Purpose of this note

The advisory group was set up to provide advice which informed the FCA's Call for Input on open finance and to feed into the FCA's strategy towards open finance. This document is one in a series of three advice notes produced by the advisory group.

Advice from the 'open finance working group on data rights' to the FCA

'I want to be better off for having shared my data'

Open finance offers the potential to significantly improve people's financial resilience, boost SME productivity and increase the UK's economic growth. However, consumers find it difficult to understand the value of their data and make sense of Terms & Conditions. It's imperative that the FCA put in place an appropriate regulatory regime to protect consumers and facilitate a fair, well-communicated value exchange to build the trustworthy ecosystem that will drive the adoption and continued use of open finance -enabled products.

An effective consumer data right for open finance includes the following key principles:

- Consumers should be able to choose with whom they start and stop sharing their data without facing penalties
- Third parties accessing consumer financial data should be regulated. Technology which facilitates regulatory oversight and drives more efficient regulation of firms should be embraced
- Where regulated financial services firms are mandated to allow a consumer to consent to share their data, it should be shared without charge to the regulated third party
- The exchange of consumers' data for value should be fair, transparent and meet with consumers' reasonable expectations for all uses of their data
- A consumer's choice to share their data should not result in them accepting liability or risk which they cannot reasonably be expected to understand or mitigate
- Consumer consent should be informed and contextualised, aligning to the requirements set out in GDPR
- Consumers should be able to enforce their rights under GDPR and FSMA easily and effectively
- Consumers should be materially better-off for having shared their data
- When things go wrong, access to help and redress should be accessible, free and timely

Our advice is to:

1. Put in place an appropriate **regulatory regime** which fixes the weaknesses in the current 'patchwork of legislation' and provides **consistency** for firms and consumers in the ecosystem

2. **Define the scope of financial data and consumers right of access to it**, the broad purposes it can be used for, and provide examples of fair value exchange
3. Provide for **consent management tools** which allow people to meaningfully control their data and all parties who may have access to it and assess how **digital identity** can facilitate security, privacy, trust, consent and consent management

We further recommend defining more clearly concepts of consumer 'trust' so that design of the ecosystem can appropriately meet consumer expectations and keep in line with known consumer behaviours (e.g. use of heuristics, relative salience etc). In considering how firms can build a trustworthy ecosystem, we also recommend the FCA consider: codes of conduct, kitemarks/trustmarks, labelling and guarantees. The FCA should explore how business models and incentives structures can be aligned to consumer interests, through supply chain due diligence for example. The FCA should work with other sectors to facilitate efficiencies in the market.

Our questions as part of an open consultation are:

1. To what extent can consumers make informed decisions to share their data? Where they cannot be expected to bear the risk, what kind of protections may be needed?
2. What changes may be required to the regulatory landscape to facilitate open finance? How should onward sharing of data be dealt with? What is the role of digital identity?
3. What tools can regulators and industry usefully deploy to build trust between firms, and between consumers and firms? Who else should be part of the ecosystem to help build trust?
4. What tools do consumers need to help make sense of data-driven financial services?

Appendix: Data Rights Working Group

Areas of consideration for this group

1) Value opportunities – where can we create new and more value for consumers?
2) What stands in the way of adoption?
3) What are the new risks consumers will face and what are the remedies?
4) Is it necessary to constrain with whom consumers have a right to share financial data? PSD2 right is limited to regulated TPPs
5) Lessons learnt in open banking and elsewhere in relation to consent management including communication, granting consent, ongoing management and withdrawal.
6) What risks should the FCA be aware of and mitigate?

Overall observations:

- **As an overarching principle, consumers should have the right to share their data with a regulated actor of their choice.**
- **It is key to define the scope of data over which consumers can exert their rights** with a focus being on ensuring all data created by the individual as a by-product of using a service are available to them free of charge.

- The FCA may wish to consider raw data (e.g. payments transactions), observed data (e.g. shopping history), inferred data (e.g. intelligence inferred, e.g. riskiness) and anonymised aggregated data (e.g. big data insights). Inferred data requires investment and is hard won and therefore exposing it would reduce its current economic value.
- **Monetising data:** Although parties should not be able to charge third parties for raw data that belongs to the customer, they should be able to monetise sharing of data where it has been verified for the purpose of third-party reliance (e.g. for identity). The FCA should consider whether consent contains the right to carry out that activity.
- **The role of government should be considered.** Is it keeping up with citizens' expectations to protect them in a digital world?
- **The EU will be looking at the portability of data** as part of the next phase of its work and it will be important to link up to this work. **Inertia and vulnerability should be considered further.** Increasing awareness and trust in services is important to get engagement with open finance.
- **Creating a consistent language** that can be understood by consumers as well as firms would aid policy discussions as well as practical implementation. There are too many acronyms.

