



Financial Data and Technology Association

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FDATA Europe Response to FCA’s Call for Input: Open Finance

Table with 2 columns: Question (Q1: 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?) and Answer (The twin initiatives of PSD2 and open banking have provided a good starting point for innovation benefiting consumers. So that and TPPs can maintain sustainable growth and relevance, we need authorities and the FCA to act to: 1. Require ASPSPs and TPPs build to the UK Open Banking Standard, 2. Address poor bank API performance, 3. Extend API coverage beyond the CMA9, 4. Extend API coverage to non-payment accounts, 5. Address gaps in API functionality, 6. Address flaws in existing regulatory framework, 7. Move to standardised UK Open Banking Certificates, 8. Require ASPSPs and TPPs to conform to the Open Banking Customer Experience Guidelines).

**9. Develop a full system of customer redress extending** from the Dispute Management System, and require all actors in UK Open Banking to take part in it

In particular, FDATA recommends that the FCA use its existing powers to deliver the following:

**Address poor bank API performance and implementation**

- The FCA should take transparent enforcement action, including issuing fines against banks who effectively lock customers out of open banking for extended periods. This will help to restore trust and confidence in UK open banking at this critical stage.
- As required under SCA-RTS Article 32(2), the FCA should monitor the major retail banks to find out whether the level of support provided for their dedicated interfaces continues to be equivalent to the support provided for their own online channels (as required under SCA-RTS Article 32(1)).
- If levels of support are found to have fallen below those provided for direct online channels, the FCA should use SCA-RTS Article 33(7) to revoke a bank's exemption from the contingency mechanism requirement.
- The FCA's RegTech team should consider ways to make reporting easier for firms, and the resulting data more useful for the FCA. We suggest FCA explore the possibility of producing an API that TPPs can call when a bank is unavailable.
- The FCA should publish a list of the banks with the most NOT05 notifications. This would be similar to how banks are required to make information on major incidents publically available under the FCA service metrics initiative. The information should be published on the same page by the FCA.
- The FCA should create a permanent dedicated open banking supervision team whose role will be to spot the worst performing banks, and work with individual bank supervisors to take necessary action.
- As in other areas where the FCA 'confirms' industry guidance (JMSLG, Payments UK Guidance on BCOBs etc) the FCA should confirm or make a formal endorsement of the OBIE's Customer Experience Guidelines, and make clear that it expects all (not just CMA9) retail banks to adhere to these good standards for redirection screens (given the critical role they play in determining customer take-up of open banking services).

	<ul style="list-style-type: none"> <li>The FCA and/or the PSR should formally consult on how confirmation of payee and CRM risk screens should be treated in open banking customer journeys.</li> </ul> <p><b>Extend API coverage beyond the CMA9</b></p> <ul style="list-style-type: none"> <li>The FCA should use the opportunity of the Open Finance CfI to set out a pathway to migrate all retail banks with significant retail presence to APIs. We suggest the retail banks who should be migrated to APIs initially are the same banks subject to the <a href="#">voluntary or mandatory information on current account services</a></li> <li>The FCA should remove the default requirement to build a contingency mechanism. This punishes banks who seek to build APIs because they either have to build a second set of infrastructure (which in any case most TPPs who have discontinued screen scraping won't be able to use) or they have to undergo an extensive and costly exemption process with the FCA. Continuing this approach will push banks towards building inferior MCIs.</li> </ul> <p><b>Address flaws in existing regulatory framework</b></p> <ul style="list-style-type: none"> <li>The FCA and/ or HM Treasury should act to develop rules and guidance enabling TPPs to operate continuous, unattended access, without the need to provide authentication to the bank every 90 days: Bank authentication should occur the first time a PSU wishes to connect their TPP to their bank account. Confirmation that the customer still intends to access the account via a TPP should then be obtained at regular intervals by the TPP. It should be the TPPs' responsibility to communicate to the bank that they continue to hold the PSU's explicit consent.</li> <li>HM Treasury should amend the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 to remove account information services providers (AISPs) and payment initiation services providers (PISP) from its scope, as soon as the opportunity arises</li> </ul> <p>We also maintain that Secure Customer Authentication (SCA) requires fixing, and should only be widely introduced/enforced after Open Finance is fully delivered and robustly tested. Any MCI delivery that does not cater to customer-not-present access should be prohibited by the FCA, as being non-compliant, due to the introduction of 'Obstacles' clearly not allowed by the PSD2 Level 1 text.</p> <p>Open Finance will also require Read/Write Data standards be implemented (Open API, data format, and security standards).</p>
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<p>Q2: We are interested in your views on what open banking teaches us about the potential development of open finance.</p>	<p>The lessons from Open Banking can serve as a roadmap for the development of Open Finance. A few key lessons include:</p> <ul style="list-style-type: none"> <li>• Common standards: technology, technology performance &amp; conformance, data formatting, all of which should be outcome based and predicated on the Customer Experience Guidelines</li> <li>• Mandating: left to set their own technical standards, incumbents are likely to obstruct and delay interoperable APIs in order to preserve market share and stymie competition. All firms operating in the industry need to be mandated to deliver Open Finance principles for it to work; all firms must be measured on the same basis (technology tools should be used to measure technology performance); all actors must be regulated and meet security standards and have appropriate cyber risk indemnity in place; all actors must contribute to the cost of shared utilities proportionately</li> <li>• SCA should be in appropriately delivered, but only once APIs are universally available and adopted</li> <li>• All market actors should be subject to the same technical standards, customer experience guidelines, and performance/conformance</li> </ul>
<p>Q3: Do you agree with our definition of open finance?</p>	<p>FDATA Europe is in broad agreement with the FCA definition. We expand our analysis below.</p> <p>“Open Finance” describes the process whereby a financial services customer can choose to enable Third Party Providers (TPPs) to offer products and services by compelling current providers of financial services to share access to the customer’s financial data. Some of the services provided by TPPs may be competitive to existing financial service providers.</p> <p>The core principle of Open Finance is reducing information asymmetries. As such, all customers should have access to Open Finance. Every account holder – individuals, small business and large businesses – should be able to direct that data be shared. The Canadian Consultation captured the essence when they renamed their Open Banking policy consultation as ‘Customer Directed Finance.’</p> <p>At the heart of Open Finance, we recognise that the data subject (customer) should have rights in, and control their data, irrespective of who holds or is custodian of that data. Under Open Finance’s essential customer data right, the customer has the right to authorise, mandate, and compel</p>

