

Osborne Clarke's 2022 Future of Financial Services week



The Future of Open Banking and Open Finance

26 January – 3 February



Speaking with you today



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Legislative Framework: CMA Order and PSD2 / PSRs

CMA Order

- Effective Date: 13 January 2018
- UK CMA – competition law remedy
- Application: CMA9 only
- Scope: Personal and business current accounts
- Mandatory open APIs
- Established OBIE

PSD2 and the Payment Services Regulations 2017 (PSRs)

- Effective date of RTS: 14 September 2019
- EU harmonizing directive: transposed in UK via PSRs
- Application: All EEA ASPSPs
- Scope: All online payment accounts (includes e-money)
- Voluntary open APIs (can use modified customer interface)
- OBIE facilitates PSD2 open banking (e.g. directory)



Key Definitions in the PSRs: PIS, AIS and ASPSPs

Payment Initiation Services (PIS)

"means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider"



Account Information Services (AIS)

"means an online service to provide consolidated information on one or more payment accounts held by the payment service user with another payment service provider or with more than one payment service provider, and includes such a service whether information is provided—

(a) in its original form or after processing;

(b) only to the payment service user or to the payment service user and to another person in accordance with the payment service user's instructions"

(language in red added to PSRs definition)

Account Servicing Payment Service Providers (ASPSPs)

- ASPSP "means a payment service provider providing and maintaining a payment account for a payer"
- Payment account "means an account held in the name of one or more payment service users which is used for the execution of payment transactions"
- Is the payment account "accessible online" for the purposes of the TPP access provisions (PSRs regulations 69 and 70)?

Open Banking: Examples and Use Cases



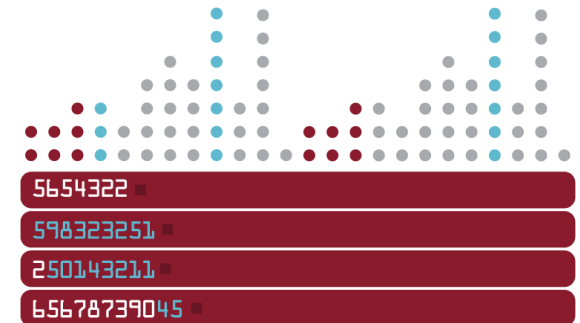
AIS - used to view aggregated data or share data with third parties.

- PERG: "online 'dashboard' where they can view information from various payment accounts in a single place"
- PERG: AISPs "provide information from the user's payment accounts to both the user and another party (such as a lender or financial adviser) on a user's instruction"



PIS – used as an online payment method as an alternative to card payments

PSD2 recital (29): "provide comfort to a payee that the payment has been initiated in order to provide an incentive to the payee to release the goods or to deliver the service without undue delay."




Technical Service Providers – not regulated

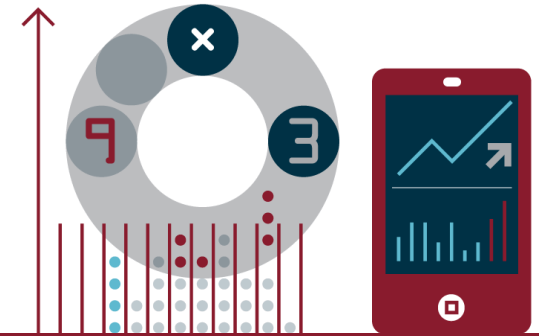
PERG: "A business that obtains and processes payment account information in support of an authorised or registered account information service provider, but does not itself provide the information to the user, is a technical service provider."

