

Institution: London School of Economics and Political Science		
Unit of Assessment: 17 – Business and Management Studies		
Title of case study: Ensuring the fair treatment of Open Banking customers		
Period when the underpinning research was undertaken: 2008-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Edgar Whitley	Associate Professor (Reader) in Information Systems	1990 to present
Roser Pujadas	LSE Fellow	2016-2018
Period when the claimed impact occurred: 2017-2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact (indicative maximum 100 words) <p>In 2017, Dr Edgar Whitley led a programme of research at LSE for the Financial Services Consumer Panel (FSCP) of the UK Financial Conduct Authority (FCA). This research found that customers of Open Banking-type services don't necessarily understand what is happening to their data but assume that there are regulations (and regulators) who ensure they are being treated fairly. The research identified important gaps in the regulation of Open Banking by the FCA. Specifically, it demonstrated that not all parts of the Open Banking ecosystem met the requirements of the FCA Principles For Business, including the Principle of "Treating Customers Fairly". Further to the research, the FCA has updated its regulations to ensure that the whole Open Banking ecosystem is covered. This and other research by Whitley has also strengthened key aspects of the customer experience for Open Banking more broadly. As a result, the more than three million customers currently using Open Banking in the UK now enjoy stronger protections and more effective, consent-based controls over the use of their financial data.</p>		
2. Underpinning research (indicative maximum 500 words) <p>Open Banking and the European Second Payment Services Directive (PSD2) allow consumers to share access to their bank accounts with third party providers (TPPs) in new and more secure ways, using application program interfaces (APIs). These APIs enable people to make payments directly from their bank accounts without using a card; they also allow the use of their transaction data to access better financial products and services. Open Banking is intended to increase competition in retail and small business banking by driving innovation in the quality and variety of products and services available, with significant potential benefits to consumers who are willing and able to share their banking data. However, that same banking data can be used to infer a great deal of information about consumers, making issues of consumer consent and robust data management imperative in the development of Open Banking. In the UK, this is underscored by the requirement for Open Banking consumers to give their consent for TPPs to use their financial data for products and services from regulated apps and websites.</p> <p>Research led by Dr Edgar Whitley at LSE has made important contributions to this agenda. Impacts described here are underpinned by more than 10 years of research led by Whitley on making customer consent to the use of their data a clear and reliable commitment. This includes research on the move from static to "dynamic" consent (see below). Whitley also has wider relevant expertise in data protection and user-centric data management and in the development of effective technology-based policies in the context of privacy concerns (see, for example, [1]).</p> <p>Dynamic consent: the concept of "dynamic" consent emerged from the "Ensuring Consent and Revocation" (EnCoRe) project, which ran between 2008 and 2012 in collaboration between HP Laboratories, QinetiQ, HW Communications, the Universities of Warwick and Oxford, and LSE [2]. EnCoRe explored technical, regulatory, and organisational issues associated with making the giving and revoking of consent as easy and reliable as turning a tap on and off. The ensuing model of dynamic consent is one in which individuals are able to review and control the consents they have given and change these in response to new information about the uses of their data. The aim of dynamic consent is to provide a transparent, flexible, and user-friendly model for</p>		

engagement with consent. It is a general approach that can be applied to any area in which personal data is handled, but is particularly helpful for areas where the data is sensitive, such as health data or financial records. Dynamic consent meets the highest international ethical and legal standards for consent in a world where data protection laws are in flux. Its dynamic nature allows consent to be reliably given and revoked at different times as circumstances change, empowering individuals to have real choice and control over their privacy preferences and how their data is being used [3]. Whitley has continued to explore the concept of dynamic consent as a radically different way of managing the consent process, which explicitly empowers individuals whilst providing technological safeguards of their consent preferences.

Biobanking was one of the key use cases for EnCoRe. At the end of that project, Whitley and his EnCoRe colleagues at HW Communications and the University of Oxford, along with a new team at the University of Manchester, carried out further research on dynamic consent in the context of biobanking and electronic medical records (see, for example, [4]). Further empirical work revealed that participants appreciated the opportunity to improve on the timing of consent and the ability to reflect and review consent decisions over time, including having a record of previous consent decisions available electronically [5]. These ground-breaking studies of the application of dynamic consent have helped ensure that it has become an important element in ongoing consideration of the role and implementation of consent in healthcare.

