

The future oversight of the CMA's open banking remedies

Open Data Institute response

About the ODI

The Open Data Institute (ODI) is an independent, non-partisan, not-for-profit organisation founded by Sir Nigel Shadbolt and Sir Tim Berners-Lee in 2012.

The ODI wants data to work for everyone: for people, organisations and communities to use data to make better decisions and be protected from any harmful impacts. We work with companies and governments to build an open, trustworthy data ecosystem. Our work includes:

- **pilots and practice:** working as a critical friend with organisations in the public, private and third sectors, building capacity, supporting innovation and providing advice
- **research and development:** identifying good practices, building the evidence base and creating tools, products and guidance to support change
- **policy and advocacy:** supporting policymakers to create an environment that supports an open, trustworthy data ecosystem

We believe that our six manifesto points will help us to achieve our vision:

- **Infrastructure:** Sectors and societies must invest in and protect the data infrastructure they rely on. Open data is the foundation of this emerging vital infrastructure.
- **Capability:** Everyone must have the opportunity to understand how data can be and is being used. We need data literacy for all, data science skills, and experience using data to help solve problems.
- **Innovation:** Data must inspire and fuel innovation. It can enable businesses, startups, governments, individuals and communities to create products and services, fuelling economic growth and productivity.
- **Equity:** Everyone must benefit fairly from data. Access to data and information promotes fair competition and informed markets, and empowers people as consumers, creators and citizens.
- **Ethics:** People and organisations must use data ethically. The choices made about what data is collected and how it is used should not be unjust, discriminatory or deceptive.
- **Engagement:** Everyone must be able to take part in making data work for us all. Organisations and communities should collaborate on how data is used and accessed to help solve their problems.

We have a mixed funding model and have received funding from multiple commercial organisations, philanthropic organisations, governments and intergovernmental organisations to carry out our work since 2012.

Consultation response

This is the ODI's response to the Competition and Markets Authority (CMA) consultation on [The future oversight of the CMA's open banking remedies](#). We focus on the desire to see the 'Future Entity' (the organisation the CMA proposals suggest is created) to be a sustainable and trustworthy [data institution](#) – an organisation that stewards data infrastructure on behalf of others, towards public, educational or charitable aims.

The UK already has some well-known data institutions. For example, in the public sector, the [Office for National Statistics](#), [Ordnance Survey](#) and [NHS Digital](#) each have responsibilities defined in legislation to collect, maintain, and share data. There are other examples of data institutions beyond the public sector. [UK Biobank](#) is a large-scale biomedical database that supports the advancement of modern medicine and treatment. [OpenStreetMap](#) is a global civil society initiative that started in the UK, and gives open access to standardised geospatial data that enables applications to scale world wide.

In this case we see the Future Entity as a data institution stewarding open data standards and guidelines to drive competition and innovation in the retail banking and finance sector, ultimately leading to better consumer outcomes in the form of new and better services.

Our general views on the future oversight of open banking and the CMA proposals include that:

- The Future Entity should have a vision and mission that recognises and incorporates its impact beyond the banking and finance system.
- The Future Entity should strive to balance its needs for sustainability against its mission and prioritise the sustainability model that allows for the most equitable outcomes.
- The Future Entity should strive to be a trusted and trustworthy data institution with a commitment to openness and transparency.
- Open banking is an ongoing data access initiative that will require pronounced changes in culture and practices. The Future Entity has a significant leadership role to play within the sector, particularly in ensuring that those involved have the necessary capabilities and [data literacy](#).
- We also stress that any commitment to being 'at the heart of the Open Data and Payments market' should include the publication of data under an open licence and enable participants in the market to do so as well. Failure to do this, [as is the current case with data that is cited as 'open data'](#)¹ in the open banking ecosystem, will mean the advantages of open data will fail to be realised by the ecosystem and undermines wider national and international efforts for open data.

