

# Open Banking Lessons Learned Review

Report by Kirstin Baker CBE

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# Report of the Open Banking Lessons Learned Review

## Executive Summary

1. The Open Banking remedy is the most ambitious and complex single intervention that the Competition and Markets Authority (CMA) has undertaken and has sparked significant change across the retail banking industry.
2. It is widely praised by the UK Fintech industry and recognised internationally as a world-leading approach, with over 5 million users (in the UK), and over 300 service providers enrolled in the OBIE service directory<sup>1</sup>.
3. However, significant governance failures at the Open Banking Implementation Entity (OBIE) were identified in an independent report which was published in 2021. The report found that the former Trustee had not ensured the OBIE was properly managed in accordance with the Retail Banking Market Investigation Order 2017 and that this was not only a failing of the ‘managers’ themselves but also of the primary stakeholders (which included the CMA). The report commented that ‘the governance processes of OBL<sup>2</sup> clearly fell down the cracks between the CMA and the CMA9’.
4. The CMA Board recognised there were lessons for the CMA to learn from these failures and this review has looked at how the CMA can improve its approach to the design, implementation, delivery and monitoring of market investigation remedies in future.
5. The findings and recommendations in this review focus on the lessons to be learnt at an institutional level across the CMA as a whole. Therefore the review does not apportion individual blame or make findings in respect of other stakeholders.
6. Under the markets regime the CMA has extensive powers to impose remedies where competition issues are identified. It is important that the CMA continues to be ambitious in seeking to make markets work better for everyone. However, it is clear that the CMA did not fully anticipate the scale and complexity of its Open Banking remedy and failed to foresee or manage

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<sup>1</sup> John Glen, Economic Secretary to the Treasury referred to “*Another of the great UK and fintech success stories has been ‘Open Banking’... with technology that is supporting innovation and empowering consumers*”, during a keynote speech at the Innovative Finance Global Summit during Fintech Week (April 2022).

<sup>2</sup> Open Banking Limited (OBL) is a company limited by guarantee and is the legal entity set up to be the Open Banking Implementation Entity under the Retail Banking Market Investigation Order 2017.

some of the key risks inherent in the delivery of the project, in particular in relation to governance at the OBIE and relationships with key stakeholders.

7. This was a major project involving the creation of a new entity and significant IT change across the whole banking industry. It required collaboration amongst a large set of stakeholders to agree and enforce a new set of technical standards alongside the UK implementation of wider EU legislation on data sharing in the form of the Second Payment Services Directive (PSD2).
8. Whilst the technical solutions to achieve the remedy have and continue to be successfully implemented, there have been significant challenges in doing so. It became apparent that both the initial timetable of two years and eventual costs, resourcing and governance needs of OBIE had been underestimated, CMA resourcing was insufficient for the level of oversight required and, the CMA did not put in place enough strategic oversight and stakeholder management. Opportunities were missed to correct some of these failings including in relation to governance at the OBIE once it became clear that the initial timetable would slip.
9. In line with the statutory framework for market investigations, the remedy was designed by an independent Inquiry Group (the Group) supported by a CMA staff team. The risks involved in implementing the remedy were not fully appreciated at the design stage. Once responsibility for implementation and delivery of the remedy passed from the Group back to the CMA in 2017, the strategic implications and risks were not suitably escalated or reviewed until mid-2020. Formal escalation processes within the CMA or checkpoints within the delivery plan to prompt this review were not in place.
10. As Open Banking was designed as a principles-based remedy reliant on developing technology, there were inherent uncertainties and scope for differing interpretations in how it was to be delivered. However, the implications of this uncertainty and of setting up a new entity to do the delivery were not sufficiently considered or revisited by the CMA. This meant early on and as the remedy was being implemented, there was not sufficient clarity between the CMA, OBIE and other stakeholders on their respective responsibilities and accountability or what reaching the end state for the remedy might require.
11. The CMA wants to be a learning organisation and the Board and staff have engaged openly with this review and identified lessons to be learnt. In many cases, changes have already been made or are in progress which address the issues flagged in this review. My recommendations focus on improving Board and Executive oversight of remedies, identifying risks at the outset of

projects and revisiting this assessment as projects progress, ensuring formal processes are in place and issues are always escalated effectively and building the skills and understanding of both staff, panel members and the Board.

12. As further detailed in the Recommendations section below, I am making seven recommendations to the CMA:
  - (a) **Recommendation 1: Build more effective Board oversight and risk management of the end-to-end strategy for complex remedies.** The CMA Board should consider the overall strategy for remedies in market investigations at the point of reference and may include views on these aspects in its advisory steer. This should include early consideration of the risks relating to the implementation phase, the potential endpoint for the remedy and possible involvement by other regulators or parts of Government where required.
  - (b) **Recommendation 2: Set out processes and governance for CMA Board and Executive oversight of the delivery and implementation of remedies.** The CMA should set out clear processes for management of remedies implementation by the CMA at the point of handover from the Group to the CMA Board and Executive. During the design phase there should be greater engagement with the Executive, and Board where required, about the operational implications of the remedy and proactive risk management and ongoing reporting during the implementation phase.
  - (c) **Recommendation 3: Consider questions relating to implementation at the remedies design phase.** The CMA should ensure that the Group considers certain key questions relating to remedies implementation during the design stage in order to mitigate risks that may arise during the delivery of complex remedies.
  - (d) **Recommendation 4: Ensure key factors are considered where a remedy establishes a new entity or large and enduring CMA function.** The CMA should ensure that where a remedy requires a new entity to be established certain key factors are considered and brought to the attention of the Group. The CMA should also consider whether there are other bodies performing similar functions who could be consulted.
  - (e) **Recommendation 5: Include gateways in the remedy delivery and implementation process.** The CMA should consider including formal review points into the project plan for the implementation of complex remedies. These could provide an opportunity to reconsider key aspects

of the remedy including timescales, scope and governance where appropriate.

- (f) **Recommendation 6: Implement effective and agile internal governance and stakeholder engagement in remedy delivery and implementation.** The CMA should set out clear internal decision-making processes and ensure appropriate resourcing for the remedies' implementation phase of market investigations. This should include clarity for external stakeholders and regular risk reporting to the Executive level.
- (g) **Recommendation 7: Conduct an evaluation case study of complex market investigation remedies.** The CMA should commit to identifying suitable complex market investigation remedies for an evaluation case study. The CMA should conduct such a study and take on board its findings in future processes.

## Background

### *The CMA's market investigation*

13. On 6 November 2014, the CMA Board launched a market investigation into the supply of retail banking services to personal current account (PCA) customers and to small and medium-sized enterprises (SMEs) in the UK.<sup>3</sup> The CMA had launched a market investigation into the energy sector in June 2014<sup>4</sup> meaning that two very resource-intensive, high-profile investigations were running concurrently at a time when the organisation itself was still very new.
14. The concerns which led to the retail banking market investigation included: low levels of customers shopping around and switching; limited transparency, and difficulties for customers in making comparisons between banks; continuing barriers to entry and expansion into the sector, limiting the ability of smaller and newer providers to develop their businesses and very little movement over time in the market shares of the 4 largest banks. A wide variety of stakeholders, including a range of banks, consumer and SME representative bodies and the FCA welcomed the CMA's decision to launch the market investigation.

