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*Dear Andrea*

### **Tackling the loyalty penalty**

I would like to thank you for your considered and constructive response to the Citizens Advice super-complaint regarding the loyalty penalty in the mobile, broadband, cash savings, home insurance and mortgages markets. It is essential that competition works for the benefit of consumers and that unfair practices are tackled effectively. I am grateful to Citizens Advice for raising this issue. We have one of the world's strongest consumer protection regimes and I strongly believe that consumer loyalty should not be exploited and nor should consumers have to work so hard to get a fair deal. We have acted quickly in tackling this issue in the energy market, legislating for Ofgem to introduce a price cap which is now in force saving eleven million consumers around £1 billion every year.

Your analysis, confirming that done by Citizen's Advice, that the cumulative size of the loyalty penalty is in the region of £4 billion every year in the five markets you looked at indicates the scale of the challenge. I am committed to ensuring that both Government and regulators now take further action on your recommendations to tackle harmful business practices and deliver better outcomes for consumers. As you know, we identified this issue in our Modernising Consumer Markets Green Paper last year and have work underway to address it. I am also determined to ensure that consumer law remains fit for purpose and that it is enforced effectively so that consumers are treated fairly.

Our Consumer Green Paper also recognised that the increased use of data by companies in many of these essential markets gives them considerable power in understanding consumer preferences, patterns of spending and engagement with the market. We want these new technologies and business models to work for the benefit of consumers, not against them. The prevailing approach of relying on consumer engagement and providing them with ever more information to make choices must evolve. As a principle therefore, I support the CMA's view that more onus needs to be

put on what suppliers are doing than it has in the past, while still empowering consumers to find the best deals and make firms work harder for their custom.

In light of the relationship between the loyalty penalty and consumer engagement, this letter also responds to your earlier work on Digital Comparison Tools (DCTs). These are a growing feature of markets and, as your study found, they make it easier to shop around and improve competition which drives lower prices, higher quality, innovation and efficiency. Their evolution has considerable potential to get consumers better deals with even less effort and therefore tackle the loyalty penalty. As you identify, it is important we ensure they are trusted, transparent and easy to use.

### **Stopping harmful business practices**

We have a robust legal framework that provides strong protections for consumers. It is therefore extremely concerning that some businesses are employing practices which adversely affect the interests of loyal consumers and contribute to the loyalty penalty. I am committed to ensuring that the legal framework prohibits business practices that are harmful to consumer interests, addresses contract termination and provides robust remedies for any consumers harmed and that these are robustly enforced. I firmly endorse the cross-market principles of good business practice in dealing with their customers. The Government expects these to guide regulators in their approach to enforcement:

- Exit/entry equivalence: people must be able to exit a contract at least as easily as they can enter it;
- Auto-renewal should generally be on an 'opt-in' basis upfront, and include a clear and prominent option without auto-renewal in most markets;
- Exit fees should not be used after any initial minimum/fixed term;
- Auto-renewal onto a fresh fixed term should not generally be used;
- Customers must be sufficiently informed about the renewal and any price changes (through sufficient notifications) in good time;
- Switching should generally be managed by the gaining supplier so that customers do not have to contact their existing supplier if they want to move.

We are taking a stand against egregious practices that cause consumers harm or take advantage of vulnerabilities and are committed to ensuring that the legal framework prohibits these. All of these practices exacerbate the loyalty penalty and we will seek views on options for strengthening the legal framework to tackle subscription traps in our forthcoming Consumer White Paper. There should be greater enforcement against subscription traps – subscriptions and roll-over contracts should ultimately be as easy to exit as they are to enter.

I fully agree with you that enforcement against harmful business practices needs to increase and welcome the action that you have announced in the anti-virus and online gaming sectors.

