

# Evaluation of the OFT's enforcement action on health and fitness contracts

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## Executive summary

1. The Competition and Markets Authority (CMA) carries out at least two ex-post evaluations every year. As part of our evaluation programme for 2015/16, we have evaluated consumer enforcement action taken by one of the CMA's predecessor bodies, the Office of Fair Trading (OFT), in the health and fitness sector (gyms).<sup>1</sup>
2. The intervention period that we evaluated started in August 2011, when the OFT obtained an enforcement order in the High Court of England & Wales against Ashbourne Management Services Limited (Ashbourne).<sup>2</sup> The Court found a number of terms used by Ashbourne were unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). Two of the main terms found to be unfair were:
  - (a) terms which impose a minimum membership period of one year without giving consumers the right to terminate the agreement in certain circumstances (for example, illness, injury, loss of livelihood, change of principal place of work); and
  - (b) minimum term contracts longer than 12 months where the consumer could not give 30 days' notice to cancel and pay a modest sum in compensation.
3. Following the decision in Ashbourne, the OFT opened further investigations into other gyms' contracts. This investigation led to six gym operators announcing changes to their contract terms in 2013. The exact changes varied depending on the operator, but most committed to making it easier for consumers to cancel contracts when they faced an unforeseen change in circumstances and to stop using contracts with minimum term periods longer than 12 or 18 months.<sup>3</sup> The OFT also sent a warning letter to 20 other gyms to recommend that they review their terms and conditions and business practices and amend them if necessary to ensure unfair terms or practices were not being used.<sup>4</sup>
4. The key dates of the interventions are set out below.
  - August 2011 – Secured enforcement order against Ashbourne.

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<sup>1</sup> From 1 April 2014, the CMA brought together and took on the functions of the Competition Commission (CC) and many of the functions of the OFT.

<sup>2</sup> [Office of Fair Trading v Ashbourne Management Services Ltd \[2011\] EWHC 1237](#).

<sup>3</sup> [Summary of the key points of the investigation](#).

<sup>4</sup> [OFT warning letter to gyms](#).



- March 2013 – Signed undertakings with Bannatyne’s, David Lloyd and Fitness First.
  - September 2013 – Signed undertakings with David Whelan, LA Leisure and Harlands Group. Letter sent to 20 other gyms asking them to review compliance.
5. In intervening in the sector, the OFT sought to ensure that contract terms across the industry were fair so that competition could work effectively for the benefit of consumers.
  6. The changes were expected to benefit consumers by reducing the likelihood of being kept on gym contracts that they did not wish to be on, either because their circumstances had changed or because they had overestimated their future usage levels.

## **Purpose of the evaluation**

7. There were two main aims of our evaluation:
  - (a) Understand the impact of the OFT intervention, including positive and negative effects.
  - (b) Assess the effectiveness of the intervention in achieving its objectives of reducing consumer harm. Through this we aimed to establish what had gone well and what might have gone better in order to identify useful lessons for current and future cases.
8. During the evaluation we gathered data and information from a variety of sources, including market reports and other publicly available data, questionnaires sent to gyms, a consumer survey of gym users commissioned by the CMA and data on the number of consumer issues reported to Citizens Advice. We are very grateful to the numerous parties that responded to our request for information and gave their time to assist us.

## **Impact of the OFT intervention**

9. We considered the contract terms being offered by gyms today using a mixture of desk-based research, information from gyms, our consumer survey and an analysis of reported consumer issues about the sector.
10. The majority of gym operators now avoid using contract terms that were deemed unfair by the OFT. This appears to be true for the gyms sector as a whole, including gyms that were not directly investigated by the OFT.

11. On the other hand, we have found some evidence that:
  - (a) a small minority of operators may still be offering contracts with minimum contract terms longer than those deemed fair by the OFT without fair cancellation clauses;
  - (b) there is some variation in how cancellation terms are used and applied by gyms; and
  - (c) there may be some consumers who are not aware of their ability to leave gym contracts if their circumstances change, as highlighted by responses to our consumer survey.
12. On the whole, the sector appears to have made significant improvements to contract terms since the OFT intervention. However, the CMA and its consumer enforcement partners should remain alert to developments in the sector to ensure compliance, especially if future complaints or issues arise.

