



Department for
Business, Energy
& Industrial Strategy

MODERNISING CONSUMER MARKETS

Consumer Green Paper



April 2018

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The consultation can be found on the BEIS section of GOV.UK:
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CONSUMER GREEN PAPER

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Any enquiries regarding this publication should be sent to us at:
ConsumerGreenPaper@beis.gov.uk

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General information about the consultation

Purpose of this consultation

This consultation is to seek views on a range of issues in relation to modern consumer markets.

Issued: 11 April 2018

Respond by: 4 July 2018

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Consultation reference: Modernising Consumer Markets: Consumer Green Paper

Territorial extent:

Consumer protection is devolved to Northern Ireland but reserved for Scotland and Wales. Consumer advice and advocacy were devolved to Scotland on 23 May 2016 by the Scotland Act. Competition policy is reserved for the whole of the United Kingdom.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Where possible responses should be submitted electronically via the e-consultation link <https://beisgovuk.citizenspace.com> This is our preferred method for receiving responses. However, responses sent to the postal address or email address set out above will be accepted.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets>

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: beis.bru@beis.gov.uk

Introduction

1. Consumers are central to our economy: their choices about what they spend on goods and services drives innovation and competition.
2. Our Industrial Strategy aims to create an economy that raises business productivity and earning power for all. Achieving this ambition requires a UK business environment that is powered by new technologies, shaped by competition and contestability, where the best businesses of all sizes can thrive and where consumers can get high quality goods and services at the lowest possible prices.
3. The UK is a fundamentally strong economy, with a global reputation as a good place to do business. Consumers benefit from competitive markets which not only deliver better quality goods and services but also greater choice and innovative products and services. We have an internationally respected competition regime which ensures that businesses can compete vigorously, unfair practices are tackled effectively, and new businesses can enter the market and grow. We have one of the world's strongest consumer protection regimes to ensure consumers' interests are safeguarded in our economy, with recently modernised and comprehensive basic rights, strong advocates for consumer interests and well-developed advice services.
4. The UK led the way in the privatisation and liberalisation of previously state-owned monopolies. This allowed new competitors in and reduced the power of incumbents – from British Telecom to British Gas. But we also recognised the need for regulation to protect the interests of consumers. Hence the original aim of price cap regulation (“RPI-X”), to give suppliers incentives to seek cost savings while capping the price to consumers. This model of regulation has been adopted around the world.
5. This in turn has allowed significant private investment – there has been around £240bn of investment in water and energy networks alone since privatisation. Outcomes for consumers have also improved, with more reliable and higher quality services and more choice. Further liberalisation has followed with the opening up of retail markets to competition.
6. It is right that we review this regulatory model periodically, given the changing nature of markets and the development of new technologies and practices. For example, new ways of buying and selling services either individually or in bundles have emerged. The increased use of data has enabled companies to develop sophisticated, individual offers to consumers, but also means that companies know far more than they ever did before about our preferences, patterns of spending and engagement with the market. We are determined that the UK should lead the world in innovation-friendly regulation that encourages the tech sector and provides stability for businesses. But we have to support both innovation in our markets and privacy for consumers.

7. In energy, telecoms and financial services, firms charge increasingly higher prices to customers who have not recently switched provider. The large gap between the best and the worst deals received by consumers are difficult to justify and it is often the vulnerable who suffer disproportionately. In some markets, such as telecoms, bundled packages of services provide huge choice but offers can be complex and difficult for consumers to compare.
8. These challenges raise fundamental questions about how the Government ensures modern markets work for all consumers. Simply relying on 'engaging' consumers by providing them with more and more information has been shown not to be a wholly effective approach. We want to harness the power of new technologies and new ways of doing business for the benefit of consumers. But we also want people to feel confident that they are not being exploited for their loyalty to what they may think of as a trustworthy supplier. Competition should drive the best deals, but no one should be exploited if they lack the time or capacity to engage and the vulnerable should be protected.
9. We are also changing the way we purchase goods and services. We purchase more goods online than ever before. The nature of digital markets provides firms with access to a huge amount of data on consumers, enabling them to serve consumers in highly sophisticated ways. Through the Digital Charter we want to make sure these markets work for everyone – for consumers, businesses and society as a whole. We want to make sure that the markets of the future are designed to encourage competition and innovation, and at the same time ensure that consumers are treated fairly, their data is held securely and used appropriately, and their privacy is respected.
10. If competition is to work for consumers, then they must feel confident in their rights, and must be able to seek redress easily when things go wrong. There is more that can be done to give consumers access to high quality dispute resolution services and to avoid costly court hearings. And as markets become increasingly national (or global) rather than local, it is clear that our current model of enforcement also needs review.
11. This Green Paper sets out three principles for responding to the challenges and opportunities of modern consumer markets:
 - **competition should be central to our approach** and the Government should always look to remove barriers to competition where they arise
 - **consumers should benefit from new technology and new business models**, with competition and regulation working together in the consumer interest
 - **consumers should be able to get redress when things go wrong** and consumer rights are effectively enforced
12. As we leave the European Union, we are committed to maintaining and championing an open, liberal and modern economy, built on the principles of competition, free trade

and high regulatory standards. We remain firmly committed to the strong consumer rights and high standards from which UK consumers have benefited for many years.

13. Our aim is to build a regulatory and competition framework that meets the challenges of the future – whether those come about from the changing nature of markets, from increasing globalisation and innovation or from a better understanding of how consumers behave when faced with real-world questions. We need to adapt to innovations and business models driven by the data revolution to maximise the opportunities to improve consumers’ lives. We want to see responsible businesses flourish.
14. We welcome input from all – business and investors, consumers and consumer groups – as to how best to deliver our objective of an economy that works for all.

Our approach

15. The Government wants to ensure that modern consumer markets work for all, both now and in the future.
16. Chapter 1 sets out our commitment to an open, liberal, modern economy. To ensure modern consumer markets we will build on the core principles of competition, free trade and high regulatory standards.
17. Chapter 2 focuses on improving the consumer experience in modern regulated markets for utilities, telecommunications and financial services.¹ In these markets, where there is competition, it works well for some but not for everyone.² We are committed to ensuring Government and regulators are adaptable and flexible in responding to this new world and use both competition and intervention where appropriate to get the best possible outcomes for consumers.
18. Chapter 3 explores how to ensure consumers in the digital economy benefit from new technology and new business models, and with their personal data properly protected and working in their interests.
19. Chapter 4 focuses on how consumers in all markets are able to get redress when things go wrong, and how to ensure consumer rights are effectively enforced at both the national and local level.

¹ The devolution position for the regulated sectors considered here is varied. Telecommunications and financial services are reserved policy areas, and Ofcom and the Financial Conduct Authority have UK-wide remits. Energy policy is reserved for Great Britain and devolved for Northern Ireland. Ofgem regulates the sector throughout Great Britain. Responsibility for policy on water supply and sewerage is devolved. In England and Wales, the water industry is regulated by Ofwat. In Scotland, water is regulated by the Water Industry Commission for Scotland. In Northern Ireland, energy and water are regulated by the Northern Ireland Utility Regulator.

² The water sector does not have a market for domestic customers.

20. Chapter 5 explores how to ensure the roles of Government and the regulators are clear in working together to create well-functioning consumer markets and an environment for long-term investment. It also launches the call for evidence on our review of competition law and seeks views on the Government's Strategic Steer to the Competition and Markets Authority on its objectives over the next Parliament.

Chapter 1 - Competition drives better consumer outcomes across the economy

Introduction

21. We are an open enterprising economy, built on invention, innovation and competition. We believe in the power of the competitive market – competition, open financial markets, and the profit motive are the foundations of the success of the UK. Competition between firms generally drives productivity and long-term economic growth and leads to better outcomes for consumers.

Competition and productivity

22. Our Industrial Strategy seeks to improve productivity – raising living standards, providing funds to support our public services and improving the quality of life for all. One of the best ways to improve productivity is to increase exposure to competition.
23. Competition and entrepreneurship create the pressure for firms to innovate or be squeezed out by their competitors. Firms are also incentivised by competition to improve their internal efficiencies to reduce costs. This includes managerial efficiencies, a key determinant of productivity, with one study finding that management skills could account for a quarter of the productivity gap between the UK and the US.³

Competition benefiting consumers

24. Consumers receive the greatest benefits when markets are competitive. When markets work well, firms only thrive if they provide what consumers want better and more cost-effectively than their competitors, through greater choice, lower prices, and better-quality goods and services.
25. Competition has driven substantial improvements in quality and price in a wide range of markets in the UK. In the airline industry, for example, strong competition amongst airlines has seen the introduction of low-cost airlines into the market and substantial reductions in prices: prices for flights by the lowest priced carrier to major European destinations dropped by 66% by 2002 compared to a decade earlier.⁴ Introducing competition between the UK's major airports is estimated to have delivered improvements in service and quality for consumers worth £870 million by 2020.⁵

³ Bloom, Van Reenen, 2016, '[Measuring and explaining management practices across firms and countries](#)'

⁴ Department of Trade and Industry, 2004, '[The Benefits from Competition: some illustrative UK cases](#)'

⁵ Competition and Markets Authority, 2016, '[BAA airports: Evaluation of the Competition Commission's 2009 market investigation remedies](#)'

26. The market in groceries is another example: competition amongst food and household goods retailers is fierce, which keeps strong downwards pressure on food prices. Consumers benefited from falling prices between 2013 and 2016.⁶ Competition has also changed the way we shop and increased convenience, as online grocery sales are estimated to reach £11.1 billion.⁷

Our approach

27. Our competition, legal and regulatory frameworks are fundamental to our economic success, and increasingly our approach to the use of data in the economy will underpin our future growth. We have a reputation for a world-leading competition regime and our consumer protection framework encourages engaged, active consumers who drive high standards.
28. Our ambition is to make the UK the best place to start and grow a business. The role of government is to ensure that the British business environment is shaped by competition and contestability in which the best businesses of all sizes can thrive. No incumbent – however large and longstanding – should feel immune from this challenge. We want anyone with a good idea and the entrepreneurial ambition to make it a reality to see the UK as the best place to do business.
29. The UK has championed a competition regime that is transparent, rules-based and predictable. This has been positive for businesses making investments and has promoted public confidence in the regime.
30. We have an independent expert competition body, the Competition and Markets Authority (CMA), to promote competition in the interests of consumers and business across the economy. The CMA works to prevent and mitigate harm to consumers from ineffective competition mainly through:
- a markets regime which proactively investigates competition problems, including market failures due to firms taking advantage of consumer behavioural biases, and proposes remedies
 - merger control, to ensure merger activity does not lead to a lessening of competition
 - enforcing competition law to prevent dominant firms abusing their market leading positions, and preventing cartel and other agreements that restrict competition
31. The work of the CMA from 2014-2017 is expected to achieve benefits to consumers well in excess of £3 billion.⁸

⁶ Office for National Statistics, [Consumer Price Index](#)

⁷ Mintel, 2017, [Online grocery clicks in the UK: sales set to surpass £11 billion in 2017](#)

⁸ Competition and Markets Authority, 2017, [CMA impact assessment 2016/17](#)

32. To further support the CMA in its work, in Budget 2017 we announced that we would provide the CMA with an extra £2.8m a year, so it can take on more cases to promote competition for the benefit of consumers and business.
33. Strong and active competition policy across the whole economy is critical to the Government achieving its objectives set out in the Industrial Strategy of raising living standards and economic growth while creating the right conditions for new and growing enterprise to thrive, not protecting the position of incumbents.
34. We will publish a review of the existing competition regime by April 2019 to make sure it is working effectively. We are launching the Call for Evidence for the review in Chapter 5.
35. We want to encourage the CMA to identify, prioritise and tackle inadequate competition in low-productivity sectors that have an important impact on growth. We are consulting on our Strategic Steer to the CMA in Chapter 5.
36. As the UK leaves the European Union, we will not change our commitment to an open, liberal, modern economy, built on the core principles of competition, free trade and high regulatory standards.

Chapter 2 - Better outcomes in regulated markets

To ensure that in regulated markets consumers benefit from competition and do not face excessive penalties for loyalty

In this chapter we are:

- announcing a review into how to make data portability work best for all consumers in regulated markets, as part of a 'Smart Data' review
- proposing the development of performance scorecards for suppliers and digital comparison tools in regulated markets to hold them to account for the outcomes they deliver
- consulting on extending consumer advocacy to telecoms
- taking specific actions to address issues relating to vulnerable consumers in regulated markets, including facilitating data sharing, identifying and sharing good practice and setting minimum standards across sectors

Updating our approach to regulated markets

37. The UK has led the way in the privatisation and liberalisation of previously state-owned monopolies such as energy, telecoms and water.⁹ This has brought many benefits to consumers through higher investment, better quality services and value for money. It is right that we review this model periodically to ensure that it is able to meet the challenges of the modern world.
38. Consumers that are well-informed and shop around get the best deals, but all consumers should expect to get reasonable outcomes, even if they do not actively search for the best deal. In many markets large price differentials for similar goods or services are limited by the fact that enough people search enough of the time to ensure suppliers offer reasonable prices to customers. However, in some of these regulated markets, this competitive pressure is missing. Many people hardly ever switch from their existing supplier. Suppliers can exploit that position through their pricing policies, often charging these customers significantly higher prices. Suppliers also have an increasingly greater ability to identify and segment consumers into different groups based on their individual characteristics or behaviour and charge some customers significantly more for the same goods or services.
39. The CMA identified this problem in the energy market, noting that:

⁹ In the water sector, there is not a competitive market for domestic customers. As such, the parts of this paper that consider competition, price differentials, switching and consumer engagement are not applicable to the domestic water sector.

“... our view is that the overarching feature of weak customer response gives suppliers a position of unilateral market power concerning their inactive customer base and that suppliers have the ability to exploit such a position through their pricing policies...by pricing their standard variable tariffs materially above a level that can be justified by cost differences from their nonstandard tariffs; and/or by pricing above a level that is justified by the costs incurred in operating an efficient domestic retail supply business.”¹⁰

40. This represents a new challenge to regulators and requires a new approach. Established means of improving consumer outcomes include breaking up cartels or tackling the exploitation of a dominant position. We have learnt a considerable amount in the past few decades about consumer behaviour and behavioural biases which has driven efforts to promote engagement by facilitating searching and switching. But while intervening in these ways should improve outcomes on average, the features of modern markets we set out above mean we are increasingly seeing too many consumers, and often the most vulnerable, not benefiting from this approach. In these situations, regulators may need to use a range of tools and shape markets to fundamentally change the incentives on firms.
41. We believe there should be a new approach by Government and regulators to safeguard consumers who, for whatever reason, remain loyal to their existing supplier so that they are not materially disadvantaged. Exploitation of these customers by charging them significantly higher prices and providing poorer service is a sign of a market that is not working well and should be tackled vigorously. Government and regulators should be prepared to act when this is the case, and to be adaptable and flexible in responding to this new world, using both competition and intervention where appropriate to get the best possible outcomes for consumers. In Chapter 5 we consider the way Government and regulators work together to improve outcomes for consumers.

