

Reforming competition and consumer policy

Response to the
Department for Business,
Energy and Industrial
Strategy from Citizens
Advice.



Contents

Overview of response	2
Responses to individual questions	10

Overview of response

At Citizens Advice, we offer free, independent, and confidential advice and information to anyone who needs it. Every day we help people with the consequences of essential market failures; from widespread price discrimination costing loyal customers billions, to the pricing of natural monopolies that may overly favour investors at the expense of consumers. The people who use our services are four times more likely to be in poverty than the general population, and are often facing complex, vulnerable circumstances. This gives us a unique insight into the ways markets don't work for those who struggle to engage with them.

In the past year, we have supported people with over 930,000 consumer problems, and have been at the forefront of helping consumers manage the unprecedented impact of the coronavirus pandemic.¹ Government and regulators acted swiftly to protect consumers and businesses, but the pandemic still provided opportunities for businesses to exploit consumers, revealing weaknesses in our consumer protection frameworks. We have also seen an acceleration in the digitisation of markets that has been developing over recent years, bringing both new benefits and potential risks to consumers.

It's therefore welcome that the government is taking the opportunity of the Reforming Competition and Consumer Policy consultation to consider how consumer rights and enforcement can be strengthened to keep pace with markets. Proposals to improve consumer rights in specific markets, such as tackling subscription traps, which can result in consumers paying significant sums for products or services they don't want or can't afford, are vital.

We also welcome the proposals to strengthen consumer law enforcement by empowering the CMA to better tackle bad business practices and consumer harm. Too often, our regulatory regime is slow to identify problems, and regulators are not in a position to act boldly enough to tackle them. The timelines for the CMA to take action when a problem is identified, and the fact that action cannot be taken until the conclusion of the process, allow harms to continue for unjustifiably long periods. The current approach also incentivises firms to drag investigations out. Enabling the CMA to implement interim remedies at the start of investigations, and to implement remedies on the basis of market studies rather than having to wait for a full investigation to complete, would ensure that the acute harm experienced by consumers can be ended in a timely fashion. We are also very supportive of proposals to empower the CMA to

¹ Citizens Advice Consumer Service and Advice statistics, 2020/21.

enforce directly, rather than through the courts, which should also improve the timeliness of decision making, to the benefit of consumers.

However, given the intent of this consultation to represent the centerpiece of the government's consumer policy reform, it's important to reflect on whether the 'big picture' issues facing consumers today are addressed by the proposals set out. When markets work well, competition can drive lower-cost, higher-quality products and services. But too often we see firms compete to exploit consumer inertia or biases, rather than to innovate or deliver more affordable or better quality products. Regulators and policymakers have often been slow to find remedies, or to act strongly enough to tackle the underlying causes of persistently poor outcomes for consumers. If we are to meaningfully transform markets so that they work for consumers, broader and bolder action is needed in a number of areas.

Price protections for low income consumers

All consumers should be able to secure good market outcomes, but it is generally understood that some groups are more likely to fall victim to poorly functioning markets than others. Market design tends to favour those with time and skills to engage in complex and often opaque processes, to the disadvantage of everyone else. Vulnerable consumers are the most likely to struggle to engage in markets, which are often not designed with their needs in mind. Our research with people with mental health conditions found that they can incur costs of over £1,000 a year as a result of inaccessible services, poor regulatory protections and inadequate support in essential markets.² Vulnerable consumers are not a static group; any consumer has the potential to experience increased vulnerability, either for a short or an extended period of time. This could be due to illness or bereavement, a disability or mental health condition, or an income shock, such as we have seen during the coronavirus pandemic.

Citizens Advice have observed firsthand the impact of the pandemic on household finances. At the end of 2020, we estimated that 6 million people had fallen behind on their bills as a result of the pandemic, building up around £1.6 billion in arrears. While some areas of economic recovery have been promising, we know that for many households the next few months will bring further challenges. The impending removal of the £20 uplift to Universal Credit risks pushing 2.3 million people into debt.³ More than one in four (28%) households receiving Universal Credit are already behind on

² Citizens Advice, [The Mental Health Premium](#), 2019.

³ ICM Unlimited polling for Citizens Advice, nationally representative sample of 2,183 adults receiving Universal Credit. Fieldwork took place online between July and August 2021.

their energy bill.⁴ Combined with energy bill rises announced by Ofgem in August, three quarters of our benefit and debt clients could be left unable to cover their living costs.

We also know that the impact of the pandemic has not been felt equally. Those in insecure work, disabled people, carers, people from Black and Ethnic Minority (BAME) backgrounds, and younger people are all more likely to have fallen behind on their bills during the pandemic. Our research also shows that disabled people are more than twice as likely to still be behind on at least one household bill (59%) than the wider population (20%).⁵ Against this backdrop, it's vital that the government considers all the tools at its disposal to support low income consumers. This should include looking across markets to assess the impact of existing measures, and exploring where government intervention could ensure a more consistent and comprehensive approach.