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<sup>3</sup> [CMA Press release](#) "Personal current account and small business banking face full competition investigation" – 6 November 2014.

<sup>4</sup> [CMA Press release](#) "Energy market referred to CMA" – 26 June 2014.

15. The CMA published its provisional decision on remedies in the retail banking market investigation on 17 May 2016. The CMA outlined a wide-ranging package of proposals to tackle the issues hindering competition in PCAs and in banking services for SMEs.<sup>5</sup>
16. The press release accompanying the provisional decision on remedies said: *“Big technological changes are happening in banking, and the CMA wants to harness them to empower customers to compare and switch accounts. The CMA is proposing to require banks to move swiftly to introduce an Open API (application programming interface) banking standard. This standard will enable personal and SME customers to safely and securely share their unique transaction history with other banks and trusted third parties. This will enable bank customers to click on an app, for instance, and get comparisons tailored to their individual circumstances, directing them to the bank account which offers them the best deal”*.<sup>6</sup>

### **The Open Banking Working Group Report**

17. The Open Banking Working Group (OBWG) was a government/industry initiative established by HM Treasury in 2015 to explore how data could be used to help people transact, save, borrow, lend and invest their money, paving the way for open standards in retail banking. The OBWG’s work built on the 2014 report by the Open Data Institute and Fingleton Associates (produced at the request of HM Treasury and the Cabinet Office), which recommended that banks create standardised application programming interfaces (APIs) that would be accessible by third parties. Whilst the CMA’s market investigation was taking place, the OBWG published a report entitled “Open Banking Standard” which provided a guide as to how open banking data should be created, shared and used by its owners and those who access it. The OBWG recommended that *“An entity should be established and mandated with the primary purpose of planning, designing and delivering future phases of the open banking initiative.....the Open Banking Implementation Entity (OBIE)”*.<sup>7</sup>

### **The CMA’s Final Report**

18. The CMA’s retail banking market investigation final report (the Final Report) was published on 9 August 2016.<sup>8</sup> It concluded that older and larger banks did

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<sup>5</sup> [Retail banking market investigation: provisional decision on remedies \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

<sup>6</sup> [CMA Press release](#) “CMA wants banks to work harder for their customers” – 17 May 2016.

<sup>7</sup> Open Banking Standard – 9.4.1 “Establishment of an OBIE”.

<sup>8</sup> [Retail banking market investigation final report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).



not have to compete hard enough for customers' business and that smaller and newer banks were finding it hard to grow. The CMA implemented a wide-ranging package of reforms including the establishment of open banking standards and a requirement on *"the largest banks in GB and NI to make data available using these standards so as to enable consumers and SMEs to more easily identify products which suit their needs and to facilitate the creation of new digital services to help them manage their money"*.<sup>9</sup>

### **Retail Banking Market Investigation Order 2017**

19. In accordance with the statutory timescale, the Inquiry Group had 6 months (extendable once by a period of 4 months) from publication of the final report in which to enact its remedy proposals via either accepting undertakings from the relevant parties or making an order.<sup>10</sup> The Open Banking remedy was enshrined in the CMA's Retail Banking Market Investigation Order (the Order) which was made on 2 February 2017. The provisions relating to Open Banking are set out in Part 2 of the Order.
20. Part 2 includes provisions requiring the largest UK retail banks (the CMA9) to set up an entity (the Implementation Entity) that would *"agree, consult upon, implement, maintain and make widely available without charge open and common banking standards for read only access to data set out in Articles 12 and 13 (the Read-only Data Standard) and both read and write access, which allows a third party to access account information or initiate a payment on behalf of the customer (subject to the customer's explicit consent, for data set out in Article 14 (the Read/Write Data Standard)..."*.<sup>11</sup> The CMA9 were also required to appoint an Implementation Trustee.
21. Article 10.3 provides that, *"The composition, governance arrangements, budget and funding for the Implementation Entity (the 'Agreed Arrangements') shall, subject to Article 10.6, be those proposed by the [CMA9] and mandated by the CMA..."*. The CMA9 are required to comply with the Agreed Arrangements and to use their best endeavours, both individually and collectively, to ensure that the Implementation Entity complies with the Agreed Arrangements.<sup>12</sup>

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<sup>9</sup> Final Report – 13.5, page 441.

<sup>10</sup> Paragraphs 4.5 and 4.6 of CMA3. Section 138A of the EA02. These time limits do not apply to any further implementation required after final undertakings have been accepted or a final order made.

<sup>11</sup> Article 10.1 of the Order.

<sup>12</sup> Article 10.4 of the Order.

22. The Implementation Trustee is required to propose a project plan and timetable which, once approved by the CMA, would become the “Agreed Timetable and Project Plan” (now more commonly known as the Roadmap).<sup>13</sup>
23. The Order sets out a process for making amendments to the Agreed Arrangements and the Roadmap which is that either amendments should be proposed by the Implementation Trustee but would need approval from the CMA, or amendments could be made by the CMA following consultation with the CMA9 and the Implementation Trustee.<sup>14</sup>
24. The Roadmap was used as a means of turning the high-level principles set out in the Order into specific obligations. The Order and Agreed Arrangements also provided for an Implementation Entity Steering Group (IESG) which acted as a forum for consultation in relation to the delivery of those obligations although the Trustee remained the ultimate decision maker subject to approval from the CMA.

### ***The rise of Open Banking***

25. The Open Banking remedy was ambitious and novel, both within the UK and more widely across the world. The UK has been seen as a global leader in this area and it is estimated that there are currently over 5 million users of services powered by Open Banking technology. Open Banking has also been at the forefront of the expansion of the Fintech community, with over 300 regulated providers now enrolled in the OBIE directory (and therefore authorised to provide secure open banking enabled services).

### ***Alison White’s Report***

26. In September 2020, Alison White was appointed to lead an independent investigation, following receipt of a complaint setting out a number of allegations relating to the OBIE and its former leadership. The investigation considered the issues raised under the following five themes: corporate governance; late delivery of accounts; management of conflicts; procurement and value for money and human resource issues. The investigation also considered serious allegations relating to bullying, harassment, discrimination and victimization.
27. Alison White’s report (the Report) was published on 1 October 2021.

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<sup>13</sup> Article 10.5 of the Order.

<sup>14</sup> Article 10.6 of the Order.

