

We thank the CMA for the opportunity to contribute to the consultation on the future oversight of the Open Banking ecosystem.

We believe that a timely and collaborative transition to the Future Entity will give Open Banking participants from all markets the opportunity to help grow the services provided under the Order, but also kick start innovation in a number of financial and customer markets.

1) Independent and accountable

1a) It is envisaged by UK Finance that the Members of the Future Entity would appoint the Chair with “votes weighted by participant type.” This process is not explained in detail and we will seek further clarity from UK Finance. However, it may give rise to a risk that a particular stakeholder group (e.g. the largest banks) would have an inappropriate degree of influence over the appointment. What process and criteria should be used to identify suitable candidates for the Chair? Who would be responsible for doing this, who should be kept informed and whose approval should be sought for decisions at this stage? Should the Members alone approve and appoint the Chair or should the CMA’s approval be required, as was the case in the appointment of the Trustee?

- i. In order to give reasonable confidence that the Chair will be objective and not aligned to any one of the roles of the Board members, we feel they are required to be someone not directly aligned to those roles. For example, not an individual having recently worked within a TPP, ASPSP or consumer and SME advisory group.
- ii. It is our understanding that the process for appointing the first chair will be based on a panel comprised of the Transition Advisory Group Chair, End User Representative, ASPSP and TPP Representatives. We would expect this to provide a balance of perspectives which should lead to a fair and high calibre appointment with the CMA and FCA invited to provide their opinion on the appointment in advance.
- iii. Going forward, future appointments will require voting from members and some degree of weighting will be required to ensure all parties and type of participant are given fair and equal opportunity to represent their industry. We expect more detail on how this will operate in practice during the transition.

1b) Does the proposed composition of the Future Entity Board constitute independent leadership? On its face, the composition of the board would suggest a balance of perspectives will be represented. However, should the CMA seek further information or assurances before concluding that the proposals will result in an independently led organisation?

- i. We would agree that the composition of the Board provides a balance of perspectives with no individual constituency over-represented, to give confidence to members of the ecosystem that decisions will be made with objectivity and with proportionality in mind.

1c) To whom should the board be accountable. Should their accountability extend beyond the membership of the Future Entity? Are there transparency or reporting requirements that it would be appropriate to impose on the Entity’s Board similar to those imposed on the OBIE?

- i. The board will likely be responsible for co-ordinating the response of the ecosystem to new requirements coming from any of the UK regulatory bodies onto individual market participants. Ultimately, however, the board should only be accountable to the members and participant groups who will be driven by their own regulatory or commercial imperatives.

- ii. Appropriate checks and balances in the governance should be in place to ensure the Future Entity acts within its remit.
- iii. We would appreciate clarification on the existing transparency requirements that the OBIE are obliged to adhere to, to assess if these would all continue to be appropriate for the Future Entity, or if additional items are required.

1d) Does the initial funding model envisaged risk undermining the Future Entity's ability to act independently because of the potential tension between the interests of the CMA9 (who will be providing all of the funding initially) and the objectives of the independent Chair? Can the CMA be confident that the Future Entity governance structure (including an independent Chair, NEDs and the Advisory Committee) will be sufficient to resist pressures that may arise as a consequence? And if we cannot be confident what steps should be taken to mitigate this risk?

- i. Future activity should be driven by either new regulatory mandates (with a funding model that will be determined by the nature of that mandate) or through participant groups identifying and proposing new commercial services which will require commercial funding from the participants wishing to see the venture progress. Where there will be a need or the board to exercise more nuanced judgement on the use of funding is where there are enhancements to existing standards and guidelines which are discretionary in nature.
- ii. We therefore see the role of the Board to be critical in ensuring that objective and proportionate decisions are made, whilst maintaining competition and furthering development of the ecosystem. Funding provided by any party should be allocated with those principles in mind.
- iii. During transition, it will be necessary to fully establish the scope for cost savings and also for revenue raising, potentially through the creation of new paid for services or through the implementation of charges for certain services which are currently provided free of charge. Only once this is complete will the funding provision required be understood. Clearly, large financial institutions will provide a significant amount of the initial funding and the CMA-9 will stand as guarantors for the continued operation of the legally mandated functions of the OBIE, but over time we expect more balance to emerge.

1e) Do UK Finance's proposals for the Future Entity raise any other concerns regarding its leadership and governance model? Are there any other alternative approaches which would be more suitable to address these types of issues?