Our research found that in June last year, an estimated 2.5 million people were behind on their broadband bill, with 700,000 falling behind as a result of the pandemic.⁶ Those behind on their bills ultimately face disconnection from their service, which we all rely on for work, education and accessing essential services.

Suzie's story

Suzie*, 43, was told to shield in March last year. In October, she was made redundant and had to apply for Universal Credit and New Style Jobseekers' Allowance.

"There was always something that I wasn't able to pay in full. I couldn't always afford my food - I was really worried about how I was going to survive. There was nothing else I could cut back on, as if I cut my broadband I wouldn't be able to apply for jobs and to keep updated with my Universal Credit."

*Client's name changed to protect anonymity

Ensuring access to affordable broadband will be crucial as we look to rebuild the economy following the pandemic. Ofcom and DCMS have been working with providers to encourage offers of affordable tariffs for people on low incomes, but there is a risk that this voluntary approach could lead to patchy and confusing provision for consumers. Currently only a few providers offer an affordable tariff, and people can struggle to switch; 78% of broadband customers said they had not switched providers in the last 18 months.⁷ It is therefore vital that the government and Ofcom monitor the

⁴ ICM Unlimited polling for Citizens Advice, nationally representative sample of 6,001 UK adults (18+) about their experiences of the coronavirus pandemic. Fieldwork took place online between March and April 2021.

⁵ ICM Unlimited, July and August 2021.

⁶ Citizens Advice, [Broadband must be made affordable for everyone](#), 2021.

⁷ Citizens Advice, [Broadband must be made affordable for everyone](#), 2021.

efficacy of voluntary steps taken by industry, and remain open to rapidly introducing a mandatory approach if rapid improvements to broadband affordability aren't delivered.

Given the unprecedented context of the pandemic, we would encourage the government to take a bold approach to exploring other measures to deliver better outcomes for low income consumers, including ensuring all regulators have the necessary powers to take action. Regulators have in the past demonstrated willingness to act to protect vulnerable consumers experiencing poor service, but action on costs is on a less firm statutory footing. A statutory duty to implement price protections for vulnerable and low-income customers, mirroring the duty given to Ofgem through the Domestic Gas and Electricity (Tariff Cap) Bill, could tackle this issue. While this may not be appropriate in all cases, it would be a useful tool to support regulators to protect consumers from excessive costs.

Future proofing regulation

Markets are evolving rapidly, with innovations in technology and the use of consumer data generating significant benefits for consumers. But innovation also brings the potential for new risks, which regulation can struggle to keep up with. Firms are consistently developing a more sophisticated understanding of their customers, their behaviours and their biases. This should enable firms to improve their offer to customers through more tailored products and support, but too often we see that firms instead use this insight to exploit behavioural biases in ways that are harmful to consumers. Advances in the use of algorithms and machine learning also present novel opportunities and risks, particularly when deployed in essential services markets, or areas where structural inequalities exist which could be reinforced by algorithms.

We welcome the government's acknowledgement of this changing landscape, and proposals to update consumer rights in specific areas such as online shopping, prepayment schemes, and subscriptions. Proposals to prevent fake reviews and introduce principles around the presentation of online transactions will act to protect consumers against some of the emerging harms created by increased digitisation of markets. Exploring the use of behavioural techniques used by companies to influence consumer choices is particularly welcome. We are also pleased to see the government taking steps towards establishing a new regulatory regime for digital markets through the consultation on 'A new pro-competition regime for digital markets'.

But with new innovations entering markets all the time, a piecemeal approach to regulating specific products will be less effective than if our entire regulatory framework is future proof. We need to think creatively about how regulation can adapt to new challenges, and how incentives can be shifted to harness innovation in a way that works for consumers. Embedding clear principles and rules around consumer protection, care,

and outcomes across markets will help lay the foundation for government and regulators to be agile, and make swift interventions against exploitative practices as they emerge. There is a risk that if the government misses this opportunity to introduce a more flexible and holistic approach, regulators will be slowed down by the need for new legislation each time a new product or practice requires intervention. We would encourage BEIS to take a broader view of the future of regulation through this consultation process, and would welcome the opportunity to work collaboratively on this in the future.

The broader consumer landscape

We welcome the government's intention to enhance the CMA's powers and improve consumer law enforcement, and have set out our reflections on the proposals in our responses to specific questions below. More broadly we would encourage the government to look beyond competition as the sole vehicle for driving better consumer outcomes. While competition can be the best way to deliver for consumers, and many of the markets where we see high levels of consumer harm also have competition defects, this is not always the case. Some highly competitive markets do not deliver for consumers, particularly for vulnerable consumers whose characteristics can make them harder or less commercially attractive to serve. In some cases we have seen firms compete to exploit consumer behaviours, such as inertia, which is particularly detrimental for vulnerable consumers.

We believe that the CMA should have an explicit statutory duty to intervene in markets on the basis of consumer interests, rather than just competition failures. This would enable the CMA to take stronger action in relation to vulnerable consumers specifically, and help restore public confidence that the competition and consumer policy framework works for all consumers.

