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# CONSUMER DATA RIGHT: DRAFT RULES TO ALLOW FOR COLLECTING THIRD PARTIES

## TrueLayer response, July 2020

Dear CDR rules team

Thank you for the opportunity to comment on the consultation on the draft CDR rules for collecting third parties (“intermediaries”).

### About TrueLayer

TrueLayer is a UK-headquartered FinTech firm, founded in 2016 and authorised by the UK’s Financial Conduct Authority (“FCA”). TrueLayer takes advantage of the right under PSD2 to access customer payment account data and initiate payments on behalf of the customer, with their consent.

### Our plans for Australia

We see Australia as a key growth market for our business, and the first key market outside of Europe. We are very optimistic about the potential brought about by the CDR regime, and the NPP, and are encouraged by the clear and visible regulatory and government support for FinTech and Regtech. TrueLayer was one of the inaugural participants in the UK-Australia FinTech Bridge in 2018/2019, and we have participated in a number of policy discussions since.

In 2020, we intend to bring our API-based Open Banking platform to Australia and help local and international companies to build better experiences for their customers, and we are seeking accreditation from the ACCC in order to do so. We also hope to help Australian FinTechs and scale-ups export their products globally with our platform. From our founding day, TrueLayer has been focused on growing the global Open Banking economy, and we want to continue this work in Australia, as we have done in Europe.

### Consultation

The ability for intermediaries to participate in the CDR regime is fundamental to how our clients, which include both international and local Australian businesses, wish to partner with us in the Australian market. Many of them operate Open Banking enabled services with us in Europe, and have provided us with useful feedback on how these proposed rules may impact their uptake of the Australian CDR APIs. It is clear that the proposed draft rules will have a significant impact on TrueLayer, our clients, and their end-users. In this response, we highlight where we feel the ACCC needs to go further to drive adoption of the CDR regime.

Our response focuses on three key areas:

- The CAP arrangement, as proposed in the draft rules;
- the requirement for intermediaries to be accredited; and
- the need for agent business models and tiered accreditation.



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### Comments on the CAP arrangement as proposed in the draft rules

TrueLayer largely agrees with the scope and nature of the draft CDR rules for intermediaries, and as such will not provide additional commentary on a rule by rule basis. Our comments on the proposed CAP arrangement fall into the following categories:

1. How to manage the liability between Providers and Principals
2. How CAP arrangements will be made effective
3. How to highlight the provider's involvement

#### How to manage liability

We note the intention for Providers and Principals who enter into CAP arrangements to both be liable for meeting CDR obligations, which can be contracted to either party (e.g. if one party provides a CDR receipt, the other party does not need to).

TrueLayer believes that the ACCC should consider specifying liability for certain rule breaches. For example, in a CAP arrangement, only one party will be responsible for interaction with the CDR consumer. It is therefore particularly onerous for the second party to have potential liability for acts and omissions of that party, when it has no contractual or other relationship with the consumer. For example, a Principal may gather consumer consent, but may alter that consent journey during the course of the CAP arrangement and fail to gather consent in a CDR compliant manner (or alternatively, a technical issue at the Principal may cause consent breaches). It is impossible for the Provider to intervene in the consumer journey to ensure that consumer consent is provided in accordance with CDR rules. We therefore do not accept that both parties can be responsible for ensuring compliance with all aspects of the CDR rules, and there are clear areas where liability should remain with one party in a CAP arrangement.

Alternatively, if the ACCC does not wish to assign liability by rule, it should consider whether contractual agreements that assign responsibilities under the CDR rules (e.g. as to who gathers consent) should also remove liability for CDR breaches where another party has accepted responsibility, and making this more explicit in the rules. As an example, if only one party has a relationship with the consumer, it should contractually accept full liability for CDR breaches which relate to interactions with that consumer (notwithstanding that both parties have unrestricted accreditation).

#### How CAP arrangements will be made effective

Since all parties within a CAP arrangement are accredited with the ACCC, we believe it would introduce unnecessary friction for these bilateral agreements to require formal approval from the ACCC before coming into effect. Once a CAP arrangement has been made, the Principal and Provider should be able to start building the infrastructure for this arrangement in accordance with the various components of the CDR technical ecosystem (e.g. the Register, when obtaining certificates etc.), and go live with their services, without waiting for manual sign-off.



We understand this process is not yet outlined in the Rules or elsewhere, but believe it is important to make the process as simple as possible for CAP participants. As we have outlined in the other sections of this response, the CAP arrangement is already fairly complex and involved. Based on feedback we received from various existing and prospective clients, adding further barriers will continue to decrease their interest in using the CDR infrastructure over alternative data sources.

### How to highlight the provider's involvement

We believe that there should be enough flexibility in the initial roll-out of CAP arrangements to allow for different ways of presenting the involvement of an intermediary provider to the consumer. For instance, we would argue that any following CX Guidelines should not mandate front-and-centre presentation of the provider's involvement in the consent journey, until it can be shown using data from real conversion journeys that this builds customer trust and understanding, as opposed to confusing them with an additional, potentially unknown, brand.

### Comments on the requirement for accreditation of intermediaries

TrueLayer agrees with the ACCC's position that firms wishing to act as intermediaries should obtain unrestricted level accreditation in order to do so.

