Level Playing Field in Technology Transformed Finance

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Introduction

Technology offers us a significant opportunity to re-align the commercial interests of firms with the interests of consumers – people and small businesses. Improvements in technology and design make it possible to better understand what consumers genuinely need and want from providers. More personalised services can be developed and delivered much more quickly, at a reduced cost and in ways which positively engage us.

Change itself is being driven by: consumers' expectations of more personal, flexible, and convenient interactions with service providers; the market drive to digital interfaces which are cheaper to maintain for firms; and regulation which is forcing data sharing to drive competition in the market. The General Data Protection Regulation, Payment Services Directive 2 (PSD2), the Competition and Market Authority's Open Banking Remedy and Pensions Dashboard are all examples of regulation seeking to level the playing field, promote competition, and simultaneously improve consumer protection.

Andy Haldane said that 'a 'great divide' exists between the vocal minority that sell and the silent majority who buy" noting that banking has moved from being a "local, relationship-based business to a centralised and transactional service.'[1] This move further away from their customers meant that firms could use this distance to tell themselves that they no longer understood what was happening in their customers' lives and when they might need assistance – to convince themselves that they were only guilty of sins of omission rather than commission. But, rather than widening the great divide, can technology bring firms and customers together and aid mutual understanding?

Arguments in the past for making changes to serve the needs of more marginalised customers relied, to an extent, on the difficulty and expense of getting products to market which would serve a niche group of less profitable consumers. These arguments have not subsided altogether, but technology and its application to more difficult issues like 'access', 'vulnerability' or 'mental health' do challenge them and recent 'Techsprints' (aka 'hackathons') at the UK's Financial Conduct Authority (FCA) show that in very short periods of time, developers can design real solutions to real problems.

The question is whether a level playing field is sufficient to drive the innovation required to satisfy the needs of all society, especially those the Pope has identified as vulnerable. Furthermore, how might 'ethical conduct' of individuals and firms help fulfil the opportunity presented by technology to realign consumer interests and the interests of the owners and executives of large and small firms alike.

Below, I explore some general themes in relation to financial services and purpose; the concept of a level playing field; and ethics. I am particularly grateful to my colleagues at the varied places I work who are an inspiration to me. But what follows is written in my personal capacity and the Christian beliefs expressed, mine only.

The purpose of financial services

The London consultation by the CAPP Foundation asks: 'how does financial innovation affect the common good in society?'. How should we define the 'common good' or 'public interest' in financial

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[1] Andrew Haldane: The Great Divide, Speech at the New City Agenda Annual Dinner, London 2016 https://www.bis.org/review/r160520b.pdf

services, given they are so vague. The Leveson Inquiry[2] suggested guidance for the media on what constitutes 'public interest', because it is largely defined by context[3]. The FCA has done a good job of explaining its own regulatory contribution towards 'public value' but it could do more to describe what it sees as the purpose of financial services in our context today.

The Finance Innovation Lab (FIL) distinguishes between the immediate 'purpose' of finance: to create, deploy and facilitate the movement of money (or capital); and its ultimate purpose: to do this in a way that best enables us to achieve our goals as individuals, as communities, and as a society[4]. We should remember that the first investment-based insurance products were invented by a pair of Scottish Ministers in 1748 to provide support to the widows and orphans of deceased clergy.

If we want to understand how the 'common good' can be affected by financial innovation, we need first to understand in our various geographies what the 'common good' is. If, for example, only 3% of firm lending is to businesses as opposed to lending against existing assets or speculation[5], what should it be in future? Understanding and codifying the 'common good' is essential if fintech is to positively affect it.

FIL calls for a renewed focus on the social purpose of finance to support the productive economy, serve its users, and address the most pressing environmental challenges. The industry initiative, The City UK, while appearing at first glance to focus its post-Brexit vision for 2025[6] on developing financial services as the 'golden goose' of the economy, also references the need for the industry to provide for consumer needs and societal challenges (such a climate change).

If we are to take up the opportunity afforded by innovation to realign consumer and commercial interests and face-off to Brexit, leadership is required to harness consensus and set a course of direction.