Further, the government should consider broader reforms to ensure the consumer landscape is fit for purpose. Alongside changes to enforcement outlined above, this should also consider the roles of consumer advocacy, advice and education as the bedrock of strong consumer protection. We would also like to see consideration given to ways the asymmetries of information and resources between companies and consumers can be mitigated.

Advocacy

Market-specific, statutory consumer advocacy can deliver real benefits for consumers, but there continue to be sectors - such as the telecoms market - where the independent consumer voice is almost entirely absent from the policy-making process.

A strong, well-resourced telecoms advocate could help ensure investments in our digital infrastructure, such as the rollout of full-fibre broadband, are a success by representing

consumers in decisions that affect the services they receive, and by empowering them through consumer education. A consumer advocate can also shine a light on established and emerging areas of consumer detriment, which is particularly vital as rapid technological changes bring new challenges as well as opportunities. Alongside highlighting and reducing this consumer detriment, an advocacy body could contribute overall to a better functioning telecoms market and greater productivity.

We set out more detail on how the key functions of a statutory consumer advocate for telecoms could be delivered by Citizens Advice in our response to the government's consultation in 2019. We await the government's formal response to the consultation, and hope that the opportunity is taken to set up a telecoms advocate as soon as possible.

More broadly, the majority of household spending occurs in markets with no statutory consumer advocate.⁸ This means that where markets are not working as they should, consumers have no one to speak on their behalf, and balance the voice of industry when unfair practices are investigated. Alongside these market failures, the changing consumer context set out above - particularly rising innovation in digital markets and the impact of the pandemic - means the way consumers access goods and services is changing rapidly.

This evolving consumer landscape points to both an accelerated need for effective advocacy on behalf of consumers, and an opportunity to rethink how the government and stakeholders can deliver effective scrutiny and reduce consumer detriment across markets. We have previously proposed a dedicated Consumer Advocacy Unity within Citizens Advice, to close the gap in dedicated consumer advocacy, and to provide timely, evidence-based insights to support government and regulators to act in the interests of consumers.

Recognising the vital role of consumer advocacy is essential in ensuring that reforms to policy deliver for consumers. Alongside planned wider reforms to the competition and consumer landscape, the government should develop a clear vision for consumer advocacy, and explore options for legislating to set up dedicated advocates to fill the current gaps in the advocacy landscape.

Advice

Achieving the UK's net zero target is a shared endeavour between government, industry and the public.

⁸ 90% of household spending occurs outside of the energy, post, transport, water and telecoms sectors. The relative percentages of consumer spending have been estimated based on data from the Office for National Statistics: ONS, Family spending in the UK (April 2018 - March 2019). Release date: 19 March 2020.

As the statutory consumer watchdog for energy consumers, we're ready and willing to play our part in ensuring the net zero transition is a success. We have extensive experience in monitoring the market and advocating for consumers - from the support people need when their energy suppliers fail, to advocating for the right protections for new and emerging smart energy technologies, and ensuring consumers get the best possible value from the highly technical energy price controls.

Retrofitting 29 million homes as part of the net zero transition is a once in a generation undertaking. It's one of the biggest and most complex infrastructure challenges facing the country. With the current rise in energy prices, it's more important than ever that people are supported to improve the energy efficiency of their homes.

Our insight from consumers shows that most people are struggling to understand what changes need to be made to their homes or how they'd go about it. It's currently too complicated for people to make changes to their homes; many have difficulty understanding what home technologies to install, and there is too little information about the different options available or the benefits they're intended to deliver. Researching and choosing the right technology, finding a reputable installer and having the work completed demands huge amounts of knowledge, time and effort.

As we set off on the journey to net zero, people will need personalised, impartial advice to help them understand what's right for their home, their lifestyle and their budget. This will be fundamental to helping people make the changes required.

The government has an opportunity to give people the tools, support and confidence they need to engage with the process and support the transition to net zero, by creating a Net Zero Homes Advice Service. Providing this service would accelerate the retrofit of homes and adoption of net zero technologies - making the government's climate change targets more attainable. A tailored advice offer would drive markets for everything from loft insulation to heat pumps, and to major works such as installing renewables or solid wall insulation.

Appeals

Many of the issues we observe in consumer markets relate to the asymmetry of information, power and resources between companies and consumers, or their representatives. A clear example of this is the appeals process for price controls.

In the last year, the CMA has heard appeals in both the water and energy sectors looking at very similar issues - essentially how much return should be made on regulated assets. Appeals processes are themselves costly from a consumer perspective. The recently concluded water sector (PR19) appeals process added over £8 million to consumer bills, from a total £26 million of network company costs. This is in addition over £6 million in costs to Ofwat and the CMA, also ultimately payable

by consumers. These costs illustrate the resource asymmetry between the network companies and other interested parties, i.e. consumer representatives, in the appeals process.

