<u>Fairer Finance's Response to 'Modernising consumer markets: Consumer Green Paper' – July 2018</u>

Fairer Finance welcomes the opportunity to respond to the government's consultation on modernising consumer markets.

Fairer Finance holds a unique position in the financial services industry. We are a ratings agency, a consultancy, and a consumer campaigning organisation. Through our ratings, Fairer Finance has in-depth insight into the way financial products are designed and sold. Through our consultancy arm, Fairer Finance understands the pressures on providers, and the appropriate steps needed to ensure better outcomes for consumers

Fairer Finance has responded to the key questions posed by the consultation that fall most within the remit of its insight, and makes best use of its unique position within the financial services industry.

Question 2. How can we ensure that the vulnerable and disengaged benefit from data portability?

Fairer Finance welcomes the work already done to better serve customers in the financial services market, such as the ban on surcharging and a cap on payday loan interest and charges. It also agrees that data portability can improve consumer choice and competition within the financial services market.

To ensure that the vulnerable and disengaged benefit from this, attention must be paid to the ways in which these services are communicated. Having sat on the Open Banking Implementation Entity's (OBIE) consumer panel, Fairer Finance is acutely aware of both the possible benefits of such data portability, and the barriers to its success.

The key barrier to success is the language used – this affects both the vulnerable, and the disengaged. Communications around and within these new data portability services must be simple enough for consumers to engage with them. According to the National Literacy Trust, around 5.2 million adults in the UK are 'functionally illiterate', and so have the reading abilities of an 11 year old or below.

Therefore, communications which both publicise these services, and encourage consumer participation, must be written as simply as possible. This will ensure that all consumers can understand, and therefore engage with, these services.

From Fairer Finance's research, there can be a parallel drawn between increasing the clarity of information provided and an increase in consumer trust. Consumers are not naturally inclined to share their data, and so trust is vital to ensure data portability services are utilised by them. To ensure consumers trust these new services, the language by which they are communicated and operated must be easy to understand.

Just as complex language can be a barrier for vulnerable and disengaged consumers, so can online accessibility. Many vulnerable consumers are blocked from using online platforms due to these platforms failing to factor in their accessibility needs. These needs include being able to use the online platform with a screen reader, or purely through the use of the keyboard.

Across the insurance and banking brands Fairer Finance analyses for its ratings, over 95% have at least one issue with online accessibility. The most common issue is colour contrast, an error which affects those with visual impairments – around 2.7 million people in the UK.

For these new services to fully benefit disengaged and vulnerable consumers, the online platforms must be accessible to all consumers, and the language used within them and to publicise them must be understood by all.

Question 4: What is the best way to publish performance data so that it incentivises firms to improve and can be used by consumers when taking decisions? Should firms also offer discounts or compensation for poor performance?

For performance data to be effective, it needs to be distilled into meaningful metrics which are available for consumers at the point of purchase.

Fairer Finance creates ratings that aim to improve quality in the financial services sector – and numerous companies have said to us that they would work to improve the factors we assess them on if our data was available at the point of sale (ie through a comparison site).

We continue to work on getting our ratings integrated into comparison sites – and also look for ways to improve the ratings we have.

We would like firms across all regulated sectors to be mandated to publish more performance data. This could be provided to the sector regulator – and collated and published on the regulator's website. This might include call waiting times, account transfer times, fraud levels, prescribed reporting of insurance claims data etc.

The immediate end user of this data would not be consumers. Instead, it would be ratings firms such as Fairer Finance, who aggregate the data – along with other data sources – to create meaningful ratings for consumers.

We would like to see firms having to publish details of all of their standard correspondence templates too – so that these could be assessed by firms such as ours. We'd also like to see templates of their purchase journeys made available – so that they can be assessed. In the banking sector, for example, we're unable to mystery shop purchase journeys because credit checks are performed. This prevents firms such as ours checking to see whether companies are being clear and transparent with their customers.

Question 6. How can the government support consumers and businesses to fully realise the benefits of data portability across the digital economy?

Services such as the Current Account Switching Service benefit consumers by removing the friction involved in decision-making, which encourages competition and positive consumer outcomes. Fairer Finance welcomes the government's support of such services, though more can be done to ensure their success.

