The Money Charity Response – FCA Call for input: Open Finance (March 2020)

The Money Charity is a financial capability charity whose vision is to empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives.[1]

We welcome the opportunity to respond to the FCA Call for Input on Open Finance, which could potentially have a big impact on our financial capability service delivery and policy work.

In this response, we set out our Key Points, make some overall comments on the issue then answer selected questions posed in the Call for Input.

[1] See box on back page.

Key Points

1. We recognise and support the positive vision for Open Finance in the Call for Input, particularly as expressed in Annex 1 Open Finance Use cases, pages 28-33. These use cases have the potential to improve financial capability in the UK by embedding and helping to structure healthy financial behaviour such as we advocate and teach in our school, workplace and community workshops.

2. At the same time, many of the use cases will be seen by less scrupulous financial service providers as invitations to profit at the expense of the consumer. The successful implementation of open finance will require a substantial improvement in consumer protection, addressing conduct risk before breaches of FCA principles occur rather than afterwards. Specifically, we think the FCA should:

- Introduce a Duty of Care.
- More strongly enforce the Senior Manager and Certification regime.
- More strongly enforce the FCA's existing rules on Treating Customers Fairly.

3. For the consumer, key issues in open finance are:

> **Data security:** making sure that the personal and financial details of consumers are safe from hacking, fraudulent use and accidental loss. This is essential for the successful introduction of open finance.
>
> **Consent control:** making sure that consumer consent for data sharing is genuinely voluntary, that consent is requested along the full data chain (including fourth, fifth etc parties) and is fully reversible along the data chain.
>
> **Exclusion:** making sure that the amount of data released under open finance does not lead to service exclusion for those in less advantaged situation.
>
> **Fraud:** making sure that open finance does not lead to more opportunities for fraud, scams and twilight offers that straddle the boundary between regulated and unregulated activities.

4. FCA should encourage competition in open finance services by making sure that (1) incumbents do not use their control over data to restrict new entrants or competitive offers, and (2) if/when Big Tech[2] enters UK financial services, Big Tech advantages arising from network monopoly effects should not be allowed to crowd out existing providers and other potential competitors.

[2] Facebook, Apple, Amazon, Google and their Chinese equivalents (Alibaba, Tencent, Baidu, Xiaomi).

5. In the case of unauthorised release of consumer data, the consumer should have a single point of redress, which should be the company with which the consumer contracted for the open finance-based service. Tracing leaks and establishing liability for leaks should be the responsibility of this company (and its partners) and should not affect consumer redress.

Glossary

API	Application Programming Interface
COP	Confirmation of Payee
FCA	Financial Conduct Authority
MaPS	Money and Pensions Service
OB	Open Banking
OBIE	Open Banking Implementation Entity
OB4G	Open Banking for Good
TPP	Third Party (Payments) Provider

Overall Comments

The Money Charity takes a positive view of the possibilities of Open Banking and Open Finance. For example, we have participated in Nationwide Building Society's Open Banking for Good (OB4G) programme and we consult regularly with consumer representatives on the Open Banking Implementation Agency. We see the possibility that Open Banking and Open Finance can help consumers by better picturing their financial affairs and by helping them adopt healthy financial behaviour through apps that:

- Analyse income and expenditure.
- Present consumer balance sheets (including the concept of what a balance sheet is).
- Help consumers save money by spending less than they earn.
- Construct and stick to budgets.
- Understand and act on the difference between needs and wants.
- Reduce reliance on credit and avoid building up unmanageable debts.
- Automate savings and investments.
- Choose the best rates of return at acceptable levels of risk.

- Find the best financial products for the circumstances of the individual or family.
- Establish financial goals and work towards them.

In the OB4G programme we have seen prototypes of what some of these apps might look like, for example apps that automate savings or regulate payments for people with irregular earnings. On the other hand, we recognise that this is a new field. Much further development will be needed before success is achieved.

