OPEN BANKING

TRUSTEE END OF IMPLEMENTATION ROADMAP REPORT:

Recommendations for the Future of Open Banking

Contents

Trustee Summary

Open Banking has come a long way since the Competition and Markets Authority (CMA's) Retail Banking Market Investigation in 2016. Today, more than 6.5 million consumers and SMEs in the UK have been empowered to use innovative Open Banking-enabled products to better manage their money. The UK fintech sector has successfully leveraged Open Banking technology, contributing to our leadership in innovation and providing tangible benefits to consumer and businesses.

The UK's implementation of Open Banking was achieved in large part by the CMA mandating the CMA9[1] to implement Open Banking. The UK continues to lead the world in this innovative new technology and is committed to maintaining this leadership role and sustaining this momentum. The UK's approach to Open Banking is being closely watched and adopted around the world.

The progress made so far has been by design, the product of relentless effort and significant investment by the entire Open Banking ecosystem, in particular the CMA9. With the backing of government and regulators, it was delivered in collaboration with the UK's largest banks and building societies, card companies, hundreds of fintechs, consumer and small business groups, advisory groups, and led by Open Banking Limited (OBL). There have also been several challenges and important lessons learnt. These have been recognised and substantially addressed, including governance, risk management and controls, leadership and people and culture improvements at OBL. There has also been a significant effort to maintain and enhance OBL's engagement, openness, and transparency with all ecosystem participants and OBL has built up the expertise and knowledge that would be an asset to the further development of Open Banking and beyond.

Since the establishment of OBL, the primary objective has been to deliver the required aspects of Open Banking as defined in the CMA's Retail Banking Market Investigation Order 2017 (the Order). OBL has operated within the parameters of the Order whilst ensuring the obligations on industry are both proportionate and effective. This has encouraged and resulted in significant competition and the creation of commercial opportunities through innovation, including propositions that help vulnerable users, particularly in the areas of mental health and over-indebtedness.

In the current macroeconomic environment, Open Banking can be leveraged not only to support similar initiatives and future infrastructure projects such as the New Payments Architecture (NPA), Pensions Dashboard and the work being undertaken by The Investing and Saving Alliance (TISA) on open savings, investments and pensions (OSIP), but also deliver real life benefits for our citizens. Through the safe sharing of data and payments in retail and business banking, innovations such as automatic sweeping from low to high interest savings and investments, improved management of mortgage products, and increased visibility of personal and business finance insights, can help our consumers and businesses evaluate and make the most of their money.

Whilst significant progress has been made, there is still much more to do to optimise and deliver the full benefits of Open Banking within retail banking markets, and beyond. This report provides my Trustee recommendations for the CMA on how to maintain the ongoing requirements of the Order post-implementation. It also provides my personal views and recommendations for the Joint Regulatory Oversight Committee (JROC) to consider as they look to develop Open Banking beyond the Order and decide how to ensure the benefits of Open Banking to consumers and SMEs are sustained and developed going forward.

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[1] The nine largest banks and building societies in Great Britain and Northern Ireland, based on the volume of personal and business current accounts: AIB Group (UK) plc trading as First Trust Bank in Northern Ireland, Bank of Ireland (UK) plc, Barclays Bank plc, HSBC Group, Lloyds Banking Group plc, Nationwide Building Society, Northern Bank Limited, trading as Danske Bank, NatWest Group plc, Santander UK plc (in Great Britain and Northern Ireland).

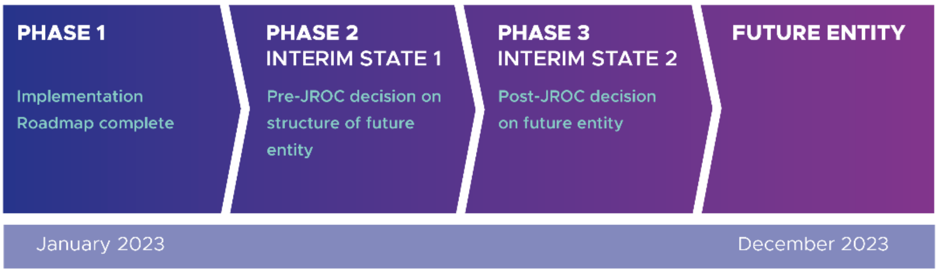
Open Banking is ready to move to the next phase in its journey. The CMA has confirmed that its May 2020 Revised Roadmap (the Roadmap) is now substantially complete. OBL can now prepare for transition as we move beyond the implementation phase of the Order. However, OBL cannot develop a final detailed transition plan until JROC publishes its recommendations on the design of the Future Entity.