### **Quantifying the impact of the intervention**

13. We sought to quantify the direct impact on consumers of an increased ability to cancel gym membership and any reductions in contract length. We only attempted to quantify benefits to consumers of gyms that were directly investigated by the OFT and made changes as a result.
14. In our analysis we considered what would have happened to contract terms in the gyms sector without the OFT intervention (the counterfactual), noting the wider changes that have taken place since the OFT's enforcement action.
15. It is difficult to accurately predict what the consumer detriment from gym contracts would have been if the OFT had not intervened in the sector. We therefore took a cautious approach.
16. We noted that there had been a substantial increase in the number of budget gyms since the OFT intervention and that a key selling point of these operators was flexibility around contract terms. Following submissions from a number of operators, we considered that the growth of budget gyms may have had an impact on the contract terms offered by other operators in the sector absent the OFT intervention.
17. The number of budget gyms in the UK rose significantly from June 2014 to June 2015, but not so significantly from 2013 to 2014. We considered that, even on a very conservative basis, any observed reduction in consumer detriment due to better contract terms could be attributed to the OFT intervention until at least June 2014.

18. Based on this counterfactual, our main estimate of the total reduction in consumer detriment due to the OFT intervention is £37 million.<sup>5</sup> This covers the period from August 2011 to June 2014 and we have assumed no benefits beyond this point, although note that this is a conservative assumption.
19. The table below shows how our main estimate for the total reduction in consumer detriment is split by the type of change.

**Table 1: Estimated benefits of OFT intervention**

<i>Area</i>	<i>Main estimate (£million)</i>
Increased ability to cancel	30.7
Reduction in contract length	6.3
Total	37

Source: CMA calculations.

20. We consider our quantification of benefits to be an underestimate of the OFT intervention's impact as we believe the assumptions underpinning it are conservative in nature. In addition, it does not capture the following changes that may have occurred due to the intervention:
- (a) Benefits from the changes other than cancellation terms and contract length, such as improved coverage of membership suspensions and changes to roll-over contracts.
  - (b) Benefits to consumers of other gyms who made changes following the intervention.
21. We tested the sensitivity of our estimates to the assumptions we made concerning the number of affected gym users and the amount that they have saved due to the intervention. We also note that our main estimate is highly sensitive to the period of time over which benefits are assumed to arise. Our chosen assumption was conservative and we found that small increases in the length of the assumed benefit period increased substantially the estimated benefits of the intervention, as denoted by the range presented. The sensitivity testing gave us a range of estimates for the total quantifiable benefits of £23.1 million to £68.5 million.

## **Wider benefits of the intervention**

22. In addition to the benefits we have been able to quantify, we found qualitative evidence of several other benefits to consumers. These were:

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<sup>5</sup> Adjusted to current prices using the consumer price index (CPI).

- (a) Benefits to members of gyms other than those directly investigated by the OFT. The evidence we have found suggests that other gyms also made changes to their practices following the OFT intervention against seven gyms. Whilst the operators that were subject to the OFT's investigation covered between 30% and 51% of members of UK gyms at the time of the investigation, we consider that there is likely to be a number of additional consumers that have benefited from the OFT intervention but are not captured in our quantified impact assessment.
  - (b) Changes that many gyms have made regarding contract suspension rights, debt collection practices and increasing the ability of consumers to cancel their membership if the service levels of their gym change.
- 23. In addition, we consider that the OFT intervention is likely to have had the following additional impacts:
  - (a) Reduced stress from complaining or solving contract disputes. This is due to consumers' increased ability to cancel contracts when their circumstances change or where there are negative changes to the services provided by gyms. We note that the number of issues raised by consumers about gyms appears to have decreased since the intervention.
  - (b) Impact on switching between gyms and increasing pressure on gym pricing and quality. Whilst we were unable to obtain evidence to test whether the OFT intervention has led to more switching, we believe that there is likely to be at least some benefits to competition from a number of consumers being able to switch gyms.