We know from our financial capability work that, while knowledge is important, behaviour is key. This is often to do with the emotions and impulses people experience around money. For Open Finance and Open Banking to make a lasting contribution to financial capability, they will need to be based on an understanding of the behavioural characteristics of human beings and harness these to the advantage of the consumer, resisting the temptation to exploit them for the benefit of the financial service provider, as happened with, for example, diminishing interest rates on cash savings or escalating annual charges for home insurance.

As we have argued in other consultation responses, the consumer protection aspect should be enhanced by:

- Introducing a Duty of Care.
- Timely enforcement of the Senior Manager and Certification regime.
- Enforcement of the FCA's existing rules on Treating Customers Fairly.

It is important that the various distinct FCA consumer initiatives are joined-up. For example, the work on vulnerability and fair pricing should be automatically part of the work on open finance. If firms are properly implementing FCA requirements on vulnerability, fair pricing and TCF, then the risk of adverse consumer outcomes in open finance would not arise. However, on industry past practice this is unlikely to be the case without explicit regulation, supervision and enforcement.

Answers to selected consultation questions

Q1: 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?

As suggested in our answer to question 2 below, we think the biggest contribution the FCA can make is in reducing conduct risk, in particular making sure that products are designed in consumers' interests and that consumer data are safe and fully under the control of the consumer.

If the risks are minimised, then organisations like The Money Charity can focus on the positive case for open banking as a suite of services that can potentially improve consumers' financial capability and wellbeing.

We expect innovators in the fintech industry and incumbent banks to try out numerous open banking applications. Eventually, and providing risks are addressed, several apps (or types of apps) will emerge that have clear consumer value and popularity and become part of the standard banking offer.

Q2: We are interested in your views on what open banking teaches us about the potential development of open finance.

The implementation of Open Banking has revealed several consumer issues that need to be addressed and are likely to apply to open finance, in particular:

Incumbent power: it is not easy to set up new competitive companies facing large incumbents. Some app developers have found it more practicable to collaborate with an incumbent (selling services to that incumbent) rather than setting up in competition. For example, a supplier might provide an open banking extension to an incumbent bank's mobile banking offer. At this stage it remains to be seen whether this model will generate the competition sought by policy makers, or whether it will ultimately cement the position of the incumbents.

On the other hand, if the competitive challenge comes from Big Tech (Facebook, Google, Amazon, Alibaba, Tencent etc) an opposite problem may arise: how to enable the present UK incumbents to compete with larger global firms wielding the power of network effects.

In each case, the challenge will be to resist the drive to monopolisation, to make sure there are enough competitive alternatives in the marketplace for the consumer's best interests to be served.

Incumbent power enhanced by creating or not removing practical obstacles: we have heard from our contacts in the open banking community that incumbent banks may restrict the amount of data that flows through an open banking API. For example, a bank may hold expenditure classification information but not release this via the API, meaning the app developer has to create its own system of expenditure classification using different data. This imposes extra costs on the challenger and helps maintain the incumbent advantage. In the wider open finance context, incumbents may well try to limit the sharing of relevant data in order to restrict the emergence of competitive offers.

Anachronistic software barriers: we have been told that some bank systems have a 32-character limit in critical parts of their software, which limits the ability of the system to carry more sophisticated transaction data. This is part of the larger problem, of which the FCA will be aware, that new bank software is sometimes built on top of very old software platforms. The challenge here is to work out a way to bring all bank software into the twenty-first century and to make it future-adaptable.

Unintended loss of existing consumer protections: when consumers make a payment by credit-card they are protected by section 75 of the Consumer Credit Act, which makes credit card companies jointly liable for purchases that go wrong (e.g. a faulty product or wrongly-charged car rental fee).[3] This is an important protection which we refer to in our financial capability workshops. However, if payment is made via a third-party payment provider (TPP), this protection is lost, even if the consumer has used a credit card to top up their account with the TPP. With open finance, care will need to be taken to ensure that existing consumer protections are not lost in the process of transitioning to a new regime.