FIL suggests a 'regulatory compass'[7]. A compass does not set a roadmap 'but instead offers key considerations for purpose-driven regulation in a rapidly changing landscape, buffeted by the forces of fintech and the uncertainties of Brexit…[helping] us check we're heading in the right direction'. As FIL rightly points out, no regulation is 'values neutral'. Likewise, no firm's culture is 'values neutral'. Business purpose which promotes the 'common good' is likely to challenge ownership models, governance, staff incentives and business models.

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[2] An Enquiry into the culture, practices and ethics of the press, Executive Summary and Recommendations, 29122012

[3] https://theconversation.com/whose-interests-why-defining-the-public-interest-is-such-a-challenge-84278

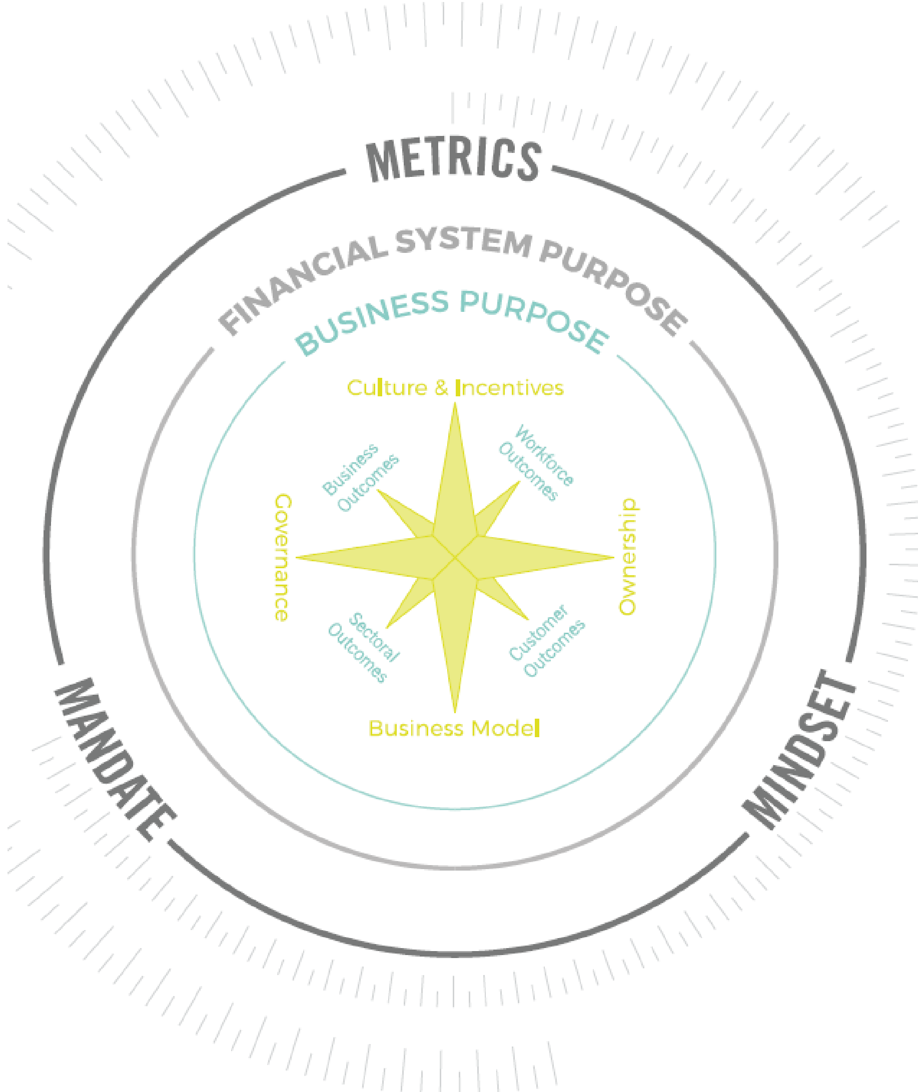
[4] Finance Innovation Lab, The Regulatory Compass, Towards A Purpose-Driven Approach to Financial Regulation, 2018

[5] Ibid

[6] The City UK, A Vision for a Transformed World Leading Industry, 2017

[7] Finance Innovation Lab, The Regulatory Compass, Towards A Purpose-Driven Approach to Financial Regulation, 2018

Figure 1: Regulatory Compass, Finance Innovation Lab, 2018



In the meantime, firms focus on how best to navigate the costs of regulation while maintaining their status quo. In financial services, there is a need to guard against a tick-box culture which values compliance over ethics. Articulating principles (as well as rules and objectives) which deliver against *a codified purpose*[8] could provide a stronger framework for ethical conduct than present.