We are also concerned that the appeals rules in the energy sector encourage companies to appeal. This is because companies are able to 'cherry-pick' which issues to appeal upon, whereas parties with contrary interests, i.e. consumers, do not have the same opportunity, nor the resources, to appeal. This leads to a highly asymmetric process, with only matters where appealing might be favourable to the networks being addressed at appeals. This has the potential to lead to an overall outcome skewed against consumer interests.

The requirement for the CMA to recover its costs from the appellants essentially removes any possibility that a consumer group would bring an appeal, given the potential scale of these costs. While costs may not be awarded against interveners, this is not an adequate substitute to enable the involvement of consumer representatives, as interventions can only be made in relation to the grounds that have been cherry-picked by the appellant.

We believe that CMA can have an important role working with government and sectoral regulators to reduce the likelihood of appeals and improve the regulated network sector appeals processes. In particular, a more coordinated regulatory approach to setting the Cost of Capital would at minimum provide greater clarity for all stakeholders and so reduce the prospect of appeals on this ground. Moreover, close alignment of regulatory appeals processes and establishing best practice across sectors would further reduce overall uncertainty and costs.

Conclusion

Ultimately, we see the Reforming Competition and Consumer Policy consultation as a significant opportunity to shape the future of consumer policy to deliver better outcomes for consumers, now and in the future. We hope that alongside the proposals put forward, the government takes the opportunity to consider the breadth of challenges facing consumers in the current climate, and takes bold and decisive action.

The remainder of our response sets out our reflections on specific consultation questions.

Responses to individual questions

Competition

Q4. Should the CMA be empowered to impose certain remedies at the end of a market study process?

Q5. Alternatively, should the existing market study and market investigation system be replaced with a new single stage market inquiry tool?

Both options presented for reforming the market study and investigation processes could represent improvements compared to the status quo. Reforms will be most effective when directed to improve the timeliness of decision making. Speed of action can be highly material when addressing consumer detriment; in the case of the energy market investigation, the CMA identified detriment of approximately £1.4bn/year.

The ambition behind implementing a single market inquiry tool is welcome, as reducing duplication could streamline processes and free up CMA resources to conduct a wider range of activities. However, we are concerned that this approach carries risks in practice. It is possible that market inquiries will come to resemble market investigations in terms of the time taken and the requirement for decision makers to both determine the level of harm and assess the proportionality of different remedies. In many cases, such as relatively simple consumer protection problems with clear solutions, the extensive nature of this process will be unnecessary.

We are therefore supportive of the proposal to enable the CMA to impose remedies at the end of a market study process. This would enable the CMA to address more cases without the need for a full investigation, and could cut up to two years from the timescale taken to respond to problems, which will bring real benefits for consumers. While there could be a risk that the existence of a subsequent investigation process becomes a rationale to delay judgement, for example if there was reluctance to consider remedies at the end of the market study process, we believe this can be mitigated by government empowering the CMA to use their new powers where appropriate.

The CMA should be given the flexibility to make a judgement as to which cases require market investigation remedy powers, and to avoid full end to end investigations in favour of market studies with attached remedies in other cases. This approach should enable cases to be managed more quickly and efficiently, bringing significant benefits for consumers.

Q6. Should the government enable the CMA to impose interim measures from the beginning of a market inquiry?

Yes, where this is proportionate to its findings. As previously highlighted, the detriment uncovered by some investigations has been acute - in the case of the energy market investigation, £1.4bn/year. Where detriment is this high, it is perverse that the CMA cannot act until the end of the process. We recognise that businesses may have concerns about precipitous action by the CMA if it were able to impose interim measures, but there are safeguards in place against this in the form of both judicial review and the need for the CMA to manage its own reputational risks that would mitigate against hasty or unreasonable use of interim measures.

Q7. Should government enable the CMA to accept binding commitments at any stage in the market inquiry process?

This proposal appears sensible providing those commitments are sufficient to remedy any detriment that the CMA has found. There may be incentives on investigated businesses to offer commitments that are weaker than those that might be imposed at the end of an investigation, in an attempt to head off those outcomes. There is a risk that this approach, combined with the issues outlined above with appeals processes, could result in poor outcomes for consumers, which they are unable to challenge. It is therefore important that the CMA only considers commitments that have a high likelihood of fully addressing the problems found.

Q8. Will government's proposed reforms help deliver effective and versatile remedies for the CMA's market inquiry powers?

We agree that it would be sensible to allow the CMA to require businesses to participate in implementation trials in order to test and develop more effective solutions, however we think it may be appropriate to constrain the timescales allowed for this.

To explain this positioning, it may be informative for BEIS to consider the experience of Ofgem's collective switching trials. These have been highly effective in encouraging more consumers to switch energy supplier or tariff. However they commenced in 2018, and we are still some way off fuller implementation - the timeline implied by the recent Energy White Paper suggests they may not be fully rolled out until the middle of the decade. While the benefits of trialling are that it can help to improve the effectiveness of solutions, a big risk is that it can significantly delay the taking of action to improve consumer outcomes.

