FAIR BY DESIGN
Ending the extra costs of being poor

CALL FOR INPUT: OPEN FINANCE

MARCH 2020

1. INTRODUCTION

1.1. Fair By Design welcomes the FCA's Call for Input on Open Finance.

1.2. Please note that we consent to public disclosure of this response.

1.3. For more information about this response please contact Martin Coppack, m.coppack@barrowcadbury.org.uk Tel: 0207 632 9084.

2. ABOUT FAIR BY DESIGN

2.1. Fair by Design is a movement dedicated to reshaping essential services, like energy, credit and insurance, so they don't cost more if you're poor.

2.2. People in poverty pay more for a range of products including energy, through standard variable tariffs; credit, through pay day loans; and insurance, through post codes considered higher risk. This is known as the poverty premium.

2.3. We collaborate with industry, government, and regulators to design out the poverty premium.

2.4. Our Venture Fund provides capital to help grow new and scalable ventures that are innovating to make markets fairer.

2.5. Fair by Design was conceived by the Joseph Rowntree Foundation and Big Society Capital. The Barrow Cadbury Trust manages the Campaign, and Ascension Ventures manage the Venture Fund.

RESPONSE TO CALL FOR INPUT

The Fair By Design view on Open Finance:

Open Finance (OF) demonstrates how the financial services market changes gear in response to greater personal banking data being available for providers to access. In theory, this allows financial services to offer more suitable products to consumers. However, what access issues may consumers face? Will OF increase or decrease risks of consumer vulnerability, and do we need to consider powers of attorney?. Also, what is the cost to consumers of the 'privacy premium': what is the minimum information that people can give for access to services? Will they be penalised for providing less information?

1. What action can we take to help ensure the potential of open banking is maximised, for instance to support the development of new open banking services?

1.1. As per our response to Q2, and the FCA's own point on 2.13 in the Call for Input, we feel that the benefits of Open Banking are not yet fully realised. Analysis is needed to understand the benefits to consumers so far. The FCA should lead the way in building an evidence base on:

- the benefits for consumers;
- outcomes for consumers; and
- preparedness for remedies if there is fallout/unintended consequences for those at risk of financial exclusion.

2. We are interested in your views on what open banking teaches us about the potential development of open finance.

2.1. We would urge the FCA to proceed with caution to ensure Open Finance develops in the interests of consumers. It is our view that Open Banking has not been operational for a sufficient period of time, and that insufficient evaluation has been carried out on the impact it has had on low income and/or vulnerable consumers.

2.2. The following points (from paragraph 1.7 in the Call for Input document) will need evidencing as soon as possible:

- increased use of open finance services will spur greater innovation, benefiting a wide range of consumers by providing products and services that better suit their needs, including those whose poor outcomes are directly related to use of inappropriate products and services,
- widespread use of new services that improves the financial health of consumers in the UK.

2.3. We would like to see outcomes for consumers clearly set out for Open Finance initiatives, and firms required to monitor and report against these. They should mitigate against risks created by technology and adjust their approaches as necessary.

2.4. Open Finance should not simply focus on the portability of data, but the entire consumer journey: from appropriate products and distribution channels to post-sale service.

2.5. It is therefore also important for technology companies' purpose to include consideration of their impact on end-users. For example, Continuous Payment Authorities are frequently cited as being misused by merchants, to automatically continue taking money out of customers'

accounts after a perceived agreed fixed period has ended.[1]

3. Do you agree with our definition of open finance?

3.1. We agree with the definition of open finance.

4. Do you agree with our assessment of the potential benefits of open finance? Are there others?

Personal financial management dashboards

4.1. We are generally supportive of innovation that enables the customer to access more appropriate services, enjoy better financial outcomes, and understand their overall financial position.

4.2. For instance, in the context of Open Finance, we understand being able to access a simple interface that lets a consumer know their existing financial commitments (including debts) can be helpful. For example, it can help prioritise which commitments to pay down first (in the case of credit commitments).

4.3 Additionally, low income consumers often choose to pay in ways other than direct debit, to exercise greater budgetary control. Personal Finance Management Dashboards could allow them to continue to maintain payment control through a Payment Initiation Service.

4.4 Where consumers currently incur a penalty for non-standard billing, access to consumers' income and expenditure data should give firms an indication of a customer's ability to pay – and should lead to greater flexibility from firms, as discussed further in paragraph 4.10. of this response.