In theological terms, concerning purpose, one might consider some similarities with the Christian journey. The Christian faith is not marked out by a set of rules but by its pursuance of love, mercy and justice that we see exemplified in Christ. But this requires wisdom. Following the law – mentally ticking boxes – is often our default as we seek our own imperfect righteousness, rather than the true righteousness of Christ, afforded to us through salvation. Abraham 'believed and it was credited to

[8] The FCA's strategic objectives detail the means but not the end aim of those means, e.g. 'relevant markets function well' but to what end should relevant markets function well?

him as righteousness'[9]. He did not follow a lot of rules but rather 'his faith was made complete by what he did[10]'.

Ethics is part of setting a belief or values system for employees and ecosystems so that they 'believe' and can apply wisdom to their interpretation of the law and then act on it (instead of just ticking a box). One encouraging way the UK is setting up an ethical values system is by its increased emphasis on vulnerability[11]. The FCA has made it a clear focus for firms[12]; the Department for BEIS recognises the need to address vulnerability[13]; and the National Audit Office recently reported on improvements required[14]. Gender equality and mental health are increasingly championed[15]. Firms are responding by introducing measures such as 'gambling blocks' to help consumers protect themselves[16].

A level playing field

In want of clarity of end purpose, and perhaps because there is a body of law which provides a framework for compliance officers to employ, competition and therefore innovation, are often described by the industry as the purpose of activity[17], almost as an end in itself. However, the FCA is clear that competition is in the interests of consumers and not for its own sake[18].

The concept of a 'level playing field' is central to the theory of effective competition. But barriers to entry are only one challenge. New entrants rely on being able to engage customers and secure sufficient trust to make the 'sale'.

Getting a product to market requires a strong business case which can focus firms' energies on cherry-picking more valuable consumers, leaving the needs of more marginalised people unmet because they simply are not profitable. There is a nervousness that once the stream of venture capital ends, the more generous approach of fintechs will demise as they are forced to sell out to incumbents or more aggressively sell their wares.

Competition theory is known to be imperfect, not reflecting reality[19]. Perfect competition is based on firms taking 'normal profits' but profit-maximising firms would, by definition, prefer to make

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[9] Galatians 3:6, Genesis 15:6
[10] James 2:22
[11] It is always possible to argue that the industry is, in fact, a cause of vulnerability or that the industry pays lip service to vulnerability, but nonetheless, the understanding and addressing of vulnerability has improved over recent years.
[12] FCA, Occasional Paper 8: Consumer Vulnerability, 2015; FCA, Mission: Our Approach to Consumers, 2017
[13] Department for Business, Energy & Industrial Strategy, Modernising Consumer Markets, Consumer Green Paper, April 2018
[14] National Audit Office, Vulnerable Consumers in Regulated Industries, 2017
[15] See for instance, the Money and Mental Health Policy Institute, https://www.moneyandmentalhealth.org/publications/
[16] 'Barclays customers can now 'switch off' spending', https://www.bbc.co.uk/news/business-46512030, 11th December 2018
[17] See for example, a quote from an industry magazine in November 2018 says, 'Open Banking was launched in January this year to great fanfare, mandating the UK's largest banks to share anonymised customer data with approved third parties, with the aim of increasing competition and innovation in financial services.' http://www.p2pfinancenews.co.uk/2018/11/27/2019-open-banking-gulamhuseinwala/
[18] FCA, FCA Mission: Our Approach to Competition, 2017, https://www.fca.org.uk/publication/corporate/our-approach-competition.pdf
[19] https://hbx.hbs.edu/blog/post/imperfect-competition-unrealistic-economics-or-useful-strategy-tool

more ('supernormal profits') and need 'market power' to achieve this[20]. Market power is typically achieved through deploying a variety of pricing strategies, a number of which (e.g. price obfuscation) may be detrimental. 'The market-power strategies employed by firms…may interfere with [consumer's] rational process. However, just as importantly, real consumers do not necessarily behave rationally. Instead, they have all kinds of behavioural traits that may enable or reinforce the strategies of firms. Firms may even exploit these behavioural traits (Costa et al, 2016)'[21].

