

Written evidence submitted by UK Finance to The Data (Use and Access) Bill (DUAB38)

UK Finance is the collective voice for the banking and finance industry. Representing 300 firms across the sector, we are a centre of trust, expertise and collaboration at the heart of financial services, championing a thriving sector and building a better society.

UK Finance strongly supports the overall objectives of the Data (Use and Access) Bill. We believe it has the potential to unlock more data-driven innovation in financial services, incentivising investment in new products and services that are more tailored to the specific needs of consumers and businesses.

However, our members believe some elements of the Bill need to be strengthened or clarified to ensure these benefits are fully realised, and to maintain the protection of individuals' data rights. We draw the Committee's attention to the following three issues:

- ▶ **Smart data schemes (clauses 1-26):** For Open Banking to thrive, it needs to be put onto a commercial footing. During the remaining stages of the Bill, we ***urge the Government to provide ministerial assurance*** that secondary legislation made under the Bill will deliver a long-term regulatory framework for Open Banking that incorporates commercially sustainable arrangements. Industry must be closely consulted on this framework.
- ▶ **Data protection (Schedule 4):** The Bill includes provisions to facilitate public authority requests for disclosure of personal data by firms. While we recognise that these provisions will not compel firms to share data, firms will nonetheless feel pressure to comply when requested to do so. We therefore ***urge the Committee to amend the Bill*** to provide stronger safeguards in relation to such data collection requests by public authorities.
- ▶ **Complaints by data subjects (clause 103):** The Bill contains provisions for complaints by data subjects to data controllers. We ***urge the Committee to amend the Bill*** to ensure that the timescales it sets out for acknowledging receipt of complaints is aligned with timescales under GDPR. This will avoid unnecessary operational complexity for firms.

Further details on each of these issues is included below, and proposed amendments to address points 2 and 3 are included in the Annex.

If you are open to discuss this matter further, please contact Harrison Burns in our Public Affairs team at harrison.burns@ukfinance.org.uk – we would be pleased to arrange a more detailed briefing by our Payments and Innovation policy team.

Smart data schemes – ensuring sustainable commercial arrangements

- ▶ The Government and industry stakeholders recognise that incentives to encourage market-led long-term, sustained investment and innovation are a critical foundation to Open Banking and Open Finance.
- ▶ The Government's National Payments Vision (NPV) frequently cites the importance of commercial models or arrangements in respect of the future of Open Banking. This is also one of the central recommendations of the Centre for Finance, Innovation and Technology (CFIT)'s work on Open Finance.
- ▶ The long-term regulatory framework for Open Banking, and any future smart data scheme for Open Finance, must not follow the model on which Open Banking was founded, which mandates participation and requires free-access to bank APIs.
- ▶ All firms involved in the Open Banking and future Open Finance ecosystems must be able to share in the value created through open APIs and data sharing, and contribute to the development and maintenance of shared infrastructure that underpins this.

Our ask: For Government to provide assurances that secondary legislation made under the Bill will deliver a long-term regulatory framework for Open Banking that incorporates commercially sustainable arrangements. Industry must be closely consulted on this framework.

Data access – stronger safeguards for 'recognised legitimate interest' requests

- ▶ At present, public authorities seeking to access private sector data typically use statutory or common law powers to compel disclosure by firms. These powers incorporate safeguards for individual rights – they can often only be used in specific circumstances with external oversight.
- ▶ Article 6(1)(ea) and Annex 1 paragraph 1 of the Bill propose to allow much freer disclosure of personal data to public authorities that request it, where they cite a public interest need.
- ▶ We are concerned that the Bill creates a data acquisition option for public authorities which lacks the due diligence that firms normally need to exercise before making a disclosure, and without the application to public authorities of any compensating

safeguards.

- ▶ This will create a strong temptation for authorities use the ‘recognised legitimate interest’ powers in this Bill to obtain data more rapidly, or to acquire data that would not have been legally accessible, under their pre-existing data acquisition powers.
- ▶ We already see public authorities request firms in our sector to share large data sets on a voluntary basis, which we consider disproportionate, including for bulk profiling. We are concerned the Bill will encourage more of these types of requests.
- ▶ Although there will be no ‘compulsion’ to share data under the Bill’s provisions, it is likely firms will still feel pressure to comply when requested to do so by a public body. We note that the [Information Commissioner’s Office’s Bill response](#) identifies an “accountability gap” in this provision.

Our ask: For the Bill to be amended to add safeguards to data requests made by public authorities under the ‘recognised legitimate interest’ provisions. For example, the Bill could prevent public authorities from using data obtained in this way for making decisions about individual data subjects, or require notification of the ICO of requests for voluntary disclosures. A proposed amendment to the Bill is included in the Annex.

Complaints handling – align timescales for responding with GDPR requirements

- ▶ Clause 103 of the Bill contains provisions relating to ‘complaints by data subjects to controllers’, specifically requirements for data controllers to acknowledge receipt of a complaint within the period of 30 days beginning when the complaint is received.
- ▶ However, Article 12 of GDPR requires that ‘the controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request’.
- ▶ The inconsistency in these two timescales could result in unnecessary operational complexity for firms.

Our ask: For the Bill to be amended so that it includes a timescale of ‘one month’ rather than ‘30 days’, bringing it into alignment with Article 12 of GDPR. This will help to avoid unnecessary operational complexity for firms. A proposed amendment to the Bill is included in the Annex.

For more information on the issues raised in this briefing note, please contact Harrison Burns in UK Finance's Public Affairs team at harrison.burns@ukfinance.org.uk. We would be pleased to arrange a more detailed briefing by our Payments and Innovation policy team.

Annex: Proposed amendments to the Data (Use and Access) Bill

Data Access

Schedule 4

Lawfulness of processing: recognised legitimate interests [INSERT NAME]

Schedule 4, Annex 1, Page 192, line 21, at the end insert –

“(c) the other person has notified the Commissioner of the nature and purpose of the request.”

Member’s explanatory statement

This amendment is designed to ensure oversight of government access to individuals’ personal data in the UK, reducing the risk of scope creep and institutional overreach.

Complaints-handling

Clause 103

Complaints by data subjects

[INSERT NAME]

Clause 103, Page 132, lines 26-27, leave out “30 days” and insert “one month”

Member’s explanatory statement

This amendment aligns timescales with Article 12 GDPR, to simplify firms’ compliance processes.

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