The Consumer and Small Business Blueprint for Open Banking

FINAL

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with Daniel Jenkinson

Foreword

This submission was written by Faith Reynolds and Mark Chidley, as Consumer and SME Representatives to the Open Banking Implementation Entity Steering Group respectively, supported by Daniel Jenkinson, Senior Manager at Open Banking Implementation Entity (OBIE).

The authors took contributions from a number of organisations and experts in the course of developing this Blueprint. The authors would like to thank them for their invaluable help but note that the responsibility for the report belongs to the authors.

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The consumer manifesto for open banking

Open banking should be a force for good which promotes financial inclusion and widens access to more useful, affordable and understandable financial services for everyone.

Services should meet people's positive expectations, be upfront about how they're paid for and how they use personal data. They should be sold and delivered in a way which respects people's identity, their data and their right to make the most of their money and live the lives they want to.

Open banking should genuinely equip people with real power to control access to their account and use of their data. People should be able to stop sharing access to their account easily without facing penalties.

Open banking should be reliable and as secure as it possibly can be. It should be clear to people with whom they are sharing their data and the legitimacy of those companies.
Data breaches and fraud should be rare and exceptional, not the rule.

People, their identity and their money should be universally safe. People should not bear unfair risk. When things go wrong people should have simple, free, quick access to help and redress.

Executive Summary

Open banking is at a crossroads.

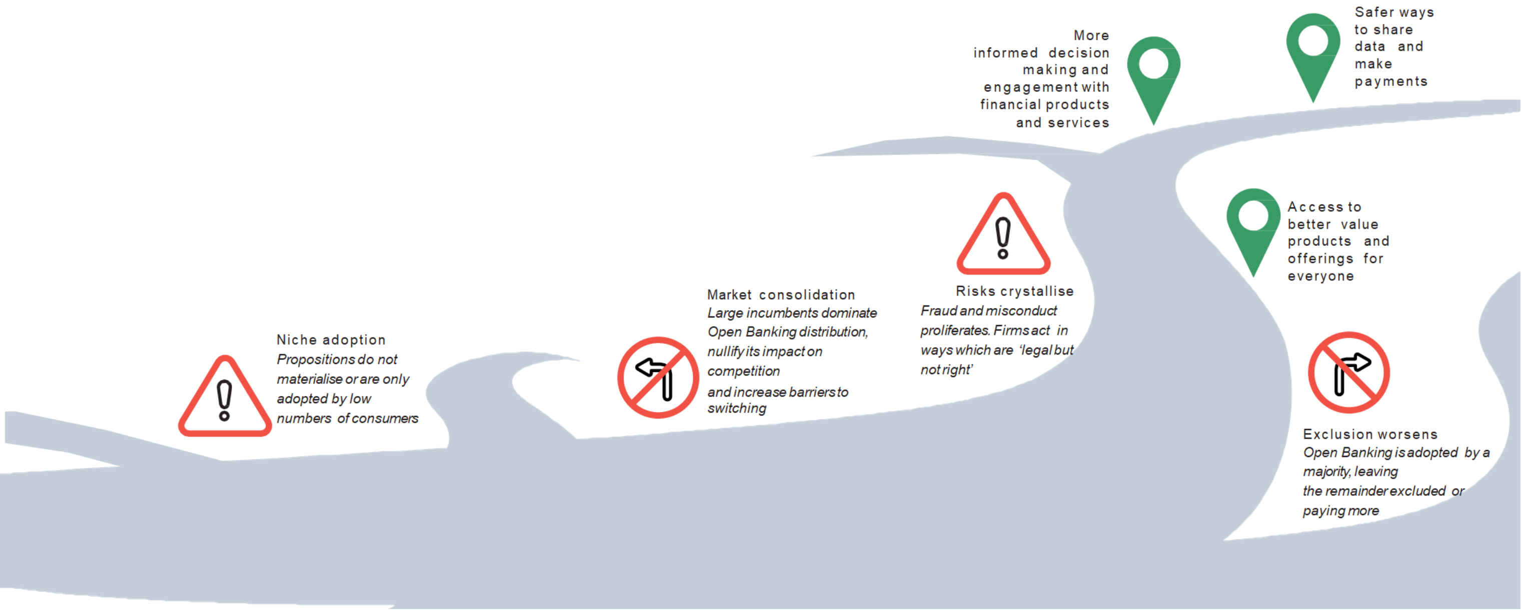
Open banking is more than just a regulatory initiative: it's a pioneering phenomenon that is shaping the international market for data. Therefore, as we look to the future of the Open Banking Implementation Entity (OBIE), we're also looking at our future data economy domestically and internationally.

New technology brings new opportunities to reduce the gap between what society expects from banking and other service providers and what we actually get. The promise and potential of opening up data is measured in the economic billions. But for people, small businesses and the planet it will be measured in whether it has actually improved financial and social wellbeing, helped the UK's small businesses to thrive and addressed challenges such as climate change and the inequality of our society.

We have previously written about the benefits and opportunity of open banking, open finance and Smart Data (2019)[1]. Little has changed since then. The vision remains as powerful and attractive as it was then, but the risks to achieving the vision are greater than they were (see Figure 1). From a consumer point of view, the costs have been borne by all, but to date only a small proportion of savvy consumers are benefiting.

UK Finance proposes a governance model for open banking that reinforces the power of the largest banks to determine the future strategy, limits the likelihood of innovation and makes the entity's decisions difficult to enforce. The industry has already proved this kind of governance model works against the needs of consumers and small businesses and does not deliver the desired innovation or progress[2]. Doing the same thing and expecting a different outcome for open banking will fail to deliver the intentions of the CMA Order and could lead to the demise of our emerging data economy and our international reputation for fintech. It could also hamper the efforts of our crucial small businesses to survive and recover following the double shock of the pandemic and Brexit.

Figure 1: Vision for Open Banking, from Consumer Priorities Report



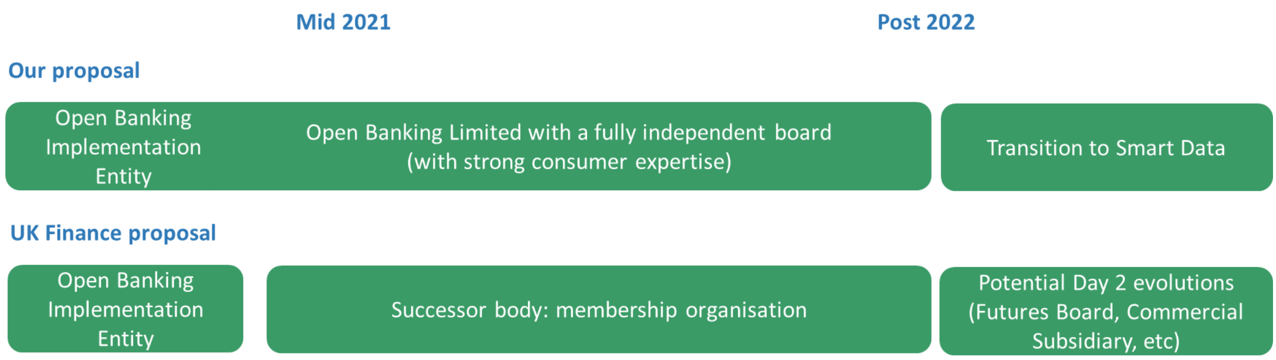
[1] Consumer Priorities for Open Banking, Reynolds and Chidley, 2019. See here
[2] Setting the Strategy for UK Payments, July 2012, HM Treasury page 11, para 3.18. See here

Our vision for Smart Data, for which open banking should be seen as a core foundation, is:

> *Smart Data simplifies and enhances life for everyone. UK consumers and small businesses benefit from a highly innovative, trustworthy, sustainable and secure Smart Data market that meets their needs for inclusive, better value products and services at an affordable price.*

Our Blueprint is in two phases: in the short-term, an evolution of OBIE; and from 2023 a longer-term governance as part of the Government's Smart Data function (see Figure 2).

Figure 2: The Evolution of Open Banking Governance



To kick-start this evolution the CMA should immediately put in place a fully independent board for Open Banking Limited (OBL), with an independent Chair, independent directors, working alongside the Trustee and a new Chief Executive.

OBL, under the supervision of its independent board, should focus in the short term on:

- Completing the Open Banking Roadmap.
- Delivering the outcomes envisaged in the CMA Order.
- Convening industry to set out the medium to long term strategy for open banking. This should be in place by the end of 2021, to bring transparency and accountability to the activities of OBL.

In parallel, OBL needs to start work on longer-term planning, focusing on:

- Working with regulators to set out a post 2022 funding model combining commercial fees and regulatory levy.
- Working with the PSR and Pay.UK to identify responsibilities and activities required to make open banking payments an effective competitive force in the UK payments market and to investigate the possibility of moving payments APIs to Pay.UK.
- Working with BEIS and the FCA to Plan for an orderly transition to a future Smart Data Function.

Figure 3: Summarised Priorities of OBL

Open banking is part of a wider vision and promise for society. It can only reach its full potential as part of open life: open finance + Smart Data. Open Banking needs Government vision, strategy and co-ordination to develop a coherent and interoperable infrastructure that will drive up rates of adoption and inclusion while reducing friction for firms and confusion for the end customer[3]. Only in this way can the outcomes envisaged in the CMA Order be delivered.

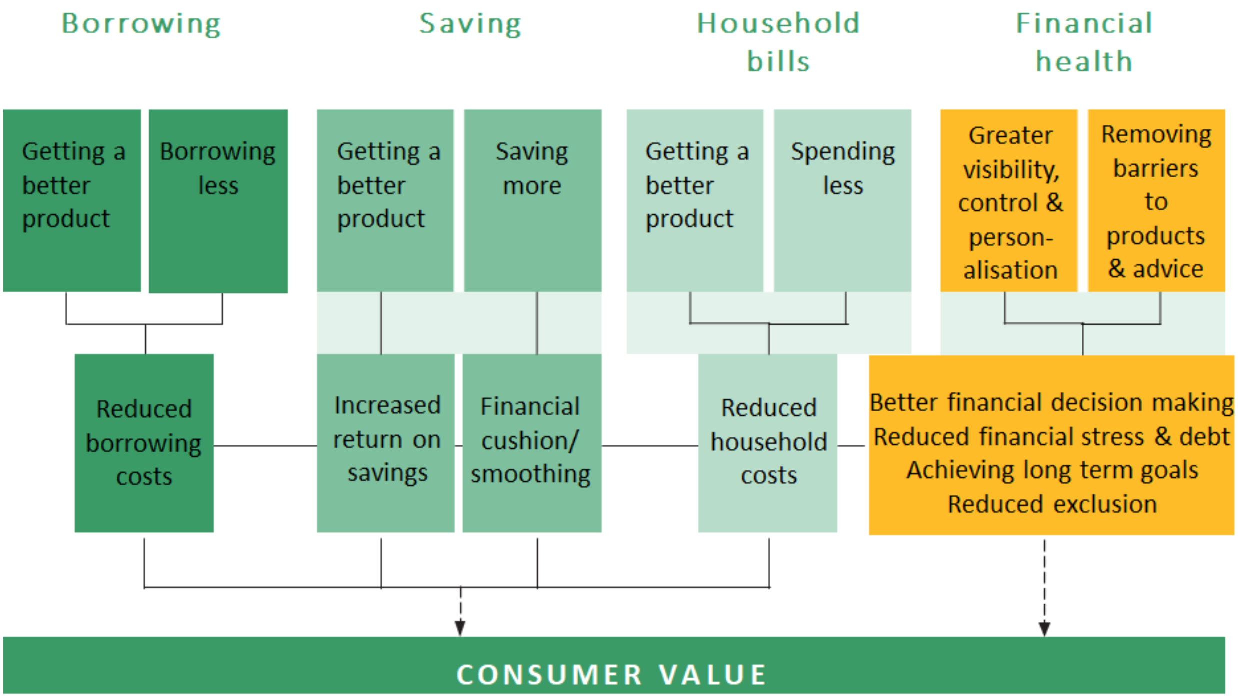
Given the pace of change, Government must now work quickly with regulators to secure the future of open banking or risk losing this opportunity and relegating open finance and smart data to niche use cases at large cost with limited benefit.

We are pleased to set out our vision and Consumer and Small Business Blueprint for open banking.

[3] FCA Advisory Group on Open Finance, 2019. See here

How well is open banking delivering for end users?

Figure 4: Sources of Consumer Value from Consumer Priorities Report



The appropriate future oversight of the open banking remedy depends on the current status of open banking, as at April 2021. While we agree with the basic premise that open banking has made considerable progress in the last four years, open banking is a long-term infrastructure development programme[4].

The CMA's summary and the UK Finance proposal overstate the progress that has been made for consumers and do not provide any robust evidence that open banking has yet mitigated the Adverse Effects on Competition the CMA identified in its study and final report[5] (2014 – 2016). As we set out below, handing over substantial control of open banking to the large banks will jeopardise these competition aims.

The UK Finance proposal suggests that the completion of the Roadmap would bring to a close the requirement for a Trustee, funding beyond residual requirements and an implementation entity.

At the heart of this is a highly misleading confusion between the completion of the Roadmap with completion of the Order. Not only is the Roadmap incomplete, but the consumer value anticipated by the CMA Order is still some way off. Figure 4 sets out some of the different ways in which consumers benefit from open banking we identified in our Consumer Priorities Report.

In Appendix 1 we robustly evidence the availability of open banking products and adoption by consumers:

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[4] FCA, Open finance Feedback Statement, 2021. See here
[5] https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk

- Very few of the CMA-envisaged, transformative use cases have emerged and those that have are typically small[6]
- Consumer adoption of open banking is low (3 million users at 5.3% suggested penetration)[7]
- Willingness to share data is very low[8]
- There is very limited evidence to demonstrate experience or impact of the remedy on consumers in addressing the Adverse Effects on Competition

We also note that many commentators highlight that the UK Fintech market is in a precarious state, with funding become increasingly difficult to secure. We have become used to the ever-expanding fintech ecosystem, but as one recent report highlighted, we shouldn't take this for granted: "around 75 per cent of all fintech SMEs currently being on the brink of a funding collapse[9]."

In Appendix 2, and summarised in Figure 5, we robustly evidence outstanding evaluation and implementation requirements:

- There is considerable work to be done by OBL to finish the Roadmap and this work is not due to be completed until 2022 (as published in the March Implementation Entity Steering Group papers)
- There are continued low levels of consent success when consumers do try to use open banking (estimated at 65%) with disagreement between CMA9 and TPPs on how this should be addressed
- Key functionality to facilitate consumer value and control over their data has yet to be evaluated or implemented

By presenting the CMA Order implementation and evaluation work as substantially complete, the CMA is downplaying the need for a robustly independent organisation to hold the CMA9 banks to account during the remaining implementation and evaluation phase of the open banking remedy.

Figure 5: Outstanding Implementation and Evaluation Required

Outstanding Areas of Implementation	Outstanding Areas of Evaluation
Any implementation requirements from two-way notification of revocation - which could potentially run to September 2022	Two-way notification of revocation – due for evaluation in Oct 2021
Implementation of changes to Consent and Access Dashboards – due to run to March 2022	Any evaluation of options to implement the FCA's decision on 90 Day Reauthentication – where the FCA's decision will not be known until June 2021.
Contingent Reimbursement Model Code / Confirmation of Payee Implementation – potentially due to run to March 2022, depending on Trustee decision.	Root Cause Analysis – the important one-year review recommended by the Trustee in his letter to the CMA – due March / April 2022
Root Cause Analysis – potentially due to run to March 2022	The iteration of the Consumer Evaluation Framework, which is scheduled for Sep 21, Apr 22 and Nov 22.