The Agreed Arrangements outline the requirements on OBL and the Trustee with regards to transition as OBL and Open Banking move beyond the CMA's implementation phase following the completion of the Roadmap. Implementation of transition of the ongoing activities, assets, and staff of OBL will only commence upon the CMA's consent. These shall only be provided when the CMA is satisfied, on advice from OBL and the Trustee, with the terms of such transition, that adequate preparations for transition have been made, and that Open Banking will transition to a financially stable and well-governed body.

In addition, the Trustee is required to consider the Order in its wider context, and I have engaged with the JROC and other relevant government departments on related initiatives including Open Finance and Smart Data and encourage the incoming Trustee to continue this engagement.

As transition and the maintenance of the Order are inextricably linked with JROC's work in designing the Future Entity, I have provided my views and recommendations in this wider context addressing issues and considerations that go beyond the Order. This report is therefore relevant for not only the CMA, but also JROC. A number of these considerations fall outside the scope of the Trustee mandate, however they have been noted by me during my discussions and engagement with the ecosystem and relevant stakeholders across multiple different fora.

There will be several transition phases, illustrated below, to ensure the Order is maintained but also coordinated with the sequencing of JROC's decision-making with regards to the interim and future states. We are currently in Phase 2 of the interim state at the time of publication. The end destination will ultimately be a Future Entity that will operate within a new long-term regulatory framework.



JROC timelines:

There will be a staged transition in the governance of Open Banking, summarised as follows:

1. **Current state:** OBL, overseen by the CMA, continues to implement the specific areas covered in the Order implementation timetable (the Roadmap) in line with Order. This ends when the CMA agrees the Roadmap is completed.
2. **Interim state:** OBL, overseen by the CMA, will continue to monitor those banks which have not yet implemented the remaining Roadmap requirements, in addition to the continuing obligations under the Order following Roadmap completion. OBL'S successor (the Future Entity), once established, will take on responsibility for further developing Open Banking. This interim state will end when the long-term regulatory framework is in place.
3. **Future state:** A long-term regulatory framework will be put in place for Open Banking and the Future Entity will continue to develop Open Banking within this framework.

The CMA will review and consider the transition recommendations as they relate to the Order, and JROC will make its proposals regarding the Future Entity, strategic roadmap, and long-term future regulatory framework. There is a limited amount of time to make clear and important decisions on the future of Open Banking to prevent the loss of many of the significant achievements of this project. Leadership is needed from the authorities, and clarity is needed on the interim and future state and the long-term regulatory framework to build on the success of Open Banking.

Trustee Recommendations

As the implementation phase of the Order ends, with the completion of the Revised Roadmap (agreed in May 2020), OBL and the Trustee have started to prepare for transition and developed initial recommendations to ensure ongoing operations, staff and assets could be transitioned during the interim state to a Future Entity (following clarification by JROC) in a smooth and effective manner. In addition, OBL has started to prepare for transition of ongoing Order-related requirements – the functions related to the residual and ongoing obligations of the Order post-implementation, namely:

1. Monitoring of standards conformance, performance and availability, and enforcement where necessary
2. Maintenance of the Standards
3. Maintenance of the Directory
4. Making the Standards widely available through reasonable promotion of Open Banking in the retail banking markets including support for industry adoption.

There are a range of options to progress transition to a Future Entity in the most effective way as Open Banking moves beyond the CMA Order to a long-term regulatory framework. These are important when considering both the maintenance of the Order and how to ensure that Open Banking continues to develop to deliver further benefits to consumers and small businesses. These options may include either transfer of functions to a new legal entity / entities or moving certain functions to other existing organisations.