## **Unintended consequences**

- 24. We acknowledge that there could be two main negative and unintended effects of the OFT's intervention:
  - (a) Gyms might be able to use other measures to recoup lost profits, such as increasing gym prices for at least some users.
  - (b) The changes might increase the costs of running gyms and affect their ability to supply their services (beyond reducing profits due to the changes in contract terms).
- 25. As part of this evaluation we were not able to robustly test the effects of the intervention on gym prices or quality. However, we found no evidence that the OFT intervention had had negative consequences for consumers.



## Effectiveness of the intervention and lessons learnt

26. We consider that the OFT intervention was effective and that it met its objectives of reducing consumer detriment in the gyms sector. The OFT's approach to the intervention, taking enforcement action against one large operator and then investigating others, appears to have been a successful strategy. We have not considered whether the OFT could have reached these aims through alternative means, but note that the approach they took appears to have resulted in the vast majority of the sector now not using terms considered unfair through the intervention.
27. Based on our findings from this evaluation, we consider that the following factors could help maximise benefits in future similar cases:
- (a) As far as possible, minimising the time between enforcement actions and focusing enforcement action on getting changes in behaviour of the largest non-compliant operators. In this case there was a period of two years between the first intervention and the last.
  - (b) Monitoring and compliance:
    - (i) Ongoing monitoring of compliance can help maximise impact, encouraging widespread adoption of fair terms.
    - (ii) Impact could be maximised in some cases by being as specific as possible about the application of contract terms (eg how a cancellation term could be fair) or by specifying best practices to increase compliance.
  - (c) Promoting findings within the sector through interactions with the trade associations.
28. Further, we thought that there are a number of steps that could be taken when undertaking enforcement work that will make it easier to understand the impact of our work. This will allow us to gain a better understanding of the magnitude of consumer harm from different practices and therefore how best to direct our enforcement efforts.
29. In particular, in future the CMA should consider:
- (a) to the extent possible, collecting more detailed information during the investigation on the number of individuals, and their costs, who are directly affected by the activities that are part of the evaluation; and
  - (b) where appropriate, using research (eg consumer surveys) to understand the scale of consumer detriment prior to an intervention.

## Introduction

30. Each year the CMA undertakes two independent ex-post evaluations of past actions of the UK competition authorities. This is in line with its performance framework agreement with the Department for Business, Energy & Industrial Strategy (BEIS)<sup>6</sup> which also sets out that at least one of these evaluations should concern a market study or investigation.
31. We undertake evaluations for a number of reasons, including to:
  - (a) learn lessons;
  - (b) assess the validity of past decision-making; and
  - (c) to evaluate the impact of the decision.
32. Each CMA evaluation will tend to focus on one or more of the above depending on the nature of the decision being examined as well as other factors such as the available sources of information and resourcing requirements.
33. For the year 2015/16, the CMA has chosen to evaluate the OFT's enforcement action on health and fitness contract terms.<sup>7</sup>
34. The OFT took a number of actions in relation to the gyms sector in the past. For example, in 2002 it produced guidance on unfair terms in health and fitness club agreements.<sup>8</sup> In this evaluation, we focus on specific interventions made between 2011 and 2013.
35. This evaluation has been carried out internally by the CMA, but independently from the previous OFT case teams involved in the intervention. Our work has been independently reviewed by Professor Stephen Davies.<sup>9</sup>
36. We had a number of aims in conducting this evaluation.
37. Firstly, we sought to understand the impact of the OFT intervention. Where possible we tried to quantify the impact, but also considered qualitative evidence of the overall effect.
38. Secondly, we wanted to assess the effectiveness of the OFT intervention in achieving its objectives of reducing consumer harm. Through this we aimed to

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<sup>6</sup> For further details on the CMA performance framework agreement with BEIS, see [Competition and Markets Authority: Performance Management Framework](#), January 2014.

<sup>7</sup> The other project the CMA chose to evaluate was the [CC's BAA airports market investigation](#).

<sup>8</sup> CMA (2002), [Guidance on unfair terms in health and fitness club agreements](#).

<sup>9</sup> See Professor Stephen Davies' biography on the [University of East Anglia website](#).

establish what had gone well and what might have gone better in order to identify useful lessons for current and future cases.