- i. The UKF proposals have gone through lengthy and detailed consultation with a wide range of participants invited to feed in their views. We believe that the proposal strikes a pragmatic balance between the needs of all participants within the boundaries of the known and anticipated regulatory and commercial framework.

2) Adequately resourced

2a) In overall terms, is the framework proposed by UK Finance capable of performing the functions necessary to ensure the effectiveness of the CMA's open banking remedies going forward? Are there alternative approaches that the CMA should consider?

- i. The model proposed appears to enable all of the functions currently undertaken by the OBIE to be taken forward by the new Entity, which will secure the ongoing delivery of the objectives of the Order. Clearly, the work undertaken by the OBIE has been solely regulatory in nature under the mandate of the Order. The new entity will need to transition to a model which is

driven more by market forces. This will undoubtedly have its challenges, but we believe this will ultimately lead to a healthier and more co-operative ecosystem delivering the future vision of Open Banking for all customers.

2b) Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:

- i. What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?
 - As per our other responses, it seems appropriate that the party or parties driving a change or project should be responsible for sourcing or providing funding for that initiative.
 - The development of the enhanced customer attributes standard financed outside of the CMA order shows that there is scope for the entity to raise its own funding.
 - Equally, the blueprint work has identified the potential for additional paid for services which are not a legal entitlement.
- i. Given that the anticipated external revenues may or not materialise in 2022 or be maintained after that date, how can the CMA and other stakeholders be confident that the budget of the Future Entity will be adequate to deliver the residual requirements of the Order?
 - Due diligence on the financial position and underlying services of the current OBIE must be completed urgently to fully understand the current cost position which will in turn inform the funding position and the requirement from individual members. As the work to finalise the roadmap nears completion, some costs will inevitably fall which will also need to be taken into account, whilst at the same time future work from the participant groups should come with funding
 - As a backstop, the CMA-9 are obliged to stand behind the future entity to fulfil its regulatory obligations, which would include the delivery of any residual requirements of the order.
- i. How should the Future Entity set priorities in the face of a potentially reducing budget and competing requests for investment in future developments, including from the Participant Groups?
 - The role of the Board should be to objectively review items requested (for example, a backlog of requests made by the participant groups, individual ecosystem participants, Board members, or external parties) objectively and allocate the appropriate level of funding to the items that will provide the most value to customers and the ecosystem, whilst considering the cost of implementation of the initiative. As mentioned earlier, new work from the participant groups should be funded by the group's constituents.

2c) The proposed funding model does not anticipate significant funding from the TPP community in the short term. Is this reasonable? Should more financial support be sought from firms acting as TPPs, some of which are quite large businesses and others, for example retailers, who are likely to benefit from the adoption of existing (rather than yet to be developed) open banking payment services in particular?

- i. We believe the funding model should ensure that any party suggesting or driving a change in the Open Banking ecosystem that brings a cost to either the Future Entity or ecosystem participants should be funded by the party or parties seeking to push for that change.
- ii. As detailed in the blueprint report, it is important that charges are not considered an obstacle under PSD2, however, charges for TPPs could be explored in relation to the services

they receive which are over and above what they are entitled to by law (examples include the service desk or conformance tools). From the discussions with ecosystem participants during the creation of the blueprint, TPPs appear keen to 'pay their way' and therefore we anticipate this will be a viable source of future revenue that we would welcome and believe is healthy for the future of the ecosystem.

- iii. If a TPP, or multiple TPPs, wish for the ecosystem to either develop additional functionality on the existing API standard, or create something new, then that should be funded by those TPPs and any other participant interested to see that outcome.
- iv. Service driven fees (e.g. paid by retailers for open banking payments) could broaden the financing of the future entity, although it is also possible that other streams of work (e.g. PSR consumer protections review) may see those market participants contribute in a different way to the development of the ecosystem by providing the commercial basis for consumer protections to underpin the growth of open banking payments.

2d) The OBIE has performed functions and supplied services which while not stipulated in the Order have, in the opinion of many parties, proved fundamental to maintaining a well-functioning ecosystem. These include, for example, the onboarding services that OBIE provides to help TPPs interface with ASPSPs. Can the CMA and other stakeholders be confident that these will be maintained?

- i. With TPPs represented on the Board of the Future Entity it is likely that their needs, including but not limited to those regarding onboarding, will continue to be met and we have no concerns this will not be the case. As per comments above, some services may no longer be free, but a fair charging model should provide a sustainable model.