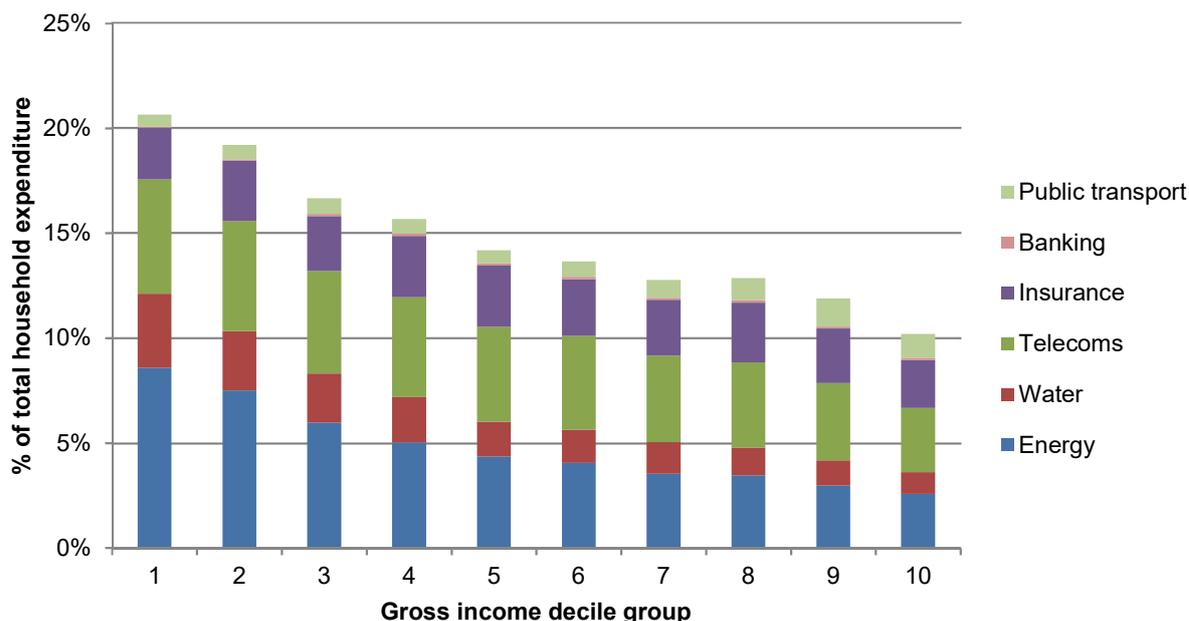
Consumer outcomes in regulated markets

42. In this chapter we focus on regulated consumer markets, where there is private provision and, with the exception of water, competition, but where Parliament recognises the need for independent regulators to exercise oversight. Expenditure on these items accounts for a substantial proportion of many people’s spending, particularly for the less well-off – for example, the poorest households spend more than 10% of their weekly expenditure on energy and water alone.¹¹

¹⁰ Competition and Markets Authority, 2016, [‘Energy Market Investigation - Summary of Final Report’](#)

¹¹ Office for National Statistics, 2018, [Family spending in the UK](#)

Weekly household expenditure in regulated markets, by income decile group



Source: ONS: Family spending in the UK for financial year 2017

43. In these sectors, privatisation and the introduction of competition have brought considerable benefits to consumers in the form of significant investment, innovation and cheaper and higher quality services, for example:
- there has been around £240bn of investment in water and energy networks alone since privatisation¹²
 - improved productivity and service quality – the number of power cuts has halved, and consumers are five times less likely to see water supply disruptions¹³
 - increased innovation and choice – in the telecoms sector, for example, consumers have gone from being tied to a single monopoly provider for a telephone line, to having the choice of many different connectivity services, including the use of smartphones, mobile data outside the home, and superfast broadband in the home.
44. However, in recent years some of the price differentials and quality of service outcomes in these sectors indicate that the full benefits of competition and choice are not being felt by all.¹⁴ Suppliers are able to take advantage of consumer inertia and charge disengaged consumers more. In energy, for example, despite efforts to promote switching, 57% of customers remain on a standard variable tariff, with those at the six largest suppliers paying on average over £300 more than they need to.¹⁵ In banking,

¹² Ofgem, 2018, [RIIO-2 Framework Consultation](#) and Cathryn Ross, 2017, [Speech to the Moody's 2017 UK Water Sector Conference](#)

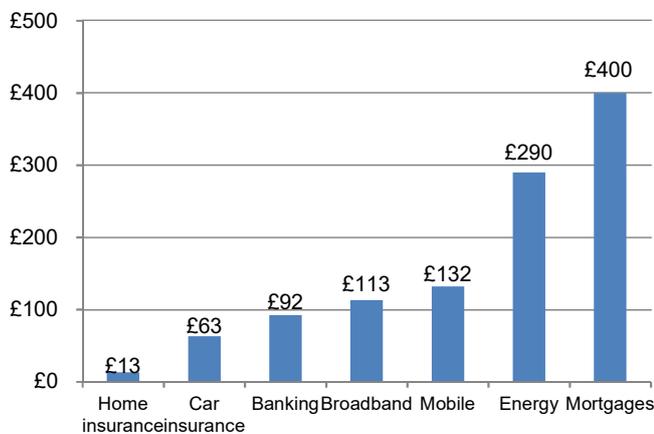
¹³ Ofgem, 2018, [Network price controls and you](#), Cathryn Ross, 2017, [Speech to the Moody's 2017 UK Water Sector Conference](#)

¹⁴ Price differentials, competition and choice do not apply to water where there is no domestic retail competition and retail prices are fully regulated.

¹⁵ Ofgem, 2017, [Standard variable tariff league table](#)

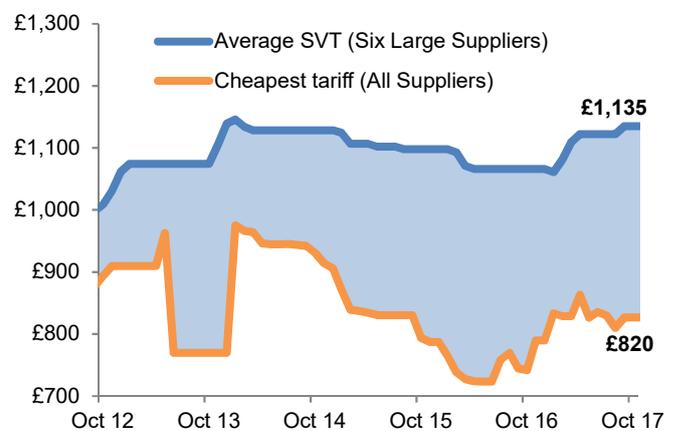
90% of customers could gain financially by switching from a standard or reward account to one of the five cheapest on the market.¹⁶ Ofcom research found that one million customers (or 6%) who have a handset included in the price of their service remain on their mobile contract¹⁷ after the minimum contract period comes to an end, and that collectively these customers could potentially save up to £130 million per annum by switching. Research by Citizens Advice into the cheapest basic broadband deal available to new consumers found that on average prices jump 43% at the end of a fixed-term deal.¹⁸ Data collected by Ofcom found that consumers who were out of contract for a fixed broadband and voice service spent on average £5 more a month than those who were in contract; for services including pay TV, the difference was £9.¹⁹

Average annual saving from switching for those on poor value deals



Source: BEIS analysis of Citizen Advice, FCA, Ofcom, Consumer Intelligence and Ofgem research

Price differences between energy tariffs



Source: Ofgem

45. It is often those who are the most vulnerable who are least likely to be on good deals and therefore pay the most. For example in the energy market, the consumers least likely to have switched in the past three years are consumers with one or more of the following characteristics: household incomes under £18,000 a year; living in rented social housing; without qualifications; aged 65 and over; with a disability; or on the Priority Services Register.²⁰ Those who are most likely to remain on a land line-only contract are the elderly.²¹

¹⁶ Competition and Markets Authority, 2016, '[Retail banking market investigation](#)'

¹⁷ This refers to post-paid mobile contracts, i.e. where the consumer enters into an agreement with a mobile provider and usually pays for usage on a monthly basis.

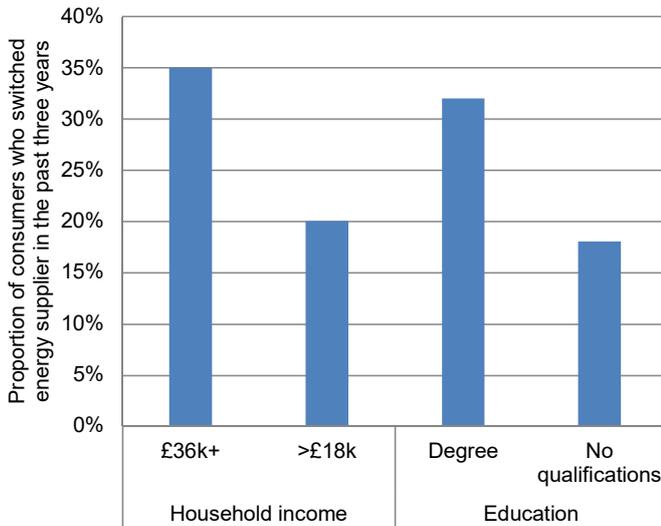
¹⁸ Citizens Advice, 2017, '[Exploring the loyalty penalty in the broadband market](#)'

¹⁹ Ofcom, 2017, '[Pricing trends for communications services in the UK](#)'

²⁰ Competition and Markets Authority, 2017, '[Energy Market Investigation](#)'

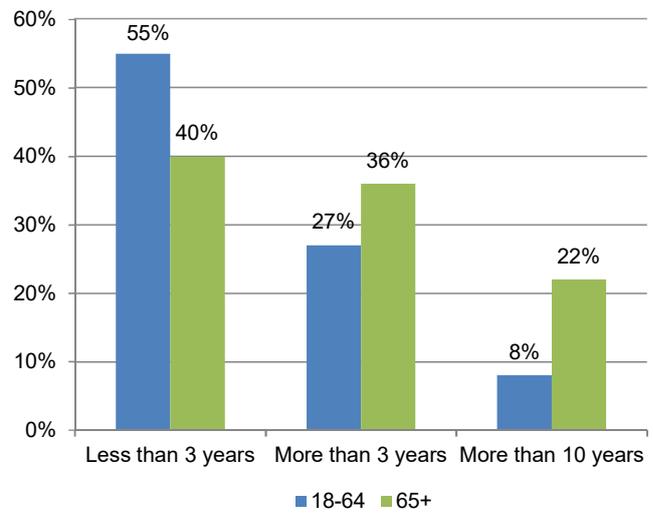
²¹ Ofcom, 2016, '[Landline prices review to protect elderly and vulnerable](#)'

Average switching rates for consumers in the energy market



Source: CMA Energy Market Investigation

Duration of time consumers remain on their broadband contract by age



Source: Citizens Advice

46. While most consumers have a satisfactory experience,²² quality of service is less strong than in other consumer markets. Of the fifteen lower-performing markets in the UK as measured by the EU consumer market scoreboard, ten are regulated markets.²³ The Institute for Customer Service ranks energy, water and telecoms among the weakest performing markets for customer service.²⁴
47. This is also reflected in high numbers of complaints. Consumers made over twelve million complaints to financial services, energy and water suppliers in the most recent year, and survey evidence suggests complaints in telecoms are of a comparable volume.^{25, 26}
48. Satisfaction with complaint handling in some of these markets is also poor.²⁷ In the past five years consumers took over two million complaints to alternative dispute resolution

²² For example, consumer satisfaction is estimated at over 90% for water companies (Consumer Council for Water), 87% for broadband (Ofcom) and 72% for energy suppliers (Ofgem).

²³ European Commission, 2016, '[Consumer Markets Scoreboard](#)'

²⁴ Institute of Customer Service, 2018, 'UK Customer Satisfaction Index'

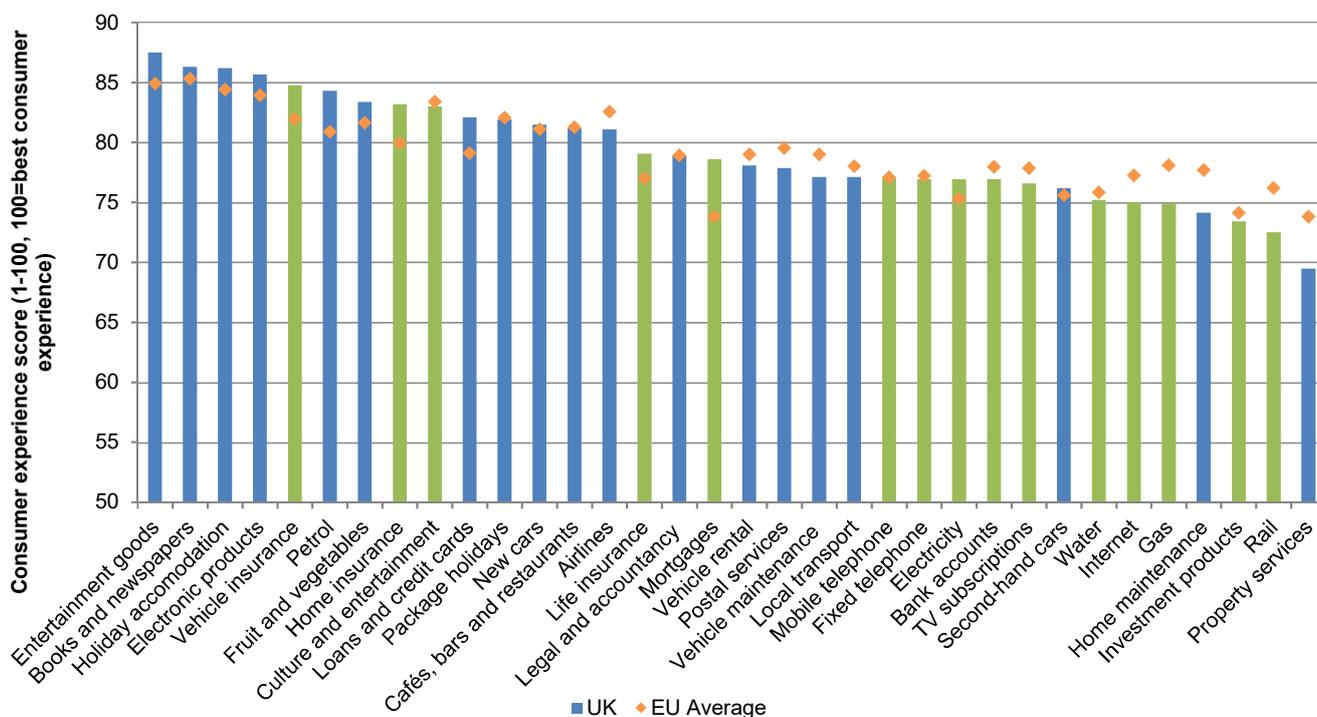
²⁵ In the most recent year for which data is available consumers made 6.4 million complaints to financial services providers (4.4 million excluding PPI), 3.5 million complaints to energy suppliers and 2.1 million complaints to water companies. Complaints data are published by the Financial Conduct Authority, Ofgem, and the Consumer Council for Water.

²⁶ Ofcom publishes on a quarterly basis complaints it receives by provider in the form of a ranked table. Ofcom publishes the proportion of consumers who have had reason to complain to their provider and satisfaction levels with complaints handling. Ofcom does not publish data on complaints to communications providers, but other sources suggest the number of complaints is comparable to other regulated markets. For example, Citizens Advice, 2016, '[Consumer Detriment: Counting the cost of consumer problems](#)' estimates that consumers experienced more problems in 2015 with communication services than with energy and financial services combined.

²⁷ For example, satisfaction with complaint handling in the energy market is only 27% and has fallen from 39% in 2012. In financial services only 31% of consumers were satisfied with how their complaint was handled. Source:

to secure redress.²⁸ Research by Citizens Advice found that 23% of consumer complaints in regulated markets took over six months to resolve.²⁹ There is a substantial gap between the best and worst performers in these sectors, suggesting there is room to improve.

The consumer experience in selected markets



Source: European Commission, Consumer Market Scoreboard 2016

Economic regulation of infrastructure services

In this chapter we concentrate on retail markets in regulated sectors – where there may be potentially many retail suppliers but where competition is not always working well. However, underpinning many of these markets are network monopolies in the upstream markets. This is the case for key infrastructure services such as water, energy transmission and distribution, and rail. In telecoms Ofcom appraises relevant markets regularly to see if the operator has “significant market power.”

These network services are provided by regulated companies, and the regulator controls the price of, or access to, some of these services. They form a considerable part of the overall cost of the final service to the consumer, and regulators need to ensure the companies that provide them are investing in and maintaining these services appropriately and doing so as efficiently

FCA, 2017, '[Understanding the financial lives of UK adults](#)', and Ofgem, 2016, '[customer satisfaction with energy supplier complaints handling 2016](#)'

²⁸ BEIS analysis of various alternative dispute resolution providers' annual reports. This figure includes complaints resolved in the financial services, energy and communications sectors

²⁹ [Citizens Advice, 2016, 'Understanding consumer experiences of complaint handling'](#)

as possible, to keep service standards high and deliver value for money – both now and in the future.

Recently, there have been criticisms that past decisions made by regulators have allowed network companies to earn significant profits over and above what was expected.³⁰ Regulators and the Government are responding to these criticisms:

- in the water sector, as part of the 2019 Price Review, Ofwat has proposed the lowest ever cost of capital for a regulated utility in this country. It has also developed an approach for indexing the cost of future debt and strengthened incentives to meet performance and environmental targets. In addition, Ofwat will shortly be consulting on a package of proposals for water companies to improve their corporate behaviours and share more of the financial benefits they make with customers.
- in energy, Ofgem has indicated that its next price control will have a tougher financial settlement for companies, with potential savings of £5 billion to consumers over five years. It is lowering its cost of capital and consulting on indexing the cost of equity. The Government commissioned an independent Cost of Energy review by Professor Dieter Helm and will be responding later this year to its recommendations.

Our approach

49. In the next section of this chapter, we focus on markets where there is competition among suppliers, but where market outcomes are sometimes poor for particular groups of consumers – specifically in energy, telecoms and financial services. In the subsequent sections of this chapter we also consider the water sector. In these markets which are open to competition, the combination of complex choice, transaction costs (including both monetary costs and the time to search and switch), the individualised nature of pricing and the “evergreen” or ongoing nature of contracts takes away the competitive pressure. Suppliers today have an increasing ability to identify and segment consumers into different groups on the basis of their individual characteristics or behaviour, and to charge some of their customers more for the same goods or service.
50. Regulators recognise the challenge in these markets and are working to improve competitive outcomes by improving the availability of information, lowering the costs to switching and using prompts so that consumers who want to engage find it easier to do so. We agree with this approach and we want regulators to adopt best practice and learn from each other.
51. However, we think that these markets also need to take account of real-world behaviours and preferences, recognising that not everyone has the time or capacity to shop around. There are new and emerging technologies that can significantly reduce

³⁰ For example, National Audit Office, 2015, [‘The economic regulation of the water sector’](#); Citizens Advice, 2017, [‘Energy Consumers’ Missing Billions’](#)

search costs by making better use of a consumer's own data – we want to encourage these developments to make choice effortless, not a burden. We also think there is room for greater transparency to help give suppliers the right incentives to offer better quality services and value for money.

52. We also want to make sure that those who remain loyal to their existing suppliers, for whatever reason, are not penalised for doing so, including the most vulnerable.

