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Response to: FCA Call for Input: Open finance

Consultation Response

Which? response to FCA call for input: Open Finance

Which? welcomes the opportunity to respond to the FCA's call for input on Open Finance. The work that the FCA is doing is timely and is needed to ensure that due consideration is given to the future shape of the regulation and governance of Open Banking and Open Finance.

Financial services markets are complex and new technology is enabling rapid changes across sectors. It is vital that the FCA, with support from the Government, keeps pace with the changing landscape and maintains and introduces the necessary protections needed to support consumers.

Which? supported the introduction of Open Banking as an initiative that would give customers more control over their retail banking data and encourage innovation in a market that has not yet benefited significantly from competition. As the development of Open Finance continues, it is important to remember that it is consumer data that sits at the heart of this work and that further developments must be focused on delivering benefits for consumers. Our response to the call for input focused on three key themes:

1. The need for a clear consumer-focused approach to Open Finance.

Open Banking was implemented by the CMA as a competition remedy in the retail banking market. It is not yet clear what the impact of the project will be for consumers. The FCA, supported by the Government, needs to ensure that the expansion of Open Finance initiatives will deliver a tangible benefit for consumers. As part of the development of any initiatives it is vital that consumers are able to give clear consent using secure authentication, that firms accessing data are suitably accredited and have the necessary regulatory oversight, and that there are clear protection and redress mechanisms in place for consumers.

2. The need for regulators and Government to recognise the risks and concerns of consumers.

Consumers do understand the theoretical benefits of Open Banking enabled services. However, if consumers cannot be confident of better outcomes as a result of engaging with new products and services, there will be limited customer uptake and limited effects on competition. There are also concerns that Open Banking and Open Finance might lead to price discrimination in the market for consumers who are not engaging with data-sharing initiatives.

3. The need for a consistent approach across Smart Data initiatives.

Work on Open Banking and Open Finance appears to be well ahead of similar work in other sectors. It is essential that the FCA takes the lead on Open Finance to ensure all relevant firms are regulated and consumers are fully protected. However, the work the FCA undertakes must complement the work of the UK Government, the CMA and regulators in other industries to

ensure that the UK has a clear and coordinated approach to the regulation and oversight of Smart Data initiatives.

Open Banking is not fully implemented and more work needs to be done before it can be considered a success for consumers. However, there are important lessons to learn to ensure that there is a strong consumer-focused approach to Open Finance. [Response to Questions 1 to 3]

Which? supported the implementation of Open Banking as a means of improving consumer outcomes. To that end we supported the publication of the Consumer Manifesto for Open Banking and have engaged with the Open Banking Consumer Forum¹. The Consumer Manifesto for Open Banking contains the following principles:

- Open Banking should be a force for good which promotes financial inclusion and widens access to more useful, affordable and understandable financial services for everyone.
- Services should meet people's positive expectations, be upfront about how they're paid for and how they use personal data. They should be sold and delivered in a way that respects people's identity, their data and their right to make the most of their money and lead the lives they want to.
- Open Banking should genuinely equip people with real power to control access to their account and use of their data. People should be able to stop sharing access to their account easily without facing penalties.
- Open Banking should be reliable and as secure as it possibly can be. It should be clear to people with whom they are sharing their data and the legitimacy of these companies. Data breaches and fraud should be rare and exceptional, not the rule.
- People, their identity and their money should be universally safe. People should not bear unfair risk. When things go wrong, people should have simple, free, quick access to help and redress.

Which? believes all of these principles stand for the development of Open Finance initiatives. Without a strong, consumer-focused approach, consumers will not be able to reap the potential benefits of Open Finance.

It is too early to fully understand what the impact of Open Banking will be for consumers. However, there are some important lessons we would like to reflect from the implementation of Open Banking.

The Consumer Priorities for Open Banking report highlighted that there are clear potential benefits for consumers, with consumers having the potential to benefit by £72 to £287 a year as a result of various propositions - with consumers classed as over-stretched having the most to gain. Despite this there has been a relatively slow adoption of services by consumers and there remains a reluctance from consumers to share financial data at all².

