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Consultation Response:

# FCA Open Finance- call for input

Response by the Money Advice Trust

Date: September 2020

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# Introduction

## About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2019 we delivered this free training to over 981 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org)

## Public disclosure

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

# Executive summary

We welcome the opportunity to feed into the FCA call for input into the potential for open finance to develop and enhance good consumer experiences in relation to financial products and services.

- ✓ The FCA should ensure that the required regulatory protections are in place to ensure that Open Banking works well for consumers. It should then be in a position to enable open finance to develop in an appropriate manner based upon the foundation of Open Banking.
- ✓ The regulators aim should be to enable the development of ‘socially useful’ Open Banking and open finance services that ensure that the potential benefits are not limited to a niche group of “financially savvy” and better-off consumers.
- ✓ There are fundamental issues with Open Banking that need to be resolved, before the development of open finance. Consumers need to be confident that in Open Banking:
  - sufficient protections are in place in relation to how their data is treated;
  - there is an easy to access, free and straightforward complaints and redress system in place;
  - all providers are effectively regulated and can demonstrate this through a trustmark or equivalent.
- ✓ There needs to be a clear liability framework put in place, so that it is easy to trace the journey of the customer’s data with robust protections put in place to ensure free and easy access to redress.
- ✓ We have particular concerns that some firms will use open finance interfaces to harm consumers. We have pointed out on many occasions, that firms who operate on the periphery of FCA authorisation are not subject to scrutiny. In addition, firms who are not required to be authorised at all or fall under a different regulator will not be covered.
- ✓ There should be an overarching requirement in the common standards to ensure good consumer outcomes. This should place the consumer at the heart of open finance and ensure that good outcomes for people in vulnerable circumstances and people who are excluded both financially and digitally are seen as fundamental.
- ✓ We believe that there is an ethical issue to consider relating to consumers who do not engage in open finance due to both vulnerable circumstances and digital exclusion who may well face higher costs for products and services due to the poverty premium.

# Responses to individual questions

## Question 1 – What action can we take to help ensure the potential of Open Banking is maximised, for instance to support the development of new Open Banking services?

The FCA should ensure that the required regulatory protections are in place to ensure that Open Banking works well for consumers. It should then be in a position to enable open finance develops in an appropriate manner.

It has not yet been demonstrated how Open Banking services will provide good outcomes to financially excluded or digitally excluded consumers. The FCA should aim to enable the development of ‘socially useful’ Open Banking services that ensure that the potential benefits are not limited to a niche group of “financially savvy” and better-off consumers.

It is also important not to over-emphasise the potential impact of Open Banking or open finance. One benefit of Open Banking that is often suggested is to facilitate debt advice through bank account data auto-populating a financial statement and providing budgeting support. This is set out in annex 1 of the paper. This certainly has the potential to improve the speed and accuracy with which financial statements can be completed, and we look forward to the benefits this will bring to the debt advice process. However, while access to account data may help the debt adviser to accurately complete a financial statement with a client more quickly, it is not a substitute for debt advice itself. Open Banking data is retrospective and obviously cash transactions can never be captured. To unpick the data to create a sustainable budget for the client still requires nuanced adviser interaction.

There will be additional considerations such as client trust in how their data will be used by the agency and whether value judgments will be made by the agency about their spending patterns. Open Banking may make it easier for people to complete their budgets but this does not mitigate some of the emotional barriers people have in doing so.

The use of Open Banking technology in completing budgets could suit those clients who have surplus incomes, which, when identified through their automated budget, can lead to a debt solution. However, technology may have limited use for clients with deficit budgets or unusual circumstances, disputed or statute-barred debts or priority debts. There is always the risk that it's a technology that works for certain clients and that providers run the risk of misunderstanding the volume of clients that will fall into this neat group.

Having said this, the advice sector is working to use Open Banking to help develop online tools to smooth the debt advice process and the Money and Pensions Service is leading work on this. We recognise the challenges around consent throughout the whole journey for clients and trust for potential users, which must be solved before a wider scale adoption of this technology can take place. We would like to see the rather crowded landscape of competing technology and credit referencing providers and agencies working in a more joined-up fashion to provide the most helpful environment for advice agencies to make use of Open Banking.

