

Consultation Response:

The future oversight of the CMA's open banking remedies

To whom it may concern,

Please find below GoCardless' responses to the above referenced consultation.

GoCardless has long seen Open Banking as critical to the development of retail payments in the UK. With our recent \$100m investment focusing on Open Banking, it is crucial to us that there is an appropriate delivery vehicle behind this initiative, which can continue to deliver improvement .

We agree that the CMA Order has largely been delivered but while the bones have been built and 90% of the work is done, Open Banking is still not ready for robust payment uptake. It is the remaining 10% of work that will be critical for wide and successful adaptation.

As an example, API availability continues to be an issue and does not meet the standards needed for Open Banking to become a viable alternative to cards. Frequent downtime occurs, which the self reported ASPSP numbers do not reflect. In addition, payer experience remains poor and inconsistent across different online banking platforms. Together with inadequate payment status updates and challenging onboarding processes, these are all elements that must be completed to ensure the robustness and completeness of Open Banking.

We fully support the migration of Open Banking from a CMA mandated structure to an industry led entity. The key, however, is the timing of such migration. We also want to call out potential concerns with the proposed governance and funding structure that exist irrespective of timing.

Governance

The initial chair will not only be key in providing the direction for the future entity but also in ensuring the completion of the CMA Order. To ensure multiple participants' interests are represented equally, we would like to see a process whereby the regulator plays a central role in the appointment of the initial chair. We also suggest that careful consideration is given to the design of 'weighted voting rights' to avoid undue influence by large ASPSPs.

Funding

If banks (particularly the CMA9) directly fund Open Banking, it creates an inherent obligation for the future entity to prioritise the large contributors. We believe that funding should represent the participants of the system more broadly to create the basis for more distributed and equal decision making powers.

Impact on competition

The CMA's objective was to bring more competition and innovation to the sector. As alluded to above, we believe that there is a strong case for Open Banking payments to become a viable alternative to card payments. Nevertheless, it is not only the remedies themselves but the detail of how these are defined and implemented that is key. Inconsistent or generally non-conformant implementation will -- even if just initially -- disproportionately impact new or relatively young market entrants. The current proposition is fragile to the extent that 'as is' is not fit for consumers. Without completing the 'last mile' both in terms of propositions, implementation and performance, we are concerned that TPPs will be unable to obtain the mass adoption necessary to create a commercially viable product. The result will be that the good work done so far will go to waste and that the CMA9 will maintain their current position.

Proposed model

Provided that the above points considering governance and funding are addressed, UK Finance's blueprint provides a good long term model for ongoing maintenance of Open Banking. Nevertheless, it is too soon to move directly to that structure. We believe that the continued development of Open Banking should happen in three stages, rather than the two currently proposed:

1. **Build** - the current stage led by OBIE;
2. **Bedding Down** - an interim stage with independent governance, and de-linked funding that maintains delivery momentum, and is likely to be for a period of at least 18 months; and
3. **Operate** - future stage that incorporates UK Finance's proposal

By implementing an interim 'Bedding Down' stage of, for example 18-24 months, the industry can ensure delivery of the remaining roadmap and provide the robustness needed to allow mass uptake. It will provide sufficient time to design and implement an 'Operate' stage that not only considers all players within the ecosystem, but also creates a stable foundation upon which other initiatives such as Open Finance can be built.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Hiroki Takeuchi

CEO

[REDACTED]

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Leadership of the Future Entity

<p>a. It is envisaged by UK Finance that the Members of the Future Entity would appoint the Chair with “votes weighted by participant type.” This process is not explained in detail and we will seek further clarity from UK Finance. However, it may give rise to a risk that a particular stakeholder group (e.g. the largest banks) would have an inappropriate degree of influence over the appointment. What process and criteria should be used to identify suitable candidates for the Chair? Who would be responsible for doing this, who should be kept informed and whose approval should be sought for decisions at this stage? Should the Members alone approve and appoint the Chair or should the CMA’s approval be required, as was the case in the appointment of the Trustee?</p>	<p>We suggest that the current stage is followed by a “Bedding Down” period before implementing UK Finance’s proposal. The proposal is appropriate for a steady state where the main objective is to operate rather than develop Open Banking. Each stage should take a slightly different approach to appointing the Chair.</p> <p>‘Bedding down’ stage: The initial appointment of the Chair will be crucial to maintaining delivery momentum. Completing the roadmap is needed to ensure mass adoption of Open Banking. We suggest that the CMA and possibly FCA appoint the initial chair for a three year period.</p> <p>‘Operate’ stage: In addition to the members’ nomination and approval, the CMA’s approval also should be required when appointing the Chair to ensure industry interests are balanced. Over time as the Open Banking Roadmap has been completed and the Future entity can demonstrate fair representation, the CMA’s approval might become unnecessary.</p>
<p>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?</p>	<p>The composition seems well balanced for an ‘Operate’ stage, but the point in question (a) on “votes weighted by type” is key and should be considered carefully. Consideration should be taken as to how the PISP and AISP board members are nominated. PISP and AISP cover companies with a wide range of products and interests. In addition many organisations play multiple roles in the market. Appointing a member for each group, who can represent broadly enough might be challenging.</p>
<p>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?</p>	<p>Either the FCA or CMA should impose transparency/reporting requirements as a part of the oversight of the future entity. A significant part of success of the Open Banking model relies on the CMA9 delivering to high standards and being held accountable.</p>
<p>d. Does the initial funding model envisaged risk undermining the Future Entity’s ability to act independently because of the</p>	<p>Despite the balanced governance model, the initial funding model gives disproportionate power to the CMA9.</p>