OBL is at a critical point, with its efforts focused on delivering the ongoing requirements of the Order and preparing for the transition of functions to a Future Entity during the interim state. Significant improvements have been made within OBL to prepare for and improve transition preparation with respect to completeness, transition dependencies, consistency in detail, and accuracy of costs. While additional decisions will need to be taken over the long-term, the strategic planning to date provides a baseline for a ‘continue as is’ approach that has been taken from current to interim states, which can be refined as the form and requirements of the future state become clearer.

OBL has agreed upon a strategic path towards a future state across the ongoing four key requirements under the Order. While a series of paths were considered, a ‘continue as is’ approach maintains operational stability given the ongoing discussions by JROC.

As the Revised Roadmap is concluded, there is a need to maintain confidence in the Open Banking project more broadly, and the transition approach specifically, with stakeholders continuing to drive the benefits of Open Banking to consumers and small and medium-sized businesses.

It is therefore recommended that OBL continue in its current state in the interim state early in 2023 to secure and maintain the ongoing four key requirements (Directory, Monitoring, Standards, and Promotion of OBL) listed under the Order and to continue to undertake activities.

It is important for OBL to continue to focus on delivering cost efficiencies within the interim state and to take a strategic approach to reviewing and sizing the provision of the ongoing Order requirements, liabilities, pricing etc. with a view to how these may be provided for in the future state.

In addition to ongoing-Order responsibilities, the future success of Open Banking requires there to be adequate resourcing to support Standards development, ecosystem support and strategy that fall outside of the Order. This could be funded and provided for by non-CMA9 funding.

The CMA, JROC and others must determine what is required in the future state. OBL will work closely with stakeholders to ensure an orderly transition and the future success of Open Banking as a public good. As primarily a competition remedy to date, there has been an absence of a shared vision for Open Banking across the ecosystem and this has often resulted in unnecessary delays to implementation and has recently contributed to the lack of progress in defining the future.

It will be important to address this to secure the future of Open Banking in the UK. It is positive that JROC has dedicated time to understand the ecosystem's views and needs for the future. JROC will need to corral all stakeholders and ecosystem participants as they develop a shared vision for the future and clearly articulate why it is in all our interest to progress Open Banking and to lay the foundations for Open Finance.

Risks to Open Banking during the Interim State

Open Banking is already demonstrating its effectiveness, in particular, improving customer engagement with finances, offering alternative products that unbundle the current account into its component parts, reducing incumbents' advantages through increased choice and building financial resilience.

However, less than three in 20 digitally active UK adults use Open Banking-enabled services, and growth in Account Information Services (AIS) users has stalled. Open Banking payments are only used in a limited number of use-cases (such as wallet top-ups, tax payments and credit card repayments).

Current levels of investment in the UK fintech sector remain strong, but there is a significant risk that this investment could slow if the Standard does not evolve or if systemic issues aimed at unlocking the potential of Open Banking remain unresolved. This may result in reduced momentum in UK Open Banking and could slow the progress in reducing adverse effects on competition (AECs).

In more detail, the risks are as follows:

Risks to fintech investment

KPMG published a report in September which indicated that overall fintech investment has dropped by 65% year-on-year. Whilst this is not unexpected given the global economic situation, VC funding is no longer at the levels it was at prior to the current crisis. In an Open Banking context, participants tell us that they continue to be supported, but there are limits to what can be achieved under the current regulatory structure (PSD2/UK PSRs) and the CMA Order. Several Open Banking providers have exited other markets due to perceived failures to address similar issues.

Unresolved systemic issues

The SWG Interim Report (the Interim Report) identified a substantial number of ongoing issues with the UK Open Banking system that prevent firms taking advantage of banks' read/write APIs in such a way as to make a significant positive impact on consumers and small businesses. Many of these pose a threat to the ongoing success of the CMA Order and are matters that require addressing immediately.

