

16 March, 2020

Tracy-Linn Peters
Strategy & Competition
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Dear Ms. Peters,

CFA UK response to the FCA regarding Call for Input: Open Finance (issued in December 2019)

The CFA Society of the UK (CFA UK) is delighted to have the opportunity to share its views on the FCA's Call for Input on Open Finance. CFA UK's mission is to help build a better investor profession for the ultimate benefit of society. CFA UK welcomes opportunities to explore initiatives that produce new business models, new products and meaningful ways for firms to engage with customers that provide them with a better service and more choice.

About CFA UK & the CFA Institute

Please see Appendix 1 for a brief overview of both CFA UK and CFA Institute.

EXECUTIVE SUMMARY

- We support the Open Finance initiative for the benefits of customer data access, transparency and innovation. It can help to address the UK advice gap by bringing the benefits of financial planning to a wider audience.
- However, to make it a success, we believe a strong regulatory and legislative framework is required to ensure both customer and provider trust and confidence in Open Finance.
- The underlying principle should be that the client owns the data and that providers, whether incumbents or Third-Party Providers ("TPP"), compete on services rather than data.
- To achieve a critical mass of useful data and participation, it should be made progressively compulsory (initially for the larger banks and financial institutions) to share data with the TPPs so that Open Finance services are able to present recommendations or actual transactions based on complete and accurate data. For banks and financial institutions to do this without conducting extensive due diligence, the TPPs must be regulated and authorised and provider risks must be mitigated.
- TPPs venturing into established sectors as part of their service, such as financial advice, should be subject to the same regulation and client treatment standards as are currently in force for those sectors.
- Common industry standards are necessary and these should be endorsed by the Bank of England. We suggest that a standard set of guidelines be developed and implemented by stakeholders, with the FCA and the Information Commissioner's Office (ICO). In relation to this:
 - we support the development of common Application Programming Interface ("API") standards to encourage innovative technological development;

- regulation and standards should be implemented in measured stages, with each stage responding to feedback from earlier stages; and
- the regulation and standards should be coherent, holistic, risk-based and proportionate.
- The fee model of TPPs should not be based on introduction, retrocession or any form of commission from product providers, in line with principles established under RDR. Nonetheless, due care needs to be taken when fees are directly borne by consumers, as it may further increase barriers for mass adoption especially when the benefit of Open Finance is unclear to consumers. We suggest this is an area for further industry consultation and that a fixed-fee model or co-operative models (where all the partnered product providers share the TPP's operating costs) could be considered.
- The sequence by which Open Finance should develop should be determined by considering two factors:
 - the balance of the scope of the change vs. the ability to leverage pre-existing work (e.g. the pensions dashboard); and
 - the balance of consumer benefit vs. risk of consumer harm.For example, Open Finance should be implemented in credit, which involves a smaller set of changes that leverage o banking and benefit many consumers, including the vulnerable, before it is implemented in investments, which involve a much larger set of changes and likely puts consumers' capital at risk.
- CFA UK has significant concerns about: (i) data security; (ii) misuse of personal data; and (iii) data mining in ways that benefit the TPP or (an)other client(s) of the TPP but do not benefit the data subject. On the other hand, the existence of positive network externalities, such as the ability to see a pattern of suspicious transactions among multiple players, could make it easier to detect fraud or money laundering.
- CFA UK is concerned about the enforcement of the user's 'right to be forgotten' and believes that the permission the client gives a TPP to execute transactions on its behalf should lapse after a reasonable time period.

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?

There are now over 1 million customers using Open Banking in the UK¹. This growth is impressive, given that the regulation was only introduced in January 2018. However, the UK has 54² million retail banking customers and nearly 6 million businesses³, so penetration rates are still very low. Monzo founder, Tom Blomfield, has commented: "The positive effect of Open Banking on innovation has been nil. I don't see any businesses based on Open Banking in Europe whatsoever."⁴

¹ <https://www.openbanking.org.uk/about-us/latest-news/open-banking-2019-highlights/>

² <https://www.statista.com/statistics/940560/number-of-customers-at-select-banks-in-the-united-kingdom/>

³ <https://www.merchantsavvy.co.uk/uk-sme-data-stats-charts/>

⁴ <https://www.telegraph.co.uk/technology/2020/03/07/monzo-boss-warns-open-banking-reforms-have-zero-benefit/>

The two biggest barriers to the growth of open banking are: (i) a lack of consumer appreciation of the benefits; and (ii) a lack of consumer trust.

The lack of appreciation of the benefits of open banking is due to inertia and can only be tackled by education. The providers of open banking services themselves are probably in the best position to do this, both to retail and (especially) SME business customers.

