



# Brave New World

24 January 2019

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## INTRODUCTION

Open Banking presents a landmark opportunity. Yet over-eager innovation can irreparably scar consumers' trust in new entrants and drive customers back to their customary safe havens.

In addition, innovation and privacy law may offer new entrants the opportunity to obtain more meaningful data.

What fundamental issues should be considered in open banking data sharing models to avoid the kinds of exile suffered by Aldous Huxley's protagonists?

- 1. From the view of fintech provider (as opposed to a major bank), what are the risks and challenges from a data perspective?**
  - a. Loss of trust and re-affirming a bank as the trusted financial provider and anchor manager of a customer's fund
  - b. Irreparable reputation damage
  - c. Delay or inability to obtain account information
  - d. Inaccurate account information
  - e. Missing key information (eg that may enable fraud prevention or a specific customer insight tool)
  - f. Regulatory hurdles
  
- 2. How can this arise?**
  - a. Loss of data or security incident
  - b. Insufficient, ill-prepared data sharing arrangements
  - c. Inability to conform with banking standards or a bank's procurement or security team's compliance framework
  - d. Outstandingly fast pace of scale or growth (where processes and compliance measures don't keep up with growth rate)
  - e. Ill-conceived API terms of use or pricing
  - f. Over-reliance on one provider and no contingency or back-up
  
- 3. What are the potential solutions or, at least the means to devising a combined, over-arching solution?**
  - a. Identifying the (a) must have; and (b) nice to have data sets – and stress-testing whether, in fact the 'nice-to-have' data sets are really the must have's to enable your offering to distinguish itself from competition and incumbent banking or payment providers
  - b. Understanding the regulatory framework surrounding the duties on banks to provide account information. And, specifically, where possible, identifying any means of leveraging existing legislation to facilitate the best quality and most up-to date data sets (more on this below)



- c. Devising and implementing effective data sharing frameworks to optimise (reciprocal) data exchange (Open Data Institute standards) – eg fraud prevention
- d. Identifying the categories of data to be processed and understanding and ensuring the legal basis upon which it may be used
- e. Negotiating a sufficiently wide licence to exploit data sets received
- f. Limiting risk in data sharing contracts
- g. Explaining in clear English to consumers how their account data may be used (and any innovative benefits.
- h. Implementing an effective cyber security strategy and managing cyber risk
- i. Treat data as if it were your own money
- j. Insurance and Back-up/disaster recovery – resilience

**4. What are the real opportunities and game-changers for fintech providers or open banking entrants and challengers?**

- a. Insight for consumers (see further below)
- b. Data metrics to support new products (eg credit scoring)
- c. New information assets from pooling and cross-fertilisation of data sets (itemised receipt data to enrich customary account data)
- d. Increased revenue from a greater number of transactions and payments/transfers
- e. Improved efficiencies, cost savings and creation of valuable return-path data (and growing IP assets in data sets and licensing opportunities)

## DATA PORTABILITY

1. *“The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller... in a structured or commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance... where:*
  - a. *the processing is based on [data subject consent for the processing of personal data], or [the data subject’s explicit consent to processing sensitive personal data] or [processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract]; and,*
  - b. *the processing is carried out by automated means.*
2. *In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible.*
3. *The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others”*

The purpose of data portability is to promote interoperability and to empower consumers to control data that controllers hold and an increased level of control and choice. The aim being that data subjects can then migrate between banking providers without any loss of data and, in theory (at least), enjoy a seamless transition without the need to add additional information.

This is to create a level playing field and stimulate competition and innovation.



Issues that are likely to arise are:

- What data is covered
- The extent to which it covers all data held by the bank versus the data provided by [(on behalf of )] the consumer
- the necessary format for the data and effecting the porting of the data
- what is technically feasible
- what delays are acceptable and how up to date and accurate the data will be
- how to protect the privacy of others to which the account data relates (eg who paid or received the funds in relation to payment)
- whether it includes any sensitive or special category data

The likely theme of 2019 will build on the adoption of GDPR into force in 2018. In particular, we see a trend in Data Privacy Impact Assessments (**DPIAs**) required where high volume or sensitive categories of data will be processed which may have a material effect on individuals' privacy. Investors, consumers, brand protection and the demands of regulators will also look to see if such DPIAs have been carried out. This, in turn, will increase the value of data sets.

Further we see the true commercial incentivisation of data will be the real key to unlocking account data (in addition to the regulatory duties of PDS2 and GDPR). Where fintechs offer the prospect of rich, reciprocal insight data to incumbents, we will see a valuable and mutually rewarding data exchange providing greater choice and transparency for the ultimate customer. This should, in the long term, should also help drive behaviour and social change across all socio-economic classes

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