Regarding the process of the consultation itself we have the following comments:

- It appears that this consultation has been largely shaped by UK Finance, a trade association for the UK banking and financial services sector. This could send the message that the priority mission and vision of the Future Entity is focussed on the

¹Dodds (2017), '[The limitations of the open banking licence](#)', <https://blog.ldodds.com/2017/03/30/the-limitations-of-the-open-banking-licence/>

benefits to business. We believe the CMA should take a wider view including benefits to consumers and to society, and that this consultation should have had a more equitable foundation and implementation.

- The process through which the consultation document was created was not transparent or inclusive. We are concerned about the level of engagement of CMA and UK Finance with groups such as people in vulnerable circumstances and end users. The lack of clarity in engagement may have harmed trust in the process with various stakeholders, and altered the type of engagement by these stakeholders over the last 12 months.
- The Future Entity consultation was conducted over the period of one month, leading up to the UK government fiscal year end which is often a busy time for organisations interested in this consultation. A longer consultation process may have enabled a broader and more inclusive set of responses.

Questions relating to the leadership of the Future Entity:

1. 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 (eg 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?

1.1 Appointing the Chair with ‘votes weighted by participant type’ gives rise to the risk that a particular stakeholder group (eg the largest banks) might have a disproportionate degree of influence over the appointment. This could impact the ability of the Future Entity to carry out its duties of serving the interests of consumers and small and medium-sized enterprises (SMEs) and prioritising end-users outcomes. Allocating equal votes on who is Chair to all members is a more equitable, transparent, and representative approach.

1.2 The criteria used to identify suitable candidates for the Chair should be clear and satisfy the goal of being an independently-led and accountable body. This is likely to mean that the Chair should not be from government or from a key industry player such as a CMA9 bank, challenger bank, or financial technology (fintech) provider. Leaders in data, technology and innovation policy from academia and the third sector would be more suitable candidates for this role since industry and government will already be adequately represented.

1.3 An alternative system for selecting the Chair would be an [instant runoff voting process](#), wherein all Members get one vote. All Members should be able to nominate a Chair for election. The Board and Advisory Committee should be informed of the process.

1.4 The Members should approve and appoint the Chair with the CMA's approval as was the case in the appointment of the Trustee. There should be clear guidelines as to why the CMA could reject the appointment of a Chair voted for by the members, such as due to conflict of interest, or another such area of their purview.

2. 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?

2.1 The proposed composition of the Future Entity Board takes good steps to balance out potentially competing interests in the banking and finance industry. However, the board could go further in ensuring the views of key stakeholders that have not traditionally been seen as industry players are incorporated as well.

2.2 The ethical access, use and sharing of data is critical to the open banking and open finance ecosystems. To this point, there should be an independent Board Member that represents this viewpoint, and has data ethics, privacy and responsible use of data and technology at the heart of their work. In setting up the Future Entity, it would be helpful to refer to the [Data Ethics Framework](#) developed by the government and the ODI's [Data Ethics Canvas](#), both of which would provide valuable guidance on the ethical use of data.

2.3 Open banking and open finance have the opportunity to make a material impact on the lives of millions of people in the UK, by providing services that improve their financial health, by appropriately including the unbanked and underbanked, and by helping channel funds into environmentally responsible enterprises. To this point, there should be independent Board Members that represent these viewpoints, and have the broader social and environmental impact of open banking and open finance at the heart of their work. We recommend a Board member focussed on individual benefits (such as improvements in savings by people in financially vulnerable circumstances), a Board member focussed on societal benefits (such as improvements in competition, improvements in health and welfare) and a Board member focussed on environmental benefits (such as green finance).

3. 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?

3.1 The board should be accountable to the Members and as the open banking and open finance ecosystem will grow to be an important part of the finance sector in the UK, and therefore a public asset, the board should also be accountable to the public.