I note that the Interim Report's executive summary identified a range of items that require a collaborative regulatory approach, with the immediate-term focus being on "fixing fundamental issues" with the current ecosystem. Certain of these issues, which I have set out below, have been raised repeatedly with me throughout my tenure as Trustee by various ecosystem participants across multiple different fora. In my view, these will need further consideration by JROC.

1. **Ecosystem reliability**
   There is substantial evidence that many propositions are not brought to market because firms do not provide consistently performing and available APIs, and because conversion rates (i.e., the proportion of end-users that successfully complete their Open Banking journey) are inconsistent and/or low. Whilst many TPPs are pushing for additional functionality, most agree that the immediate priority is to ensure that the core foundations deliver what they are intended to deliver.

   A possible way to resolve this would be for the FCA or other authorities to have the power to set out clear Management Information (MI) requirements from both banks and TPPs to help determine conversion rates, to interrogate this MI and take appropriate enforcement action if conversion rates fall below a set figure. The application of this power, and the analysis of the MI, could be delegated to the Future Entity. This could, over time, replace the Customer Experience Guidelines (CEGs) as a regulatory requirement, by focusing on the desired outcome (acceptable conversion) whilst allowing flexibility for both banks and TPPs to design optimal customer journeys. This is in line with the general move towards principles-based regulation.

2. **Fraud interventions by banks**
   This refers to unnecessary (i.e., “false positives”) friction (e.g., warnings and additional screens), payment failures (e.g., payment declines), and the lack of information provided to TPPs when things don’t work as they would expect. This is linked to the current Contingent Reimbursement Model (CRM) Code which has led many banks to adopt blanket (not risk-based) warnings, and to apply low payment limits, as a result of the PSD2/PSRs principle of channel parity, whereby banks apply the same limits to TPPs that they do in their direct channels, irrespective of the risk levels.

   I recommend three solutions for the JROC to consider and where appropriate, consult on:
   - Removing the principle of equivalence from the PSRs. This could also enable performance benchmarks to be developed which reflected the needs of the ecosystem rather than adherence to performance in bank channels.
   - Developing and implementing a “whitelist” of known payees (such as HMRC, and other government departments).
   - Requiring TPPs to implement Transaction Risk Indicators (TRIs), and banks to take full account of them in determining fraud risk, with appropriate shifts in liability to those TPPs that are happy to accept them.

3. **Improvements to customer transparency**
   The current mechanisms for ensuring that customers have the information they require as to who they’ve shared their data with are not working well, particularly when data is onward-shared. Whilst some TPPs believe a wholesale change away from the use of “software statements” is required, this would require a substantial implementation effort which may not be proportionate or sufficiently timely for today’s ecosystem. However, there are alternative solutions, including better and/or automated implementation of software statements, which I believe should also be explored by JROC, and appropriate regulatory intervention made following this assessment.

4. **Levelling-up and error codes**
   Whilst TPPs have presented the SWG with many requests for technical enhancements to the Standard, most of these would require change that would be difficult to justify as proportionate at this time. However, there is a strong case for the FCA considering how to enforce the same requirements on the entire ecosystem (perhaps subject to a size threshold) rather than continue to only make such demands on the CMA9. Such a levelling-up of expectations would require a change to the monitoring regime too, to ensure quality MI provision, all-of-market conformance, and supervision.

> One of the most substantial concerns of TPPs, across both payments and data, is the lack of consistency and granularity in the application of error codes by banks. I believe that this is worthy of further evaluation by JROC.

OBL Capability

OBL is recognised by ecosystem participants for its holistic understanding of the UK Open Banking ecosystem, and there is a strong desire from some ecosystem participants and others to evolve OBL into a Future Entity that continues to champion the development of Open Banking. Whatever OBL's future, a failure to outline a clear plan to transition to a Future Entity creates uncertainty which creates a significant risk of losing expertise, experience, and knowledge.

Future State Considerations

Given the nature of the risks (above), it is essential for JROC to review the current regulatory framework (PSD2/PSRs and the CMA Order) as far as possible, given the time it will take to develop any revisions to that framework. I note that it may be possible to make minor changes to the current framework ahead of agreeing a long-term regulatory strategy.