The lack of trust probably stems from the perception, particularly amongst retail customers, that their data might not be safe or might be misused if released to a TPP. Continual media reports of cyber-crime, fraud and scams mean that older, wealthier and less tech-literate retail customers see only small benefits and significant potential downsides from embracing Open Finance. It is essential that the FCA continues to do all it can to tightly regulate the firms providing open banking services, provide assurance to consumers that their data is safe and that all regulated firms are following GDPR laws and keeping their clients' data safe.

TPP-side re-authentication would allow users to provide TPPs with continued access to their data without having to revisit their bank's website or app. Currently, customers are forced to re-authenticate with each TPP through their bank every 90 days, which is an unnecessary inconvenience and encourages customers to stay with their incumbent bank.

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

Open banking has achieved a gradual increase of users since it launched in January 2018 and is in the growth cycle of consumer adoption; to some extent, it is just getting started. It is fair to say that open banking has now evolved and demand continues to grow steadily due to digital-literate consumer demand. However, open banking has yet to deliver the ground-breaking shift in retail banking envisioned by regulatory initiatives. This may be in part due to a lack of consumer awareness of open banking and privacy concerns regarding the use of TPPs. Consumer education is critical in order for Open Finance to flourish. Open banking has laid the foundations which will allow Open Finance to benefit from the infrastructure already established by open banking. Further development should be driven by consumer demand coordinated by vendors and TPPs. Our view is that although consumers are primarily interested in services and front-end interfaces, regulation must ensure that back-end processes and data are adequately controlled and not used for impermissible purposes.

It is worth noting that open banking delivery costs significantly exceeded the initial industry cost estimation proposed by the Competition and Markets Authority (CMA) in 2016.

Key lessons learned from open banking include:

- Incentives and barriers to adoption by incumbent providers or data holders should not disadvantage competition or prevent a level playing field for vendors and TPPs;
- Supporting API development and organically supported standards are beneficial;
- AIS development should be prioritised over PIS development to benefit the common good in areas such as state pension, child support benefit, scholarships, etc;
- "One size fits all" is a holistic ambition that may impede development. Differences between financial sectors (e.g. insurance vs. mortgages) means that the goal of

automatic switching should not be rushed. Gradual adoption may be more worthwhile and result in an enhanced future-proofed concept;

- The routine technical industry committee standard agreements created problems due to a lack of understanding among consumers of the granular technical detail. Unexpected technical gaps became apparent during implementation. In certain cases, important issues identified by the technical committee were not necessarily considered to be important by industry users or end-consumers;
- The Open Finance initiative should leverage pre-existing or concurrent initiatives such as the pensions dashboard;
- Consumer education and awareness are essential and should be incorporated in any future plans. A centralised webchat or telephone helpline, supported by an Open Finance Implementation Executive, would be an ideal place to help both developers and consumers and to collate unforeseen issues for discussion and resolution;
- Consumer adoption barriers such as cyber risk, fraud and scams need to be quickly identified, assessed and addressed;
- The trust of TPPs is a key factor in increasing adoption levels. This may be even more of a challenge for certain products in Open Finance that require greater and more sensitive data to be shared; and
- There remain a large proportion of consumers who have not used and benefited from open banking. Only certain sectors of consumers have utilised open banking. Open Finance should seek to address this perceived lack of adoption.

Q3: Do you agree with our definition of Open Finance?

We believe a more concise definition should be developed by the FCA to enable communication and understanding by participants and consumers. Open Finance is based on the principle that the data supplied by and created on behalf of financial services customers are owned and controlled by those customers. Competition between providers should be based on services, not control of the data. Re-use of these data by other providers for transactions and potential transactions takes place in a safe and ethical environment solely for the benefit of customers and with explicit informed consumer consent.

In regard to establishing a vision statement, it may be useful to consider that there is an opportunity to further extend the offerings of Open Finance to other areas, such as social (e.g. state pension, child support benefit, etc.), scholarship applications, etc. to extend its impact in the longer term and to maximise public awareness and benefit, reduce stigma, and facilitate overlap with the audience for other Open Finance products.

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

Broadly, we agree with the FCA's assessment of the benefits of Open Finance. CFA UK would add:

- Helping to address the advice gap: benefits of targeted financial advice and planning to a wider audience;
- Potentially lowering the cost of provision once scale has been achieved;

- Benefits for customers in need of support, such as the less credit-worthy or vulnerable, and the less financially savvy;
- Automation and digitalisation make it easier for individuals and businesses to manage their finances;
- An opportunity for new players to enter the market and provide innovative products which benefit consumers; and
- The creation of a new TPP sector with new streams of revenue / market place for TPPs.