Recent actions to improve outcomes for consumers

The Government and regulators have already made strong progress in tackling major individual causes of consumer detriment and improving outcomes for consumers. Actions taken in recent years include:

In telecoms

- cutting charges by 37% for up to a million BT landline-only customers, saving customers £84 per year, many of whom are elderly or vulnerable (from April 2018)
- an automatic compensation scheme for broadband consumers when service quality falls short, benefiting consumers by over £100 million per year compared to today, and strengthened rules on broadband speeds
- legislating through the Digital Economy Act to enable mobile users to cap their monthly bills (from October 2018)
- introducing a text to switch reform to make switching mobile phone provider easier and removing requirements on consumers to pay for their old service during a notice period once they have switched
- Ofcom has also extended regulation so that from October 2018 mobile providers will have to have debt and disconnection practices that are proportionate and not discriminatory

In financial services

- new rules to help the four million credit card customers struggling with persistent debt (from March 2018)
- a ban on charging consumers just for using their credit card ('surcharging') to pay for goods and services, helping give consumers the transparency they need to pick the best deal (from January 2018)
- a cap on the cost of payday loans, leading to savings of approximately £150 million for 760,000 consumers (from January 2015)
- the introduction of a cap on charges for members in default workplace pensions schemes used for automatic enrolment (from April 2015) and a cap on early exit charges in workplace pension schemes to remove barriers to accessing pensions flexibly following the introduction of pensions freedoms (from October 2017)

In energy

- an energy prepayment price cap, cutting bills for around four million households (from April 2017)
- extending the energy prepayment price cap to a further one million vulnerable consumers in receipt of the Warm Home Discount (from February 2018)
- the introduction of legislation to place a requirement on Ofgem to cap all standard variable and default energy tariffs, while action is taken to make the market more competitive. The price cap will continue until the conditions for effective competition are in place, or until the end of 2023 at the latest. Implementing a temporary absolute cap on SVTs and default tariffs is in line with the recommendations from the BEIS Select Committee (February 2018)

In water

- legislating through the Digital Economy Act 2017 to allow data matching between water companies and public authorities to provide assistance to customers who cannot be supplied with water or sewerage services at a reasonable cost
- establishing an alternative customer redress scheme ('WATRS'), providing an independent, impartial and more cost-effective alternative to going to court
- following the publication of guidance, since April 2017 all water companies now offer a social tariff to customers struggling with their water bills
- making the protection of vulnerable customers a key priority for Ofwat and the water sector (alongside ensuring long-term operational resilience) through the Strategic Policy Statement, which is reflected in Ofwat's methodology for its upcoming price review

In transport

- proposals to enhance consumer protection in the package travel sector to protect an extra 10 million UK package holidays published (14th August 2018)
- introducing the right for rail passengers on some franchises to claim compensation for delays of 15 minutes or more to their journey, with a view to rolling this out to all franchises (announced 13th October 2016)

Putting consumers in control

53. There is now a large body of evidence and research from behavioural science which looks at how consumers react when faced with real-world, complex choices. As a result, regulators have become much more focused on exploring what are the best ways to help consumers make good choices, based on how they really behave and the factors that might inhibit them searching for and switching to better deals.
54. We think there is still more that can be done to prompt consumers to think about switching, and to lower the real and perceived costs of switching. The UK Competition Network, which comprises the Competition and Markets Authority and the sectoral regulators, will publish a report later this year detailing lessons learned from recent

research on consumer-facing remedies drawing on behavioural insights, evidence of effectiveness, and experience of conducting testing. We welcome this work and support the commitment of regulators and competition agencies to act on its findings.

55. However, we also need to look ambitiously at how changes in markets and technologies can be harnessed to help consumers. Price comparison websites and other types of digital comparison tools can save time and effort for consumers. They now play a significant role in helping consumers make decisions, with 85% of consumers having used one.³¹
56. We are now seeing new emerging technologies, such as automatic switching services or apps, that can make it even easier for consumers to manage the range of services they require. All of these have the potential to reduce significantly the real and perceived costs of making informed choices.
57. To put UK sectors at the forefront of the data revolution – one of the Industrial Strategy Grand Challenges – we would like to understand the applicability of this new technology into regulated markets other than banking. Insurance is one sector with particular promise, given the requirement by individuals to provide extensive information to each potential provider. Another area might be bundled services such as pay TV, landline, broadband and mobile deals where the complexity of tariffs limits effective comparison. A service to filter deals to those which best matched the needs of the consumer could be valuable.
58. Data is at the heart of these new approaches. Companies hold large amounts of data about consumers and their use of particular products and services. Too often this data works against consumers rather than for them, for example when companies identify loyal customers and put them on expensive deals. We want to end this information asymmetry so that consumers can use their own data to get the best deals and drive competition.
59. Automatic switching services, for instance, require access to data about individual consumers' usage. To maximise the opportunities from these kinds of technologies and business models, that data needs to be in a format that is easily comparable and portable across providers. To work effectively and be accepted by consumers, it is also essential to have the appropriate protections, and provision for redress, in place to give consumers confidence and to facilitate trust, particularly with sensitive personal data.
60. As Chapter 3 sets out in more detail, the UK's new data protection laws will update data protection laws for the digital age and introduce a new right for personal data

³¹ Kantar (on behalf of the Competition and Markets Authority), 2017, '[Digital Comparison Tools: Consumer Research Final Report 2017](#)', page 37

portability.³² It is essential that this is implemented in a way that works for consumers and is trusted by them. They will then be able to move their data (or allow others to move on their behalf) between firms to enable them to get better deals and offers than they might otherwise.

61. This holds great promise for the regulated sectors given the challenges we have identified in this chapter. Accurate information about their usage (for instance, as energy smart meters will provide which are being offered to all domestic and small business consumers by the end of 2020), preferences and demographics will mean it is easier for consumers to get offers from suppliers that match their needs. Innovative intermediaries could generate offers or manage contracts on behalf of consumers, eliminating altogether the need for consumer effort. The 'Midata' programme offers an approach to portability in the energy sector and Government will be responding later this year to our Call for Evidence on how best to implement it. As we transition to a smarter, flexible energy system underpinned by the roll out of smart meters, and as new offers to consumers become available, data will be vital. Open Banking is a revolutionary move in this direction for the retail banking sector and we want to understand how this approach can be successfully implemented in other regulated sectors.

Emerging models that help consumers find good deals

Open Banking was launched in early 2018 and is offered by the nine largest UK banks and an increasing number of challenger banks. It allows consumers to provide third party providers, regulated by the FCA, with secure access to their current accounts in order for them to seamlessly provide a range of innovative new products tailored to the needs of consumers. It will make it easier for people to manage their money, putting them in control of their data. For example:

- an app could monitor their spending and make payments
- they could be alerted to saving and investment opportunities across accounts
- they could authorise the movement of money between accounts to prevent overdraft charges and even access cheaper overdraft facilities without switching current account provider.

In the UK, new innovative financial service providers are making use of this data, and plan to expand their offer to consumers by partnering with providers in other essential markets such as energy and telecoms. By monitoring and analysing usage in real time, these services will be able to harness insights based on consumers' data to identify and automatically switch to better deals based on their actual spending and usage history.

³² The Data Protection Bill will set new standards for protecting general data, in accordance with the General Data Protection Regulation (GDPR).

Key to Open Banking are the underpinning Application Programming Interfaces (APIs) which are standardised, making it easier for innovative new firms to deploy their products.

62. We recognise that there are risks that must be managed alongside these opportunities. Consumers must have trust that their data is secure, costs to suppliers must be proportionate and we need to ensure consumers have access to the information they need in order to know when to switch. We must also avoid a situation where the power that incumbent suppliers currently have to take advantage of existing customers is simply transferred to other companies or new intermediaries. We must guard against the risks that, for instance, bundled services across markets make it more difficult for meaningful comparisons and reduce the willingness of consumers to switch.
63. Regulators have a key role to play – they can initiate activity, set expectations and standards, reassure consumers and bring industry, innovators and consumer groups together. With the growth of cross-sectoral bundling and intermediaries operating across multiple sectors, we want to ensure that a sectoral lens does not limit the potential.
64. The Government will therefore launch a ‘Smart Data’ review into how best to ensure data portability is implemented in a way which supports consumers to get better deals in regulated markets, building on the approach pioneered by Open Banking. The review will seek to identify those markets where data portability can have the biggest impact and how regulators can be empowered to introduce transformative changes for the benefit of consumers.

Consultation Questions

1.	In which regulated markets does consumer data portability have the most potential to improve consumer outcomes, and for what reasons?
2.	How can we ensure that the vulnerable and disengaged benefit from data portability?
3.	How can we ensure these new services develop in a way which encourages new entrants rather than advantaging incumbent suppliers?

Digital capability for all

We recognise that not everyone has the digital capability to benefit from new technologies like digital comparison tools. The reasons for this are often complex: research suggests that there are four key barriers:

- access: the ability to connect to the internet and go online
- skills: the ability to use the internet and online services

- confidence: a fear of crime, lack of trust or not knowing where to start online
- motivation: understanding why using the internet is relevant and helpful

The Government is already working with industry and the voluntary sector to increase the digital capability of those who are digitally excluded, as well as those who are online but lack the confidence and knowledge to make the most of it:

- establishing the Digital Skills Partnership which brings together stakeholders from the private, public and charity sectors to join efforts to help people increase their digital skills at all levels
- introducing fully-funded basic digital skills training for adults lacking these vital skills from 2020
- using the 3000 libraries across England to provide a trusted network of accessible locations with trained staff and volunteers, free Wi-Fi, computers, and other technology as well as Assisted Digital access

These initiatives will build on the significant investment the Government already makes in basic digital skills training through the Adult Education offer.

Incentivising companies to do better

65. Consumer engagement and action alone will in many cases not be sufficient to make competition effective. In this section we focus on changing the incentives on companies to improve customer service and value for money.
66. Regulators use information about performance to incentivise companies financially to improve their service by requiring them to compensate consumers when standards fall below certain levels. In energy, water and telecoms, automatic compensation exists or is being introduced so that customers get money back if they do not receive a service or if appointments are missed.
67. Collecting and publishing performance data at company level can place reputational incentives on companies to improve outcomes for consumers and can inform consumer choice. It can also help regulators determine where to focus action. Regulators have taken steps to publish supplier performance data.³³ However, we think more could be done to improve the coverage and visibility of this data, and to enable comparability across sectors where relevant.
68. To improve the availability of performance data Ofgem, Ofcom, Ofwat and the FCA, through the UK Regulators Network, will develop performance metrics for companies and digital comparison tools operating in their sectors where relevant. These will be published regularly and, where appropriate, will provide a set of comparable data on

³³ For instance, Ofcom, 2017, '[Comparing service quality](#)', Ofgem, 2017, '[Standard variable tariff league table](#)', and [Discover Water](#)

consumer outcomes such as price differentials, consumer engagement, service quality and complaints across these sectors.

69. Publication of this data will allow the Government, regulators and consumer groups to monitor performance and hold suppliers and digital comparison tools to account for their customer outcomes. They will enable good performers to demonstrate progress and drive poor performers to take action to improve. Performance data could also be used by digital comparison tools to help inform customer choice.
70. We welcome views on how we could maximise the use of performance metrics or scorecards to tackle poor performance, for example by 'naming and shaming' poor performers or highlighting suppliers who fail to meet certain minimum standards.

Consultation Question

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| 4. | What is the best way to publish performance data so that it incentivises firms to improve and can be used by consumers when taking decisions? Should firms also offer discounts or compensation for poor performance? |
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Consumer advocacy in regulated sectors

71. Consumer groups play an important role in holding companies to account for their performance and driving improvements in consumer outcomes. A strong consumer voice can make a significant difference to consumer outcomes through highlighting established and emerging areas of consumer harm and using evidence to advocate for change in policy and/or practices.
72. There are already statutory consumer advocates in several regulated sectors such as water, energy, transport, financial services and postal services that put the interests of consumers at the heart of decision making. Consumers' interests in the telecoms sector are currently protected and promoted by the Communications Consumer Panel, a panel of eight independent members providing advice to Ofcom and others.
73. Ofcom research shows that over 87% of consumers are satisfied with their broadband, landline and mobile services.³⁴ However, that means that millions of consumers are dissatisfied. The Institute of Customer Service Satisfaction Index also demonstrates that telecoms consistently compares poorly against other markets, ranking last in 2016 and 2017, and second last in 2018.
74. We would like views on whether the current consumer advocacy arrangements in telecoms remain the right ones or, alternatively, a different model could more efficiently

³⁴ Ofcom, 2017, ['Comparing service quality'](#)

support and protect consumers, including the vulnerable, by providing advice, information and targeted support, and by influencing regulation on consumer matters.

Consultation Question

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| 5. | Is there a need to change the current consumer advocacy arrangements in the telecommunications sector? If so, what arrangements would be most effective in delivering consumer benefits, including for those who are most vulnerable? |
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Ensuring vulnerable consumers are treated fairly

75. Vulnerability can arise because of individuals' characteristics, their circumstances, the nature of the market, product or service, or the behaviour of firms. The risk of being vulnerable can change with events, such as bereavement or job loss.
76. Regulators should act robustly to prevent harm to vulnerable consumers and encourage companies to design systems that work for vulnerable consumers. Companies must understand their customers including those who are vulnerable, and how they can reasonably support their needs.
77. People who are vulnerable or at risk of vulnerability must not be treated as a homogenous group. Vulnerability can be about financial matters, for instance the ability to afford bills or access best value deals. It can also be about non-financial matters, such as the ability to read or understand bills, make decisions, greater reliance on particular services, the need for advance notice of service interruptions and problems in interacting confidently with companies.
78. Technological changes could risk widening the gap in outcomes between groups at different risk of vulnerability. For example, consumers on lower incomes and with lower academic qualifications are less likely to use the internet and use digital comparison tools.

Recent action to protect the vulnerable

- Ofcom has updated the requirements on companies operating in their sectors so that from autumn this year they must all have policies and processes for supporting vulnerable consumers
- Ofgem introduced a vulnerability principle into energy suppliers' licences which places obligations on suppliers to have specific arrangements in place in all their dealings with customers in vulnerable circumstances
- Ofwat has challenged companies to use data more collaboratively to identify and support vulnerable consumers, which will form part of its assessment of business plans for the

upcoming price review period. Ofwat has also included new performance commitments on vulnerable customers which sets a clear challenge to water companies to reduce bad debt and debt management costs

- The Financial Conduct Authority published an Occasional Paper on Vulnerability to broaden its understanding of vulnerability and an accompanying Practitioners Pack for firms. This has supported trade bodies such as the Council of Mortgage Lenders and UK Finance, to develop or review vulnerability strategies in their sectors
79. The National Audit Office recently reviewed the way vulnerable consumers are served in the energy, water, telecommunications and financial services sectors. It recommended that regulators and Government should clarify roles and responsibilities for supporting vulnerable consumers and that we should explore opportunities for data sharing to better identify and support vulnerable consumers.³⁵
80. The Government agrees with the National Audit Office recommendations and is acting to address the issues raised. We are making use of data sharing through powers taken in the Digital Economy Act 2017 which gives certain public bodies new powers to share information, with safeguards to protect privacy, across organisational boundaries to tackle energy and water poverty. This will enable the matching of benefit recipients with energy and water customers to identify eligibility for social tariffs and other support.
81. Ofgem and Ofwat, through the UK Regulators Network, are working to improve non-financial data sharing on vulnerability between energy and water companies. This is because if a consumer requires particular forms of support from their energy company (such as large print bills or priority support in an emergency), they will probably require similar support from their water provider. Data sharing between companies reduces the need for the consumer to have to tell both companies the same thing. We strongly support the UK Regulators Network plan to build on this work, through potentially extending this collaboration to other regulators and other kinds of data (for example on financial vulnerability). The UK Regulators Network will publish an update on progress in the autumn of 2018.
82. There has also been a lot of good work by companies to support vulnerable consumers. We want to see more collaboration, sharing, and assessment of the effectiveness of different approaches to supporting vulnerable consumers. The UK Regulators Network will lead a project to identify examples of good practice in company policies and approaches to vulnerable consumers from across sectors and work with appropriate experts to assess the effectiveness of different approaches to supporting vulnerable consumers.
83. One specific area in which Government wants to see action is in helping consumers with mental ill health, cognitive impairments and dementia including conditions like

³⁵ National Audit Office, 2017, [‘Vulnerable consumers in regulated industries’](#)

Alzheimer's. They may have particular challenges engaging with suppliers and will therefore be at risk of receiving poor outcomes. The regulators, through the UK Regulators Network, will therefore identify where there are benefits from introducing a set of minimum standards that consumers with mental ill health, cognitive impairments and dementia should expect to receive across sectors, and agree principles for improving services to these consumers.

84. We are also establishing a new joint Government-regulator Consumer Forum (see Chapter 5). Given the importance of protecting vulnerable consumers in regulated markets we propose that this should be the first priority of this new forum to ensure regulators are working effectively together, best practice is shared and suppliers are playing their part in ensuring vulnerable consumers are not exploited.

Power of attorney

85. A power of attorney can enable trusted family members or carers to access and manage the accounts of certain vulnerable consumers, helping them to pay bills, change deals, and complain. However, there are differences in what information companies require before they recognise a power of attorney which makes it more difficult than it needs to be for consumers during what are likely to be a challenging period of life. Greater scrutiny may be necessary in financial services than other sectors given the greater impact of fraud, but many differences in the approach companies take arise because they are unclear on what is required.
86. The Office of the Public Guardian will lead a project, with input from Ofgem, Ofwat, Ofcom, and the FCA through the UK Regulators Network, to produce new guidance on the recognition of power of attorney in regulated markets, working with consumer groups and businesses. The project will build on previous work by Ofcom and the Office of the Public Guardian and provide clarity on what the law requires, and implement changes to processes as appropriate, with the aim of meeting consumers' needs and achieving greater consistency. The regulators will ensure that companies are aware of the guidance and encourage them to have clear policies and processes for dealing with customers that wish to use power of attorney.