Automating switching

4.5 Not being able to switch to the best tariff or the best deal is often down to being time-poor or feeling less confident in navigating complex markets – which can be linked to vulnerabilities such as poor mental health.[2] However, as Andrew Tyrie (Chair of the Competition and Markets Authority) recognized, all consumers, regardless of income, can be time-poor, and therefore vulnerable to paying more.[3]

4.6 Our view is that it is not reasonable to expect all consumers to have the time or knowledge to assess whether they are getting the right product. Therefore, we generally welcome the potential for automating switching and attempts to switch people onto better deals for them.

4.7 Automating switching could protect consumers against the loyalty penalty, which is one driver of the poverty premium – the extra costs incurred by low income consumers for essentials such as energy, credit, and insurance.

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[1] https://www.thisismoney.co.uk/money/saving/article-6790007/Stop-sneaky-cash-grab-Outraged-readers-campaign-tackle-fees-racket.html

[2] https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/the-cost-of-loyalty-exploring-how-long-standing-customers-pay-more-for-essential-services/

[3] http://www.smf.co.uk/andrew-tyrie-keynote/

4.8 However, as discussed further in response to Q7, this benefit could be reduced if consumers have to navigate complex issues of data and consent, effectively adding in another factor in the decision making process.

More accurate creditworthiness assessments

4.9 Open Finance data could offer an opportunity related to determining income and expenditure, and provide Credit Reference Agencies with a 'real time' picture when assessing creditworthiness and affordability.

4.10 Research by Aqua found that 'near-Prime' consumers (a term used by PwC to describe consumers with minor marks on their credit record, or possessing a 'thin' credit file) had either never missed a payment, or missed just 1 or 2 payments.[4] Most consumers catch up and these missed payments would not have impacted on a business's bottom line. Often, payers would simply like the option of delaying a bill payment, usually for reasons as simple as matching bill dates up with payday. At other times people's situations may change – but in a manner that is predictable, for example, reduced working hours but increased costs during the summer holidays.

4.11 While these factors are outside of the remit of the CRAs, live data on income and expenditure could enable an individual to access affordable credit because of an improved credit score.

We have also identified other potential benefits of Open Finance. These include:

4.12 Open Finance could present an opportunity to determine why people pay more for some goods and services than others. Open Finance data could be used to monitor variabilities in the prices paid for essential services, and matched with consumer's transactional account data.

4.13 The Global Open Finance Centre of Excellence (GOFCoE) at the University of Edinburgh, for example, could act as a host for this data.

4.14 Bridging the digital divide: Open Finance may reach more people as smartphone ownership becomes more common and more people use banking apps Nearly 8 in 10 people now own smartphones, including nearly three quarters of 55-64 year olds.[5] Mobile phone signal may be easier to receive than broadband, and it is likely to be easier to switch mobile phone providers than broadband, where providers may not have infrastructure in certain areas. However, API developers should ensure that apps are designed to be backwards-compatible with as wide a range of operating system versions as is possible – so as not to exclude people with older phone models.

4.15 The potential benefits of 'Smart Data' are apparent in sectors other than finance, such as energy, where smart meter data could be used to signal when consumers are self-rationing in a way that is potentially very harmful, for instance in the winter. It could also be used to identify patterns of self-disconnections i.e. when people are not simply forgetting to top up a prepayment meter. If spotted early, interventions could be made, for instance, to discuss

[4] https://newday.co.uk/media/32466/research-on-the-near-prime-credit-market.pdf
[5] https://www.finder.com/uk/mobile-internet-statistics

affordability of bills. Firms could consider automatically switching their customers onto tariffs in line with the best available price and value.

5. What can we do to maximise these benefits (given the considerations set out in paragraphs 3.12 to 3.17)?

5.1. Research by Britain Thinks found that, while data had transformed people's lives (for example, through online maps or social media), they had a limited understanding of how it was processed. And the more they knew about the use of their data by firms – for example, third-party sharing or data amalgamation – the less comfortable they were.[6]

5.2. The FCA could use its sandbox to enable firms to better understand consumers' needs and test assumptions. The FCA should engage consumers and track their views so that Open Finance develops at a pace that is acceptable, but also develops in a socially beneficial way i.e. creates better outcomes. For example, they could test the amount of data consumers are willing to share, and what they expect in return.

5.3. The FCA has an important role to play in looking at Open Finance as a whole and the impact of individual firms' decisions on consumers – which together can lead to groups of consumers being excluded.