[6] OBIE, Consumer Evaluation Framework, 2021. This has not yet been published, but was made available to us as members of the OBIE Steering Group.
[7] OBIE own figures; Lloyds Consumer Digital Index, 2020. See here
[8] FCA, Financial Lives, 2020
[9] Report by Innovate Finance, 2021

Outstanding Areas of Implementation	Outstanding Areas of Evaluation
Sweeping – potentially due to run to Jun 2022	
The implementation of the Trustee's recommendations to update the CEG in relation to A12 TPP Side Protection	

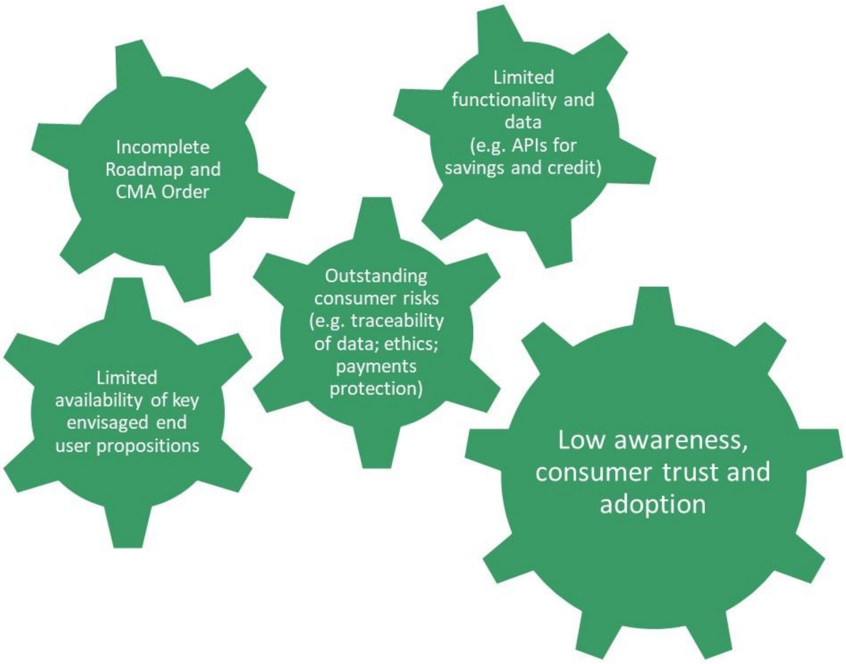
In addition to the existing Roadmap, there are a number of important outstanding issues which have yet to be resolved if the expectations set out in the Consumer Manifesto for Open Banking (see Appendix 4) are to be met and detriment avoided:

- The roles and responsibilities of TPPs and associated parties such as agents and Technical Service Providers in the delivery of redress to consumers in the event that there is a data breach which is not covered by the Financial Ombudsman Service[10] as identified by the report into Liability for BEIS in 2020
- The traceability of data in the data chain and the ability of consumers to effectively control their data when it passes between different entities.
- The lack of regulatory requirements on TPPs or non-CMA9 banks to provide consent management tools for consumers to manage their connections effectively and the importance of such tools as identified in the report into Consent for BEIS in 2020[11].
- Consumer protection for Open Banking Payments and consumers access to redress in the case of Authorised Push Payment Scams or retail purchase problems as identified by the PSR in its consultations[12].
- There is still significant digital exclusion in the UK which means that many people in the UK cannot access or make use of the benefits of open banking.
- It is unclear how consumers will be protected from exploitation of their data or what recompense they can access when they suffer harm as a result of data breaches or misuse of their data.
- The legitimate lack of consumer trust and confidence which needs to be urgently addressed. It is clear that the majority of the UK population are not comfortable with the concept of sharing transaction data[13]. We have consistently recommended a clearly co-ordinated communications campaign so that consumers are aware they can share their data safely and securely and get redress simply and easily if things go wrong.

[10] BEIS Smart Data Research (Liability), 2020. See here
[11] BEIS Smart Data Research (Consent), 2020See here
[12] PSR Consultation CP21-4 See here and Consultation CP21 -3, see here /
[13] This is robustly evidenced in the recent FCA Financial Lives survey, See Appendix 1.

Open banking has the potential to drive significant transformation in the way individuals and small businesses manage their finances, share transaction data and pay. In Consumer Priorities for Open Banking published in 2019, we conservatively estimated the potential value of open banking for consumers as £18bn, or £230 per individual consumer and £1,100 for each small business[14]. These are significant values and given the changes wrought by the COVID crisis the potential value is both potentially larger and more significant. Open banking is only one example of the broader data sharing economy, which has been estimated to bring £27.8bn to the UK Economy[15]. However, in our report we also noted that the regulators and industry must do more to deliver the value anticipated, build trust and stimulate the market to create the sophisticated products and business models required to make open banking a success. Without doing this, open banking could lead to niche adoption, dominance of large incumbents, an increase in consumer exclusion and misconduct leading to fraud and/or exploitation. See a summary of the key issues which still need to be addressed in Figure 6.

Figure 6: Outstanding Issues to be Addressed



We are now concerned that OBIE, the driving force for open banking, will be turned over to the industry before it has completed the Order and the expected consumer value is still some way off. Moreover, the banks who are the subject to the CMA Order will hold a dominant sway with little incentive to drive out the consumer value intended through an effective competition remedy and even less so through innovation.

[14] Consumer Priorities for Open Banking, 2019. See here

[15] CTRL SHIFT, DATA MOBILITY. ("The economic analysis estimates the impact from productivity and competition benefits enabled by personal data mobility at £27.8bn increase in UK GDP. The contribution to GDP that digital innovation enabled by personal data mobility, is likely to be significantly greater"). See here

The UK Finance Proposal

We welcome the UK Finance proposal and its Day 1 vision to "Enable UK consumers, small businesses and corporates to benefit from highly efficient, safe and reliable Open Data and Payments markets, as well as continuing to provide a platform for UK financial institutions to meet their regulatory requirements".

We also broadly support the proposed outcomes and associated Key Performance Indicators set out by UK Finance as follows:

- Widespread adoption of Open Data[16] and Payments propositions
- The services provided will be highly secure and reliable
- The UK remains at the forefront of innovation in Open API propositions
- Those in vulnerable situations are able to experience equal benefits of Open Data and Payments propositions
- Poor customer outcomes are avoided[17]

The mission and intended outcomes should be the lifeblood of the Future Entity. We propose an updated version of these outcomes in the Our Proposal section (see Page 13 – 14).

However, based on previous documented experience, we have significant concerns that the Entity Structure, Governance and Commercial Model may make it difficult for the Future Entity to deliver against these statements of intent.

Specifically, we note that the UK Finance Blueprint does not address or include a number of important elements of the existing OBIE approach to ensuring that open banking delivers for consumers and small businesses:

- Outcomes are set out but there is no identifiable function that would be responsible for setting or monitoring the organisation's own KPIs.
- There is no mention of the existing Consumer and SME Forums or expectation of their continuation. There is no inclusion of secretariat to support these Forums (as there is currently today).
- There is no mention of using the existing Consumer Evaluation Framework to assess the development of the ecosystem or impact on consumers.
- There is no placeholder for the existing End User Risk Committee nor detail on how it will identify and mitigate risks or work with regulators to mitigate risks to consumers.
- In accordance with the existing Roadmap, OBIE has made progress towards developing the Customer Experience Guidelines to incorporate standards for TPPs and non-CMA9 banks which can be recognised as industry guidance by the regulator. These have been designed specifically to focus the industry on good practices in seeking consumer consent and the use and management of data. Again, there is no commitment from UK Finance to continue this important work to protect consumer interests nor obvious function to promote the consumer.
- There is no function to identify or promote consumer or small business interests internally.

[16] The use of 'Open Data' in this context is confusing given it has other meanings which do not relate to consented data. We think "Widespread adoption of Open Finance and Payments propositions" is what UK Finance intend.

[17] Whilst we understand the intent of this bullet, it could be interpreted as suggesting that as long as poor customer outcomes are avoided the future entity could be seen as being successful. To avoid this interpretation we would suggest rewording to say "Intended customer outcomes are delivered and end user detriment is avoided"

- There is no mention of how it will broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions and community finance providers.

The current proposed governance structure built on a membership model has the appearance of independence. However, we note that the **almost identical governance structure** developed for the Payments Council did not manage to meet these requirements (See Figure 7).

The Payments Council was set up with objectives to facilitate competition and innovation and to identify and sponsor innovative solutions for the current and future needs of consumers, businesses and other users[18]. Even with the presence of independent directors and membership payments based on payments volumes, it nevertheless failed to deliver on its intentions. It attracted significant attention from regulators and government and led to the establishment of the Payment Systems Regulator. Because of their importance, we quote the relevant sections of the HM Treasury review in full in Appendix 3.

The UK Finance proposals attempt to deal with some of the issues outlined above but do not *sufficiently* address the problems identified by the Government and regulators previously for the same set of institutions in the approach to governance of similar bodies.

Figure 7: Assessment of UK Finance Blueprint against failings of Payments Council identified by HM Treasury

Challenge to Payments Council model	Assessment of UK Finance Blueprint for open banking
Dominated by the financial services industry	The members and board of the entity envisaged by UK Finance are still dominated by the financial services industry. They hold voting, funding and resourcing power. There is no way for consumers and small businesses to hold the company to account other than through one single consumer representative on the board and on the Advisory Committee.
Largest banks have dominant decision-making power and the board gives undue weight to the voices of individual banks; perceived conflicts of interest	Members have voting shares according to their market power for key decisions meaning larger banks will dominate. The CMA9 banks are the largest funding members and are incentivised to resource lobbying and challenge in respect of business-as-usual budgets and overstate the budget needs for requested participant changes that affect their own implementation costs. The UK Finance proposal emphasises the focus on reducing current operational costs to the CMA9. The CMA9 banks will select the chair, who will in turn select the ASPSP representatives. There is significant potential therefore for banks, or voices sympathetic to the ASPSP position, to dominate the board.
Proposals that would help the industry or the UK as a whole but which are not in the interests of a particular participant are blocked or delayed	In both the Board and Advisory Committee, consumers and small businesses are under-represented. It is unclear how they will be resourced to engage with the independent participant groups that UK Finance suggest will put forward changes. The end-user representative role requires significant lobbying of stakeholders to build alliances to forward or halt changes. This is unfair and unbalanced.

[18] Setting the Strategy for UK Payments, July 2012, HM Treasury page 11, para 3.18

	The Future Entity does not have a remit to drive innovation or strategy for the industry and has a clear focus on reducing operational costs and driving efficiencies.
Struggles to secure funding	The UK Finance model proposes that innovation will be led externally by participant groups. This approach requires significant resourcing among participant groups to advance their propositions through Discovery, Advisory Committee and Board without certainty they will be taken forward. This is likely to reduce incentive for parties to propose or fund innovation. (See also problems on decision making and enforcement below). Business as usual is expected to be funded by a call on ASPSP members. Given the focus on reducing operational costs, it is likely that once limits for charging TPPs are reached, ASPSPs will seek to keep the organisation on as limited a budget as possible, again reducing likelihood of innovation or the ability to respond to other initiatives like open finance or Smart Data, or manage change. It should be noted that the costs of OBIE are trivial in the context of the incomes generated by the CMA9. Based on our calculations the £32.7m net cost of OBIE in 2020 represented 0.073% of the income of the six largest CMA9 banks in the same period[19]. The current proposal also limits the CMA9 to fund for three years before the potential for exiting. As members leave, this could create a heavy burden on remaining players or see fragmentation of the UK's standards. The threat of larger members leaving and establishing competing bodies also creates an inappropriate pressure on the Future Entity.
Struggles to enforce decisions	It is not clear how the Future Entity will enforce decisions on participants, whether CMA9 banks or other parties. Indeed, the existing CMA Trustee's powers are limited to the CMA9 only. This means that TPPs cannot be required to implement changes. This has reduced and will continue to reduce the overall effectiveness of open banking. The removal of the Trustee (as proposed by the UK Finance Blueprint) would significantly further reduce the ability of the new entity to enforce decisions. In the event that a participant group puts forward new innovation or change requests to OBL it is not clear how OBL's role as service provider would enable it to make requirements above and beyond what the participant group are willing to pay, even in the event that such additional requirements are in the overall ecosystem, or consumer interest. Even in the event that the Board agrees to design the Standards, it cannot force any entity to implement without regulatory mandate.

In addition to the problems noted above, the UK Finance proposal does not fully reflect the role of open banking as a precursor and fast track to Open Finance[20] or Smart Data. Both these initiatives take on

[19] Our analysis of the Incomes of the 6 largest members of the CMA9. For those members with global banking operations, the analysis includes only the UK Retail Banking division.

[20] FCA, Open Finance Feedback Statement March 2021, "… all respondents agreed that open finance would require an implementation entity to coordinate development of a directory, authentication protocols and API tech standards. Respondents also

additional significance in helping the UK economy recover from the impacts of Brexit and the economic, social and health impacts of the coronavirus pandemic.

UK Finance proposes that "the UK remain at the forefront of Open API propositions". Again, this is welcome but the detailed proposal does not include strategy setting or R&D functions necessary to deliver such an outcome. The proposal includes a Futures Board as a Day 2 evolution but the detail fails to convince that this would be an effective way of dealing with delivery of the intended benefits of open banking or its adaptability to Open Finance and Smart Data.

Our overall analysis of the Blueprint as set out by UK Finance is that it will prevent an effective completion of the CMA Order and the creation of the intended value for consumers and small businesses. It will also obstruct the long-term development of open banking as a part of open finance and Smart Data. In place of the UK Finance Blueprint we present an alternative model which is much more likely to deliver the meaningful change for consumers and small businesses we all aspire to.

broadly supported using key elements of the OBIE to support this… It will be important that the entity is flexible and able to respond to any future legislative requirements. We are keen that any entity be open in terms of participation and funded equitably and sustainably." see here

Our Proposal

Our Vision

Our vision for Smart Data, for which OBL should be a core foundation, is:

> *Smart Data simplifies and enhances life for everyone. UK consumers and small businesses benefit from a highly innovative, trustworthy, sustainable and secure Smart Data market that meets their needs for inclusive, better value products and services at an affordable price.*

OBL should be a beacon demonstrating globally how competition and innovation can go hand in hand with good consumer protection, inclusion and privacy by design. It should model excellence in keeping the consumer and small business voice front and centre, addressing risks head-on and delivering a data infrastructure that inspires confidence in data sharing and facilitates the inclusive data driven economy promised.

Data sharing in the UK should simplify and enhance our lives. It should not add in another layer of decision-making complexity for consumers and small businesses or facilitate more exploitation and harm.

Outcomes and Key Performance Indicators

The vision should be supported by clear consumer outcomes and related Key Performance Indicators. Building on those proposed by UK Finance, we suggest the following:

- Widespread availability of a full range of open banking-enabled propositions
- Widespread adoption of a full range of open banking-enabled propositions
- Consumers and small businesses are better off for using open banking-enabled services and realise the potential value such services bring.
- The services provided are highly secure and reliable and consumers trust open banking.
- Those in vulnerable situations are able to experience equal benefits of open banking-enabled services
- The UK remains at the forefront of innovation in Open API propositions
- Poor customer outcomes are avoided and steps are taken to mitigate risks

KPIs will need to be defined as part of the annual planning process, but we suggest some initial proposals in Appendix 6.