28. The Report came to several conclusions regarding the issues it had investigated including that the former Trustee did not ensure that the OBIE was properly managed in accordance with the Order.<sup>15</sup>
29. In relation to the issue of governance, the Report concluded that:
- (a) *“The governance processes of OBL<sup>16</sup> clearly fell down the cracks between the CMA and the CMA9; the fact that this investigation has concluded that there was not “proper management” is not only a failing of the “managers” themselves, but also of the primary stakeholders”.*<sup>17</sup>
  - (b) *“the lack of appropriate corporate governance was directly responsible for what happened in this organisation. Too much power was vested in too few people, with insufficient checks and balances, and a complete lack of independent scrutiny and challenge”.*<sup>18</sup>

### ***The lessons learned review***

30. On 1 October 2021 the CMA announced (as part of a number of actions to be taken following the investigation) that *“Kirstin Baker, an independent non-executive Director of the CMA, has been appointed to lead a review to identify the lessons for the CMA in its approach to designing, implementing and monitoring remedies in its market investigations. The findings of this review will be published”.*<sup>19</sup>
31. The scope of this review was set out in the terms of reference for the Review (Terms), (published on 23 November 2021 and included as Annex 1). The Review has not revisited the questions considered by Alison White’s Report but has taken the Report into account in order to answer the key forward-looking questions in the review, which relate to the CMA’s future approach to remedies arising from market investigations. Consequently, the review has not considered the CMA’s handling of the complaint that gave rise to Alison White’s investigation. The review has also not focused on the role of other stakeholders in the management of the OBIE or made findings in relation to them as this is a review into the lessons to be learned for the CMA.

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<sup>15</sup> [Alison White’s Report](#) – page 30.

<sup>16</sup> Open Banking Limited (OBL) is a company limited by guarantee and is the legal entity set up to be the Open Banking Implementation Entity under the Order.

<sup>17</sup> Alison White’s Report – page 31, paragraph 2.

<sup>18</sup> Alison White’s report – page 32, paragraph 3.

<sup>19</sup> [CMA Press release](#) “Update on Open Banking” 1 October 2021.

32. This review focuses in particular on learnings for the CMA in the period prior to mid-2020 as CMA oversight and engagement with the Open Banking remedy (including at an Executive and Board level) has increased significantly since then. A biography for Kirstin Baker is attached at Annex 2 and an overview of the timeline is attached at Annex 3.

## **Methodology of the review**

### ***Methodology***

33. Following the publication of the Terms, a series of meetings were held in order to gather information from a range of participants including:
- Current and former CMA staff and Board members involved in various stages of the development of Open Banking;
  - Members of the Retail Banking Market Investigation Inquiry Group;
  - Representatives of the CMA9;
  - The current and former OBIE Trustees and members of the OBIE Board
  - Representatives of other key stakeholder groups;
  - Other regulators and Government Departments.
34. A list of participants is provided at Annex 4.
35. Where participants wished to provide written contributions in addition to the information provided during meetings, they were given the opportunity to do so. Relevant correspondence and documentation held by the CMA was also reviewed.
36. The Review has given careful consideration to the information provided during the course of the above exercise in reaching the findings and recommendations set out below.

## Findings

37. The Review has made findings under each of the key themes set out in the Terms of reference:

- Design of the remedy during the market investigation and making of the Order.
- OBIE implementation and delivery.
- Oversight by the CMA.
- Monitoring of the remedy.

### ***Design of the remedy during the market investigation and making of the Order***

38. In line with the statutory framework for market investigations, an independent Inquiry Group was appointed by the CMA Board to act as the decision-maker on the market investigation including any potential remedies, supported by a CMA staff team. Therefore, whilst the CMA Board had made the decision to launch the market investigation, it was not involved in decisions on competition issues in the relevant markets or the appropriate remedies to resolve any such issues. Responsibility for the remedy only reverted back to the Executive and the Board following the conclusion of the Group's involvement on the making of the Order in February 2017.

39. At the point of launch in 2014, there were a number of possible remedies under consideration including divestiture or behavioural remedies.<sup>20</sup> The concept of open APIs and potential benefits of Open Banking were only just starting to emerge, which meant that it would not have been immediately apparent to the Board at that time that Open Banking would clearly be one of the remedies under consideration. As noted above, in 2016 the OBWG produced a report setting out a framework for delivery of the standard in the UK. The work of the OBWG came to the attention of the Group in the second half of the market investigation and provided inspiration for the design of the CMA's Open Banking remedy as set out above.

40. This was also in the context of the concurrent introduction of the Payment Services Regulations 2017 which implemented PSD2 and which broadened the product scope of Open Banking.

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<sup>20</sup> CMA Decision on market investigation reference: Personal current accounts and banking services to small and medium-sized enterprises, 6 November 2014.

41. A key element of the Open Banking remedy was the creation of an implementation entity to act as a driving force for the creation of open banking standards. This aspect was promoted by numerous stakeholders during the course of the investigation, most notably by the OBWG in their report.
42. The Order only provided a summary of the core deliverables and delegated the design and ultimate decision-making on the technical specificities of Open Banking to the Implementation Trustee (as set out in the description of the Order above). There were a number of factors which meant that this principles-based approach was the most effective and practicable basis for delivering the Open Banking remedy:
  - (a) It was not possible at the outset to specify or anticipate in detail from a technical standpoint what would need to be done, given this was an emerging area;
  - (b) A more prescriptive approach with a pre-determined set of requirements would have impacted the ability of the CMA and the OBIE to adapt promptly to changes in matters such as timings, technical challenges, developments and innovations, potentially requiring ongoing variations to the Order as implementation progressed;
  - (c) This approach enabled the CMA to progress at pace, both a) making an Order in line with the 6 month statutory deadline from the date of the Final Report, and b) starting to implement the remedy once the Order was in place, in line with the concurrent PSD2 implementation deadline.
43. All these factors were central to the success in the delivery of the technical solutions underpinning the Open Banking remedy. These factors also mitigated a number of risks, for example relating to customer data security, that were flagged at the outset but did not materialise and that could have resulted in significant consumer harm and detriment to the effectiveness of the remedy as a whole.
44. However, the principles-based approach of the Order left significant scope for interpretation which gave rise to the potential for differing views to be taken. Equally, a number of issues were not fully considered at the design stage or revisited as the project developed (see OBIE implementation and delivery stage below). Those matters relating to the design stage are addressed below.