A Which? survey in 2019 indicated around three quarters of people had still never heard of Open Banking. Further to that, seven in 10 respondents to our survey said they were unlikely to consider sharing their financial data, even if it meant that financial products and services were more tailored to their needs. The main reasons for being unlikely to share financial data were:

¹ The Consumer Manifesto for Open Banking (2018). Available at: <https://financeinnovationlab.org/wp-content/uploads/2018/05/Open-Banking-Consumer-Manifesto.pdf>

² Faith Reynolds et al. (2019) Consumer Priorities for Open Banking Report. Available at: <https://www.openbanking.org.uk/wp-content/uploads/Consumer-Priorities-for-Open-Banking-report-June-2019.pdf>

- 'I am happy with my current banking arrangements so don't see a need for an Open Banking product' (64%)
- 'I am concerned about the security of my personal/financial details when shared with a third party' (41%)
- 'I am concerned about data privacy' (41%)
- 'I am not prepared to share my data with third parties' (40%)
- 'I prefer just to deal with my own bank' (27%)

In-depth research for our Everyday Finances report found that there are many legitimate barriers to consumers to engaging with banking services, including adopting and using Open Banking enabled services³. These barriers include:

- **A lack of perceived benefit** - with many consumers seeing little product differentiation between banks and therefore not willing to engage and explore the market further. This was despite awareness of potential cash incentives for switching.

"At one point I did actually look around other banks to consider switching and there's not really any difference between all of them. They all pretty much do the same job; they just hold your money and when you want it you take it."

Quote from a younger, lower SEG research participant

- **Concerns about data security and privacy** - sharing financial data goes against the grain of consumers' behaviour. This is both because people know they should keep their banking data secure and because sharing it gives third parties access to data which many will see as private and sensitive. As such, trust is also a major factor for many consumers.

"See, I did download (a new app using Open Banking) and everything, but I just wasn't comfortable putting my details in that one. I wasn't sure if it's reputable, to put my bank details and everything into that."

Quote from an older, higher SEG research participant

A key learning from Open Banking, therefore, is a need to make sure initiatives deliver tangible benefits for consumers while overcoming their concerns around sharing financial data. To make sure new Open Finance or Open Data initiatives benefit consumers, work must be undertaken to understand the use-cases that consumers could benefit from, or may be at risk from. Subsequently, rules and standards must be developed to encourage the consumer benefits from Open Finance and to minimize any risks. Learnings from Open Banking should be shared and used across sectors, to build data sharing pathways that are both secure and familiar to consumers so that they can rely on a trusted secure system.

Open Banking has shown the importance of having strong independent oversight, and the importance of forcing major participants in the industry to support the development of the initiative. Without these two factors, Open Banking would never have taken off.

However, without clear consumer protections and redress for consumers, Open Banking will not be an effective tool for consumers. At present, the level of consumer protections and the availability for redress for consumers using TPPs are unclear. This is demonstrated in the HMT Payments Landscape review, which notes that there is a need to consider what additional

³ Which? (2019a). Everyday Finances Report. Available at: www.which.co.uk/everydayfinances

consumer protections are necessary for Payment Initiation Services and Faster Payments, which provides the rails that Payment Initiation Services run on⁴.

While Open Banking was implemented in the UK, the model is being used across the world to open up consumer data in a range of sectors. The pace of change globally means the UK needs to be proactive in this space. The European consumer group, BEUC, is already calling on the EU to build on PSD2 and ensure that regulation allows for open data in wider financial services markets.

As such, Which? welcomes the work of the UK Government to look at how Smart Data initiatives can be developed across the UK. We have responded to the Government's Smart Data Review⁵. It is vital that in the long run the UK develops a clear governance framework for Open Data that encompasses work from Government on Smart Data and Open Finance.

A governance framework for Open Data initiatives will need to be independent of industry to ensure that standards and regulation protect the interests of consumers and ensure there is a clear process of redress that can be reviewed and updated in line with best practice. The governance framework should also set out clearly how decisions around what information or functionality must or must not be included as part of Open Data initiatives can be made, as the development of Open Banking has been set back by firms arguing that certain things - such as refund capability - are not required to fulfil the CMA order that created Open Banking.

Given our concerns, Which?'s preference is for an independent body supported by, or part of, the FCA to take on responsibility for the current Open Banking standards and for them to be developed to encompass further Open Finance initiatives.