3.2 To assure this public accountability, there should be a set of monitoring and evaluation requirements that are openly published. Currently, Open Banking Limited monitors and reports on some API KPIs, including availability, number of calls, and call success rate.² We recommend extending and expanding the monitoring and reporting on services, to improve understanding about how data shared through open banking is being used. This will improve transparency and could lead to better awareness, reduced misunderstanding of how services work and better financial and data literacy. We recommend that information about who implements open banking and open finance standards, and the quality of that implementation, is published as open data. For example, the [Consumer Priorities for Open Banking](#) report describes a taxonomy of financial services built with open banking APIs.³ This measures the breadth of consumer choice being enabled by open banking, and categorises fintech by the ability to meet particular consumer segments' financial health needs. Similarly, metrics for the number of new accounts opened via open banking integrations, or access to financing to populations, such as those with protected characteristics, could also be created as appropriate metrics to determine whether open banking implementations are generating value for all stakeholders. The Future Entity should have an explicit commitment to openness which should include the publishing of open data, making other data as open as possible, and the use of open standards where possible. An initial step would include defining and sharing a data model of open data standards and KPIs that could be collected as part of industry monitoring and evaluation.

² Open Banking (2021), '[Open Banking APIs Performance](https://www.openbanking.org.uk/providers/account-providers/api-performance/)', <https://www.openbanking.org.uk/providers/account-providers/api-performance/>

³ Open Banking (2019), '[Consumer Priorities for Open Banking](https://www.openbanking.org.uk/wp-content/uploads/Consumer-Priorities-for-Open-Banking-report-June-2019.pdf)', <https://www.openbanking.org.uk/wp-content/uploads/Consumer-Priorities-for-Open-Banking-report-June-2019.pdf>

4. 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?

4.1 Government funding is an investment in open banking and open finance akin to industrial research and development investment. Similar bodies managed by other countries, such as Australia's [Consumer Data Standards body](#), which creates banking API and data standards, is funded by [Data61](#), a division of the [Commonwealth Scientific and Industrial Research Organisation \(CSIRO\)](#) in recognition of the innovation potential that investment in open standards generates.

4.2 Research is warranted to measure the income being contributed by open banking and open finance stakeholders already to demonstrate the potential for sustainability already being generated by the current open banking system. For example, the HMRC use of open banking technologies is expected to automate existing tax processes, reduce current expenditure and reduce tax avoidance and auditing costs⁴. Similarly, the OECD recognises multiple benefits of applying APIs to taxation systems⁵. It can be expected that the UK government will generate savings from the adoption of open banking by HMRC. There are other processes that already occur that generate revenue for the UK government from open banking: There are over 150 UK-originating fintechs specifically using open banking APIs. These are all employing staff, receiving investments, and contributing to the UK tax base. There are also indirect benefits, such as reduced waiting times, greater savings and lending contributions and the multiplier effect this has on the wider economy, and reductions in environmental costs from optimised digital infrastructure. There are already both cost-reductions through government service efficiencies and increased revenues being generated from open banking's short history, and calculating the potential contribution of the Future Entity proposal to the UK government revenue base would help further understand the value of the UK government supporting the Future Entity in ways other than direct self-generating income.

⁴ Global Government Forum (2020), '[HMRC explores the potential of open banking to 'streamline' tax](https://www.globalgovernmentforum.com/hmrc-explores-open-banking-potential-streamline-tax/)', <https://www.globalgovernmentforum.com/hmrc-explores-open-banking-potential-streamline-tax/>

⁵ OECD (2019), '[FORUM ON TAX ADMINISTRATION Unlocking the Digital Economy - A Guide to Implementing Application Programming Interfaces in Government](http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/unlocking-the-digital-economy-guide-to-implementing-application-programming-interfaces-in-government.pdf)', <http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/unlocking-the-digital-economy-guide-to-implementing-application-programming-interfaces-in-government.pdf>

5. 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?

1.1 N/A

Questions relating to the adequate resourcing of the Future Entity

6. 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?

6.1 In overall terms, the framework proposed by UK Finance could be capable of performing the functions necessary to ensure the effectiveness of the CMA's open banking remedies going forward, however this should not be seen as an outright endorsement, and the CMA should incorporate the views of the respondents to this consultation rather than just implement the UK Finance framework.