39. The remainder of this report is structured as follows.
- (a) We start by providing an overview of the OFT intervention into the sector.
  - (b) Secondly, we set out our approach to conducting the evaluation.
  - (c) We then assess what changes have occurred to contract terms since the OFT's intervention.
  - (d) Next, we consider what would have happened absent the OFT's intervention, namely what the appropriate counterfactual should be.
  - (e) Following this, we set out our estimates for the impact of the OFT's intervention and a qualitative assessment of the other effects.
  - (f) Finally, we consider possible lessons to draw from the work.

## Overview of the OFT's enforcement action and the purpose of this evaluation

### The OFT's interventions

40. Prior to the intervention, the OFT received numerous complaints against health and fitness clubs (henceforth gyms)<sup>10</sup> regarding the contract terms that they used with members.
41. Supported by the consumer complaints and references in the economics and psychology literatures, the OFT's contention was that a number of terms used by gyms were potentially unfair under the UTCCRs and had the potential to cause consumer detriment.
42. For example, consumers considering signing gym contracts tend to overestimate their future attendance. Accordingly, members tend to underuse gyms and, for contracts of around 12 months or longer, tend to want to cancel before minimum terms expire. In addition, consumers may underestimate the likelihood of wanting to cancel their contracts in the future due to a change in their circumstances (eg loss of job or relocation) and therefore not have due regard to the cancellation terms that apply, potentially signing up to restrictive cancellation terms.
43. This prompted the OFT to launch an investigation into gym contracts. In intervening in the sector, the OFT sought to ensure, so far as consistent with its powers and role in the consumer landscape, that contract terms across the industry were fair so that competition could work effectively and consumers were not being harmed.
44. In August 2011, the OFT obtained an enforcement order in the High Court of England & Wales against Ashbourne, a gym management company, regarding a number of terms in the membership contracts the firm used on behalf of numerous gym and fitness club operators.<sup>11</sup>
45. The High Court held that a number of the clauses in Ashbourne's contracts were unfair contrary to UTCCRs.<sup>12</sup> The two most significant types of contract term deemed unfair were:

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<sup>10</sup> The services covered by the contracts concerned potentially covered a wide range of health and fitness services, although many of the organisations involved would be considered gyms. For the purposes of the OFT's intervention, it was the nature of the contracts and the information provided to the consumer that was important, rather than the exact health and fitness service provided. For brevity, we therefore use the term gyms to refer to a potentially wide range of health and fitness operators and not only to gymnasium based fitness operators.

<sup>11</sup> [Summary of the events of the Ashbourne case.](#)

<sup>12</sup> [HTML version of the High Court's judgment.](#)



- (a) terms which impose a minimum membership period of one year without giving consumers the right to terminate the agreement in certain circumstances (for example, illness, injury, loss of livelihood, change of principal place of work); and
  - (b) minimum term contracts longer than 12 months where the consumer could not give 30 days' notice to cancel and pay a modest sum in compensation.
- 46. Following the decision in *Ashbourne*, the OFT sought to drive wider compliance within the industry, warning other gyms that they should review their terms. In January 2012 it also opened an investigation into membership contracts for a number of leading gym operators. This led to a number of operators announcing changes following engagement with the OFT. The exact changes varied by gym, but broadly speaking most committed to providing terms that allowed consumers to cancel contracts in certain circumstances and to stop using contracts longer than 12 months.<sup>13</sup>
- 47. The OFT closed its investigation into Virgin Active in April 2012 after finding no evidence it was using terms or practices found to be unfair by the High Court in the *Ashbourne* case. Virgin Active did however agree to make some minor changes to its membership policies following its engagement with the OFT, including the terms under which people could cancel contracts if they lost their job to include circumstances in addition to redundancy.
- 48. In March 2013, the OFT closed its investigation into Bannatyne's Fitness Limited, David Lloyd Leisure Limited and Fitness First Clubs Limited, as they each gave undertakings to the OFT to amend their terms and practices to make membership contracts transparent and give their members better cancellation rights. In summary, they agreed to:
  - (a) extend rights for members to cancel their contracts early should their circumstances change in a way that makes attendance at the gym difficult or unaffordable – for example if they lose their job or suffer an injury;
  - (b) make a commitment not to describe membership as being of a fixed duration, if the contract automatically continues on a rolling basis after the initial membership period has expired; and

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<sup>13</sup> The operators involved were: Dave Whelan Sports Limited; LA Leisure Limited; Harlands Group Limited; Bannatyne's Fitness Limited; David Lloyd Leisure Limited and Fitness First Clubs Limited. Note that while LA Fitness stopped offering contracts with a 24-month minimum term, it chose to continue offering 18-month minimum term contracts as discussed in paragraphs 50 & 51. See a [summary of the key points of the investigation](#).