Key Requirements in the PSRs: Rules on Access

Rules for TPPs: Regulations 69 (PIS) and 70 (AIS) PSRs	Rules for ASPSPs: Articles 69 (PIS), 70 (AIS) and 71 (denial of access) PSD2
TPP must ensure that personalised security credentials of PSU are not accessible to third parties and are transmitted through safe and efficient channels	ASPSP must communicate securely with the TPP in accordance with the EBA's Regulatory Technical Standards
TPP must not use, access or store any data for purposes other than the PIS or AIS explicitly requested by the PSU	ASPSPs must treat: <ul style="list-style-type: none"> • data requests submitted by the AIS provider "<i>without any discrimination except for objective reasons</i>" • payment orders submitted by PIS provider "<i>without any discrimination except for objective reasons, in particular in terms of timing, priority or charges vis-à-vis payment orders transmitted directly by the payer</i>"
TPP must identify itself towards the ASPSP and communicate securely in accordance with the EBA's Regulatory Technical Standards	In respect of PIS only: the ASPSP must immediately after receipt of the payment order, provide or make available all information on the initiation of the payment transaction and all information accessible to the ASPSP regarding the execution of the transaction to the PIS provider.
PIS providers: must not store "sensitive payment data" of the PSU AIS providers: must not request "sensitive payment data" linked to the account	The provision of PIS or AIS shall not be dependent on the existence of a contractual relationship between the TPP and the ASPSP. In the UK PSRs, there is a direct obligation on the ASPSP not to require the TPP to enter into a contract before complying with the access rules.
PIS providers shall: <ul style="list-style-type: none"> • not hold payer's funds in connection with PIS • not modify the amount, payee or any other feature of the transaction • not request any data from the PSU other than those necessary to provide the PIS • ensure that information about the PSU obtained when providing PIS is only provided to the payee with and then only with the PSU's explicit consent 	Regulation 71 PSRs: an ASPSP may deny a TP access to a payment account for "objectively justified and duly evidenced reasons relating to unauthorised or fraudulent access to the payment account by that [TPP]" The ASPSP must inform the payer of the denial and the reasons for it and must also notify the relevant competent authority including the reasons for taking action.
AIS providers shall: <ul style="list-style-type: none"> • only provide AIS based on the PSU's explicit consent • access only the information from designated accounts and associated transactions 	Regulatory Technical Standards on Common and Secure Open Standards of Communication: <ul style="list-style-type: none"> • Requirements for a dedicated interface or modified customer interface • Dedicated interface must have same performance and availability as customer interface - no obstacles to AIS or PIS! • Contingency measures for dedicated interface (unless exemption obtained)

Open Banking: What does the market look like today?

- OBIE Report (October 2021): 2021 saw significant growth in adoption of Open Banking in the EU
- HMRC accepting PIS Payments: first tax authority in the world to integrate OB
- European picture: Fragmented
- Ancillary products and related functionality:
 - Request to Pay 
 - Confirmation of payee
 - Premium APIs



OBIE estimates that 1 in 13 people were using at least one OB product in Aug 2021, increased from 1 in 40 in Jan 2020.

Open Banking: What does the regulatory regime look like today?

- Evolving EU interpretation over last 6 years: PSD2 2015 | RTS 2019 | EBA Opinions | EBA Q&A
- Onshoring of RTS – UK RTS – recent amendments:
 - Removed requirement to reauthenticate after 90 days (AIS)
 - Mandatory use of dedicated interface for certain ASPSPs
 - Removed 6 month testing period for interfaces
- Evolving FCA view: Perimeter issues:
 - Presentment of account information = AIS
 - BAN & sort code not "consolidated information"
 - AIS agent models



"...moving forward it will also be important for there to be a clear regulatory vision supported by cooperation from wider industry and stakeholders" CMA Update on Open Banking 5 November 2021

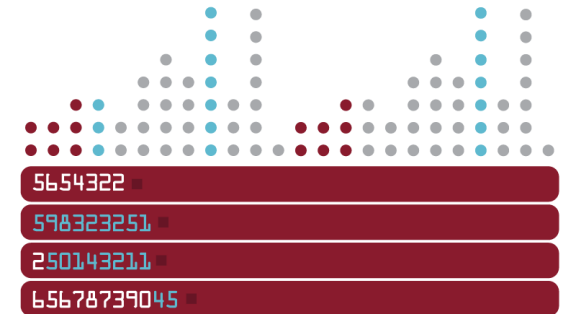
Open Banking: What's next for functionality and regulation?

Products and functionality:

- Variable recurring payments
 - CMA mandates sweeping using VRP for CMA9
 - Alternative to CPAs or Direct Debits: VRPs to third parties under development
- HMRC – OB proof of concept
 - AIS
 - Splitting VAT at source
- OB as part of a broader network of open finance

Regulation:

- AML – HMT consultation
- Greater levels of FCA enforcement?



Open Banking "serves as a natural blueprint for how the 'open' philosophy can be extended to everything from open finance to open telecommunications, thereby giving customers greater control and greater benefits."