It is for regulators to determine the powers they use to address specific problems in the markets they regulate. I agree that bolder use of existing enforcement and

regulatory powers are needed from the regulators. I welcome your recognition of the role targeted pricing interventions can play in tackling this and that regulators should consider these in their decisions about how to tackle the loyalty penalty. Although pricing interventions should be a matter of last resort, it is vital that all potential interventions are considered to protect those who are most vulnerable. The Government expects such interventions to be well-designed so that they are targeted, proportionate to the scale of the harm and minimally distortive to the wider market.

But, as highlighted by Lord Tyrie, new powers are also needed to properly address this issue. Where action by the CMA and regulators using existing powers does not or cannot deliver an improved outcome for consumers, then I am willing to consider further legislative or regulatory change to ensure that they have the tools they need. Enforcement is an essential element of ensuring a level playing field for business, maintaining trust in markets and protecting consumers.

In the Consumer White Paper I will consider proposals to strengthen our system of public enforcement of consumer law while maintaining the benefits of the current landscape. The Government has already committed to legislate in order to give consumer enforcers the power to impose fines on companies for breaches of consumer law by applying to the courts. We will follow this through and also want to go further to ensure that enforcers have the powers they need to incentivise firms to comply with the law. This will include empowering the CMA to decide itself whether consumer protection law has been broken and then impose fines for wrongdoing directly. We will consult on how best to achieve this in our Consumer White Paper, including the route of appeal, and the implications for the wider consumer enforcement landscape.

### **Role of the regulators**

As you know, we have established the Consumer Forum, chaired by the Minister for Consumer Affairs, to bring together regulators and Government to improve consumer outcomes through enhanced collaboration and coordination both between Government and regulators, and across sectors. This is about strengthening how we interact in the interests of consumers, not undermining regulatory independence. The loyalty penalty is a prime area of interest for the Consumer Forum and I welcome your proposal to use it to track progress on implementing your recommendations.

In addition, building on the work of our Consumer Forum, the Government proposes to issue a cross-sectoral statement of strategic priorities for the regulated sectors. I anticipate this having a focus on taking innovative action to tackle consumer harm, such as the loyalty penalty. The Government already has the ability to set strategic priorities for individual regulators, and as described below Government is in the process of doing this for Ofcom. However, there is currently no formal mechanism for setting out its priorities across consumer markets or for coherently encouraging collaboration between regulators. As is clear from the loyalty penalty, there are important issues where this wider focus is valuable. This cross-sectoral statement of strategic priorities would address this issue and would inform, but not replace, the sectoral priorities. I anticipate consulting on this in the Consumer White Paper.

Addressing the loyalty penalty will require concerted effort from regulators and Government as well as actions from intermediaries and industry to support customers in getting the best available deals. Collaboration and sharing best practice across regulators on actions that have been shown to work is vital. Government will monitor closely how regulators interpret and act on this recommendation and the impact it has on consumer outcomes.

Establishing a reliable evidence base has to be a priority and I therefore welcome the recommendation that regulators should publish data on the size of the loyalty penalty for each supplier. Our Green Paper announced that Ofgem, Ofcom, Ofwat and the FCA, through the UK Regulators Network, would develop performance scorecards that would provide a set of comparable data on consumer outcomes for each company, including the loyalty penalty. The scorecards will provide transparency on the outcomes which regulated companies deliver for their customers and allow the Government, regulators and consumer groups to monitor performance and hold suppliers to account. I am expecting the UKRN to publish the results of their scoping study into the implementation of performance scorecards, alongside recommended next steps, before the summer and will be encouraging the regulators to review the conclusions of the CMA report and consider how the findings should influence the work on performance scorecards.

I would also welcome efforts by regulators to innovate in how they seek to tackle consumer harm, learning from each other and the latest evidence of what works. An approach that has yielded impressive results recently, as your report notes, in the energy sector is collective switching. I agree that this has promise which should be further explored.