We believe that any firm that has the ability to access CDR data through CDR APIs should be required to comply with the rules and requirements that ensure the highest level of protection to sensitive consumer data, as those parties can be *instructed* by the consumer to collect or 'retrieve' the CDR data from the data holder. Those instructed to retrieve data must bear important responsibilities for handling and/or transmitting that data securely, and for obtaining the explicit consent of the consumer, or ensuring this consent has been obtained by their Principal partner.

We consider that in being required to obtain unrestricted accreditation, intermediaries will be able to demonstrate to both consumers and to their clients (data recipients, accredited or otherwise) that CDR data will be handled correctly and the infrastructure has been built to the highest security standard. This will be important to building consumer trust in the CDR system as it becomes more widely adopted.

### Comments on the scope of the draft rules

Finally, TrueLayer does not believe that the draft rules go far enough to enable the innovation and competition outcomes desired by the CDR and foster the uptake of the CDR regime. Simply put, the requirement for both intermediaries and their clients to obtain unrestricted level accreditation, as well as the complexity and limitations that lie in the technical implementation (as was highlighted in the recent roundtable and technical concepts shown), will dissuade many participants from entering the market.

As noted in our response to the earlier consultation on intermediaries, intermediaries can bring a range of benefits to the CDR regime, both for consumers and for innovators who wish to bring their products to market. Requiring both intermediaries and their clients to obtain 'unrestricted' level accreditation will



severely limit the efficiencies and benefits of intermediaries in the CDR regime, and raise significant barriers for adoption. This is not just a matter of small innovators being dissuaded, but also large organisations for whom usage of CDR data (or identical data obtained through alternative sources) is not a major part of business.

We are concerned that by failing to allow for either an agent business model, or tiered accreditation, the significant costs of obtaining accreditation (in particular, in obtaining the relevant security audits) may not be affordable to small businesses in the ‘start-up’ phase, or practical to large businesses with other focus areas outside of the CDR. Furthermore, it is not clear why firms would pay the costs of accreditation while alternative methods to gather consumer banking data, such as screen scraping or bilateral relationships, are permitted to exist. Consequently, we feel like not only do the rules at present pose a barrier to entry for some firms, they also do not encourage the uptake and use of CDR data over data gathered by other means.

We strongly encourage the ACCC to consider introducing tiered accreditation, agent business models, or both if the aim is to drive uptake of this new ecosystem.

#### [A model where intermediaries take on more liability but can lower barriers to entry](#)

TrueLayer operates a successful agent model in Europe, where we accept the liability for our clients’ actions in order to allow them to receive and use CDR data to develop innovative products for consumers. In Europe, we currently have over 30 PSD agents who receive client banking data through TrueLayer’s license as an account information services provider. We perform rigorous customer due diligence on these firms, and perform ongoing monitoring to ensure that firms are securely handling consumer data and acting in compliance with European legislation. In the case of something going wrong, we take on the liability as the main license holder. This is a concept that is very common in the financial services space, from card issuing to debt collections.

We understand that some data holders, and the ACCC, may be concerned about CDR data being shared with unaccredited third parties, which would occur in an agent model. In our view, this model has however been absolutely instrumental to the growth of the Open Banking ecosystem in Europe. Tiered accreditation could address some of the accessibility concerns, though it does not achieve the same level of flexibility if it is implemented without an agent model alongside it.

To clarify the difference between tiered accreditation and an agent model: in an agency model, an accredited party takes on the liability of their clients and makes their ongoing accreditation dependent on doing this correctly.

As noted in our earlier response on intermediaries, we consider the benefits of a tiered accreditation model to be that:

- It allows for a setup where the intermediary takes on the liability and obligations of full accreditation as opposed to the potential clients, who in many cases will be smaller firms, startups, or firms for whom the data service is a small part of a larger offering, making full accreditation prohibitive for market entry and proposition testing. This carves out a space in



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the market for innovators to provide a service using CDR data before deciding whether they want unrestricted accreditation in their own right.

- It decreases barriers to entry to the market, and creates more competition, which ultimately is good for consumers.
- With the intermediary's clients who fall into a lower tier of accreditation, consumers retain key CDR rights, and can expect that their data will be managed and stored in compliance with the CDR regime. Complaints to lower tier accredited parties will also have to follow the CDR complaints process.
- The clients of the intermediaries handle the relationship with consumers, including instructions/ consents and requests to delete data. The client then passes those instructions/ consents or deletion requests to the intermediary to action.
- Since the clients remain subject to the requisite obligations of their own accreditation (unlike 'agents', where full liability lies with the accredited entity, i.e. the 'intermediary' or 'provider' in the CDR context), they would be able to have the freedom to innovate their own products with the CDR data provided by the intermediary. This avoids the pitfalls of the agent/principal<sup>1</sup> relationship in the EU, where clients are required to distribute the product of the principal with less room for customisation.

Despite the concerns we have outlined in this response, we remain excited about the opportunities offered by the CDR regime, and welcome the introduction of these draft rules which will allow for one form of intermediary partnerships in the market.

Many thanks,

TrueLayer

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<sup>1</sup> Please note: a principal in the EU is NOT the same as a principal as defined in the CAP arrangement. Quite the opposite: in the EU, TrueLayer would be the Principal and our clients would be Agents, since they are acting on our license and we take full liability.