Fintech does offer some hope in this respect by allowing consumers the possibility of delegating the hard work of shopping around and getting personalised recommendations instead. The trade-off is being willing to share personal financial data. But the addition of 'taking control of one's data' and choosing with whom to share it adds in yet another layer of complexity. Will the firm taking my data be trustworthy and what is its pricing strategy?

Other research commissioned by the Financial Services Consumer Panel (FSCP) demonstrated that people struggle to understand terms and conditions (even when they could review in order to answer specific comprehension questions) and in some cases, where they had shared their personal financial data for a product, they were not aware they had done so[22]. The research was conducted with educated, young, tech-savvy professionals which makes the findings particularly concerning.

The challenge of terms and conditions was highlighted by the FCA's work on Smarter Comms. However, the legal profession continues to advance the position that terms and conditions can be relied upon in court, even where consumers do not read or understand them. Financial services rely on a legal profession which appears somewhat outdated in this particular respect.

For the General Data Protection Regulation to be effective, consumers must understand what data is, what data they generate, what they own, its value, and how they, or delegated financial (or other) providers 'control' it on their behalf. The current design of products tends to mean that to choose to 'share data' is to choose to hand over power, which in a market already characterised by significant power asymmetries in favour of firms, is a concern.

A role for Ethics?

Selling on aggregated data, automation, investment in cyber-security etc. are all business variables for which industry norms are not yet firmly established. It is for this reason that I have been asked by industry participants to lead Code Collaboration[23] to assess the merits a Code of Conduct for open banking[24].

Consumer financial data (e.g. your bank statement) is a high-quality data set from which it is possible to infer much about a consumer's lifestyle, what they value and also what their value is to other producers. It is the interpretation of these datasets by organisations that leads to innovation (and raises ethical questions about how we perceive people's 'identity').

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[20] Taken from Jonquil Lowe, Consumers and Competition, Delivering more effective consumer power in retail markets, on behalf of the Financial Services Consumer Panel, 2017

[21] Taken from Jonquil Lowe, Consumers and Competition, Delivering more effective consumer power in retail markets, on behalf of the Financial Services Consumer Panel, 2017

[22] London School of Economics, Report on a study of how consumers currently consent to share their financial data with a third party, on behalf of the Financial Services Consumer Panel, 2018

[23] A collaboration between Account Technologies (a 'fintech'), the Lending Standards Board and Manifesto Growth Architects

[24] Research is currently being undertaken with industry participants, and the findings are, as of 15th January, not yet published.

Research participants engaged in Code Collaboration recognise that with increasing levels of data available, machine learning and automated decision making, new ethical issues *do* arise. Innovation by its nature, often involves charting new territory. There is support for a Code as firms are keen to understand 'what good looks like', with many stating the purpose of open banking being 'for good'. The Code should lead to better financial health and improved outcomes for vulnerable people.

A Code is a way of 'verifying and solidifying the standards that a lot of companies are already trying to adhere to[25]' – it provides for a set of industry norms. The code is also a way to 'level the playing field[26]': firms don't wish to see their good reputations undermined by 'one cowboy company[27]' and see it as a 'trust vehicle[28]' for new entrants, helping to reduce barriers to entry.

But there is diversity of thought about what pursuing ethical conduct means in practice. Some suggest that existing decision-making tools such as 'Treating Customers Fairly' suffice for ethics. Others acknowledge a general lack of experience and understanding in ethics – what is the ethics landscape and how should it be navigated? Some start-ups, which are challenging incumbents, believe, by their nature, that they are 'ethical'. Ethics is described as 'a grey area which needs defining[29]' and even 'a dangerous space to go[30]'. But some recognise technology itself could be used innovatively to monitor and promote ethical behaviours (e.g. by way of Regtech).

Instead, interview participants coalesced around the need for transparency and how they might best communicate the 'value exchange' with consumers. Interestingly, this places the emphasis largely on consumers receiving messages from providers and being able to act on them. In itself, this is entirely appropriate and sensible. Open Banking has suffered from unclear communications with consumers about their rights to share their personal financial data with third parties. Terms and conditions which are lengthy and onerous do nothing to aid consumers, so measures which improve these aspects should be pursued.