2e) Do UK Finance's proposals for the Future Entity raise any other concerns regarding its proposed resourcing? Are there any other alternative approaches which would be more suitable to address these types of issues?

- i. No further comments.

3) Representation for consumers and SMEs

3a) Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?

- i. We do not have any concerns with the proposal for the Board representation of Consumer and SME's and note the principal purpose is written into the vision statement for the Future Entity
- ii. The Board of the Future Entity will be responsible for ensuring all proposals and decisions consider the outcomes for consumers and SME's and the consumer representation on the board reflects the importance of this role. However, the commerciality of the item, the cost to ecosystem participants to implement and the opportunity costs to consumers from that expenditure must also be considered hence the balance of perspectives in the makeup of the board.

3b) Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?

- i. The role of any Board member should be to represent the views provided by the experts in their field through the use of the Advisory Committee and potentially further advisory councils as required in order to take account of the view of various specialist subject matter experts. This will be true for all of the board members who will need to represent the views of multiple constituents, some of whom will also be playing roles in the SME sector. We would expect the Advisory committee to include an SME representative as the initial mechanism to ensure the views of SMEs are captured.
- i. In this case, we believe that a single Board member to represent the views of the Consumer and SME advisory groups would be appropriate to ensure a single and consistent voice is able to represent them.

3c) What process and criteria should be used to select the consumer representatives on the Board and Advisory Committee? Should there, for example, be a specific reference to the needs of vulnerable or less well-off consumers?

- i. It is our view, taking into account experience of developments in the Open Banking API standards, that this role would be most effective if it were someone who is able to represent and consult with a wide range of constituencies to ensure a range of perspectives is included.

4) Sustainability / adaptability

4a) Is the assumed ability of one or more of the CMA9 to withdraw from the Future Entity a cause for concern in terms of the sustainability of these arrangements? Would the CMA9 not have to retain membership in order to comply with certain requirements of the Order, for example to maintain the network that supports the directory requirement in the Order? Would, in any case, the benefits of membership to CMA9 members be expected to outweigh the (minimal) cost savings from withdrawing (which we would expect to be limited)? Would, nonetheless, a longer membership commitment from the CMA9 (for example, 5 years) provide greater security for the Future Entity?

- i. We do not see a reason for CMA9 members to want, or be able to, withdraw from the Future Entity at any point in the future. In order to foster a collaborative ecosystem and ensure fair representation of the point of view of CMA9 members, it would not seem likely that a member would wish to withdraw.
- ii. A refined view of the ongoing costs to membership would likely be required before non-CMA-9 members would commit to long-term inclusion.

4b) Would the membership / proposed funding model allow non-CMA9 account providers who had adopted the open banking standards, to “free ride”: enjoy the benefits generated by the entity without making an appropriate contribution? If so, and were it deemed necessary, how could this be avoided?

- i. We would recommend that a funding model is established that ensures all participants in the ecosystem wishing to drive future developments of the API standards be responsible for funding the necessary work to progress those changes. When completed, the funding model and membership fee will need to minimise the issue of free-riding.

4c) Could or should the Future Entity, as UK Finance has suggested, be a suitable vehicle for the implementation of other “open” projects such as the FCA’s Open Finance initiative and the BEIS

Smart Data project? The Open Finance and Smart Data initiatives are not, as yet, fully defined. How, therefore might the Future Entity be designed so as to accommodate their requirements?

- i. Whilst the future requirement of Open Finance and Smart Data remain unclear, the structure of the entity appears to be able to accommodate a future regulatory requirement through the establishment of new participant groups to bring together the market participants with interests in the outcomes envisaged under those initiatives. The participant groups can then make requests on the Future Entity for specific services to facilitate the delivery of the initiative which the Board will consider alongside all other work. Clearly, the remit of the Open Finance and Smart Data initiatives are much wider than retail banking and therefore will necessarily widen the potential scope of both membership and the funding base.

4d) It could be argued that the maintenance and development of payment initiation standards should be dealt with separately from account information and as a scheme. What should be the relationship between the new arrangements and the oversight of payment systems more generally?

- i. Given the intrinsic links to date between AIS and PIS, separating these functions would be a significant step that at this stage there is insufficient clarity to take without significant risk.
- ii. UKF are establishing a working group to explore the question of what is required to further develop the open banking payments ecosystem including consistency of standards, resilience and consumer protection. We will participate in this group before we form further opinions on the requirement for a separate scheme.