Dynamic consent in the context of Open Banking: although it is now central to ethical considerations around healthcare data, dynamic consent has been less widely adopted in other areas where personal data is also considered sensitive, such as for financial data. Whitley was alerted to its potential role in these areas thanks to his broader engagement with privacy, data protection, and data sharing. This included his roles as co-chair of the Privacy and Consumer Advisory Group (PCAG) to the UK Cabinet Office and on two Government Data Sharing Review Boards. In August 2017, he submitted a successful bid to lead FSCP research exploring data governance and security in the context of consumers sharing data with a third party. The focus here - on business applications of data sharing, rather than on biobanking - drew on the expertise of Whitley and Pujadas in the study of management information systems.

The FSCP commissioned the research in advance of the January 2018 launch of Open Banking in the UK and the empirical research was carried out in the autumn of 2017. The research explored the ways in which existing consumers of TPP services are asked for consent to share their transactional financial data; how people might make more informed choices about sharing those data; and whether they are adequately protected when they do share them. It particularly sought to identify gaps in the current regulatory framework that leave people unprotected. To that end, it investigated the extent to which customers of TPPs understood:

- the concept of ownership of their data;
- the nature of the consent they gave to sharing data;
- the impact that the terms and conditions of the service have on their consent; and
- the cost - both implicit and explicit - of the service they use and its value.

The researchers looked at prior academic work and conducted qualitative research with 50 individuals who were already allowing a TPP to access their bank account by sharing their login credentials. They also carried out a larger quantitative study examining attitudes to financial data sharing among more than 190 non-TPP users. They found that, even when sharing financial data with TPPs, consent is frequently neither freely given nor unambiguous or fully informed in the ways required by the General Data Protection Regulation (GDPR) that came into force on 25 May 2018. Consumer consent is not well-informed: over half of the study participants claimed not to read any terms and conditions for the products and services they signed up for, including specific services that access their financial data. Even when they did read them, participants reported being often none the wiser for doing so. A key insight was therefore that terms and conditions are not a useful basis for informed consent and need a radical overhaul to bring them in line with advances in technology.

The research also found that participants often disengaged from reading the terms and conditions as they assumed that they would be protected by the financial and data regulatory environments.

Although they valued privacy, participants valued it less than speed of access to goods and services, in part because they assumed that data and financial regulators would ensure their fair treatment.

Finally, participants showed a poor understanding of the value of their data and of the ways in which those data, either alone or in combination with others, can be used to make money for TPPs. The findings from the study were published in a 2018 report for the FSCP [6].

3. References to the research (indicative maximum of six references)

- [1] Whitley, E.A. and Hosein, G. (2010). *Global challenges for identity policies*. Palgrave Macmillan. ISBN 978-0230542235.
- [2] Kaye, J., Whitley, E. A., Lund, D., Morrison, M., Teare, H., and Melham, K. (2014). Dynamic Consent – A Patient Interface for 21st Century Research Networks. *European Journal of Human Genetics*, 23(2), pp.141-146. DOI: 10.1038/ejhg.2014.71 Note: This is one of the most highly cited papers in EJHG (Impact Factor: 3.657).
- [3] Whitley, E.A. (2013). Towards effective, consent based control of personal data. In M. Hildebrandt, K. O'Hara, and M. Waidner (Eds.), *Digital Enlightenment Forum Yearbook 2013* (pp. 165-176). IOS Press. Available at: <https://personal.lse.ac.uk/whitley/allpubs/def2013.pdf>
- [4] Williams, H., Spencer, K., Sanders, C., Lund, D., Whitley, E. A., Kaye, J., and Dixon, W. G. (2015). Dynamic Consent: A Possible Solution to Improve Patient Confidence and Trust in How Electronic Patient Records Are Used in Medical Research. *JMIR Medical Informatics*, 3(1). DOI: 10.2196/medinform.3525.
- [5] Teare, H., Morrison, M., Whitley, E. A., and Kaye, J. (2015). Towards “engagement 2.0”: Insights from a study of dynamic consent with biobank participants. *Digital Health*, 1, September, pp. 1-13. DOI: 10.1177/2055207615605644.
- [6] Whitley, E.A., and Pujadas, R. (2018). [Report on a study of how consumers currently consent to share their financial data with a third party](https://bit.ly/37xHzfC). Financial Services Consumer Panel. Available at: <https://bit.ly/37xHzfC>.