	<p>the institution holding that data to make it available to authorised third parties (TPPs) for a clearly defined purpose. We envisage the data availability made through a high-quality, robust, standard API.</p> <p>When it comes to data sharing obligations, it is unfair that banks are required to provide their customers' data to TPPs and other "non-banks" without any reciprocal rights – all participants should be obligated to comply with a customer's explicit direction to share data. An Open Finance system in which all eligible entities participate fully is fairer, more effective and competitively dynamic.</p> <p>Open Finance consists of seven (7) major pillars:</p> <ul style="list-style-type: none"> <li>● Customer data right</li> <li>● Explicit Consent</li> <li>● Liability Model &amp; Customer Redress</li> <li>● Legal and Regulatory Framework</li> <li>● Technical Standardisation &amp; High Level Architecture</li> <li>● Governance and Funding Model</li> <li>● Implementation and Monitoring</li> </ul> <p>FDATA Europe has created an Open Finance Blueprint dossier detailing these seven pillars to share with the FCA.</p> <p>In the second bullet of point 3.5 in the FCA Open Finance Call For Input, there is a miscommunication on 'write' access which is used to describe a transaction (payment) initiation, and 'read' access, which is used to describe the utilisation of the customer's data, with their explicit consent, to perform a service.</p>
<p>Q4: Do you agree with our assessment of the potential benefits of open finance? Are there others?</p>	<p>FDATA Europe agrees with the FCA's assessment of the potential benefits of Open Finance to consumers and the market. We believe that an Open Finance policy, when implemented, will reduce the risk of data sharing, tidy up the liability model via regulation, and accelerate the opportunity for innovation in financial services as long as technical standards are in place.</p> <p><b>Opportunities for Consumers</b></p> <p>Consumers have the most to gain from regulated and standardised Open Finance. Innovation to address problems, better value ways of accessing and paying for services, and improved timeliness of automated switching and renewals are all anticipated benefits. We also anticipate that services will be more insightful and intuitive. Risk-based services will be better priced. Financial inclusion for less sophisticated consumers will improve. Friction and frustration in application, onboarding and</p>

	<p>leaving service suppliers will be radically reduced. This will all be done in a way in which their risks are being properly managed by fully regulated market actors who are ready to make them 'whole' if mistakes are made. In short, consumers will be able to trust the new ecosystem and avoid bad actors.</p> <p><b>Opportunities for Businesses</b></p> <p>Whilst generally expected to be more sophisticated than consumers, businesses will benefit from significant speed and efficiency gains, making them more nimble and cheaper to operate. Obvious use cases would be in preparing lending data, automating complex bank and accounting reconciliations, speeding up the flow and readiness of financial information and making payments and receipts more efficient.</p> <p><b>Opportunities for Regulators</b></p> <p>Regulators will have significant gains in understanding markets and customer behaviour, enabling them to correctly sanction bad actors and provide greater flexibility in the measures they can use to protect customers. FinTech has introduced an array of new business models and techniques often making it challenging for regulators to keep up. Open Finance is one significant method for regulators to gain insight into such models, as FinTech models are typically highly connected to data and measurability.</p> <p><b>Opportunities for TPPs &amp; New Market Entrants</b></p> <p>Currently, TPPs and other new market entrants are at a competitive disadvantage; their ability to attract new customers and compete with incumbent firms is limited by their ability to accurately assess the suitability of customers, whereas incumbents can use the data they hold on customers largely for their exclusive benefit. Enabling access to data removes those barriers and allows TPPs to develop better, more competitive solutions. Examples include improving the quality and completion rate of affordability tests in all lending situations and enabling credit provision and alternate credit models, such as P2P and third-party overdrafts.</p> <p><b>Opportunities for Incumbent Banks, Fund Managers and Insurers</b></p> <p>Incumbents can also gain from Open Finance. The ability to apply data science algorithms over the customer data and leverage predictive modelling by applying such methods to expand the customer base is substantial for curating valuable customer insights, empowering 'digitally-enabled' customers, and strengthening marketing strategies. From a regulatory and</p>
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	<p>compliance perspective, open finance can improve efficiency while reducing costs for identify verification, anti-money laundering (AML) and Know Your Customer (KYC) requirements, fraud prevention and customer suitability checks.</p> <p>Beyond the technical advantages, simply knowing the customer better and understanding where else they have financial services relationships, can improve customer experience, digital distribution, and enable incumbent firms to be better servants of their customer.</p>
<p>Q5: What can we do to maximise these benefits (given the considerations set out in paragraphs 3.12 to 3.17)?</p>	<p>FDATA Europe believes that the FCA can maximise these benefits by understanding and adopting the following:</p> <ul style="list-style-type: none"> <li>• That the proof points of open finance are not new, and that TPPs have been consuming and using financial data from a wide range of sources in the unregulated space and underpinned by credential sharing through to screen scraping models.</li> <li>• That these business models have served a wide range of financial demographics, including those who have low engagement in financial services, where the value add is the low friction and enjoyable interface, and the ability to take away jobs from the customer, thus improving customer outcomes</li> <li>• That the data scope available to the market has been made worse by the unintended consequences of adding SCA to PSD2 through the misconstrued RTS, such that savings accounts, loan accounts and mortgage information, which have long been used by the market, are being inhibited by the technical choices, whereas they have never been deliberately banned by regulation.</li> <li>• That the matter of bringing this Open Finance Policy to fruition is therefore urgent, to re-empower TPPs applications with they data they need to perform critical customer services</li> <li>• That the FCA should develop policy objectives that would encourage new legislation to be passed by the UK Government, which brings data assets from regulated institutions `into scope` and in line with PSD2.</li> <li>• Develop an implementation strategy, that provides for governance, funding, and a liability model that is cohesive and built around customer needs</li> <li>• Establish full data mobility for these assets, that enable the customer data right to be enforced, and that providers be required to build a capability using the reciprocity requirement, and never paid for access to the customer's data</li> </ul>