4e) Do UK Finance's proposals for the Future Entity raise any other concerns regarding the sustainability of the proposed approach? Are there any other alternative approaches which would be more suitable to address these types of issues?

- i. The structure laid-out in the proposal does not raise any concerns regarding sustainability of the Future Entity or Open Banking ecosystem.

5) Future Monitoring

5a) Our working assumption is that it would not be appropriate for an industry-led body – such as the Future Entity - to have responsibility for compliance monitoring of the conduct of some of its members. However, we envisage that whatever entity does undertake compliance monitoring will rely in part at least on data provided by the successor body to OBIE which it may also use for its own purposes. Is this reasonable? Could, with appropriate governance, the proposed Future Entity be given the responsibility for monitoring the compliance of the CMA9 with the Order?

- i. We agree that the monitoring should sit outside of the industry service body, which maintains independence from membership and the delivery of the services themselves. We also believe it is important for there to be consistency in the standards all participants in the ecosystem aspire to and that there is equivalent MI provided across all ASPSPs to enable a consistent view on performance. To best achieve this, the ASPSP market would have one point of regulatory oversight and monitoring [the FCA] and would be encouraged to move to a single standard of performance and conformance across all payment accounts.

- ii. The industry service body can continue to collate the industry service company (proposed by UK Finance) would continue to collate management information, which could be made available to the FCA and the CMA. Whilst we do not foresee any immediate requirement to produce MI in addition to that provided by ASPSPs to the OBIE today, the FCA or the ecosystem could make further requests for MI from ASPSPs which would be met via the Future Entity as a request from the PSD2/CMA participant group.

5b) We have identified ecosystem monitoring as an important function that may, for example, indicate the need for product or other developments. Would this role fit best with the entity charged with compliance monitoring or conversely, would this role fit better with the successor body to OBIE?

- i. The purpose of the monitoring function is to ensure compliance with the regulatory standards. The need for product or other developments should be raised via the Participant Groups or the Advisory Committee.

5c) The CMA commonly appoints an independent professional services firm as a Monitoring Trustee to monitor compliance with remedies imposed after Market Investigations or Merger Inquiries. Would this be appropriate in this instance and if so, which types of firms or other bodies could be considered? Would it be practicable to find a firm that was not conflicted?

- i. As set out in our response to question 1 above, whilst the appointment of a professional services firm is a possible mechanism to facilitate ongoing compliance, we believe that combining all regulatory oversight and monitoring to a single regulatory body would ensure the ecosystem as a whole moves to a single standard of performance and conformance across all payment accounts and providers. As there is a high degree of overlap between the CMA requirements and the PSR requirements, the FCA already perform the majority of this function and would be best placed to undertake this role

5d) ASPSPs may challenge suggestions that they are non-compliant and, currently, the Trustee's monitoring function makes an initial assessment which may be subsequently passed to the CMA. Should the new monitoring entity perform this initial screening, or should this reside with the CMA's enforcement function? We envisage the former but invite views, including to the contrary.

- i. We have no comment.

5e) Is it necessary to continue monitoring activities at all since the FCA is already responsible for ensuring compliance with the (similar) requirements of the PSR including by the CMA9? To what extent would the FCA's current monitoring activities be an effective substitute for the activities of the Trustee's monitoring function?

- i. Many of the open banking obligations on the CMA9 banks to comply with the Read/Write Standard that arise from the Order are closely aligned to requirements that the CMA9 and ASPSPs more broadly are subject to under PSD2. The requirement to notify the FCA and agree and complete remedial actions with the FCA are likely to also remediate compliance with the Order.
- ii. Whilst the CMA would also be appraised of the breach alongside the FCA, the CMA may determine it expedient to rely on the FCA for resolution of the issue, rather than take enforcement action itself.

- iii. As outlined above, this may also provide an opportunity to align on a single set of standards for all ASPSPs providing a level playing field, driving up standards across the ecosystem.

5f) Are there any other issues regarding monitoring and compliance which the CMA should be aware of?

- i. We have nothing else to add.

6) The transition

6a) What measures should the CMA adopt to mitigate the risk that the OBIE's ongoing services will be interrupted or disrupted during a transition process?