Key Design Principles

In developing an alternative option to the UK Finance Blueprint, we adopted the following design principles:

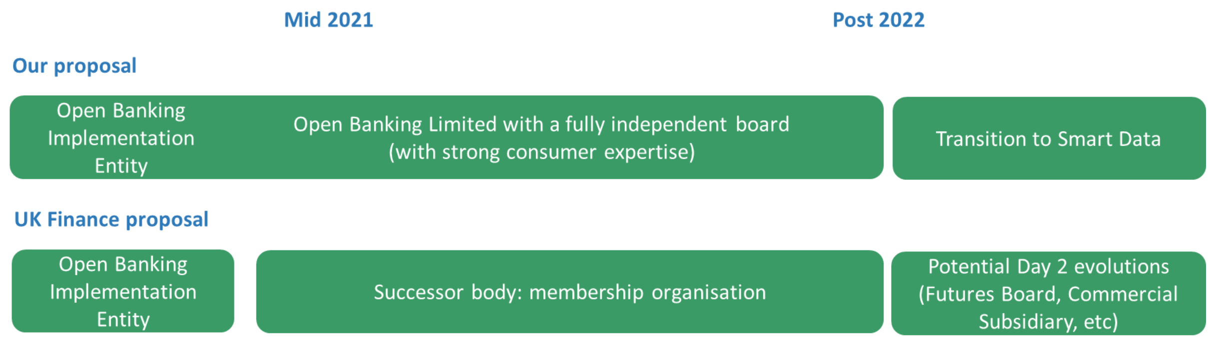
- Disruption to open banking should be minimised to ensure effective delivery of the Roadmap and the requirements of the CMA Order.
- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market and brings greater financial inclusion.
- There should be a strong, resourced consumer and small business voice through the organisation from governance to delivery

- Governance should be fully independent.
- The organisation must be incentivised and aligned to deliver the outcomes and KPIs envisaged.
- It must be subject to regulatory oversight, to ensure it delivers both as a competition remedy and a long-term driver of end user value.
- It must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.
- It should drive standardisation and interoperability as part of the journey towards open finance and Smart Data.
- Board recruitment should be open and transparent and follow agreed best practice.
- The assets of OBL, ultimately paid for by consumers and small businesses, should be leveraged to deliver other open initiatives and Smart Data.
- OBL should broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions, community banks and responsible finance providers.
- Independent monitoring is required to ensure compliance with the Standards. Monitoring should be automated and effected through a schedule of fees and charges where possible.
- Dispute resolution between firms should be consistent. Consumers should have access to simple, free, timely help and redress when they need it.
- Consumers lives don't align to regulatory silos – open banking will only deliver true value to consumers when it evolves into open finance and Smart Data.

These principles are in line with our Manifesto for Open Banking (see Appendix 4), published in 2018 and still valid today.

The Evolution of Open Banking Governance

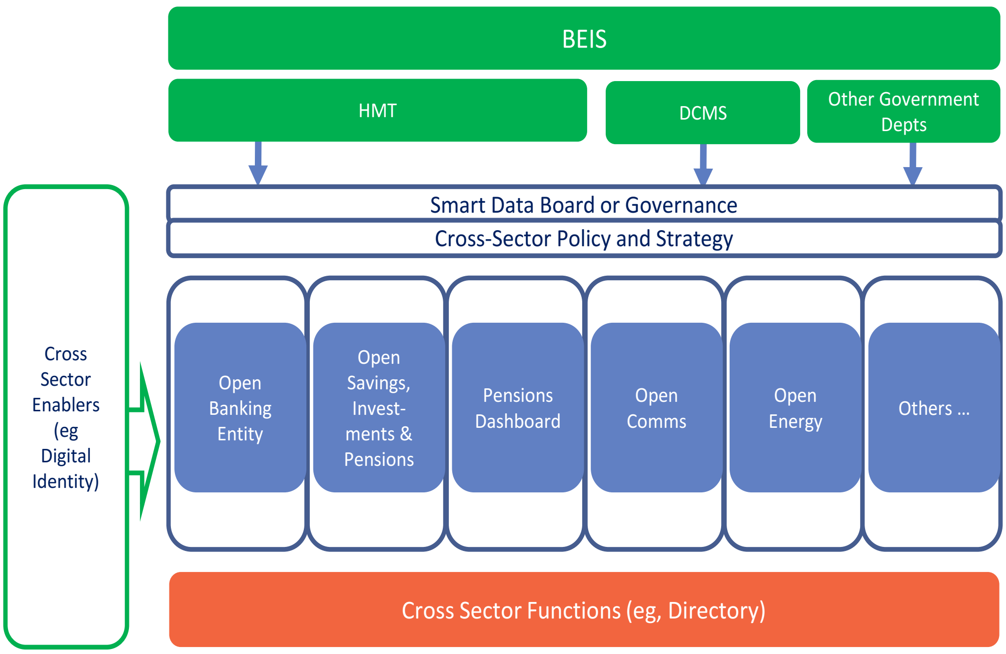
Figure 8: Evolution of Open Banking Governance



The emphasis at OBL must change from the project and its role as the OBIE, to the development of the organisation, OBL. The first step is to put in place a fully independent board and the CMA should do so immediately. In contrast to the UK Finance proposal, we do not see the need to create a successor body to the OBIE at this stage, which could destabilise it and derail the Roadmap and the strong foundations put in place since 2018 (See Figure 8).

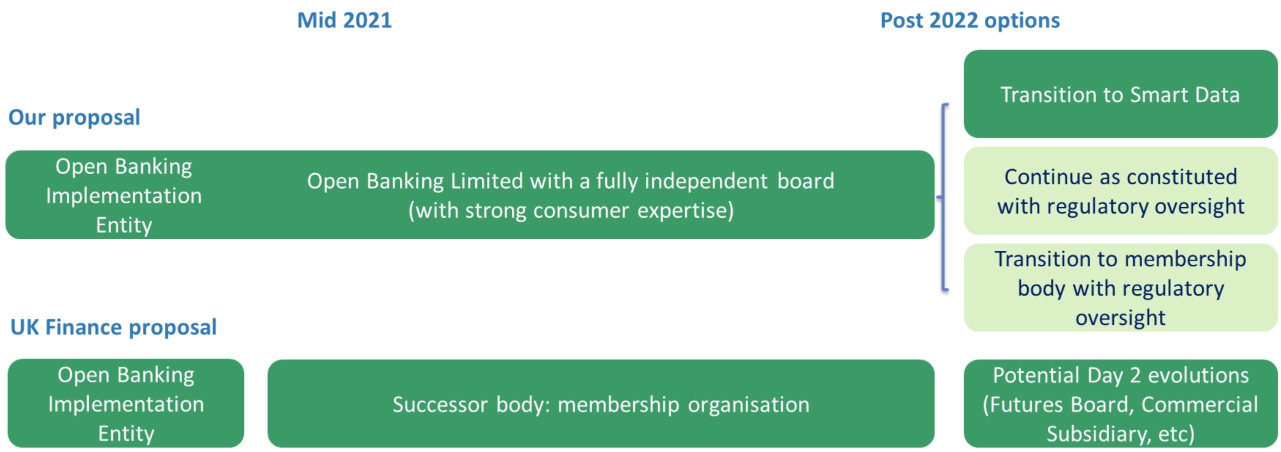
Our long term vision is that OBL should form the basis of and be part of a Smart Data Function as outlined by BEIS[21] which would set the strategic, over-arching vision for the use of consumer data in driving innovation, competition and inclusive markets (See Figure 9). We also expect it would increase co-ordination between sectors by addressing cross-cutting themes such as consent, authentication, the fair treatment of consumers (especially consumers in vulnerable circumstances), the ethical use of their data, liability and redress. So that no matter what, consumers can trust that sharing their data is as safe as turning on the tap to pour a glass of water: it simplifies and enhances their lives.

Figure 9: Illustrative Structure for Integration of open banking into a broader Smart Data Function



However, we also acknowledge that our vision may not transpire and that there are alternative options for OBL (See Figure 10). In all cases, we believe that OBL will require regulatory oversight. It will be the first requirement of the OBL Board to put in place a clear medium to long term strategy in consultation with all stakeholders for sign off by regulators.

Figure 10: Post 2022 Scenarios



[21] BEIS, Nest Steps for Smart Data, Sep 2020. See here

Governance

OBL should expand immediately to put in place a fully independent board to avoid conflicts of interest and ensure it is governed by people with a strong fiduciary duty to the entity. We are opposed to representative boards in general, which have typically resulted in either impasse or domination by one particular and well resourced, party. The role of a board is generally to set strategic direction and oversee the executive, ensuring the objectives of the organisation are met, that it has resources to do the job, is transparent and accountable, and complies with applicable law. It is also important to avoid conflicts of interest. This is impossible with a representative board, where the members have a direct and, in some cases, financial interest in the outcome of board decisions. An independent chair is insufficient to mitigate these potential conflicts.

The board should also be suitably qualified to reflect the interests of consumers, especially consumers in vulnerable circumstances, and small businesses. It must have experience in consumer policy, the design of infrastructure as it impacts consumers downstream, customer experience and its impact and evaluation, alongside the typical industry expertise required. Too often boards simply do not have the appropriate consumer experience and small business knowledge to reflect the needs of those whom they are ultimately there to serve.

We propose a board made up of:

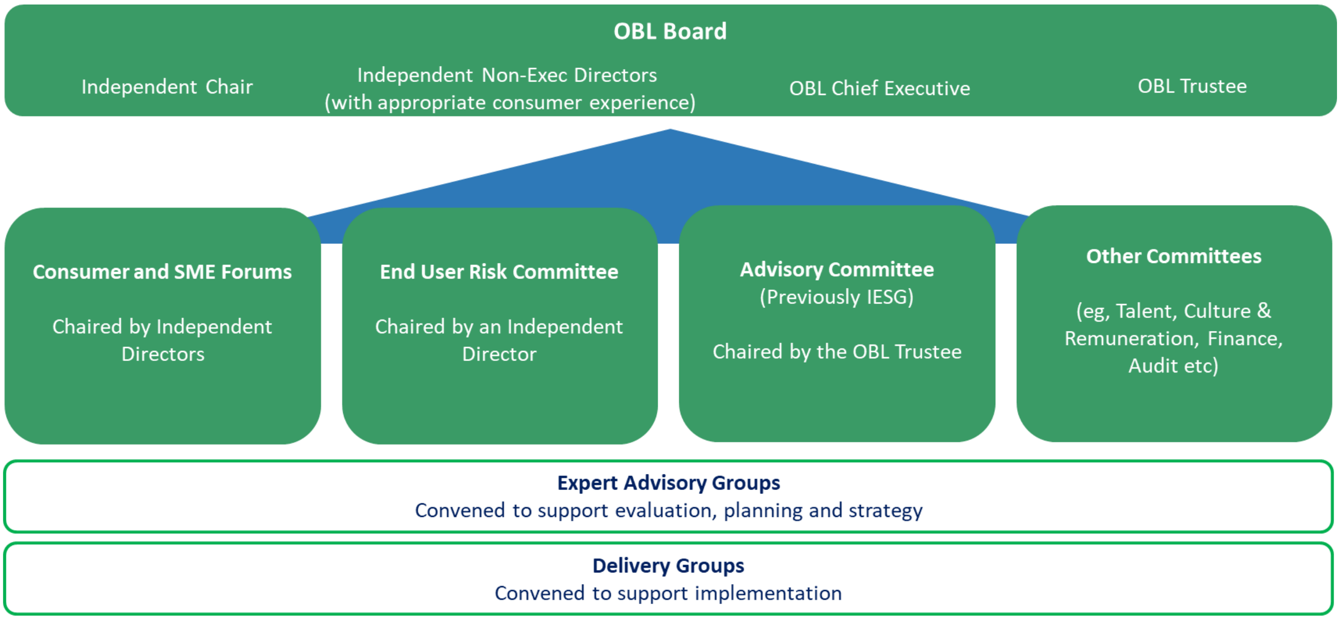
- A fully independent chair, appointed by the CMA in consultation with the FCA and BEIS and responsible for the organisation as a whole.
- Independent directors with appropriate consumer expertise as noted above.
- The Implementation Trustee, appointed by the CMA responsible for the CMA Order.
- The Chief Executive, who leads the organisation and is responsible to the Trustee (for the delivery of the CMA Order) and the chair (for the overall organisation, its strategy and delivery).

The board will be responsible for all aspects of corporate governance. In addition, board members will chair committees to the board including the Consumer and SME Forums. The Chairs of these committees will be responsible for recruiting additional permanently paid members to attend any additional stakeholder working groups (e.g. Delivery Group). The Forums will be required to report monthly to the board on key issues and the board will be obliged to provide feedback. This will ensure consumers and small businesses have direct interaction with the board and understand how their contributions are being weighed by the board. It will also ensure that consumers and small businesses are adequately resourced and represented as policy and standards are being developed at an early stage through working groups.

The board will also be supported by the current Implementation Entity Steering Group. This Group should be renamed to be an Advisory Committee. Until the end of 2022, this Advisory Committee should continue with the same representation. Its remit should expand to provide advice on all aspects of OBL. The current stakeholder engagement through Expert Advisory and Delivery Groups should continue, ensuring the industry still has appropriate influence over the organisation.

A board member should also chair the End User Risk Committee which should become a board committee meeting quarterly to provide regular reports on the identification, mitigation or escalation of risks. BEIS, the FCA, PSR and ICO should be invited to this committee as observers and an annual report publicly published on where regulation could play a helpful role in mitigating risks.

Figure 11: Outline Proposed Governance for OBL



Remit

OBL will have 5 main areas of responsibility in the short term:

1. Delivering the CMA Roadmap and the CMA Order, including maintenance and refinement of the open banking standards.
2. Convening and consulting on a medium to long term strategy, with set of annual deliverables, signed off by the regulators. The first 3- year strategy and plan should be complete by the end of 2021.
3. Developing a robust transition plan. This work includes:
    a. Re-assessing the scope of the entity and its likely transition to Smart Data governance and role in supporting other open finance and Smart Data initiatives
    b. Assessing the role of the Directory, Dispute Management Service, Helpdesk etc and whether they should be set up independently or made available to other open finance and Smart Data initiatives
    c. Working with Pay.UK and the PSR to identify the most effective way to use the open banking payment APIs as part of the UK Payments Strategy and to investigate the possibility of moving payments APIs to Pay.UK.
    d. Evaluating the need to set up a separate monitoring function for 2023
4. Working with regulators to set out the funding model for commercial fees (including both CMA9 and non-CMA9 and TPP fees for services) and regulatory levy
5. Evaluating the ongoing development and impact of open banking and reporting publicly on this every six months to regulators and the Advisory Committee using the existing Consumer Evaluation Framework

As noted, OBL will set out its activities in a rolling 3-year strategy and annual plans which are consulted on with ecosystem stakeholders, to be signed off by the CMA and FCA. The first 3-year strategy should be ready for the end of 2021 for immediate delivery. This will bring transparency and accountability to the deliverables and activities of OBL.

The new independent board will provide strategic oversight and leadership to these five areas of remit to ensure transparency, the avoidance of conflicts of interest, and the effective delivery of the plan.

OBL will require the functions it currently has. However, it must also develop a strong policy and strategy function, incorporating capacity for research and innovation to facilitate the work expected. Continuation and expansion of the work of the ecosystem engagement function will also be essential to meet the Outcomes and KPIs we propose. This work must ensure that usage of the open banking APIs extends to all parts of the finance ecosystem, including alternative business models such as credit unions, community banks and responsible finance providers. A core part of the role of OBL should be broadening the types of organisation using the open banking APIs to deliver better solutions to consumers and small businesses.

Integration of Payments APIs into the UK Payment Strategy

We recognise that the open banking payment APIs provide the building blocks for a more competitive UK payments market, which provides more choice to those needing to be paid and new options for those wanting to make payments. However, with roughly 1m payments a month at present, this potential is not yet realised and there are a number of fundamental issues which need to be resolved before open banking payments can provide more than a niche alternative to incumbent payment methods such as cards and direct debits. These issues include consumer protection, speed and convenience of journeys, being able to see one's balance in *all* journeys before making a payment and reliability of the APIs.

The payments APIs therefore need to be considered a critical part of the UK Payments Strategy, under the oversight of the PSR and Pay.UK. Open banking payments need to be fully integrated into the plan for the New Payments Architecture, and the underlying issues with open banking payments reviewed and resolved to enable them to thrive as a competitor to existing ways of making payments. Most importantly, this competition must not come at the expense of consumer protection such as Chargeback or Section 75[22].