#### *Estimated timescales and costs for implementation of Open Banking*

45. The initial deadline for implementation of the Open Banking standards was around 2 years from the making of the Order. Separate deadlines were set for

the two different standards (Read-only and Read/Write) and a process was put in place for amending those deadlines if necessary.<sup>21</sup>

46. This timescale was influenced by the deadline for the implementation of PSD2 which had been set at EU level.<sup>22</sup> Following discussions with HMT, the CMA sought to align the timescales for Open Banking with PSD2, as reflected in the Final Report.<sup>23</sup> OBL (the company which was set up to act as the OBIE) was incorporated in October 2016 and implementation of the remedy was expected to be complete in January 2018.
47. In the Final Report the CMA considered the costs of the Open Banking Remedy in conjunction with the costs of complying with PSD2 (which was required under EU law). The Final Report concluded that whilst the cost of the Open Banking remedy was likely to exceed that of complying with PSD2, the difference in cost was likely to be small, particularly relative to the benefits of greater competition and innovation associated with prompt implementation. The CMA also considered that the costs to the industry of supporting the OBIE and the Implementation Trustee would not exceed £20 million<sup>24</sup>. As we now know the project is still ongoing after more than five years and has incurred significant overall costs.<sup>25</sup>
48. The initial optimistic projections in terms of time and costs of implementation had a bearing on key aspects of the design of the remedy. At the time at least some stakeholders involved believed that the timetable was unrealistic. The Group decided that there was insufficient justification to delay the implementation deadline. The Group thought that there was sufficient flexibility built into the design as the Trustee had the authority to ask the CMA to extend the timetable if certain EU standards required to align Open Banking with implementation of PSD2 were not ready. If the Group had received additional advice on the operational challenges of complex IT change projects in financial services and technical standard-setting in a context with multiple

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<sup>21</sup> The Read-only Data Standard needed to be in place by 31 March 2017 to enable the CMA9 to comply with their obligations under Articles 12 of the Order which came into force from that date (see Article 2.2) and the Read/Write Data standard needed to be in place by 13 January 2018 to enable the CMA9 to comply with the requirements under Article 14 (see Article 2.10). Article 10.6 of the Order provided a process for amending the timetable for implementation.

<sup>22</sup> The European Directive required all EU Member States to implement the PSD2 rules as national law by 13 January 2018.

<sup>23</sup> Final Report paragraph 19.67, page 677 "We have also aligned the timing of our remedy with the transposition of PSD2 required by January 2018".

<sup>24</sup> Final Report, Paragraph 13.86, page 461.

<sup>25</sup> Alison White's Report states that the costs of funding OBL are in excess of £150 million.

stakeholders, some of the issues with the design discussed below could have been anticipated.

49. At this early stage, the CMA did not fully appreciate the implications of delivery and implementation of the remedy by the OBIE and the extent to which it might exceed the initial projections in relation to timing, scope and cost.

### *Corporate Structure*

50. The Group set out their expectations of the implementation entity in the Final Report in order to deliver the outcomes within an ambitious but achievable timescale. Specifically, it was to “*be agile, its structure, organisation and processes streamlined and conducive to rapid and efficient decision-making. This would tend to imply a tight management/steering group and a flat organisation structure.*”<sup>26</sup> The implementation entity was also to have a very clear and narrow focus. The Group also noted that the OBIE was in the process of being created by the CMA9 given the expectation that the delivery timeframes would be ambitious.
51. The OBIE was established by the CMA9 through Payments UK in October 2016 as a company limited by guarantee, Open Banking Limited (OBL). This was before the Order was issued. In relation to the corporate structure of the OBIE:
  - (a) The articles of association of OBL, were insufficiently tailored to take into account the purpose of OBL under the Order and lacked clarity in relation to issues of governance and conflicts.
  - (b) The Agreed Arrangements, defined as the “*composition, governance arrangements, budget and funding for the Implementation Entity*” under Part 1 of the Order did not set out provisions in relation to the governance of the OBIE, and the respective roles of the CMA, CMA9 and the Implementation Trustee, beyond establishing the Implementation Entity Steering Group (IESG) which focussed on the technical delivery of the open banking standards.
52. As Alison White found in her review<sup>27</sup>, the corporate structure set out above was unsuitable and did not prevent the situation where (until recent

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<sup>26</sup> Final Report, paragraph 13.38.

<sup>27</sup> Alison White’s report, pages 13, 14 and 24.



governance changes were put into effect) OBL had been operating with a board of two for most of the former Trustee's tenure.

53. The CMA's main focus at the time the OBIE was set up was on finalising the Order, which may have meant that it was not as focused as it should have been on the arrangements being put into place by Payments UK on behalf of the CMA9. This lack of appropriate attention being paid to the governance arrangements may also have stemmed from the need to move at pace to establish the OBIE in line with the PSD2 deadline. Other relevant factors were the projected short-term length of the project at the time, the expectation that it would be a relatively small and streamlined organisation with a narrow focus, the inadequate resourcing of the CMA team (see below) and their lack of expertise on corporate governance or the risks inherent in a contractor-only staffing model and the expectation that OBIE and/or the CMA9 would seek advice on these issues themselves.
54. The CMA did not clearly recognise that setting up this new entity was a significant undertaking that had the potential to extend for a longer period of time. This meant that the CMA did not anticipate the required level of effective oversight of the entity.
55. Had the CMA done so at the outset, thereby resourcing this activity appropriately, with access to expertise on corporate governance as well as recognising the need to revisit this as timeframes extended, many of the ensuing issues might have been avoided.

#### *The Trustee's dual role*

56. There were inherent tensions between the Trustee's role as the Implementation Trustee and Chair of the OBIE within the above corporate structure, most notably:
  - (a) The Trustee both had to chair and manage the OBIE to deliver the standards required for implementation of the Open Banking remedy, whilst at the same time monitoring compliance by the CMA9 with that remedy;
  - (b) The Trustee's role as Chair, requiring them to act as a director in accordance with the Companies Act, could potentially conflict with their role as Trustee under the Order;
  - (c) The CMA9 had to use best endeavours to ensure the OBIE complied with the Agreed Arrangements but it was unclear how they would fulfil this duty as they had no obvious role in the governance of the OBIE, save for funding obligations and attendance at the IESG.

57. As set out above, these tensions and the risks inherent in these arrangements were not identified at the design stage. This was partly because of the assumption that the OBIE would exist for only two years and there was no process for reviewing or challenging this assumption. Whilst there was significant engagement between the Trustee and the CMA, there were no formal reporting lines to the CMA or review mechanisms built into the implementation phase. This was an omission for a remedy of this scale where the Trustee was acting on behalf of the CMA and managing a significant project with multiple diverging stakeholder interests. Formal engagement with the CMA at more senior levels would have helped anticipate and overcome some of the challenges which surfaced during the OBIE implementation stage.

#### *CMA/CMA9/OBIE – Roles and Responsibilities*

58. The respective roles of the CMA, CMA9 and the OBIE should have been more clearly or more prescriptively set out within the terms of the Order and/or the Agreed Arrangements or at least revisited at key stages.
59. As the project extended over time, this lack of clarity led to uncertainty around important issues, most notably around funding and the precise division of responsibility in relation to the governance of the OBIE. While these issues were discussed at working level, there was no formal mechanism for the CMA9 to escalate any concerns to more senior levels of the CMA.
60. Whilst the IESG provided a forum in which the CMA9 could input into the implementation of the remedy, it was not a decision-making body empowered with the right to make decisions in relation to matters such as funding arrangements, or changes to the governance of the OBIE. The Order and/or Agreed Arrangements could have provided greater clarity as to the mechanism for CMA9 involvement, including in relation to the procedure for agreeing the funding of OBIE and the appropriate type of CMA9 representation to be involved in discussions on funding or governance. The Agreed Arrangements state that the CMA9 “shall use their best endeavours, both individually and collectively, to ensure that the Implementation Entity complies with the Agreed Arrangements”, but without considering what was appropriate in terms of governance arrangements for the CMA9 to meet this obligation.
61. The Open Banking remedy required the CMA and the OBIE to take on roles more familiar to sector regulators and to work on an ongoing basis with the CMA9 and with other market players, all of whom had their own interests. The CMA did not consider sufficiently what skills and capabilities this would require or what the risks would be.