Chapter 3 - Digital markets that work for consumers

To ensure consumers benefit from new technology and new business models, with their personal data properly protected and working for them, not against them

We are consulting on ways to improve consumer outcomes through effective competition in digital markets by:

- realising the benefits of data portability in consumer markets
- maintaining the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights
- reviewing our competition regime for the digital age

We are consulting on ways to boost consumer confidence by:

- ensuring consumers have the right legal protections in consumer-to-consumer transactions
- promoting fair use of data with respect to personalisation of price and search online

Introduction

87. Data and digitisation has the potential to improve the consumer experience across all markets, not just in regulated markets. The digital era has led to a transformation in the way that consumers interact with business. This is a revolution of choice, convenience and affordability – consumers now have access to a global market in goods and services at the click of a button. This has sharpened competition in many markets, as well as providing significant rewards to innovation and entrepreneurship.
88. This is just the beginning – these new technologies have the potential to transform every facet of our lives. Our Industrial Strategy aims to put the UK at the forefront of the artificial intelligence and data revolution. It will transform the way we live and boost the spending power of every consumer. We want consumers to take full advantage of innovations resulting from data and new technologies while ensuring their privacy rights are protected. The Government's Digital Charter aims to create the frameworks needed to shape these retail markets of the future.
89. Our approach in this chapter seeks to ensure competition and consumer policy act together to build consumer and business confidence and trust in new technologies.

A world-leading digital economy

Our Digital Strategy sets out our aim to create a **digital economy that works for everyone**.³⁶

The Government is investing billions in superfast broadband, full fibre networks and 5G and introducing a **new broadband Universal Service Obligation** to give every household and business the right to request a high-speed broadband connection by 2020.³⁷

We are undertaking a **Future Telecoms Infrastructure Review** to determine how to encourage the long-term investment needed in full fibre and 5G networks.³⁸

The Government takes both the protection of personal data and the right to privacy extremely seriously. The **Data Protection Bill** will make our data protection laws fit for the digital age in which an ever-increasing amount of data is being processed.³⁹

Our Industrial Strategy sets out the Government's approach to making sure people have the necessary **digital skills to benefit from the digital economy**, including new technical apprenticeships and T levels.⁴⁰ Through the Digital Skills Partnership we have partnered with the private sector to provide over 4 million new training places.

Our ambition is to put the UK at the forefront of the artificial intelligence and data revolution through the **Artificial Intelligence and Data Grand Challenge**. We will build on our world-class research and vibrant start-up eco system by working with industry to develop innovative uses of AI and advanced analytic technologies.

The Government's Digital Charter will **agree the norms and rules for the online world and put them into practice**, increasing public confidence and trust in new technologies.⁴¹ This will include a world-first Centre for Data Ethics and Innovation. The Centre will review the existing governance landscape and advise government on how we can enable and ensure ethical, safe and innovative uses of data, including artificial intelligence.

We are committed to **making the internet in the UK the safest place in the world** to do business and be a consumer. The Internet Safety Strategy considers the responsibilities of companies to their users, the use of technical solutions to prevent online harms and government's role in supporting users.⁴²

The Government's aim is to make it easy for consumers to secure their internet-connected devices by **building strong cyber security into Internet of Things products by design**. Government is already working with industry to develop best practice guidelines for businesses and drive adoption of improved security practices.⁴³

³⁶ DCMS, 2017, '[UK Digital Strategy](#)'

³⁷ DCMS, 2017, '[Broadband Universal Service Obligation: consultation on design](#)'

³⁸ DCMS, 2017, '[Government launches review into future telecoms infrastructure investment](#)'

³⁹ '[Data Protection Bill 2017-19](#)'

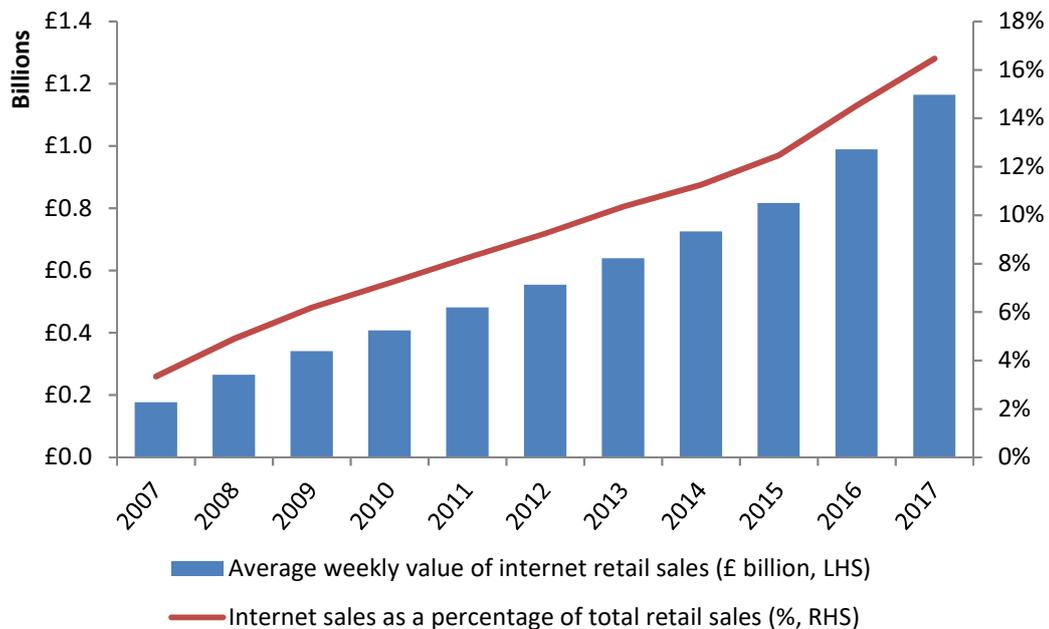
Ensuring effective competition in digital markets

90. We believe that effective competition in markets leads to the largest consumer benefits, driving business to innovate and giving consumers better products, cheaper prices and greater choice. To create the right business environment, we want to support consumers and businesses in their roles of driving continued innovation and competition in digital markets. It is also crucial we ensure that our competition policy is fit for the digital era.

Helping consumers to drive competition

91. Consumers have a key role in driving competition in digital markets: UK consumers spent on average £1.2 billion online every week in 2017 and a fifth of UK retail sales were taking place online by the end of last year.⁴⁴

UK weekly retail spending online, 2007 to 2017



Source: ONS Retail Sales Index: internet sales

92. Consumers experience many ‘free’ online services like search and social media that are, in effect, paid for through the data they provide and the advertising clicked through. Firms, and in particular digital platforms, use data to drive advertising revenues and better tailor products.

⁴⁰ BEIS, 2017, [‘Industrial Strategy: building a Britain fit for the future’](#)

⁴¹ DCMS, 2018, [‘Digital Charter’](#)

⁴² DCMS, 2017, [‘Internet Safety Strategy green paper’](#)

⁴³ DCMS, 2018, [‘Secure by Design report’](#)

⁴⁴ ONS, 22 March 2018, [‘Retail Sales Index internet sales’](#)

93. Data privacy and protection are well established consumer rights. The Government's Data Protection Bill will modernise our data protection laws, making them fit for a digital age and digital markets.⁴⁵ The provisions include new rights for consumers, giving them greater control over their data. For example, it will give consumers the right to request corrections and the 'right to be forgotten' will allow consumers to request erasure of their personal data from firms' databases. It will also strengthen the Information Commissioner's powers, including significantly increased sanctions for data breaches with fines of up to 4% of global turnover or £20 million, whichever is greater.
94. Whilst individuals have had the right to access the personal information that companies hold about them for some time, the UK's new data protection laws also introduce a new right to data portability, that allows people to have their personal data given to them or a third party of their choice in a commonly used machine-readable format.
95. This right to data portability will lay the groundwork for new tools and applications that could help consumers switch between services and so encourage competition and increase choice for consumers. As noted in Chapter 2, this could be particularly relevant in the regulated sectors, by significantly lowering the costs to consumers of searching and switching.

Data Portability: the right to move and use your personal data

Data portability is a new right introduced in the UK's forthcoming data protection legislation that gives consumers the ability to request the movement of their personal data between services and suppliers. This increased control offers consumers easier switching between services. It is an opportunity for the creation of innovative data-driven products and should ultimately lead to a more dynamic digital economy.

Examples of new services facilitated by data portability could include:

- easily transferring your playlists and listening history between streaming services
- exporting activity-tracking data from your smartphone to help your doctor review your exercise levels and suggest personalised fitness plans
- moving your listings for things like home rentals between sites to make sure they reach the biggest audience possible
- making joining new social networks easier by quickly moving your personal data from existing services

96. However, whilst the regulation requires data requested through the data portability right to be provided in a 'commonly used format,' it does not guarantee standardised formatting of the data for ease of use by a consumer or another business. Also, organisations that receive a request under the data portability right have a month to respond which may delay switching between services. The right only applies to

⁴⁵ ['Data Protection Bill 2017-19'](#)

personal data collected under certain circumstances: data captured automatically; explicitly provided by individuals (e.g. when filling out a form on a website); or generated as part of an individual's activity (such as smart meter data). This may limit the impact of the right across online sectors.

97. To take full advantage of this new right and make data portability a reality for consumers in other markets, the Government has commissioned research to understand how greater portability could make a real difference to competition and to engage with business to understand what actions are needed to deliver these benefits.

Consultation Question

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| 6. | How can the Government support consumers and businesses to fully realise the benefits of data portability across the digital economy? |
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Increasing secure and responsible access to data for business innovation

98. Innovative businesses drive competition in digital markets and create exciting new consumer products. The availability of data is crucial for such businesses and the continuing development of artificial intelligence which needs data to develop and code algorithms.
99. The Government is committed to driving the open data agenda further through the release of more public datasets in machine-readable formats and under the Open Government License. We are rapidly progressing work on opening up geospatial data in line with our Manifesto commitment and the commitment made at the Autumn Budget in 2017 to open the Ordnance Survey MasterMap data by May this year.
100. Opening up data has already facilitated new products and innovations. For example, Transport for London (TfL) makes its data available to third parties and developers to deliver new products, apps and services for consumers. Over 11,000 developers have registered for this open data that powers over 600 travel apps in the UK, with over 46% of Londoners using apps powered by TfL data. This enables millions of journeys in London each day, giving consumers the right information at the right time through their channel of choice.
101. Many other types of data are sensitive for commercial or intellectual property reasons, or because they incorporate personal information. For personally identifiable data there is a need for secure access and protections from use without consent, while ensuring that anonymised and pseudonymised data can be used for research. The Government is exploring the establishment of Data Trusts and other innovative approaches to fair, safe and equitable data sharing between parties. As part of the Life Sciences Sector Deal, the Government will be working to develop regional Digital Innovation Hubs which

support the use of data for research purposes within the legal framework and meet the strict parameters for sharing data and the security standards set out by the National Data Guardian.

102. Personal data especially needs to be used lawfully and ethically. Consumers must have trust and confidence in the use of their data if we are to maximise the benefits that comes from innovation in consumer markets. The UK already has strong data protection laws and we are in the process of modernising these, making them fit for digital markets. We must make sure these laws stay robust and relevant in the face of constant technological and societal change.
103. We must continue to ensure that the right balance is struck between strong data protection laws and realising the pro-competitive effects of opening up data. We are conscious of the risk that improperly designed data protection laws could limit competition and constrain innovation if they skew access to personal data towards the established platforms. We will continue to be mindful though that privacy rights and safeguards around the use of personal data must be maintained.

Consultation Question

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| 7. | As technology continues to develop, how do we maintain the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights? |
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Maximising choice and innovation in the Internet of Things

The Internet of Things – everyday devices connected to the internet – has opened a wealth of new possibilities for the consumer. Many new and established technology firms are competing to offer new products that support consumers in their lives and homes.

There is, however, concern that the market may not remain as competitive in the future. The Internet of Things could aggravate consumer lock-in if buying a smart product from one platform ties the consumer to that platform's system and it is incompatible with other platforms and products. In this scenario, it could be difficult for competing systems or component providers to enter the market, hindering innovation and consumer choice.

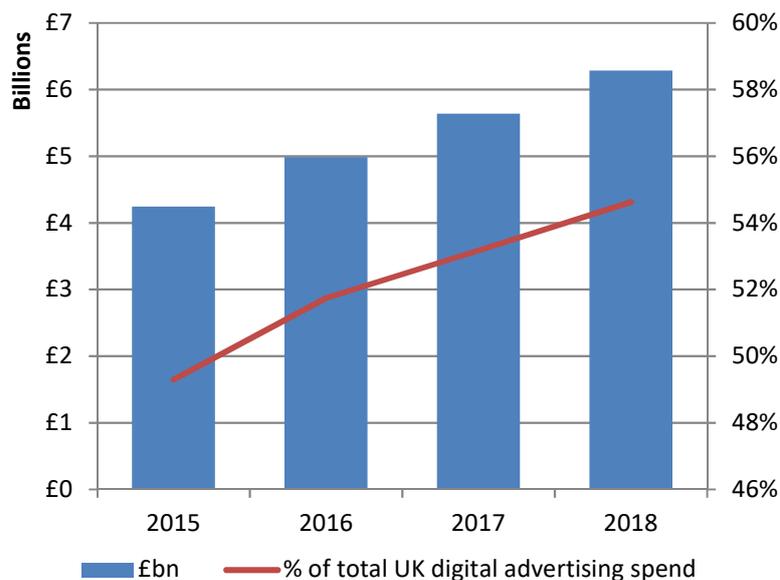
The Government is consulting on proposals to set standards for smart appliances based on the principles of: interoperability; data privacy; grid-stability; and cyber-security.⁴⁶

⁴⁶ BEIS, 2018, ['Proposals regarding setting standards for smart appliances'](#)

Effective competition enforcement

104. As digital markets become increasingly central to consumers' lives we need to ensure that we have the right tools in place to promote effective competition in these markets. Digital technologies and innovative services (which are often free-to-use) pose unique challenges to our existing competition frameworks. After we exit the EU, we will gain a greater ability to adapt our competition framework and rules to address these challenges.
105. Digital platforms provide much of the infrastructure on which consumers and business interact. They act as intermediaries to bring together sellers and buyers, increasing consumer choice and have helped reduce the prices consumers pay. They take many forms – social platforms, search engines, knowledge sharing platforms, marketplaces, crowd-sourcing platforms, and media platforms, to name a few. Typically, these markets are highly dynamic and innovative. The value of a platform's service increases with the number of users it has (known as network effects). This means that there naturally tend to be only a small number of firms in platform markets.

Digital advertising revenues of the two largest online platforms in the UK



Source: eMarketer, Worldwide Ad Spending.

106. In general, having a small number of firms in a market need not lead to consumer harm. We often see fierce competition amongst firms to become the market leader and to maintain their position, and we have previously seen examples of incumbent firms being replaced by new entrants. This form of competition can effectively achieve good, innovative outcomes for consumers, but it is difficult to predict and can be undermined if large firms acquire their small rivals before they have the chance to enter the market fully. If firms have sustained market power over long periods, this could lead to costs to consumers and business if this is not effectively managed for their benefit.

107. The Competition and Markets Authority (CMA) is the independent body which has been given powers by Parliament to make sure that competition works across the economy. Our competition tools are designed to be sufficiently flexible to tackle competition problems across the economy, whilst also not stifling fast-changing technologies and innovations.
108. The CMA has powers to investigate mergers which could limit competition. It can conduct market studies and enforce consumer protection legislation. It can investigate a firm abusing its dominant position, as well as investigate cartels and other anti-competitive agreements.
109. Whilst the CMA's tools are very flexible, platforms operating in digital markets pose challenges to the established techniques for assessing competition in markets. For example, using merger control where large tech firms buy small, innovative rivals (or firms in closely related markets) may be challenging given the need to assess how the market might develop. Alternatively, to prove that a firm has abused its dominant position is a high legal bar to meet and doing so can lead to a lengthy process. Understanding where harm arises is also difficult with firms that operate across many markets and provide bundled or tied services.
110. The traditional concept of ineffective competition leading to consumer harm from increased prices, does not easily apply in markets where consumers receive 'free' services in exchange for their data. Digitally based platforms are becoming much better at capturing users' attention to gather data and make ever better predictions of what consumers want to buy and their behaviour. We need to find ways of ensuring that these techniques are being used to benefit consumers.
111. The use of algorithms by firms is a new challenge for competition law enforcement. For example, firms are increasingly using algorithms to track and adjust prices, and this could facilitate collusion and undermine the benefits of price competition, potentially without anyone in the firm being aware.⁴⁷ The CMA is at the forefront of work in this area, working closely with international counterparts. In 2016, the CMA imposed fines for an agreement between two competing sellers on an online platform who had used automated repricing software not to undercut each other's prices.⁴⁸
112. The CMA has a well-established digital forensics unit and is currently establishing a new specialist digital, data and technology team, to improve understanding of issues raised by data and the digital economy, and to tackle the challenges from big data.

⁴⁷ Half of retailers track competitors' prices online; 67% of these use automatic software to do this; and 78% of that group subsequently adjust their own prices. See, for example, [OECD roundtables](#), work by [Ezrachi and Stucke](#) and the European Commission [preliminary report](#) on its e-commerce sector inquiry.

⁴⁸ CMA, 2016, '[Online seller admits breaking competition law](#)'

113. We will review the use of the UK's powers in the context of digital markets as part of our competition law review to make sure the powers are effective in responding to the new digital challenges.