4. Details of the impact (indicative maximum 750 words)

Open Banking is presented as an exemplar of the ways that consumers' data can work for them in the [UK National Data Strategy](#) (Section 6.1.1). However, the new ability that it provides to share consumer data comes at a time of increasing concern about the misuse of such data in the wake of the Cambridge Analytica scandal and continuing examples of data leaks. The research described here, and particularly that published in [6], has made a significant contribution to work by the FCA's Financial Services Consumer Panel (FSCP), as well as the Open Banking Consumer Forum, to deliver fair treatment for Open Banking customers.

Confirming the importance of informed consent as a basis for consumer protection

Since May 2014, Whitley has been co-chair of the UK's Privacy and Consumer Advisory Group (PCAG), which advises the government on trusted and secure means of using data. He was invited to take up this position on the basis of his academic expertise in digital identity and privacy (including [1]). In early 2017, a number of consumer groups became concerned about the ways that industry was driving the development of Open Banking in the UK, with little regard to privacy concerns and limited consumer insight into the process. These concerns were highlighted to Whitley by consumer representatives on PCAG. In March 2017, Whitley agreed to discuss the issues raised with representatives from Open Banking, who were already familiar with privacy principles for identity assurance previously developed by PCAG.

Alongside discussions about privacy issues in Open Banking, Whitley suggested that his work on digital consent management and insights from the EnCoRe project ([2]-[5]) would be particularly helpful to the Open Banking Implementation Entity (OBIE). OBIE is the organisation formally tasked with implementing Open Banking in the UK. Whitley presented the concept of dynamic consent (as described in [2]) and some of the empirical findings around participant engagement with consent (e.g. [5]) to an Open Banking Consent and Data Privacy working group in April 2017 and joined a further detailed discussion about data and consent at OBIE shortly afterwards. These presentations helped reaffirm Open Banking's commitment to relying on consent as both the legal

and the ethical basis for processing the financial data of customers who chose to use Open Banking products. That commitment is evident in an FSCP Position Paper published in April 2018, which asserted that:

“The success of Open Banking and PSD2 relies on two principal mechanisms to protect consumers from harm. The first is the authorisation gateway operated by the FCA (or equivalent authority for TPPs from outside the UK). The second is the consumer’s explicit and informed consent.” [A, p. 4]

The FSCP subsequently acknowledged that:

“Based on the research evidence, consumer consent is unlikely to protect consumers from harm effectively. It is also unlikely to comply with the GDPR requirement that consent must be informed ... If people can’t give informed consent, then they are not being treated fairly.” [A, p. 4]

With these considerations in mind, the FSCP concluded:

“... that significant work is needed to inform consumers about the new ‘data sharing’ world heralded by Open Banking and PSD2 ... It will also be necessary to find ways of ensuring that firms that use poor or exploitative practices are effectively excluded from the market and other steps taken to avoid consumer harm.” [A, p. 5]

Highlighting failures to treat consumers fairly

The impacts of the research published in [6] include specific changes to the regulatory environment around Open Banking and many related contributions to its consent practices. These are intended to improve the fair treatment of consumers, which has a specific meaning in the context of the FCA’s work. Of the FCA’s 11 Guiding Principles [B] for businesses, three (Principles 6-8) relate to the environment within which giving consent takes place:

- 6. **Customers' interests:** a firm must pay due regard to the interests of its customers and treat them fairly.
- 7. **Communications with clients:** a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair, and not misleading.
- 8. **Conflicts of interest:** a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

On 13 December 2017, Whitley and Pujadas presented draft findings of [6] to the FSCP, with members of the FCA in attendance. Their presentation included one of the major insights of the work, namely that customers expect that the existing FCA regulations about treating customers fairly (Principle 6) would cover the entire regulatory environment. FCA attendees noted that these assumptions did not, in fact, currently apply to all parts of the Open Banking ecosystem. This was because, at that time, TPPs were only regulated under the Payment Services Regulations, rather than under the FCA’s requirement to treat customers fairly as well.