"Open Finance could create substantial opportunities for better advice and better financial outcomes. The ability for individuals to access and share a full set of their provider-held financial data – beyond the bank transaction account data made available under Open Banking – will allow third party firms to offer advice and optimisation solutions that will save them money and help them manage their savings, investments, pensions and insurance for better overall financial health."

Kalifa Review of UK FinTech



Open Finance

- Extension of Open Banking-like data sharing to wider range of financial products, e.g. savings, investments, pensions, insurance
- May herald a new wave of FinTech innovation

UK

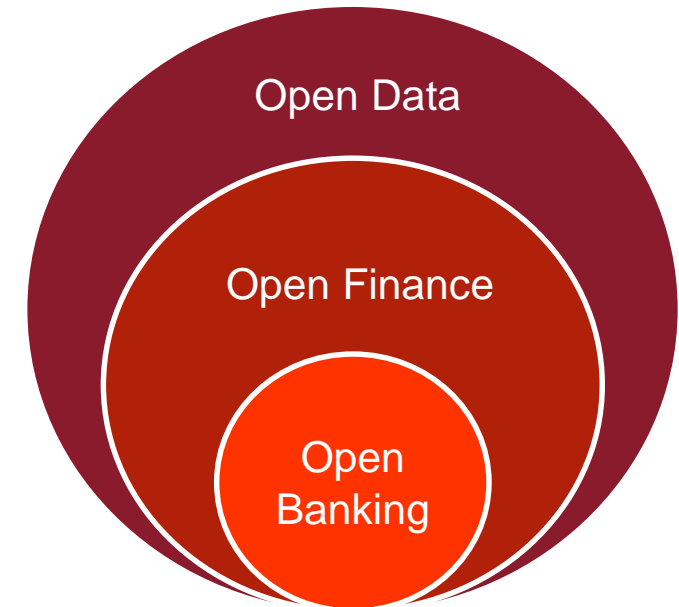
- FCA recently called for input on Open Finance ([feedback](#) published March 2021)
- No clear road-map to Open Finance
- Pensions Dashboard: digital platform providing online access for people to information about all their pensions in one place

EU

- Digital Finance Strategy
- Intention to adopt legislative proposal for a new open finance framework by mid-2022

Beyond Europe

- e.g. Australia and Canada in process of adopting an Open Finance model



Open Finance: use cases

**Greater personalization of
products and services**

**Better and lower cost
fact find**

**More accurate
creditworthiness or
underwriting
assessments**

More competition

**Dashboards to view and
manage the entirety of a
customer's finances**

Driving digitisation

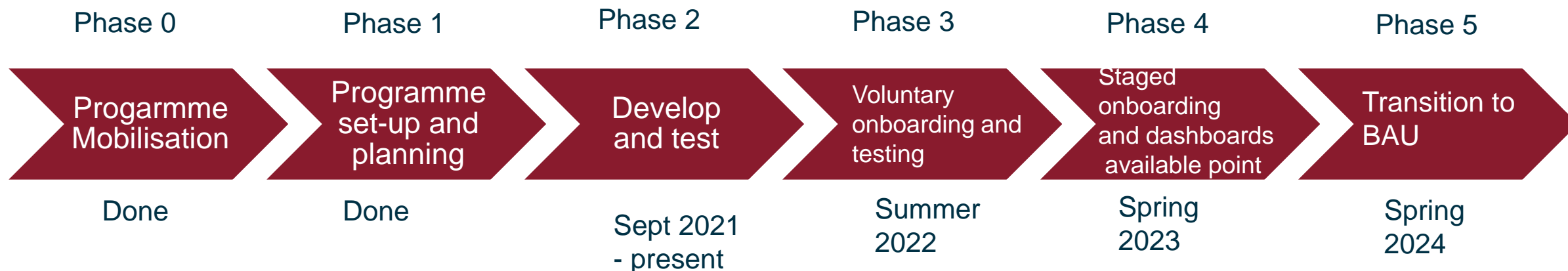
Open Finance: challenges

- Read and write access?
- Appropriate regulatory framework
- Compulsion vs incentives
- Clarity on GDPR
- Consumer protection measures
- Data sets
- Technical standards and central body