## *Review mechanisms*

62. The Order provides for the possibility for the Agreed Arrangements and/or the Roadmap to be amended either by proposal by the Implementation Trustee with the CMA's approval, or by the CMA following consultation with the CMA9 and the Trustee. However, there was no formal process for review of the overall implementation of the remedy, for example in the event that it became apparent that it would continue beyond the initial 2-year projection, or at key stages in the implementation process.
63. Had the Order and/or Agreed Arrangements contained more prescribed gateways or "review points" as a prompt to consider strategic issues relating to governance, roles and responsibilities and other matters discussed above, the CMA would have been more likely to have spotted some of the issues earlier and to have anticipated the challenges presented by a much longer OBIE implementation period than originally envisaged.

## *The Future of the Open Banking Project/OBIE*

64. The Explanatory Note to the Order anticipated the "*need to ensure that open banking standards and governance processes are maintained beyond the implementation of the last stage of the CMA remedies in January 2018 and are consistent with the adoption of open API standards in other sectors of the financial services market, for example mortgages*".<sup>28</sup> However, neither the Final Report nor the Order set out explicitly what arrangements should be put in place following the OBIE implementation of the Order. Although it was difficult to foresee what would be required at that point, the CMA could have done more to prepare the ground for what would come after the point at which the Open Banking standards were established. In particular, while the FCA and HMT attended the IESG at working level, there was no engagement with them at CMA Executive level on the long-term arrangements for Open Banking until later.
65. This meant that the OBIE was set up without a clear process or strategy to guide decision making and planning in relation to the end point of the remedy and the future of OBIE or any successor entity.

## ***OBIE implementation and delivery***

66. As discussed, above, the principles-based structure of the Order allowed the OBIE to work through the technical detail involved in the implementation of

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<sup>28</sup> Paragraph 17, page 41.

the standards with stakeholders, who were engaged on a regular basis at the IESG meetings, chaired by the Trustee, in pursuance of the targets set out in each of the three Roadmaps.

67. The CMA's internal decision-making process on technical issues provided a generally robust and flexible means of co-ordination within the above set up to meet the objectives of the Roadmaps. The CMA provided consistent oversight, support and supervision on the technical side ensuring the OBIE and CMA9 remained on course to successfully deliver the remedy as required by the Order, mitigating key technical risks and issuing directions or taking other decisions where necessary.
68. However, the CMA did not supervise the corporate governance at the OBIE, which may have been as a result of the lack of clarity over responsibility for governance and what was required as the organisation evolved from what was originally envisaged in the Final Report. There were also no processes prompting staff working within the CMA team to consider reviewing issues of governance and other significant and/or strategic non-technical issues and risks (actual or potential) within the CMA and to then escalate them to the CMA Executive. OBIE was not obliged to carry out periodic reviews of Board performance and effectiveness.
69. With hindsight, opportunities were missed at key stages to step back and assess the overall remedy and implications for both the CMA and other key stakeholders, as set out below.

### *Timing*

70. A new Trustee was appointed in April 2017 and revised versions of the Roadmap were issued in November 2017, July 2018 and finally in May 2020.
71. The revisions to the Roadmap were necessitated by a variety of factors including the addition of new requirements, changes in circumstances, and in some cases the need from some of the banks for greater time to implement the requirements. These revisions were a key factor in the project lasting longer than initially expected.
72. As noted above, the principles-based approach adopted under the Order meant that there was scope for stakeholders to take different views as to the interpretation of the Order, for example in terms of what fell in or outside of scope. This led to disagreements and tension between key stakeholders.
73. The revisions to the Roadmap in 2017 and most notably 2018 presented opportunities for the CMA to strategically review, the earlier two-year estimate for the length of the project, as set out in the Final Report. If the CMA had re-

assessed the likely ongoing timescales consideration could have been given to governance, funding, scope and resourcing as discussed below.

### *Structure and Governance of OBIE*

74. The extensions to the deadlines in 2017 and, in particular, 2018 should have provided an opportunity for the CMA to take stock in relation to the structure and governance of OBIE, including matters relating to:
- (a) The Trustee's role;
  - (b) The corporate structure at OBL and the extent of checks and balances, including whether additional directors or non-executive directors should have been appointed;
  - (c) The contractor-only based staffing model;
  - (d) Whether additional CMA resources or external technical expertise were required in relation to the design and implementation of the remedy.
75. As noted above whilst the limited initial consideration of these matters was likely to have been influenced by the original two-year estimate for implementation, the advent of the July 2018 Roadmap ought to have prompted the CMA to strategically review the structure and governance arrangements underpinning the OBIE, as by then it was evident that it would be a longer term and larger scale project.
76. The former Trustee did make representations to the CMA in relation to corporate governance at OBL. This included recommendations in late 2019 to include an item on the Roadmap related to improving corporate governance of the OBIE and specifically to appoint a Non-Executive Director to the board.
77. The CMA did consider these recommendations but felt they were not appropriate for inclusion in the Roadmap as such proposals should be considered in the context of the future governance of Open Banking. These recommendations were therefore not progressed, nor were they escalated to the CMA Executive.
78. The question of whether to improve the corporate governance of the OBIE should have been subject to greater strategic consideration within the CMA, at an Executive level either at this point or earlier in conjunction with revisions to the Roadmap. This could have included a review of whether the existing arrangements were fit for purpose. The fact that this did not occur reflects the lack of escalation of risk and formal processes to ensure that significant

issues were reviewed appropriately at key stages (as discussed further below).

79. This meant that opportunities to improve governance were missed.

#### *Funding arrangements*

80. There was a lack of clarity from the outset as to how the CMA9's role as funders of the OBIE would operate in practice and this was linked to the lack of clarity over roles and responsibilities in relation to the OBIE. The adoption of revisions to the Roadmap in 2017 and 2018 should have provided the CMA with an opportunity to review and if needed clarify the processes around the funding arrangements. The CMA could have considered, for example, the flow of information in relation to OBIE's finances between the OBIE, the CMA9 and the CMA particularly given that the Order and Agreed Arrangements lacked detail or clarity over such matters, and bearing in mind that the longer timescale for the project would have been apparent by 2018 if not earlier.
81. The CMA should also have reviewed the overall costs to the industry given the significant increase from initial estimates and should have sought to understand the reasons for this increase notwithstanding the context of wider PSD2 implementation.