Changes in FCA guidance

The final research report [6] included specific discussion about the current limitations on treating customers fairly in Open Banking. The FSCP subsequently acknowledged the need both to overhaul terms and conditions as a basis for informed consent, and to do so in line with the consumer preferences demonstrated in [6] for speed and convenience in accessing goods or services. It further recognised the need for additional consumer protection measures and included a specific recommendation that: *“the FCA should consult on extending its principles for businesses to TPPs, which are currently only regulated under the Payment Services Regulations” [A, p. 5].* In July 2017, HM Treasury supported this idea, noting that *“there is merit in extending the FCA’s rule-making powers to enable the regulator to combat poor practice among firms regulated under these two directives, protecting consumers, and ensuring that all firms providing payment services can be held to the same standard” [C, para. 2.7].*

In August 2018, the FCA duly consulted on general standards for the payment services and e-money sectors, noting that the Principles for Business *“do not currently apply to payment*

institutions (PIs), electronic money institutions (EMIs) or registered account information service providers (RAISPs) [D, para. 1.5]. It therefore proposed:

“...extending the application of the Principles to PIs, EMIs and RAISPs. Our proposals would help providers and customers to understand the standards of behaviour we expect in the market. They would also make it more efficient for us to intervene where we see harm.”
[D, para. 1.6]

In February 2019, the FCA confirmed that it would indeed be “*extending the application of the principles for business to the provision of payment services (and the issuance of e-money) by certain payment service providers*” [E, para. 1.1]. These new rules came into effect in August 2019.

Changes in Open Banking guidance on consent

Early in his engagement with Open Banking, Whitley was asked for his expert opinion on OBIE proposals relating to the possible redaction of some Open Banking data to ensure compliance with Data Protection law. He was subsequently invited to join the Open Banking Consumer Forum in July 2017, where his expertise in privacy and consent has continued to help shape both the work of OBIE and the guidance it produces.

Impacts in this area have included Whitley’s input into the development by OBIE of guidance for its Open Banking dashboards. The dashboards support the management and revocation of customer consent and associated off-boarding activities; that is, what happens to customer data when consent is revoked [F]. In line with the principles of dynamic consent, they allow users to see what consents they have given to TPPs and, potentially, to revoke these. Their development responds to the research finding (published in [3]) that people value being able to reflect on and review consent decisions over time, including by accessing an electronic record of their previous consent decisions.

The LSE research has also informed aspects of the codification of the Open Banking customer data agreement [G], which sets out agreement parameters that include data usage statements (“how we will and won’t use your data”) and business monetisation statements (“this is how we make money”). These were key consumer concerns identified in the FSCP research [6]. In addition, the section of the Open Banking Operational Guidelines for TPPs on privacy explicitly references [6], noting that finances have traditionally been a very private thing which needs to be treated with extra caution.

Together, these impacts on understanding, guidance, and practice support important improvements in customer protection and consumer control over the use of their financial data. These improvements are essential in allowing more people to access the potential benefits of Open Banking in a safe and secure way.

5. Sources to corroborate the impact (indicative maximum of 10 references)

[A] “[Consenting adults? Consumers sharing their financial data](#)”, Financial Services Consumer Panel position paper, 19 April 2018.

[B] “[PRIN 2.1: The Principles - FCA Handbook](#)”, Financial Conduct Authority.

[C] “[Implementation of the revised EU Payment Services Directive II: response to the consultation](#)”, HM Treasury, July 2017.

[D] “General standards and communication rules for the payment services and e-money sectors”, Financial Conduct Authority, [Consultation CP18/21**](#), August 2018.

[E] “General standards and communication rules for the payment services and e-money sectors”, Financial Conduct Authority, [Policy Statement PS19/3](#), February 2019.

[F] “[Customer Experience Guidelines](#)” (Version 3.1.6), Open Banking Implementation Entity, 2020.

[G] “[Customer Journey](#)”, Open Banking Implementation Entity, 2020.