## **Sector specific action**

### Telecoms

From February 2020, providers will be required to notify their customers of the end date of their minimum contract period, and the best tariffs available to them. Britain's biggest broadband and phone companies also recently signed Ofcom's new 'Fairness for Customers' commitments, which include improving consumer information, ensuring they can change services quickly and smoothly, get the right deal for them, and supporting the vulnerable. Ofcom's new rules for mobile switching that are coming into force on 1 July 2019, will also mean mobile customers can switch provider by sending a free text message to their new provider.

These new measures will improve consumer information and engagement, and help consumers get the right deal for their needs. The Government welcomes this action.

But more needs to be done including in relation to mobile handsets - the Government agrees that continuing to charge customers on bundled mobile phone contracts the same monthly price after they have effectively paid off their handsets at the end of

their minimum contract period is not right. We have made this clear in our draft Statement of Strategic Priorities (SSP) for the sector.

Ofcom has consulted on two options to address this issue: better information for consumers on bundled mobile contracts; or moving these consumers to another deal (e.g. SIM only) when they reach the end of their contract, which was the CMA's recommended approach. Government will continue working with Ofcom on tackling this issue, and Ofcom will set out their next steps on this issue in the Summer. The SSP sets out that, if Ofcom does not have the necessary powers to tackle this issue, then the Government will consider legislation to enable it to do so.

The Government welcomes the review of broadband pricing that Ofcom launched on 14 December 2018 and supports the CMA's recommendation that Ofcom considers targeted pricing interventions where appropriate.

In quarter 3 of this year, Ofcom will consult on its proposed approach to implementing a new switching process so that it is always led by the gaining provider, including when a consumer is switching away from or onto the Openreach network.

The Government has also announced it will legislate to create a new independent consumer advocate for the telecoms sector to achieve better outcomes for consumers through conducting research, taking part in key policy and regulatory debates, working directly with industry, and providing consumers with direct support and advice. The new body will also support investment in digital infrastructure, and help meet the Government's digital ambitions, by helping consumers get the best deals and upgrade to better and faster mobile and broadband services. We will launch a consultation outlining further details over the summer, including options for creating the new advocate and how it could be funded.

### Financial services

We welcome the CMA recommendations for areas the FCA should consider. The FCA has ongoing work in the cash savings, insurance and mortgage markets, which the CMA acknowledges and in which its recommendations are grounded. The FCA has committed to consider all options to improve outcomes for consumers, including those who are long-standing, and the Government supports the work of the independent regulator in this area. We will consider any FCA recommendations to Government to enable implementation of its findings.

### **Smart Data Review: ensuring data works for consumers**

This Review examined how we can enable and accelerate the development of innovative data-driven solutions in regulated markets to make it easier for consumers to get good deals. These include automatic switching services, concierge services and advanced comparison tools. It has highlighted that the ability for consumers to share

their data, for example on their current deal and usage, with third parties is key to enabling new services to enter these markets and innovate.

Significant progress has already been made in the banking sector and the Open Banking initiative is due to be delivered by Spring 2020. Implementation has also begun in the energy sector. The Government is also committed to legislating to require pension providers to make information about consumers' pensions available via third party 'dashboards' so an individual can view all of their pension pots in a single location. I published the full Review on 11 June.

**In that Review we are consulting on the creation of a new smart data initiative for telecoms where we believe there is likely to be a transformative effect on the market and considerable gains for consumers.**

The Government strengthened Ofcom's powers in the Digital Economy Act 2017 to request information from communication providers for the purpose of improving information available to consumers. Ofcom has used these powers to gather information for its new annual Comparing Service Quality report, of which three have been published (in April 2017, May 2018 and April 2019). Ofcom is also working to improve the access of intermediaries, like price comparison websites, to broadband and mobile coverage data.

In its Annual Plan for 2019/20, Ofcom has committed to do further work to ensure consumers have the right information on availability, speeds and own usage of broadband services so they can make informed decisions about the products and services that best suit their needs. This is key to putting in place the building blocks needed to take forward the CMA's recommendation on smart data and, if appropriate, collective switching.

