framework, which officials should consider in developing the future framework, namely the meaning and implications of 'consent':
- 'Consent' has a very specific meaning under GDPR, which is much narrower than under the PSRs / PSD2. According to the [FCA's guidance](#), 'consent' under the two regimes is not equivalent and needs to be interpreted differently (see 8.54 and 8.55, among other provisions of the guidance).
 - As FCA has noted, GDPR has multiple 'bases for processing', any one of which is sufficient for a firm to process / transfer personal data, broadly:
 1. Where the data subject has given consent
 2. Where the processing is necessary to perform or enter into a contract
 3. To comply with a legal obligation
 4. To protect the vital interests (life) of the data subject
 5. When in the public interest
 6. Where the controller has a 'legitimate interest' in processing the data, provided this interest is not outweighed by the rights of the data subject.
 - Very broadly, consent is only appropriate where the data subject has a genuinely free choice as to whether the data will be processed and will not be denied access to a service if they refuse. More detail is available from the [ICO here](#), and from [EU regulatory authorities here](#).
 - Under GDPR, 'consent' is only valid in very particular circumstances and is not the same as 'as per is contained in T&Cs' or 'on request'. In a payments context for example, what many people would assume to be processing based on 'consent' is in fact frequently based on 'contract', 'legal obligation' or 'legitimate interests' under GDPR.
 - There are many situations in which we would accept that firms should legitimately be able to store and process personal data without relying on GDPR-defined consent as a basis for processing. For example: when necessary to provide services under contract, to maintain legitimate business records or to detect and prevent fraud. On our understanding, TPPs do not always (or even often) currently rely on consent for the processing of personal data obtained under PSD2. Similarly, under PSD2 ASPSPs would not generally consider their GDPR basis for processing to be 'consent' when making a transfer of customer data to a TPP. This is much more likely to be 'legal obligation', given the requirements of the PSRs.
 - In designing Open Finance, it will be important to keep in mind the difference between 'consent' in a conventional sense and in the GDPR sense. This is confused in the PSD2 text, which has proven unhelpful. There is also some possible confusion in the Open Finance consultation, which seems to suggest in 5.40 that GDPR offers lower protection than PSD2 because data can be processed without 'consent'. However, given GDPR consent is only valid in very narrow circumstances, it would be impossible for all personal data processing to require consent in the GDPR sense.

- Officials might also find useful the draft guidance from the European Data Protection Board on GDPR-PSD2 interplay, [available here](#). This guidance is still in draft, and we have reservations about some elements, but the analysis of 'basis for processing' on pages 8-14 is broadly appropriate.
- i. In considering questions of consumer control, it is important to note that under GDPR, depending on the basis for processing, individuals have different rights in respect of their data (for the specific relevant purpose). In particular:
 1. Consent can be withdrawn at will at any time
 2. Processing in the public interest or in the 'legitimate interest' of the firm can be objected to by the individual, though the firm can sometimes override this objection.
 3. There are no such additional controls in respect of processing based on 'contract' or 'legal obligation'

Individual control over transfers and over data processing

- j. The transfer of data under Open Finance probably needs to be considered separately to the processing / use of the data once received.
- k. *Transfers* from ASPSP to TPP should only occur when the customer has made an informed decision to request the transfer. However, as noted above, this does not necessarily mean that the GDPR 'basis for processing' will be 'consent'.
- l. In order for the ASPSP to make a transfer to a TPP, it will need to have a suitable 'basis for processing' under GDPR. Under PSD2, this is 'legal obligation'. Through regulation / legislation, Open Finance could operate in this way but this is not the only option. In principle, the ASPSP could also base the transfer on the consent of the customer or on 'legitimate interests'.
- m. Whichever approach is taken, the infrastructure and standards would need to be adequate to ensure that the ASPSP can be confident that it has (and can evidence) 'consent', a clear 'legal obligation' to transfer, or that the 'legitimate interests' test is passed, as appropriate.
- l. Similarly, the basis for the processing by the TPP after the data has been received will often not be consent. More likely, this will be 'necessary for performance of a contract' or 'legitimate interests', as the processing will be required to deliver the service the customer wants. Data might also be processed for other business purposes by the TPP beyond the immediate service sought by the customer, which would be valid under GDPR in situations where 'legitimate interests' can be relied on (this could include analytics to improve the service or to support fraud detection).

