

Consultation on The Future Oversight of the CMA's Open Banking Remedies

NatWest Group Response

29 March 2021

Independent and accountable leadership

- a) *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?***
- UK Finance should define a role profile for the Chair, covering leadership of the Future Entity, strategic leadership of Open Banking, board and committee stewardship and people leadership aspects of the role. An executive recruitment firm would then be used to identify suitable candidates, who should be independent of either bank, OBIE or fintech groups.
 - The CMA should be consulted with respect to the role profile, recruitment process and the shortlist of prospective candidates. To preserve the independence of the Future Entity and the role, Members alone should appoint the Chair.
- b) *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?***
- The proposed composition of the Future Entity Board does constitute independent leadership and provides a balance of independent and ecosystem perspectives. We do not think it is necessary for the CMA to seek further information or assurances, as it will be the Chair's responsibility to demonstrate to Members and ecosystem stakeholders that the Future Entity is independently led.
- c) *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?***
- The accountability of the Board should not extend beyond the membership of the Future Entity, but it does have an obligation to consult with the Advisory Committee which has representation from broader ecosystem, including regulators.
 - The Future Entity will be more transparent than OBIE with respect to reporting progress against its objectives and providing detailed financial reports to Members. The Board is also expected to consult on strategy, business plan and funding requirements with the Advisory Committee. Once agreed by the Board, they would then be published to Members.
- d) *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?

- The CMA9 and non-CMA9 ASPSPs are dependent on Future Entity and the services it provides to meet residual CMA Order and PSD2 requirements. It is in their interest to fund the Future Entity, insofar as the funding requirement is proportionate and it delivers 'value for money'. Also, more and more ASPSPs are operating in the AISP and PISP space, so it's potentially misleading to think that the interest of ASPSPs would always be out of step with other ecosystem participants.
- The governance model of an independent Chair, NEDs and the Advisory Committee, combined with a Membership covering all ecosystem participants, is sufficient to mitigate the risk that the Future Entity will not be able to act independently due to its funding model. Furthermore, it's in the interests of both ASPSPs and TPPs to collaborate on future standards and the potential extension of Open Banking to other markets.
- Alternative funding models either require all ecosystem participants to pay or for a regulatory 'levy' to be applied to all participants. Both have challenges, with the former not being compliant with PSD2 regulatory requirements by potentially prohibiting obstacles or barriers on TPPs entering the ecosystem to access ASPSPs and the latter requiring intervention from the FCA.

e) 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?

- The UK Finance proposals for the Future Entity does not raise concerns regarding its leadership and governance model. Other approaches would either potentially undermine the collaboration within the ecosystem between participants and with stakeholders, or likely require further regulatory intervention.

Adequately resourced to perform the functions required

a) 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?

- The Future Entity will maintain the services provided by OBIE and will evolve them to meet the needs of the ecosystem. Also, the agreed vision for the Future Entity places end users at the centre of the company and measures will be taken to ensure their needs are understood and delivered effectively. These points together demonstrate that the Future Entity can perform the functions necessary to ensure the effectiveness of the CMA's open banking remedies going forward.

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

- ***What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?***
- ***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?***
- ***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 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?

- The proposed funding model, where the CMA9 commit to being Members for a minimum of three years and need to comply with the residual requirements of the Order, does provide confidence about the resourcing of the Future Entity.
- There should be checks (e.g. business plan and annual budget communicated to members in advance of each financial year) in place to ensure the Annual Funding Requirement for the Future Entity is set at an appropriate level and that the funding model is proportionate. The transition will create opportunities for cost reduction driven by the Board, and it is recommended that a strategic review of costs and fee income is undertaken during this period. There is the expectation that the Annual Funding Requirement will be capped following the financial reviews and that the Future Entity will become more cost-efficient over time.
- The current FCA consultation on changes to the Regulatory Technical Standards for Strong Customer Authentication could result in those ASPSPs providing a Modified Customer Interface, being mandated to implement a dedicated API interface. This will potentially push more ASPSPs to join the Open Banking ecosystem and make use of the service capabilities, such as onboarding and directory services.
- External revenue from non-CMA9 ASPSPs and Confirmation of Payee is already available, and the Future Entity has three years in which to develop and grow external revenue streams. In addition, the introduction of Open Finance and Smart Data and potential Digital ID opportunities could provide new revenue streams.
- Priorities should be set on the basis of new regulatory requirement, benefit to end users and commercial potential (where it is expected that a participant group would self-fund any changes). Transparency is ensured through consultation with the Advisory Committee and the priorities being published in the business plan communicated to Members.
- We agree that it is reasonable that the TPP community should provide more funding on a proportionate basis, however PSD2 regulatory requirements place limitations on how this can be achieved so as not to create a barrier to enter the ecosystem. The Future Entity should look at the following opportunities to grow revenue:
 - Utilising data and MI to generate insights that can be commercialised (either as part of the Membership proposition or more broadly);
 - Enhancing the Membership proposition by creating a “Pay to Play” model for Member ASPSPs and TPPs to influence the evolution of standards, and become aware of latest industry thought leadership;
 - Commercialising the UK Open Banking experience in other sectors of the economy and abroad through a Future Entity “Advisory” service.

c) 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?