We think BEIS should give more thought to setting out a practical - and binding - timeline for how long the CMA can spend trialling solutions to mitigate that risk.

Q9. What other reforms would help deliver more efficient, flexible and proportionate market inquiries?

The CMA is relatively unique among regulators in having no explicit duty to protect consumer interests. It is solely a competition regulator. While competition is frequently the best way to deliver good consumer outcomes, this is not always the case. Some groups of consumers may be badly served even in highly competitive markets, because their characteristics make them harder or less commercially attractive to serve. Frequently this will include consumers who have vulnerable characteristics, who are unbanked, or are offline.

To improve the outcomes received by vulnerable consumers, and to improve public confidence that the competition and consumer policy framework works for all, we believe the CMA should be given an explicit statutory duty to promote consumers interests, including those of vulnerable consumers.

Evidence of the need for this duty is clear across markets, but perhaps the strongest example is the energy market. Between 2004 - 2014, retail energy prices rose significantly. The average annual domestic gas price rose by around 125% and domestic electricity prices by around 75%, fueling public anger and distrust. The CMA's investigation was opened in 2014, but had to focus on finding adverse effects on competition. All remedies had to be justified to the extent that they - reasonably and proportionately - reduced these adverse effects. The Panel concluded that this was the case in the prepayment meter market, where several factors limited consumer choice. But they did not reach that conclusion for the market more generally, despite the harm they had identified.

It is, of course, difficult to predict with certainty what would happen should the CMA have had a wider consumer interest remit at the time of the investigation. But 11 million households paying £200 a year more than they needed to is not consistent with what is in consumers' interests. While it would have had to balance such interests against the overall impact on competitiveness of the market, it is more likely it would have implemented the temporary whole-of-market energy cap it considered, without direct political intervention having been necessary.

As above, it is important that the CMA is able to make decisions quickly when significant harm is identified. However, it is possible that increasing the speed at which decisions can be made could increase the risk that the root causes of problems are misidentified, or the solutions implemented are ineffective. It can always be difficult for regulators to estimate how firms will respond to interventions before they are implemented. This is why it's important for regulators to be able to continuously monitor the impact of decisions and remedies, to ensure the intent of regulation is delivered in practice.

Investing in an evaluation function, with data request powers to enable oversight of firm behaviours in response to new rules such as price regulations, would enable the CMA to more effectively assess the interventions it has made. This would help to ensure that harm identified is addressed, and provide the opportunity to change or strip back regulation if it is demonstrated that it is not needed.

Q18. Will the CMA's interim measures tool in Competition Act investigations be made more effective by (a) changing the procedures for issuing decisions and/or (b) changing the standard of review of appeals against the decision?

It is likely that the CMA will be empowered to use the interim measures tool more frequently, and with fewer risks of these measures being successfully challenged, with the reforms suggested. Judicial review offers a narrower range of reasons for appeal than a full merits review does, which would create a higher hurdle for legal challenges to pass.

Q19. Will the reforms in paragraphs 1.170 to 1.174 improve the effectiveness of the CMA's tools for gathering evidence in Competition Act investigations? Are there other reforms government should be considering?

We agree with the reforms proposed to tighten requirements for businesses to preserve evidence relevant to an investigation. This should reduce the risk of relevant evidence being destroyed or otherwise lost, frustrating the CMA from reaching evidence-based conclusions.

We are less convinced that a case has been made to widen powers to interview relevant witnesses to those who have no connection to a business under investigation. It would be useful for BEIS or the CMA to provide some concrete examples of where the absence of such powers has impeded investigations in the past in order to understand the practical benefits and use of such a tool. Without this, it appears relatively hard to justify being able to force an individual to give evidence when they have no direct connection to the business (or businesses) under investigation.

Consumer Rights

Questions 30-41 - Subscription traps

We welcome the government's commitment to tackling the problems relating to subscription contracts or 'subscription traps'. Our research found that consumers face a variety of problems when falling into, and dealing with, subscription traps.⁹ These include problems due to misleading advertising, unclear terms and conditions, and difficulty cancelling payments. As referenced in the proposals, over 80% of customers in

⁹ Polling conducted for Citizens Advice by YouGov, 2-3 October 2018. Online omnibus survey of 2,096 GB adults aged 18+.

subscription traps were not made aware they were buying a contract that would automatically renew at the outset.¹⁰ Further, 44% of consumers who have attempted to cancel subscription services found it more difficult to cancel than to sign up. Given the challenges many consumers face when trying to exit a subscription contract, it's unsurprising that 11% of consumers who've ever taken out a subscription are currently paying for a subscription that they don't want.¹¹

We agree with the proposals to ensure consumers are provided with clear pre-contract information about their subscriptions. Information about the contract should be presented to the consumer in a clear and prominent manner, at an early stage in the process and immediately before the consumer places their order. However, it is still likely that many consumers will still not fully engage with the information provided. This solution must be introduced in tandem with other measures, for example changing auto-renewal defaults.