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

- a. The open banking framework offers a good starting point with positives including:
 - A centralised register of participants which can be relied upon for confirmation of regulatory status and rights of access
 - A dispute mechanism
- b. Additional rights and protections might include:
 - a common liability and redress framework across all Open Finance participants
 - Consumer protections (replicating payment schemes) which is absent from Open Banking
 - Framework for usage and security of proprietary/confidential information of incorporated entities.

- User experience/switching might also be improved by common standards of KYC/CDD and the ability to rely on screening undertaken by the institution from whom a customer is switching.

The importance of consumer control

- c. In order to ensure effective consumer control over transfers of data from ASPSPs to TPPs, effective transparency is needed. The GDPR requires detailed privacy notices but this will not guarantee that the most important information is provided suitably clearly and prominently. It would be worth exploring whether a shared understanding of key information in the context of open finance could be reached, along with how best to present it.
- d. 'Consent dashboards' governing how data is being shared could assist and should be explored, especially given the risk that customers could lose track of the movement of their data as the Open Finance ecosystem becomes more complex.
- e. We note that there are particular challenges around 'onward transfers', where TPPs share data with additional parties. These situations are difficult to address cleanly, as there are many different purposes for onwards transfer, which have different legal status and carry different risks. For example:
 - Transfers to vendors acting purely on the TPP's instructions ('data processors' under GDPR)
 - Providers of important services used by the TPP (e.g. credit checks, fraud checks)
 - Commercial partners putting the data to a new use unrelated to the service sought by the customer (e.g. sale to data brokers, sale for direct marketing analysis, etc).
- f. A suitable protection might be to extend any consent / authorisation requirements to cover recipients of data from TPPs in one or more of the above categories.
- g. However, the distinction between TPPs and 'further recipients' could become increasingly blurred, if TPPs share data with each other and with ASPSPs, and combine it with data from other non-Open Finance sources. It would also become increasingly difficult to present a clear picture of data flows to customers.
- h. Open Finance will need to be designed in such a way that consumers have the right level of control over how their data is transferred. Further work is needed to consider the appropriate regulatory perimeter for onward transfers.
- i. Consideration is also needed as to whether a degree of standardisation of tools that allow customers to understand and control the movement of their data would be beneficial ('consent management tools').
- j. As a first step, it would be beneficial to consumer trust and engagement to have a greater shared understanding among firms. In particular, a more broadly shared view of the appropriate nature of controls to give consent / authorise and to object, both in relation to onward transfers of data and to internal uses of data would be helpful. This would include consideration of factors such as:
 - the key information consumers need to see prominently in relation to different types of onward transfer in order to make informed decisions
 - what the most appropriate GDPR 'basis for processing' would be for different types of 'onward sharing' (and potentially also key types of processing within the initial TPP)

- what level of control GDPR gives individuals over specific processing / onward transfers, as a function of the basis for processing that applies (freedom to withdraw consent, a rebuttable right to object, or no recourse)
 - analysis of whether this picture provides the right level of consumer control and identification of any gaps, where consumer control is insufficient under the GDPR framework
- k. The merits of some degree of standardisation of these matters should also be explored, taking care not to inadvertently impede beneficial innovation in this area. As stated above, it might be that agreed industry standards and guidance from the ICO and FCA could be sufficient to provide the necessary protections and structure, though this should be explored further and considered in light of other insights emerging from broader international debates at EU level and beyond.