We suggest extending the areas considered under Open Finance to include those with social benefit, such as state pension, scholarship applications, etc.

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

From the perspective of consumers, we believe that consumer education would help adoption and, consequently, the delivery of benefits. Given that consumers are more focused on services and interface, rather than back-end processes, making Open Finance easy to use would be essential to maximize adoption. However, CFA UK sees the responsibility for both of these important aspects sitting primarily with the providers of Open Finance services rather than the FCA.

From the perspective of providers, to maximize benefits, it would be helpful to incentivise providers as much as TPPs to ensure quality data is shared and used in the best interest of customers. Additionally, promoting investment in technology, as well as interconnectivity between data suppliers managed by TPPs would be very useful. Consideration may be made to encourage larger providers to act as TPPs such that offerings would come from established brand names. It would be helpful to study further the appropriate incentives for large firms' participation while balancing the need for competition and a level playing field. Certainly, all TPPs would need to be authorised and regulated by the FCA and the ICO. It is critical that consumers can trust the parties who have access to their data.

A strong regulatory or legislative framework is essential to provide trust and confidence in Open Finance. For example, it should be compulsory for banks and financial institutions to share data with the TPPs and to maintain the integrity and accuracy of the data so that Open Finance services are then able to present recommendations or actual transactions based on complete and accurate data. However, in order for banks and financial institutions to do this without conducting extensive due diligence, the TPP must be regulated and authorised.

At this point, it is very difficult to predict the evolution and eventual outcome of Open Finance. Therefore, to maximize potential benefit, we recommend adopting a risk-based regulatory framework that is pre-emptive and forward-looking, while ensuring timely and transparency of communication of regulatory or technical expectations to consumers and all relevant market participants. Furthermore, the mechanism for regular periodic feedback from key entities including consumer advocacy organisations, industry organisations and the CMA should help ensure that issues may be raised in a timely manner.

Q6: Is there a natural sequence by which Open Finance would or should develop by sector?

CFA UK believes the sequence should be determined by considering the following three factors:

- (1) The balance of scope and magnitude of change vs. ability to leverage pre-existing work (open banking, pensions dashboard, etc.):
 - a. Credit (mortgages, cards, etc.) and/or protection (life and general insurance) because of existing APIs for open banking (predominant suppliers of credit are banks); and
 - b. Start with simple fixes that eliminate friction:
 - i. ISAs from different providers in same tax year; and
 - ii. Duplication / differences in coverage / holes if both you and your spouse have employer-provided medical insurance;
- (2) The balance of consumer benefit vs. risk of consumer harm:
 - a. The sequence should be determined by data-based analysis using (where available) FCA data on nominal loss and risk of loss;
 - b. Focus on products that:
 - i. require the most red tape or take the longest, such as mortgages; and
 - ii. cater to the less financially literate; and
- (3) The existence of positive network externalities, e.g. ability to see a pattern of suspicious transactions among multiple players makes anti-fraud / anti-money laundering easier.

Based on these three factors, we think credit should be first and investments last, with mortgages, insurance, and pensions in the middle.

In terms of the ambition of providing holistic financial advice and services, this can only be done on the basis of the TPPs having received holistic information. This will include increasingly personal and sensitive information and therefore will require the highest level of confidence and trust from consumers.

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

We agree with the risks outlined in the Call for Input.

However, we suggest that the following risks are either additionally called out or emphasised further:

Operational risk:

- Risk of standardised API's potentially weakening data security; the weakest link in the chain risk and concentration risk of a single data hack resulting in vast amounts of sensitive and personal data at risk. The number of high-profile data-hacks even on FTSE-250 companies in recent years (e.g. British Airways (IAG), Tesco, Talk Talk) serves to underline the importance and reality of this risk; and
- High, unrestricted API traffic from multiple TPPs. Data processors must be able to limit high-traffic APIs.

Information risk:

- The risk of important information not being captured, leading consumers or data users to inappropriate conclusions and decisions. As one example, a regulated investment advice process would require a full understanding of a consumer's wider circumstances, their goals, capacity and appetite. Or, if all relevant data (e.g. the client's balances at one financial institution) is not accurately captured, false conclusions might be drawn and poor recommendations made;
- One other potential problem is the risk of different data sets being used by different TPPs with the result that the presentation of data by different TPPs could create consumer confusion; and
- More complex, less commoditised financial products with multiple features cannot be discriminated on purely on price and/or could easily be 'gamed' via the introduction of 'unique' features or 'added extras'.