6.2 We recommend that the Future Entity see itself, and be recognised, as a data institution – an organisation that stewards data infrastructure on behalf of others, towards public, educational or charitable aims. While there are [several roles that data institutions play](#), we articulate the role of Open Banking Limited, and the Future Entity, as 'developing and maintaining identifiers, standards and other infrastructure for a sector or field'⁶. We encourage the Future Entity to recognise its status as a data institution and engage with other data institutions, that may play different roles or exist in different sectors, but face similar challenges around sustainability.

⁶The ODI (2021), '[What are data institutions and why are they important?](https://theodi.org/article/what-are-data-institutions-and-why-are-they-important/)', <https://theodi.org/article/what-are-data-institutions-and-why-are-they-important/>

7. 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?

7.1 With the implementation of the UK National Data Strategy, including initiatives like the rollout of Smart Data and open finance, there will be an increase in the need for data portability policy and technical expertise from organisations both within the finance sector, and in connected sectors. This was confirmed in the government's [Build Back Better: our plan for growth](#)⁷ which highlighted the government's intention to support data and digital innovation and growth across the economy, including in fintech. There will be a number of initiatives that will follow, including a Digital Strategy, that could provide the Future Entity with sources of external revenue.

7.2 Some revenue generation could be created through application of penalties and fines where stakeholders do not meet open banking standards. While this would hopefully not be a sustainable mechanism (as if all actors within the open banking ecosystem were acting in good faith, then no revenue would be generated), globally it appears that open banking is not being implemented in the spirit it is intended. [Studies from the European Banking Authority](#), for example, demonstrate that banks create obstacles that reduce the flow of data that can be channelled through open banking APIs, in contravention of agreed standards.⁸ The EBA has identified that national regulatory authorities can place penalties on banks that fail to remove obstacles. While this is not a sustainable funding avenue, the use of fines could allow the Future Entity to recover some monitoring costs, or apply revenue generated to education programmes that support banks to act in accordance with open banking standards.

⁷ HM Treasury (2021), '[Build Back Better: our plan for growth](#)', <https://www.gov.uk/government/publications/build-back-better-our-plan-for-growth/build-back-better-our-plan-for-growth-html>

⁸ EBA (2021), '[Opinion of the European Banking Authority on supervisory actions to ensure the removal of obstacles to account access under PSD2](#)', https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2021/963372/Opinion%20on%20supervisory%20actions%20for%20removal%20of%20obstacles%20to%20account%20access%20under%20PSD2.pdf

8. 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?

8.1 The Future Entity has the opportunity to be a mission-driven organisation, and therefore implement an operational model that is focussed on delivering to its mission, which is one of direct benefit to society. It is from this viewpoint that the Future Entity should understand the relationship between its mission and receiving significant funding from the TPP community. A flat rate for TPPs would be a regressive, anti-competitive policy, which would work counter to the stated goal of serving the interests of consumers and SMEs and prioritising end-users outcomes. The Future Entity should research, and where possible implement, a progressive funding model in order to maximise the inclusiveness of the ecosystem and the equitable outcomes of the initiative.

8.2 Novel models of revenue collection that could be researched include:

- a commission on large volume transactions made by standardised APIs, so that smaller startups and scale-ups are not barred from market entry, but that global platforms contribute to the functioning of national data infrastructure from which they benefit.
- Creation of API neutrality taxes whereby if financial services and banking providers do not provide a machine-readable mechanism for customers to gain access to their own data, they pay a fee based on the size of their customer base.
- Creation of a digital services value-added tax whereby if a financial services or banking provider does not make agreed industry-wide, aggregated, anonymised data available in machine readable format, they pay a value-added tax in the same way that value-added taxes are paid by end consumers who do not use consumables in another stage of production.

9. 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?