To that extent, the FCA's definition of Open Finance is welcome:

Open Finance is based on the principle that the data supplied by and created on behalf of financial services customers is owned and controlled by those customers. Re-use of these data by other providers takes place in a safe and ethical environment with informed consumer consent.

Which? recommends that, in the immediate term the FCA works with the OBIE and takes a leading role in ensuring that Open Finance and the functionality new initiatives enable are developed in a way such as they deliver clear benefit to consumers, data is shared securely and with the clear consent of consumers, and that there are clear redress mechanisms and consumer protections that cover all firms accessing consumer data through these initiatives.

While there are potential benefits to developing Open Finance further, consumers have real concerns about opening up their financial data. [Response to Q4 - Q8]

Which? recognises the potential benefits of Open Finance beyond encouraging innovation and competition. The Financial Services market is complex but provides products and services that

⁴ HM Treasury (2020). Payment Landscapes Review. p23 Available at: https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/904140/2020_template_PLR_CfE_27072020_final.pdf

⁵ Which? (2019c). Consultation response to 'Smart Data: Putting consumers in control of their data and enabling innovation'. Available at:

https://about-which.s3.amazonaws.com/policy/media/documents/5d517ecade106-Smart%20Data%20Putting%20consumers%20in%20control%20of%20their%20data%20and%20enabling%20innovation%20-%20Which_%20response%20FINAL.pdf

are essential for consumers' wellbeing. As such, there is significant potential for Open Finance initiatives to deliver products and services that support consumers to make better choices and to make their engagement with financial services more simple.

Which? has been a key driving force behind the Pensions Dashboards work, where sharing customer data will allow customers to have a better overview of their pensions savings and will help people make more informed decisions regarding their retirement planning.

We agree with the potential risks highlighted in the *Call for Input*. As such, initiatives to encourage and enable the sharing of customer data must be accompanied by the appropriate protections. For this reason, Which? called for the provision of pensions dashboards to be a regulated activity that is regulated and supervised by the FCA. Earlier this year the Government made a commitment to enable this by amending the Regulated Activities Order to include the provision of pensions dashboards.

Our work on understanding how consumers engage with their everyday finances⁶ highlighted clear risks associated with a transition to digital banking and the rise of business models that rely on customers sharing data. The main concerns raised by the consumers, the consumer groups and industry representatives we engaged with were:

- The likelihood that **non-digital consumers will be excluded** and will, as a result, struggle to access services and be unable to access better prices available via new business models. This is an issue that could affect many consumers, not just those considered vulnerable or who opt not to share their data. A fifth of consumers in the UK do not use online banking, with a similar amount who are not confident they could check their balance online. When it comes to other offerings, around two-fifths of consumers would not feel confident making a query on a chat tool or applying for a loan or credit online. There are concerns that these consumers will struggle to use and benefit from Open Finance tools and services.
- **A lack of confidence when using online tools will be a major barrier to consumers adopting Open Finance enabled services.** There is no easy way to overcome this, but the industry should look at ways to ensure that everyone - even if they rely on offline banking or financial support services - can benefit from Open Finance initiatives. Within the debt advice sector, there are already examples of charities looking to use Open Banking as a way of collating information in order to help offer person-to-person advice⁷. Within the credit sector, some credit unions are using Open Banking data to support loan application processes⁸.
- The potential for firms to **use or misuse data in a way that consumers are not aware of and that may cause harm.** A widely shared concern among consumers is that data about them will be used in a way that is not good for them. For example, customers are worried about being targeted with advertising for products or services they don't need.

⁶ Which? (2019a). Everyday Finances Report. Available at: www.which.co.uk/everydayfinances

⁷ Stepchange (2020). We bring Money Coaching to clients with innovative new partnership with OpenWrks. Available at: <https://www.stepchange.org/media-centre/press-releases/openwrks-partnership.aspx>

⁸ Marloes Nicholls (2020). Open Finance, 'Open X': What's the use? Available at: <https://financeinnovationlab.org/open-finance-open-x-whats-the-use/>

“It’s not that I don’t want them to know that I’m spending at Costa... but it’s more what’s going to come after, who’s going to learn and what they’re going to sell to you and what are they going to build a profile of you.”