	<ul style="list-style-type: none"> <li>• Adopt and enforce technical standards for APIs; FDATA supports adoption of the Financial Grade API (FAPI) standards, and the various standardised derivatives to support other Consent Flows.</li> <li>• Recognition that technical specifications and technical standards are not the same thing</li> <li>• Adopt and enforce the use of API implementation, whilst ensuring that the credential sharing model is only phased out by being replaced by a provably better technology and data scope, and not by banning its use (at least until the market signals that the APIs are meeting their needs).</li> <li>• Ensure that regulation requires conformance to the standards. These should be tested using a technical instrument, providing a pass/fail result</li> <li>• Remove the option for institutions to self-assess API performance and conformance, by adopting a technical measuring solution</li> <li>• Publish on a regular basis API performance showing uptime availability and any rate limiting setting; a single source of truth on performance/conformance should be created, thereby setting a fair assessment framework</li> <li>• Enforce testing against the standards and publish the results</li> </ul> <p>The most critical element of ensuring Open Finance delivers benefits to the customer and the market is establishing the Customer Liability Model. All technical standards, as well as the legal and regulatory framework, are easier to build if based on a proper liability model predicated on certainties of custodianship. From a financial data perspective, there are two certainties of custodianship:</p> <ol style="list-style-type: none"> <li>1) the customer</li> <li>2) the ASPSP</li> </ol> <p>These certainties frame a basic structure of the liability model required for effective Open Finance:</p> <ol style="list-style-type: none"> <li>1) a method to make the customer whole, when through no fault of their own, they suffer loss;</li> <li>2) a method between firms in allocating blame and cost, which is accurate, fair, and reasonable; and</li> <li>3) a system to protect these regulated market actors from customers making fraudulent claims</li> </ol> <p>FDATA Europe’s Open Finance Blueprint dossier details our guidelines on the essential components and structure of a proper customer liability model.</p>
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<p>Q6: Is there a natural sequence by which open finance would or should develop by sector?</p>	<p>Open Finance should utilise many of the assets and capabilities already developed by Open Banking and other industry initiatives on standards, such as those in the Life, Investments and Pensions space developed by Origo. If this is done with a clear plan, it is possible to move to a federated delivery model, whereby each market sector develops its own design of a standardised data payload, but otherwise uses common artefacts and centralised governance.</p> <p><b>Banking</b></p> <p>Predominantly delivered by the banking sector, loans, out of PSD2 scope savings accounts and mortgages are reasonably simple products, and are mostly already digitised, standardised, and often with key fields already displayed on an internet or app based banking portal. These should be relatively easy to deliver quickly. There is already an Open Banking Implementation Entity, and it would be reasonable to design a pathway for this capability to be maintained (albeit with an amended funding model) to endure through to deliver these additional standards.</p> <p><b>Pensions</b></p> <p>The delivery of Open Pensions has two technically challenging issues to address and one difficult policy issue to address.</p> <p>There are some legacy issues with digitising pensions. The industry has been aware for some time that a 'Pensions Dashboard' is coming, so have been planning their approach to digitising. The ability to present clean and organised data to an API is critical to the success of either a 'Dashboard' or a move to incorporate Pensions in Open Finance.</p> <p>Marrying the customer to their various disconnected pensions is the job of a pensions finder service. It appears that there is a solution to this in the market already developed.</p> <p>It would therefore appear that Pensions could easily be incorporated into Open Finance from a technology perspective, as much of the 'heavy lifting' is already underway, and delivered via the Pensions Dashboard team.</p> <p>The policy challenge is getting the DWP programme to morph from a single central dashboard and into the Open Finance design (with customer right of data mobility using explicit consent) to enable a much fuller and more useful design for TPPs and their customers to be developed. The DWP programme has been needing help with the liability model,</p>
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	<p>which the Open Finance indicative design has more fully developed.</p> <p><b>Investments</b></p> <p>Work is already underway under the auspices of TISA, and supported by the Investment Association and FDATA Europe, to develop Open Savings and Investments.</p> <p>The planning for this is at an early stage, but is cognisant of the need to align with some of the Open Banking lessons and capabilities, whilst ensuring that the capabilities for designing the data payload for a broad spectrum of customer enabled investment types are supported, using a clear data standard.</p> <p>The investment industry has a reasonably good track record of delivering standardised technology processes, to make it easier for firms to distribute through a broker channel. FDATA Europe believes that the investment industry (led by the TISA initiative) is fully capable of delivering the data payload design and to work on delivering standards as part of a federated Open Finance Implementation.</p> <p>The implementation plan should prioritise the investment types with the largest and most generic customer need, and deprioritise esoteric investment types which affect typically only specialised investor communities.</p> <p><b>General Insurance and Life Insurance</b></p> <p>Whilst the payments to insurance premiums through open banking can make it easy to discover how much is being paid by the customer to which insurers, the types of cover, even for relatively simple products, have a lot of variables.</p> <p>However, many types of General Insurance, and to a lesser extent, Life Insurance, have had to standardise their descriptions of data fields to make it easy for them to integrate with price comparison (General) and broker quote engine and portal software (Life). It should therefore be relatively straight forward for these standardised data fields to be presented with the data. The data pertaining to the customer (such as address, age, type of car, driving history) should be very simple to make mobile.</p> <p>Insurance needs to be better scoped, but the early indicators are that adding this sector to a Federated Open Finance Design should be achievable.</p>
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<p>Q7: Do you agree with our assessment of the potential risks arising from open finance? Are there others?</p>	<p>FDATA agrees with the FCA’s assessment of potential risks arising from open finance.</p> <p>We acknowledge that the risk of potentially discriminating against customers who opt out of Open Finance directed data sharing exists, especially in light of a potential privacy premium for those who do not want to share their data more widely across the ecosystem in search of better product fit or price.</p> <p>Whilst we acknowledge the risk of switching (particularly complicated product types) without adequate advice, we see Open Finance as part of the solution, rather than exacerbating the problem. Already only a small percentage of consumers get access to advice. Only by enabling applications with the correct data, will they be able to help bridge the advice gap, or make it easier for human advisors to more efficiently serve more customers.</p> <p>Any application or professional service would need to prove they were suitably qualified to carry out this additional activity, so being involved in what would be an Open Finance activity, should be extended the rights and obligations of AISP under PSD2 to additional sectors, which is a discrete activity. Firms have to be separately regulated to use that data to carry out any other regulated activity.</p> <p>We also acknowledge the risk to the competitive landscape, especially for those new entrants who do not have access to suitable de-identified data for product and service development. Our fear is that existing big players and incumbents will continue to dominate the market, thereby excluding new, innovative, and evolving means of delivering financial services.</p> <p>We also see the potential risk that comes without a good governance structure, that having chosen to embark upon Open Finance, the risk of failure to deliver looms without a proper trustee to oversee delivery.</p> <p>One major lesson from the Open Banking journey is the importance of an impartial Trustee, rather than letting the market determine next steps or technical specifications which can lead to fragmentation and poor outcomes.</p> <p>We recommend that the ecosystem be orchestrated by an Open Finance Implementation and Standards Entity, led by an independent Trustee, and governed by a diverse and representative group of stakeholders. Each actor must abide by the technical, regulatory, and ethical standards agreed by the OFIE and must transparently conform to these rules.</p>
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	<p>We also see potential risk from not having an adequate liability framework and customer redress model in place before Open Finance is delivered. PSD2 detailed the liability clearly for payments; however no such model has been designed to include other verticals, and the potential number of errors when the actors in the value chain multiply. We believe this risk can be managed by creating an appropriate liability framework. We discuss this in more detail in response to Q8.</p>
<p>Q8: Do you consider that the current regulatory framework would be adequate to capture these risks?</p>	<p>FDATA does not believe the current regulatory framework is adequate to mitigate the risks of Open Finance.</p> <p>This is because regulated access to financial data is currently limited to only payments data in the UK and across the EU. All other data is out of scope for the FCA and therefore (in the case of consumers) not connected to the Financial Ombudsman Service. This does not mean that 'open finance' activity is new in the market, it just means that the legal framework to impose regulation, a clear liability model, and the enshrining of the customer's data right does not yet exist. These other verticals need to be urgently brought in line with PSD2.</p> <p>Because these data sets are not in scope in the EU, they are not part of any Maximum Harmonisation requirement and the FCA can certainly recommend HMT and HMG to bring forward legislation to align scope.</p> <p>As mentioned earlier, Open Finance consists of seven (7) major pillars:</p> <ul style="list-style-type: none"> <li>● Customer data right</li> <li>● Explicit Consent</li> <li>● Liability Model &amp; Customer Redress</li> <li>● Legal and Regulatory Framework</li> <li>● Technical Standardisation &amp; High Level Architecture</li> <li>● Governance and Funding Model</li> <li>● Implementation and Monitoring</li> </ul> <p>FDATA Europe has created an Open Finance Blueprint dossier detailing these seven pillars to share with the FCA with the idea of providing a framework for converting the policy ideas into a plan, and the plan into law.</p> <p>The Open Finance liability model is by far its most important artefact. Establishing technology standards, or legal and regulatory framework, is substantially easier if built from the liability model foundation. It is from this model that we can</p>