6. Is there a natural sequence by which open finance would or should develop by sector?

6.1. We are already seeing the integration of Open Banking data with utilities data, by firms such as Fair By Design Venture Fund investee Youtility.[7] BEIS' Smart Data Review also consulted on 'Open Communications', which covered broadband and telecoms and related services. We feel that this could lead to what we would term as 'Open Essentials'- where open data is used in a joined up way across essential services.

6.2. In Australia, the new Consumer Data Rights Act is broader than Open Banking, taking into consideration mortgages, lending and credit cards, and energy and telecoms will soon be in the scope of the legislation.[8] As consumers become more accustomed to using Open Finance, the next stage will be to build upon this success, remedying fears and illustrate the benefits to both the public and banking providers.

6.3. Once the necessary evidence has been obtained of the benefits of Open Banking/Finance, rolling out Open Essentials would be the obvious next step. The Smart Data Function suggested by BEIS could be the most appropriate body to convene such a programme. This could also utilise the work already undertaken by OFGEM.

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[6] https://britainthinks.com/pdfs/Consumer-Data-Research-report.pdf
[7] https://youtility.co.uk/
[8] https://www.bobsguide.com/guide/news/2019/Nov/13/financial-services-in-the-2020s-from-open-banking-to-open-finance/

7. Do you agree with our assessment of the potential risks arising from open finance? Are there others?

Poor consumer outcomes

7.1. In theory we agree that better information could help consumers make better informed choices. However, in practice, we know that consumers find information about financial products complex, too confusing, or are time-poor to such a degree that relying on information impedes their ability to make good decisions. This is especially the case for more vulnerable consumers, including those on low incomes. The FCA should avoid putting the onus on consumers to make the 'right' purchasing decisions, and focus more on firms' actions, such as inclusive design and delivery where firms must design products and services that consider all consumers. Instead of making the consumer fit the product, innovation should shape products to serve consumers in ways that reflects their lives. At present, we believe that many of the problems vulnerable consumers face could be addressed by inclusive product and service design. There is too much reliance on trying to fix problems later via customer support.

7.2. Consumers may consent to sharing their data but may not be aware of how it is ultimately being used. They have no control over how machine learning or AI algorithms are applied to their data. We do not believe that disclosure should absolve firms of the responsibility to ensure that their pricing practices are fair for all consumers.

7.3. The FCA could consider a 'Community Consent' model[9] which could incorporate an inclusive design approach. This should not include just direct subjects of the data who might provide consent but everyone in the communities and groups who will be affected. Approaches could include: firms publishing Legitimate Interest Assessments for comment; boards, including consumers and their representatives (consumer bodies or elected officials); targeted research through interviews and focus groups; and citizens juries. It is important to ensure people with lived experience of issues such as poverty and low income are involved at an early stage.

7.4. Additionally, as the FCA has identified, there is risk that out of date and incorrect, or incomplete data, being shared with a Third Party Provider (TPP) could result in incorrect advice or recommendations, a switch to an inferior product or the wrong price.

7.5. This obliges consumers to have a lot of insight into the verifiability of their own data. As per point 7.1., we believe that many consumers will not feel completely confident they could verify information relating to them in a sufficient way, which therefore risks misinformation going unaddressed.

7.6. Furthermore, non-financial, unstructured data is increasingly being used to better understand consumer trends and behaviour, in order to tailor products and services, as well as determine insurance risk or creditworthiness. This is both information offered up voluntarily and 'leaky' data such as that made available from the browser or device used to access particular

[9] http://www.jenitennison.com/2020/01/17/community-consent.html

websites[10] - as recognised by the FCA in its interim report [11].

7.7. For the reasons above, the onus is upon bodies like the FCA to ensure consumers properly understand the risks as well as the perceived advantages. Greater control of data should be coupled with maintaining high standards of data assurance and quality. The FCA should create a standard on how non-financial data can be used. TPPs need to also ensure consumers are informed in the materials and information they provide. The periodic verification of consumers' data could be incorporated into draft principle 3, alongside revisiting consent/access.

7.8. Consumers may be withholding information for various reasons, including for reasons of privacy. There is therefore a risk of consumers incurring a 'privacy premium': the extra costs of not sharing information about them available to providers using open finance. There is a risk of developing a two-tier market along these lines, which could reduce competition and consumer choice.