Quote from a younger, lower SEG research participant

- The potential for **changes to the way services are offered to lead to worse consumer outcomes**. Consumers are aware that technology is making it easier to make financial decisions, for example allowing one-click payments or instant access to credit. While convenience is recognised as a clear benefit of new technologies, consumers are concerned that the ease by which they can spend and access financial products is leading to worse outcomes. This is a particular concern for those on lower incomes. Seven out of 10 people in the lowest income quartile are concerned technology is making it too easy to spend compared to four out of 10 for those in the highest income bracket.

“It’s almost that they’re making it easier for you to spend. The easier it is for you to just touch a screen or a watch or a phone, the more you’re going to spend.”

Quote from a younger, lower SEG research participant

- **The resilience of digital infrastructure and the risk of relying entirely on those services**. Customers are understandably concerned that their banks and other firms cannot be relied on to work 100% of the time. The same is true of their internet connections. This means that there is a reluctance to rely fully on digital-only services and people want reassurance that they won’t be left worse off if technology fails them.

“We talked about system failures, so it’s all well and good having all these different services and providers, but when the infrastructure fails, what happens then? You could be in a limbo where nobody can pay or receive.”

Quote from research participant in Cardiff

One key concern for consumers is that they need to know that someone has oversight of firms accessing and using data.

“If I knew it was regulated and controlled I’d feel more positive.”

Quote from a research participant in Glasgow

The FCA and the Government must be open to regulating firms that provide the new products and services that develop as a result of increased data sharing and must ensure that there is sufficient oversight of how consumer data is used by firms. All firms must be accredited by a relevant regulator. In the first instance, all firms accessing and using data via Open Finance initiatives should be accredited by the FCA.

Oversight of these markets is vital as customer data is playing an increasingly important role in the financial services market, with potentially detrimental outcomes for consumers. Which? has already raised concerns with the FCA about the excessive use of data for pricing by insurance companies being inappropriate⁹. The more financial service offerings rely on the sharing of consumer data, the greater role the regulator will have to play in regulating the use of data by financial firms.

⁹ Which? (2019b). Consultation response to FCA General Insurance Pricing Practices interim market study. Available at: <https://www.which.co.uk/policy/money/4990/consultation-responses-insurance>

Therefore, Which? would expect the FCA to continue to invest in understanding how financial firms are using consumer data to set prices and to target consumers with products. Where the FCA believes it is necessary they should work with the Government to ensure they are able to effectively regulate firms to protect consumers.

It is vital that there is a consistent approach to Smart Data interventions from regulators and the Government. [Response to question 10 and questions 14 to 22]

Work on Open Banking and Open Finance appears to be well ahead of similar work in other sectors. While it is essential for now that the FCA takes the lead on Open Finance initiative to ensure all relevant firms are regulated and consumer are fully protected, it is vital that the work the FCA undertakes compliments the work of the UK Government, the CMA and other “Smart Data” stakeholders to ensure that the UK has a clear and coordinated approach to the regulation and oversight of Smart Data initiatives. This will help ensure that best practices can be shared across sectors and that there are consistent, consumer-focused standards and protections.

To this end, we have previously called on the Government to provide a clearer vision for how the governance framework of Smart Data will fit together as a whole¹⁰. We are pleased that the FCA will be included in the recently announced Smart Data working group and that this working group will include detailed consideration of how schemes should be regulated in the long term¹¹. We hope that this will lead to a consistent approach on Smart Data interventions which is focused on the needs of consumers and delivers positive consumer outcomes.

About Which?

Which? is the UK’s consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We’re the independent consumer voice that influences politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we’re not for profit and all for making consumers more powerful.

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¹⁰ Which? (2019c). Consultation response to ‘Smart Data: Putting consumers in control of their data and enabling innovation’. Available at:

<https://about-which.s3.amazonaws.com/policy/media/documents/5d517ecade106-Smart%20Data%20Putting%20consumers%20in%20control%20of%20their%20data%20and%20enabling%20innovation%20-%20Which%20response%20FINAL.pdf>

¹¹ BEIS (2020). Next Steps for Smart Data. Available at:

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