	<p>start to define customer redress, quantification of loss, and who is liable to provide compensation to the customer.</p> <p>Many TPPs are new businesses with thin capital models and are often not regulated in the same way as banks, who hold significant balance sheet reserves to underpin the maturity transformation and risks associated with deposit banking and lending, or insurers, who also have balance sheet strength and reinsurance to distribute risk. The liability model cannot be fairly allocated as a contingent risk on the balance sheet of the bank in the ASPSP role, just because they also had the customer data. If a TPP is at fault, the TPP should pay. If the TPP is not able to pay, the market needs to protect the customer.</p> <p>For example, if the TPP cannot pay under PSD2, the liability for making the customer whole rests as a contingent liability on the balance sheet of the cyber risks insurance market that has provided adequate cover to the TPP. There may be circumstances where the customer is suffering loss and requires to be made whole, where the insurer is not compelled to act to cover the loss.</p> <p>Markets investigating an Open Finance implementation need to do scenario planning and properly understand the extent of various types of claim and the various situations of fault or contribution to fault that may exist.</p> <p>This step remains an outstanding issue in the EU for PSD2 and requires additional work and definition. As the UK contemplates the move from Open Banking to Open Finance, there is a clear opportunity to build from the customers needs outwards, rather than as an afterthought.</p> <p>Some of the foundation principles of the data sharing elements of PSD2 and the emergence of the FCA approach and application process for TPPs wishing to enter the market, has created a strong starting point for the extension of scope from Open Banking to Open Finance in the UK.</p> <p>The easiest way to deliver Open Finance, is to build through the Customer Data Right and role of Explicit Consent, to a point where we extend the liability model of PSD2 to other financial verticals, maintaining consistency of approach.</p> <p><b>Recommended Guidelines for the Liability Model</b></p> <ol style="list-style-type: none"> <li>1. A requirement for TPPs to be constructed of suitable layers of protection for the customer and the customer's data. These include:</li> </ol>
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	<ol style="list-style-type: none"> <li>a. Secure architecture and systems</li> <li>b. Fit and proper people</li> <li>c. Privacy policy and compliance arrangements</li> <li>d. Ongoing security audit and penetration testing</li> <li>e. Adequate insurance to protect the end customer</li> <li>f. Mechanism to test the adequacy of the previous points</li> </ol> <p>2. In addition to these requirements at the level of each AISP that wishes to operate, there are also some overarching market level layers designed to enhance the model. These include the following artefacts:</p> <ol style="list-style-type: none"> <li>a. Legal liability model described in PSD2 that makes clear that the TPP is responsible to their customers when they are at fault; Requirement for the consent of the customer for both the TPP and ASPSP roles</li> <li>b. A method for an ASPSP to identify which TPP is connecting on behalf of the customer</li> <li>c. A requirement for a system of complaint and redress</li> <li>d. A system of potential sanctions for bad actors</li> </ol> <p>FDATA Europe details additional requirements and guidelines for a robust liability framework in its Open Finance Blueprint dossier.</p>
<p>Q9: What barriers do established firms face in providing access to customer data and what barriers do TPPs face in accessing that data today?</p>	<p>FDATA Europe perceives the following to be primary obstacles faced by established firms:</p> <ul style="list-style-type: none"> <li>● Competing internal priorities to deliver business as usual - including rapid technology changes, regulatory, social, and market changes</li> <li>● Perceived threat to market share of customers guiding business policy and obstructionist practices to hinder third party providers</li> <li>● Tendency to build to specifications rather than standards</li> <li>● Complex legacy IT systems, including M&amp;A legacy integrations. Some of these are in need of a major overhaul anyway, but need to be done in a way sympathetic to APIs, such as have unique transaction identifiers for each resource</li> <li>● Complexity of inconsistent data models, syntax, and definitions, including in the case of many older pension</li> </ul>