Consultation Question

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

Consumer confidence in digital markets

114. UK consumers are some of the most confident when using digital markets: 88% of UK shoppers are confident buying goods or services online, the highest across Europe.⁴⁹ We want to build on this strength to create a broad and justified base of trust in digital markets and where necessary our consumer protections should evolve to meet consumer needs in new online environments.

Ensuring clarity and confidence in online transactions

115. The digital economy has changed the way we purchase goods and services. Online marketplaces have facilitated individuals to buy and sell a diverse range of goods and services. The rise of the sharing economy has created opportunities for more peer-to-peer connections. Both trends have led to a substantial increase in the volume of consumer-to-consumer transactions. The sharing economy, for example, facilitated £7.4bn of transactions in the UK in 2015, up from £2.1bn in 2013.⁵⁰

Connecting consumers-to-consumers in future sectors

Digital technologies will create new ways for consumers to connect and trade with other consumers across a range of sectors:

- Peer-to-peer lending: the UK is leading the way in peer-to-peer lending with the UK peer-to-peer market representing 80% of Europe's alternative finance market.⁵¹ The Fintech sector, regulated by the Financial Conduct Authority, is competing with traditional financial services providers to offer innovative, attractive and flexible investment and borrowing opportunities for consumers
- Autonomous fleets for ride sharing: connected and autonomous vehicles incorporate a range of different technologies, facilitating the safe and efficient movement of people and goods. Ride-sharing in autonomous vehicles could optimise efficient road use and decrease congestion

⁴⁹ European Commission, 2017, '[Consumer Conditions Scoreboard](#)'

⁵⁰ PwC, 2016, '[Outlook for the sharing economy](#)'

⁵¹ PwC, 2016, '[Outlook for the sharing economy](#)'

- Peer-to-peer energy trading: artificial intelligence and data analytics technologies can enable the more efficient use of energy and resources. For example, peer-to-peer energy trading could in the future allow consumers to buy renewable energy directly from other consumers. BEIS's Energy Entrepreneurs Fund is supporting such innovative technologies and processes and contributes to our Clean Growth Challenge which aims to maximise the advantages for the UK industry from the global shift to clean growth

116. The UK has the one of the world's strongest consumer protection regimes, with recently modernised and comprehensive basic rights. Consumers buying goods and services from traders online have the same strong rights (or stronger) as they do offline, but consumers have fewer rights when buying from other consumers.⁵² The law that can be applied to consumer-to-consumer transactions (such as the Sale of Goods Act 1979 and the Misrepresentation Act 1967) dates back several decades, long before the volume and nature of consumer-to-consumer transactions was transformed by platform marketplaces.
117. For example, goods supplied by traders to consumers must be of satisfactory quality and the Consumer Rights Act 2015 has clear remedies if they are not. By contrast, goods supplied by consumer sellers to any buyer must be as described but there is no requirement for them to be of satisfactory quality. Similarly, services provided by a trader to a consumer must be provided with reasonable care and skill, but there are no quality requirements in the legislation which applies to services provided by a consumer seller.
118. Consumers may not be aware of the difference in their rights and may not always be clear whether they are transacting with a business or an individual, nor the responsibilities/liabilities of the platform if something goes wrong.
119. Several platforms offer their own guarantees, such as extended returns policies, pre-screening and verification of sellers, and by offering compensation for poorly performed services. Voluntary industry codes have emerged to help instil confidence in platforms.⁵³ Feedback systems are now a ubiquitous sight on platforms as a tool to signal trustworthiness and what good quality looks like so as to help consumers make good choices. These metrics help to facilitate effective competition within platforms, with traders punished or rewarded depending on the quality of their offer. We see these as positive market developments, but they may not be sufficient to protect consumers and promote confidence in consumer-to-consumer transactions.

⁵² Consumers are individuals acting for a purpose wholly or mainly outside their trade, business, craft or profession.

⁵³ For example, Sharing Economy UK has developed a [TrustSeal kitemark for platforms](#).

120. We want to ensure that our legal framework is the right one for the future, to support consumer-to-consumer transactions, and other forms of disintermediation in which consumers buy from other consumers.

Consultation Question

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| 9. | Is the legal framework that covers consumer-to-consumer transactions appropriate to promote consumer confidence? |
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Fair use of consumer data

121. Varying prices based on consumer characteristics is commonplace in many markets and can lead to lower prices for some consumers. For example, student or loyalty card discounts can lead to more people being able to buy more goods than they would otherwise do. Risk-based pricing based on consumer characteristics is a fundamental aspect of insurance markets.
122. Compared with many offline markets, firms online can access and analyse substantially more consumer data, such as search history, making it easier to personalise prices and search. Consumer data may be used by firms to personalise consumers' experience online, so that consumers are shown different prices for the same product, or personalised search results. This could save consumers time by directing them to well-matched products, as well as saving them money if discounts are offered.

Case study: personalisation online

Consumers may be offered different prices based on a range of different factors such as their geographical location, browsing history, and operating system. For example:

- Consumer A has a rich browsing history that reveals information about his purchasing behaviour and preferences. Consumer B has just cleared her cookies, so has no browsing history. Both consumers conduct an identical search for hotel rooms on an online platform. The first page of hotel results shown to each consumer is different because of their different search history.
- Whilst browsing an online clothing site, Consumer C puts an item in her basket but then leaves the site and doesn't make the purchase. The next day, Consumer C receives an email with a unique 15% discount code, sent to encourage her to complete the purchase.

123. Emerging research suggests that the practice of personalising prices and search results may be relatively common.⁵⁴ However, firms rarely make it clear to consumers

⁵⁴ A U.S. study found evidence of personalised pricing on 9 out of 16 e-commerce sites investigated and personalised search on travel bookings sites and ticket sellers. Source: Hannak and others, 2014, [Measuring](#)

when prices or search results are being personalised based on consumer data. A recent survey found that at least one in ten UK consumers is unaware that personalisation takes place online.⁵⁵

124. Surveyed consumers perceive personalisation to be unfair: 78% of UK internet users who were surveyed think that online platforms should be regulated to limit the extent that search results are personalised using consumer data.⁵⁶ Regulations do prevent different prices being charged in some instances. In 2012, new EU regulation was brought in that banned insurers from using gender as a factor in pricing insurance products.⁵⁷ A recent EU decision on geo-blocking stipulates that EU sellers can no longer charge customers in different EU countries different prices based on where they are located.⁵⁸
125. We think further work is needed in this area to better understand the impacts of personalisation. We welcome the CMA's timely investigation into the online hotel booking market which is examining how search results are ranked and presented to consumers (see box below).⁵⁹ More broadly, the new Centre for Data Ethics and Innovation will seek to ensure that our governance, rules and regulations consider public concerns around data driven technologies, and address businesses' needs for greater clarity and certainty around data use.
126. We welcome views and experiences of personalisation of prices and search results to inform our future work.

Consultation Question

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

[price discrimination and steering on e-commerce web sites](#), Proceedings of the 2014 conference on internet measurement conference.

⁵⁵ European Commission, 2016 '[Special Eurobarometer 447](#)'

⁵⁶ European Commission, 2016, '[Special Eurobarometer 447](#)'

⁵⁷ European Commission, 2012, '[Factsheet: EU rules on gender-neutral pricing in insurance](#)'

⁵⁸ European Commission, 2018, '[Geo-blocking: unlocking e-commerce in the EU](#)'

⁵⁹ CMA, 2017, '[Online hotel booking](#)'

Are online hotel firms taking advantage of consumer behavioural biases?

In 2017 the CMA launched an investigation into the online hotel booking market as a number of practices have emerged that may confuse consumers and limit good decision making, by taking advantage of consumers' behavioural biases.

The investigation will examine:

- how search results are ranked and presented to consumers, and whether commissions influence results
- whether discount claims or reference prices presented are genuine and give a fair comparison for customers
- drip pricing, where consumers are surprised by additional taxes, fees and charges later on in the booking process, potentially making it difficult for consumers to compare prices across sites
- pressure selling techniques including scarcity claims, such as 'only four rooms left at this price' which may not be accurate and may rush consumers into making a bad decision.

Informed consent to terms and conditions and privacy notices

127. Now that consumers' data is commonly being collected by online companies in exchange for 'free' goods and services, consumers need to understand what they have agreed to when accepting a contract or privacy notice. The UK's new data protection laws will require consumers to 'opt in' to clearly presented privacy policies when handing over personal data.
128. We know that consumers rarely read terms and conditions when they enter into a contract. Websites' click-through data finds that fewer than 1% of shoppers open the terms associated with a retail purchase.⁶⁰ Uninformed consent exposes consumers to the risk of being caught out and one in ten consumers has experienced regret in the past 12 months for not reading terms and conditions.⁶¹
129. The way that terms and conditions are presented can make a real difference to consumer comprehension. Consumers are more likely to read and understand terms and conditions if they are shortened and simplified.⁶² A new study, completed by the Money Advice Service and Behavioural Insights Team's 'Financial Capability Lab', found that changing the presentation format of a credit card application webpage could almost double comprehension of key terms such as the charges associated with using the card.

⁶⁰ Bakos, Y, Marotta-Wurgler, F, Trossen, DR, 2009, '[Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts](#)', Journal of Legal Studies 43(1)

⁶¹ European Commission, 2016, '[Consumers' attitudes to Terms and Conditions \(T&Cs\)](#)'

⁶² European Commission, 2016, '[Consumers' attitudes to Terms and Conditions \(T&Cs\)](#)'

130. The Behavioural Insights Team will produce a concise, good practice guide for business on presenting terms and conditions and privacy notices online. The guide will be developed following a series of lab-based randomised control trials to test which forms of communication consumers find most comprehensible. Behavioural science techniques will be used to design the presentation formats and generate robust, widely-applicable results.
131. Responsible businesses already take steps to highlight key facts to consumers and avoid confusing them with tick boxes that require them to opt-out of unwanted services. They should also regularly test whether their terms and conditions are intelligible to consumers as it should be in their interests for customers to understand the key facts about the products they are buying. We are interested in your views on whether comprehension testing could also encourage best practice in presenting terms and conditions to consumers.

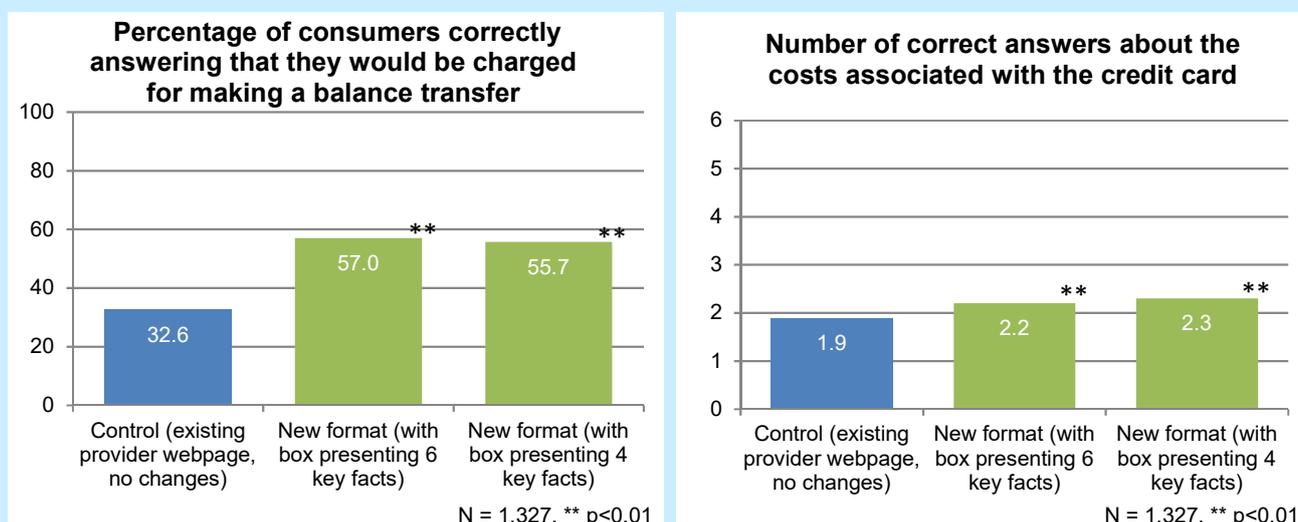
Consultation Question

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

Helping consumers understand terms and conditions using behavioural testing

Participants in the study were randomly assigned to see one of three webpages advertising balance transfer credit cards. One of the websites was based on an example of a current provider's website. The other two were optimised using behavioural science techniques centred around salience and simplification, such as representing costs as pound values rather than percentages, and telling participants that it would take less than two minutes to read the terms.

Participants were then asked a series of multiple choice questions about the information they had seen. Changing presentation improved levels of comprehension of key pieces of information, from very low base levels. This work demonstrates how firms can redesign the presentation of information to significantly increase comprehension of key terms.



This study forms part of the Money Advice Service and Behavioural Insights Team's 'Financial Capability Lab'. The Lab uses experiments to test a range of new ideas to tackle some of the UK's most common money management challenges.

Preventing use of unfair terms

132. Research found that, on average, one in seven businesses are using at least five practices where care needs to be taken to avoid using unfair terms. These include terms about deposits or advance payments, cancellation charges, limitations on business liability and asking customers to agree to privacy rules or data use.⁶³ However, business familiarity with the law at present is low, with 54% of businesses saying they did not know the law on unfair terms well or had never heard of them.
133. The CMA is therefore working with sector regulators, trade bodies and trading standards to improve business compliance so as to minimise use of unfair terms in consumer markets. They have produced videos and short guides on key areas of

⁶³ IFF, 2016, '[Unfair Contract Terms Research](#)'

contention and will develop further sector-specific guidance to build on their market studies and enforcement work.⁶⁴

134. To strengthen enforcement powers against firms that deliberately flout the law in this area, the Government intends to introduce legislation for civil fining powers. These are covered in more detail in Chapter 4.

Enforcement Action on Unfair Terms

The CMA has taken the following recent enforcement action against unfair terms:

- a leading UK care home provider has dropped its policy of charging fees after a resident has died⁶⁵
- several online gambling sites are changing how they offer bonus promotions to customers paying online⁶⁶
- car hire firms to provide full costs upfront after CMA action⁶⁷

The CMA has also launched enforcement action against several online gambling firms for practices that may place unfair obstacles in the way of people withdrawing their money.

Subscriptions

135. Subscriptions are increasingly common online and many consumers find a subscription service a convenient way of paying for goods or services. However, many consumers who take up free trial end up inadvertently paying for unwanted services. A recent study, based on a natural experiment, found that 99.8% of consumers ended a subscription when cancellation was set as the default, but fewer than 40% did if the default required active cancellation.⁶⁸
136. An EU-wide market study in 2016 found that half of the free trials and subscriptions advertised online contained as many as five problematic practices. Common problems were unclear terms and conditions and misleading information and 34% of those surveyed reported problems unsubscribing from an unwanted service.
137. The Consumer Protection Partnership has undertaken work to develop an understanding of the various subscription models affecting UK consumers and the key elements underpinning them. It has produced business guidance and raised consumer awareness at national and local level, including through National Consumer Week in November 2017. We want them to build on this work to tackle subscription traps.

⁶⁴ CMA, 2015, [Guidance on unfair contract terms](#)’ and CMA, 2016 [‘Unfair terms explained for businesses: individual guides](#)’

⁶⁵ CMA, 2017, [‘Care homes: consumer protection case](#)’

⁶⁶ CMA, 2018, [‘Further online gambling firm provide undertakings to CMA](#)’

⁶⁷ CMA, 2018, [‘Car hire sites to provide full costs upfront after CMA action](#)’

⁶⁸ Letzler and others, 2017, [‘Knowing When to Quit: Default Choices, Demographics and Fraud](#)’, Economic Journal, volume 127, issue 607

138. We have asked the Consumer Protection Partnership to work with traders, consumer groups, regulators and the financial sector, to assess the outcomes of work to date and to recommend any further actions needed to prevent consumers being charged unexpectedly, to make it easier for consumers to cancel unwanted subscriptions (including free trial subscriptions) and avoid them facing unreasonable charges. This work will consider the range of potential options including explicit nudges, removing automatic opt-ins for paid for services, targeted enforcement, or regulatory action.

Chapter 4 - Improving enforcement of consumer rights

To ensure consumers can easily get redress when things go wrong and that consumer rights are effectively enforced

We are seeking views on:

- how we can improve consumers' awareness of alternative dispute resolution and their experience of the process
- how to improve consumer access to alternative dispute resolution
- how to support local and national enforcers to work together to protect consumers

We will also give civil courts the power to impose financial penalties on companies for breaches of consumer law.

Overview

139. Creating a business environment where businesses respect consumer rights is essential to ensuring markets work well for all. Vigorous enforcement of consumer rights benefits businesses by creating a level playing field, ensuring that those who obey the law aren't disadvantaged and helping to avoid a 'race to the bottom' in standards. This chapter considers how to ensure disputes are minimised and resolved quickly and cheaply and explores the challenges facing public enforcement to protect the collective interests of consumers.
140. UK consumer rights are stronger than in many other EU countries and compliance with the law is considered high - 84% of consumers think traders respect their rights (the joint highest percent in EU) while 79% of traders think their competitors comply with consumer law (the highest in the EU).⁶⁹ We also have excellent consumer advice organisations such as Citizens Advice and Resolver that can guide consumers in pursuing a complaint and provide data which reveals patterns of behaviour that may require a public enforcement response. This suggests that for the majority of consumers, the current framework works well most of the time. However, for those who experience a problem, getting satisfactory resolution can sometimes be difficult. The Government wants to ensure that all businesses treat customers fairly and resolve any problems quickly. This is important not only for the individual consumers concerned but for business performance more broadly, as consumer feedback plays an important role in sanctioning poor behaviour.