- Yes, if they are required to maintain a well-functioning ecosystem. It would be in the interests of all ecosystem participants / Members to maintain these OBIE functions and services, as detailed in the proposal.

d) 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?

- The proposal does not raise any other concerns regarding its proposed financing.
- Alternative funding / resourcing models are not more suitable as they either require all ecosystem participants to pay or for a regulatory 'levy' to be applied to all participants. Both have challenges, with the former not being compliant with PSD2 regulatory requirements and the later requiring intervention from the FCA.

Representation of consumers and SMEs

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

- The proposed arrangements ensure the effective representation of consumer and SME interests, through both Board and Advisory Committee representation. These arrangements are the same, if not better than the current representation with OBIE.

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

- End users are at the heart of the vision for the Future Entity and it is not just a single board member representing the interests of consumers and SMEs. The Chair and Non-Executive Directors are expected to represent their interests, and both customer experience and consumer policy expertise should be present on the Board. This can be bolstered by having separate representatives for consumers and SMEs on the Advisory Committee.

c) 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?

- The Chair should select the consumer representatives, based on a transparent process and clear criteria. At a high level, the criteria should include the ability to represent multiple consumer and SME interests and their needs, with senior leaders in the ecosystem.

Sustainability / adaptability

a) 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?

- The CMA9 will be required to be Members of the Future Entity for a minimum of three years and can only leave after that period if alternative arrangements were in place to meet the residual requirements of the Order. Any alternative arrangements would require investment by the CMA9, which could not be 'commercially' justified if the Future Entity continued to demonstrate value-for-money for complying with the Order and obligations under the Payment Services Regulation 2017.

b) 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?

- In theory non CMA9 account providers could have a ‘free ride’, however there are incentives to become Members and contribute to funding. These include gaining access to services provided by the Future Entity (e.g. Directory, implementation support), being able to submit new requirements and representation in governance forums and decision making. To further mitigate the risk of a ‘free ride’, the Chair and Board of the Future Entity should look to enhance the benefits of Membership over time.

c) 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?

- The vision, capabilities, governance model and Membership / participant model of the Future Entity means it already has the flexibility to adopt to Open Finance or Smart Data initiatives if required.

d) 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?

- Insofar that that payment initiation is just an overlay service, that relies on the existing Faster Payments Scheme rails, it’s hard to see why this would need to sit separately as a scheme in and of itself), and arguably by dealing with it separately (or under separate governance, such as via Pay.UK) you introduce new potential barriers to access for fintechs and TPPs straddling the AISP/PISP line in their propositions by creating standard/scheme arbitrage that introduces an addition level of complexity to industry engagement.
- This should nonetheless remain under review considering developments within the PISP market both from a proposition perspective, but also in light with regulatory focus under the PSR’s recent Call for Views on consumer protections in interbank payments and HMT’s wider Payments Landscape review.

e) 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?

- UK Finance’s proposal is sustainable and designed to evolve to meet the needs of ecosystem participants and does not raise any other concerns.
- Any alternative approaches would be ‘regulatory’ in nature and would likely limit the ‘flexibility’ of the Future Entity model and disrupt the high level of collaboration within the ecosystem.

Monitoring Arrangements

a) 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?

- The Future Entity should continue to provide data to the compliance monitoring function, as this would maintain current arrangements and does not require additional investment by the CMA9 in new reporting capabilities.
 - The service and delivery capabilities of the Future Entity should be separate from compliance monitoring to prevent potential conflicts of interest. However, combining the compliance monitoring of the CMA9 with the Order and non CMA9 account providers and third-party providers with PSD2, would benefit the ecosystem by providing a clear and consistent compliance reporting framework for all impacted stakeholders. This would ensure all participants complied with the requirements of the standards (including Customer Experience and Operational Guidelines) and that end users had a highly available and performant experience.
- b) *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?***
- Having consistent monitoring in place for the ecosystem would benefit end users and participants alike. This would have to be agreed with the FCA as they are responsible for monitoring compliance with PSD2 regulatory requirements. The role of the Future Entity should be to provide data on ecosystem participants to any monitoring function, whether that's a regulatory function or a separate monitoring function charged with specific compliance monitoring objectives.
- c) *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?***
- As covered below in our response to question 5 in more detail, before considering the appropriateness of appointing an independent professional services firm, the CMA should consider the extent to which a separate monitoring function is required in respect of the CMA9 continuing to meet, in isolation, the objectives of the CMA Order. As raised above, combining the compliance monitoring of the CMA9 with the Order and non CMA9 account providers and third-party providers with PSD2 would benefit the ecosystem. Our view is that, to the extent possible (and accepting that some CMA order requirements will be more applicable to CMA9) monitoring should be consistent across the ecosystem for all participants to ensure the best outcome for end users. It is therefore in this context that the CMA, potentially in conjunction with the FCA, should consider whether appointing an independent professional services firm (using a transparent process to prevent conflicts of interest) would drive operational efficiency for the benefit of the broader Open Banking ecosystem.
- d) *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.***
- The new monitoring entity perform any initial screening before any referral to the CMA.
- e) *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?***