- (c) provide greater transparency about key membership features, including initial membership periods and cancellation rights, and for these to be provided upfront as part of the sales process.
49. In September 2013, LA Fitness, Dave Whelan Sports and Harlands Group<sup>14</sup> gave the OFT undertakings to make similar changes to their membership contract terms and practices. These changes included giving consumers better cancellation rights and making their contract terms more transparent. They agreed that key membership details, including initial membership periods and cancellation rights, would be highlighted as part of the sales process. Further details of the changes made by each operator can be found in Annex 1.
50. Fitness First, Harlands and LA Fitness all agreed to reduce their minimum contract term for some contracts. Both Harlands and Fitness First ceased offering contracts with a minimum period of over 12 months, while LA Fitness stopped offering contracts with a minimum term of 24 months. It did however choose to continue offering 18-month contracts (with consumers able to exit after 12 months with the payment of an exit fee).
51. In the OFT's view, minimum term contracts that exceeded 12 months had the potential for unfairness under the UTCCRs in the health and fitness sector. LA Fitness introduced a provision for consumers signed up to an 18-month minimum term to terminate their contract at any time during the minimum term by payment of an exit fee. The OFT considered this continued use of a minimum term of longer than 12 months in the light of all of LA Fitness's business practices, including the number of members on each minimum membership term it offered, the proposed exit fee, and other data. The OFT decided, having carefully considered all the circumstances surrounding the use of this term, to reserve its position and continue to monitor this issue.
52. More details on the agreed changes made at each gym is contained in Annex 1. Some gyms committed to making other changes. These included:
- (a) clarifying that contracts roll-over to a month-by-month contract after expiry of minimum term;
  - (b) allowing cancellation following decreases in service quality;
  - (c) changing debt collection practices, limitations of liability, prepayment retention and compliance with the Consumer Credit Act 1974;

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<sup>14</sup> Harlands Group manages gym member contracts on behalf of gym operators.

- (d) clarifying conditions under which the gym could terminate the membership;
  - (e) improving the explanation of terms in their sales process, including minimum terms, notice periods and cancellation fees; and
  - (f) introducing and expanding suspension periods (where members can freeze membership).
53. We estimate that at the time of the intervention, the seven operators that made changes as a result of the OFT intervention accounted for between 30% and 51% of all members of UK gyms.<sup>15</sup>
54. After concluding its investigations into the operators discussed above, the OFT sent out advisory letters to a further 20 gyms setting out terms and practices that in the OFT's view would be considered unfair and recommending that they review their own terms and practices.<sup>16</sup> The letter was also shared with the industry trade association, Fitness Industry Association, which agreed to disseminate it to its members.<sup>17</sup> The letter highlighted the key findings from the Ashbourne case and other potential contract terms that could give rise to potential unfairness under the UTCCRs.
55. Table 2 provides a timeline of the OFT actions in the gyms sector covered by this evaluation.

**Table 2: Timeline of OFT actions**

<i>Date</i>	<i>Action</i>
Mar-10	Start of High Court proceedings against Ashbourne
Aug-11	Secured enforcement order against Ashbourne
Jan-12	OFT opened investigation into other clubs
Apr-12	Closed investigation into Virgin Active
Mar-13	Signed undertakings with Bannatyne's, David Lloyd and Fitness First
Sep-13	Signed undertakings with David Whelan, LA Leisure and Harlands Group Letter sent to 20 other gyms asking them to review compliance

Source: OFT website.