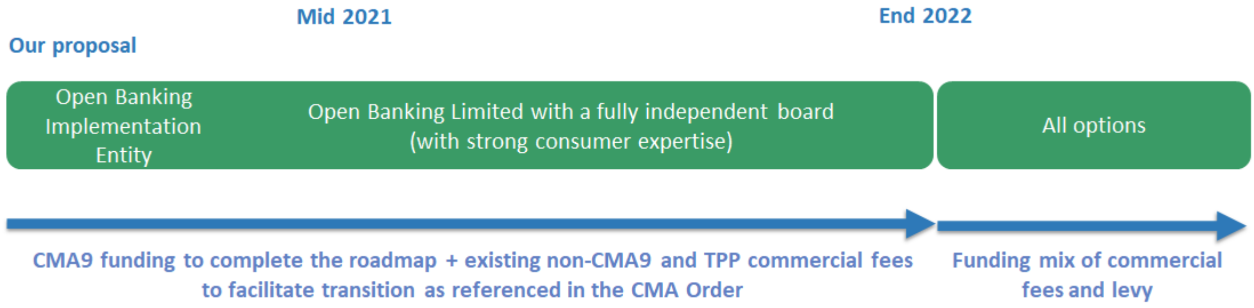
There is an opportunity to create a strong innovative strategy for supporting the development of a competitive market for payments using the New Payments Architecture and Payments APIs. OBL should be charged with investigating whether Payments APIs should move to Pay.UK to facilitate this strategy. It should work with Pay.UK and the PSR to set out exactly how it will interact on the future of the open banking payments standard and define responsibilities. Changes to the open banking standard should be integrated into both Pay.UK and OBL strategies and annual plans. Importantly, any governance issues must also be addressed so there is a level playing field for payments and consumer protection is harmonised and consistent.

Funding

OBL should continue to be funded by a mix of CMA9 funding and non-CMA9 and TPP commercial fees until the transition post 2022. In all scenarios post 2022, it is expected that funding will be a mix of commercial fees as far as possible and a regulatory levy on all relevant data providers (ASPSPs in the first instance) and TPPs (See Figure 12).

[22] Please see our responses to the Payments Landscape Review and the PSR on the topic of Consumer Protection in relation to open banking payments. It is not acceptable that a protection gap exists between open banking payments and cards.

Figure 12: Funding the Evolution



Up to the end of 2022, we envisage that the CMA9 would fund OBL for activities (up to certain thresholds) to facilitate the work outlined above which is a necessary part of the transition aspects of the CMA Order.

The CMA must enable OBL to explore other commercial funding opportunities, including further fees for TPPs. This would also allow OBL to provide services to other open initiatives or participant groups.

The regulatory levy should cover the remaining costs of the organisation and strategic planning that cannot be afforded through fees alone. The levy should be funded proportionately according to size with similar metrics to those used for other bodies in the regulatory family such as the Money and Pensions Service and the Financial Ombudsman Service. A levy provides distance between the funding entities and the governance of the entity so that the entity is free to go about its business with less lobbying from dominant incumbents. There is currently no other proposed model that would address the inappropriate sway of large banks with funding power. The connection between funding power and governance has to be broken and this has not previously been adequately achieved through other examples of membership governance.

A final point on funding: **the mix of commercial fees and regulatory levy would confirm the Open Banking Standard as *the* open standard for the Dedicated Customer Interface for the UK and specifically look to ensure interoperability and standardisation for the banking sector**. This approach does not restrict individual firms providing their own proprietary dedicated customer interface or stop other initiatives from developing standards for other parts of the financial sector. However, it would make it difficult to establish an alternative OBL. As such it would reduce the likelihood of threats by large incumbents to remove funding or set up alternative bodies.

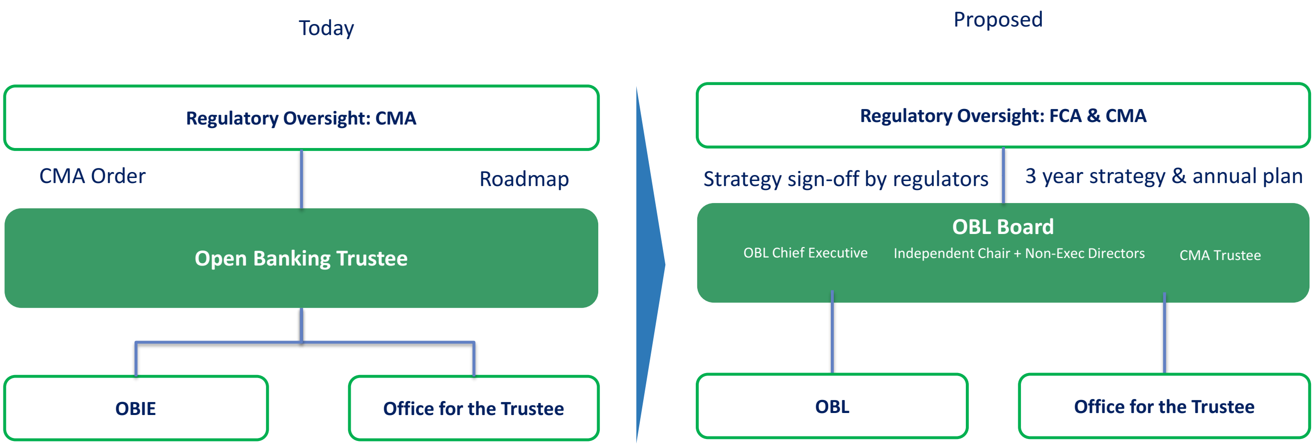
Accountability and Monitoring

As noted above OBL must have regulatory oversight to ensure it delivers the outcomes for consumers and small businesses envisaged. This includes and exceeds the CMA monitoring function:

- OBL will be accountable to the CMA for the CMA Order and transition.
- Additionally, it will be accountable to the FCA for the delivery of the UK's open standard for the dedicated interface for PSD2; other open finance initiatives OBL may serve; and the extent to which OBL addresses conduct and end user risks associated with Open Finance.

We recommend that the FCA aligns its KPIs for the performance of APIs to that of OBL to reduce fragmentation, harmonise reporting and more effectively share the burden of supervision for market performance. Monitoring of the Order will continue to be conducted as part of OBL by the Office of the Trustee, drawing in the MI created by the same organisation.

Figure 13: Transition of regulatory oversight and board



OBL will be responsible for convening stakeholders to agree a 3-year strategy on a rolling basis and to agree an annual plan. OBL will present this to regulators for their scrutiny against the needs of consumers and small businesses and its own policy strategy before requiring adjustments or signing off the plans. OBL should report publicly in its annual report how well it is delivering against its annual plan and strategy.

OBL should report annually and publicly to relevant regulators about the risks identified by the End User Risk Committee, how it is mitigating these and what it requires by way of support from the regulators. The regulators should be obliged to respond and set out publicly how they are working with OBL to ensure risks are addressed before they crystallise. This is an opportunity to formalise a 'prevention rather than cure' approach as frequently espoused but rarely delivered.

The organisation will continue to use, update and publish the Consumer Evaluation Framework to monitor end user outcomes derived from open banking, reporting six-monthly on progress. This should be used to support the industry's 3-year strategy and annual planning cycle.

Costs will be open book and available for scrutiny. Activity based costing will be used to ensure costs are allocated to activities in a transparent way so that all funding parties can track where funds are being spent.

Post 2022 Transition

Smart Data

Assuming that OBL transitions to Smart Data, the board of OBL would become an Oversight Committee and would have a very similar remit, funding mix (albeit levied for a broader organisation) and accountabilities to regulators for sign off of sector strategies. The Independent Chair of the Oversight Committee would be part of the board of Smart Data and have additional responsibility for working with other Smart Data initiatives to create cross-sector policy and strategy and facilitate standardisation and interoperability across sectors (See Figure 9).

Membership body

In the case of a membership body, OBL would continue to have a similar remit, funding mix and accountabilities to regulators. Members would be limited in number and should be 80% consumer and civil society organisations and 20% industry representatives. The membership would have the right to vote out the chair and Chief Executive. This approach would align the incentives of the organisation more closely to those interests it is ultimately there to serve.

Benefits of our Proposal

Our proposal prioritises the intended beneficiaries of Smart Data and open banking: people and small businesses. It learns from the industry's past mistakes, where lack of independence has thwarted innovation and damaged consumer outcomes.

Our proposal provides a strong alternative to the UK Finance Blueprint, informed by our analysis of the current immature state of open banking in the UK, the continued requirement for delivery of the CMA Roadmap and the Order and open banking's vital role as a front-runner of Smart Data.

Our proposal:

- Aligns governance with the interests of consumers and small businesses more closely.
- Breaks the relationship of power between those who fund and those who govern, in accordance with the needs of the UK for innovation, competition and growth.
- Reduces the inherent conflicts of interests in membership bodies and increases the voice of people, small businesses and civil society.
- Creates accountability to public bodies which have a duty to protect consumers and deliver fair markets. This strengthens OBL's decision making power and ability to enforce the industry strategy.
- Gives industry responsibility for setting out its collaborative approach to delivering the intended benefits of open banking, open finance and Smart Data; and proactively identifying and mitigating risks associated with data sharing.
- Minimises disruption and provides a solid foundation for delivering the Roadmap, the CMA Order and addressing the outstanding issues which undermine consumer trust.
- Leverages the assets, skills and investment in open banking effectively for Open Finance and Smart Data.
- Facilitates a seamless transition to Smart Data.
- Creates a governance structure which fosters a trustworthy, sustainable and secure data sharing economy, oversees broadening of consumer and small business adoption and transforms markets for the benefit of all.

Answers to Specific Consultation Questions

Design Principles

In responding to the CMA's detailed questions in relation to the UK Finance Blueprint we have drawn on a set of design principles which we used to develop our alternative Proposal. These principles lead us to some very different conclusions which we outline in response to each question. For simplicity these design principles are restated here.

- Disruption to open banking should be minimised to ensure effective delivery of the Roadmap and the requirements of the CMA Order.
- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market and brings greater financial inclusion.
- There should be a strong, resourced consumer and small business voice through the organisation from governance to delivery
- Governance should be fully independent.
- The organisation must be incentivised and aligned to deliver the outcomes and KPIs envisaged.
- It must be subject to regulatory oversight, to ensure it delivers both as a competition remedy and a long-term driver of end user value.
- It must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.
- It should drive standardisation and interoperability as part of the journey towards open finance and Smart Data.
- Board recruitment should be open and transparent and follow agreed best practice.
- The assets of OBL, ultimately paid for by consumers and small businesses, should be leveraged to deliver other open initiatives and Smart Data.
- OBL should broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions, community banks and alternative finance providers.
- Independent monitoring is required to ensure compliance with the Standards. Monitoring should be automated and effected through a schedule of fees and charges where possible.
- Dispute resolution between firms should be consistent. Consumers should have access to simple, free, timely help and redress when they need it.
- Consumers lives don't align to regulatory silos – open banking will only deliver true value to consumers when it evolves into open finance and Smart Data.

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 (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?*

Design Principles

- Governance should be fully independent.
- There should be a strong consumer voice through the organisation from governance to delivery.
- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market and brings greater financial inclusion.

Issues with UK Finance Blueprint – The governance structure proposed by UK Finance will give the largest participants the greater portion of weight in votes and inappropriate sway over the organisation. The largest banks, who are also likely to bear the largest funding burden, are subject to the CMA Order and incentivised to reduce OBL activity and scrutiny. The suggested governance approach creates a conflict of interest between the organisation which is there to deliver for all ecosystem participants and its largest members who have vested interests and select the chair. It is not appropriate for the industry members to exert control and influence over the selection of the chair, particularly given that open banking is an incomplete competition remedy designed to deliver for consumers and small businesses first and foremost.

Our Alternative – We recommend a fully independent governance model to deliver the completion of the Roadmap, the envisaged outcomes from the CMA Order and the transition to Open Finance and Smart Data.

The board should be suitably qualified to reflect the interests of consumers, especially consumers in vulnerable circumstances, and small businesses. It must have experience in consumer policy, the design of infrastructure as it impacts consumers downstream, customer experience and its impact and evaluation, alongside the typical industry expertise required. Too often boards simply do not have the appropriate consumer experience to reflect the needs of those whom it is ultimately there to serve.

We propose a board made up of:

- A fully independent chair, appointed by the CMA in consultation with the FCA and BEIS, responsible for the organisation as a whole.
- Independent directors with appropriate consumer expertise as noted above.
- The Implementation Trustee, appointed by the CMA responsible for the CMA Order.
- The Chief Executive, who leads the organisation and is responsible to the Trustee (for the delivery of the CMA Order) and the chair (for the overall organisation, its strategy and delivery).

In case of a Membership Body members should be limited in number and should be 80% consumer and civil society organisations and 20% industry representatives. The membership would have the right to vote out the chair and Chief Executive. This approach would align the incentives of the organisation more closely to the interests of consumers it is ultimately there to serve.

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?*

Design Principles

- Governance should be fully independent.
- There should be a strong consumer voice through the organisation from governance to delivery.
- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market and brings greater financial inclusion.

Issues with UK Finance Blueprint – The proposed model does not offer balanced representation and the consumer voice is marginalised. Each industry participant has at least two representatives with the possibility of creating further alliances with the additional independent non-executives suggested (merchants/international). There is only one consumer representative. There is every likelihood that independent chair would find it impossible to prevail against a coalition of similarly interested, powerful and well-resourced members with an agenda all of their own.

The UK Finance model is very unlikely to deliver an independent and effective leadership which can secure the necessary funding or enforce decisions (see pages 12 and 13). There are many examples of representative boards which do not achieve independence but become dominated by certain parties, or reach an impasse and are unable to move forward.

The UK Finance's proposed governance model replicates the risks identified by the Treasury Select Committee when reviewing the Payments Council, suggesting that the UK Finance Blueprint is just as likely to recreate the errors from the past. Please see pages 12 and 13 of this submission for full analysis and Appendix 3 for the HM Treasury assessment of the weaknesses of the Payments Council which had very similar governance to that proposed by UK Finance.

The role of a board should be to set strategic direction and oversee the executive, ensuring the objectives of the organisation are met, that it has resources to do the job, is transparent and accountable, avoids and appropriately manages conflicts of interest and complies with applicable law. The skills required to do this are specialised. This is impossible with a representative board, where the members have a direct and, in some cases, financial interest in the outcome of board decisions. An independent chair is insufficient to mitigate these potential conflicts.

Our Alternative – As noted in our response to Question (a) relating to the process for appointing the chair, independent governance is absolutely essential. We propose a fully independent board, not one which purports to be representative.

The board should be suitably qualified to reflect the interests of consumers, especially consumers in vulnerable circumstances, and small businesses. It must have experience in consumer policy, the design of infrastructure as it impacts consumers downstream, customer experience and its impact and evaluation, alongside the typical industry expertise required. Too often boards simply do not have the appropriate consumer experience to reflect the needs of those whom it is ultimately there to serve.

We propose a board made up of:

- A fully independent chair, appointed by the CMA in consultation with the FCA and BEIS, responsible for the organisation as a whole.
- Independent directors with appropriate consumer expertise as noted above.
- The Implementation Trustee, appointed by the CMA responsible for the CMA Order.
- The Chief Executive, who leads the organisation and is responsible to the Trustee (for the delivery of the CMA Order) and the chair (for the overall organisation, its strategy and delivery).

In case of a Membership Body members should be limited in number and should be 80% consumer and civil society organisations and 20% industry representatives. The membership would have the right to vote out the chair and Chief Executive. This approach would help align the incentives of the organisation more closely to the interests of consumers it is ultimately there to serve.

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?*

Design Principle

- The entity must be subject to regulatory oversight, to ensure it delivers both as a competition remedy and a long-term driver of consumer value.
- The organisation must be incentivised and aligned to deliver the outcomes and KPIs envisaged.

Issues with UK Finance Blueprint – At its core, a fundamental issue with the UK Finance Blueprint is that the future entity has no regulatory oversight. The proposed board is accountable to its membership, which is dominated by the industry and likely to be unduly swayed by its larger members (both ASPSPs and TPPs). The Blueprint therefore passes substantial control of the incomplete open banking remedy to the subjects of the CMA Order and the largest incumbent TPPs.

There is no accountability to the consumers, small businesses and society it is there to serve. Innovation and competition are not strong enough forces in the market to ensure that consumer and small business needs for privacy, transparency, control, redress and protection will come about without regulatory oversight. Indeed, it is clear from existing data markets that where protection and oversight is weak, consumers are exploited[23].

Further, as noted by HM Treasury in its assessment of the Payments Council, it is easy for industry-led bodies to become out of touch with consumer and SME needs and to focus only on measures that are in the financial interests of the members[24].