Summary of overall value opportunities

There is scope to create new value in the following areas:

- **Individual (consumer) benefit**

Improving financial resilience through more informed consumer decisions and better value products and offerings. The shorter-term improvement of financial circumstances could enable people to invest for their futures better or spend more or differently[1].

- **Productivity and efficiency gains for firms**

Key gains for SMEs include reduced time spent in administration, better cashflow analysis and unbundled products, like cheaper overdrafts or FX services. Larger corporates, including financial services firms, could also benefit through better risk and process management.

- **Broader societal gains**

The availability of data could allow policy makers to better understand key issues like benefits and pensions and put in place different support mechanisms to help customers in future. Macro-economic models also suggest an economy only grows where there is increased automated decision making, thus economic growth may be seen where consumers have less decisions to make.

- **Effects of demonstrable 'new value'**

Demonstrable 'new value' will compel some people to engage, for example a reduction in the complexity, number of decisions to be made, financial and, or time, convenience and, or stress savings (i.e. "have I made the right decision/am I doing the right thing?").

- **Benefits of a familiar and trusted service**

Quicker adoption could be expected where convenience/time savings can be made when a service is familiar and already trusted, for example a mortgage application. This is

[1] https://www.openbanking.org.uk/wp-content/uploads/Consumer-Priorities-for-Open-Banking-report-June-2019.pdf

different when compared to a 'new' product that requires more intense consumer engagement to understand and get to grips with (e.g. Personal Finance Management).

Recommendations/suggestion for the FCA to include its call for input:

The key risks and challenges to adoption include consumer inertia and concerns about security, privacy, additional complexity of products and access to redress. Remedies focus on an effective and consistent regulatory regime, reassurances to consumers and tools to help them enforce their data rights.

- **To what extent can consumers make informed decisions to share their data? Where they cannot be expected to bear the risk, what kind of protections may be needed?**

The degree to which consumers can give **informed consent** is limited. Research shows consumers are uncomfortable when they are made fully aware of the implications of sharing data and it may therefore have a disproportionate impact on their willingness to share. It is important to balance the risks that consumers should be required to manage through consent versus the risks that should be managed by way of enhanced protection which better reflects consumer expectations and engagement.

Consumers struggle to make informed decisions about data and whether to share it because **Ts & Cs** are too long and complex; it is difficult to understand the **values of one's data**; firms may get value from consumer data even after consent has been revoked (e.g. through aggregation of anonymised data); the **impact of data sharing** is not well communicated; and **visibility and transparency** of data movement and use is low (especially once it passes from the third-party provider (TPP) to other parties). There are no **educational campaigns** to inform people of their data sharing rights.

There are a number of **ethical risks** with the use of machine learning and AI where consumers have minimal control. The value of data is increased when it is combined with other datasets that consumers may not fully understand and which create new ethical concerns.

For open finance to work it requires consumers to switch or add new products. However, many **consumers are inert** and do not currently engage, even in cases where firms can demonstrate new value. An excessive focus on switching could create harm for more vulnerable consumers who are less likely to switch and therefore feel the brunt of cross-subsidising a potentially larger group of savvier, more engaged consumers. Firms may continue to access consumers' data even when the consumer is inert and no longer using the product, creating an unfair value exchange.

- **What changes may be required to the regulatory landscape to facilitate open finance? How should onward sharing of data be dealt with? What is the role of digital identity?**

Governance is a key facilitator in creating a trustworthy ecosystem which protects consumers and market integrity. There is a currently a **patchwork of legislation** with inconsistencies identified between GDPR and PSD2 (e.g. a consumer's right to be forgotten, access to individual redress etc). Consumers have expectations that they can exert their data rights consistently across sectors. However, this may not be the case.

Any framework for Open Finance should build consistency around existing legislation to standardise and provide clarity for firms.

While GDPR has strict guidelines around the sharing of data relevant to all firms whether regulated or authorised, **additional constraints may be needed to limit firm's ability to access and process data, particularly for onward sharing**. This may also lead to increased levels of consumer trust and encourage new technologies.

A list of 'regulated/accredited' providers which access consumer's financial data could help build consumer trust while making it easier for regulators to supervise and enforce against. **Digital identity** could act as a single point of entry for a variety of market actors while facilitating **easier consent management** for consumers. If digital identity is formally recognised by the forthcoming anti-money laundering regulations (AMLD5) it could provide a **framework to deliver digital identity** by way of the e-IDAS framework.

Financial data should be **defined** as this will impact the scope of regulated firms. Should financial data be defined as any data which informs a decision in relation to a financial product/service; or data secured from financial institutions used for any financial **or non-financial** product/service?

Firms' access and use of data could be limited to a specified and explicit purpose that is communicated to the consumer. The **purposes could be codified** so consumers can increase their familiarity with them. Uses of data are wide-ranging (e.g. it may be possible to infer the financial stability of a company based on transactional data) and therefore may need limiting.