Unresolved data permission issues: in our discussions with the open banking community we have heard that open banking data permission systems are not watertight, in particular that, once data are on-sold (or on-provided) to fourth, fifth or subsequent parties there is no practical control on the data, that in effect the data "escape". Relatedly, we have heard that permissions cannot easily be reversed, that when a consumer decides to withdraw permission for a TPP to access their data via an API, it is not easy to reverse that permission along the chain to subsequent parties. The combined effect of these two issues is that the consumer cannot be sure their data is secure.[4]

For open finance to operate as policy makers would like, steps will need to be taken to ensure that (1) all relevant information flows through the APIs, subject to consumer permission, (2) that consumer data are held securely and (3) that permissions can be reliably reversed along the data chain.

As a financial capability charity, we need to consider what advice we give to workshop participants about adopting open banking and open finance. Because of the potential financial capability advantages, we would like to advocate the use of open banking and open finance apps. But to do this, we need to be sure that consumer protection issues have been addressed. We need to know that the products have been designed to work in the consumer's interest and that consumer data will be under the consumer's control and absolutely safe.

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[3] https://www.moneysupermarket.com/credit-cards/guide-to-credit-card-protection/

[4] See our December 2019 response to the OBIE Open Banking roadmap, available at: https://themoneycharity.org.uk/work/policy/consultation-responses/ (December 2019)

Q3: Do you agree with our definition of open finance?

Yes.

Q4: Do you agree with our assessment of the potential benefits of open finance? Are there others?

We agree with the FCA's assessment as far as it goes but, as noted in our opening remarks, our financial capability work has taught us that behavioural traits and emotions underly consumers' relationship with money. Paragraphs 3.7 to 3.12 of the Call for Input focus on the provision of information to consumers, but in our experience, information alone does not make the difference. The most interesting open finance apps may prove to be those that engage with human behavioural traits and emotions in such a way that consumer financial wellbeing is improved.

However, as with gambling and the ready availability of credit, human emotions and traits can also be harnessed by financial service providers to reduce financial wellbeing and encourage consumers into poor choices and/or unmanageable debt. The FCA will need to balance its encouragement of open finance with the development of a strong regime of consumer protection.

Q5: What can we do to maximise these benefits (given the considerations set out in paragraphs 3.12 to 3.17)?

First, ensure that the development of open finance is not impeded by artificial barriers created by incumbents to protect their market position. Second, focus on the conduct risks and try to minimise these.

For example, paragraph 3.18 of the Call for Input mentions pensions dashboards. We support the creation of a pensions dashboard, as we think this could potentially enhance consumers' understanding of pensions and of their prospective retirement incomes. However, we have heard that the attraction of pensions dashboards for some financial service firms is that they can be used to sell pension consolidation. We know from the FCA's study of Defined Benefit pension transfer advice,[5] and other sources, that there are many in the financial services industry who succumb to the temptation to maximise their own income at the expense of their clients. To maximise the benefits of open finance, the FCA will need to enhance its supervision of the industry and intercept attempts to turn open finance to purposes other than consumer wellbeing.

We note also that the Money and Pensions Service (MaPS), in its role as leader of the UK's financial capability strategy, has set ambitious ten-year goals for increasing the

[5] https://www.fca.org.uk/publications/consultation-papers/cp19-25-pension-transfer-advice

number of savers in the UK and reducing the number of people over-reliant on credit.[6] To ensure that public policy is joined up, FCA should ensure that the evolution of open finance helps achieve MaPS' goals. These goals should be part of the success criteria for open finance.

Q6: Is there a natural sequence by which open finance would or should develop by sector?

We don't have a view about the sectoral order in which services develop, but we agree that a staged approach is likely to be better as this will enable conduct risks to emerge and be dealt with along a narrower front. We would like to see the issues of data permission and security resolved before open banking is broadened into open finance.

Q7: Do you agree with our assessment of the potential risks arising from open finance? Are there others?