For some products and services, the predicted costs and savings that might have contributed to a consumer's decision to make a purchase or enter a contract can change over time. For example, a smart energy company might sell a smart appliance such as a washing machine, but then subsequent innovation in the market means that the savings predicted by the company at the point of sale are no longer correct. There should be an expectation for companies to update terms and notify customers when the expected costs change significantly from predictions at the point of sale, later in the contract or product lifecycle.

We also welcome the proposal to give consumers greater choice and ensure consumers must actively choose to take contracts with auto-renewal or rollover. Subscription traps use nudge and sludge behavioural techniques, which are described in more depth in response to the question on behavioural insights (Q.46). Companies nudge consumers to make passive financial decisions about products that involve long term payment commitments, and then make it difficult to cancel. Information remedies are not enough on their own to tackle this issue. Disrupting this nudging technique by changing a default is the most powerful way to change consumers' behaviour and outcomes. By changing defaults, consumers are less likely to passively slip into a subscription they don't want, and are given a better chance of making choices that are right for them. We therefore agree that traders should obtain the consumer's explicit consent to continue with a subscription after the free trial or low cost introductory offer period ends. Our research found that over 80% of customers in subscription traps were not made aware they were buying a contract that would automatically renew at the outset.¹²

¹⁰ Citizens Advice, [Locked In: Consumer issues with subscription traps](#), 2016.

¹¹ YouGov, 2018.

¹² Citizens Advice, [Locked In: Consumer issues with subscription traps](#), 2016.

Consumers shouldn't default into a subscription they don't want, just because they have forgotten to cancel it. Nor should consumers end up paying for subscriptions because they don't realise they have signed up for one.

We support the proposed mechanisms for making the process of cancelling a subscription simpler and faster. Consumers lead busy, complex lives and often don't have the time or sophisticated understanding needed to engage with these products. This is particularly true of vulnerable consumers, as financially stretched and time poor consumers are even less likely to be able to take the time and effort required to unsubscribe from an unwanted subscription. Products should be redesigned with specific and measurable rules to reflect this. Making canceling subscriptions simpler is also strongly supported by consumers. Our research found 93% of adults who've taken out subscriptions agree (and 81% strongly agree) that 'It should be as easy to cancel a subscription contract as it is to sign up'.¹³

Although we broadly support a requirement to send reminders and nudges as free trials and introductory offers end, this is unlikely to go far enough. To fully address the issue of consumers unexpectedly slipping into a subscription trap, companies who run free trials should have to set the default to opt-out for subscriptions which follow these trials. Traders should be required to contact consumers prior to free trials or introductory offers coming to an end to seek their consent to continue with the subscription. If the customer does not respond, then the default option should be to end and unwind the subscription and business relationship. This would remove the current onus on consumers to remember to cancel and will make it more difficult for consumers to take out a subscription inadvertently.

An opt-out default is supported by consumers; 72% agree that 'When a free trial or introductory rate ends for a repeat service and/or subscription, customers should have to sign up again to confirm they want the full cost service before receiving it.' In contrast only 5% agree that customers should automatically be signed up.¹⁴

These proposals should not include auto-renewal situations in essential or regulated consumer markets like energy and insurance. Whilst auto-renewals in these markets involve similar consumer behaviour, these regulated markets have existing contract arrangements to protect consumers which should not be superseded by these proposals.

¹³ YouGov, 2018.

¹⁴ YouGov, 2018.

Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of good or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

We think that it may be more useful to think in terms of misleading reviews than of fake ones. This is because there is scope for genuine reviews to be as misleading to consumers as fake ones, if they only show part of the picture. Many consumers are signposted to review sites by the businesses they deal with. We are concerned that this may be abused by businesses choosing to signpost where they are aware that a transaction has gone well and that their customer is happy, but not doing so when it has gone badly. A result of this may be reviews that reflect the genuine views of some consumers, but are unrepresentative of the actual performance of the business.

In addition to fake reviews, the government should also consider whether reforms to signposting are needed to ensure that reviews reflect a genuine cross-section of a companies' consumer base, and are not simply cherry-picked to reflect the happiest.

Q46. Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

It is welcome that the government has identified behavioural techniques that influence consumer purchasing decisions as an area to explore in this consultation. However, we believe a broader scope is needed, encompassing the range of dark patterns and exploitation of behavioural biases occurring in online markets. At Citizens Advice, we've noticed a worrying trend emerging across markets where online spending is easy to slip into but difficult to get out of. We refer to this as 'financial quicksand'.

When it comes to engaging with financial products, credit, gambling or entering into long term payment commitments, ideally consumers would be in a reflective mindset. They would take time to interrogate the information they're provided with and make a plan. However, when people come across these products whilst browsing online, they're typically not in this reflective mindset, but in more of an autopilot mode. People make quick, unconscious decisions and use rules of thumb to get by. This passive mode of thinking combined with temptation and the right nudges can lead to impulsive decision making.