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

- a. In addition to appropriate control over transfers of data, careful consideration should be given as to whether additional limitations are needed around *how data can be used once received*. We note, however, that there is a risk of unintended distortions if processing of data received under Open Finance is more limited than processing of data collected in other ways.
- b. The report is correct in pointing out ethical issues can arise from ML and AI and identifies several pertinent examples. Given that these issues are not unique to Open Finance, it is important for consideration of these issues to be closely connected to similar work in other areas. In particular, the ICO and Centre for Data Ethics and Innovation are working in this area. This work includes ICO guidance on AI (recent guidance covers issues of explainability, fairness, bias and accuracy), as well as CDEI research on 'bias' in algorithmic decision-making. FCA should collaborate closely with them in order to ensure a coherent approach is taken by all regulators and authorities.
- c. We suggest in particular that the FCA coordinate their work around transparency and AI explainability with the ICO. It might be beneficial for the FCA to build on this economy-wide guidance, adding financial services-specific examples and nuances to ensure a coherent approach that works in practice, for example through research notes or guidance.
- d. UK Finance would note to the FCA that our members take the ethical consideration of their work very seriously. Our members are already working with government (CDEI) and regulators on existing ethical questions such as the impact of AI.
- e. Given an open finance ecosystem will see the introduction of new players in an increasingly interconnected manner, the FCA will need to consider how they manage ethical concerns with these new players. This could include disputes management, redress and liability and informed customer consent management, as noted above.
- f. We also note that some of the concerns raised by FCA are at least in part addressed by existing obligations in GDPR, for example in relation to collecting and inferring 'special category data' such as race and ethnicity. Similarly, there are rules around the use of data on protected characteristics and customer vulnerability; it is important to consider how ML and AI might lead to challenges and risks in this area but it is also important to not lose sight of the fact that legal protections (such as against discrimination) do already apply.

- g. TPPs must take responsibility for use of data in line with customer expectations, provide full transparency around the use of data and ensure ease of customer understanding of such use, in line with their obligations under GDPR.

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

- a. UK Finance believes that principles are a positive and useful tool in achieving an effective and interoperable ecosystem, particular with industry led initiatives.
- b. We would welcome the opportunity for industry to develop the principles with the FCA. There is an opportunity to write principles in a way that shows clear guard rails while not locking organisations into a single approach or model that may have unforeseen consequences, such as “To build trust in the ecosystem, consumers should not be asked to share their credentials with TPPs (for example via redirection), where possible.”

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

- a. To support an evidence and industry-led approach to meeting end user needs, UK Finance would suggest that the FCA should publish principles as a set of guiding principles for firms to use as the open finance market develops. These will need to be developed in a product specific context and should not be through new regulation as static regulation tends to be less flexible than needed given the speed of change.
- b. The FCA should allow for a period of stabilisation to allow open banking to embed and commercialise, they should then conduct an analysis of the market demand before considering taking action. Functionality and services that are mandated need to match customer demand and interest and should be phased focusing on the less complex product suites in the first instance.
- c. FCA should prioritise resilience of the existing (and any future expanded) ecosystem, balancing the pace of change with stability of customer services.
- d. We also suggest that the FCA consider if regulation of TPPs that fall outside of PSD2 is needed.
- e. UK Finance considers that it could play a role in assisting the FCA and wider industry in establishing how the set of principles should be developed. We look forward to participating further in any subsequent process to this call for information and would welcome the opportunity to participate in the Advisory Group on Open Finance.

21. 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.

- a. User experience/switching might be improved by common standards of KYC/CDD and the ability to rely on screening undertaken by the institution from whom a customer is switching.
- b. Careful consideration is required in respect of how new regulatory frameworks are implemented in order to avoid unintended regulatory consequences. By including AISPs in the PSRs, AML regulations were imposed by default. This in turn leads to friction at on-boarding yet risk profiles are significantly different.
- c. The future development of the regulatory framework and cross-regulator coordination with the ICO would assist with smoothing out current differences between GDPR and PSD2 legislation