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<sup>15</sup> These estimates are based on data provided by gyms at the time of the investigation and market reports from Mintel. The wide range of estimates is due to the uncertainty surrounding the membership numbers of some of the gyms affected by the intervention (as discussed in paragraph 224). Including only private gyms increases the estimated share of members from 50% to 85%.

<sup>16</sup> OFT press release (2013): '[OFT secures further improvements to gyms contracts](#)'.

<sup>17</sup> The Fitness Industry Association has since become ukactive.

56. When referring to the OFT intervention throughout this report we include the Ashbourne case, subsequent investigations into other gyms and the follow-up letters.<sup>18</sup>

## **Reasoning behind the intervention**

57. Before discussing our estimates of the impact of the OFT intervention, we discuss some of the justification for it in the first place. We focus on a high-level expression of the economic ideas that lead to the OFT's intervention, referring to the literature where relevant.
58. In this case, the main potential harm to consumers derived from the contract terms they entered into. Within this, one of the main issues related to consumers' ability to accurately forecast how much they would value their gym membership in the future and the ultimate likelihood of wanting to end, or cancel, that membership. If consumers significantly overestimated the future value of their contracts, they may have entered into long-term contracts that were ultimately poor value for them. Similarly, if they underestimated the likelihood of wanting to cancel, they may not have paid due consideration to cancellation terms when signing up for a gym membership – reducing the pressure on operators to compete to provide more favourable terms.

## ***Economic literature***

59. We considered evidence from the economic literature surrounding these points and, in particular, how different types of contracts could be harmful to consumers. A full summary of our review of the relevant literature can be found in Annex 4. Overall, the literature seems to suggest that consumers do not always behave rationally when signing long-term contracts, such as those for gym memberships. In particular, we have explored the following main themes in the academic literature:
- (a) There are a number of reasons why consumers may make bad decisions regarding contracts. The literature highlights that consumers may fail to make choices that maximise their utility because of imperfect information and imperfect rationality. Firms, in turn, may have incentives to exploit consumers who suffer from cognitive biases or who lack information about a product.
  - (b) We also considered what the literature said regarding consumers' perceptions about their usage of services when signing contracts. Most

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<sup>18</sup> Many gyms had different contract terms before the intervention and therefore agreed to make different changes following it. These differences are reflected in our impact estimates where possible.



papers on consumers' perception on usage reflect that consumers are not able to estimate correctly their future utility and they are generally over-optimistic when engaging in long-term contracts.

(c) Finally, a number of papers in the literature analyse and quantify consumers' detriment when joining a gym under different contract lengths. The findings obtained from these empirical papers suggest that a significant proportion of consumers who subscribe to long-term contracts end up making a suboptimal choice, given their attendance frequency, and they would have been financially better off if they paid per use instead.

60. In summary, the literature appears to show that new gym consumers tend to over-predict the usage of gyms when they sign-up for a contract and, in turn, gyms may have incentives to exploit consumer cognitive biases so as to encourage them to engage in long-term contracts (eg consumers are keener to sign-in for a long-term contract if they are offered a discount on the price). This is likely to result in significant detriment for consumers who are prone to these biases. The literature also shows that consumers often have poor understanding or no awareness of their contract terms (eg add-ons or cancellation terms) and firms have an incentive to exploit such myopic consumers. This lack of awareness also means that consumers might not respond to attempts by firms to compete on offering fairer contract terms and hence competition on its own may not be sufficient to reduce consumer harm.
61. These findings suggest that the OFT intervention resulting in shorter contracts and better cancellation terms is likely to have reduced the detriment from the exploitation of consumer biases.

## Approach to the evaluation

62. In this section, we set out how we have approached evaluating the impact of the OFT's intervention and describe the main sources of information we have been able to draw upon to do so.