	<p>or investment types a requirement to digitise, standardise and clean data.</p> <p>We believe TPPs face the following barriers:</p> <ul style="list-style-type: none"> <li>• Inconsistency of ASPSPs' specification builds, rather than standardised builds</li> <li>• Inconsistency of ASPSPs' API quality and performance</li> <li>• Inconsistency of legacy ASPSPs' data protocols, formats, semantics and coverage</li> <li>• Lack of enforcement of the customer data right, lack of enforcement to compel ASPSPs to share customer data when customer consent has been granted</li> <li>• Complex and unnecessarily burdensome SCA requirements for reauthentication every 90 days</li> <li>• No current work arounds for 'customer-not-present' authentication where SCA has been introduced to an interface, blocking payments data access illegally and blocking access to non-payment accounts consequentially</li> </ul>
<p>Q10: Do you think the right incentives exist for open finance to develop, or would FCA rules, or any other changes be necessary?</p>	<p>Legal and regulatory intervention is an essential requirement to deliver Open Finance.</p> <p>Each firm needs to provide means for their customers to be able to direct their data to a regulated actor of their choosing using a cohesive technique and applying a consistent liability model.</p> <p>Because each actor has different incentives, compulsion to build to a required standard is necessary. Each firm must build and pay for their own technology. All firms must pay for the central infrastructure and standards on a fair and proportionate basis.</p> <p>If this is not mandated, some firms will choose not to make the customer's data available, and others will use the standards made by others, but without paying for them. The result would be anti-innovation, anti-competition, and deteriorating opportunity to drive better customer outcomes.</p>
<p>Q11: Do you have views on the feasibility of different types of firms opening up access to customer data to third parties?</p>	<p>The modern approach to running a financial services business is to carefully control and harness data. All firms seek to do this, even if they are low tech in the customer interface. There is now a low cost barrier to provisioning that data to third parties, as firms are making data available internally to a number of resources, often using APIs.</p> <p>Because vendors have already developed the technology to conform to UK Open Banking Standards the cost to other sectors has substantially declined. The Open Banking</p>

	<p>Implementation journey has developed a series of processes and techniques that will further reduce the costs to other sectors.</p> <p>The costs are therefore largely to do with any upgrading of legacy technology and security systems, which in many cases are long overdue an upgrade for other reasons pertaining to risk. By mandating the delivery of Open Finance, it is making it easier for IT departments to get the green light to invest in the necessary upgrades.</p> <p>Many of the leaders in the CMA9 have used the opportunity afforded by compulsion to deliver major technology overhaul strategies, and are becoming more digitally native and more fit to compete in the modern economy.</p>
<p>Q12: What costs would be involved in doing so? We are interested in views on the desirability and feasibility of developing APIs?</p>	<p>Delivering data to an open finance model is certainly feasible. The desirability will depend on the firm's strategy, market share, perceived costs, and perceived execution risk. Other factors include whether it is perceived as an innovation opportunity (to also operate in the TPP role) or as a compliance function.</p> <p>Costs will vary according to scale and levels of legacy technology.</p> <p>Outline cost types for a large financial institution who is in favour of Open Finance.</p> <ol style="list-style-type: none"> <li>1. Pay FCA, FOS and Implementation Entity on an ongoing basis</li> <li>2. Developing a business strategy as a Data Donor Institute and/or Data Recipient Institute</li> <li>3. Developing a technology strategy</li> <li>4. Develop a regulatory plan and get advice</li> <li>5. Run a process to select technology vendors to implement technology strategy, if required</li> <li>6. Develop a business plan for this activity and gain budget approval</li> <li>7. Enter contracts</li> <li>8. Begin to overhaul internal technology, organise and clean data</li> <li>9. Engage in the Standards community as a Data Donor and perhaps also as a Data Recipient to help to define the market requirements</li> <li>10. Develop the Customer Experience framework design patterns, to explain to tech how the data will surface</li> <li>11. Develop security protocol, following industry guidelines</li> <li>12. Develop architectural drawings, working with API vendors, where necessary</li> </ol>