Yes, we broadly agree with the assessment of risks in Chapter 4 of the Call for Input. We would emphasise in particular:

1) The **data security and permissions control** risks we outlined in our answer to Question 2 above.

2) Human nature being what it is, when consumers delegate to others the power to make transactions or investments, a serious **moral hazard** arises: the financial service provider may be tempted to spend the customer's money to benefit the provider more than the customer. For this reason, we would advise consumers to be wary of applications that sign away executive power, unless there is a high degree of transparency and a strong audit trail.

For example, the Call for Input suggests:

> "Reducing friction associated with carrying out larger transactions, such as pension consolidation or investment transfers, may lead to harm where advice is not taken." (Paragraph 4.3)

This is a classic situation of moral hazard, in which the risk of harm exists where advice **is** taken, as well as where advice is not taken. In fact, taking advice can increase the risk of harm, as happened with Defined Benefit pension transfer advice.[7]

[6] The goals are: two million more working age 'struggling and squeezed' people saving regularly; two million fewer often using credit for food and bills. See MaPS, *The UK Strategy for Financial Wellbeing 2020-2030*, page 11.
[7] See FCA, CP19/25.

One way of mitigating this risk would be for the FCA to introduce a fiduciary Duty of Care, actionable by the individual consumer or by a group of consumers in a class action. With such a Duty in place, financial service providers and their professional indemnity insurers would have a financial incentive to avoid improper advice and transactions unfavourable to the consumer.

In the debate around introducing a Duty of Care, there has been discussion as to whether such a duty should take a tort form ("to avoid reasonably foreseeable harm") or a fiduciary form ("to act in the best interests of the customer"). The fiduciary form is particularly appropriate for open finance, as open finance is likely to involve apps and financial service providers acting on behalf of the consumer, i.e. acting with executive authority in the consumer's interests, in a manner similar to that of a trustee.

3) **Risks of exclusion**. It may be that the disclosure of information facilitated by open finance becomes so great that people in disadvantaged situations (vulnerability, low income, less-advantaged post codes etc) find they are excluded from services they otherwise would have been offered. Risks, instead of being shared, may become highly individualised. This concern was raised by many charity and consumer participants in the OBIE/FCA forum on open finance on 26 February 2020, underlining that it is seen as a serious risk by many who come into contact on a day-to-day basis with people in less advantaged situations.

4) **Risks of fraud and scams**. Consumers are already bombarded with fraudulent offers of many types, particularly via Internet and mobile phone, and Internet platforms do not yet reliably filter out criminal activity. UK consumers are reasonably familiar with the "big names" in finance and insurance (the main banks and insurance companies) but open finance will potentially open up the market to hundreds or thousands of retail offers, some legitimate, some fraudulent, some operating in the twilight zone between what is regulated and un-regulated (such as the vendors of mini-bonds). FCA will need to consider carefully how to establish a regulated and consumer-protected market for open finance. This is partly about making sure that all vendors and retail products are properly regulated, but also about working with other branches of government and law enforcement to remove frauds, scams and twilight products and firms from the market.

Q8: Do you consider that the current regulatory framework would be adequate to capture these risks?

The Call for Input (pages 15-16) draws attention to the problem of some open finance activities being regulated while others fall outside the regulatory perimeter. This is confusing to consumers, especially when unregulated activities are nested within regulated activities, as happened with minibonds.[8] In our view, all financial services and

[8] https://www.fca.org.uk/news/press-releases/fca-ban-promotion-speculative-mini-bonds-retail-consumers

financial products designed for or marketed to retail consumers should be subject to regulation. We think that most consumers would expect that to be the case and would be surprised to find out that it is not already the law.

Additionally, as indicated in our overall comments above, we think the FCA needs to strengthen consumer protection by:

- Introducing a Duty of Care.
- Timely enforcement of the Senior Manager and Certification regime.
- Enforcement of the FCA's existing rules on Treating Customers Fairly.