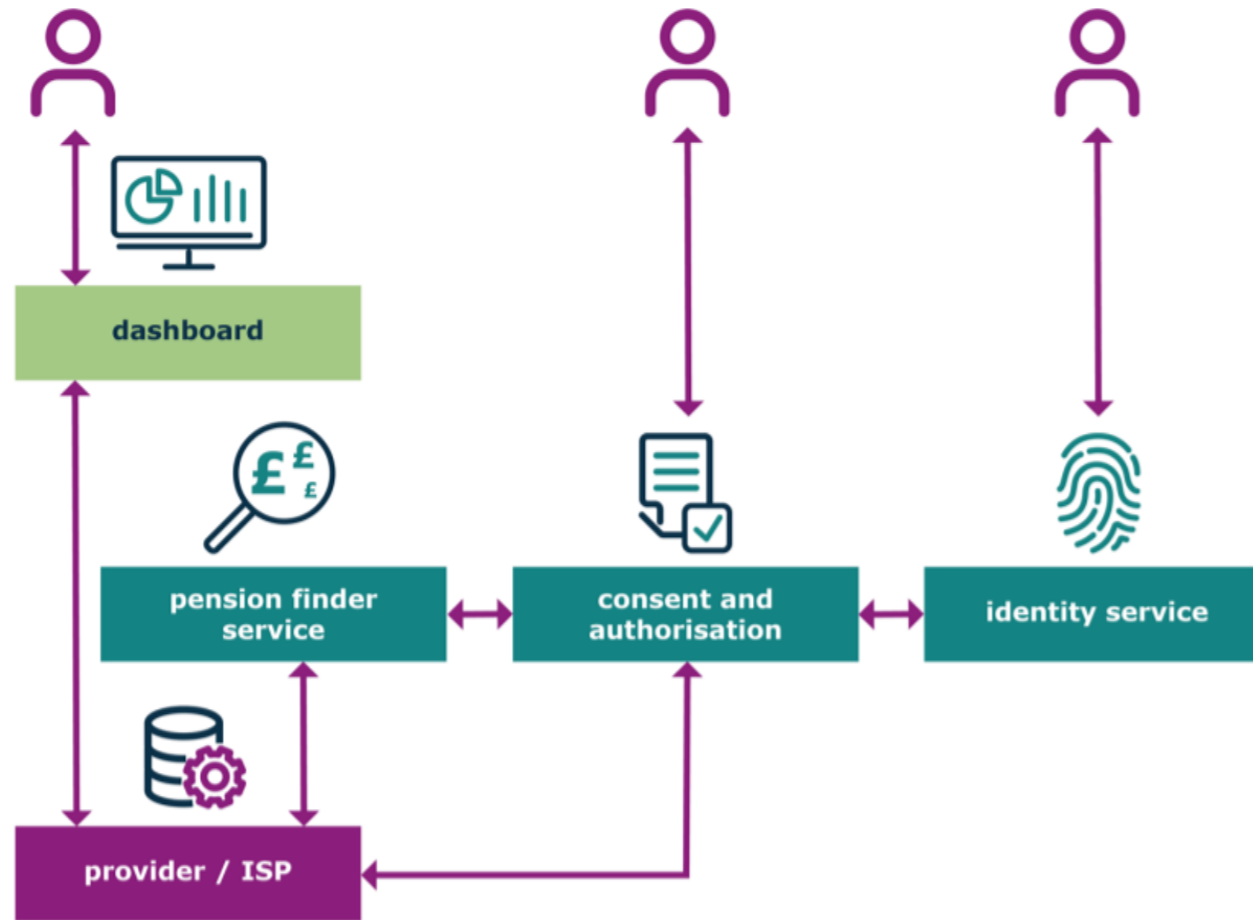
Open Finance: Pensions Dashboard

- Dashboard to view key information about pensions
- Pensions Dashboard Programme (**PDP**) / Money and Pensions Service (**MaPS**)
 - responsible for developing programme and dashboard ecosystem
- Framework already set out in law:
 - Pensions Act 2021 / FSMA
 - Providers required to provide data to dashboards
 - Dashboard providers to be regulated under FSMA
 - What, how and when to be set out in regulations
- Scope
 - All plans except non-UK or plans in payment

Timetable



Pensions Dashboard – how it works



Familiar issues to be resolved:

- Data set
- Interaction with GDPR
- Liability regime
- Tech build

Source: Pensions Dashboards Programme Architecture brief for suppliers March 2021

"Smart Data is the secure sharing of customer data with authorised third-party providers (TPPs), upon the customer's request. These providers then use this data to provide innovative services for the consumer or business user, such as automatic switching or better account management."

BEIS Smart Data Working Group



Any questions?



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