- With many of the substantive ongoing obligations for open banking (derived from Article 14 of the Order) overlapping with the monitoring and supervision carried out by the FCA under PSD2, we consider that a separate monitoring function would add unnecessary complexity.
- We accordingly propose that the CMA proceed without appointing a specific replacement monitoring entity for the Implementation Trustee, once the open banking implementation phase is complete, and assume responsibility for the Article 14 monitoring itself. This would substantially match the ongoing monitoring, compliance and enforcement role that the CMA already performs for the rest of Part 2 (Articles 12–13), and for Parts 3–5 and 7–11 of the Order.
- Many of the open banking obligations on the CMA9 banks that arise from the Order (via the Article 14 requirement to comply with the Read/Write Standard) are identical to or align closely to requirements that the CMA9 and ASPSPs more broadly are subject to under PSD2. This means that a typical instance of a material breach of the Read/Write Standard will frequently also give rise to a breach of PSD2, and a requirement to notify the FCA of that breach; and the remedial actions agreed with the FCA are also likely to be sufficient to remediate compliance with the Order.
- In those circumstances, we would expect that the bank in breach would inform the CMA of the breach alongside the FCA, but the CMA could be largely content to accede to the FCA resolution of the issue, rather than needing to take separate enforcement action itself.
- While the Read/Write Standard and PSD2 requirements will not always fully align in this way, this close alignment ought to mean that in practice the circumstances in which the CMA needs to take the lead in determining an effective response should be limited.
- Alongside that:
 - the Article 46 annual compliance reports for Part 2 would continue to be provided to the CMA, and the banks would be subject to the requirement to update the CMA of non-compliance under Article 56.2. This should substantially reduce the need for resource-intensive own-initiative investigation by the CMA.
 - Although in practice the resolution of a material breach would likely be led by the FCA with its PSD2 responsibility, the CMA would retain such power as it has at present to appoint a monitoring trustee should a particular need arise, or to issue directions to a bank that themselves anticipate the use of a monitoring trustee, in case of material breach.
 - Retaining responsibility for a technical area with the CMA, with its remedies team with deep experience in this area, would appear to reduce the cost of a new monitor coming up to speed (especially if the monitor is rarely called upon to act), or the risk of a new monitor taking an approach to interpretation or enforcement at odds with the CMA. But the parallel responsibility of the FCA and CMA, with their respective bases of experience, should provide an opportunity for informed feedback and challenge between the regulators, improving regulatory practice.
 - the Future Entity would continue to collate management information, which could be made available to the CMA.
 - no change is proposed to the monitoring and enforcement of the other ongoing operative provisions in Part 2 (Articles 12–13), or to the other operative parts of the Order (Parts 3–5 and 7–11) – in practice these are already monitored and enforced directly by the CMA.

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

- No.

Transitional arrangements – design considerations

- a) *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?***
- It is the responsibility of the Trustee and Chair once appointed, supported by the Transition Advisory Group and Transition Group, to ensure that OBIE's ongoing services are not disrupted during transition.
- b) *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?***
- The Trustee's current monitoring function should be maintained in OBIE during the transition process, up to the point that the new monitoring function is ready to take over.
- c) *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?***
- The legal obligation for the transition of the entity resides with the CMA9. However, it is proposed that a Transition Advisory Group is formed to provide the governance for the transition comprising: CMA, CMA9 reps, OBIE rep, TPP rep, end user rep and interim Chair. The Transition Advisory Group will govern and inform establishing the work of a wider Transition Group, focused on the transition of OBIE to the Future Entity. OBIE would provide the contracting party and funding for all the required transition activities, e.g. to recruit a Chair, undertake due diligence and hire third party support.
- d) *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?***
- The Roadmap is due to complete September 2021 and the transition from OBIE to the Future Entity is due to complete by end Q1 2022, 6 months later. The CMA should permit the commencement of the transition process, as OBIE should have completed all activity relating to standards and defining Roadmap outcomes. It will remain the responsibility of the Trustee's current monitoring function and then the new monitoring function to ensure the CMA9 complete delivery of agreed Roadmap elements.
- e) *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?***
- The governance of the Future Entity will be set up and run in parallel with OBIE governance until the transition is completed. Prior to the Future Entity governance being in place, the Transition Advisory Group should be responsible for agreeing any development beyond the scope of OBIE (e.g. to support Open Finance or Smart Data).
- f) *Are there any other issues regarding transition arrangements which the CMA should be aware of?***
- No.