## Question 2 – We are interested in your views on what Open Banking teaches us about the potential development of open finance.

We would suggest that before Open Finance can be developed, it is vital that mechanisms are put into place to protect consumers using Open Banking systems. Consumers need to be confident that in Open Banking:

- ✓ sufficient protections are in place in relation to how their data is treated;
- ✓ solve the problem of customer reauthentication of accounts and its effect on continued usage of services by consumers;
- ✓ there is an easy, free and straightforward complaints and redress system in place;
- ✓ all providers are properly regulated and can demonstrate this through a trustmark or equivalent.

The relevant regulatory bodies need to work with the Open Banking Implementation Entity (OBIE) to impose a comprehensive customer redress system for Open Banking before Open Finance can develop further.

The development of Open Finance initiatives should not proceed until these fundamental issues are resolved, alongside the future of the OBIE, and the planned Smart Data Function.

## Question 3 – Do you agree with our definition of Open Finance?

The definition in the paper seems to provide a good outline of Open Finance and what it means.

## Question 4 – Do you agree with our assessment of the potential benefits of Open Finance? Are there others?

The paper sets out a good summary of the potential benefits of Open Finance.

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

The FCA should consider how products and services that are not regulated under the FCA, such as utilities, can also come under the regulatory umbrella for Open Finance. It would be a likely source of future consumer detriment if TPPs are authorised and regulated in a different way depending upon the type of product or service they offer.

It would appear that for Open Finance to develop in the future, there would need to be a mandate on firms to participate in data-sharing, to ensure there is a competitive level-playing field. Otherwise, some firms might see commercial advantages to opting out to avoid any potential risks to their profitability.

## Question 6 – Is there a natural sequence by which Open Finance would or should develop by sector?

We are not in a position to comment on how Open Finance should develop by sector. It seems reasonable to see the fit between sharing bank account information, savings accounts, consumer credit information and mortgages so that consumers can see all their financial interactions in one place.

We agree that the pension dashboard development should not be undertaken in isolation. This would be a very good way of the sectors working together to ensure this work is joined up with other Open Banking money dashboards. Consumers would probably find it easier to see all their finances in one place, rather than in silos.

Where a consumer has set up a long-lived consent with a Third Party Provider (TPP), they are required under regulation to 'reauthenticate' the connection every 90 days or their data stops being shared. We would suggest that the issue of customer reauthentication in Open Banking needs to be resolved. Repeated requests for consumers to reaffirm the passwords for all their accounts to continue to use the service, can act as a disincentive to continued interaction. See our response to question 22 below.

## Question 7 – Do you agree with our assessment of the potential risks arising from Open Finance? Are there others?

We agree with the FCA's assessment of the potential risks arising from Open Finance. The potential for firms to narrow their ranges of products and exclude others is a clear risk to consumers' ability to make competitive choices.

We have particular concerns that some firms will use Open Finance interfaces to harm consumers. We have pointed out on many occasions, that firms who operate on the periphery of FCA authorisation are not subject to scrutiny. In addition, firms who are not required to be authorised at all or fall under a different regulator will not be covered.

This grey area already causes consumer harm in relation to debt management, lead generation firms, and their relationship with insolvency practitioners. We would not expect consumers to be aware of the legitimacy of firms that advertise Open Finance services or of how to check their legitimacy.

Concerns over whether firms are reputable in the Open Banking sphere has led to consideration of a binding code of conduct and a whether a form of trustmark would help consumers identify authorised and trustworthy firms. However, this initiative has not progressed and is not yet in place.

It would be vital that any trustmark or equivalent should not result in a “false sense of security” for consumers who might be reassured by the trustmark but not notice that it only relates to certain products or services provided by the company. We are all familiar with the smokescreen that allows firms who are authorised by the FCA for a certain product, to use this to promote unregulated products, safe in the knowledge that consumers are unaware of this as an issue. Therefore any trustmark must apply to all products and services offered by that firm.