<p>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?</p>	<p>The CMA9 will have limited incentive to:</p> <ul style="list-style-type: none"> - Invest in the remaining components crucial to get Open Banking to a level where it is ready for mass adoption (see “Resourcing” question (a)) - Provide services that primarily benefit other members, such as TPPs onboarding support <p>UK Finance’s proposal places a large focus on immediate cost reduction. In a steady state where the aim is ongoing maintenance and reliability, cost reduction makes sense in order to create a viable commercial model. Nevertheless, at Open Banking’s current maturity level, additional investment to complete core components is a need to have, not a nice to have.</p> <p>Operate Stage</p> <p>We believe that other participants beside ASPSPs should be able to participate in the funding to provide an equal balance of power and ensure decision making represents the industry broadly. The exact model requires careful consideration and should be considered as a part of the “Bedding Down” stage.</p> <p>Bedding Down</p> <p>Funding during this period should be provided by the CMA9 as a requirement by the future entity. We believe this would be in line with the residual requirement of the CMA order.</p>
<p>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?</p>	<p>We don’t believe that Open Banking is sufficiently mature to sustain the model proposed by UK Finance. Instead, as described in the introduction, we suggest a staged approach that includes an interim ‘Bedding Down’ stage for 18-24 month that aligns more closely to the current OBEI model.</p> <p>This will also allow sufficient time to engage TPPs more broadly on the crucial questions on funding and governance.</p>

Resourcing	
<p>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?</p>	<p>We are concerned that the proposed approach will not allow the residual part of the Order to be completed.</p> <p>In UK Finance’s proposal ‘Maintenance and Reliability’ is at the very top of the hierarchy of requirements for the Future Entity. While this makes sense for a mature model, we do not believe this reflects the current state of Open Banking. On the contrary, we believe that if this model is implemented now, it will stall that crucial ‘final mile’ developments, which are key for mass adoption of Open Banking. As outlined above, we believe a ‘Bedding Down’ stage should be considered instead.</p>

	<p>Examples of existing issues that must be solved before Open Banking can become mainstream product include:</p> <ul style="list-style-type: none"> • Poor API availability - if PIS is to become a viable alternative to cards the availability must be significantly higher than it is today. • Ambiguity around API rate limiting - there is lack of clarity and uniformity around what acceptable usage patterns are how limits can meet an increase in demand • Consumer experience - merchants quote payer adaptation and conversion as their main concerns related to Open Banking. A inconsistent and poor user experience is a key contributor. Not only do we observe big differences in online banking solutions between ASPS, we also see gaps between individual ASPS' desktop and mobile solutions. • Onboarding - the process for TPPs to onboard banks is time consuming and cumbersome. As an example, more work needs to be done on developer portals and documentation
<p>b. Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:</p> <ul style="list-style-type: none"> • 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? [footnote 18] 	<p>Given the fact that consumer uptake of Open Banking products and services is still low, we do believe that there is a risk that the anticipated external revenue will not materialise. The CMA9 will be incentivised in keeping costs low. Without external revenue the only way to achieve this is by reducing the roadmap and cutting investments.</p> <p>As outlined above, without the roadmap investments in Open Banking, TPPs will be left with a product that is unreliable and not fit to offer to consumers.</p>
<p>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</p>	<p>We support adapting a model where funding is sourced from multiple participants incl. TPPs. Regardless of government model, the annual funding contributors will have the strongest decision power. Hence</p>

<p>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?</p>	<p>TPPs will be at a disadvantage if they are exempt from contributing directly to this model. The “Bedding Down” stage will allow the industry time to develop what the exact funding model should look like and how we ensure that smaller entrants are not left at a disadvantage.</p>
<p>d. Do UK Finance’s proposals for the Future Entity raise any other concerns regarding its proposed resourcing? Are there any other alternative approaches which would be more suitable to address these types of issues?</p>	<p>No comments</p>
<p>e. 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?</p>	<p>These services are fundamental to the successful adaptation of Open Banking. The current model does not create the right incentives and we believe these services are at risk of not being maintained.</p>

Representation of consumers and SMEs

<p>a. Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?</p>	<p>No comments</p>
<p>b. Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?</p>	<p>No comments</p>
<p>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?</p>	<p>No comments</p>