Misuse of data:

- Risk of data misuse by unscrupulous participants, including for exploitation of vulnerable consumers, money laundering, fraud, loss of control by consumers, onward circulation of data etc. This is of particular concern because data, once released, cannot be guaranteed to be destroyed (even though there is a GDPR requirement to do so) and can be on-sold;
- Risk of conflicts of interest in the role of data user cum product provider, with data being used to promote their own products only on visible criteria; and
- Data misused to infer social, race, ethnic information creating the risk of biased outcomes.

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

The current regulatory framework is not adequate to capture these risks. CFA UK advocates that the FCA follow a proportionate and risk-based approach based on cost-benefit analysis to Open Finance.

We believe there should be a stronger regulatory (and if required legislative) framework to enable the safe rollout of Open Finance. This is important given the various sectors within scope, and the regulatory and legal safeguards developed for consumers in each of these sectors should not be diluted over time. There is also a need for a clear framework for liability when one party is communicating or transmitting to another party.

Our specific suggestions are:

- TPPs should be regarded as asset custodians for data and be regulated for: (i) misuse of data; (ii) mis-representation of data; (iii) the establishment and maintenance of protocols on how data is shared, retained and destroyed; (iv) decision-making around how much and which data is shared; (v) disclosures to consumers; and (vi) a duty of consumer protection;
- In order to ensure that customer data is not used for purposes that the customer did not consent to, we recommend 'consent codification'. This would mean codifying the

customer's consent and attaching it to the data. This would make it clear to data processors, auditors and regulators how the customer intended their data to be used;

- In order to ensure that customers retain control of their data after they terminate a service, we recommend not just revoking access, as is currently the case, but also automatically deleting data that has already been shared;
- Where TPPs seek authority to act on the data by contracting / investing into new products for the consumer, cancelling or modifying existing products, or switching between products, the regulatory protection and supervision regimes in place in the various sectors to ensure good consumer outcomes should apply to TPPs as well. These include cooling-off periods post-sale, clear accountability for suitability assessment, obligations to consider and disclose risks to the consumer, etc. We suggest PIS consent be explicitly required in addition to AIS consent and allow for the consumer to place limitations on the scope and tenure of such authority. There also needs to be clear delineation of responsibilities between TPPs and product providers;
- TPPs should meet requirements to regularly stress-test data security measures. These stress-tests should, potentially, be independently audited and validated by third parties on a standard set of controls;
- Dashboard design should be subject to customer best interest standards and products being recommended should be explainable with the use of dashboards;
- The fee model of TPPs should not be based on introduction, retrocession or any form of commission from product providers, in line with principles established under RDR. Nonetheless, due care needs to be taken when fees are directly borne by consumers, as it may further increase barriers for mass adoption especially when the benefit of Open Finance is unclear to consumers. We suggest this is an area for further industry consultation and that other models could be considered:
 - Possible models for a platform include (a) ownership and administration by the provider(s), (b) ownership and administration by a third party (neither provider nor client), or (c) mutual (some combination of all three). Each has different incentives and potential payment structures.
 - Possible co-operative fee models include fixed fee and equal ownership, fee based on the number of products the provider offers, etc.;
- TPPs should be allowed to discriminate against customers only under the permitted exceptions in the Equality Act 2010; and
- Consumer complaints may need to be dealt with differently from the current setup, given the cross-sector approach of Open Finance, the interaction between different players, and possible proliferation of volumes of TPPs.

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

Established firms face the following barriers:

- **Competitive Advantage:** Many view Open Finance as a regulatory burden, rather than an industry opportunity. Especially for companies for whom data ownership is a competitive advantage, such as some of the social media platforms or electronics providers. Sharing of data may disrupt their business model and reduce their competitive advantage;
- **Consent:** Prior to sharing data, how can firms ensure that customers are fully aware of the risk they may expose themselves to by sharing data?;

- Privacy/Sensitive Data: May regard some data as sensitive and not wish to share it (e.g. a car insurance company that has the personal details of a customer, as well as over 20k miles of telematic driving habits data. Should they be sharing this data with other financial services providers, if it was collected by equipment which they own and was not paid for by the customer?)
- Strategic Positioning: May have been slow to realign their internal strategy for Open Finance. Their client-base may be concentrated on consumers (older, less tech-literate retail clients) less likely to be interested in Open Finance;
- Cross border regulatory implications: What happens when a consumer asks consents to a TPP accessing all their data and that includes data overseas? Would their data related to a country that has other data rules be shared with the TPP in the UK? Or does the TPP only then get a partial profile using all UK but excluding some/all overseas data? What happens for a customer that wishes to switch all overseas accounts to the UK to fund their retirement here, for example?;
- Failed Transfer: Once transferred, who holds accountability to the data if something goes wrong? If data is transferred incorrectly, what happens?; and
- Due Diligence: Firms may determine they need to perform their own thorough due diligence of the TPP if the TPP is not a regulated firm and is, for example, a tech-firm looking to offer “A-type” services as defined in paragraph 4.7 of the Call for Input. In this example, the established firm would need reassurance that their customer’s data would be safe. The established firm is the one more likely to be held accountable where there are negative outcomes from an Open Finance platform.