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

No, we do not consider the current regulatory framework is adequate. There needs to be a clear liability framework put in place, so that it is easy to trace the journey of the customer’s data. This needs to be alongside robust protections that should be put in place to ensure free and easy access to redress.

Before any wider application of Open Finance is considered, all the TPPs and all the products and services offered by TPPs must be regulated and must enable consumers to raise a complaint to the Financial Ombudsman Service if things go wrong. It is not acceptable that some services would operate as an FCA regulated activity whilst others would not operate to the same standards if dealing with energy or telecoms or other sectors. Consumers need to have confidence in these services and to know that all their interactions will be protected.

In our view, such a system would have the potential to cause consumers severe financial detriment. The regulatory system needs to be both holistic and transparent. Open Finance must have a common complaint route to the Financial Ombudsman Service that is clear and accessible. No system that gives protection in one product or service area, but not another, should be allowed to develop.

It is also worth considering whether there should be a cross-sector regulator for data that goes beyond financial services and the current regulatory powers of the ICO. This would need to be set up in conjunction with a data ombudsman service.

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

We are not a financial services firm, so are unable to comment on the barriers that firms may face in any detail. We would place the primary barrier as being a lack of a robust regulatory framework that allows firms to be confident that they are sharing data with a reputable TPP. Likewise, a TPP will find it hard to prove that they are reputable and can be entrusted with customer data.

## Question 10 – Do you think the right incentives exist for Open Finance to develop, or would FCA rules, or any other changes be necessary?

From the paper, it appears that the right to data portability for an individual under GDPR is not an adequate mechanism for real-time data sharing for Open Finance as is allowed under Open Banking. Therefore, additional rules will be needed to ensure real-time data sharing works for firms not covered by the Open Banking rules.

We would suggest that for Open Finance to develop, there would need to be a robust regulatory framework in place that encompasses all the elements identified and gives both consumers and firms' confidence in the system. We would be concerned to see Open Finance developing in a piecemeal fashion, without a framework of consumer protections in place.

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

We have no comments to make in response to this question.

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

As we are not a financial services firm, we have no comments to make in response to this question.

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

As we are not a financial services firm, we have no comments to make in response to this question.

## Question 14 – What functions and common standards are needed to support Open Finance? How should they be delivered?

We would agree with the suggested common standards that have been set out in the paper, as recommended by the advisory group.

We note that the paper states at point 5.26 that a model of Open Finance that is “*interoperable and cohesive*” would “*ensure the whole system is based around the customer and their journey*”. We would like to see an overarching requirement in the common standards to ensure good consumer outcomes. This should place the consumer at the heart of Open Finance and ensure that good outcomes for people in vulnerable circumstances and people who are excluded both financially and digitally are seen as fundamental.

## Question 15 – What role could BEIS’ Smart Data Function best play to ensure interoperability and cohesion?

We understand that the Smart Data Function has not been put in place as yet, so it is difficult to comment. However, it would make sense for either the OBIE to remain in place and expand its remit to develop Open Finance operating standards, or this function may need to be transferred to the Smart Data Function.

The Smart Data Function would need to work closely with the FCA and other regulators and government to ensure the governance develops coherently.

## Question 16 – To what extent should the standards and infrastructure developed by the OBIE be leveraged to support Open Finance?

The infrastructure developed by the OBIE should be used as the basis for expanding Open Finance rules and functions.

However, as we have said, we believe there is some way to go before the OBIE provides proper consumer protections.

## Question 17 – Do you agree that GDPR alone may not provide a sufficient framework for the development of Open Finance?

We are in complete agreement that GDPR will not provide a sufficient framework for the development of Open Finance. There needs a regulatory regime that provides a coherent framework to build on existing legislation such as GDPR, Payment Services Regulation (PSR) and the revised Payment Scheme Directive (PSD2).

## Question 18 – If so, what other rights and protections are needed? Is the Open Banking framework the right starting point?

The set of standards suggested by the advisory group appear to be a good starting point. These would cover some of the concerns we have with Open Banking regarding the requirement for a free, accessible route to complaints, redress and compensation.