However, work done elsewhere shows that disclosure may not be sufficient, in fact, too much 'can reduce the quality of decision-making'[31]. Is it reasonable to expect consumers to understand complex products, new technology and use of data? With great power comes great responsibility. Consumers look to firms and regulators to protect their interests and believe that they are powerless to do anything else[32] (especially in the face of large corporate entities, e.g. Google[33]). Consumers who take the trouble to read the Ts & Cs are often left bewildered[34].

In light of ongoing power asymmetries, the FSCP has been calling on the regulator to introduce a specific 'Duty of Care'[35] for consumers. A new duty could encourage firms to pay more heed to good consumer outcomes thus supporting a rebalancing of firm and consumer responsibilities. One particular problem identified with the Principles of Business (which incorporate 'Treating Customers

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[25] Industry interview participant
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Professor Amelia Fletcher, UEA, The Role of Demand-Side Remedies in Driving Effective Competition, A review for Which?, 2016
[32] Citizens Advice, Fairness and Flexibility, Making Personal Data Work for Everyone, 2016
[33] Google has just received a payments licence in Ireland, https://www.finextra.com/newsarticle/33167/google-gets-payments-licence-in-ireland
[34] Citizens Advice, Fairness and Flexibility, Making Personal Data Work for Everyone, 2016
[35] Financial Services Consumer Panel, Duty of Care Briefing, 2017

Fairly'), is that it is 'rare for the FCA to enforce against the principles, unless rules have also been broken'[36]. A duty should give the FCA more confidence to enforce against a breach of principles. The Financial Ombudsman takes into account the 'principles of business' when it resolves disputes. So, a duty of care would mean that the same protection would apply to all consumers, 'and not just those with the time, energy and inclination to take a dispute to the FOS. This should benefit the more vulnerable in particular.'

The FSCP does not argue against consumers taking responsibility for their actions, but rather it suggests that Principle of Regulation 4 be updated: 'Consumers should take responsibility for their decisions, *where they are capable of doing so, and where firms have complied with the principles for business*[37]*'.*

In the Bible, dishonest standards are warned against multiple times. 'Do not use dishonest standards when measuring length, weight or quantity. Use honest scales and honest weights…[38]'. Re-balancing asymmetries of power involves being honest about what we can realistically expect from people, bearing in mind their busy and complicated lives.

Whatever the belief system, levelling the playing field for consumers, as much as for firms, contributes towards the 'common good'. Protection is needed so that competition is fair, the scales are balanced and vulnerable people are not put at a disadvantage by the ecosystem[39]. The FCA call this 'regulating for the real world'.

Concluding remarks

As Christians we are called to advance the kingdom of God but to do so with humility,

> 'All of you, clothe yourselves with humility towards one another, because "God opposes the proud, but shows favour to the humble". Humble yourselves therefore, under God's mighty hand, that he may lift you up in due time. Cast all your anxiety on him because he cares for you. Be alert and of sober mind[40]'.

A discussion on ethics should inevitably lead us to examine our own hearts and practices first. The Church and its members must constantly re-orient their relationship with money and security back to God. The church of the New Testament is characterised by its generosity, where 'the poor,…the weak…the ignorant, …the naïve and …exploited'[41] find their true identity in Christ, a home and a family. Who they are is not defined by their data but by Christ.

Levelling the playing field in financial services can help rebalance power asymmetries between firms, and between firms and consumers. At this juncture in fintech, creating ethical standards and industry norms is particularly important in shaping concepts of personal identity and human value, so that no firm is disadvantaged by doing the 'right thing'. Contextualised ethics, set against a clear purpose for financial services, taking into account the needs of vulnerable people and society as a whole, offer us new frameworks of accountability that move beyond the tickboxes to an application of wisdom, and I hope, mercy.

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[36] Ibid.
[37] Italics denote the addition of new, updated text suggested by the FSCP
[38] Leviticus 19:35
[39] Personal Finance Research Centre, Making the Poverty Premium History, 2017
[40] 1 Peter 5: 5-7
[41] Vatican, Indications from Pope Francis, The Dublin Process, London, 2019