We note TPPs face the following barriers:

- Unclear Business Model: Is required to have a clear business model. E.g. provider of service or product, financial adviser, administrator or data provider;
- Inadequate Data Infrastructure: May lack financial resource to acquire/ develop scalable, secured and compliant infrastructure;
- Data Access: May lack access to all the necessary data in a standardised format that they can use. For example, the data might be overseas;
- Unregulated: May have its data request refused by the established firm if the TPP are not regulated or authorised and the established firm’s due diligence standards and thresholds have not been satisfied;
- Lack of Brand Recognition: May not get consent from or the trust of customers, especially if the TPP is a new joiner in the market and not an established brand name; and
- Poor Competitive Position: TPPs may face high levels of competition with existing established firms and industry players that already hold vast amounts of consumer data.

Overall Considerations:

- Money Laundering and Identify Theft Concerns: Both TPPs and established firms may be held accountable for data vetting prior to sharing data, which may be costly;
- FCA-Created Barriers to Entry:
 - Should be proportionate and risk-based. Consumers require protection, but excessive regulation will deter market participants;
 - The more clearly defined the Open Finance rules and principles are, the fewer concerns they will create in implementation; and

- On the other hand, there should be a mechanism for periodic review and change as users discover unexpected gaps as they implement Open Banking and Open Finance; and
- Non-UK regulation:
 - If the data subject, data controller, data processor, or TPP are non-UK, they may be vulnerable to non-UK regulation.

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

CFA UK's view is that the development of Open Finance will likely be dominated by commercial incentives and consumer demands. While established providers may have an incentive to grow their market share, for those whose commercial success is based on data ownership, they may perceive data sharing as a disruption to their business model and a threat to their existing competitive advantage, particularly for non-standardised products such as investments or insurance. As such, FCA rules setting out minimum requirements for access provision by firms (i.e. FCA authorisation) would help broaden the incentive.

The introduction of FCA rules with the objective to better align incentives to the public interest would be beneficial. Specifically, an effective regulatory framework can help provide a level playing field and ensure that all registered or authorized TPPs meet a set of minimum standards to be fit for their roles. Whilst banks co-operate today to share data for certain purposes, such as fraud prevention and credit checks, already exist today, greater co-operation in data sharing is necessary if Open Finance is to succeed and become mainstream.

We also agree with the findings of your advisory group and the recommendation for common standards listed in section 5.27 of the Call for Input. Whilst the FCA would not be involved in drafting these standards, the Open Finance industry responsible for drafting them could look to the FCA to recognise them under their code recognition regime, in the same way that they have recognised codes and standards in the UK money markets, global FX market and for lending practices.

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

Because of work already done for open banking, pensions dashboards, and data feeds to companion websites, we do not see any fundamental barriers in the credit, protection, or pensions sectors as long as there is adequate regulation to ensure that consumers are protected and firms adhere to approved guidelines and standards.

CFA UK recognises the following challenges, however:

- There may be technological glitches because different areas of finance have different definitions of standard data sets, encryption software or use different formats;
- Some traditional firms' business models remain paper-based and neither they nor their clients have any interest in embracing Open Finance initiatives and incurring related costs;

- Some financial products require the provision of more sensitive and greater amounts of data than others and therefore require a greater threshold of trust;
- Some financial products are more complex than banking and payment services and less commoditised. Discriminating fairly between products from rival providers on multiple features rather than just price and in a way that matches bespoke client needs will be far more challenging and present far more grey areas; and
- Opening up access may be feasible for large firms, but may be prohibitively costly for small and medium firms.

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

Costs:

- Infrastructure costs for building APIs may prove costly to ensure it is secured and compliant, regardless of the use of standardised off the shelf or in house developed APIs. There will be massive one off implementation fees from the outset, this can especially be the case for smaller players who do not have in house capability to assess the legal, compliance or security risks; and
- Firms will also incur further costs for data standardisation. Even though GDPR has already encouraged a certain degree of data standardisation, a higher level is likely required to facilitate Open Finance. Standardising data itself can also be costly and time-consuming, especially if the scope of data is beyond that which is already covered by some of the GDPR standards and potentially for larger firms with more customer records.