## Question 19 – What are the specific ethical issues we need to consider as part of Open Finance?

It is not sufficient to ensure systems are put in place that guarantee transparency for consumers to check where their data goes and who is controlling their data. For most people, data, and Open Finance is very complicated, and no amount of consumer information is going to enable consumers to navigate such a complex area.

It is important to be aware that truly “informed” consent is not easy to achieve. It is increasingly the case, that ‘throwing pages of small print at people’ does not promote active engagement, and should not be used as proof that a consumer understands what they have consented to. It should be incumbent upon the service or product provider to use inclusive product design techniques to design simple and transparent consent models.

However, there is no doubt there is much dedicated research into the unconscious biases of consumers and how these can be taken advantage of when building products such as price comparison websites, and so on. This is another ethical issue that should not be overlooked.

It is therefore vital that protections are built into the system to avoid firms from exploiting consumers or help prevent the risk of fraud. Easy to use systems that automatically make switching products or savings and investment decisions help to deal with the issue of low consumer engagement. However, this means that the systems and firms require an even greater level of trust by consumers that these systems work for the consumer and not against their best interests. Good consumer outcomes need to be at the heart of such developments.

In addition, consideration needs to be given to how to tackle the way in which automated data algorithms might operate with an inbuilt bias against specific vulnerable groups, or through profiling of gender, ethnicity and so on.

Furthermore, the regulator should consider how far profiling should be allowed to develop. Improvements in technology can result in increasing access to products and services for some previously excluded groups. However, the ability to narrow such profiles can result in the identification of a small group of consumers who can end up being completely excluded from products and services. Greater data sharing could lead to customers with certain characteristics being excluded from certain markets. This is also an ethical issue that needs to be considered.

We believe that there is an ethical issue to consider relating to consumers who do not engage in Open Finance due to both vulnerable circumstances and digital exclusion. Such consumers may well face higher costs for products and services. As this scenario is likely to apply to people in low income groups who have no access to online services, or older age groups who are more likely to be digitally excluded, this serves to increase the likelihood of the poverty premium becoming more prominent.

In addition, there could be consequences for people who self-exclude from digital services or are unable to participate in a digital society. If the default position is that data is shared to participate in credit services, then there could be effects on credit ratings, credit reference files and access to financial services more widely for those who do not. This could deepen the gap between consumers in vulnerable circumstances, or those who voluntarily disengage, and the rest of society.

## Question 20 – Do you have views on whether the draft principles for Open Finance will achieve our aim of an effective and interoperable ecosystem?

The draft principles appear to cover many areas of potential concern. However, we believe that there should be a principle that explicitly covers the right for consumers to make a complaint using a common and transparent process, to one independent body, e.g. the Financial Ombudsman Service. This principle should also cover the right of redress for consumers.

We would also like to see the draft principle 3 *“User right to be in control of their data and transact and share data securely”* to set out more plainly what the rules are for TPPs to transfer individual data to third parties and what protections should be put in place. This has repeatedly emerged as an area of concern in discussions about Open Banking.

Rules should restrict data being transferred to third parties automatically, and there needs to be a direct complaints and redress mechanism that is clear and simple, that can be used against all such parties. Unless consumers can track who has accessed their data, and seek redress for any wrongdoing by third parties, then it would be hard to recommend any Open Finance products as being “safe” for consumers.

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

We would like to see the FCA take charge of developing these principles, in conjunction with the future incarnation of the Open Banking Implementation Entity. Such principles should be underpinned by enforceable rules that apply to all elements of Open Finance.