Whilst resolving the risks to the interim state is an urgent priority, this must be done in parallel with work to determine the vision and strategy for Open Banking in the UK. This will require significant investment of resources within JROC members (and, potentially, the Future Entity).

Considerations include:

1. Limited Ambition: Fixing fundamental issues

> Please refer to the "unresolved systemic issues" above **which provides further details on fixing fundamental issues within the current ecosystem and framework**.

2. Moderate Ambition: Focus on priorities

> Once the basics have been fixed, there are a few activities that some ecosystem participants have suggested be prioritised for delivery.
>
> It is likely that these would require some form of regulatory intervention (e.g., by setting clear requirements to industry that, if not met, would lead to regulation). However, it does not necessarily mean that such intervention needs to be part of the wider strategic changes envisaged by Smart Data.

These priorities are:

- Ensuring that banks provide the most up-to-date status of a payment to a Payment Initiation Services Provider (PISP).
- Developing a rulebook, scheme or multilateral agreement that delivers Variable Recurring Payments (VRPs) to the market for non-sweeping use-cases. This development would include considerations regarding customer protection/redress and liability.
- Adding adjacent datasets to the Open Banking ecosystem, for example, loans, more detailed credit card data than required by PSD2/PSRs, savings, mortgages, and identity attributes such as full name and address.

3. Strategic Ambition: Realise the potential

One of the impediments to progress has been the absence of a clear cross-department vision for developing the UK into a Smart Data economy, where people and businesses have rights to access their data, wherever it may be held, and benefit from a wide range of new choices and innovations. This lack of clear long-term vision for Smart Data has made it increasingly difficult to develop a roadmap to move from the current Open Banking ecosystem to a full Smart Data ecosystem.

Fintech is a major export industry for the UK, and a source of considerable inward investment and employment. This is in addition to the positive impact it has on business productivity and consumer choice.

If the UK is to retain its leadership position in fintech, it must be a leader in Open Banking/Open Finance/Smart Data. Measures it could take to retain that leadership position include:

Payments:

- Developing and maintaining Premium API schemes, including VRPs, and address customer protection, liability, and redress.
- Aligning with the New Payments Architecture (NPA) in developing the UK into a world- leading payments system.

Data and identity:

- Exploiting the UK Digital Identity and Attributes Trust Framework to re-orient Open Banking around a user's single digital ID.
- Developing Open Finance (i.e., investments, pensions, insurance) as a branch (or branches) of a harmonised Smart Data Framework.

There is a need to ensure that solutions for the interim state do not negatively impact future opportunities. This has prompted consideration of what the structure of such Future Entity should be, and which functions are moved from OBL to that entity. It is important that consideration is given in this work to other future infrastructure projects such as the NPA, Pensions Dashboard and the work being undertaken by The Investment and Savings Alliance (TISA) on open savings, investments and pensions (OSIP). This will in turn future-proof work being done in the short-term to maintain the Order.

There are, therefore, a number of key issues that JROC will need to consider that the Future Entity structure must address, including, but not limited to, the separation of Order and non-Order related liabilities, the just re-apportionment of non-Order liabilities (and eventual closing out of Order liabilities), the ongoing requirement to serve both existing Order obligations as well as new regulatory obligations and, the flexibility to allow for the pursuit of commercial opportunities to help with future funding. In particular, the liabilities issue requires swift resolution.

The appointment of independent consultants is strongly recommended during the interim state to assist in determining the optimal Future Entity structure and its remit. There are clearly a variety of corporate structures that could be considered. For example, the incorporation of a new Service Company would facilitate an operating model which allows for clear ring-fencing of liabilities, and the opportunity to undertake non-Order activities through a different funding structure whilst maintaining appropriate levels of oversight and governance. It could also allow for the use of OBL's existing assets, without the constraints imposed by OBL's current Order-based funding and governance model, and it could enable revenues, earned through the use of those assets for non-Order activities, to offset Order-related costs and build up reserves.