The Government's draft Statement of Strategic Priorities for Ofcom emphasises the transformative role that smart data could play in the telecoms sector and, as part of this, reiterates the need for Ofcom to take action to enable the development of innovative services that could make it easier for consumers to manage their communications services and find the best deals for them. To enable these services, it will be necessary, where the customer has consented, for communication providers to make customer and product data available to third parties. The Government will legislate when Parliamentary time allows, as we set out in the Smart Data Review, to introduce an Open Communications initiative. In the meantime, we welcome the work Ofcom, supported by the Open Data Institute, will do with the telecommunications industry and others to explore some of the key design questions for Open Communications.

The CMA also highlighted the potential of smart data solutions in the cash savings, insurance and mortgages markets. The FCA is currently conducting a market study into the general insurance market and will launch a call for input later in the year on the development of Open Finance. The Government supports the FCA's work in these areas and will consider carefully the introduction of further smart data solutions where appropriate.

## **Empowering intermediaries to support switching for vulnerable consumers**

Vulnerable consumers in regulated markets are often on the poorest value deals and at the greatest risk of harm. We believe that innovative smart data enabled services have the potential to help these consumers. Automatic switching services and advanced digital comparison tools may be more accessible and simpler to use than current services and require less effort and complex decision making. However, many vulnerable consumers, for example those who are not online, may be less willing or able to embrace new services. Therefore, as the CMA has highlighted, additional support may be required to enable these groups to benefit from new technologies.

**As we set out in our Smart Data Review, we therefore intend to launch a Vulnerable Consumer Challenge to stimulate the development and deployment of innovative data-driven technologies that improve outcomes for vulnerable consumers, and ensure that the benefits of modern, data driven markets do not leave any consumer behind.** The challenge will also identify any barriers to the development of these services and prompt the Government or regulators to take action.

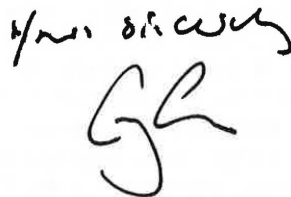
Access to Open Banking data and data from other markets could, for example, allow advisors to auto-populate a standard financial statement. It could also identify if an individual is eligible for support schemes and register them, or automatically identify how much a household could save by switching for example to a better energy, broadband or insurance deal and enact a switch if desired. This would reduce the costs of providing advice and make a significant difference to those facing financial difficulties.

In addition, there is likely to be potential for innovations to help carers or appointed attorneys manage the finances of a vulnerable friend or family member, or to help companies to identify and support their customers who are in vulnerable circumstances. The Vulnerable Consumer Challenge will support charities, regulated companies and innovators to realise these opportunities. We are also actively engaging with Citizens Advice to look at what face-to-face support they might be able to provide to vulnerable consumers to help with switching.

With all of these new business models, at the front of our mind is the need to ensure appropriate consumer protection. The Smart Data Review looked at this across sectors and as part of that, and through the review we are doing with Ofgem on the design of the energy retail market, we are considering the earlier recommendations from your Digital Comparison Tools market study. This includes, in particular, the suggestion to consider bringing DCTs into regulators' scope where they are not already and how best to enable services spanning more than one sector. We also endorse your proposed 'CARE' principles for DCTs including smart-data services, that they should be clear, accurate, responsible and easy to use.

It is my intention to put the consumer at the heart of retail markets in the regulated sectors and to ensure that no consumer loses out or can be exploited by companies

taking advantage of their loyalty. I look forward to working with the CMA, the Consumer Forum and Citizens Advice on this important agenda to deliver the best outcomes for consumers.

A handwritten signature in black ink, consisting of the words "Yours sincerely" written in a cursive style above the initials "Gh".

**THE RT HON GREG CLARK MP**  
Secretary of State for Business, Energy & Industrial Strategy