Our Alternative – Ultimately the entity should be accountable to the public. Costs are being borne by the consumer and all consumers should have access to the value created. OBL needs regulatory oversight to achieve the envisaged innovation required for inclusive, accessible and affordable markets. This includes and exceeds the CMA monitoring function:

- OBL should be accountable to the CMA for the CMA Order and transition.

[23] Most glaringly this can be seen in the misuse of consumer data by Cambridge Analytica: see here
[24] HM Treasury, Setting the Strategy for UK Payments, July 2012

- Additionally, it should be accountable to the FCA for the delivery of the UK's open standard for the dedicated interface for PSD2; other open finance initiatives OBL may serve; and the extent to which OBL addresses conduct and end user risks associated with open finance.

We recommend that the FCA aligns its KPIs for the performance of APIs to that of OBL to reduce fragmentation, harmonise reporting and more effectively share the burden of supervision for market performance. Monitoring of the Order will continue to be conducted as part of OBL by the Office of the Trustee, drawing in the MI created by the same organisation.

OBL should be responsible for convening stakeholders to agree a 3-year strategy on a rolling basis and to agree an annual plan. OBL will present this to regulators for their scrutiny against the needs of consumers and small businesses and its own policy strategy before requiring adjustments or signing off the plans. OBL should report publicly in its annual report how well it is delivering against its annual plan and strategy.

OBL should report annually and publicly to relevant regulators about the end user risks it has identified, how it is mitigating these and what it requires by way of support from the regulators. The regulators should be obliged to respond and set out publicly how they are working with OBL to ensure risks are addressed before they crystallise. This is an opportunity to formalise a 'prevention rather than cure' approach as frequently espoused but rarely delivered.

The organisation should continue to use, update and publish the Consumer Evaluation Framework to monitor end user outcomes derived from open banking, reporting six-monthly on progress. This should be used to support the industry's three-year strategy and annual planning cycle.

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?*

Design Principles

- Governance should be fully independent.
- OBL must be incentivised and aligned to deliver the outcomes and KPIs envisaged.
- The entity must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.
- It should drive standardisation and interoperability as part of the journey towards Open Finance and Smart Data.
- OBL should broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions, community banks and alternative finance providers.
- The assets of OBL, ultimately paid for by consumers and small businesses, should be leveraged to deliver other open initiatives and Smart Data.

Issues with UK Finance Blueprint – The governance and funding approach set out by UK Finance undermines the Entity's ability to act independently and will not be sufficient to resist pressures that may arise as a consequence. Funding is closely linked to power as demonstrated by HM Treasury's summary of the failings of the Payments Council model. The limited time commitment to funding also places the Entity under pressure to conform to the wishes of the largest funders who can threaten to set up an alternative Entity at the end of the committed funding period.

The existing UK Finance Blueprint focuses heavily on reducing the costs associated with OBIE. Given the focus on reducing operational costs, it is likely that once the limits for charging TPPs are reached, ASPSPs will seek to keep the organisation on as limited a budget as possible, again reducing likelihood of innovation or the ability to respond to other initiatives like Open Finance or Smart Data. This suggests the annual call on ASPSP members will become a key battleground for ASPSPs and TPPs.

As noted by HM Treasury in its assessment of the Payments Council, it is easy for industry-led bodies to become out of touch with consumer and SME needs and to focus only on measures that are in the financial interests of the members[25] confirming that the annual call on members will not be an effective route to funding.

There are suggestions in the UK Finance Blueprint that certain aspects of the OBIE (helpdesk, Directory, Dispute Management System) could form part of a separate commercial function. We are not yet convinced that this has merit and more work needs to be undertaken to review the commercial potential of these services, weighed up against their potential value to society if they were to form a core part of the UK's future Smart Data infrastructure. Having multiple Directories and Dispute Management Systems is likely to create friction in the market for TPPs and lead to fragmentation, reducing the power of the Open Banking Standards. It is important that services consumer receive are consistent.

Our Alternative – OBL should continue to be funded by a mix of CMA9 funding and non-CMA9 and TPP commercial fees until the transition at the end of 2022. However, this funding should be agreed in advance and with greater transparency and tied to the agreed annual plan. OBL should then work with regulators to set out a post 2022 funding model combining commercial fees with a regulatory levy. The regulatory levy would apply to all PSD2 regulated parties.

See our answer to Question (b) of the section on Adequate resourcing to perform function required on page 31 - 32.

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?*

We set out a series of concerns with the UK Finance proposal in pages 10-12. In addition to what we have already submitted in this section of our paper, we note that the governance and leadership will struggle to secure finance and enforce decisions as the Payments Council also struggled to (see page 11-12).

We set out our alternative Consumer and Small Business Blueprint for Open Banking on pages 14 – 22.

[25] HM Treasury, Setting the Strategy for UK Payments, July 2012

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?*

Design Principles

- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market and brings greater financial inclusion.
- The entity must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.
- The organisation must be incentivised and aligned to deliver the outcomes and KPIs envisaged.
- OBL should broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions, community banks and alternative finance providers.
- Dispute resolution between firms should be consistent. Consumers should have access to simple, free, timely help and redress when they need it.

Issues with UK Finance Blueprint – The CMA Order is not complete, so the first priority is to identify whether any successor organisation can deliver this effectively for end users. It is not clear to us that the Future Entity proposed by UK Finance will have sufficient resource to ensure the Order is completed effectively. The incentives are poorly aligned here because the funding members have an incentive to reduce funding and resource so that they are placed under less scrutiny.

An Implementation Trustee and Office for the Trustee continues to be necessary to ensure the delivery by the CMA9 of the outstanding Roadmap items and issues (see pages 7 & 8 for a summary and Appendix 2, Outstanding Evaluation and Implementation Requirements). The UK Finance Blueprint appears to suggest the Roadmap is already completed when it is not.

Looking to the longer term, the proposed mission, vision and outcomes as proposed by UK Finance are good (subject to some amendments), but the detail fails to convince that the future organisation will have the governance or resources to be able to deliver on them:

- Outcomes are set out but there is no identifiable function that would be responsible for setting or monitoring the organisation's own KPIs.
- There is no mention of the existing Consumer and SME Forums or expectation of their continuation.
- There is no mention of using the existing Consumer Evaluation Framework to assess the development of the ecosystem or impact on consumers.
- There is no placeholder for the existing End User Risk Committee nor detail on how it will identify and mitigate risks or work with regulators to mitigate risks to consumers.
- In accordance with the existing Roadmap, OBL has made progress towards developing the Customer Experience Guidelines to incorporate standards for TPPs and non-CMA9 banks which can be recognised as industry guidance by the regulator. These have been designed specifically to focus the industry on good practices in seeking consumer consent and the use and management of data. Again, there is no commitment from UK Finance to continue this important work to protect consumer interests nor obvious function to promote the consumer.

- There is no function to identify or promote consumer or small business interests internally.
- There is no mention of how it will broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions and community finance providers.

The current framework is a retrograde step in relation to consumer and small business interests with little consideration or reference to the existing functions, committees, forums or frameworks in place.

The UK Finance model proposes that innovation will be led externally by participant groups. This approach requires significant resourcing among participant groups to advance their propositions through Discovery, Advisory Committee and board without certainty they will be taken forward. This is likely to reduce incentive for parties to propose or fund innovation. It is also unclear how any decisions taken will be enforced by the Future Entity as described by UK Finance.

The current framework is a retrograde step in relation to consumer and small business interests with little consideration or reference to the existing functions, committees, forums or frameworks in place.

The UK Finance model proposes that innovation will be led externally by participant groups. This approach requires significant resourcing among participant groups to advance their propositions through Discovery, Advisory Committee and board without certainty they will be taken forward. This is likely to reduce incentive for parties to propose or fund innovation. It is also unclear how any decisions taken will be enforced by the Future Entity as described by UK Finance.

Our Alternative – As articulated in our paper, OBL, with an independently chaired board and an Implementation Trustee, is the best-placed entity to ensure the CMA Order is delivered as envisaged and bridge the gap until Smart Data is ready to provide a longer-term home for open banking.

Our proposal clearly identifies the role OBL plays in convening the industry to set out a 3 year strategy and annual plan for innovation and development, which is funded appropriately through a mix of commercial fees and regulatory levy, held account to its delivery through publicly published reports and regulatory oversight. This agreed plan should form the basis for defining the resources and budget required to deliver.

It also demonstrates how the vision and outcomes will be delivered through:

- A powerful horizon scanning, strategy setting and policy function within OBL.An ecosystem development function.
- Six monthly publications of the Consumer Outcomes Evaluation Framework.
- An annual report to regulators from the End User Risk Committee with an obligation on regulators to respond on how they are working with OBL to mitigate risks.
- Draft Key Performance Indicators (see Appendix 6).
- The inclusion of a dedicated and resourced Consumer and SME Forum chaired by a board member
- Appropriately resourced consumer and SME representatives to feed into the various stakeholder groups.

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?*

Design Principles

- Governance should be fully independent.
- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market and brings greater financial inclusion.
- There should be a strong consumer voice through the organisation from governance to delivery.
- The entity must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.
- The organisation must be incentivised and aligned to deliver the outcomes and KPIs envisaged.
- It must be subject to regulatory oversight, to ensure it delivers both as a competition remedy and long-term driver of consumer value.
- OBL should broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions, community banks and community finance providers.

Issues with UK Finance Blueprint – in the short term, the UK Finance Blueprint is not able to ensure that sufficient funding is available to deliver the CMA Order, a critical failing. Longer-term the UK Finance Blueprint is not able to prevent a situation where the funding members only permit the Entity to work on areas which are in their interests. This is not a theoretical challenge as highlighted in the Treasury Select Committee's (TSC) evaluation of the Payment Council where proposals were blocked because they "…may be in the interests of the industry or the UK as a whole, but not in the commercial interests of a particular participant".

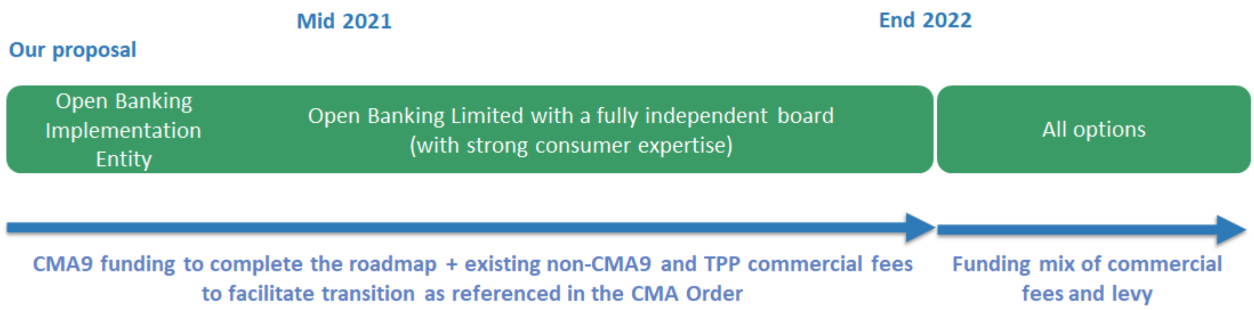
The UK Finance model proposes that innovation will be led externally by participant groups. This approach requires significant resourcing among participant groups to advance their propositions through Discovery, Advisory Committee and board without certainty they will be taken forward. This is likely to reduce incentive for parties to propose or fund innovation. It is also unclear how any decisions taken will be enforced by the Future Entity as described by UK Finance.

Business as usual is expected to be funded by a call on ASPSP members. Given the focus on reducing operational costs, it is likely that once limits for charging TPPs are reached, ASPSPs will seek to keep the organisation on as limited a budget as possible, again reducing likelihood of innovation or the ability to respond to other initiatives like open finance or Smart Data or manage change.

The current proposal also limits the CMA9 to fund for three years before the potential for exiting. As members leave, this could create a heavy burden on remaining players or see fragmentation of the UK's standards. The threat of larger members leaving and establishing competing bodies also creates an inappropriate pressure on the Future Entity.

Our Alternative – OBL should continue to be funded by a mix of CMA9 funding and non-CMA9 and TPP commercial fees until the transition at the end of 2022. However, this funding should be agreed in advance and with greater transparency and tied to the agreed annual plan. OBL should then work with regulators to set out a post 2022 funding model combining commercial fees with a regulatory levy. The regulatory levy would apply to all PSD2 regulated parties.

Figure 14: Funding the Evolution



The mix of commercial fees and regulatory levy would confirm the Open Banking Standard as *the* open standard for the Dedicated Customer Interface for the UK and specifically look to ensure interoperability and standardisation for the banking sector. This approach does not restrict individual firms providing their own proprietary dedicated customer interface or stop other initiatives from developing standards for other parts of the financial sector. However, it would make it difficult to establish an alternative OBL. As such it would reduce the likelihood of threats by large incumbents to remove funding or set up alternative bodies.

A levy provides distance between the funding entities and the governance of the entity so that the entity is free to go about its business with less influencing and lobbying from dominant incumbents. There is currently no other proposed model that would address the inappropriate sway of large banks with funding power. The connection between funding power and governance has to be broken and this has not previously been adequately achieved through independent board membership alone. The levy would be funded proportionately according to size with similar metrics to those used for other bodies in the regulatory family such as the Money and Pensions Service and the Financial Ombudsman Service.

The levy component also gives OBL the flexibility to invest in research and develop, deliver activities that may advantage the consumer but may be of less commercial interests to firms. It would also support ecosystem development such that the technology could be made directly accessible to not-for-profit providers of financial services, like community finance providers.

Once an independent board is in place a commercial strategy for the new entity can be developed which considers the variety of potential income streams possible and works with regulators to work out the levy portion. This strategy should determine which elements of infrastructure can be used cross-sector to support the nascent Smart Data industry. In addition, the OBL should push for commercial returns, where it doesn't create barriers to entry or create competitive concerns. As elsewhere it is essential that this commercial strategy is undertaken independently as there is significant risk of the results being swayed by particular interest groups (e.g. banks who are seeking to reduce costs by selling valuable assets, which may have been better deployed to support the broader open ecosystem).

Rather than relying on participant groups to self-organise and fund a precarious governance journey to implementation, OBL should be responsible for convening the industry and agreeing a 3-year strategy and annual plan and budget outlining how it will use the regulatory levy and commercial fees to ensure residual aspects of the CMA Order are delivered and monitored; and to deliver further innovation and change.

c) *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?*

Design Principles

- The entity must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.

Issues with UK Finance Blueprint – we support the concept of TPPs paying for services they use as set out in the Blueprint. However, there is a risk that the drive to generate commercial revenues creates barriers to entry and prevents "the development of a dynamic intermediary sector" which was anticipated in the CMA Order[26]. Additionally, where bank-dominated bodies are responsible for setting pricing, there are clear examples of incumbents acting to set pricing in such a way that competition is thwarted and consumers and small businesses lose out. LINK would appear to be the most clear example of this. The MD of NM Money Group (an independent ATM operator) commented that, "we have seen that the Banks within LINK have chosen to reduce the interchange pricing … This has greatly reduced the supply of cash to consumers. Such influence from large banks could run a similar risk … and be completely contrary the objective of 'open banking'"[27]. We understand that LINK has acted to reduce the fees paid to independent ATM operators via interchange such that their business has become uneconomic, despite the fact that LINK has commissioned independent cost studies which have been ignored. NM Money Group believe that this is a significant contributory factor to the current crisis in Access to Cash, a major concern for the UK Government which has requested the FCA and PSR to coordinate an industry-led solution which appears slow to emerge.

These same issues were identified in the TSC evaluation of the Payments Council where they found that initiatives of benefit to society were blocked by the large funding members.

Many TPPs in the ecosystem are small – themselves SMEs – which are really struggling with slower than anticipated API rollout and the impact of the pandemic. In many cases it is these smaller TPPs that are our best hope of a strong and diverse ecosystem and an additional financial burden on them now is inappropriate.