- i. We see no reason that the existing service should be disrupted. The vast majority of day-to-day activity to run the service, for example onboarding, is now automated and the infrastructure implemented by the OBIE has been found to be resilient. Resources likely to be engaged in the continuation of service would be unlikely to be required to contribute materially to the transition planning.
- ii. We would expect services such as the Service Desk to be maintained in the new entity or if a new provider were chosen in the future then this would be done as part of a managed handover as the OBIE would do in the same circumstance.

6b) How should the ecosystem's performance be monitored during a transition process? Should, for example the Trustee's current monitoring function be maintained during a transition process and if so where would it be appropriate to site it?

- i. It is reasonable to assume that the activities undertaken by the new monitoring function would align to that of the existing OBIE team, therefore a transition is expected to be straight forward and not be disruptive to the launch of the Future Entity or the ecosystem.
- ii. We would expect that the new arrangements for monitoring would be in place and functioning satisfactorily before formally moving the responsibility away from the current OBIE team, but this does not require the transition and the establishment of the Future Entity to be complete at that point since the Monitoring Function should be independent from the Future Entity and separately funded.

6c) Who should be held accountable for managing the transition process and what incentives should be put in place to reinforce their obligations to ensure continuity?

- i. It would be most appropriate for the Future Entity to be created, a Board put in place, and for Leadership roles to be filled to support and enact the transition, with support from the OBIE. Initially, this will require appointing the Chair and establishing the Transition Advisory Group to guide the process and consider the views of all parties.
- ii. Quick and measured progress of the transition should be overseen by the CMA, to ensure the Future Entity is set-up to adequately conduct its role under their order. The engagement and support of the OBIE Senior team will be essential to facilitate a smooth transition with the support of the CMA and appropriate remuneration and performance tracking ensuring a successful outcome.

6d) What steps should the CMA take to mitigate the risk that any remaining deliverables from the Roadmap are left incomplete? For example, should the CMA refuse to permit the commencement of the transition process before all of the elements of the implementation are in place? If not, what assurances should it seek and what safeguards would need to be put in place to eliminate the risk that the final elements of implementation would be unreasonably delayed or left uncompleted?

- i. An effective and well managed transition to new funding and governance requires to support of the OBIE senior team, but dedicated resource would ensure the Roadmap is not put at risk.
- ii. A core part of the role of the Future Entity is to enable firms to meet their regulatory requirements, therefore it is entirely appropriate that the Future Entity can oversee the completion of any residual roadmap items. We will also be under the mandate of the order to complete any outstanding items on the roadmap irrespective of the stage of transition.
- iii. Commencing the transition without delay would provide much welcome certainty to those involved in both the existing OBIE team and those charged with delivering the Future Entity. The OBIE team implementing the roadmap is relatively small in size and would be able to continue with their responsibilities in supporting the ecosystem with delivering the roadmap, while the other areas of the OBIE support the transition. The existing team could be ring-fenced from the other activities required for a smooth transition, which would provide them with certainty and stability during the transition period.
- iv. Delaying the transition until the completion of the roadmap would mean that the ecosystem is not on a sustainable footing to take forward the mixture of future regulation and commercial opportunities which are likely to present themselves in the future. It is our view that the roadmap items can progress at the appropriate pace if the transition to the Future Entity takes place in parallel. This of course needs careful consideration in the transition plan, however the ASPSP community design and implement change without much engagement with the OBIE, once an item is approved at IESG, therefore it would not disrupt progress to have the transition begin or end while roadmap items are in-flight.
- v. An early transition to the Future Entity would provide stimulus to the ecosystem and enable existing participants or potentially new entrants to begin exploring opportunities that reach beyond the scope of the CMA order.

6e) Once the final remit of any new organisation to succeed the OBIE is agreed, for example its ability to undertake development work that is currently beyond its scope, would it be desirable to reflect this during the transition period?

- i. Clearly, any work to progress commercial initiatives will be subordinate to the requirement to ensure regulatory mandates are completed.
- ii. However, the timing of demands on the new entity will likely mean that once the final remit of the Future Entity is agreed, there will be scope to shift attention to the development of future requirements with the participant groups being established to ensure the ecosystem continues to develop and support new commercial opportunities as well as pragmatic and collaborative changes to existing standards.
- iii. It will be up to the Chair and Advisory Committee and eventually the Board to manage how this area is explored further without delaying the transition.

6f) Are there any other issues regarding transition arrangements which the CMA should be aware of?

- i. We have nothing further to add.