Relevant firms must comply with the FCA's principles for business including **Treating Customer Fairly**. The FCA is in the process of considering a new stronger duty to protect consumers. This could potentially help reduce the reliance on Ts&Cs which consumers do not read. The FCA should consider the impact of **agency and incentives** of different players in the market: in the case of firms which work solely for the consumer the risks may be different than for firms who work as agents of other firms in the delivery of the consumer product or service. Anonymisation of data, de-identification and illegitimate uses of data require further consideration.

Accrediting any providers who have access to financial data as well as codifying consent could make it easier to isolate **liability** in chains of providers and also facilitate redress. **Free, accessible and timely individual redress** is a missing part of the jigsaw. **Reassurances** about easy access to complaint and redress would help aid consumer trust and adoption.

90-day re-authentication provides some protection for inert consumers who may continue to share data without getting value from a product. However, the legal 'gap' between 'consent' and 'access' should be closed. 90-day re-authentication is a blunt tool which can create unhelpful friction. Consideration is needed to work out what a better intervention to prevent 'inert' sharing of data might be.

- **What tools can regulators and industry usefully deploy to build trust? Who else should be part of the ecosystem to help build trust?**

People and small businesses both cite security and privacy concerns in research, even though they may already be sharing a lot of data. Defining trust more specifically could help shape more applicable interventions. The need for trust between businesses may be significantly helped by **interoperability**[2]. Ipsos Mori has differentiated between 'active' and 'passive' consumer trust. Greater Than Experience defines 'verifiable trust' for consumers.

The ICO focuses on the consumers' ability to trust firms; that all appropriate security measures are in place and can be relied on. The ICO supports the development of **codes of conducts** that firms are required to report to and certification – where firms can demonstrate it adheres to Data Protection Act (DPA) requirements it could be given **certification / standard** mark they can use as part of their branding. Both of these schemes are mandated by the GDPR but they are separate processes. The ICO believes that certification can help demonstrate compliance to the regulator and the public and improve business-to-business relationships. The Codes of Conduct approval process is not yet open due to finalisation of the accreditation requirements for monitoring bodies; nevertheless the ICO are welcoming enquiries from representative organisations who are considering developing codes of conduct.

Internationally, success in establishing consumer trust is similarly demonstrated/implied from **labelling, codes of conduct, Trustmarks, guarantees, or governing bodies**, for example for food standards. In this event, consumers don't need to understand the unpinning rules but are protected by the oversight of the governing rules.

There could be a role for intermediary parties who undertake **supply chain due diligence.** It can be harder for smaller firms to undertake due diligence of larger firms. Intermediaries could verify or authenticate providers (i.e. supermarkets in the context of food labelling). This is likely to be particularly the case for markets where brand recognition is a key driver of consumer choice or importance. Could intermediaries (including price comparison sites and tech platforms) ensure certain qualities of providers? This kind of due diligence reduces reliance on the consumer to manage and assess risk, where they are not well positioned to do so. It also helps align firm interests with those of consumers.

Open Banking is doing research on a **Trustmark** which suggests it could help tip early adopters into taking up a product. Consumers are asking about how they can identify trustworthy firms and looking for short-cuts, such as a padlock in the browser bar.

Guarantees that consumers will be 'better off for sharing their data' could build trust and encourage adoption.

Consumer organisations could have a role to play in helping people understand the rights over the data as well as the merits and truths of data sharing.

- **What tools do consumers need to help make sense of data-driven financial services?**

Consumers should be able to easily **control the flow of their data** and have the ability to amend data sharing preferences. There remains uncertainty around the practicality of controlling multiple connections between multiple providers for individual products. There are no tools for consumers which enable them to see, for instance, with whom data has been onward shared.

[2] https://openidentityexchange.org/wp-content/uploads/2019/09/OIX-workshop-Innovate-Identity-Establishing-a-Trusted-Interoperable-Digital-Ecosystem-in-the-UK-20.09.19.pdf

More ‘education’ and ‘disclosure’ is unlikely to be effective for consumers who already struggle to engage. **Consumers need practical tools to help them** manage data they have shared. Open Banking’s consent and access dashboards are helpful but would a more centralised consent/access management platform be more practical for multiple products and multiple connections? A federated **digital identity** scheme could also help consumers to control and manage the flow of their data.

Firms need help to **communicate the value exchange** more clearly. Some research suggests that the more honest and upfront the firm is in explaining the risks and benefits of a product, the more likely consumers are to adopt. Making information about features/risks more dynamic and timely could help.

Open Banking has created **Customer Experience and TPP Guidelines** that could be developed further, especially as they relate to the communication of data rights, consent, and what happens to the data once consent has been revoked.

Disclaimer

The FCA is committed to encouraging debate on all aspects of open finance. As part of this commitment, the FCA established an independent advisory group on open finance to inform its strategy. This publication is the advisory group’s advice to the FCA and does not necessary reflect the views of the FCA. It is however one source of evidence that the FCA may use to inform its views along with responses to the Call for Input.