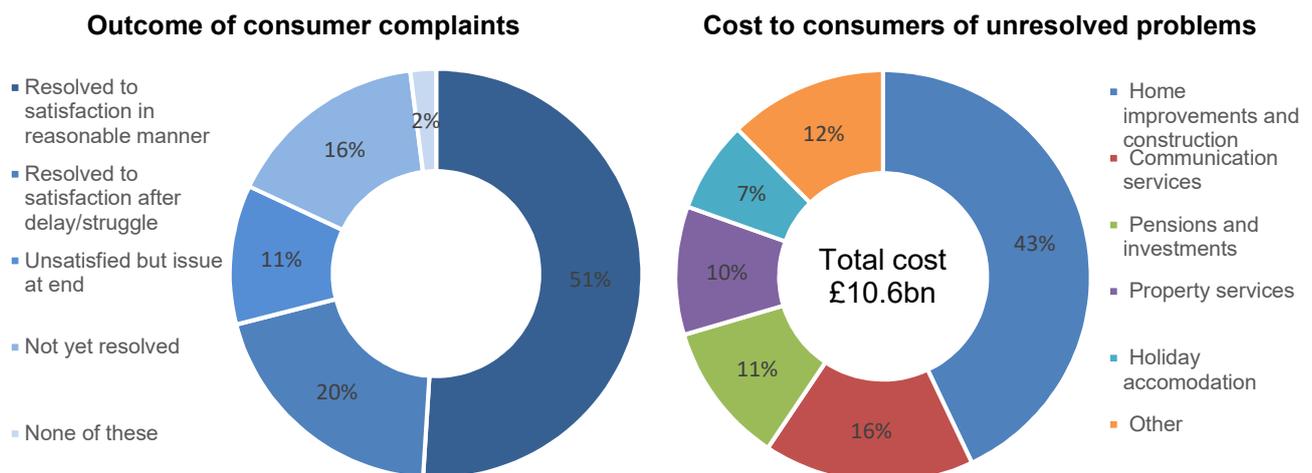
⁶⁹ European Commission, 2015, [Flash Eurobarometer 397](#) and [Eurobarometer 396](#)

The current enforcement landscape

- The Citizens Advice Consumer Service delivers general consumer advice and in sectors where there is specific protection there is additional advice available.
- Local authority Trading Standards carry out most general consumer enforcement and have 75% of enforcement resources.⁷⁰
- National Trading Standards (NTS) and Trading Standards Scotland (TSS) coordinate Trading Standards' response to issues which affect consumers and businesses regionally and nationally. They have no enforcement powers but provide leadership, influence and support, including funding for local authority actions in priority cases.
- The Competition and Markets Authority is responsible for identifying and tackling market-wide practices which erode consumer trust and affect competition. They have consumer and competition enforcement powers.
- The sector regulators also have broad consumer law enforcement powers.
- The Consumer Protection Partnership brings together key consumer bodies to identify, prioritise and take action to address key threats and risks to consumers.

Supporting consumers to pursue their complaints

141. Thirty five per cent of consumers experienced at least one consumer problem in 2015, but only half of those who pursued a complaint resolved their problem satisfactorily and in a reasonable manner.⁷¹ It is also concerning that tens of thousands of consumers ultimately have to go to court and that, of those that responded to our survey, 47% of them are there because the business has refused to participate in a cheaper, quicker alternative dispute resolution process.⁷² Many consumers lack the confidence or capability to use the courts and may be forced to abandon a legitimate complaint.



Source: Citizens Advice, 2016, 'Consumer detriment: counting the cost of consumer problems'

⁷⁰ National Audit Office, 2016, '[Protecting Consumers from scams, unfair trading and unsafe goods](#)'

⁷¹ Citizens Advice, 2016, '[Consumer detriment: counting the cost of consumer problems](#)'

⁷² BEIS, 2018, '[Resolving Consumer Disputes: Alternative Dispute Resolution and the Court System](#)'

142. We want to make it easier and quicker for consumers to obtain redress when things go wrong across all sectors. We are therefore seeking views on how to make alternative dispute resolution more accessible and simpler for consumers. We would also like to see alternative dispute resolution providers take a greater role in working with businesses and regulators to improve customer service and tackle common problems.

The role of alternative dispute resolution

143. Alternative dispute resolution is a process that enables disputes between a consumer and business to be settled by an independent mechanism outside the court system that is generally funded by business and free to the consumer. Over two million consumer disputes have been resolved through alternative dispute resolution in the past five years.⁷³ BEIS research shows that eight in ten consumers who used alternative dispute resolution say their problem would not have been resolved without it.⁷⁴

Forms of dispute resolution

The UK has a well-established alternative dispute resolution landscape with a number of statutory and private providers of alternative dispute resolution. Consumers have a right to take a dispute to alternative dispute resolution in many regulated sectors, such as financial services (Financial Ombudsman), energy (Energy Ombudsman), telecoms (Ombudsman Services: Communications, and the Communications and Internet Services Adjudication Scheme), estate agents (Property Ombudsman, Property Redress Scheme and Ombudsman Services: Property),⁷⁵ water (Water Redress Scheme) and regulated legal services, (Legal Ombudsman and Scottish Legal Complaints Commission).

In the non-regulated sectors, use of alternative dispute resolution is voluntary. The Chartered Trading Standards Institute has approved 30 alternative dispute resolution providers in the non-regulated sectors.

All alternative dispute resolution providers are independent third parties who provide dispute resolution to remedy a complaint between a consumer and trader. It can take several forms from mediation or conciliation to binding arbitration. Several new private sector businesses offer alternative dispute resolution in both the regulated and non-regulated sectors.

Ombudsman schemes are a form of alternative dispute resolution and some are established by legislation. Non-statutory ombudsmen must be certified alternative dispute resolution providers and hold ombudsman-level membership of the Ombudsman Association. Statutory ombudsmen typically have binding powers to enforce their decisions. Ombudsmen generally have a wider role beyond solving disputes, as they support consumers, provide advice to

⁷³ BEIS analysis of data provided by alternative dispute resolution providers

⁷⁴ BEIS, 2018, '[Resolving Consumer Disputes: Alternative Dispute Resolution and the Court System](#)'

⁷⁵ As announced on 6 February 2018, Ombudsman Services will withdraw from handling complaints in the property sector from 6 August 2018.

businesses and share information with regulators and consumer organisations to highlight systemic issues in a sector.

How alternative dispute resolution is helping consumers

In 2016/17, the Financial Ombudsman Service answered nearly 1.4 million enquiries from consumers, helping resolve often complex and technical complaints ranging from mortgage and banking errors to problems with insurers and pension difficulties.

Set up in 1992, the Furniture Ombudsman has been helping consumers seek redress and resolve complaints across a wide range of issues from faulty furniture such as sofas and dining tables to badly fitted kitchens. In 2016, the Furniture Ombudsman accepted 5,903 complaints on behalf of consumers.

Consumers also benefit through the direct involvement of businesses in alternative dispute resolution, for example, through skills training and support on changes in the law that help business better serve their customers. Engaging in alternative dispute resolution allows businesses to demonstrate that they are serious about providing good service; giving consumers confidence to engage in the knowledge that independent support is available if things go wrong.

144. The Government carried out a call for evidence on alternative dispute resolution in 2016 and is publishing independent research into the effectiveness of alternative dispute resolution alongside this Green Paper.⁷⁶ Citizens Advice and MoneySavingExpert have also reviewed the consumer experience of alternative dispute resolution.⁷⁷ The research suggests that the system of alternative dispute resolution could be more effective.
145. First, in non-regulated markets where participation is voluntary for businesses, take-up has been low. The Consumer Ombudsman, which offers its service in sectors where participation in alternative dispute resolution is voluntary, received 5,600 complaints in 2017, but businesses agreed to participate in only 6% of cases.⁷⁸
146. In some of these sectors where participation is not mandatory, both the volume and the value of disputes are high (see figure below). For example, the Consumer Ombudsman reports that vehicle sales and home improvements are two of the top three markets where they receive most complaints. The average complaint value for vehicle sales was £1,400 (the highest was £17,000), while the average complaint value for home improvements was £2,000 (highest was £20,000).⁷⁹

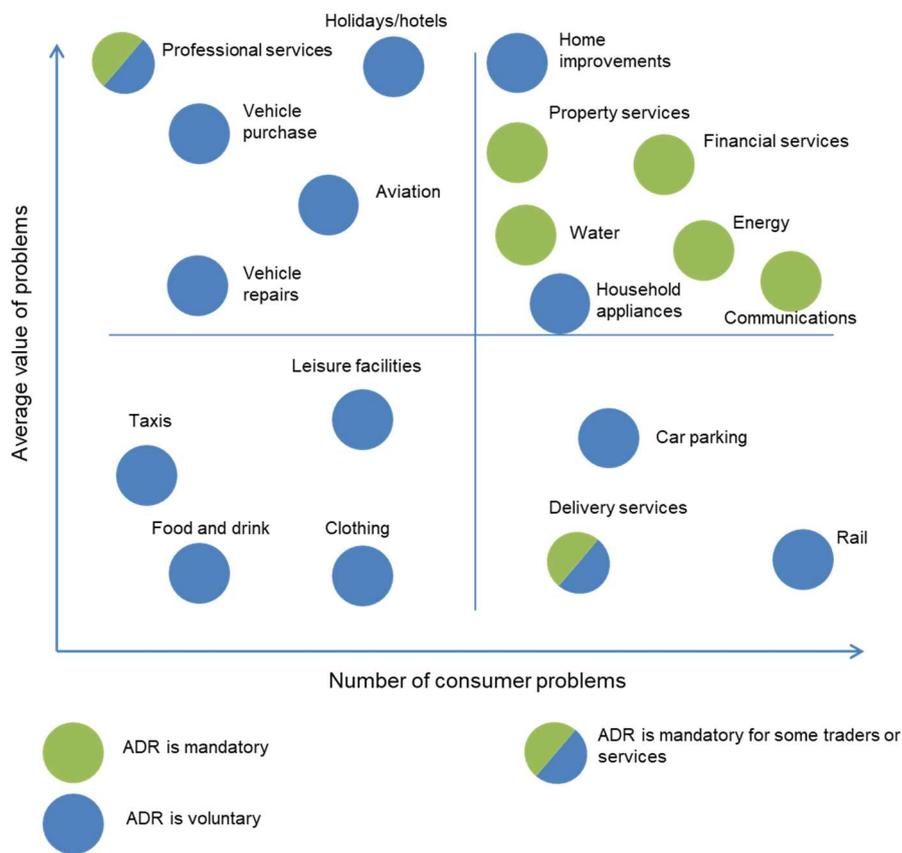
⁷⁶ BEIS, 2018, '[Resolving Consumer Disputes: 'Alternative Dispute Resolution and the Court System'](#)'

⁷⁷ Citizens Advice, 2016, '[Understanding Consumer Experiences of Complaint Handling](#)' and MoneySavingExpert, 2017, '[Sharper teeth: the consumer need for ombudsman reform](#)'

⁷⁸ Data provided by Ombudsman Services

⁷⁹ Ibid

Availability of ADR in consumer markets⁸⁰



147. Second, even where alternative dispute resolution is available many consumers do not benefit from it. Citizens Advice found that only 28% of consumers who had experienced a problem in regulated sectors were aware of alternative dispute resolution.⁸¹ Which? found significant variation within this figure – 59% of consumers were aware of the Financial Ombudsman Service, but only 20% had heard of Ombudsman Services: Communications.⁸² Outside the regulated markets, some 84% of consumers have not heard the term ‘alternative dispute resolution’ and so are unlikely to check whether this option is available to them.⁸³
148. The evidence also suggests that consumers who use alternative dispute resolution tend to be older, more educated, and earn more than the average adult.⁸⁴ We would like to understand what challenges other groups of consumers, particularly vulnerable

⁸⁰ The relative position of markets in this chart is based on data from Citizens Advice, 2016, [Consumer Detriment: Counting the cost of consumer problems](#). The chart is not to scale and does not attempt to present an accurate assessment of the absolute levels of detriment in each market. The property services market is comprised of estate agency, letting agents and property management. Data on private rental or leasehold problems were not captured in the Citizens Advice research and are therefore not included in this chart.

⁸¹ Citizens Advice, 2016, [‘Understanding Consumer Experiences of Complaint Handling’](#)

⁸² Which? response to Ofcom’s 2017 review of alternative dispute resolution schemes

⁸³ Citizens Advice, 2016, [‘Understanding Consumer Experiences of Complaint Handling’](#)

⁸⁴ BEIS, 2018, [‘Resolving Consumer Disputes: ‘Alternative Dispute Resolution and the Court System’](#)

groups, face when accessing alternative dispute resolution to ensure that it is an option for all consumers.

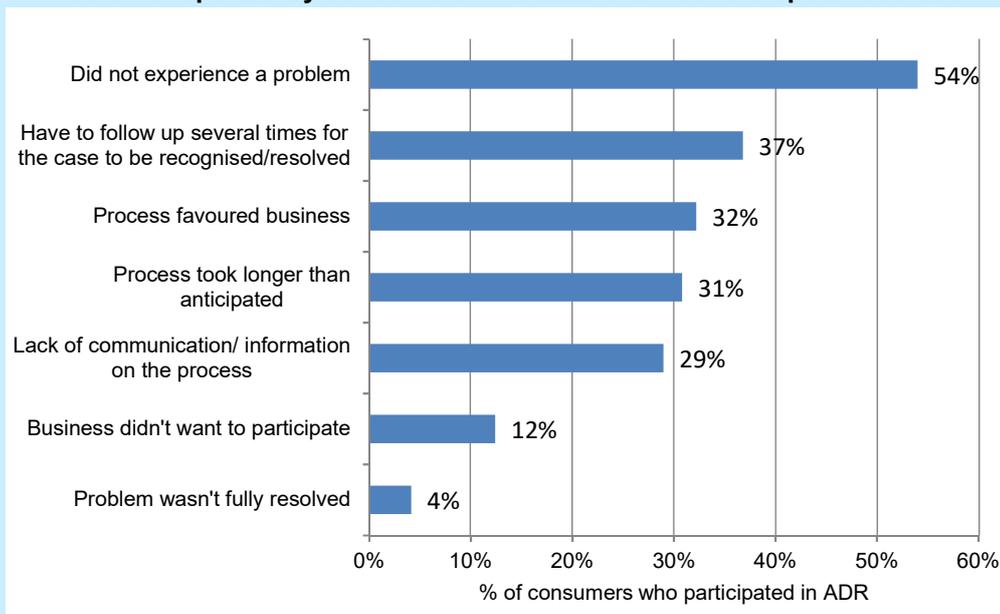
149. Third, responses to the Government's 2016 call for evidence and our own research suggest that further action is needed to improve the quality of service offered by alternative dispute resolution providers.⁸⁵

Problems with the quality of alternative dispute resolution

Independent research commissioned by BEIS⁸⁶ found that:

- 46% of consumers using alternative dispute resolution had problems including concerns over the time the process took, customer service or a perception that the process favoured the business.
- 54% of cases took longer to resolve than the three months allowed in the alternative dispute resolution Directive
- 16% of consumers who went to court did so because the business refused to comply with a previous alternative dispute resolution decision.

Problems reported by consumers who used alternative dispute resolution



Source: BEIS, 2018, 'Resolving Consumer Disputes: Alternative dispute resolution and the Court System'

150. Making a complaint requires significant effort from consumers and unnecessary frictions, complexity or delay in the process can deter them from pursuing it to a conclusion.⁸⁷ We want the steps in taking a complaint to alternative dispute resolution and the process itself to be as easy as possible for consumers.

151. Currently quality assurance is the responsibility of 'competent authorities,' which are required to accredit and monitor alternative dispute resolution providers. We want to

⁸⁵ GOV.UK, 2016, 'Helping Consumers Get a Better Deal'

⁸⁶ BEIS, 2018, '[Resolving Consumer Disputes: 'Alternative Dispute Resolution and the Court System'](#)'

⁸⁷ Behavioural Insights Team, 2014, '[EAST: Four simple ways to apply behavioural insights'](#)'

ensure that the quality assurance regime is working effectively and that it has the capability to monitor consumers' experience of alternative dispute resolution, the quality of decision making and drive improvements where necessary.

152. Some alternative dispute resolution providers and consumer representatives have questioned whether having more than one provider in a given sector is beneficial for consumers, suggesting that it could affect the quality of service provided as well as causing confusion to consumers.⁸⁸ The Government allowed for more than one provider in order to stimulate innovation and good value, giving businesses a choice of different types of dispute resolution at a range of costs. However, we would welcome your views on whether giving businesses a choice of provider is also beneficial to consumers.