Alternative Solutions:

- A centralised data depository with different levels of permission-granted access and encryption; or
- Something like a public blockchain may help (and also to restrict access of data through the zero-knowledge proof, also reducing the reliance on specific TPPs). The only thing that needs to be standardised would then become customer data.

Type of API:

- The costs of developing an API, particularly for smaller firms, may be prohibitive. For those financial products which require more sensitive data or greater amounts of data this cost may be higher;
- It might be easier to encourage party/ B2B APIs (used by business partners, suppliers, providers, resellers) an alternative to public/ open APIs, as they reduce partner cost, can be more easily monetised and enhance security. A layer of 'Premium APIs' which sit above the mandatory 'Regulatory APIs', similar to those envisaged for Open Banking, would incentivise larger players to grow the Open Finance ecosystem and improve the performance of their APIs;

- However, this may make Open Finance capability less flexible in its market reach (a small group of TPP ‘conglomerates’ where the TPP works with a limited number of specific providers); and
- Off the shelf APIs could also represent a greater data security risk as the technology would be more widely available and understood and potentially the firm’s management more dependent on ongoing external help to ensure data security, cyber-defence etc.

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

Open Finance can work without requiring all firms to participate, but it will work only if large incumbent firms are required to participate. Don’t let the perfect (third party access to 100% of the market) be the enemy of the good (third party access to the bulk of the major players).

We can divide the incumbent firms that hold data on their clients into two categories: significant market share and insignificant market share. We can also divide the products that that TPPs provide into two categories: users of data in one sector (e.g. car insurance) and users of data across multiple sectors (e.g. holistic financial advice).

	Incumbent / Large market share	New Entrant / Small Player / Small market share
TPP requires data from one sector (e.g. car insurance)	Should be required in 1 st wave	Cost of implementation may outweigh benefit, consider requiring in 2 nd stage
TPP requires data across multiple sectors (e.g. holistic financial advice)		Failure to include may lead to inaccurate product (e.g. financial advice) but consider cost of implementation

The players with significant market share are the ones whose data is most valuable; they are the ones who are best placed to absorb the costs of allowing access to their data, the ones who have the least incentive to allow access to their data and they also have the most incentive to delay or limit access to their data. Hence, they should be the ones with the most stringent requirements to allow access to their data. Open Finance should follow the two-stage open banking model, where the larger players were required to provide access to their data in the first stage, with the smaller players following in the second stage.

For smaller players, implementing access to their data may impose costs that drive existing small players out of business or make the field less appealing to new entrants, consolidating market share toward the larger players. For certain firms, such as a small financial advisory with older non-tech-savvy clients, the cost will significantly outweigh the benefit. Proportionate implementation suggests that smaller players like this be exempt from Open Finance data-sharing requirements.

For products that use data across multiple sectors, such as holistic financial advice, allowing smaller players not to participate leads to incomplete data sets and inaccurate advice. The best that can be done is for the advice TPP to pre-populate the information-gathering template with Open Finance data and ask the customer if he or she wishes to change or add anything.

Once a significant proportion of major players in a sector open their data, the smaller players who do not participate risk a two-tier ecosystem, one with major firms that participate and other 'left behind' firms that do not.

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

We consider common industry standards to be useful and required. We suggest that a standard code specifying a set of guidelines be developed and implemented for use by vendor and user stakeholders. The code need not be overly prescriptive. The FCA could then recognize the code under its scheme for recognising industry codes for unregulated financial markets and activities, similar to the FCA's recognition of the FX Global Code and the UK Money Markets Code.

We reiterate our suggestions from question 8:

- TPPs should be regarded as asset custodian's for data and be regulated for: (i) misuse of data; (ii) mis-representation of data; (iii) establishing and maintaining protocols on how data is shared, retained and destroyed; (iv) decision-making around how much and which data is shared; (v) disclosures to consumers; and (vi) a duty of consumer protection;
- Where TPPs also seek authority to also act on the data by contracting / investing into new products for the consumer, cancelling or modifying existing products, or switching between products, the regulatory protection and supervision regimes in place in the various sectors to ensure good consumer outcomes should apply to TPPs as well. These include cooling-off periods post-sale, clear accountability for suitability assessment, obligations to consider and disclose risks to the consumer, etc. We suggest PIS consent be explicitly required in addition to AIS consent and allow for the consumer to place limitations on the scope and tenure of such authority;
- TPPs should meet requirements to regularly stress-test data security measures. These stress-tests should, potentially, be independently audited and validated by third parties on a standard set of controls;
- Dashboard design should be subject to customer best interest standards and products being recommended should be explainable with the use of dashboards;
- TPPs should be paid by the client and not via any form of introducer fee from a product provider, in line with the principles established under RDR;
- There should be restrictions on how financial decisions are to be made e.g. ethnicity, social class, shouldn't be used; and
- Consumer complaints may need to be dealt with differently from the current setup, given the cross-sector approach of Open Finance, the interaction between different players, and possible proliferation of volumes of TPPs.