Our Alternative – Short term funding would continue in the same way as today, with CMA9 contributions based on market share and tied to the delivery of an agreed annual plan. Longer-term a mix of commercial fees and a regulatory levy on industry would be more appropriate to secure the long-term market evolution required. Levy funding would ensure that any fees were appropriate and took into consideration the broader benefits of competition in the evolution of the retail banking and payments markets.

[26] Retail Banking Market Investigation, xxxvii

[27] Quoted from the submission from NM Money Group to the CMA and shared with us.

d) *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?*

Design Principles

- The entity should drive standardisation and interoperability as part of the journey towards open finance and Smart Data.
- The organisation must be incentivised and aligned to deliver the outcomes and KPIs envisaged.

Issues with UK Finance Blueprint – KPIs are required to ensure that the future entity invests sufficiently in these essential functions. The UK Finance Blueprint does detail KPIs but, without any regulatory oversight, the new entity would be accountable only to its members for the delivery of these KPIs. This is insufficient and creates the significant risk that a Future Entity dominated by bank interests may consider these services to be a low priority and reduce funding and focus.

Independence and KPIs subject to regulatory scrutiny are therefore essential to ensure that the entity is balanced between competing interests in the market.

Our Alternative – By providing continuity until the completion of the CMA Order, our proposal ensures the ongoing investment in these vital, enabling services which help to ensure the smooth running of the ecosystem in its immature state and ensure the ecosystem continues its progress towards the "dynamic intermediary sector" envisaged in the CMA Order.

Our post-2022 proposal would ensure an independent but accountable body within a Smart Data organisation which would be driven by a clear, transparent plan with KPIs, one of which would logically cover services "fundamental to maintaining a well-functioning ecosystem". This would ensure that appropriate levels of resource were provided to ensure delivery of these KPIs and via levy funding ensure that there was a mechanism to ensure the fair allocation of costs to all parties. The services are likely to be beneficial cross-sector services for Smart Data and could also be shared across a wider group of participants as part of the envisaged Smart Data Function[28].

e) *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?*

We set out an alternative approach to funding and resourcing in our paper. This prioritises the needs of consumers and small businesses and the resources needed to effectively deliver the anticipated benefits of the CMA Order, rather than the needs and preferences of the funding members. This approach is designed to:

- Ensure sufficient resource to allow the CMA Order to be completed effectively.

[28] BEIS, Next steps for Smart Data, 2020. See here

- Ensure sufficient resource to ensure that the ecosystem continues to grow and develop into the “dynamic intermediary sector” envisaged in the CMA Order.
- Ensure that vested interests are not able to block valuable work by preventing access to resource and funding. This is a real risk as demonstrated by the case of the Payments Council where there were found to be significant examples of initiatives which had clear benefits to society but which were blocked by large funding members.

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?*

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

Design Principles

- There should be a strong resourced consumer and small business voice through the organisation from governance to delivery.

Issues with UK Finance Blueprint – We are not convinced that the Blueprint will result in an entity which is focused on consumer needs. We are opposed to representative boards in general, which have typically resulted in either impasse or domination by one particular and well-resourced party. Consumer and SME interests are wholly under-represented on the proposed board. The UK Finance model of consumer representation is a retrograde step. It does not recognise the existing approach to consumer and SME representation (despite UK Finance being informed of it several times) or the challenges associated with lack of resourcing or invitation to engage in external participant groups.

Consumers feature strongly in the mission, vision and outcomes of the UK Finance Blueprint but their interests are not adequately reflected in the detailed governance, leadership, resourcing, function or ecosystem development:

- Outcomes are set out but there is no identifiable function that would be responsible for setting or monitoring the organisation's own KPIs.
- There is no mention of the existing Consumer and SME Forums or expectation of their continuation. There is no inclusion of secretariat to support these Forums (as there is currently today).
- There is no mention of using the existing Consumer Evaluation Framework to assess the development of the ecosystem or impact on consumers.
- There is no placeholder for the existing End User Risk Committee nor detail on how it will identify and mitigate risks or work with regulators to mitigate risks to consumers.
- In accordance with the existing Roadmap, OBL has made progress towards developing the Customer Experience Guidelines to incorporate standards for TPPs and non-CMA9 banks which can be recognised as industry guidance by the regulator. These have been designed specifically to focus the industry on good practices in seeking consumer consent and the use and management of data. Again, there is no commitment from UK Finance to continue this important work to protect consumer interests nor obvious function to promote the consumer.
- There is no function to identify or promote consumer or small business interests internally.
- There is no mention of how it will broaden usage of its APIs across all parts of the finance ecosystem, including alternative business models such as credit unions and community finance providers.

Our Alternative – We recommend:

- Regulatory oversight from the CMA and FCA to ensure public accountability.

- A fully independent governance model to deliver the completion of the Roadmap, the envisaged outcomes from the CMA Order and the transition to Open Finance and Smart Data which is vital if the consumer value for Open Banking is to be realised.
- Appropriate functions to ensure the organisation delivers against the vision and outcomes envisaged.

Regulatory oversight and public accountability

Regulatory oversight is essential if consumer and small business needs are to be taken into account adequately. The industry and indeed OBIE itself have been reticent to prioritise, sufficiently resource or deliver on the specific consumer-related aspects of the existing Roadmap that are not commercial in nature (e.g. Consumer Outcomes Evaluation Framework, TPP-Side Customer Protection etc). **If there had not been specific CMA endorsement of these items in the latest Roadmap they would not have been delivered, despite the strength of consumer and SME representation.** We contrast this with the CMA9 power to fund and set up work on Extended Customer Attributes without requiring a revised CMA Roadmap and only a decision at IESG.

A key role of regulators is to protect consumer interests and ensure a level playing field for market participants so that competition and innovation can flourish. A three-year strategy and annual plans developed by industry in consultation with consumer and small businesses, signed off by the CMA and FCA and published (and reported against) provides more accountability and opportunity for scrutiny by media and government.

This process also allows the industry to lead the strategy, demonstrate their commitment to good consumer outcomes and develop timelines which are realistic. If their strategies do not meet these requirements, consumers and small businesses can inform regulators and regulators can advocate on their behalf where appropriate. This approach also provides regulators with the opportunity to ensure industry activity is aligned to their own policies and thematic focuses.

Independent governance

In our proposal, the board should be suitably qualified to reflect the interests of consumers, especially consumers in vulnerable circumstances, and small businesses. It must have experience in consumer policy, the design of infrastructure as it impacts consumers downstream, customer experience and its impact and evaluation, alongside the typical industry expertise required. Too often boards simply do not reflect the diversity of society or have the appropriate consumer experience or small business knowledge to fulfil the needs of those whom it is ultimately there to serve.

We propose a board made up of:

- A fully independent chair, appointed by the CMA in consultation with the FCA and BEIS, responsible for the organisation as a whole.
- Independent directors with appropriate consumer expertise as noted above.
- The Implementation Trustee, appointed by the CMA responsible for the CMA Order.
- The Chief Executive, who leads the organisation and is responsible to the Trustee (for the delivery of the CMA Order) and the chair (for the overall organisation, its strategy and delivery).

The board will be responsible for all aspects of corporate governance. In addition, board members will chair committees to the board including the Consumer and Small Business Committee. We recommend the

Consumer and SME Forums are combined into one Consumer and Small Business Committee and that separate engagement work continues with both constituencies. The chair of this committee will be responsible for recruiting additional permanently paid members to attend the stakeholder working groups (e.g. Expert Evaluation Groups, Delivery Groups etc). The Consumer and Small Business Committee will be required to report monthly to the board on key issues and the board will be obliged to provide feedback. This will ensure consumers and small businesses have direct interaction with the board and understand how their contributions are being weighed by the board. It will also ensure that consumers and small businesses are adequately resourced and represented as policy and standards are being developed at an early stage through working groups.

Appropriate functions

Our proposal clearly identifies the role OBL plays in convening the industry to set out a 3 year strategy and annual plan for innovation and development, which is funded appropriately through a mix of commercial fees and regulatory levy, held account to its delivery through publicly published reports and regulatory oversight.

It also demonstrates how the vision and outcomes will be delivered through:

- A powerful horizon scanning, strategy setting and policy function within OBL.An ecosystem development function.
- Six monthly publications of the Consumer Outcomes Evaluation Framework.
- An annual report to regulators from the End User Risk Committee with an obligation on regulators to respond on how they are working with OBL to mitigate risks.
- Draft Key Performance Indicators (see Appendix 6).
- The inclusion of a dedicated and resourced Consumer and SME Forum chaired by a board member
- Appropriately resourced consumer and SME representatives to feed into the various stakeholder groups.

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?*

Design Principles

- Board Recruitment should be open and transparent and follow agreed best practice.

We recommend that all board members are openly and independently appointed rather than reflecting specific stakeholder interests. As such, the whole board should have a focus on end users, given that open banking is ultimately intended to create value for end users. The board should therefore be suitably qualified to reflect the interests of consumers and small businesses, especially consumers in vulnerable circumstances. It must have experience in consumer policy, the design of infrastructure as it impacts consumers and small businesses downstream, customer experience and its impact and evaluation, alongside the typical industry expertise required.

All board members should be appointed through open recruitment with specific targeting of certain civil society staff. A process similar to the recruitment process for organisations like the FCA Consumer Panel should be adopted[29]. At least one representative should have specific knowledge and ideally lived experience of vulnerability. Consumer policy and customer experience should be additional core requirements of other board members.

[29] Although dating from 2017, this document gives an overview of how the FCA Consumer Panel recruits members: here. The Consumer Panel represents the interests of both individuals and small businesses.

Sustainability and 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?*

Design Principle

- The entity should drive standardisation and interoperability as part of the journey towards open finance and Smart Data.
- The entity must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.
- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market.

Issues with UK Finance Blueprint – The new entity needs certainty that the large banks cannot withdraw from the entity and destabilise it (or threaten to and undermine the independence of the entity). In the future, there are strong benefits from creating unifying standards that all firms adopt, and therefore the entity should seek to form a bedrock of the UK's future data sharing economy, not be one of potentially many different bodies in existence. Our understanding of the UK Finance Blueprint is that membership is voluntary meaning that CMA9 banks could withdraw after the initial 3 year period. This lack of certainty means that banks could create alternative entities, or threaten to do so, and undermine the universality of the Open Banking Standard.

Our Alternative – Our proposal ensures that the CMA9 continue to fund the organisation until the CMA Order is complete and subsequently transitions to a mix of commercial and regulatory levy funding as part of Smart Data. The mix of commercial fees and regulatory levy provides certainty to OBL and removes the potential for a 'cliff edge' at either three or five years.

The mix of commercial fees and regulatory levy would confirm the Open Banking Standard as *the* open standard for the Dedicated Customer Interface for the UK and specifically look to ensure interoperability and standardisation for the banking sector. This approach does not restrict individual firms providing their own proprietary dedicated customer interface or stop other initiatives from developing standards for other parts of the financial sector. However, it would make it difficult to establish an alternative OBL. As such it would reduce the likelihood of threats by large incumbents to remove funding, set up alternative bodies and fragment the Standards.

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?*

Design Principle

- The entity must be financially sustainable and resourced to deliver against its mission and outcomes. It must support the development of a commercially sustainable and vibrant ecosystem.

Issues with UK Finance Blueprint - Our understanding is that non-CMA9 banks represent a significant proportion of the £3.4m income generated by the OBIE in 2020[30]. It is therefore not correct to say that non-CMA9 account providers get a "free ride" today. Our assumption is that non-CMA9 banks would continue to pay fees in the future. The question and reference to "free ride" for non-CMA9 account providers appears to ignore the fact that the CMA9 should carry a greater cost than others since they are subject to the CMA Order. It should further be noted that these costs are trivial in the context of the incomes generated by the CMA9. Based on our calculations the £32.7m net cost of OBIE in 2020 represented 0.073% of the income of the six largest CMA9 banks in the same period[31].

Our Alternative - In our proposal, we assume that the interim entity would continue to charge participants fees in the short term for using services as it does today. As set out above it is critical that these fees are set in such a way that don't create barriers to entry for providers and therefore independence of the future entity is critical[32]. The longer-term funding position should resolve these issues through a mix of commercial fees and a regulatory levy. This is an accepted funding model for entities which provide whole of market solutions. Levy funding provides clarity and certainty to bodies providing essential services to the whole market and avoids the issues where the largest funders in membership organisations exert greater control.

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?*

Design Principles

- Consumers lives don't align to regulatory silos – open banking will only deliver true value to consumers when it evolves into open finance and Smart Data.
- The assets of OBL, ultimately paid for by consumers and small businesses, should be leveraged to deliver other open initiatives and Smart Data.

Issues with UK Finance Blueprint – the UK Finance Blueprint does not convince us that it would easily transition to any future Smart Data governance structure. In any case, this would be a double transition, from CMA9 funded to membership organisation and then transitioning again into a Smart Data organisation.

The UK Finance governance model is not attractive to other industry sectors. The Savings and Investments Alliance (TISA) has already formed its own standards body (OSIP[33]) and it seems implausible to suggest that a

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[30] OBIE Annual Report 2020. Sources of fee income are not broken out, but the report notes that "Total Income, which reflects a growing number of participants utilising open banking services, grew to £3.4m. This has helped reduce the overall cost position of the Entity"

[31] Our analysis of the Incomes of the 6 largest members of the CMA9. For those members with global banking operations, the analysis includes only the UK Retail Banking division.

[32] Both the Payments Council and LINK appear to have engaged in pricing which has acted to minimize competition.

[33] See here

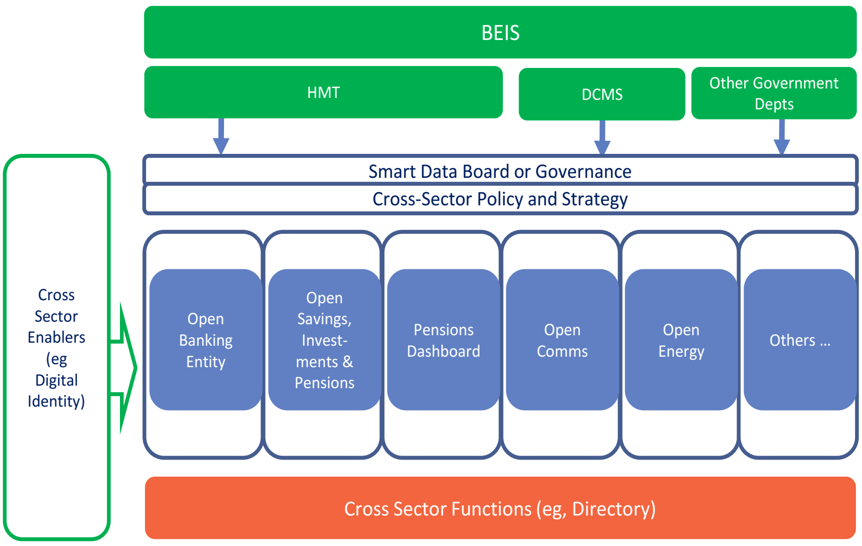
group of investment firms would have any interest in giving up control to a group of banks, or to have to negotiate their interests through a representative board incorporating a wider set of interests.

We are already seeing fragmentation emerge in the market with separate initiatives covering open banking, open savings and investments, open energy and pensions dashboards. Despite being a significantly large and wide-ranging trade body, UK Finance has not addressed this fragmentation nor reflected the advice of the Open Finance Advisory Group on Cohesion and Interoperability to:

> *"Initiate both a multi-stakeholder, federated Working Group which can 'hive up' lessons learned from Open Banking into a central framework, governance and funding structure, and also enable each financial sector to drive their own Implementation Entities to address sector-specific issues (e.g. open [insurance/ pensions/investment])."*

Our Alternative – OBL should be an independently governed organisation with a clear plan to transition into the UK's Smart Data governance structure. The transition from OBL to a part of Smart Data would be much simpler than a transition from a membership organisation. The proposal also respects the governance of other industry sectors but sees the key leads of those sectors working together as part of the Smart Data board to ensure cross-sector interoperability and consistency of services for consumers. It is far more likely that other "open" projects would consider joining such an organisation where they can benefit from collaboration, explore cross-cutting initiatives like digital identity, but still retain their own sector governance.