9.1 The report '[Open Banking, Preparing for lift off](#)⁹', prepared by the ODI and Fingleton for Open Banking Limited mentions functions and services that are verified by data users and other stakeholders to be working well, such as the Open Banking standards themselves, the implementation approach and the open banking ecosystem. The Future Entity should strive to continue to provide these services and other services, mandated or otherwise, that have

⁹ The ODI and Fingleton (2019), '[Open Banking, Prepare for lift off](https://www.openbanking.org.uk/wp-content/uploads/open-banking-report-150719.pdf)', <https://www.openbanking.org.uk/wp-content/uploads/open-banking-report-150719.pdf>

proved fundamental to maintaining a well-functioning ecosystem, so that it can continue to meet its mission of serving the interests of consumers and SMEs and prioritising end-users outcomes.

10. 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?

10.1 In our report ‘[Designing sustainable data institutions](#)’¹⁰ we propose a framework for thinking about the sustainability of data institutions that involves considering three different elements:

- The role that the data institution plays in its data ecosystem, which directly impacts the type and source of its revenue; and the underlying costs that the institution has to cover.
- The stage that the data institution is at in its lifecycle, which informs the type of revenue it needs to acquire, and how those revenue sources may evolve over time as the institution and its ecosystem matures.
- The business model of the data institution, which informs the choice of revenue model that best aligns with its purpose

10.2 Our research has identified some broad patterns around how data institutions are approaching sustainability. At an early stage in their lifecycle, data institutions need financing to support the process of scoping and launching the institution. This is typically provided through grants and other non-earned revenue sources. Later in their lifecycle they need funding to cover costs of service provision while generating sufficient revenue to build reserves to ensure long-term sustainability and invest in necessary infrastructure. At this stage institutions use a mixture of earned and non-earned revenue. For many institutions this mix evolves over time based on the changing needs of the community they support.

10.3 While our exploratory research was not intended to produce a comprehensive survey of the many data institutions that exist across sectors, through our desk research and interviews we have already identified some common issues and challenges in the design of sustainable business and revenue models. Based on those insights, we offer some initial suggestions for the scoping, designing and running of the Future Entity as a data institution:

- **Ensure the revenue model aligns with organisational goals**
 - Define a clear understanding of the data ecosystem being created and supported, and the ways in which value will be created and shared.
 - Consider how adopting specific revenue streams will impact the operational focus, cost structure and ecosystem of the institution. Fundamentally, the

¹⁰ The ODI, (2020), ‘Designing sustainable data institutions’, <https://docs.google.com/document/d/1k0tcVStnXb7jpS7P9hhFQ2d3Spu45J5GkVtXpUdXwCg/edit>

revenue model should be aligned with the goals of the Future Entity and not run contrary to them.

- **Consider both financial and non-financial aspects of sustainability**
 - The Future Entity should have a governance structure that aligns with a goal of sustainability.
 - The Future Entity should invest in maintaining and growing the open banking and open finance community and ensuring that open standards and other data infrastructure products and services remain useful to stakeholders.
- **Learn from others**
 - Continue to examine and research how open standards bodies and regulatory data institutions are building sustainable revenue business models, and how they are demonstrating wider societal value to demonstrate any government investment.
 - Work openly to share successes and failures. It will be helpful for similar entities in other sectors and the wider smart data ecosystem if the Future Entity shares the decisions it makes, the challenges it faces and is open about its business and revenue models.

10.4 In our report '[Data institutions: reducing costs and improving sustainability](#)'¹¹ we explore the revenue models used by data institutions by looking at a broader set of data institutions through our desk research. We also examine the cost structures of a small number of data institutions and the approaches they have taken to lower costs so that they do not have to generate as much revenue. We look at data institutions that are relatively young as well as others that have been operational for a long time.