	<ol style="list-style-type: none"> <li>13. Execute the development using a chosen dev methodology</li> <li>14. Develop test environments</li> <li>15. Create snagging team and work on engagement with stakeholders</li> <li>16. Develop escalation processes and train staff on communications with Data Recipients</li> <li>17. Harden APIs to the required response times, levels of availability. Test scalability is functioning</li> <li>18. Enrol in the Directory</li> <li>19. Enrol and train team on customer redress and dispute resolution</li> <li>20. Run conformance testing on security profile and functional requirements</li> <li>21. Communicate with end customers, train staff to respond to customer questions</li> <li>22. Move connecting actors from test environment into production</li> <li>23. Iterate on standards and customer experience guidelines</li> <li>24. Maintain management information flow to the Implementation Entity</li> <li>25. Integrate with other Data Donors as a Data Recipient and get to know your customer better</li> <li>26. Maintain transparency and show regulators and other actors that you are compliant</li> </ol> <p>Many of these costs are business-as-usual if an institution stands up a new business line or product suite; they could be considered technology sunk costs for any new product launch.</p> <p>From experience in the Open Banking Implementation Entity, FDATA Europe has also observed that other costs were taken up by some actors in adding layers of friction to the process, arguing about scope and customer requirements, and in delivering technology more than once, either because of poor processes, poor vendor selection or simply due to arguing against things that cost money but that were clearly likely to improve market facing outcomes, and then having to fix them.</p>
<p>Q13: Do you have views on how the market may develop if some but not all firms opened up to third party access?</p>	<p>FDATA believes that if Open Finance is not mandated, it will not be successfully delivered.</p> <p>Firstly, Open Finance is predicated on the customer data right to direct their data. If not all firms participate in Open Finance, the customer does not have a trusted framework in which to share their data to the firm of their choice. This limits the ability of the customer to direct their data.</p>

	<p>Secondly, if not all firms are compelled to open up to third party access, the product and service offerings available on the market will be determined by price and characterised by uneven competition and an inability for customers to more easily compare and switch providers. Price is not indicative of eligibility and suitability, nor is it necessarily in the interest of the end consumer. Price does not equal value, nor functionality. To reduce the consumer's choice to that of pricing is to open up the consumer to the risk of ineffective, inappropriate products and services.</p> <p>Open Finance ultimately relies on a Trust Framework that ensures each actor in the ecosystem is identified, regulated, and meets security protocols. To allow some actors to operate outside of the Trust Framework compromises the liability model, leaving other actors and the customer exposed to loss should an incident occur. Assessing risk, exposure, appropriate indemnity cover, and where the breach or error occurred becomes infinitely more complex. It also means the customer has to use several entry points along the value chain to find redress. An effective liability model means all participants are held to the same standard and access.</p>
<p>Q14: What functions and common standards are needed to support open finance? How should they be delivered?</p>	<p>There is tremendous value in establishing technical standards, from both a technology and an implementation perspective. The advantages include:</p> <ul style="list-style-type: none"> <li>● Reduced complexity and risk</li> <li>● Protecting customers and all market participants in a cohesive ecosystem by reducing risks and creating certainty that TPPs can offer a complete service to all their customers</li> <li>● Reducing the building, operational and maintenance costs for TPPs and ASPSPs</li> <li>● Reducing security costs by significantly slimlining penetration testing and audit requirements</li> <li>● Enabling investment in customer-facing innovation, rather than tying up resources in the maintenance of plumbing</li> <li>● Making it easier for smaller firms (including smaller banks and TPPs) to participate, improving fairness and competition</li> <li>● Simplifying the ability to trace issues, assess fault and allocate loss, which makes it easier to establish a liability model</li> <li>● Better enables cyber risk insurers to assess threats and perform during the underwriting and handling of claims</li> </ul>