Figure 15: Illustrative Structure for Integration of open banking into a broader Smart Data



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?*

Design Principles

- OBL should work with the PSR and Pay.UK to identify responsibilities and activities required to make open banking payments an effective competitive force in the UK payments market and to investigate the possibility of moving payments APIs to Pay.UK.

Issues with UK Finance Blueprint – the UK Finance Blueprint doesn't consider how open banking payments could act as a component of the UK Payments Strategy, and the role that open banking payments could play in providing greater competition[34].

Our Alternative – We recognise that the open banking payment APIs provide the building blocks for a more competitive UK payments market, which provides more choice to those needing to be paid and new options for those wanting to make payments. However, with roughly 1m payments a month at present, this potential is not yet realised and there are a number of fundamental issues which need to be resolved before open banking payments can provide more than a niche alternative to incumbent payment methods such as cards and direct debits. These issues include consumer protection, speed and convenience of journeys, availability of balance and reliability of the APIs.

The payments APIs therefore need to be considered a critical part of the UK Payments Strategy, under the oversight of the PSR and Pay.UK. Open banking payments need to be fully integrated into the plan for the New Payments Architecture, and the underlying issues with open banking payments reviewed and resolved to enable them to thrive as a competitor to existing ways of making payments. Most importantly, this competition must not come at the expense of consumer protection such as Chargeback or Section 75[35].

There is an opportunity to create a strong innovative strategy for supporting the development of a competitive market for payments using the New Payments Architecture and Payments APIs. OBL should be charged with investigating whether Payments APIs should move to Pay.UK to facilitate this strategy. It should work with Pay.UK and the PSR to set out exactly how it will interact on the future of the open banking payments standard and define responsibilities. Changes to the open banking standard should be integrated into both Pay.UK and OBL strategies and annual plans. Importantly, any governance issues must also be addressed so there is a level playing field for payments and consumer protection is harmonised and consistent.

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?*

We outline an alternative governance structure in our submission. This proposal addresses a number of critical failings of the UK Finance Blueprint, including:

- The lack of certainty and clarity regarding future involvement of the UK's large banks, who would be free to leave the organisation and potentially set up a rival organisation. The resultant damage to consistency and standardisation would be likely to fundamentally damage the UK's burgeoning open banking market.
- Unclear and challenging transition to any future Smart Data governance structure (such a transition would be the second transition for open banking and would entail moving from a membership structure to a pillar within Smart Data).

[34] This is not surprising given that many of the largest members of UK Finance are significant beneficiaries of the current dominance of cards in retail payments.
[35] Please see our responses to the Payments Landscape Review and the PSR on the topic of Consumer Protection in relation to open banking payments. It is not acceptable that a protection gap exists between open banking payments and cards.

- The extreme low likelihood that other “open” initiatives would want to be part of the future entity as envisaged by UK Finance, given its substantial control by the large member banks.
- A failure to consider whether it would be beneficial to consider the role open banking payments can play in the PSR and Pay.UK’s work to create a more competitive payments market.

Our alternative proposal as outlined in our submission offers:

- An easier, simpler transition to a new Smart Data governance model when the time is right.
- An independent governance structure, more likely to appeal to other “open” initiatives.
- A long-term funding model based on commercial fees and a regulatory levy which reduces the incentive for banks to withdraw from the entity and set up rival bodies.

Monitoring

1. *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?*
2. *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?*

Design Principle

- Independent monitoring is required to ensure compliance with the Standards. Monitoring should be automated and effected through a schedule of fees and charges where possible.
- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market and brings greater financial inclusion.

Issues with UK Finance Blueprint – We cannot envisage a scenario in which it would be appropriate for a membership organisation with no regulatory oversight to monitor its own members for compliance with a competition remedy.

We also have significant concerns that the UK Finance proposed model, where compliance monitoring is undertaken by the CMA, based in part on data provided by the future entity envisaged by the UK Finance Blueprint, is not workable. We know from a number of recent projects and evaluations that determining whether a participant is compliant or not can be a time consuming, complex exercise. It is not a simple tick box exercise.

As we set out in our report, the CMA Order is at a critical period, with open banking immature, the implementation incomplete in some very important areas and some areas of evaluation still to be undertaken. An Implementation Trustee and Office for the Trustee is required until at least the end of 2022. It is possible that continuing monitoring will be required beyond this time.

The UK Finance proposal has not identified how it will monitor or support ecosystem development.

Our Alternative – We do not propose that monitoring is moved out of the Interim Entity, but rather it continues as a core function as today. We consider there are many benefits of keeping monitoring within OBL, provided that it is properly independent and able to challenge those banks subject to the CMA Order. (For the avoidance of doubt, the UK Finance model is not sufficiently independent or able to challenge the banks subject to the CMA Order).

The independent governance we propose, the continuation of the Trustee, and regulatory oversight should ensure the entity delivers the outcomes for consumers and small businesses envisaged. This includes and exceeds the CMA monitoring function:

- OBL will be accountable to the CMA for the CMA Order and transition.

- Additionally, it will be accountable to the FCA for the delivery of the UK's open standard for the dedicated interface for PSD2; other open finance initiatives OBL may serve; and the extent to which OBL addresses conduct and end user risks associated with Open Finance.

We recommend that the FCA aligns its KPIs for the performance of APIs to that of OBL to reduce fragmentation, harmonise reporting and more effectively share the burden of supervision for market performance. Monitoring of the Order will continue to be conducted as part of OBL by the Office of the Trustee, drawing in the MI created by the same organisation.

OBL will be responsible for convening stakeholders to agree a 3-year strategy on a rolling basis and to agree an annual plan. OBL will present this to regulators for their scrutiny against the needs of consumers and small businesses and its own policy strategy before requiring adjustments or signing off the plans.

OBL should report annually to relevant regulators about the risks identified by the End User Risk Committee, how it is mitigating these and what it requires by way of support from the regulators. The regulators should be obliged to respond and set out publicly how they are working with OBL to ensure risks are addressed before they crystallise. This is an opportunity to formalise a 'prevention rather than cure' approach as frequently espoused but rarely delivered.

The organisation will continue to use and update the Consumer Evaluation Framework to monitor ecosystem development and end user outcomes derived from open banking, reporting six-monthly on progress. This should be used to support the industry's three year strategy and annual planning cycle.

At the end of 2022, when OBL transitions, it will be appropriate to review whether a separate CMA Monitoring Function is required, or whether the oversight of the Smart Data Board will be sufficient. However, we think it is likely that for the ongoing Monitoring Function to be effective it will need powers to fine CMA9 where they do not adhere to the Standards or make unsuccessful challenges.

3. *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?*

Monitoring and compliance sit best within OBL, provided that it can be guaranteed to be independent and able to effectively scrutinise the banks. The open banking remedy is very different to most other competition remedies and we consider that it would be impractical to appoint an external professional services company to monitor compliance. Even if appropriate it would be almost impossible to find a unconflicted firm with adequate capability.

4. *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.*

Design Principle

- Independent monitoring is required to ensure compliance with the Standards. Monitoring should be automated and effected through a schedule of fees and charges where possible.

- Governance must ensure that the open banking remedy effectively resolves the underlying Adverse Effects on Competition (AECs) in the market.

Our alternative - We consider that monitoring today works relatively well within OBIE. The Office of the Trustee has been able to identify non-conformance and challenge banks to rectify it. In some cases, this has been a protracted process where there is disagreement about the judgement of the monitoring function, but typically it has seen issues resolved quickly and effectively, particularly as it has the option to pass non-conformance to the CMA.

We are not convinced that any of the other options presented in the UK Finance Blueprint or the CMA's consultation materials provide an effective alternative to the Implementation Trustee or Office for the Trustee in the short term, especially while there are implementation requirements outstanding. We are also cognisant that the CMA9 may become less diligent if there is less scrutiny, leading to problems for TPPs, consumers and small businesses before open banking has become an established service.

Post 2022, we suggest giving the Monitoring Function stronger powers to create a credible deterrent to CMA9 slippage or spurious claims. Requiring a fee to be paid by the CMA9 when they unsuccessfully challenge a Trustee assessment may incentivise better behaviour and reduce protracted and expensive discussions. Where monitoring can be automated and effected through a schedule of fees and penalties this will also help to discipline the market and reduce the need for Trustee intervention.

5. *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?*

We recommend that the FCA aligns its KPIs for the performance of APIs to that of OBL to reduce fragmentation, harmonise reporting and more effectively share the burden of supervision for overall market performance. This would fit neatly alongside its current consultation suggestion to phase out Modified Customer Interfaces and to require all ASPSPs to have a Dedicated Customer Interface. In making this suggestion, it would be acceptable for the FCA to undertake supervision to see how well firms are adhering to the Dedicated Customer Interface, which for the majority of ASPSPs is the Open Banking Standard.

In the long term, we think it would be appropriate for the FCA to require all ASPSPs to adhere to the Open Banking Standard or demonstrate their own Standard is of equal or superior quality. This would bring all ASPSPs in line with the CMA9 and pass supervisory responsibility from the CMA to the FCA.

In the meantime, the FCA could strengthen the Open Banking Standard documentation (including Customer Experience Guidelines and Operational Guidelines) by officially recognising them as industry guidance. This would give the Open Banking Standard more teeth for all ASPSPs and TPPs and drive up standards across the industry, not just for the CMA9.

However, the Payment Services Regulations (PSRs) offer significantly less detail and are much less prescriptive about the way in which banks comply with its requirements than the CMA so the PSRs would need to be strengthened through legislation. Without significant changes to regulation, it is inconceivable that the FCA could provide comparable monitoring of banks subject to the CMA Order. The FCA would need to develop new capabilities and skills similar to those of the Office for the Trustee to ensure ASPSPs do not slip in their delivery of the Standards.

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

We have clearly articulated our concerns above that many of the questions suggest that some form of watering down of monitoring is possible or appropriate. We consider these to be concerning suggestions (for example, the question posed by the CMA: "is it necessary to continue monitoring at all?"). Time and again since 2016 we have seen that banks have required significant pressure to comply: they have missed deadlines, implemented poorly or not followed required elements of the standard or the Customer Experience Guidelines. The CMA Order is not complete and any suggestion that monitoring can now be watered down or reduced is very concerning.

Appendix 1: Open Banking Availability and Adoption

The CMA summarises a number of pieces of evidence which suggest that "the core elements of open banking are now in place, and the open banking ecosystem has developed a powerful forward momentum"[36]. These include:

- The recent announcement that there are 3m users of open banking.
- Half of small businesses using open banking.
- Hundreds of banking apps are now available, including services for consumers with vulnerability.
- 450 firms are in the pipeline.

Some data points, such as the % of small businesses using open banking, are not credible[37]. The majority of SME use is likely to be incidental to the operation of widely adopted cloud accounting packages prior to open banking implementation[38]. It is unlikely to represent a conscious decision to adopt open banking by those small businesses. SME representative organisations continue to report that the majority of small businesses remain to be convinced of the value of open banking.

A more detailed review of the status of open banking, leads us to conclude that there is patchy availability of services and still quite modest adoption:

- There are 109 live to market services of which only 95 are offering services direct to the consumer. Many of these providers appear very small or in beta[39].
- Open banking is helping to make existing services slicker (e.g. income & expenditure assessments[40] in debt advice and credit[41]) but solutions offering more novel support to people in vulnerable circumstances are typically small and have yet to scale consistently[42].
- A number of envisaged use cases have not yet materialised, with only 2 helping to drive switching and 4 helping consumers to save more. There is only 1 unbundled overdraft provider which pre-dated the roll out of open banking, whose fees are expensive relative to the aims of the CMA Order and which has already attracted negative media[43].
- There are no services providing personalised recommendations on which current account would best suit the needs of either individuals or small businesses, despite this forming a very significant part of the CMA Order intention. Indeed, the CMA Order specifically created a 'safeguard remedy' for small businesses if no services materialised offering Business Current Account comparison service – a remedy which we consider needs to be invoked[44].

[36] CMA The future oversight of the CMA's open banking remedies, 5 March 2021

[37] There are 6m SMEs in the UK, so if 50% were using Open Banking, that would equate to the entire base of 3m users identified by OBIE meaning there were no individual users.

[38] Accounting platforms using screen-scraping have migrated their customers to API Standards as part of the PSD2 requirements

[39] OBIE, Consumer Evaluation Framework, 2021

[40] https://www.bristol.ac.uk/media-library/sites/geography/pfrc/OB4G_Making%20a%20difference.pdf

[41] 70% of credit unions surveyed use open banking data, https://fair4allfinance.org.uk/wp-content/uploads/2020/12/Understanding-the-role-of-technology-in-Community-Finance-v1.pdf

[42] https://www.bristol.ac.uk/media-library/sites/geography/pfrc/OB4G_Making%20a%20difference.pdf

[43] https://www.thesun.co.uk/money/13389794/payday-lender-3271-to-settle-200-loan/

[44] CMA Retail Banking Market Investigation ("This will be supported by a 'safeguard remedy' whereby the larger SME banking providers in GB and NI will be required to bring about the creation of an industry-funded SME comparison tool, to a specification approved by the CMA, if necessary."). We are awaiting specific guidance on this point from the CMA.

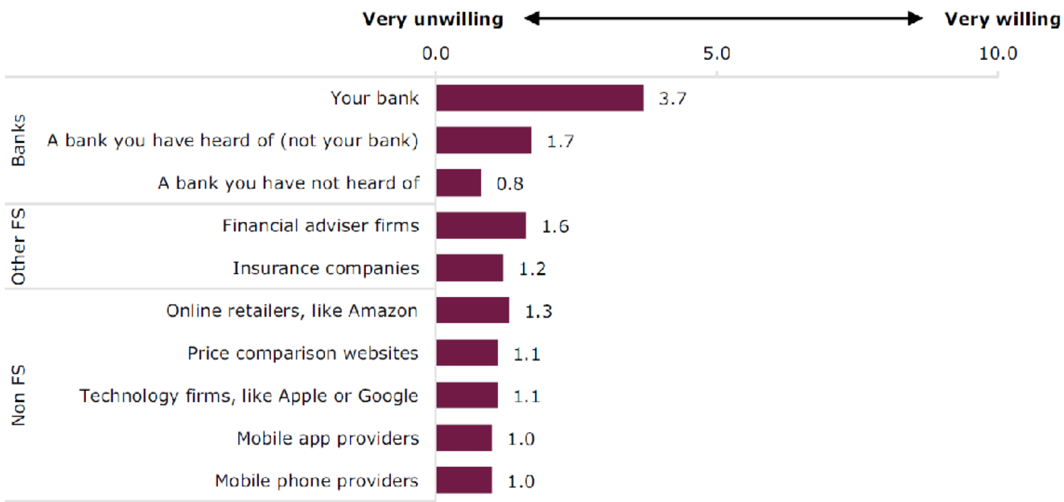
- Penetration is reported to be 5.3% of digitally active consumers but we await further evaluation to confirm their actual use. We are also conscious that because of the difficulty of ensuring that there is no double counting of consumers with multiple accounts that this figure could be overstated.
- OBIE has not yet published its Consumer Evaluation Framework report into the initial findings on ecosystem development. And has yet to undertake research to evaluate the consumer experience and impact.

The Lloyds Digital Index examined consumers' use of open banking and / or fintech services. It suggests that usage is very highly concentrated in younger and tech savvy segments. As the report summarises, "Nine in ten of this group have High or Very High digital engagement. In line with broader findings, users of these services typically have a younger age profile as 65% are aged under 40"[45]. Given that open banking is a competition remedy designed to make the market work better for all consumers, it is concerning that current adopters are younger and tech savvy. It is not surprising for an immature technology-driven innovation, but it suggests that there is still significant work to be done to broaden adoption.

The other recent dataset is the FCA's Financial Lives survey[46]. This report asked consumers if they would be willing to give various types of business access to their banking information. The results show widespread reluctance to share data.