#### *Scope*

82. The adoption of revisions to the Roadmap should have prompted the CMA to consider and review the process for determining the scope of the project vis-à-vis the terms of the Order.
83. This should have included considering whether the process for amending the Roadmap (through consultation with the IESG) included sufficient strategic input both from external stakeholders and within the CMA. The remedy was deliberately designed to give the Trustee the final word on changes to scope with approval from the CMA so as to enable the project to proceed at pace. Whilst there were initially some benefits to this, the CMA should have reviewed whether this remained appropriate as the project became longer and more complex.

#### *CMA resourcing and prioritisation*

84. Once the market investigation was complete and the Order had been made, the work of overseeing implementation by OBIE and monitoring of the Open Banking remedy was carried out by a core team of 3 – 6 people with other additional responsibilities, who sought ad hoc input from others as necessary.

It was managed as business as usual, with no dedicated project management resource.

85. It is clear that this was insufficient to oversee such a major project and it is to the CMA team's credit that despite this many aspects of the remedy are seen as a success. As set out above, the CMA did not fully anticipate the scale and complexity of the Open Banking remedy. In part, this reflects the historic focus of the organisation on delivery of investigations and cases, rather than on overseeing the implementation of remedies.
86. Opportunities were missed to review the size and skills of the team as the project extended longer than had first been envisaged and its profile both within the UK and internationally grew.
87. The insufficient resourcing reflects the limited degree of oversight at Board or Executive level until the summer of 2020 as discussed below.

### ***Oversight by the CMA***

88. The CMA Board discussed issues in the retail banking market before the MIR was launched. It was also updated periodically as the investigation progressed whilst ensuring the independence of the Group was maintained in line with the statutory framework.
89. In the months leading up to and following the publication of the Final Report the CMA's Board was provided with an overview of the market investigation, together with a high level forward look at the implementation of the suite of remedies, which included a reference to the establishment of an implementation entity for Open Banking APIs.
90. When the Order was put in place and at the point of handover from the Group, there was very limited reporting to and discussion at the Board or at an Executive level of the risks and challenges of proceeding with the remedy as designed under the Order. Subsequently during the delivery and implementation of the remedy the Board was occasionally informed of the progress of the Open Banking project as part of wider updates on remedies. However, there was no formal process in place to require periodic reviews of the remedy and risks and key issues were not identified and escalated to the Board and/or Executive.
91. This was despite the fact that this was a particularly complex remedy, requiring the creation of a new body and that the principles-based approach of the Order meant that there was significant uncertainty over how it would be delivered. There was also no consideration by the Executive or the Board of

the need to engage HMT, FCA and other stakeholders at a CMA Executive level at the outset on the long-term arrangements for Open Banking.

92. There are a number of reasons why the Board did not focus sufficiently on Open Banking until 2020. There is a requirement on the CMA to safeguard the independence of any market investigation Group, who are solely responsible for determining remedies in line with the statutory framework and the CMA Executive and the Board were concerned not to fetter that independence or influence the outcome of the investigation in any way. The CMA has since, improved the processes for interaction between the CMA Executive, Board and the Group whilst ensuring this independence is maintained in accordance with the statutory framework, including through the more frequent exchange of appropriate information pursuant to Rule 6.6 of CMA17, and as reflected in revisions to CMA external guidance (CMA3). This includes the option for the Board to give an advisory steer to its reference decision.<sup>29</sup>
93. Remedies implementation, delivery and monitoring have historically tended to have a relatively low-profile within the CMA and were rarely discussed at Board level other than when specific issues were brought to the Board's attention. It is also relevant that from 2016 onwards the CMA was focused on preparing for Brexit and for the substantial new responsibilities the CMA was expecting to take on.
94. These factors are all important context but do not negate the fact that the Open Banking remedy should have been identified from the outset of its implementation and delivery as a major undertaking and resourced and overseen accordingly. Since the Retail Banking Market Investigation the CMA has taken steps to ensure that overall strategy and risks are given due consideration by the Board at an early stage when considering future market studies and market investigation references.
95. Additionally, more recently the CMA has developed clear, embedded processes for identifying and reporting risks for all projects including remedies work, including escalation of certain entries on the internal risk register to the Executive Committee, the Board and certain Board committees. Open ended or complex remedies and/or those requiring significant CMA resource, require individual consideration and risk assessment on that register. The CMA's revised guidance also now sets out certain specific processes relating to end

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<sup>29</sup> Market Studies and Market Investigations: supplemental guidance on the CMA's approach (CMA3) (2014 revised 2017) para 3.39.



points for remedies such as sunset provisions and reviews for remedies (CMA3 and CMA11).<sup>30</sup>

### ***Monitoring of the remedy***

96. The CMA has well-established processes and guidance for monitoring of remedies once they are implemented and these processes have worked well for monitoring aspects of the Open Banking remedy that have already been implemented. However, the principles-based approach as set out in the Order, the creation of a separate entity (OBIE) to carry out the implementation, combined with the use of the Roadmap, the resulting changes from revisions to them and differing and staggered implementation by individual members of the CMA9, has made the task of monitoring compliance with the Order, a challenging one.
97. The CMA could have given greater consideration both at the design stage, then at key points during the implementation stage, to matters enabling effective monitoring, such as:
- (a) Clear processes and documentation on decisions taken during the implementation phase which are also relevant to compliance monitoring.
  - (b) Appropriate levels of resourcing and staffing to ensure prompt enforcement action could be taken.
  - (c) Consideration of how monitoring could work as part of any future arrangements, what ongoing role the CMA would have and what early steps/stakeholder engagement might be needed to facilitate decisions on this.

## **Recommendations**

### ***Recommendation 1: Build more effective Board oversight and risk management of the end-to-end strategy for complex remedies***

98. The CMA Board should consider at the point of reference to a market investigation the overall strategy for possible remedies including their duration and likely end point as well as whether there may be a need for specific arrangements for delivery, supervision and monitoring post-implementation of

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<sup>30</sup> CMA3 and CMA11.

those remedies. The Board may, at this point, wish to include views on these aspects in the advisory steer which is appended to the reference decision.<sup>31</sup>