Please refer also to our responses to question 9.

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

CFA UK is not in a position to answer this question.

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

A layer of 'Premium APIs' which sit above the mandatory 'Regulatory APIs', similar to those envisaged for Open Banking, would incentivise larger players to grow the Open Finance ecosystem and improve the performance of their APIs.

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

We agree that GDPR is not a sufficient legal and regulatory framework, given the range of sectors involved and the preference for explicit consent in Open Finance. We suggest consideration of a two-level consent, one for the data and a second for the processing or acting upon the data, in order to better protect the customer. We also suggest that the consumer have the right to be forgotten by every organisation the data is passed on to and that this be subject to a requirement on customers to re-authenticate after a set period (we are unsure whether 90 days is the right time-line) to provide some protection for inactive users and dormant accounts.

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

Please see our answers to questions 8 and 9.

The rights and protections required under PSR is a good starting point but, as Open Finance expands to areas covered by other Conduct of Business Sourcebooks, a joint panel of experienced regulators and practitioners in that area should re-consider the specific requirements and peculiarities of consumer protection and data in that area.

In all areas, the data subject should have the right to know who holds his or her data and the right to switch his or her data on and off with ease. To protect against fraud, there should be two-way key access at the single function / transaction level each time.

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

We believe the two key ethical issues that need to be considered as part of Open Finance are the (i) misuse of personal data, and (ii) data mining in ways that benefit the TPP or (an) other client(s) of the TPP but do not benefit customers.

In particular, the risk of misuse of personal data whereby the consumer is either unaware or incorrectly informed, both intentionally and unintentionally, as to how their data is being used is an ethical issue that must be considered. The challenge of ensuring that the right parties have appropriate access to the right amount of data, when TPPs are not prevented from starting other ventures with access to the (even aggregated) data need to be considered and addressed. In order to ensure that customers retain control of their data after they terminate a service, we recommend not just revoking access, as is currently the case, but also 'data revocation' - automatically deleting data that has already been shared.

In order to ensure that customer data is not used for purposes that the customer did not consent to, we recommend ‘consent codification’. This would mean codifying the customer’s consent and attaching it to the data. This would make it clear to data processors, auditors and regulators how the customer intended their data to be used.

Data mining is another key area of data misuse giving rise to ethical issues that must be carefully considered. In particular, TPPs may use aggregated data sets for the purpose of data mining to create services for other users, but not for the benefit of the customers whose data is being used. Furthermore, customers could be targeted under certain triggers (e.g. bonus receipt, high deposit balances, poor credit history, crystallisable pension benefits, or other personal life events) in a systematic and data-driven manner which might be against their best interest. Additionally, another key ethical issue would be the potential danger of data misuse, whereby data analytics become an effective “social credit system” creating an unfair barrier for access, resulting in exclusion based on social, racial, political, religious or any other sensitive personal information used against the customer.

Given the risk of data misuse and potential consumer harm, steps should be taken to ensure that the regulatory framework being considered encompasses the necessary safeguards for data protection, sufficient to address the heightened risks of broader data sharing under Open Finance. Furthermore, it should also encompass other preventative, enforcement and remedial mechanisms to protect retail consumers who may suffer harm from the potential misuse of their data given the broadening scope of Open Finance.

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

- In relation to the user’s “right to be forgotten” mentioned under draft Principle 3, this point is so fundamental to building trust in Open Finance. A situation where a client’s data continues to be processed, held and used by a TPP after that client has asked to be forgotten (or even worse sold on) would undermine the integrity of and trust in the entire Open Finance concept. CFA UK asks that the FCA gives special attention to the certification required to be given to a client by their TPP after that client has exercised their right to be forgotten and for the penalties (and liability to the client) for a TPP that fails to then honour that request. CFA UK expects this to be an area of focus for the FCA in granting all TPP Open Finance authorisation renewals or extensions.
- CFA UK suggests that the FCA consider a degree of differentiation between AIS and PIS rights and obligations, with the latter subject to a higher bar.
- A sub-principle under draft principle 3 should be for the customer to always be able to access the same data that the TPP has on the customer in the same format and at any time.
- Customer education and the suggestion of financial advice on significant decisions could also be incorporated. For example, actioning a product switch in an area like pensions could be contingent on the TPP providing advice or ensuring the customer has had advice before proceeding.
- In relation to draft principle 6, CFA UK believes there should be a period of time (we are unsure how long this period should be and this could be a matter for future consultation) beyond which the permission by a client to a TPP to execute transactions on its behalf should lapse and only be renewed after a review of past transactions executed by the TPP

for the client has been conducted with the client. These reviews should be documented and acknowledgement of them by the client should be kept on file by the TPP.