10.5 We found further validation that a mix of revenue sources, while not always feasible or indeed necessary, seems to be common among 'successful' data institutions. We also found that a mixed revenue model can help distribute the costs of running the data institution more equitably among the stakeholders that gain value from the data institution's work. Some revenue streams, such as membership and subscription fees, seem to be used only when data institutions play particular roles while others, such as grants, appear to be common across different roles. Understanding the value of data institutions for key actors in the ecosystem that surrounds them – for data contributors, data users, decision makers and funders – may help to identify the revenue models available to data institutions. This will be an essential practice needed from the Future Entity. Open banking and open finance enables many stakeholders to diversify and experiment with digital business models. As an industry ecosystem leader, the Future Entity will best be able to contribute to these discussions by itself demonstrating a mixed revenue model with multiple revenue streams.

10.6 We examined the key activities and key resources that drive data institutions' costs. Staff costs appear to make up the majority of costs for data institutions, driven by activities such as technical infrastructure development and maintenance; data collection, curation and

¹¹ The ODI (2020), 'Data institutions: reducing costs and improving sustainability', <https://theodi.org/article/data-institutions-reducing-costs-and-improving-sustainability/>

maintenance; strategy development; governance; and ecosystem engagement. The strategies to reduce costs come either from the choice of services used – for example, choice of data hosting service – or from the design of the data institution and its services. Most strategies to reduce costs come with risks that need to be balanced.

10.7 Our recommendations for those scoping, designing and running data institutions include:

- Be transparent about the full costs involved in running data institutions
- Understand the consequences of cost management strategies
- Understand and communicate the value offered to key actors in the data ecosystem
- Develop and iterate on an evaluation plan to demonstrate impact

Organisations can bring in revenue by selling added-value services where the data user pays for access to a more reliable service than the free public service or API. When applied to the open banking context, larger volumes of API transactions, or users of ‘premium’ open banking API standards, could pay an additional fee for use of standardised instruments or to process large API volumes in an international context in similar ways to government revenue generation for international transfer payments and other aspects of the traditional banking financing system.

Questions relating to the representation of consumers and SMEs

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

11.1 Having consumers and SME representatives on the board and having Members directly vote on the Chair is necessary, but alone it is not a sufficient means of ensuring effective representation of consumer and SME interests. There should also be constant monitoring, evaluation and feedback with the stakeholder communities to ensure that this representation is occurring.

1.2 A clear data model that identifies how value is expected to flow from open banking and open finance ecosystems to end consumers should be defined with key performance indicators identified. These should form part of an open data model with all participants of the open banking contributing anonymised, non-competitive data to assist in monitoring and evaluating the impact of open banking and open finance. This may in turn require other datasets to be collected with greater granularity. For example, data on business ownership based on protected characteristics is not currently collected and therefore data to examine whether open banking and open finance are generating financing and financial health opportunities for women- and minority-owned businesses is not currently possible.

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

1.1 The interests of consumers and SMEs are connected but do not perfectly overlap. As previous research in this topic, like the report [Consumer Priorities for Open Banking](#)¹², by the Independent Consumer and SME Representatives for the Open Banking Implementation Entity (OBIE) Faith Reynolds and Mark Chidley respectively, has shown, having separate people representing these interests, rather than combining them is far superior. This is both because there are differences in interests – and sometimes these interests are opposite – and as the effort and workload of such a role demands more than a single person.

1.2 We suggest two consumer reps on board to ensure that consumers are heard to the same extent as TPPs, which currently have one seat for a PISP and one for an AISP. Given the nature of TPPs, it is very possible an alliance could easily form between a PISP rep, an AISP rep that's also a PISP, and an independent non exec from 'merchant or international perspective', thus making their voice on the board substantially stronger than the consumer voice.

13. 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?

13.1 There should be a specific reference to the needs of people in vulnerable circumstances or less well-off consumers that aligns with the overarching ambitions in the Smart Data Function for providing additional services and safeguards to people in vulnerable circumstances or less well-off consumers. An organisation representing low-income consumers should be included to help ensure that open banking and open finance is generating benefits for under- and unbanked consumers. A monitoring and evaluation data model must include indicators to measure the impact of open banking on improving financial service access to those with low incomes and people in vulnerable circumstances.

