



# Written submission by the Open Finance Association to the Financial Services and Markets Bill Committee

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## Introduction

1. The [Open Finance Association](#) represents successful fintechs who have been enabled by previous Government legislation on open banking - the Payment Services Regulations 2017, and a parallel competition initiative - the CMA's Retail Banking Market Investigation.
  2. Since 2017, members have attracted over £500m in investment, generated thousands of high skilled jobs across the UK and serve millions of UK consumers and businesses.
  3. **Open banking** places obligations on banks to securely open up access to account holder data and payments to regulated parties (such as OFA members), in order to provide new types of payment service (competing with cards) and data services - giving consumers and businesses new financial awareness and convenience (see attached one page fact sheet).
  4. We see huge potential for UK fintech innovation if the principles of open banking are extended into new financial sectors such as savings, investments, pensions, mortgages and insurance - this is referred to as **open finance**. The OFA is focused on furthering this objective.
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## Executive summary

5. The Financial Services and Markets Bill is an opportunity to further enable open finance in the UK, however in its current form it does not do this. For the Bill to enable OFA members and other FinTechs to deliver on open finance so the UK remains globally competitive, the Bill needs to ensure it:
  - a. lays the ground for and sets in motion a review of Payment Services Regulations (PSRs) - to keep the UK in line with the EU which is reviewing equivalent legislation (currently the Bill only addresses isolated aspects of the PSRs - see third (5c) below.
  - b. Incorporates the initiative "Smart data", which is being progressed in the Data Protection and Digital Information' (DPDI) Bill. Smart data is supposed to enable open data initiatives in different sectors. The FSMB should cross reference to the DPDI in order to ensure that smart data can be implemented in the financial services sector in the forms of open finance.
  - c. Does not create unintended consequences for open banking - The Bill amends the Payment Services Regulations and gives the Payment Systems Regulator powers which could lead to 'de-risking' in open banking - i.e. banks no longer allowing open banking providers to facilitate payments due to banks' increased liability for fraud or banks introducing additional friction to open banking payments (making it harder for open banking to compete with card payments).



## Our submission

### Enable reforms for keeping open banking regulation up to date

6. This Bill was intended to allow the UK government and regulators to replace retained law for financial services. However, we are concerned that the Bill does not set in motion reforms to the Payment Services Regulations that would keep UK payments regulation (and open banking innovation) inline with the EU and other countries (i.e. Brazil and India). At a time when the EU is revising PSD2, we think there is an opportunity to revisit the PSRs - the regulations which enable open banking, to ensure they stay up-to-date with current technology and market trends.

### Cross referencing between FSMB and DPDI to ensure a framework for open finance.

7. The scope of open banking has been in consideration since the FCA published a [Call for Input](#) on open finance in 2019. Understandably, the FCA's focus in early 2020 turned to supporting financial measures during the COVID-19, and open finance work was put on hold. [A feedback statement](#) followed over a year later. That statement pointed to government legislation on smart data as a vehicle for progressing open finance. That legislative process has now started with the publication of the '[Data Protection and Digital Information](#)' (DPDI) bill in July, which too is currently paused.
8. The FSMB cross-references several legal and regulatory instruments, recognising the complexity and diversity of the emerging financial world. In a similar vein, this Bill should also reference DPDI to ensure open finance is built into the fabric of the UK's financial services.

### Unintended consequences for open banking of greater regulatory powers for the PSR

9. We want to make the government aware of the potential consequences of amendments to Regulation 90(1) of the Payment Services Regulations 2017 which would enable the PSR to use its regulatory powers to require mandatory reimbursement by payment service providers in cases of APP scams.
10. Whilst we support consumers being appropriately protected from APP scams, we are concerned that the PSR increasing liability on banks, will lead to 'de-risking' in open banking - i.e. banks no longer allowing open banking providers to facilitate payments due to their increased liability for fraud.
11. We are seeking measures in the Bill to ensure the regulator applies its powers in a proportionate and risk based manner, and assessed the direct and indirect consequences of any direction it imposes using these powers.

The OFA would appreciate the opportunity to discuss our concerns and provide any further information required.

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