

Complaints and Dispute Resolution Procedure

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1 Interpretation

Unless otherwise defined herein, all defined terms shall have the same meaning given to them in the Terms and Conditions or Open Data API Terms and Conditions (as appropriate).

2. Application of Procedure

- 2.1 The complaints and dispute resolution procedure set out herein (the "**Complaints and Dispute Resolution Procedure**") forms part of the Participation Conditions and is available to any entity who may have a Complaint (as defined below) against Open Banking provided that they have submitted their application for enrolment onto the Directory (a "**Complainant**").

3 Mandatory Nature of Procedure

- 3.1 Except where the Participation Conditions expressly provide to the contrary, any question, dispute or difference which may arise concerning the creation, construction, meaning, validity or effect of any part of the Participation Conditions or breach of them, any other matter or dispute arising out of or in connection with the Participation Conditions, the proper operation of the Open Banking Services or the implementation of the CMA Order (a "**Complaint**") will be dealt with in accordance with the provisions of the Complaints and Dispute Resolution Procedure. Nothing in this Complaints and Dispute Resolution Procedure will prevent either Party from bringing legal action.
- 3.2 For the avoidance of doubt, this Complaints and Dispute Resolution Procedure only applies to Complaints any Complainant may have against Open Banking and does not apply for Complaints between or against Complainants.

4 Outline of procedure

- 4.1 Any Complainant must first raise a Complaint with the Open Banking Service Desk by emailing servicedesk@openbanking.org.uk.
- 4.2 If, in the first instance, the Complaint is not resolved by the Open Banking Service Desk to the satisfaction of the Complainant, the Complainant and Open Banking (the "**Parties**") will make a good faith effort to resolve any Complaint as follows:
- (a) in the second instance, the Complainant may at any time instruct the Open Banking Service Desk to refer the Complaint to the individuals or committee set up by Open Banking on a case by case basis to handle Complaints (the "**Complaints Resolution Committee**") in accordance with Clause 5;

- (b) in the third instance, if the Complainant is dissatisfied with the decision of the Complaints Resolution Committee, they may instruct the Open Banking Service Desk to refer the Complaint to the Implementation Trustee of Open Banking (as defined in the CMA Order) (the “**Trustee**”) in accordance with Clause 6;
 - (c) in the final instance, if the Complainant is dissatisfied with the decision of the Trustee in accordance with Clause 6, they may instruct the Open Banking Service Desk to refer the Complaint to third party determination in accordance with Clause 7.
- 4.3 Notwithstanding the procedure for dealing with Complaints set out herein, in circumstances where Open Banking considers it necessary in order to prevent a material impact on the operation of the Open Banking Ecosystem, Open Banking may make an interim determination in relation to any Complaint pending resolution of the Complaint either as a result of conclusion of the assessment of the Trustee pursuant to Clause 6, third party determination pursuant to Clause 7 or otherwise.

5 Complaints Resolution Committee Assessment

- 5.1 This Clause 5 sets out the Complaints Resolution Committee procedure referred to in Clause 4.2(a).
- 5.2 If the Complaint is not resolved by the Open Banking Service Desk to the satisfaction of the Complainant, the Complainant may at any time elect to refer the Complaint to the Complaints Resolution Committee for assessment.
- 5.3 The Complaints Resolution Committee will be set up by Open Banking on a case by cases basis as soon as reasonably practicable given the nature of the Complaint and, in any event, no more than 15 Business Days from Open Banking receiving writing notice from the Complainant that they wish to escalate the Complaint to this stage.
- 5.4 Within five Business Days of the Complaints Resolution Committee being appointed the Parties will submit a written summary of the Complaint (the “**Complaint Summaries**”) to the Complaints Resolution Committee and to each other Party.
- 5.5 The assessment and decision of the Complaints Resolution Committee will take up to five Business Days from the submission of the Complaint Summaries to the Complaints Resolution Committee to be communicated back to the Complainant.
- 5.6 In circumstances where it is necessary in order to prevent a material impact on the operation of the Open Banking Services the time periods in this Clause 5 can be shortened accordingly.
- 5.7 Subject to Clause 5.6, the Parties may agree to extend any of the time periods in this Clause 5.
- 5.8 Unless otherwise agreed in writing all discussions connected with the Complaint will be conducted in confidence and without prejudice to the rights of the Parties (or any other Party) in any future proceedings.
- 5.9 The costs of the assessment including the Complaints Resolution Committee's expenses (but excluding the Parties' own costs, which will be borne by the Party incurring those costs) will be borne equally by the Parties except (and to the extent) otherwise agreed in writing.

- 5.10 The Complaints Resolution Committee shall have the right to direct that the costs are borne by the Parties in different proportions, including wholly by one Party in its discretion. In making its direction under this Clause 5.10, the Complaints Resolution Committee shall determine which Party should reasonably bear the costs and, in doing so, may give consideration to the relative resources of the Parties and the outcome of the Complaint.
- 5.11 If the Complainant is dissatisfied with any direction of the Complaints Resolution Committee in accordance with Clause 5.10, they may refer the decision on costs to third party determination in accordance with Clause 7. For the avoidance of doubt, if the Complainant is dissatisfied with any other decision of the Complaints Resolution Committee, they must follow the procedure set out in Clause 6.