¹² Reynolds, Chidley (2019), 'Consumer Priorities for Open Banking', <https://www.openbanking.org.uk/wp-content/uploads/Consumer-Priorities-for-Open-Banking-report-June-2019.pdf>

Questions relating to sustainability/adaptability

14. 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?

14.1 The assumed ability of one or more of the CMA9 to withdraw from the Future Entity is a cause for concern in terms of the sustainability of these arrangements. As the largest market share holders and largest data providers in the ecosystem, their exit from any and all of the arrangements can jeopardize the long-awaited benefits of the CMA Order. Exiting the open banking ecosystem could practically infringe on the right to data portability by removing the data infrastructure currently underpinning that data portability. Staying in the ecosystem and not adopting new changes that are not mandated could also create friction in the interoperability that would produce bad user experience and poor consumer outcomes. As the open banking standards and ecosystem environment creates benefits for the CMA9 and enables interoperability for all stakeholders, fees for non-participation or withdrawal from participation could act as a deterrent against the minimal cost savings of withdrawal.

14.2 [The ODI's conceptual model for data sharing in a simple economy](#) suggests potential paths for market development that would need to be investigated through further research.¹³ The model can be adjusted to account for:

- the amount of data access,
- the privacy requirements of consumers,
- the existence of a 'privacy shock' (a sudden and unexpected sharing of data) to the management of data by companies,
- how much consumers like to buy lots of products from one company, and
- the size of firms.

When big companies are required to share more data with small ones in a low-trust scenario that includes a privacy shock, they tend to lose market share in some sectors but expand across more sectors while product market dynamism rises.

14.3 The model shows that a high-trust, high-data sharing scenario tends to raise innovation while also leading to the expansion of firms that are already large. The complexity of products available to consumers rises, as firms are able to combine more datasets, and consumers

¹³ The ODI (2019), '[How we developed a model of data sharing in the economy](https://theodi.org/article/how-we-developed-a-model-of-data-sharing-in-the-economy/)', <https://theodi.org/article/how-we-developed-a-model-of-data-sharing-in-the-economy/>

benefit from being able to buy products from more companies that can satisfy their needs. But the absence of a privacy shock means that firms with established positions are, over time, able to exploit their original advantages with greater access to others' data, leading to a bigger position in the market.

14.4 It should be noted that these results are based on a model that is purely conceptual and only includes the basic features of data sharing in a simple economy, but can be used to consider market development expectations and research questions.

15. 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?

15.1 Multi-stakeholder participation is a necessary aspect to ecosystem functioning and growth. It is possible to introduce KPIs for Future Entity Board members to measure their contribution to enabling ecosystem benefits for all, such as engaging and supporting widespread adoption of open banking standards, or contributing to use case prioritisation discussions. It is preferable that wider membership benefits from open banking standards. The use of open banking standards creates a more secure, robust environment in which open banking and open finance services can be delivered. This does not equate with a ‘free ride’. In open ecosystems, all participants create value through network effects and through strengthening data flows. Again, a well-defined data model can identify these benefits and address gaps and limitations of an open ecosystem without classifying any particular stakeholder segment as a ‘free rider’.

16. 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?

1.1 The Future Entity could be a suitable vehicle for the implementation of other ‘open’ projects such as the [FCA’s Open Finance initiative](#)¹⁴, if and only if there were a number of additional safeguards for the additional risks that the FCA’s Open Finance initiative exposes to UK finance service consumers. We outline these risks and much more in [our response to the FCA call for input on open finance](#)¹⁵.