	<ul style="list-style-type: none"> <li>• Creating clarity for ASPSPs, TPPs and regulators by providing clear, consistent guidelines for compliance (and simplifying the process of adjusting market standards as time progresses)</li> <li>• Reducing barriers to innovation, as creating consistency in data output will simplify the development process for TPPs</li> <li>• Enables more rapid growth and better sharing of best practices across jurisdictions</li> </ul> <p>FDATA supports leading with the OBIE’s Customer Experience Guidelines, as well as the maintenance of the Directory, and believes those two principles should be applied to all firms participating in Open Finance.</p> <p>FDATA Europe recommends the following Guiding Principles for Establishing Technical Standards:</p> <ol style="list-style-type: none"> <li>1. Forced simplicity, as the alternative complexity is unsustainable from a cost, risk, scalability and time perspective</li> <li>2. Forced simplicity requires forced standardisation, which protects every market participant who wants to see a strong market outcome</li> <li>3. Recognise that specification and standardisation are not the same thing</li> <li>4. Do not let DDIs (Data Donor Institution or ASPSP) decide to build their own API specification.</li> <li>5. Ensure that regulation requires conformance to the standards. These should be tested using a technical instrument, providing a pass/ fail result.</li> <li>6. Standardisation is not possible without both an implementation entity and regulatory environment that is capable of imposing it or an ecosystem that understands the mutual benefits of being subject to it.</li> <li>7. Many of the reasonably expensive tool sets built for Open Banking were designed to scale and to be flexible. They are therefore reusable and considerably reduce the overall cost burden across the DDI and DRI (Data Recipient Institution or TPP) communities.</li> </ol>
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	<ol style="list-style-type: none"> <li>8. Now that many DDI are also operating in the DRI role, it is getting easier for them to understand the necessity of standards.</li> <li>9. Standardisation requires that conformance test suites need to be applied and tested on the DDI test environments or on some intermediate pre-production model and then also in production.</li> <li>10. TPPs need to also be tested for conformance to the security profile as part of their regulatory journey and thereafter.</li> <li>11. Test suites need to be applied through the point where the PSU joins, as the underlying ASPSP API quality needs to be tested to check for availability of the appropriate fields.</li> <li>12. Optionality does not typically drive innovation in the same way that standardised outputs enable innovation, so the minimum threshold of API data payloads should be clearer.</li> <li>13. The API performances need to be measured and published on a regular basis, showing uptime availability and any rate limiting settings. The published results should also form a single source of truth, whereby the FCA and commercial actors can be confident that firms are being treated in a fair way and that sanctions will be implemented against actors who fail to comply. The test of uptime availability for Open Finance should probably track to the PSD2 test in the short term, of being at least as available as the ASPSPs own customer facing digital channels. Flexibility in the regulation should enable this to be amended in the event that a firm deliberately reduces their digital channels to restrict competition.</li> <li>14. The investment in standardisation testing tools pays off and does in the long run reduce costs, wasted time and risks, but does require an implementation body to deliver it and some form of independent monitoring or certification capability</li> <li>15. A directory capable of managing the local and cross border identities of permissioned actors is of key importance, as it will also enable API endpoints to be displayed in a common pattern and enable faster onboarding.</li> </ol>
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	<p>16. For smaller ASPSPs without the resources to validate thousands of TPPs, this is particularly useful during the period where eIDAS is not widely delivered in all EU markets.</p> <p>17. Having more than one directory (using the definition of a directory whereby there is a single source of truth of the identity and regulatory status actors, and where that directory is part of the Trust Framework) or a competing dispute management system may prove to be unhealthy competition as it will artificially create a complexity layer without adding value. This is the central infrastructure to protect customers and market participants and needs to be uniform.</p> <p>18. The central Trust Framework used for Open Banking combines the Directory functionality with a secure area (like a digital safe) in which all of API endpoints of Data Donor Institutes are exposed, making it easy for Data Recipient Institutes to find and connect, whilst also reducing the opportunity for fraudulent actors to gain access to the customer.</p> <p>19. Done well, all regulated actors operating in UK Open Finance will be on a single directory, confident that they are securely connecting to another regulated actor who holds the correct permissions. The speed and ease of connection to conformant API security profiles that are housed in a single secure framework is seen as not only best security practise, but will massively reduce the cost and time wasted in trying to make APIs connect.</p> <p>20. Enforce testing against the standards and publish the results.</p> <p>21. Improve the levels of commercial certainty for participants, by undertaking realistic impact assessments and then being explicit with requirements.</p>
<p>Q15: What role could BEIS' Smart Data Function best play to ensure interoperability and cohesion?</p>	<p>FDATA Europe believes that BEIS' Smart Data Function is useful to ensure common standards across consumer markets, including common rules of consent, authentication, security, and API standards. This includes managing TPP credentials, as well as monitoring API performance/conformance.</p> <p>BEIS also needs to contemplate the pathway from Open Finance to Open Life, and whether outwith the remit and growing expertise of the FCA in this domain, and without an equivalent of the FOS for non financial data, whether another</p>

	<p>data regulator or actor will be required to supervise, enforce, and protect.</p> <p>Whilst all companies in the UK are required to comply with GDPR and may be advised or sanctioned by the ICO, the ICO does not conduct screening checks to bring firms into regulation.</p> <p>A critical component to enabling the Smart Data Function to be most effective is a clear liability model, which we addressed in Q8.</p>
<p>Q16: To what extent should the standards and infrastructure developed by the OBIE be leveraged to support open finance?</p>	<p>OBIE has been agile in applying lessons learned from the Open Banking delivery journey. Primary in this has been the limitations of issuing prescriptive rules. Prescriptive rules have resulted in asymmetrical technical specifications rather than synchronised outcomes.</p> <p>FDATA recommends the FCA adopt into the draft policy frameworks for Open Finance the OBIE's outcome based approach, before any rules and legislation is considered.</p> <p>We also recommend adopting the Customer Experience Guidelines as part of standard setting, as well as a Directory of all accredited TPPs across Open Finance verticals.</p> <p>The expertise in standards development found in the OBIE should continue. We recommend repurposing the OBIE to an Open Finance Implementation and Standards Entity, leveraging their experience and iterative approach to delivering open finance.</p> <p>OBIE is working on a system of customer redress. FDATA hopes that this capability can reach a stage of maturity to make it suitable for Open Finance.</p>
<p>Q17: Do you agree that GDPR alone may not provide a sufficient framework for the development of open finance?</p>	<p>FDATA Europe agrees with the FCA that GDPR does not provide sufficient framework for Open Finance.</p> <p>GDPR does not provide the right of data mobility, which is crucial to delivering Open Finance.</p> <p>GDPR does not cover customer redress, nor provision an appropriate liability framework.</p> <p>GDPR also does not provide either technical standards nor security standards, both of which are essential components of Open Finance.</p>