6 Trustee Assessment

- 6.1 This Clause 6 sets out the Trustee assessment procedure referred to in Clause 4.2(b).
- 6.2 If the Complainant is dissatisfied with the decision of the Complaints Resolution Committee, any Complaint will next be referred to the Trustee for assessment on the same terms of reference for the assessment using the Complaint Summaries.
- 6.3 The assessment and decision of the Trustee will take up to five Business Days from the submission of the Complaint Summaries to the Trustee to be communicated back to the Complainant.
- 6.4 In circumstances where it is necessary in order to prevent a material impact on the operation of the Open Banking Services the time periods in this Clause 6 can be shortened accordingly.
- 6.5 Subject to Clause 6., the Parties may agree to extend any of the time periods in this Clause 6.
- 6.6 Unless otherwise agreed in writing all discussions connected with the Complaint will be conducted in confidence and without prejudice to the rights of the Parties (or any other Party) in any future proceedings.
- 6.7 The costs of the assessment including the Trustee's expenses but excluding the Parties' own costs, which will be borne by the Party incurring those costs) will be borne equally by the Parties except (and to the extent) otherwise agreed in writing.
- 6.8 The Trustee shall have the right to direct that the costs are borne by the Parties in different proportions, including wholly by one Party in its discretion. In making their direction under this Clause 6.8, the Trustee shall determine which Party should reasonably bear the costs and, in doing so, may give consideration to the relative resources of the Parties and the outcome of the Complaint.
- 6.9 If the Complainant is dissatisfied with any direction of the Trustee in accordance with Clause 6.8, they may refer the decision on costs to third party determination in accordance with Clause 7.

7 Third party determination

- 7.1 This Clause 7 sets out the third party determination assessment procedure referred to in Clause 4.2(c).
- 7.2 If the Complainant is dissatisfied with the decision of the Trustee, any Complaint will next be referred to third party determination for assessment on the same terms of reference for the assessment.
- 7.3 Where a Complaint is to be referred to third party determination, the Parties will agree a suitably qualified third party with appropriate expertise relevant to the Complaint (or, if the Parties so agree, a panel of three suitably qualified third parties with appropriate expertise relevant to the Complaint) (such third party or such panel of third parties, as appropriate, being the "**Referee**") within ten Business Days of the Complaint being escalated to this stage by the Complainant ("**Referee Appointment Period**"). If the chosen Referee does not accept his appointment within two Business Days of request, the Parties will agree the identity of an alternative Referee within a further five Business Days.
- 7.4 If the Parties fail to agree the identity of:
- (a) the Referee within the Referee Appointment Period; or
 - (b) (if relevant) an alternative Referee within the further five Business Days referred to in Clause 7.3,
- the Parties will apply to the Centre for Effective Dispute Resolution (CEDR) to select a Referee.
- 7.5 The Parties will jointly appoint the Referee and will during the Referee Appointment Period agree in good faith and acting reasonably their terms of reference including whether the Referee will act as expert or arbitrator. The terms of reference to the Referee will direct the Referee to deliver their determination within forty Business Days after the submission of the written reports referred to in Clause 7.6 ("**Referee Determination Period**").
- 7.6 Within ten Business Days of the Referee accepting his appointment ("**Referee Report Period**"), each Party will submit a written report on the Complaint to the Referee and to each other Party. Each Party will afford the Referee all assistance and additional information as the Referee reasonably requires enabling the Referee to consider the Complaint. The Parties acknowledge and agree that the Referee may conduct the resolution of the Complaint as the Referee sees fit, including examination of records, interviewing personnel and/or hearing oral evidence.
- 7.7 In circumstances where it is necessary in order to prevent a material impact on the operation of the Open Banking Services the time periods in this Clause 7 can be shortened accordingly.
- 7.8 Subject to Clause 7.7, the Parties may agree to extend any of the time periods in this Clause 7.
- 7.9 The costs of the Referee's determination (including the Referee's fees and expenses and the Parties' own costs and expenses) will be borne as the Referee directs. The Referee shall determine which Party should reasonably bear the costs and, in doing so, may give consideration to the relative resources of the Parties and the outcome of the Complaint.. In the absence of such

direction, the Referee's fees and expenses will be borne equally by the Parties and each Party will otherwise bear its own costs.

8 Provision of Information

- 8.1 On the occurrence of a Complaint, each relevant Party will at the request of any Party, the Complaints Resolution Committee, the Trustee or any Referee promptly:
- (a) (if appropriate and relevant) disclose to the other Party, the Complaints Resolution Committee, the Trustee and/or Referee its full Audit Trail, Service Level performance records and any other information relevant to the resolution of the Complaint; and
 - (b) otherwise co-operate fully with the Parties and the Complaints Resolution Committee, the Trustee and/or Referee as reasonably required for the prompt resolution of the Complaint.
- 8.2 The costs of any Party in complying with Clause 8.1 will be shared equally by the Parties.
- 8.3 The Referee shall have the right to direct that the costs of complying with Clause 8.1 are borne by the Parties in different proportions, including wholly by one Party, where it considers that the Complaint has been started unfairly or one of the Parties is found not to be at fault. In making its direction under this Clause 8.3, the Referee may give consideration to the relative resources of the Parties.
- 8.4 For the avoidance of doubt, no Party will be required to disclose legally privileged information or documents.

9 Use of information disclosed in relation to any Complaint

Each Party acknowledges and agrees that any Audit Trail, Service Level performance records (if appropriate) and other information disclosed by or on behalf of any Party pursuant to Clause 8.1 is Confidential Information of the disclosing party and may be used only for the purposes of assisting in the resolution of the relevant Complaint, and no Party may use or permit the use of any Audit Trail of, or any other such information relating to, any other Party for any other purpose.

10 Continued performance

Except where and to the extent clearly prevented by the area in Complaint, the Parties agree to continue performing their respective obligations under the Participation Conditions while any Complaint is being resolved.