Extract from Financial Lives 2020

Figure 5.23: Willingness to give the following types of businesses permission to securely access their banking information for Open Banking (Feb 2020)



Source: *FLS Feb 2020* ***Base:*** *All UK adults who adults who have a day-to-day account (Feb 2020:4,310)* ***Question:*** *RB103. Thinking about Open Banking, how willing would you be to give the following types of business permission to securely access your banking information? Answer on a scale of 0 to 10, where 0 is 'not at all willing' and 10 is 'very willing'.*

The data shows that there is more work required to communicate the benefits of sharing data and to build trust. When open banking was introduced, analysis showed inconsistent terminology and confusing explanations by banks. While this was raised frequently at the time, little was done to address the communication of open banking to consumers[47].

[45] Lloyds Digital Index 2020, Page 35. See here
[46] FCA, Financial Lives Survey 2020. See here
[47] We note that the proposed outcomes in the UK Finance Blueprint do refer to "Widespread adoption of Open Data and Payments propositions". It is hard to see how this can be achieved without addressing the clear lack of trust

Appendix 2: Outstanding Implementation and Evaluation Requirements

OBIE published a draft roadmap of activities which are not yet complete from the Revised Roadmap in March 2021[48]. There remains a significant amount of important, complex work which either requires implementation or additional evaluation. It is not accurate to say, as the CMA does, that "the implementation requirements of the Order will be delivered by the end of 2021".

As reported to the Implementation Entity Steering Group the March, there is ample evidence that Roadmap implementation will continue beyond the end of 2021 and importantly that there are still pieces of evaluation which are required. We summarise these in Figure 16 below.

Figure 16: Outstanding Implementation and Evaluation Required

Outstanding Areas of Implementation	Outstanding Areas of Evaluation
Any implementation requirements from two-way notification of revocation - which could potentially run to September 2022	Two-way notification of revocation – due for evaluation in Oct 2021
Implementation of changes to Consent and Access Dashboards – due to run to March 2022	Any evaluation of options to implement the FCA's decision on 90 Day Reauthentication – where the FCA's decision will not be known until June 2021.
CRM / COP Implementation – potentially due to run to March 2022, depending on Trustee decision.	Root Cause Analysis – the important one year review recommended by the Trustee in his letter to the CMA – due March / April 2022
Root Cause Analysis – potentially due to run to March 2022	The iteration of the Consumer Evaluation Framework, which is scheduled for Sep 21, Apr 22 and Nov 22.
Sweeping – potentially due to run to Jun 2022	
The implementation of the Trustee's recommendations to update the CEG in relation to A12 TPP Side Protection	

The scale of work still to be delivered is significant. For example, the successful implementation of VRPs for sweeping is an important priority for the Consumer and SME Representatives and is the key to unlocking a significant proportion of the potential value for consumers. However, it also presents risks to end users if implemented poorly. The critical period for the implementation of Sweeping will fall in 2022 by which time the UK Finance Blueprint seems to suggest there will no longer be a need for an Implementation Trustee.

It is also notable that a number of sensitive evaluations are scheduled to take place in late 2021 and 2022, including Root Cause Analysis, the Consumer Evaluation Framework and two-way notification of verification. Root Cause Analysis attracts strongly opposed views between the TPP community and the CMA9. It addresses the continued low levels of consent success, which is currently estimated at 65% and which means

exhibited in the latest FCA Financial Lives data, however the UK Finance Blueprint contains no detail on how their proposed entity would seek to address these issues.

[48] March IESG Pack, Roadmap Forecast Timings at March 2021

that millions of consumers are effectively dropping out of setting up open banking data connections or payments.

If evaluations and scrutiny of implementation are undertaken by a body which is not wholly independent and free from the influence of those parties who are bound by the CMA Order to deliver the requirements, they will not be done properly. By presenting the CMA Order implementation and evaluation work as substantially complete, the CMA is downplaying the need for a robustly independent organisation to hold the CMA9 banks to account during the remaining implementation and evaluation phase of the open banking remedy.

The UK Finance Blueprint, when assessing the status of the open banking remedy includes some misleading statements, designed to present a picture of the open banking remedy as complete:

- UK Finance state that "in 2021 the specifications for the final CMA Roadmap… will be delivered".
    - As discussed above, there are clearly both implementation and evaluations which will last longer than the end of 2021
    - The May 2020 Revised Roadmap is described as "final", when nowhere in the document is it described as final[49].
- The document then suggests that the completion of this Roadmap would bring to a close the requirement for: a Trustee, funding beyond residual requirements, an implementation entity, a roadmap.

Whilst the members of UK Finance might desire these things to be the case, they do not appear to be accurate. Not only is the Roadmap incomplete, but also the outcomes anticipated by the CMA Order are still some way off. Progress has been hampered by the banks own procrastination, heavy challenge to certain Roadmap items and delays to their own implementation.

[49] The document actually states the opposite: "This is subject to any further changes to the Agreed Project Plan and Timetable made pursuant to Article 10.6 of the Order, including any changes to timing that may be necessitated by the evolution of the Covid-19 crisis" – Notice of approval of changes to the Agreed Timetable and Project Plan

Appendix 3: Extract from Assessment of the Payments Council

Setting the Strategy for UK Payments, July 2012, HM Treasury summarised the failings of the Payments Council:

- "The main reason [for the failure] is the Payments Council is dominated by the UK's largest banks. This allows the largest banks to set the strategic direction for the Payments Council overriding alternate views or stakeholder interests. This has been recognised by the Payments Council's own recent Governance review (conducted by an independent director) which noted that "the Payments Council is dominated by the financial services industry and ways need to be found to communicate more effectively with consumer groups and SMEs".
- 4.22 In their report into the future of cheques, the TSC had similar concerns. The TSC said that: "The Payments Council is dominated by the banks and other payment industry members . . . Consumers are entitled to be suspicious of the motives of a body with such a composition proposing measures that are in the financial interests of its members."
- 4.23 The position of the major UK banks as both the owners of the payment systems, and the dominant decision-making force on the Payments Council can cause the perception of conflicts of interest when the Payments Council makes decisions. It is important that the UK payments regime is able to inspire confidence in this area and the Payments Council has not been able to do this successfully to date.
- 4.24 As well as reflecting the dominance of voices from within the industry over those of end users, the Payments Council's decision making has been slowed by the need to work by consensus. It seems to give undue weight to individual large members in determining whether a particular proposal by the Payments Council should be taken forward. For example, where a proposal may be in the interests of the industry or the UK as a whole, but not in the commercial interests of a particular participant, that proposal may be blocked or delayed. As a result, there has been a tendency for decision-making to be at the pace dictated by the slowest and by the biggest banks. The largest banks in the UK have large shares in the current account market and process the highest volume of payments, and it is therefore understandable that the largest banks will have a significant voice within the Payments Council. However, it is important that all views are heard from a wide variety of sources, and the current situation does not appear to work as well as was originally intended.
- 4.25 The Payments Council could also improve its performance in delivering specific projects. The Payments Council currently works by consensus and can struggle to enforce decisions effectively, once they are taken. This has meant that a single member can block or slow progress on any given issue. This creates a tendency to restrict development or implementation to the pace of the slowest, and can partially explain the slow implementation of the new Faster Payments Service, for example.
- 4.26 The provision of stable funding for development and implementation projects has also proved difficult for the Payments Council. The Payments Council is not able to raise funding on its own initiative and it is not able to borrow to fund projects. Funding is instead assessed on a case by case basis as the need arises. This approach makes it difficult to prepare forward looking plans. It can cause delays and in some cases can cause projects to be blocked if funding cannot be secured.

Figure 17: Assessment of CMA evaluation criteria for governance of Payments Council

CMA requirement for open banking governance	Previous experience of similar governance under Payments Council
Independently-led and accountable *to the consumers and small businesses it is intended to benefit*	Struggled to maintain independence from the largest, funding members
Adequately resourced to *deliver on the mission, vision and outcomes*	Found it difficult to raise funding for innovation on a case by case basis
Dedicated to serving the interests of consumers and small businesses	Became out of touch with the consumers and businesses it was there to serve and was only brought back into line with government attention
Sustainable and adaptable to future needs of the ecosystem	Could not enforce decisions and was not able to adapt to the future needs of the ecosystem.

Appendix 4: Consumer Manifesto for Open Banking

The consumer manifesto for open banking

Open banking should be a force for good which promotes financial inclusion and widens access to more useful, affordable and understandable financial services for everyone.

Services should meet people's positive expectations, be upfront about how they're paid for and how they use personal data. They should be sold and delivered in a way which respects people's identity, their data and their right to make the most of their money and live the lives they want to.

Open banking should genuinely equip people with real power to control access to their account and use of their data. People should be able to stop sharing access to their account easily without facing penalties.

Open banking should be reliable and as secure as it possibly can be. It should be clear to people with whom they are sharing their data and the legitimacy of those companies.
Data breaches and fraud should be rare and exceptional, not the rule.

People, their identity and their money should be universally safe. People should not bear unfair risk. When things go wrong people should have simple, free, quick access to help and redress.

Appendix 5: Comparison of Governance Options

Aspect	UK Finance Blueprint	Our proposal for OBL	Post 2022 Entity (Part of Smart Data Function)
Company Type	Not for profit limited membership company	Not for profit limited company.	To be determined by BEIS
Regulated Entity?	No	Yes	To be determined by BEIS (Yes)
Board	Chair, 2 x NEDs, 1 Consumer Rep, 4 Industry Reps	Fully independent but with consumer lived experience of vulnerability, consumer policy alongside UX, digital, financial services, change, open API initiatives and small business needs.	Board becomes an Oversight Committee for Open Banking as part of the Smart Data Function. OB chair attends the Smart Data Function Board.
Trustee	No	Yes, to oversee the completion of the CMA Order and the orderly transition to post 2022 Entity.	No
Process for Selecting Chair	Weighted vote by members	Open recruitment process. Selected by the CMA, consultation with FCA and BEIS.	Public appointments process
Advisory Group(s)	Advisory Committee, with attendees nominated by members.	The IESG is reconstituted as an Advisory Committee (with same membership), alongside Consumer & SME Forums and an End User Risk Committee.	Dedicated OB Advisory Group continues but extends to incorporate other Smart Data initiatives 4 times a year as other initiatives are established.
Identification of Change Requirements	Series of user participant groups who identify change requirements which are then assessed by a Discovery Working Group.	OB required to convene industry and consumer groups to agree forward looking 3-year strategy and annual plans. Signed off by regulator.	OB Oversight Committee required to convene industry including consumer representatives to agree 3-year strategy and annual plans and get signed off by regulator for submission to Smart Data Board.

Consumer & SME Forums	Unclear.	Current Consumer Forum & SME Forums are formalised and chaired by Board independent directors.	Dedicated OB Consumer and SME Forums chaired by Open Banking Oversight Committee member, supported by secretariat function.

Appendix 6: Suggested KPIs

Outcome	Suggested KPIs (to be further developed)
Widespread availability of a full range of open banking-enabled propositions	Availability of services by each of the 6 outcome areas defined in the Customer Evaluation Framework. Maturity of such services.
Widespread adoption of a full range of open banking-enabled propositions	Total levels of end user adoption / penetration Adoption split by services in each of the 6 outcome areas.
Consumers and small businesses are better off for using open banking services and realise the potential value such services bring.	Quantification of end user benefits from using open banking-enabled services.
The services provided are highly secure and reliable and consumers trust open banking.	Number and severity of security incidents. Performance targets for the APIs Levels of consumer trust.
Those in vulnerable situations are able to experience equal benefits of open banking-enabled services	Adoption and outcomes by segment of the population and type of small business.
The UK remains at the forefront of innovation in Open API propositions	International comparison of key metrics.
Poor customer outcomes are avoided and steps are taken to mitigate risks	Regular tracking of levels of end user trust and preparedness to share data. Tracking of complaint data.

Appendix 7: Glossary

Term	Description
AEC	Adverse effect on competition. If any feature or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the UK or a part of the UK, this constitutes an AEC.
API	An Application Programming Interface is a set of routines, protocols, and tools for building software applications. An API specifies how software components should interact.
ASPSP	Account Servicing Payment Service Providers provide and maintain a payment account for a payer as defined by the PSRs and, in the context of the Open Banking Ecosystem are entities that publish Read/Write APIs to permit, with customer consent, payments initiated by third party providers and/or make their customers' account transaction data available to third party providers via their API end points.
CMA	The Competition and Markets Authority (CMA) is a non-ministerial government department in the United Kingdom, responsible for strengthening business competition and preventing and reducing anti-competitive activities. Led the Retail banking market investigation which led to the creation of the Open Banking Implementation Entity in 2016.
CMA Order	The Retail Banking Market Investigation Order 2017.
CMA9	The nine largest banks and building societies in Great Britain and Northern Ireland, based on the volume of personal and business current accounts. AIB Group (UK) plc trading as First Trust Bank in Northern Ireland, Bank of Ireland (UK) plc, Barclays Bank plc, HSBC Group, Lloyds Banking Group plc, Nationwide Building Society, Northern Bank Limited, trading as Danske Bank, The Royal Bank of Scotland Group plc, Santander UK plc (in Great Britain and Northern Ireland).
Directory	The Open Banking Directory provides a "whitelist" of participants able to operate in the Open Banking Ecosystem, as required by the CMA Order. The Read/Write Directory also provides identity and access management services to provide identity information in order to participate in payment initiation and account information transactions through APIs.
FCA	Financial Conduct Authority, is the conduct regulator for nearly 60,000 financial services firms and financial markets in the UK and the prudential supervisor for 49,000 firms, setting specific standards for 19,000 firms. Responsible for leading the public debate on open finance and to setting up an advisory group to help drive forward future strategy.
GDPR	A regulation by which the European Parliament, the European Council and the European Commission intend to strengthen and unify data protection for individuals within the European Union (EU).
OBIE	Open Banking Implementation Entity: the existing governance entity charged with delivering the Open Banking remedy by the CMA.

OBL	Open Banking Limited: the not for profit company, already in existence, through which the OBIE operates. It currently has 2 Directors: the Trustee and the General Counsel.
Open banking ecosystem	The open banking ecosystem refers to all the elements that facilitate the operation of Open Banking. This includes the API Standards, the governance, systems, processes, security and procedures used to support participants.
Open banking payments	The phrase which we use in this report to refer to Payment Initiation Services. These are payments which are initiated by a Third Party Provider through the end user's existing payment account.
Open data	Information on ATM and Branch locations, and product information for Personal Current Accounts, Business Current Accounts (for SMEs), and SME Unsecured Lending, including Commercial Credit Cards. Note that the UK Finance Blueprint uses the phrase "open data" in a different and potentially confusing way as we point out in our document.
Participant	An API Provider, API User, ASPSP, or TPP that currently participates in the Open Banking Ecosystem.
Pay.UK	The UK's leading retail payments authority. Our aim is to enable a vibrant economy by delivering best in class payment infrastructure and standards for the benefit of consumers and businesses everywhere.
Payment Services Regulations (PSRs)	The Payment Services Regulations 2017 (PSRs) are the statutory tool used by HM Treasury and Parliament to transpose and implement the majority of the provisions of PSD2 into UK law.
PSD2	The Payment Services Directive 2015/2366, as amended or updated from time to time and including the associated Regulatory Technical Standards developed by the EBA and agreed by the European Commission and as implemented by the PSR and including any formal guidance issued by a Competent Authority.
PSR	Payment Services Regulator responsible for promoting competition and innovation in the interests of the people and businesses using payment systems.
Smart Data	Smart Data is a general term to refer to the secure and consented sharing of customer data with authorised third party providers. These providers then use this data to provide innovative services for the consumer or business, such as automatic switching and account management. This saves time, money and effort for customers who can more easily find and choose better suited deals.
SMEs	Small and medium-sized enterprises by scale of business, as defined by the CMA, with a turnover <£6.5m p.a.
TPPs	Third Party Providers are organisations or natural persons that use APIs developed to Standards to access customer's accounts, in order to provide account information services and/or to initiate payments. Third Party Providers are either/both Payment

	Initiation Service Providers (PISPs) and/or Account Information Service Providers (AISPs).
TSPs	Technical service providers (TSPs) are companies that work with regulated providers to deliver open banking products or services.