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

CFA UK believes that this might be best performed by an Open Finance industry steering group comprising representatives of key stakeholders. This group might draw up a code and standards for the sector, based on the FCA's agreed final principles, which the FCA could then recognise under its code recognition regime, assuming it met the hurdle criteria.

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.

CFA UK believes its views in this regard have been adequately covered in the answers to the previous questions. It is critical that, for Open Finance to succeed, the FCA puts in place a robust regulatory framework that establishes a level playing field and that all recipients of client data are sufficiently regulated. The underlying principle should be that the client owns the data and that providers, whether incumbents or TPPs, compete on services rather than data.

CONCLUSION

We support the Open Finance initiative for the benefits of customer data access, transparency and innovation. It can help to address the UK advice gap, by bringing the benefits of financial planning to a wider audience. However, to make it a success, we believe a strong regulatory and legislative framework is required to ensure both customer and providers trust and confidence in Open Finance. The underlying principle should be that the client owns the data and that providers, whether incumbents or TPPs, compete on services rather than data.

To achieve a critical mass of useful data and participation, it should be made progressively compulsory (initially for the larger banks and financial institutions), to share data with the TPPs so that Open Finance services are able to present recommendations or actual transactions based on complete and accurate data. For banks and financial institutions to do this without conducting extensive due diligence, the TPPs must be regulated and authorised and provider risks mitigated. TPPs venturing into established sectors as part of their service, such as financial advice, should be subject to the same regulation and client treatment standards prevalent in those sectors.

Common industry standards are necessary. We suggest that a standard set of guidelines be developed and implemented by stakeholders, with FCA recognition. We support the development of common API standards to encourage innovative technological development. Regulation and standards should be implemented in measured stages, with each stage responding to feedback from earlier stages. The regulation and standards should be coherent, holistic, risk-based and proportionate. More detailed standards do not necessarily lead to better advisory or analytic tools.

- The fee model of TPPs should not be based on introduction, retrocession or any form of commission from product providers, in line with principles established under RDR.

Nonetheless, due care needs to be taken when fees are directly borne by consumers, as it may further increase barriers for mass adoption especially when the benefit of Open Finance is unclear to consumers. We suggest this is an area for further consultation and that a fixed-fee model or co-operative models (where all the partnered product providers share the TPP's operating costs) could be considered.

The sequence by which Open Finance should develop should be determined by considering two equilibrium: (i) the balance of the scope of the change vs. the ability to leverage pre-existing work (e.g. the pensions dashboard) and (ii) the balance of consumer benefit vs. risk of consumer harm.

CFA UK has significant concerns about (i) data security; (ii) misuse of personal data; and (iii) data mining in ways that benefit the TPP or (an)other client(s) of the TPP but do not benefit the data subject. On the other hand, the existence of positive network externalities, such as the ability to see a pattern of suspicious transactions among multiple players, could make it easier to detect fraud or money laundering. CFA UK is concerned about the user's 'right to be forgotten' and believes that the permission the client gives a TPP to execute transactions on its behalf should lapse after a reasonable time period.

CFA UK welcomes the FCA's call for input on this important matter and appreciates this opportunity to share its views. Should you have any questions or points of clarification regarding this letter, please contact Andrew Burton (aburton@cfauk.org) in the first instance.

Yours sincerely,



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Appendix 1: About CFA UK & the CFA Institute

CFA UK: serves nearly 12,000 leading members of the UK investment profession. Many of our members work with pension funds, either managing investment portfolios, advising on investments or as an in house employee responsible for pension investment oversight.

- The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.
- Founded in 1955, CFA UK is one of the largest member societies of CFA Institute (see below) and provides continuing education, advocacy, information and career support on behalf of its members.
- Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation, or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.

CFA Institute: is the global association for investment professionals that sets the standard for professional excellence and credentials.

- The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.
- It awards the Chartered Financial Analyst® (CFA), and Certificate in Investment Performance Measurement® (CIPM) designations worldwide; publishes research; conducts professional development programs; and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.
- CFA Institute has members in 162 markets, of which more than 170,000 hold the Chartered Financial Analyst® (CFA) designation. CFA Institute has nine offices worldwide and there are 158 local member societies.
- For more information, visit www.cfainstitute.org or follow us on Twitter at @CFAINstitute and on Facebook.com/CFAINstitute.