Sustainability and adaptability

<p>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?</p>	<p>We do not believe that membership should be mandatory in a steady state. Still, two alternatives should be considered:</p> <ul style="list-style-type: none"> - The CMA retains the right to extend the initial period from 3 to 5 years if the necessary maturity level of Open banking is not achieved. This should give the CMA9 an incentive to invest in Open Banking and obtain mass adoption sooner rather than later. <p>OR</p> <ul style="list-style-type: none"> - The CMA should be willing to impose a levy on the CMA9 if they leave prior to the model being self-sustainable.
<p>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?</p>	<p>No comments</p>
<p>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?</p>	<p>Based on experiences from the NPA, having the same entity managing steady state as well as large, future initiatives can prove challenging. The FCA in their Feedback Statement on Open Finance highlights the importance of the future entity maintaining flexibility to be able to deliver new initiatives. The type of governance needed for transformation is different from a mature “maintain and operate” stage. We believe it is important that the governance model considers that and leaves room for the composition of the board to be reviewed on a regular basis.</p>
<p>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</p>	<p>As UK Finance correctly points out in their proposal, Open Banking is not a scheme. It is an overlay service and distinctly different from a scheme. As such, we do not believe that Open Banking should become a scheme.</p>

<p>the relationship between the new arrangements and the oversight of payment systems more generally?</p>	<p>Nevertheless, we still believe that PIS would benefit from more formal governance arrangements and think the European “Payment Arrangement” version, which potentially provides a light scheme like solution, is worth exploring in more detail.</p>
<p>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?</p>	<p>No additional comments</p>

Monitoring

<p>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?</p>	<p>We believe that the CMA or the FCA should continue to be responsible for the compliance monitoring as a minimum during the “Bedding Down” stage.</p>
<p>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?</p>	<p>See 5.</p>
<p>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</p>	<p>No comments</p>

<p>considered? Would it be practicable to find a firm that was not conflicted?</p>	
<p>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.</p>	<p>As suggested above the monitoring function sits with the CMA during the ‘Bedding Down’ stage as a minimum.</p> <p>Unless the above mentioned concerns regarding the independence of the initial appointed chair and the funding model is solved, the monitoring function should continue to sit with the CMA’s enforcement function.</p>
<p>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?</p>	<p>Based on the current performance issues and the slow pace at which the CMA9 have delivered the roadmap, we believe that ongoing ecosystem monitoring is needed.</p> <p>Examples of areas where ongoing monitoring is key:</p> <ul style="list-style-type: none"> ● API availability incl. assessment of ASPSPs self reporting methodology ● Payer adaptation and consent rate ● Appropriate API rate limits as API usage increases <p>In their Call for Input on Open Finance, FCA received similar feedback on poor API performance. They mention various initiatives that they are considering, which are positive but might be insufficient in themselves. If the FCA were to take over monitoring, it would require a much more hands on approach from them to obtain live operational data, ensure goals are met and to hold the CMA9 accountable. This is particularly true during the “Bedding Down” stage.</p> <p>Regardless of whether the monitoring sits with the CMA or FCA, either regulator should ensure that they have the capacity to handle the monitoring before the OBIE is dissolved.</p> <p>Lack of monitoring could hinder the delivery of ‘the last mile’.</p>
<p>6. Are there any other issues regarding monitoring and compliance which the CMA should be aware of?</p>	<p>No additional comments</p>

Transitional arrangements

<p>1. What measures should the CMA adopt to mitigate the risk that the OBIE’s ongoing services will</p>	<p>No comments</p>
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<p>be interrupted or disrupted during a transition process?</p>	
<p>2. How should the ecosystem's performance be monitored during a transition process? Should, for example the Trustee's current monitoring function be maintained during a transition process and if so where would it be appropriate to site it?</p>	<p>The current monitoring function should be maintained and sit either with the CMA or FCA during the transition.</p>
<p>3. Who should be held accountable for managing the transition process and what incentives should be put in place to reinforce their obligations to ensure continuity?</p>	<p>No comments</p>
<p>4. What steps should the CMA take to mitigate the risk that any remaining deliverables from the Roadmap are left incomplete? For example, should the CMA refuse to permit the commencement of the transition process before all of the elements of the implementation are in place? If not, what assurances should it seek and what safeguards would need to be put in place to eliminate the risk that the final elements of implementation would be unreasonably delayed or left uncompleted?</p>	<p>We appreciate the CMA's desire for the industry to take things forward and wrap up the OBIE. As per above we suggest a 'bedding down' stage. Please see answer to "Resourcing" question (a).</p>
<p>5. Once the final remit of any new organisation to succeed the OBIE is agreed, for example its ability to undertake development work that is currently beyond its scope, would it be desirable to reflect this during the transition period?</p>	<p>Please see answer to "Resourcing" question (a).</p>
<p>6. Are there any other issues regarding transition arrangements which the CMA should be aware of?</p>	<p>No comments</p>