As markets have moved online, companies know more about consumers and have developed ways to manipulate behavioural biases. Previously, entering into a credit agreement or a payment commitment would be more of an active choice that consumers set out to make. However, online, consumers are presented with these products and services when they're in an autopilot state and may not be actively looking

for them. Using sophisticated, slick product design, online companies are nudging consumers to make passive financial decisions about products that are inherently risky or involve long term payment commitments. Once customers are signed up, this understanding of behavioural biases is used in the reverse direction, with sludge deployed to make it harder for consumers to leave a contract or get help.

The sophisticated understanding of human behaviour online that markets have developed could be used to ensure consumers get the best outcomes, but more often than not it is being used to exploit them. Slickness is being prioritised over consumer choice and control. This is leading to suboptimal outcomes for consumers - like entering a credit agreement or subscription without fully understanding it, or spending 3 hours gambling online when they only set out to gamble for 30 minutes.

We have identified financial quicksand appearing in several markets, including buy now pay later, online gambling and subscription services.

The buy now pay later (BNPL) checkout process is often so frictionless that many consumers use BNPL without realising, or without fully understanding what they're signing up to. When we surveyed people who had used BNPL in the previous 12 months, 2 in 5 had used it without realising and 42% didn't fully understand what they were signing up for.

However, this frictionless design doesn't carry over to the process of finding out vital information, like the fact that BNPL is a form of credit or that customers could be referred to debt collectors for missed payments. This information should be unmissable, but instead the majority of checkouts hide it in the small print or require clicking through to another window to access it.

This is indicative of the dark combination of nudge and sludge we are seeing across markets that prevents consumers from making considered choices on what is right for them. As online spending continues to develop rapidly and changes are made to product design to exploit behavioural biases, it is important that legislation and regulation keeps pace to protect consumers from harm.

Consumer law enforcement

Q55. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

We support the proposal to empower the CMA to enforce directly rather than through civil courts. This will provide the CMA with more control over the approach and timetable for investigations. Current timelines for action when a problem is identified allow harms to persist for unjustifiably long periods and increase incentives for firms to drag investigations out.

Q59. Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?

When consumers buy second hand goods from a trader at public auction, they may have less rights. If the seller is a private individual, or the buyer is a trader, different implied terms will become part of the contract. This is something that the law normally seeks to address. The interpretation largely hinges on whether the whole of Part 1 Chapter 2 Consumer Rights Act 2015 has to apply for the implied terms under the Sale of Goods Act 1979 to be disregarded. The outcome may mean that consumers have no implied terms of satisfactory quality, fitness for purpose made known and title.

Further, the seller's status is rarely known by the consumer. This adds practical implications when advising consumers about what their rights are, as their rights differ depending on the status of the seller. We believe this is an area that the government should look to clarify so that consumers buying at public auctions have clearer rights, and to make advising consumers in disputes more efficient.

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

We believe that Alternative Dispute Resolution can be of significant value to consumers. It acts as a safety net, ensuring the public can have confidence that, in the event they are unable to resolve a complaint with a business to their satisfaction, there is a quick, independent and transparent process to follow to obtain redress.

That said, it is firstly essential consumers (and businesses) understand the benefits of ADR. We believe public recognition of the role of dispute resolution in unresolved complaints remains low, and this in part is likely to be due to a lack of understanding as to how it works, and what it can do for the individual to help them resolve the problem. Some form of awareness raising activity, to increase the profile significantly and in particular draw attention to the confidence and reassurance consumers can have when making purchasing decisions, would help all consumers.

In addition the ADR landscape can be complex to understand, with multiple schemes in some sectors and none currently in others. Access to a single entry point, on a devolved basis where appropriate, would make ADR easier to understand and to navigate. It would also ensure all consumers would have had access to impartial advice and support prior to accessing a scheme, to help them attempt to resolve the complaint with the business from an empowered and informed position. This is particularly important for vulnerable clients, where at the Citizens Advice consumer service additional processes exist to obtain further help based on their circumstances, in conjunction with our partners. The single point of entry would be able to refer consumers into ADR schemes

seamlessly through agreed pathways when they meet the relevant terms of reference and a single data repository on cases relating to consumer ADR.

While our consumer service currently performs some of this function for ADR in England and Wales since the implementation of the Regulations, there is scope to develop and improve this to provide a more user orientated service, with all elements of the wider consumer landscape (including businesses) directing clients to it in the first instance. As such we welcome BEIS' commitment to work with established advice providers to explore how we might deliver these additional functions.

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

For ADR to be worthwhile for consumers, it must be a thorough process that takes into account the individual nature of the circumstances of any case to ensure a fair and reasoned decision is reached.

That being said, it is also the case that in the context of legal disputes more broadly, consumer issues tend to be more straightforward to resolve or make determinations on. Further, one of the greatest selling points to consumers about ADR over other courses of action, such as court, is the pace at which it can be progressed. It should be quick, and avoid leaving the complainant feeling stuck for extended periods with no apparent progression. The role of a single point of entry, as referenced in our response to question 65, would also help ensure the consumer had all relevant information and evidence to provide to the scheme at the point of opening a case, reducing the back-and-forth initial exchanges.