Improving business take-up and added value of alternative dispute resolution

153. Some businesses gain benefits from using alternative dispute resolution providers that offer additional services, such as providing advice, guidance and qualitative data on systemic issues. For example, ombudsmen typically have a wider role in providing feedback to help enhance businesses' performance and help them to comply with the law. This could be a real benefit to businesses and potentially incentivise them to engage with alternative dispute resolution voluntarily. However, the extent and effectiveness of this activity varies between sectors and alternative dispute resolution providers. We would therefore like to explore how we can encourage alternative dispute resolution providers to expand these functions and establish effective relationships with businesses to maximise the impact of this work.
154. The Government is particularly keen to see a high rate of business participation in sectors where there are significant levels of consumer complaints. We are working closely with the rail industry, supported by the Office of Rail and Road, so that all train operating companies will refer cases to a rail dispute resolution service whose judgements will be binding.
155. We plan to explore the potential for extending this model of industry-wide agreement where existing complaints processes are not meeting consumers' needs. We are also currently consulting on strengthening redress across the housing market and will make it mandatory for private landlords to be part of a redress scheme, giving all tenants access to quick and easy dispute resolution over issues like repairs and maintenance. The Government does not believe it would be proportionate to make alternative dispute resolution mandatory in every sector due to the costs imposed upon business. However, we believe mandatory alternative dispute resolution should be considered for sectors in which there are high levels of high value complaints, such as second-hand

⁸⁸ Citizens Advice, 2017, '[Confusion, gaps and overlaps](#)' and MoneySavingExpert, 2017, '[Sharper teeth: the consumer need for ombudsman reform](#)'

cars and home improvements. This could incentivise quality of service and prevent consumers having to abandon legitimate complaints.

Actions we are taking to benefit consumers in the housing and rail sectors

Housing

Housing costs represent around 18% of household income for those with a mortgage and 34% for those who rent from the private sector, typically their largest single item of expenditure. The Government is committed to improving the consumer experience across the housing market.

Protecting tenants in the private rented sector

The Government is committed to rebalancing the relationship between tenants and landlords to deliver a fairer, good-quality, and more affordable private rented sector. Steps have already been taken to protect consumers including requiring all letting agents to belong to a Government approved redress scheme (since 2014), requiring letting agents to be transparent about their fees, and clarifying whether they belong to a client money protection scheme or redress scheme (under the Consumer Rights Act 2015).

We recognise that more can be done. Therefore, we are banning letting fees to tenants and capping tenancy deposits to protect tenants from unfair charges at the outset of the tenancy. We will insist that all landlords are members of a redress scheme so that tenants have quick and easy resolution to disputes and ensure that all letting agents are registered and are a member of a client money protection scheme so they meet strict minimum standards. We will require all letting agents, and managing agents in the leasehold sector, to register with an appropriate organisation and comply with an industry code of conduct. Finally, in April we introduced banning orders and a database of rogue landlords and agents, making it easier for local authorities to protect tenants.

Protecting leaseholders and freeholders

The Government is also committed to promoting fairness and transparency for both existing and future leaseholders. Measures set out in December 2017 included introducing legislation to prohibit the development of almost all new build leasehold houses and addressing loopholes in the law to improve transparency and fairness for leaseholders and freeholders.

Consumer redress in the housing sector

It is important that consumers have swift, effective routes to complain when things go wrong; that they know where to go and are clear about what they can expect. That is why we are consulting on options for strengthening and streamlining redress services in the housing sector including exploring the option of a single housing ombudsman service.

Improving the home buying and selling process

We are committed to making the home buying and selling process quicker, cheaper and less stressful. Following our call for evidence, on 8 April we set out an ambitious programme of

improvements which will deliver a better system. This includes establishing a technology working group to ensure the process is making the best use of new and emerging technology. We will professionalise estate agents and ensure any referral fees they receive are transparent to consumers. Other measures include developing and then encouraging the use of standardised reservation agreements to reduce the rate of failed transactions and fear of gazumping.

Rail

We have embarked on a significant programme of improvements to enhance consumers' experience. We are modernising ticketing by rolling out smart ticketing across the network and we have capped fare increases in line with inflation for regulated fares to protect consumers from market abuse.

We consulted in 2017 on proposals for an Accessibility Action Plan, which will inform an Inclusive Transport Strategy to be published later this year. The strategy will set out the Government's plans to improve accessibility for all passengers including those with reduced mobility.

We are also continuing our record levels of investment in the network, with a focus on improving train service reliability and punctuality, and better joining up track and train, to deliver a higher quality service to consumers. This includes a commitment to enable Network Rail to spend around £47.9bn over the period 2019-24, focused on the key passenger priority of a more reliable railway.

Consumer redress in the rail sector

We have introduced the right for rail passengers on some franchises to claim compensation if for delays of 15 minutes or more with a view to rolling this out to all franchises. We have approved changes to the National Rail Conditions of Travel to clarify passengers' rights to compensation under consumer law, specifically in relation to the Consumer Rights Act 2015.

Later this year, building on the important, valued work of the independent passenger watchdogs – Transport Focus and London Travelwatch - the rail industry, following discussions led by Government, is working to introduce a new and independent Rail Ombudsman to investigate and rule on customer complaints.

For the first time, passengers will have the opportunity to seek binding dispute resolution in cases where they are not happy with a train operator's response to their complaint. Key features of the scheme are that it will be easily accessible, simple to use, passenger focused and provide a quick, seamless one-stop-shop for passengers.

The scheme will focus on issues which are of real importance to passengers, including: delays or cancellations against the advertised timetable; the adequacy of information publicising rail improvement works; the accuracy and impartiality of ticket retailing; and the provision of assistance and access to advertised accessibility facilities.

Consultation Questions

12.	How can we improve consumer awareness and take-up of alternative dispute resolution?
13.	What model of alternative dispute resolution provision would deliver the best experience for consumers?
14.	How could we incentivise more businesses to participate in alternative dispute resolution?
15.	Should there be an automatic right for consumers to access alternative dispute resolution in sectors with the highest levels of consumer harm?

Strengthening our system of public enforcement

156. Public enforcement of consumer law is an essential element of consumers' trust in markets and also helps maintain effective competition, by ensuring a level playing field. This includes acting on the systemic and hidden detriment that individual consumers have neither the capacity nor incentive to address. It is the backstop to protect consumers in instances of collective harm, such as misleading claims, use of unfair terms, the sale of unsafe products and instances of fraud. Tackling such practices is also important to business because they are unfair trading practices and can sometimes undermine consumer confidence in an entire sector.
157. The enforcement challenge has changed over recent years as more consumers are shopping online and from national chains rather than locally. The National Audit Office (NAO) reviewed the consumer landscape in 2016 and estimated at least £4.2 billion of the total £15 billion of consumer harm they found arose from activities, such as mass marketing scams, and the sale of fake and counterfeit goods, which require nationally coordinated enforcement.⁸⁹
158. However, the balance of responsibility and accountability in consumer protection has not followed this trend. Local Authority Trading Standard departments are the primary enforcer of consumer law and have 75% of total resources.⁹⁰ Local Authorities fund these departments which prioritise enforcement in areas which support local objectives, such as discouraging anti-social behaviour and supporting older people.
159. National Trading Standards (NTS) and Trading Standards Scotland (TSS) were established in 2012 to improve local authorities' capacity to respond to the increased level of regionally and nationally important consumer detriment and this current system

⁸⁹ National Audit Office, 2016, ['Protecting Consumers from scams, unfair trading and unsafe goods'](#)

⁹⁰ Ibid

of public enforcement has had some notable successes. They provide a valuable means to share intelligence between authorities and so identify and prioritise cases for enforcement. Over the past three years, NTS has worked with local authorities to tackle £472 million in consumer and business detriment with a core budget of £40 million. The NAO found that NTS and TSS have significantly improved the process for escalating and tackling issues that are regionally or nationally important.⁹¹

Tackling national fraud across the country

One of the teams funded by National Trading Standards is the eCrime team, hosted by City of York Council and North Yorkshire County Council. Two of their recent successful prosecutions led to the following convictions:

- six people being sentenced to a total of more than 35 years in prison for defrauding UK consumers out of over £37 million. They operated a number of 'copycat websites' impersonating official government services to sell passports, driving licences and other key documents for vastly inflated prices
- a call centre trader who misled consumers by claiming to be from Microsoft and carrying out computer repairs. His victims, including vulnerable people, were duped into giving remote access to their computers and threatened with computer shut-down until payment was made

160. The system of public enforcement is under considerable pressure, however, and the NAO has also raised concerns about its sustainability.⁹² NTS and TSS do not have enforcement powers themselves and so rely on Local Trading Standards departments to take enforcement action, which they fund. However, the capacity of Local Authorities to take national cases has reduced. Two-thirds of English local authorities have reported not having the expertise to cover fully the range of statutory duties required of trading standards teams.⁹³ For example, only half of authorities now have specialist skills in e-crime, a national priority area.⁹⁴

161. It has become more challenging for NTS and TSS to pursue more complex enforcement cases such as online and economic fraud, product safety and use of unfair terms, and also riskier, particularly for complex cross-boundary enforcement cases. The incentives to take such cases are weak and there is no overarching framework of accountability to encourage local authorities to ensure consumers are protected. NTS and TSS are not currently public bodies and do not have statutory powers or duties to protect consumers or formal accountability to Parliament.

⁹¹ Ibid

⁹² Ibid

⁹³ National Audit Office, 2018, '[Financial sustainability of local authorities](#)'. Based on local authorities who responded to the CTSI Workforce survey 2018

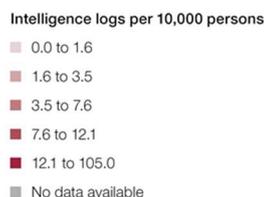
⁹⁴ Ibid

Priority areas for local trading standards services



Source: Workforce Survey 2017, Chartered Trading Standards Institute

Intelligence logs reported by local authorities, per head of population, 2015-16



Source: NAO, 2016, 'Protecting consumers from scams, unfair trading and unsafe goods'

162. In the area of product safety, the Government has acted to strengthen our enforcement regime. We now want to consider options to strengthen public enforcement in relation to scams, unfair trading and e-crime.

The Office for Product Safety and Standards

The new Office for Product Safety and Standards (OPSS) is a significant upgrade in the Government's approach to product safety in the UK. It will, for the first time, provide dedicated expertise to lead on national product safety challenges which will ensure that consumers receive a high level of protection from unsafe goods.

The Office will bring together information and evidence to inform the understanding of risks. It will provide leadership of the product safety system, bringing together technical and scientific support to coordinate and support the activities of local authority Trading Standards teams. It will work with businesses, trade associations and consumer and enforcement representatives to provide an enhanced product safety incident management capability.

The Office will publish its strategy for product safety shortly. Longer term, the Government will examine options for making the Office an independent body. This will be subject to further consideration and public consultation before any decisions are made.

Strengthening accountability for consumer protection

163. The Government is keen to ensure that our whole system of consumer protection provides a robust response to both local and national threats. We consider that a stronger system would be one in which there was a strong national body with statutory powers and duties that could provide leadership and specific expertise and lead complex national enforcement cases where necessary. As with the current model, it should have a close relationship with local authorities, drawing on their local

intelligence to prioritise and coordinate responses to national threats and ensure that a wider range of consumer problems such as misleading pricing and unfair terms are tackled at local and national level. Local authorities could continue to focus on issues principally affecting their own areas and would provide an important role in gathering local intelligence where traders operate locally and nationally. This would build on the good progress they have made over recent years in improving the collection and recording of intelligence, building an intelligence network and increasing their analytical capability.⁹⁵

164. Howsoever constituted, it is important that a strong system of consumer protection is established to assess consumer risks and ensure the most appropriate and cost-effective intervention is used to protect consumers, including guidance, business advice, regulatory self-assurance and other tools.
165. The Government is interested in your views on how to improve accountability for the enforcement of consumer law and strengthen our system of consumer protection while maintaining the benefits of the existing system.

Consultation Question

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| 16. | What changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers? |
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Strengthening the powers of consumer law enforcers

Public enforcers need appropriate tools to ensure respect for the law and react appropriately when the law is broken. Consumer law contains some criminal sanctions for the most flagrant abuses such as aggressive or misleading selling techniques but much consumer law, including the law on unfair terms, is a matter for the civil courts. Consumer law enforcers both locally and nationally have limited options to punish past behaviour and achieve rapid compliance in the civil courts.

The Government intends to introduce legislation to give civil courts the power to impose financial penalties on companies for breaches of consumer law. All consumer law enforcers, including the CMA and Trading Standards will be able to ask the courts to impose fines either as a standalone remedy, or in conjunction with the existing civil remedies such as injunctive relief, enforcement orders or enhanced consumer measures. The financial penalty will be subject to a total cap of 10% of a firm's worldwide turnover, in line with the limits for fines that can already be imposed in some of the regulated markets. We anticipate that the availability of

⁹⁵ National Audit Office, 2016, ['Protecting Consumers from scams, unfair trading and unsafe goods'](#)

this coercive power will discourage infringements and promote prompt swift compliance with the law when a breach has been identified.

Cross border enforcement

166. As consumers buy more products and services online from other countries, the issue of international cooperation on policy and enforcement has never been more important. While more than three-quarters of purchases by UK consumers are still made in shops and most online purchases are still from UK-based traders, it is important to recognise the increasing trend in cross-border, global purchases.
167. Given this context there are three key aims for the UK Government in the field of international consumer policy: we want to improve global standards of consumer protection; improve cross-border enforcement outcomes to protect UK consumers from harm; and ensure consumer views and protections are a key part of our negotiations for new Free Trade Agreements.
168. We are committed to working with stakeholders and all enforcement bodies to drive forward this strategy, helping the UK respond to emerging global consumer trends and staying ahead of the game to protect UK consumers and ensure a level playing field for businesses. The UK plays a leading role in the International Consumer Protection and Enforcement Network (ICPEN) influencing the international consumer enforcement agenda and developing products and services to ensure effective cross-border enforcement. The UK has also recently joined the OECD Consumer Bureau to strengthen its engagement in the OECD Committee on Consumer Policy. The Committee on Consumer Policy is addressing a broad range of consumer issues (particularly in digital markets) and helps public authorities enhance the development of effective consumer policies.
169. We are also committed to ensuring that high standards of consumer protection in the UK will be maintained after we leave the European Union. As already noted, some of these rights are already stronger than for consumers in other member states. For example, under the Consumer Rights Act 2015 UK consumers have a legal right, within 30 days of purchase, to reject goods that are of unsatisfactory quality, unfit for purpose or not as described, and get a full refund. This goes further than the protections in many other EU member states and the UK's withdrawal from membership of the EU will not affect rights such as these.
170. Through the European Union (Withdrawal) Bill we will implement measures to ensure that existing consumer protections provided through EU laws implemented in the UK will be maintained. This will mean that UK consumers buying within the UK, either online from a UK-based business or on the high street, will have exactly the same rights as now. The way consumer protections apply when buying across borders in future is a matter for negotiations. We will seek the best possible deal after we leave the EU. After our exit from the EU, our aim is that UK consumers can continue to buy

with confidence from traders in the EU and vice versa. It is in the UK and EU's interest for consumers to be protected from rogue traders when making cross border purchases.

171. We recognise that there are concerns about the future arrangements for cooperation between our enforcement authorities and those in the European Union following EU exit. The Government fully understands the importance of this cooperation for maintaining consumer confidence and protection. We will negotiate the best possible deal for UK consumers on cross-border cooperation on enforcement of consumer law.

Chapter 5 - A regulatory and competition framework for the future

To ensure the roles of Government and the regulators are clear in working together to create well-functioning consumer markets and an environment for long-term investment

We are creating a new Consumer Forum chaired by the Minister for Consumer Affairs to discuss overarching priorities for the regulated sectors. We want your views on the initial areas of focus for the Consumer Forum.

We are carrying out a statutory review of the competition powers (as required by the Enterprise and Regulatory Reform Act 2013). We are seeking views on:

- whether the 2014 reforms to the competition regime have helped to deliver competition in the UK economy for the benefit of consumers
- whether the competition regime provides the CMA and regulators with the tools they currently need to tackle anti-competitive behaviour and promote competition
- whether the competition regime is sufficiently equipped to manage emerging challenges

We are also seeking views on a new Strategic Steer to the CMA for this Parliament.

Introduction

172. In this Green Paper, we have set out some of the challenges and opportunities of modern markets and explored how we can ensure better outcomes for consumers. This will require action from Government, the CMA and regulators. This chapter examines the frameworks which govern how the CMA and regulators operate and the role Government plays in ensuring that they have the tools to meet the challenges we have identified. It also considers the relationship between Government and the regulators and how we can work together to ensure that all consumers can benefit from better prices, improved quality and more choice, alongside continued long-term infrastructure investment to ensure our services remain resilient for future consumers.

The independent sector regulators

173. Sector regulators oversee some of the most important markets for consumers and the economy, which we discussed in Chapter 2.⁹⁶ They take action to protect consumers which includes promoting competition as far as possible. These organisations are statutorily independent of Government but outcomes in these markets have significant implications for public policy and therefore the Government has an important role.

⁹⁶ FCA, Ofcom, Ofgem, Ofwat, ORR and CAA.