99. It may be appropriate to include views on these aspects in most if not all cases. It will be particularly important where it is already apparent that the outcome of the market investigation may involve remedies which have some or all of the following aspects: complexity, behavioural in nature, long-running, open-ended delivery, involving significant resource or risk implications for the CMA and with the potential to develop over time. Throughout these recommendations, these types of remedies are referred to as 'complex remedies'.
100. The aspects of the Board steer which relate to remedies should be focused on operational implications for the CMA from the point in time that the Group's involvement ceases and should not include any preference for specific remedies. The Board may provide: i) an indication as to the appropriate level of ongoing CMA involvement post-market investigation (for example following making of order or accepting undertakings) and, where appropriate ii) clear recommendations for involvement by other regulators or parts of government if this is required.
101. The Board should consider both at the point of reference to a market investigation and from the point that the Group's involvement on the market investigation ceases and on an ongoing basis for the duration of the remedy, the following points:
  - (a) Where a complex remedy may require ongoing development, delivery and/or monitoring, the Board should ensure there is early consideration of the appropriate endpoint for the remedy and potentially plan for senior engagement with government or other regulators to develop a framework for long-term oversight if required. Where relevant this should include consideration of the use of sunset clauses (as set out in paragraph 4.14 of CMA3) and potentially whether additional guidance on the use of such clauses in complex remedies is required.
  - (b) The potential risks involved and how these will be managed and the Board should balance these against the expected benefits to the market or markets in question. While this review heard from many stakeholders that the CMA needs to be willing to consider high impact but also high-risk interventions in markets where this may be required, it is important that

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<sup>31</sup> Paragraph 3.39, CMA3.

the Board understands the risks involved and receives assurance that they can be managed.

102. As set out in recommendation 2 below, the Group may also wish to consult the Board on the above aspects at the remedy design phase during the market investigation itself.
103. Where a market investigation reference is made by a concurrent regulator, there is no specific provision in the guidance for the CMA Board to make an advisory steer. However, the CMA's preparatory market investigation team should seek to engage with the concurrent regulator on these questions where potentially complex remedies may be envisaged as an outcome of the market investigation.
104. There may also be other circumstances where a particular type of remedy cannot be anticipated at the stage that the Board makes the market investigation reference, as was the case for Open Banking, and it will not be possible for the Board to include any advice on such an option in its steer. However, it is then even more important that the considerations listed above are considered by the Board at the point of handover when the Group's involvement ceases in addition to the operational aspects mentioned in the Recommendations below.

***Recommendation 2: Create processes and governance for CMA Board and Executive oversight of the implementation of remedies***

105. The CMA should set out clearly the governance and processes applicable from the point of handover from the Group to the CMA Board and Executive, including the oversight of any ongoing development or monitoring of remedies following the Final Report and any Order/Undertakings.
106. The CMA should consider whether an overview of all of the existing Markets guidance is required in order to consolidate and clarify the position for external stakeholders. It may be useful to include specific guidance on the implementation of complex remedies in any future revisions of external guidance.
107. We note that Groups are required to act independently of the CMA Board in taking decisions in market investigations, but also note that this does not prevent the Board from giving information to a Group nor the Group from giving information to the Board.<sup>32</sup> Without in any way reducing the

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<sup>32</sup> Paragraph 49 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

independence of the Group's decision-making, we recommend that the CMA introduce the following steps with regard to CMA Board oversight and governance of complex remedies in market investigations:

- (a) a process for the Market Investigation Group to consult the Board on the operational implications of the remedy at the design phase. In practice, we expect that this would take place via an update given by the Senior Responsible Officer (SRO) to the Board and the SRO would report back any views to the Group.
- (b) a requirement that the CMA's Executive Committee is informed about and engaged with the plan for the remedy, in anticipation of responsibility transferring from the Group to the Board and Executive, for example shortly prior to or on making an order or accepting undertakings. This plan should cover the CMA's role, responsibilities and internal governance/decision-making, estimated CMA resources that will be required including in relation to monitoring, stakeholder engagement strategy and key risks. The Executive Committee should keep the Board updated and escalate any issues to the Board as appropriate depending on the anticipated risk profile.
- (c) when it is consulted about the remedy, the Executive Committee (and where due to the risk profile the Board itself) should also indicate to the team its expectations for any ongoing reporting to the Executive Committee and Board, which should be proportionate to the remedy in each case. For example, for complex remedies it may be appropriate for the Board to be provided with specific updates at key stages whereas for lower risk remedies, the Board may be kept informed as part of the annual update (see below).

108. In addition, there should be a periodic (not less frequently than annual) update to the Board on the overall remedies portfolio to highlight ongoing CMA resource requirements, effectiveness of the remedy itself, duration and risks.

***Recommendation 3: Consider questions relating to implementation at the remedies design phase***

109. There are a number of key questions that the Group and market investigation team should consider in relation to delivery of complex remedies both at the design phase leading up to the final report as well as in respect of any orders or undertakings after the final report. These could be included as a non-exhaustive list in any future revisions to external guidance mentioned in Recommendation 2 and include:

- (a) Are there suitable checks and balances, governance mechanisms and processes in place for the overall delivery phase including in relation to both the CMA and key stakeholders? For example, this may also include processes for interpretation of aspects of the order/undertakings during delivery where appropriate.
  - (b) Will and if so how is any monitoring to be undertaken by the CMA? This may include consideration of the resource implications for the CMA, processes to adjust resources where required and use of CMA enforcement powers, for example to enforce any order.
  - (c) In addition to monitoring, what resources are required throughout the lifetime of the remedy including whether these are CMA or external resources and whether any specialist expertise may be required (either at the design stage or during delivery and implementation) for particular areas?
110. The requirements for different types of remedies will need to be appropriate and proportionate to the individual remedy. However, consideration of the above non-exhaustive list of key questions should allow some mitigation of the risks that may arise from delivery of complex remedies. Equally to the extent that certain aspects cannot be foreseen at the remedy design phase, our recommendation to create gateways for remedies with an extended development or delivery phase should give scope to revisit these questions if necessary (see Recommendation 5 below).

***Recommendation 4: Ensure key factors are considered where a remedy establishes a new entity or large and enduring CMA function***

111. Market investigation remedies can be delivered in different ways involving different entities in addition to the CMA. For example, the remedy can: be delivered by an existing entity; make a recommendation to government to set up a new entity; or the CMA can require the creation of a new entity as was the case for Open Banking.
112. If a remedy requires the creation of a new entity or function, there are a number of specific aspects which should be considered by the Group and case team at the remedy design stage (in addition to the overarching key questions set out in Recommendation 3 above). These aspects could be included in any future revisions of external Guidance mentioned in Recommendation 2 above as a non-exhaustive list of points for the Group and staff team to refer to and consider (even if only relevant in very specific circumstances).

113. These aspects may include:
- (a) the need for clarity over the scope, purpose, status and funding of the entity; and the adequacy of its proposed governance arrangements, including periodic future reviews of the effectiveness of the entity's Board and governance;
  - (b) a clear delineation of the roles, responsibilities and accountability of different stakeholder groups, including the CMA, and overall decision making processes governing each of them;
  - (c) a process for managing conflicts of interest that may arise within the entity or involving any Trustee;
  - (d) clear lines of communication between the entity, the CMA and external stakeholders;
  - (e) processes for escalation of issues to the CMA;
  - (f) appropriate line management/reporting lines from the external body or any Trustee involved in the implementation process to the CMA.
114. The CMA may also wish to refer to and consult other bodies performing similar functions, such as standard setting organisations, regulators or commercial representative bodies such as trade associations, when determining these questions.
115. As set out in Recommendations 1 and 2, processes for CMA governance and oversight of any such remedy would apply, including a requirement to report to the CMA's Executive Committee (with escalation to the Board if necessary) with the proposed delivery/set up process with an option for earlier consultation of the Board by the Group if significant CMA resource or risks may be incurred.