7.9. Similarly, there is an unintended risk of penalty for elderly and low income households, or people living with a disability. Although there has been an increase in people aged 60+ going online, Lloyds Banking Group's Digital Index found that 90% of people unable to complete any 'Foundation' digital tasks were aged 55 or over. Nearly half of people in the 'Offline' segment came from a low income household, and one third were disabled.[12]

7.10. More than half of reasons for not accessing the internet in the last 3 months were because of fear of identity theft/privacy but more than half of people also feared misuse of data. Just under half (47%) found the process too complicated.

Other risks we have identified include:

7.11. **Automating renewals** risk recreating the loyalty penalty. The FCA should consider intervention measures such as OFCOM's End of Contract Notifications (ECNs) where firms are required to contact customers between 10 - 40 days before the end of a contact. This could enable consumers to consider their current deal and if they do want to switch providers, before an auto-renewal takes place.

Creditworthiness assessments

7.12. The FCA should consider whether it is satisfied that credit score reports sufficiently demonstrate to consumers the information that is actually relied upon by lenders, as well as knowing the relative weighting placed on different categories of data when making credit decisions. This is because GDPR stipulates that consumers are entitled to request 'meaningful information about the logic involved' in any decision taken using 'automated means.' [13]

[10] http://www.charisma-network.net/finance/leaky-data-how-wonga-makes-lending-decisions
[11] https://www.fca.org.uk/publication/market-studies/ms18-1-2-interim-report.pdf (paragraph 4.19)
[12] https://www.lloydsbank.com/assets/media/pdfs/banking_with_us/whats-happening/lb-consumer-digital-index-2019-report.pdf
[13] https://www.law.ox.ac.uk/business-law-blog/blog/2019/07/big-data-and-obsolescence-consumer-credit-reports

7.13. Although Open Finance may allow TPP to see transaction data in more detail, in real-time, which in turn could lead to better and more affordable access to credit, it is not a given that greater data sharing can lead to more affordable credit options. This will still depend on a creditor's appetite to accept this non-priority spending data as a credible source towards assessing creditworthiness. This is where we think the FCA can add value by issuing guidance on what can be considered credible data for financial transactions. As noted by the FCA in point 4.3 of the Call for Input, there are areas where the greater sharing of data could lead to customers with certain characteristics being excluded from certain markets.

Insurance

7.14. There is a risk that access to more data through Open Finance leads to more personalised pricing of insurance policies and the individualising of risk –which is likely to disproportionately affect vulnerable or low income consumers.

7.15. The FCA, in its interim report on general insurance pricing practices, (paragraph 4.21) did acknowledge that that underwriting methods have put certain customers, especially vulnerable consumers, at a disadvantage.[14]

7.16. Open Finance is an opportunity for the FCA to consider whether there is sufficient transparency in how insurance premiums are calculated by firms, including weightings for different data points. – so consumers have a clearer pathway to accessing appropriate products that produce positive consumer outcomes.

7.17. As the risk modelling of insurance firms is commercially sensitive and often private, the FCA should consider whether there could be a standard on how data, including non-financial data and Open Finance data, can be used in calculating insurance premiums. The standard should also provide guidance on explaining, wherever possible, to a consumer why they are charged the price they are for insurance.

7.18. Per our responses to Q2, as the FCA's role includes consideration of systemic risks, the FCA should also consider requirements on industry to use data in a way that promotes better outcomes for consumers.

8. Do you consider that the current regulatory framework would be adequate to capture these risks?

8.1. If there is a fallout of people that become too expensive to serve, particularly in the insurance market, the FCA will need to work closely to government to ensure a joined up approach is taken to ensuring that consumer needs don't fall in between market and social policy. For example, Flood Re was created to address the needs of people living on flood plains.

8.2. We are supportive of a new Duty of Care for the FCA that would be require firms to actively consider what good looks like for consumers and pre-empt potential harm rather than simply abiding by rules and taking remedial action. This could inform the development of Open Finance.

[14] https://www.fca.org.uk/publication/market-studies/ms18-1-2-interim-report.pdf (paragraph 4.21)

9. What barriers do established firms face in providing access to customer data and what barriers do TPPs face in accessing that data today?

We have not answered this question.

10. Do you think the right incentives exist for open finance to develop, or would FCA rules, or any other changes be necessary?

We have not answered this question.

11. Do you have views on the feasibility of different types of firms opening up access to customer data to third parties?

We have not answered this question.

12. What costs would be involved in doing so? We are interested in views on the desirability and feasibility of developing APIs?

We have not answered this question.

13. Do you have views on how the market may develop if some but not all firms opened up to third party access?

13.1. There is a risk of recreating the loyalty penalty in financial services. If consumers want to switch bank account providers but not all firms have opened up third party access, they may find their choices limited depending on the compatibility of platforms and apps they are using.