The government can help by improving financial education and understanding amongst consumers. Although removing friction makes processes such as switching current accounts easier, consumers won't be motivated to switch if they do not realise the benefits of doing so.

Consumers are often unable to realise what deal is best for them. This can been seen with the rise of comparison sites, which compare financial products on price (which consumers are comfortable analysing) but not on product features (which consumers struggle to analyse). Although sharing consumer data across a variety of providers has removed friction, there's no guarantee that consumers will choose the best product for them.

Therefore, consumers must be made more aware of the benefits of changing their financial services providers, and must be educated to understand why this could be a benefit at all. Financial education should be included in the school curriculum to better prepare consumers for the financial decision making they'll have to make. Particularly, if this covers digital services with a focus on data, then this will prepare them for participation in the digital economy beyond financial services.

Outside of education, the government could better publicise the benefits of data portability by normalising services such as Open Banking. Government encouragement could go a long way to change consumer perceptions of data sharing from being distrustful to being engaged.

This normalisation should go hand in hand with a government supported safety net, to ensure the fear of fraud does not deter consumers. Mandatory renumeration in case of fraud could be implemented, in much the same way the Financial Services Compensation Scheme provides a safety net in case of provider collapse.

A bespoke data portability safety net would therefore reduce fear of fraud, as well as normalise the engagement by consumers with data portability services. Once these barriers are removed, the education of consumers to better understand the benefits of these services would motivate initial engagement.

Question 7. As technology continues to develop, how do we maintain the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights?

There are many benefits available to consumers willing to share their data through digital platforms in the financial services industry. Beyond the obvious need for strong data security, there is also a consumer-focused process to consider.

This is the process of data consent. Consumers need to understand exactly what data they're sharing, why they're sharing it, and be given options to share data with sufficient granularity. An overall request for data consent isn't sufficient – every step of the data sharing process should be split up individually.

This requires clear and consistent language used throughout the process. The best terminology to describe the process should be decided upon, then used consistently throughout, regardless of which provider is requiring the data. This will increase consumer comprehension and familiarity with the process.

A general request for any consumer data asked with unclear language will likely result in one of two outcomes. Either the consumer shares their data, but doesn't understand why, and so true consent is hard to determine. It will be hard to justify that privacy rights have been upheld in this instance. Or consumers won't trust the request, and therefore won't share their data. In this instance, the consumer won't benefit from the positives of data sharing.

Instead, consumers should be asked a series of questions. Each question should explain why the data is needed, and how the sharing of it will impact the consumer. The language used must be clear and simple. For example, a provider could ask for access to the consumer's overdraft usage data, rather than general account history data. The provider will explain this is to see if the consumer could be paying less in overdraft fees with a different bank.

A more granular approach like this will ensure that the consumer is well aware of what they're sharing and why, achieving the goal of upholding data privacy rights. The consumer will also understand, and therefore trust, this process, achieving the goal of ensuring consumers take advantage of the benefits of data sharing.

Question 8: What challenges do digital markets pose for effective competition enforcement and what can be done to address them?

There is a risk that as companies use more data to price, it will lead to unfair outcomes. For example, if all companies are able to see whether a customer is shopping through a mac or pc – and know that mac users are wealthier – they may all choose to offer mac users a higher price.

Control over comparison sites is most important here – as they have the ability to raise prices for all brands available through their sites.

There's also a risk that pricing becomes more personalised in all markets – which makes it harder for customers to know whether they're getting a good deal, unless they're able to always port their data.

For example, in the car insurance market, telematics providers track your driving habits and use this to price your insurance. But the data that is collected in the black boxes is not portable. This means you are reliant on the provider offering you a fair deal – but the pricing algorithm remains out of sight and unscrutinised.

Question 10: In what circumstances are personalised prices and search results being used? In which circumstances should it not be permitted? What evidence is there on harm to consumers?

There is evidence that these are being used in the travel market, and of course the insurance market is very much based on a model of personalised pricing.

There is evidence in the travel market that prices have been raised based on user's cookies and browing habits. This can obstruct a consumer's ability to carry out an accurate search in the market.