***Recommendation 5: Include gateways in the remedy delivery and implementation process***

116. For any complex remedies, the Final Report and/or the Order/Undertakings should set out a process for review at key stages to assess whether the existing arrangements are still working and are appropriate. The CMA should consider including formal review points in the project plan for any delivery stage, particularly where the scope, costs and/or timeframe is likely to change, but also provide a process for ad hoc reviews should unforeseen circumstances arise which would impact on the scope, costs or timing of the remedy.

117. These gateways or checkpoints would provide an opportunity for the CMA to consider whether structures and resourcing for delivery and/or monitoring of the remedy remain appropriate as well as whether additional input, for example technical expertise, is required.

***Recommendation 6: Implement effective and agile internal governance and stakeholder engagement in remedy delivery and implementation***

118. CMA internal processes, documentation, stakeholder engagement and decision makers should be clearly set out for the implementation phase of all remedies and the project should be appropriately resourced. This should be applied to each remedy in a way that is appropriate and proportionate to that specific remedy and type of decision. For complex remedies, the proposed governance process should form part of the Board update at the point of handover from the Group, for example on issue of an Order (see Recommendation 2).
119. CMA staff and panel members should also have the appropriate skillsets and training either specific to certain remedies or more generally. This would also build on knowledge gained from evaluations and case studies set out in Recommendation 7 below.
120. The appropriate decision-making structure needs to balance flexibility and agility with robustness and risk escalation. Different decision-making structures should be available depending on the significance of the decision at stake and which structure will apply should, as far as possible, be set out in advance for each type of decision.
121. There should be a strategic focus at Executive level on remedies delivery with regular risk reporting to the Executive Director (with subsequent escalation where necessary). This should include ensuring that teams responsible for this work are adequately resourced and that the responsible Executive Director has the time and capacity to oversee the whole remedies portfolio.
122. It should also be clear to external stakeholders who the relevant decision makers are at the remedies delivery stage, in the same way as for investigations and cases across the CMA, for example this could be set out on an investigation or remedies case page. For high profile remedies this should form part of an overall stakeholder engagement strategy during the delivery phase, in which the Executive Director has a role to play.

***Recommendation 7: Conduct an evaluation case study of complex market investigation remedies***

123. CMA should commit to and plan for identifying suitable complex remedies for an evaluation case study at some point in the future to inform future CMA market investigation remedy design.
124. This complements and builds on knowledge gained from more recent CMA case studies carried out of merger decisions remedies and earlier case studies on Store cards, Home credit and BAA market investigation remedies as well as the CMA/FCA joint review of information remedies.



## **Annex 1: Terms of Reference**

The terms of reference for this review were published on 23 November 2021, as set out below.

### *Aims*

To identify the lessons the CMA should learn from recent issues at OBIE in order to make recommendations for the CMA's future approach to remedies resulting from Market Investigations.

### *Objectives*

The review will not revisit the questions considered by Alison White's report but will take the report into account in order to answer the questions below.

The review will address the following key questions to identify lessons learned for the CMA for future Market Investigation remedies:

- What weaknesses were there in the CMA's design, implementation and monitoring of OBIE?
- What factors should the CMA consider when designing, implementing and monitoring remedies in Market Investigations in future, including in terms of scoping, timing, flexibility and allocation of resources and responsibility?
- What measures or processes would ensure that the governance of Market Investigation remedies is effective and appropriate, including where scope or timeframes change?
- What should be the process for CMA Executive and Board oversight of remedies when the Market Investigation Reference Group oversight ends?
- What if any further recommendations should be made for the future?

### *Timing*

The review is to be completed within 6 months.

### *Outputs*

The findings from the review will be reported to the CMA Board and published.

### *Approach*

Kirstin Baker will lead the review independently of the Board and CMA Executive and will be provided with the necessary resources and information to do so, including support from a CMA team.

## **Annex 2: Kirstin Baker – Biography**

Kirstin Baker was appointed a Panel Inquiry Chair and Non-Executive Director of the Competition and Markets Authority (CMA) Board on 1 September 2018. She is also a member of the Audit and Risk Committee.

Kirstin had a long career in the civil service and was most recently HM Treasury's Finance and Commercial Director. Earlier in her career Kirstin was part of the senior team leading the Treasury's response to the banking crisis and was awarded a CBE for this work.

Kirstin has also worked as a competition official in the European Commission, as an EU policy adviser in the Cabinet Office and as a senior civil servant in the Scottish Government, leading work on infrastructure investment. Alongside her role at the CMA, she is a Non-Executive Director at The Pensions Regulator and an independent member of Council at the University of Sussex.

## Annex 3: Timeline

Date	Event
6 November 2014	CMA launches market investigation into the supply of retail banking services to personal current accounts and SMEs.
8 February 2016	OBWG report “The Open banking Standard” published.
17 May 2016	CMA publishes provisional decision on remedies.
9 August 2016	Final Report of the Retail Banking Market Investigation.
3 October 2016	Andrew Pinder appointed as the first Trustee.
21 October 2016	OBL established.
2 February 2017	Retail Banking Market Investigation Order issued.
17 April 2017	Imran Gulamhuseinwala appointed as Trustee.
22 November 2017	Approval of changes to Roadmap.
23 July 2018	Approval of changes to Roadmap.
7 April 2020	Approval of changes to the Roadmap.
15 May 2020	CMA publishes final approved Roadmap.
September 2020	Alison White appointed to lead an independent investigation into allegations relating to OBIE.
1 October 2021	CMA publishes findings of the AW report and confirmed the appointment of Kirstin Baker to lead this review.
1 October 2021	CMA announces that Imran Gulamhuseinwala has resigned as Trustee and Charlotte Crosswell has been nominated as the replacement Trustee.
21 October 2021	Charlotte Crosswell appointed as replacement Trustee.
23 November 2021	Terms of reference for this review published.
27 May 2022	The findings and recommendations of this review are published.

## **Annex 4: Contributors**

Current and former CMA staff involved in various stages of the development of Open Banking

Members of the Retail Banking Market Investigation Inquiry Group

Her Majesty's Treasury

The Financial Conduct Authority

The Payment Services Regulator

Financial Data and Technology Association (FDATA)

Representatives of consumer and SME groups

UK Finance

Representatives of the CMA9 banks

Alison White

Imran Gulamhuseinwala (the former Trustee)

Charlotte Crosswell (the current Trustee)

Jeremy Newman and Barbara Ridpath (Non-Executive Directors of OBL)