14. What functions and common standards are needed to support open finance? How should they be delivered?

14.1. We agree with the FCA's advisory group's recommendation of common and agreed standards for user experience design.

14.2. Fair By Design's Roadmap for tackling the poverty premium[15] warns against design predicated on the myth of a 'super consumer'. These are consumers who never become ill, always have a steady income, are able to understand complex terms and conditions and always have the time and technology to easily find the best deal for them.

14.3. Fair By Design is campaigning for inclusive design to be central to regulators' interventions and firms' design and delivery of products and services, to ensure that there are no unintended consequences for vulnerable consumers.[16] Inclusive design is designing with as wide a range of people as possible in mind at the start, so that the needs of the greatest number of consumers can be met.[17]

[15] https://fairbydesign.com/wp-content/uploads/2018/09/FbD-Roadmap-Artwork-Web-with-revision.pdf
[16] https://fairbydesign.com/news/inclusive-design-in-essential-services/
[17] https://fairbydesign.com/wp-content/uploads/2019/08/CMA-Consumer-vulnerability-challenges-and-potential-solutions.pdf

14.4. The implementation of Open Finance should incorporate inclusive design principles to:

- guide an approach to understanding the needs of all consumers (through evidence, research and market analysis), to help set priorities, develop and implement interventions, and assess their effectiveness.
- Guide the FCA's expectations of firms to embed consideration of low-income consumers when they design and deliver products and services.

14.5. We would like to see clear expectations on firms to consider the characteristics and needs of vulnerable consumers, including low income consumers, at the design stage, as well as on an ongoing basis. Inclusive design could help capture a wider audience quicker – and build trust. People who are time poor will likely not engage with data sharing unless they feel it is simple and safe – and the benefits are explained clearly.

14.6. Per our response to Q7, we are supportive of a common standard for a core set of data to be shared. However, the FCA should also create a standard on how non-financial data can be used. Product data should always be made available and always include all fees and charges paid by the consumer.

15. What role could BEIS' Smart Data Function best play to ensure interoperability and cohesion?

15.1. As per our response to Q6, The Smart Data Function suggested by BEIS could be the most appropriate body to oversee the roll out of Open Finance.

15.2. BEIS' proposed Digital Markets Unit (DMU) could become a 'cross-cutting' regulator for data, with the Smart Data Function as its delivery arm. The DMU could provide uniformity in policy areas such as consumer protection e.g. vulnerability and technology and interoperability. This would help avoid 'patchworks' of protections and promote consistent consumer experiences and outcomes. The Open Banking Implementation Entity (and a potential Open Finance equivalent) should both sit under the DMU.

16. To what extent should the standards and infrastructure developed by the OBIE be leveraged to support open finance?

We have not answered this question.

17. Do you agree that GDPR alone may not provide a sufficient framework for the development of open finance?

17.1. The government (informed by the FCA) should consider whether to create a dedicated data ombudsman to oversee the flow of data in different regulated markets. As per our response to Q15, a single point of entry is needed for consumer protections across different markets. This body could also provide redress to consumers, in case of data breaches, for free and in a timely way. It could allow consumers to challenge decisions made about them by AI/algorithms.

18. If so, what other rights and protections are needed? Is the open banking framework the right starting point?

18.1. The FCA could look to the guidelines on power of attorney, developed by the UK Regulators' Network, which are available for use by utility and financial services firms to review how they

engage with customers for whom a designated other person acts on their behalf.[18] These could inform guidelines on how charities and family members or carers can use Open Finance.

19. What are the specific ethical issues we need to consider as part of open finance?

19.1. In addition to common standards for data, we feel there should be a standard required for providing consent so consumers understand what information about them is being shared. This could resemble the cookies' alerts on websites.

19.2. From a TPP perspective, a clear code of conduct is needed to provide clarity to TPPs about how they should present consent – but also enable consumers to enforce their rights, for instance, request deletion.

20. Do you have views on whether the draft principles for open finance will achieve our aim of an effective and interoperable ecosystem?

We have not answered this question.

21. How should these set of principles be developed? Do you have views on the role the FCA should play?

We have not answered this question.

22. Do you have views on whether any elements of the FCA's regulatory framework may constrain the development of open finance? Please provide specific examples.

We have not answered this question.

[18] https://www.fca.org.uk/news/news-stories/ukrn-encourages-policy-makers-power-attorney-guide