Summary of Trustee Recommendations

The Recommendations in sections 1 and 2 primarily relate to the Order and fall within the Trustee mandate. Recommendations within section 3 are my own personal views and are out of scope of the Trustee mandate.

1. Transition of ongoing Order-related requirements in the interim state

a. OBL to continue in its current state as it moves to the interim state, to secure and maintain the ongoing four key requirements (Directory, Monitoring, Standards, and Promotion of Open Banking).

b. The Board should continue to have a minimum of two iNEDs, one chairing the Nomination Committee and Remuneration Committee, and the other chairing the Finance, Audit and Risk Committee.

2. Funding and liability issues

The JROC should take immediate steps to resolve funding and liability issues which are preventing progress on non-Order activity. This includes:

a. A review of future corporate structure models, with a focus on sharing responsibility/liability for maintaining the Future Entity with a wider group of participants and removing barriers to progressing non-Order activity.

b. OBL, in consultation with the CMA and the JROC, to develop options for a market pricing framework of services provided by OBL that fall outside of the Order and CMA9 funding.

c. A strategic review to be undertaken on the structure for the provision of Trust Services, and potential alternatives, of the current OBL Directory model.

d. A services pricing review, to understand options for pricing of services currently provided to participants including those currently provided at cost or for free.

3. Ecosystem issues

As set out above, I believe there remain a range of issues which need to be addressed if adoption of Open Banking is to continue to increase. Immediate-term priorities (to be addressed in the interim state) that I recommend JROC consider include:

a. Developing a long-term vision for expanding the current Open Banking ecosystem to a full Smart Data ecosystem that aligns to the UK Payment Strategy and emerging Digital Identity strategy.

b. Provision of enhanced MI from both ASPSPs and TPPs to assist regulatory decision-making, i.e., to ensure full conformance to current regulatory requirements and to inform future regulatory intervention.

c. Options to address both the underlying fraud and the barriers to adoption arising from fraud prevention measures in Open Banking payments.

d. Improving the consistency and granularity of implementation of error codes across the market.

e. Ensuring the banks provide the most up-to-date status of a payment to a PISP across the market.

Next Steps

Once agreement with the CMA and JROC has been received on the approach and timing of transition, OBL will begin to engage relevant stakeholders and prepare and issue communications to implement an orderly transition.

In addition, to ensure that progress continues to be made and that the future and ongoing success of Open Banking in the UK is secure, the CMA and OBL should continue to advise and support JROC to deliver its objectives in a timely fashion.

To ensure the continued development of Open Banking and maintain the momentum built to date in leading the world, JROC and the CMA must make progress in deciding on the future state and Future Entity in early 2023.

Following JROC's initial proposals on the Future Entity in early 2023, it is imperative that policymakers and regulators provide stakeholders with a detailed proposal for the Future Entity, its remit and strategic roadmap. OBL will need to be able to make decisions on significant supplier contract renewals by May 2023. This is also intended to inform the preparation of OBL's Revised Budget for H2 (second half of 2023), due to be approved and circulated among OBL's key stakeholders by the end of May 2023.

Thereafter, a firm decision on the Future Entity, including governance, remit, and funding model, will be needed by the end of June. This will provide a sufficient level of certainty and time with which to plan (and budget) for the continuance and transition of operations for 2024 and ensure that a budget can be agreed. Any delay to these timeframes also risks the momentum and future success of Open Banking, as key decisions, and the associated dependencies, will be missed, putting future funding, budget, governance, and clarity on the strategic roadmap at risk.

Summary of next steps

1. The CMA will consider the Trustee's Order-related recommendations and provide feedback to OBL and the Trustee for them to consider as they develop their transition plans.

2. JROC will publicly set out its recommendations in relation to the design of the Future Entity, both during the interim state and once a long-term regulatory framework is in place, and the vision for Open Banking, by the end of the first quarter of 2023. This will likely include a roadmap to deliver that vision.

3. OBL and the Trustee will develop a detailed transition plan for the Future Entity.

4. OBL and the Trustee will work with the CMA to implement their decisions in relation to transition to a Future Entity.

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