Q9: What barriers do established firms face in providing access to customer data and what barriers do TPPs face in accessing that data today?

See our answer to Question 2 above.

Q10: Do you think the right incentives exist for open finance to develop, or would FCA rules, or any other changes be necessary?

As pointed out on page 18 of the Call for Input, GDPR is framed in terms of the consumer's right to move, copy or transfer their data easily from one digital environment to another in a safe and secure way. However, Big Tech has shown how business models can be built by firms accessing and owning consumer data, with consumers having little practical control over their data or even, in many cases, knowing what data have been captured. Similarly, open finance could mutate from being a consumer-centred proposition to one giving firms open access to consumer data, while consumers lose control.

To avert this possibility, FCA and other regulators need to build strong consumer protections from the start. As we have suggested above, this means: (1) preventing incumbent firms from impeding authorised data transfer, (2) making sure data are secure and (3) making sure consumers remain in control of the permissions.

At its heart, open finance is a large and ambitious data project. The use of APIs is supposed to standardise data transfer to make sharing of data easy and secure. But the sharing of standardised data can only ever be as good as the quality of the underlying data. There is evidence from the pensions dashboard project that this is a 'non-trivial' problem. For example, PensionBee recently published a report on its attempts to match customers with known pensions which found that for non-master trust pensions, data matching failed in 36% of cases.[9] This is because the underlying identification data were not of sufficiently good quality to make the match. Given the fragmentation and

[9] https://www.yourmoney.com/retirement/just-six-in-10-pensions-to-appear-on-all-encompassing-dashboard/

variegated IT history of the financial services industry, this is perhaps not surprising. However, it illustrates the scale of the challenge.

FCA and other regulators may be able to assist by sponsoring or requiring data clean-up and standardisation exercises that, over a period of time, get the underlying data of the financial services sector into 'fit for purpose' state, preparing it for an AI-based future in which many of the historical service demarcations may erode or disappear.

Q11: Do you have views on the feasibility of different types of firms opening up access to customer data to third parties?

No comment.

Q12: What costs would be involved in doing so? We are interested in views on the desirability and feasibility of developing APIs?

No comment.

Q13: Do you have views on how the market may develop if some but not all firms opened up to third party access?

This will be confusing for consumers. It may not be clear why some firms are in and some are out. Consumers may make decisions based on the assumption that all firms are participating, then find that they can't carry out their decision and need to do something else. This will be frustrating and potentially antagonising. It will make it harder for charities like ourselves working in financial capability to give clear guidance to people about what is, or is not, available.

As an example, take Confirmation of Payee (COP), which is subject to the Payments System Regulator's Specific Direction 10, requiring six UK banking groups to implement COP – which is a key aspect of the UK's anti-fraud strategy – by 31 March 2020. However, the direction omits a significant number of British banks (including TSB for example) and most of the banks in Northern Ireland, leading the Northern Irish to question why they have been treated differently.

Q14: What functions and common standards are needed to support open finance? How should they be delivered?

No comment.

Q15: What role could BEIS' Smart Data Function best play to ensure interoperability and cohesion?

No comment.

Q16: To what extent should the standards and infrastructure developed by the OBIE be leveraged to support open finance?

No comment.

Q17: Do you agree that GDPR alone may not provide a sufficient framework for the development of open finance?

We agree with the concerns expressed on pages 22-24 of the Call for Input, i.e. that GDPR alone may not be sufficient for consumer protection and that a new specific set of rules will be required. We agree with the recommendations of paragraph 5.44 on consumer rights and consent management.

Big Tech have introduced us to what could be called ‘compulsory consent’, i.e. where consent is nominally optional but actually a condition for access to a service (Google, Facebook etc). The open finance consent rules will need to guard against this type of leverage, making sure that the scope of consent is appropriate for the service provided and only lasts as long as the provision of the service.

We are concerned that consumers may forget about the consents given, so that large amounts of sensitive data may continue to be unintentionally shared. The framework should anticipate and provide a solution for this.