	<p>The UK needs to bring PSD2 into line with the Open Banking initiative, by compelling technical standards; then Open Finance into line with PSD2, to ensure a consistent regulatory and liability model for all customers' data when it is shared, and to ensure that only regulated actors are in the domain.</p> <p>GDPR is inadequate for this market shift, but still has a role in framing the underpinning of the customer data right.</p>
<p>Q18: If so, what other rights and protections are needed? Is the open banking framework the right starting point?</p>	<p>FDATA believes there needs to be a clear articulation of the Customer Data Right, similar to those legislated in Australia and Canada (see Consumer Directed Finance from the Canadian Ministry of Finance's Advisory Committee on Open Banking) first and foremost.</p> <p>There also needs to be a clear liability framework and customer redress process. We have outlined our thoughts in answer to Q8, and have provided additional detail in our Open Finance Blueprint dossier.</p> <p>We also believe that informed and meaningful consent is a right, and that re-authorisation of consent is needed.</p> <p>However, the current SCA 90-day reauthorisation process is in conflict with the customer's right to share data for a period they choose, as per GDPR.</p>
<p>Q19: What are the specific ethical issues we need to consider as part of open finance?</p>	<p>An Open Finance initiative needs to ensure regulatory oversight that Consent is explicit and that firms are using data for the purposes agreed with the customer, and that any data processors or Technical Service Suppliers are aligned with that aim.</p> <p>As firms consume the customer permissioned data into systems where AI or machine learning is present, that issues such as discrimination or bias are caught, and that firms don't use data intelligence to engage in exploitative practises.</p> <p>Although not specific just to Open Finance, a general point is that everyone is able to establish an identity and not be excluded from the financial system at a basic level. Without basic access customers will be excluded from the benefits of finding a path to using intelligent systems to help them find better value products and services.</p>
<p>Q20: Do you have views on whether the draft principles for open finance will achieve our aim of an</p>	<p>FDATA Europe generally supports most of the principles as outlined.</p>

<p>effective and interoperable ecosystem?</p>	<p>In section 4 - Cohesion Across Open Finance - whilst wholly in support of the general principle, redirection may not be a great example. Redirect for authentication can only happen where the customer has a digital identity with the Data Donor Institute.</p> <p>In section 6 - TPP Right of Access - whilst we again agree with the principle that the regulated TPP should have a right of access, the examples given are not based on a right.</p> <p>Taking the examples in turn:</p> <p><i>'In the absence of a regulatory activity, access must be provided on an objective, non-discriminatory and proportionate basis. For example, via membership of a scheme.'</i></p> <p>In the absence of a regulatory activity, there should be no attempt to introduce APIs or introduce anything new to Open Finance. The evidence shows that a customer data right and a TPP right cannot be successfully blended in an unregulated market. Data Donors, who would be responsible for building their API connection, could simply build a poor API or a poor customer journey. If it is unregulated, there can be no APIs and better to let the TPP access via static credential being passed through to scrape the data, and simply prevent the Data Donor from blocking this.</p> <p><i>'Unless prevented from doing so by regulation, firms or API schemes may offer access on a commercial basis.'</i></p> <p>A customer cannot have a data right at the same time as forcing a customer's fully consented Data Recipient Institute or TPP to pay for accessing data that pertains to the customer as the Data Subject. They have tried this in the USA, Japan and New Zealand, and it creates a skewed and anti-competitive market. It is effectively a Data Donor monetising the customer's data without their permission.</p> <p>Any scheme or commercial requirement would also create inconsistencies with other principles, such the cohesion principle, which is at odds with PSD2.</p>
<p>Q21: How should these set of principles be developed? Do you have views on the role the FCA should play?</p>	<p>The FCA should continue to refine the principles based on feedback. There will be areas of contention, and these will be useful in teasing out the positions of various sectors.</p> <p>The FCA should make clear which areas become contentious, so that HMT and other HMG departments such as BEIS, DWP and CMA can help to unpick and frame policy, and so industry can have a healthy discussion on paths forward.</p>



<p>Q22: 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.</p>	<p>There are two issues here.</p> <p>Firstly, the FCA is being impeded from making sensible decisions by the RTS, which was framed before any evidence was available from UK Open Banking to explain the market requirements. The FCA needs to seek the power to amend the framework to drive logical outcomes. These need to be fixed to avoid creating asymmetry.</p> <ol style="list-style-type: none"> <li>1. For example, we encourage the FCA to consider how SCA impacts the overall customer experience, and make reasonable requirements for renewal of authentication. We suggest the FCA publish rules and guidance enabling TPPs to operate under a single authentication - at the first consent stage. TPPs should be allowed to obtain their own confirmation of consent at an agreed upon frequency.</li> <li>2. The current 90-day reauthentication requirement results in a poor customer experience, and significant attrition of TPPs service. It severely impedes the PSD2 policy objectives of improving innovation, competition and security in the EU payments industry.</li> <li>3. In line with the principle of common provision of a minimum set of standardised data and transactions via open standard APIs, FDATA believes the discrepancy between the treatment of CMA9 banks and non-CMA9 banks must be resolved.</li> <li>4. The FCA should seek the power to require non-CMA9 mainstream retail banks to use the standard APIs, standardised CEGs ,and to implement app-to-app capability.</li> <li>5. The FCA should seek to adapt the RTS ASPSP process to seek exemption, as the process seems to be driving behaviour counter to the objectives, with some ASPSPs providing MCIs that have no functionality</li> </ol> <p>Secondly whilst the FCA has the 'soft power' of convening, listening and advising, it has no 'hard power' of requiring, supervising and enforcing in matters that lie beyond its scope.</p> <ol style="list-style-type: none"> <li>1. Open finance continues in the unregulated space via credential sharing and with no liability model, no ombudsman, no checks on TPP companies, no customer data right, no expression of how explicit consent is delivered, and no technical standards or requirement for identity.</li> <li>2. The FCA does need to play a role, but needs HMT to ask parliament to extend the scope of financial regulation to include data access beyond PSD2 and provide it with powers to guide and implement the Open Finance policy.</li> </ol>
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	<p>3. The execution of this step is crucial, as the various mandates need to provide power at the correct level. For example, we do not advocate the law setting technology choices, as these will keep changing, but the written law will not or will have significant lag time. It needs to develop the principles and objectives and require industry to deliver under a suitable governance regime.</p>
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