¹⁴FCA (2010), ‘Call for Input: Open finance’, <https://www.fca.org.uk/publications/calls-input/call-input-open-finance>

¹⁵ The ODI (2020), ‘The Financial Conduct Authority’s call for input on open finance: ODI response’, <https://theodi.org/article/the-financial-conduct-authoritys-call-for-input-on-open-finance-odi-response/>

1.2 The [BEIS Smart Data project](#)¹⁶ should be learning from the experience of existing and developing 'open projects' such as open banking (and its related projects open communications, energy and finance) but also from different styles of initiatives such as [OpenActive](#), a data access initiative for the leisure and activity sector, and other [decentralised data publishing initiatives](#). Researching a variety of initiatives, their impact, insights from implementation and more, will make 'open projects' like the BEIS Smart Data project, open finance and others more successful. Ongoing communication channels and wider ecosystem collaborations amongst all 'open' industry sector activities (open communications, open energy, open health, open banking, etc) should occur on a regular basis to continue UK's potential for leadership in creating open economies and an open society through open data infrastructure.

17. 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?

N/A

18. 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?

N/A

¹⁶ DBEI (2020), 'Next steps for Smart Data Putting consumers and SMEs in control of their data and enabling innovation', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915973/smart-data-consultation-response.pdf

Questions relating to monitoring arrangements

19. 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?

19.1 Our report '[Designing trustworthy data institutions](#)¹⁷' offers some initial suggestions for those currently scoping, designing and running data institutions, to help them navigate trustworthiness and trust. Regarding being trustworthy and reliably delivering on promises, we recommend data institutions, like the proposed Future Entity:

- **Define explicit expectations and boundaries.** Everything a data institution does should be constrained by its context – its purpose – to benefit some audiences and not cause harm through its actions. It should understand its role in the ecosystem: the relationships and dynamics in which it operates, including data flow and funding that could affect its purpose. It should understand its own abilities, limitations and where it should cooperate, and it shouldn't overstep those boundaries.
- **Surface implicit expectations.** Some expectations of a data institution will be implicit. Seek to understand the expectations of all those who have an interest in the operation: from regulators and direct stakeholders, to those who may be affected by using the data being stewarded.
- **Implement trustworthy practices.** Follow the rules set by the data institution itself, and by its environment. Practise ethical design with special consideration to any implicit expectations. Establish an organisational structure, governance practices and organisational processes that are aligned with the declared values and principles, and that enable the people in the organisation to deliver on expectations. Hire employees with the right skills. Be fearlessly honest.

19.2 Regarding building and sustaining trust by closing the perception gap, we recommend data institutions like the Future Entity being proposed to:

- **Demonstrate** that the data institution has implemented trustworthy practices.
- **Communicate** the data institution's own expectations and boundaries clearly.
- **Engage people with empathy.** Build mutually beneficial relationships. Understand how the data institution and its employees are perceived. Internalise the understanding gained in surfacing implicit expectations. Meet people where they are. Use language

¹⁷ The ODI (2020), 'Designing trustworthy data institutions', <https://theodi.org/article/designing-trustworthy-data-institutions-report/>

they understand. Demonstrate trust in the data institution's stakeholders.

- **Adapt and evolve collaboratively.** Circumstances change and new information comes to light, and organisations need to adapt – but trust that was placed in the data institution in one set of circumstances may or may not endure in a new set. Explain changes to stakeholders and give them the opportunity to re-establish trust on new terms. Open up the data institution's processes to influence and evolve together.

20. 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?

20.1 N/A

21. 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?

21.1 N/A

22. 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.

22.1 N/A

23. 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?

23.1 The CMA Monitoring Function should have a stronger ongoing function to ensure that the long-awaited benefits of the CMA Order are delivered. So there should continue to be a CMA oversight until such time as the market has addressed the original AECs. However, FCA plays a role in supervision and could do more, especially to ensure TPPs and other participants in the

data chain deliver for consumers. CMA should introduce a system of penalties and fines to automate more of the monitoring and conformance.

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

24.1 N/A

Questions relating to transitional arrangements – design considerations

25. 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?

25.1 N/A

26. 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?

26.1 N/A

27. 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?

27.1 N/A

28. 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?

28.1 N/A

29. 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?

29.1 N/A

30. Are there any other issues regarding transition arrangements which the CMA should be aware of?

30.1 N/A