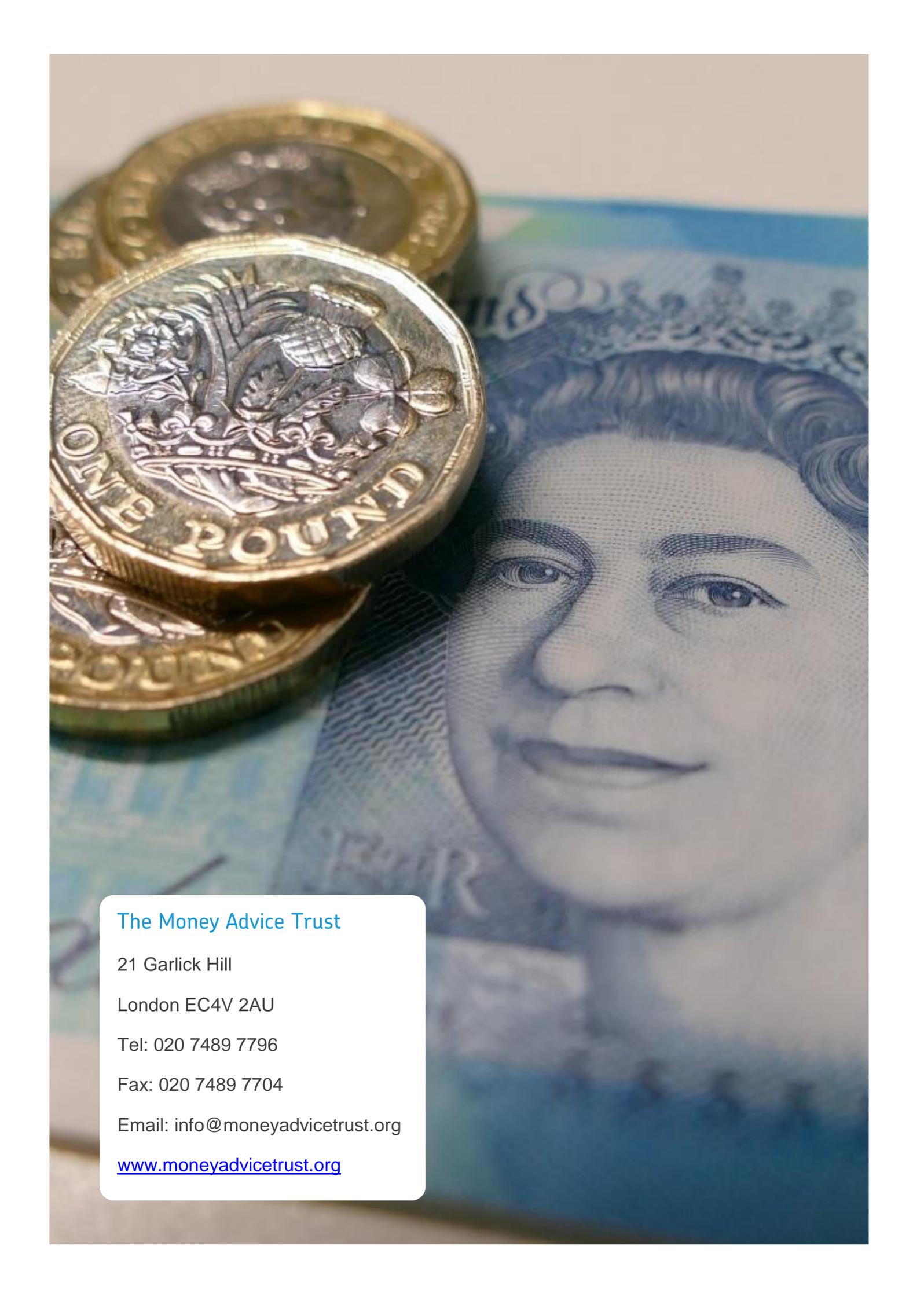
## Question 22 – Do you have views on whether any elements of the FCA’s regulatory framework may constrain the development of Open Finance? Please provide specific examples.

It may not emerge as a primary deterrent to consumers interacting with Open Finance initiatives, but there should be consideration given to how to ease the process of ongoing and repeat consents to data sharing.

There is a risk that a novel new money dashboard will fall out of use if consumers have to repeatedly confirm their consent to the dashboard continuing to use data from their financial services providers. This will particularly be the case where the consumer has to log on to their individual banking, savings, and mortgage accounts on a regular basis to reconfirm their consent. Remembering complex log-in protocols and password sequences could easily act as a deterrent to participation.

**For more information on our response, please contact:**

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