174. This Government wants good outcomes for all consumers, both now and in the future. Firms should not prosper from taking advantage of some groups of consumers. Consumers ought to be able to trust that they will be treated well both because firms recognise it is the right thing to do and because regulators will act if they do not. Firms and industries must realise that poor practices force the hand of Government and regulators.
175. We also want outcomes that are continually improving. Firms should be subject to competitive forces, putting downward pressure on prices, upward pressure on quality, and stimulating innovative new products and services. And in building markets to service future new infrastructure, we must make sure that we do not also inadvertently build in future market failures.
176. These ambitions require a refreshed approach to regulatory policy and the use of competition. Competition alone will not always lead to good outcomes for all groups of consumers but will on the whole lead to better outcomes.
177. We are clear that the Government must set the strategic direction for sector regulators.⁹⁷ It must be willing and able to take responsibility to improve consumer outcomes without undermining, or being perceived to be undermining, regulatory independence.
178. Regulators must contribute to meeting those strategic goals. They must continue to seek new ways of operating and delivering for consumers. In light of rapid technological change, they must be willing and able to take action to prevent harm, without stifling innovation, and to test the effectiveness of different interventions on consumer outcomes. They must also work together, as they do now through the UK Regulators Network.
179. The current and future challenges facing these sectors, including technological change and the power of data and new business models, require the Government and regulators to work together, whilst continuing to respect regulators' independence. We need to strengthen how we interact and ensure a greater degree of coordination. We also need to be better at predicting and dealing with cross-cutting issues.
180. To achieve this, we are creating a joint Government-regulator Consumer Forum chaired by the Minister for Consumer Affairs. This will comprise senior representatives from across Government and regulators, bringing in other experts, such as the CMA, as appropriate. It will have a particular focus on vulnerability and acting on the NAO recommendations. Other areas of focus will be:
- the principles to determine whether Government or regulator should act in dealing with a particular problem

⁹⁷ Legislation is in place for Government to set strategic policy statements for Ofwat, Ofcom and Ofgem.

- how to maximise the potential for consumers from open, portable data

Consultation Question

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| 17. | Do you agree with the initial areas of focus for the Consumer Forum? |
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The competition regime

181. We set out in Chapter 1 of this Paper the importance that Government attaches to promoting competition across all markets. Our policies ensure that, where competition is found to be inadequate, authorities have the powers to investigate and, if necessary, make timely, measured interventions to fix the problems. Also, by ensuring new firms can enter markets with relative ease, and by providing a framework of robust enforcement against abusive behaviour, the Government can drive businesses to become more efficient, improving quality and driving down prices for consumers.
182. Our competition regime is internationally regarded as one of the best in the world. The integrity of our law and the impartiality of our professional bodies are prime reasons why we are competitive in the global market and why businesses choose to locate or conduct their business in this country.
183. As the UK leaves the European Union, we will ensure that the domestic competition regime continues to be highly regarded, providing a stable environment for business and investment. The UK will continue to play a significant role in the development of global competition policy and will continue to lead the way in thinking on competition.
184. Competition issues in UK markets are dealt with by the Competition and Markets Authority (CMA) and the sector regulators, which also have certain competition powers in relation to the markets for which they are responsible. These powers include:
- enforcing breaches of competition law. This involves investigating where companies might be abusing a dominant position in a market or where companies may be making anti-competitive agreements to, for example, fix prices or share markets. The CMA and, in their relevant markets, the sector regulators, have the powers, to investigate breaches of competition law and, where necessary, impose fines on companies. The CMA may also seek the disqualification of directors and may take criminal proceedings against individuals for cartel offences.
 - merger control. The CMA is responsible for investigating mergers which could affect competition. It can block mergers which it considers would result in a substantial lessening of competition or impose remedies to address the harmful effects of such mergers.
 - conducting market studies and investigations where there may be consumer and competition problems. Only the CMA can undertake market investigations into

features of a market or markets which may be resulting in adverse effects on competition. Following such an investigation, the CMA can impose remedies on companies operating in the market to ensure better outcomes for consumers. The authority's powers to investigate and remedy market failures are amongst the most extensive anywhere in the world.

185. These powers are given to the competition authorities to promote competition for the benefit of consumers. Ultimately it is consumers that get worse outcomes when companies breach competition law or if mergers are allowed to proceed in ways which reduce choice or increase prices. Ensuring these powers continue to protect consumers in the most effective way is therefore an important part of our consumer policy.
186. The powers of the CMA and the sector regulators are in the Competition Act 1998 (CA98) and the Enterprise Act 2002 (EA02). The Competition Act contains the main prohibitions on anti-competitive conduct, including the abuse of a dominant position and the use of cartels to fix prices. The Enterprise Act sets out the system for assessing mergers (based on their effect on competition) and the powers of Ministers to intervene on the public interest grounds of national security, media plurality and financial stability. It also sets out the CMA's powers and duties in relation to market studies and investigations and provides for the cartel offence.
187. The CMA was created by the Enterprise and Regulatory Reform Act 2013 (ERRA), which merged the functions of the Competition Commission and the Office of Fair Trading. The ERRA made a number of changes to the existing regime with the aims of ensuring the robustness of decisions, supporting the competition authorities in taking forward the right cases and improving the speed and predictability of the system for business.

The Enterprise and Regulatory Reform Act 2013 (ERRA) changes

The ERRA introduced changes to all the powers of the competition authorities. To encourage more enforcement of breaches of competition law and faster, effective and high-quality decision making, enforcement powers were changed in the following ways:

- giving the CMA a new power to require individuals to answer questions as part of an investigation under the CA98
- replacing the criminal sanctions for failing to comply with investigations with civil sanctions
- adding the Competition Appeal Tribunal to the High Court and Court of Session as the judicial bodies able to issue warrants allowing an investigation officer to enter premises as part of an investigation
- giving the CMA a new power to publish a notice of investigation to which absolute privilege against defamation would attach
- amending the CMA's powers to make procedural rules in section 51 of the CA98;

- lowering the threshold before the CMA is able to impose interim measures during an investigation under section 35 of the CA98
- introducing new statutory considerations to which the CMA must have regard in fixing a financial penalty under the CA98 for the infringement of an anti-trust prohibition and requiring the CAT to have regard to the statutory guidance on the appropriate amount of a penalty when fixing a penalty
- introducing a new power enabling the Secretary of State to impose time limits in relation to the conduct by the CMA of investigations and the making by the CMA of a decision as to whether one of the anti-trust prohibitions has been infringed
- removing the dishonesty element of the cartel offence and the introduction of new circumstances in which the offence is not committed if certain persons are notified of relevant information or where that information is published in a prescribed manner

In creating the CMA, the ERRA brought the two phases of merger control and market investigation within the same organisation. They had previously been undertaken by two separate organisations: the OFT (phase 1) and the Competition Commission (phase 2). The integration of these two bodies involved new governance arrangements. Under the ERRA, phase 2 decisions in merger inquiries and market investigations are made by groups drawn from members of the CMA panel. These groups must make their decisions independently of the CMA board. In addition to this more fundamental change to introduce a single competition body, the ERRA also made changes to the CMA's powers and duties in relation to mergers and markets with a view to making the new single system more efficient and effective. Specifically, it:

- extended the investigatory powers so that the CMA has a single set of powers that can be used consistently across the whole of the merger investigation and markets processes. It also gave the CMA power to carry out a market investigation across more than one market and the Secretary of State the power to request the CMA to investigate public interest issues as part of market investigations
- strengthened the interim measures powers available to the CMA by making it easier for the CMA to suspend the integration of companies involved in a merger during a Phase 1 investigation
- changed the statutory timescales for phase 1 mergers and market investigations to speed up decision-making. In the case of mergers, this included changes to when undertakings in lieu of a referral can be made, allowing parties to make such offers having already had sight of the CMA's reasoned decision

188. The ERRA also made changes to the ways in which sector regulators should use their powers to enforce breaches of competition law. It increased the emphasis on early and proper consideration of these powers by the sector regulators before using their other regulatory powers. It boosted information sharing and reporting obligations between the CMA and sector regulators, but it also introduced a reserve power for the Secretary of

State to remove the concurrent powers of regulators to enforce competition law. This latter power has not been exercised.

189. The reforms maintained the competition authorities' independence from Government and accountability to Parliament while strengthening the regime to reduce the costs to business and improve transparency and predictability. They represented a major change to the way the competition authorities exercised their powers and duties for the benefit of consumers. In Annex B, we summarise how reformed powers have been exercised since 2014.

Statutory review

190. The 2014 changes to the regime in the Enterprise and Regulatory Reform Act, (ERRA), included a requirement to review after five years how well the regime had worked. There are two specific review requirements: the review of the operation of Part 1 of the Competition Act and the review of specific provisions in Chapters 1 and 2 of Part 4 of ERRA. The exercise will assess the extent to which the reforms have achieved their stated policy objectives as listed above, including the quality of the CMA's decisions and the strength of its powers, whether it tackles the right cases, and whether the current system works for business.
191. We will carry out this work in the context of the challenges we have outlined in this green paper. We will assess the ability of our competition regime to respond effectively amidst rapid changes especially in the digital economy, and whether we have the right policy and administrative tools for competition to benefit consumers and the wider economy. To support the review, we are seeking public views on the regime through the consultation questions in this chapter. We will separately carry out targeted consultation to engage with competition law experts, including the CMA, law firms and academics to inform the review. We are also keen that a wider range of stakeholders get the opportunity to contribute to the review, including businesses that have had direct experience of regime since the transfer of functions to the CMA.
192. We will complete the review before April 2019, the statutory deadline.

Consultation Questions

18.	Have the 2014 reforms to the competition regime helped to deliver competition in the UK economy for the benefit of consumers?
19.	Does the competition regime provide the CMA and regulators the tools they currently need to tackle anti-competitive behaviour and promote competition?

193. As well as the topics covered by the statutory review requirements in the Enterprise and Regulatory Reform Act, we want to know how well the regime is keeping pace with changes in the economy.
194. For example, as set out in Chapter 3, many digital markets are dominated by large online platforms, shaped by network effects that can encourage market concentration. There is some concern internationally that existing competition regimes may not be able to address the wider challenges raised by digital markets, for example that platforms may lock-in consumers or leverage their market power to detrimentally influence other markets.
195. We want to hear views on how the regime should be adapted for the digital economy, including how it should address digital platforms, agglomeration, data algorithms and the consolidation of competitors.
196. We would like to hear views as to whether the powers within the existing UK competition framework are adequate for addressing these challenges.

Consultation Question

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| 20. | Is the competition regime sufficiently equipped to manage emerging challenges, including the growth of fast-moving digital markets? |
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The Government's Strategic Steer to the Competition and Markets Authority

197. For each Parliament the Government issues a non-binding Strategic Steer for the Competition and Markets Authority. The intention of the Steer is to support the CMA in achieving its objectives and delivering real benefits for UK consumers and the UK economy. The Steer provides a transparent statement of how the Government sees competition fitting with its wider objectives for the economy alongside the CMA's accountability framework and its legal duties, particularly to promote competition for the benefit of consumers.
198. The Government is clear that the CMA should remain a strong, independent competition authority and the Steer does not affect how the CMA approaches its work, its selection of cases and the tools it uses to tackle them. Aligning with our Industrial Strategy, we believe the CMA should be bold and focus on activities that support the Industrial Strategy's aims, champion consumers and address the challenges of the digital economy.
199. We are consulting on a new Steer to the Competition and Markets Authority (Annex A) to replace the current Steer. The new Steer reflects our industrial strategy and the challenges and opportunities of modern markets we explore in this Paper. It focuses on

improving competition in sectors which have a significant impact on productivity and targeting markets that do not work well and where the potential for consumer harm is clear. It also recognises the opportunities and challenges of the digital economy and the need for innovative approaches to supporting competition and consumers. This draft Steer recognises the important role of the CMA now and after the UK leaves the European Union and urges the CMA to take bold action to tackle anti-competitive behaviour and unfair trading. This is in line with the CMA's single primary duty to "seek to promote competition, both within and outside the UK, for the benefit of consumers", and its aim "to make markets work well for consumers, businesses and the economy".

200. There will be a presumption that the Government will accept all the CMA's published recommendations unless there are strong policy reasons not to do so. The Government commits to responding to the CMA's recommendations within 90 days, clearly indicating the steps that it will take in response to recommendations or the reasons that it is unable to take forward recommendations. Finally, the Government intends to promote productivity and remove unnecessary burdens on business and consumers wherever possible, and we expect that the CMA will make an important contribution toward this goal.

Consultation Question

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| 21. | Do you agree with the approach set out in the draft Strategic Steer to the CMA? Are there any other areas you think should be included? |
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Annex A – The Government’s Strategic Steer to the Competition and Markets Authority

The CMA has a key role in helping consumers and benefiting the wider economy. Building on the CMA’s achievements to date, during this Parliament the Government looks to the CMA to support the Industrial Strategy, to be a strong champion of consumers, to confront the challenges of new digital services, and to take a bold approach in its enforcement and markets activity and public profile.

The CMA will be expected to have regard to the new steer during its activities but retains full independence in how it approaches its work, its selection of cases and the tools it uses to tackle them.

Support the Industrial Strategy's Aims

The Government’s Industrial Strategy aims to boost the earning power of people, places and businesses across the UK – particularly by improving productivity. There is clear evidence that strong competition drives productivity and growth, so the CMA has an important role to play in supporting the Industrial Strategy’s aims. The CMA should:

- take timely action to improve competition in sectors which have a significant impact on productivity, including in local or regional markets across the UK
- work to minimise barriers to new businesses successfully entering markets
- report publicly on competition issues affecting productivity, including steps the CMA is taking to improve competition in these areas and highlighting issues that require Government intervention

Champion consumers

Consumers benefit when competition in markets leads to more choice, lower prices, and better and more innovative products and services but consumer harm can be substantial when markets do not work well. Vulnerable consumers are particularly at risk of losing out when markets are not working well. The CMA should:

- focus its activities on businesses and markets where the potential for harm is clear
- tackle market failures, and take a cross-disciplinary approach including thinking from behavioural economics and data science
- lead work with sector regulators to ensure the overall competition regime is co-ordinated and that consumers are protected from illegal and anti-competitive practices, and
- make markets work well for vulnerable consumers.

Make the most of the challenges and opportunities of the digital economy

The Government wants to embrace the opportunities that the digital economy brings for UK consumers and business, as set out in the Digital Charter. For these markets to operate in the interests of consumers and provide opportunities for new businesses, new approaches may be needed. The CMA's powers provide it with the flexibility to adapt to these challenges, providing the scope for the CMA to pioneer innovative approaches to finding and solving competition and consumer problems. The CMA should:

- anticipate and make the most of the competition challenges of new and emerging markets, seeking high-impact outcomes
- help consumers get the most from the digital economy, through building consumer trust in these markets and enforcing the law to protect consumers
- engage and lead the UK and international debate on competition and consumer policy in the digital economy

The Government urges the CMA to take action to tackle anti-competitive behaviour and unfair trading, now and after the UK leaves the European Union. The CMA should:

- be ambitious in the number and type of cases it carries out, and the pace at which it conducts them
- be a prominent voice for consumers and improve the public understanding of competition and consumer law
- enforce competition rules robustly, fairly and effectively
- report publicly on the CMA's impact on the health of competition across the UK economy and on creating and maintaining markets that work well for all, including the steps the CMA is taking and issues that require Government intervention

Annex B – The Competition and Markets Authority’s use of powers

	2014/15	2015/16	2016/17	2017/18
Civil competition enforcement				
New CA98/civil cartel cases	7	8	10	10
Closed CA98/civil cartel cases	4	6	9	9
Infringement decisions	1	3	9	5
Fines (£ million)	0.74	46	100	9.7
Criminal competition enforcement				
Closed criminal cartel cases		1		1
Successful prosecutions		1		1
Mergers				
Merger reviews completed	82	62	57	55
Mergers found not to qualify	10	2	1	0
Less complex Phase 1 mergers cleared within 35 working days	23%	74%	81%	92%
Average working days for all Phase 1 merger cases	37	34	34	34
Phase 1 mergers completed within 40 working days	100%	100%	100%	100%
Markets				
Market studies – final reports	3		1	2
Market investigation – final reports	3		3	
Expected direct consumer benefit from all CMA work (£ billion) measured over 3 year period	2.2	2.0	3.6	-

Questions for consultation

1. In which regulated markets does consumer data portability have the most potential to improve consumer outcomes, and for what reasons?
2. How can we ensure that the vulnerable and disengaged benefit from data portability?
3. How can we ensure these new services develop in a way which encourages new entrants rather than advantaging incumbent suppliers?
4. What is the best way to publish performance data so that it incentivises firms to improve and can be used by consumers when taking decisions? Should firms also offer discounts or compensation for poor performance?
5. Is there a need to change the current consumer advocacy arrangements in the telecommunications sector? If so, what arrangements would be most effective in delivering consumer benefits, including for those who are most vulnerable?
6. How can the Government support consumers and businesses to fully realise the benefits of data portability across the digital economy?
7. As technology continues to develop, how do we maintain the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights?
8. What challenges do digital markets pose for effective competition enforcement and what can be done to address them?
9. Is the legal framework that covers consumer-to-consumer transactions appropriate to promote consumer confidence?
10. In what circumstances are personalised prices and search results being used? In which circumstances should it not be permitted? What evidence is there on harm to consumers?
11. Should terms and conditions in some sectors be required to reach a given level of comprehension, such as measured by online testing?
12. How can we improve consumer awareness and take-up of alternative dispute resolution?
13. What model of alternative dispute resolution provision would deliver the best experience for consumers?

14. How could we incentivise more businesses to participate in alternative dispute resolution?
15. Should there be an automatic right for consumers to access alternative dispute resolution in sectors with the highest levels of consumer harm?
16. What changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers?
17. Do you agree with the initial areas of focus for the Consumer Forum?
18. Have the 2014 reforms to the competition regime helped to deliver competition in the UK economy for the benefit of consumers?
19. Does the competition regime provide the CMA and regulators the tools they currently need to tackle anti-competitive behaviour and promote competition?
20. Is the competition regime sufficiently equipped to manage emerging challenges, including the growth of fast-moving digital markets?
21. Do you agree with the approach set out in the draft Strategic Steer to the CMA? Are there any other areas you think should be included?