On this basis we strongly believe the upper limit of eight weeks to reach a determination should be shortened, and further to this in all but the most complex cases or sectors, an upper limit of four weeks may be appropriate, particularly given most schemes now operate on a digital basis and the transfer of paper based evidence is significantly reduced.

Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

We welcome mandating all ADR providers to be approved by a Competent Authority. This ensures consistency of experience for consumers in all sectors, helps avoid any dilution of standards or outcomes, and should help drive the collective standard of ADR upwards.

Competent Authorities should be empowered to act as custodians of their respective ADR sectors, with increased scrutiny and transparency for all existing ADR providers on a consistent basis, based on a clear and objective framework. These should focus on

how cases are being managed and progressed, including transparency on decision making and the factors a determination is influenced by, while outcomes should also be monitored to ensure objectivity and impartiality. Ensuring the latter in particular, a 'fit and proper persons' test would be welcome. Compliance by businesses for any decision made may also require additional scrutiny - while not always entirely the responsibility of the scheme directly this may provide greater insight into any wider challenges with that scheme or sector.

We also believe that for any new entrants to the ADR landscape, a clear roadmap of expectations and evidence should be laid out, with time orientated objectives. This should include additional surveillance during the scheme's infancy to ensure any new scheme does not damage the credibility of ADR in the eyes of consumers or businesses, inadvertently or otherwise.

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

Citizens Advice welcomes the introduction of mandatory ADR in sectors of greatest detriment, such as used cars and home improvements as outlined in the consultation.

The Citizens Advice consumer service regularly reviews trends in relation to the contacts we receive from people with consumer issues, and these two sectors have always featured at the top of these lists when broken down by sector. While this is not necessarily a reflection of poor practice, given the significant number of consumers entering into agreements and the relative value compared to other purchases, it does nonetheless suggest ADR could be of significant and immediate benefit. We would further welcome a commitment to reviewing the outcomes of this decision, and consideration then being given to widening this mandate to other sectors in the future as appropriate based on objective evidence. For all consumers this would be welcome, but particularly for those that are most vulnerable, as it would ensure they are not falling through the gaps in sectors where there is currently no uniform coverage by ADR schemes.

Providing the standards for 'per case' ADR are robust and identical to those of membership based schemes, then broadly we believe the case for using them is a good one. There are caveats to consider however.

Firstly, a membership scheme has greater leverage in relation to the business complying with any decision reached, by virtue of the code of practice or similar the member would sign up to when joining. Failure to honour these commitments, which

likely include agreeing with any determination, allow the scheme to follow through with defined processes which may include expulsion of the member as a final sanction, in a public manner where appropriate. For 'per case', the relationship is much more transactional, and failure to comply by a business leaves a consumer needing to seek redress via the court system, while also placing additional pressure on the enforcement community to tackle such practice.

Additionally, it would need to be very clear who the onus is on in regards to locating and agreeing an appropriate 'per case' ADR scheme. Would the business be required to have a relationship with one provider, or could they use multiple schemes for example? Does the consumer have to agree with the recommendation or can they suggest an alternative scheme? The current landscape is confusing in many instances in unregulated sectors, with the exception of membership based schemes. We believe the business should have the responsibility of offering the consumer access to ADR in these mandated sectors, and this should be clearly explained. The single access point referenced in question 65 could provide additional support for consumers in understanding this process and the steps required from them.

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

We would not be supportive of either of these suggested changes to how ADR is accessed by consumers.

The suggested 'nominal fee' charge for consumers to access ADR, which is designed to prevent vexatious or frivolous complainants, is unlikely to significantly alter existing behaviours. The fee suggested (between £10-£20) is low enough that it will in all probability not deter any consumer wishing to take their complaint past a point that has been deemed reasonable, nor raise any significant revenue to share the cost burden of ADR services with businesses. It could however be a barrier to entry for clients (particularly those with permanent or transient vulnerability), for whom a sum of this kind could be prohibitive, particularly in the context of additional changes to Universal Credit and the Health and Social Care Levy.

Similarly, a lower limit for cases implies that it is less important to find fair and equitable outcomes for issues of a lower value. This ignores the individual circumstances of some consumers for whom relatively small amounts may be of significant value. These people may then find themselves having to seek alternative routes to redress (counter-intuitively directing low value cases into the court system), or be faced with having their access to justice barred. The alternative would be to set the threshold at such a low level that it was effectively of no use in practice.

Citizens Advice helps people find a way forward.

We provide free, confidential and independent advice to help people overcome their problems. We are a voice for our clients and consumers on the issues that matter to them.

We value diversity, champion equality, and challenge discrimination and harassment.

We're here for everyone.

citizensadvice.org.uk



Published October 2021.

Citizens Advice is an operating name of The National Association of Citizens Advice Bureaux.

Registered charity number 279057.