In the insurance market, there is also evidence that insurers are using data for pricing which is not morally right. For example, insurers are analysing demographics, looking at where customers are born, what their job is – to come up with a price. One mystery shop found that using the name Mohammed generated higher prices. Which? found that customers are often charged higher insurance prices if they declare they were born outside the UK.

The risk here is that you create an underclass who can't get insurance, or that you unfairly discriminate against certain groups of consumers.

Question 11. Should terms and conditions in some sectors be required to reach a given level of comprehension, such as measured by online testing?

Fairer Finance supports the notion that terms and conditions should be required to reach a given level of readability. Fairer Finance has conducted extensive research in this area, and has a number of suggestions regarding what this level should be, and how it should be measured.

From Fairer Finance's research, it's clear to see that the vast majority of financial terms and conditions are written in a way that is far beyond the literary abilities of the general population. For example, the average reading age of terms and conditions issued in the banking sector is 16. And in the mortgage sector, it is over 18.

This is concerning when set in the context of research from the National Literacy trust which suggests 5.2 million adults in the UK have a reading age of 11 or less, and almost 50% of the population would not pass an English GCSE.

These documents must be understood by the general population to serve their intended purpose. Therefore, they must be written in a way that the least literate can understand, and the rest of the population will also understand them by default.
A reading age of 11 should therefore be the high benchmark that documents should aim for.

From Fairer Finance's extensive work on this subject, it recognises the difficulties of achieving this in a sector as complex as financial services. Nevertheless, in our work with providers, we have managed to create a number of technical documents with reading ages of 11 or less. TSB's current account terms are an example of a document that has achieved this.

If a mandatory reading age was to be enforced, a reading age of 13 would be more realistic. This is because the inherent complexity of these documents can make reaching a reading age of 11 extremely difficult. Providers shouldn't be deterred from aiming for a greater level of readability. This may be the case if providers believe the task is impossible to achieve. A reading age of 13 is easier to achieve, and therefore won't deter providers in this way.

There is then the question of how to measure this readability. There exist a number of online testers, and a number of readability formulas. Fairer Finance has investigated the best way to measure readability. There are a number of issues with using online readability testers, and there isn't a single one Fairer Finance has discovered which is suitably accurate.

Therefore, rather than use an online readability tester, it is better to use an online word, sentence and character counter. These online counters are far more accurate that readability tests. From the metrics these will record, the reading grade of a document can be calculated manually.

Fairer Finance has found the most accurate readability formula to be the Automated Readability Index. This calculates a reading grade based on the number of words, the number of sentences, and the number of characters used in a document. Each of these metrics are easy to measure using online counters.

Note that this formula calculates the reading grade of a document, not the reading age. To achieve a reading age of 13, the reading grade of a document should be 9 or below.
We are not convinced that a mandatory maximum reading grade should be introduced yet – although we would certainly be supportive of any move if the government decided to take this step.

It would not be unprecedented. States in the US such as Florida already mandate a reading grade for insurance policy documents. Enforcing a given level of comprehension would ensure that financial documents are written in a way that is consumer-centric. If consumers could better understand these documents, they'd better understand the products they're buying. From this, consumers would make better decisions, leading to better consumer outcomes and improved market competition.

Nevertheless, it is a relatively heavy-handed way of achieving better outcomes. As a first step, we would advocate the issuance of government guidance, stating an expectation that all consumer facing documents had a reading age of 13 or less. In particular, the government could provide a definition to the phrase “plain and intelligible” language – which is used in the Consumer Rights Act.

For example “For language to be plain and intelligible, we would expect that it would have a reading age of no more than 13”. Arguably, the Consumer Rights Act already contains an incentive for firms to simplify their contracts. But many firms have not yet responded to this.

More explicit guidance – and a national narrative from Ministers on this issue – could be the catalyst for greater change.

The threat of regulation to enforce a mandatory maximum reading age for consumer contracts should be held as a next step if business doesn’t respond.

Question 12. How can we improve consumer awareness and take-up of alternative dispute resolution?

Mandate companies to have to inform consumers about relevant ADR solutions when they make a complaint. This happens in financial services – and knowledge of the FOS is reasonably high in that sector.

Fairer Finance – 4 July 2018
10 Finsbury Square, London EC2A 1AJ.