Q18: If so, what other rights and protections are needed? Is the open banking framework the right starting point?

Open banking is a starting point, but OB has unresolved consumer issues, including fourth and subsequent party consents as indicated in our answer to question 2. Also, the OB plenipotentiary governance system is unusual and, in our view, not appropriate for the long-term future of open finance, which needs a broader system of authority, including sufficient consumer representation.

Q19: What are the specific ethical issues we need to consider as part of open finance?

The field of machine learning and artificial intelligence is in its earliest stage of development, so it is natural there will be many unresolved issues, including ethical issues. We think the question of data ethics should be formalised as a process, with ongoing regulatory oversight and adequate representation from all interested parties.

The issue of embedded or learned bias (paragraph 5.48) is one that concerns us[10] and we think the FCA is right to highlight this. From our conversations with data scientists

[10] For example, insurance pricing algorithms can implicitly discriminate against people from minority cultural groups.

we understand it is possible to instruct AIs to set out the way they have made their decisions, so we would expect a successful outcome from the FCA's joint work on transparency and explicability with the Alan Turing Institute (paragraph 5.50).

In the future it should be normal practice for a consumer to request a report on the variables used to offer a service at a particular price and for the financial service provider to provide such a report. Indeed, responses to such requests, and the auditing of responses by regulators, should increasingly be automated.

Q20: Do you have views on whether the draft principles for open finance will achieve our aim of an effective and interoperable ecosystem?

We agree with the idea that a set of principles should be adopted and support most of the draft set out on pages 26-27 of the Call for Input, especially section 3 on consumer control of their data. This begins to address the concerns about data security and permission control we have raised in this response.

The fourth point of section 4 (cohesion) reads as follows:

> "Lines of accountability and liability should be clear and effective in incentivising participants to maintain a secure and trustworthy ecosystem. Where possible there should be a single source of redress."

On this point, we think it is vital from the consumer point of view that there is a single source of redress. Where there is a chain of providers and something goes wrong, there must be a single responsible party for the consumer to speak to. This should be the party with whom they have contracted for a given service. This party should have a set of contracts in place to cover non-performance contingencies in the service chain. Any situation where the consumer is told "it's not our fault, go and speak to so-and-so" must be avoided.

At the OBIE/FCA forum on open finance on 26 February 2020, the issue of traceability of data leaks and responsibility for such leaks was discussed at length. Suggestions such as a "Data Ombudsman Service", "Data Prudential Regulation" and watermarking of data were made, reflecting the scale of participants' concern. These are interesting suggestions that reveal the challenges involved in keeping data secure.

On balance, we think the best approach is for the firm that contracts with the consumer to be legally responsible for any leaks along the chain. It will then be up to that firm to write contracts with its service providers that cover the possibility of leaks and to put in place the necessary technical means for detecting and attributing responsibility for leaks.

To receive redress from the principal firm party (the firm the consumer has contracted with) it should be necessary only for the consumer to show that a leak has occurred, not to demonstrate the source or the responsibility for the leak. Indeed, it is hard to believe that consumers will retain confidence in open finance if this is not the case.

Q21: How should these set of principles be developed? Do you have views on the role the FCA should play?

We agree that a central role for the FCA is appropriate. FCA leadership (as opposed to industry leadership) ensures that consumer interests and issues highlighted by parliament are taken fully into account and that the resulting principles have the force of regulation.

Q22: 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.

No comment.

The Money Charity is the UK's financial capability charity providing education, information, advice and guidance to all.

We believe that everyone achieves financial wellbeing by managing money well. We empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.

We do this by developing and delivering products and services which provide education, information and advice on money matters for those in the workplace, in our communities, and in education, as well as through influencing and supporting others to promote financial capability and financial wellbeing through consultancy, policy, research and media work.

We have a 'can-do' attitude, finding solutions to meet the needs of our clients, partners, funders and stakeholders.

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