### Scope of evaluation

63. The purpose of this evaluation is to consider the overall impact that the OFT's intervention had on consumers. We have focused our quantification of the impact in two areas where the intervention resulted in changes: changes to cancellation terms (including cancellation notice periods) and action against longer term contracts.
64. These were areas where the High Court in the Ashbourne case deemed the membership terms to be unfair. Additionally, a number of gyms that were investigated by the OFT appeared to be operating similar terms. We also considered that these terms were likely to have led to direct and potentially large detriment to consumers. As a result, we thought that these two changes were likely to have had the most impact across all of the range of enforcement activities and negotiations enacted by the OFT in this regard. This is not to say, however, that the impact of the other changes was minimal.
65. We also believed that it would be easier to collect data and quantify the impact of these changes than for other terms that were affected by the OFT intervention. We considered that a number of the other changes would either have been unlikely to have had a major impact or the impact would be particularly difficult to quantify.<sup>19</sup>
66. In addition, we have focused our quantification of the estimated impact on the seven operators that made substantial changes as a result of the OFT intervention.<sup>20</sup> This is not to say that other gyms and operators did not make changes as a result of the intervention. We consider the extent to which other gyms made changes as part of the wider assessment of the intervention in paragraphs 315 to 321.

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<sup>19</sup> For example, as a result of the OFT intervention, a number of gyms improved the ability for consumers to temporarily suspend their memberships, allowing them to take a break, sometimes in exchange for a small fee. This has the obvious potential to reduce consumer detriment for some consumers if they are able to effectively postpone their membership to a time when it would have more value. However, we considered that it would be difficult to quantify the scale of this reduction without evidence of the detriment avoided from consumers who suspended their memberships, something that was likely to be difficult to obtain given the relatively low number of members who use suspensions. In addition, the OFT intervention affected relatively few operators' terms regarding suspensions.

<sup>20</sup> Details of these operators can be found in paragraphs 44 to 50.

67. We have also gathered qualitative evidence on the potential impact of other changes that resulted from the OFT intervention, for example changes made by gyms other than those directly investigated by the OFT. We have not however tried to quantify these benefits, focusing instead on any lessons that can be learnt from the changes and trying to gain an understanding of whether there has been any impact at all in that area.

## Evaluation framework

68. Before gathering evidence for this evaluation, we developed an analytical framework to help scope the key impacts from the OFT intervention. As part of this framework, we identified a series of key steps that needed to be completed in order to estimate the impact of the OFT intervention.

69. A first step was to identify the potential impact of the OFT intervention by establishing a link between the OFT’s views on consumer detriment, its interventions and the ultimate outcomes and impact. An example of this is presented in Table 3.

**Table 3: High-level intervention model for long minimum term contracts**

<i>Finding</i>	<i>Intervention</i>	<i>Intermediate outcome</i>	<i>Impact</i>
<p>A number of biases cause prospective gym members to underestimate their future gym use, namely:</p> <ul style="list-style-type: none"> <li>• Gym use is an experience good where it is difficult to predict use</li> <li>• Consumers are overly optimistic about their future preferences</li> </ul>	<p>Contract lengths over 12 months long and automatic roll-over deemed unfair due to risk of exploiting consumer biases</p>	<p>Majority of gyms stopped using contracts longer than 12 months, although LA Fitness maintained an 18-month contract (assuming compliance)</p>	<p>Fewer consumers stuck on contracts they don’t want for long periods of time Possible waterbed effect if gyms have responded to changes by increased prices (higher fees due to shorter contracts) /reducing quality elsewhere</p>

70. After identifying potential impacts of the intervention, we then considered the key questions that we would be seeking to answer in order to estimate the overall impact of the OFT intervention. We used these to identify the areas where we would aim to gather evidence that we would piece together to produce estimates of the impact.

71. Our approach can be summarised into the following steps, within which we would seek to answer a number of specific questions:

(a) Identify what the OFT intervention was and when it took effect:

(i) What changes were made by gyms and when?

- (ii) Have these changes been implemented and complied with?
- (b) Consider the counterfactual:
- (i) What would have happened to gyms' contract terms absent the OFT intervention?
- (c) Estimate the benefits of (a) compared to (b):
- (i) Was there a reduction in consumer detriment from enhanced cancellation rights?
  - (ii) Was there a reduction in consumer detriment from reduced long-term contracts?
  - (iii) Were there any other consequences of the OFT intervention?

## Information and data sources

72. To inform the evaluation, we sought to gather a wide range of evidence from a number of different sources. We prioritised data sources that would allow us to quantify the impact of the OFT intervention relating to changes in cancellation terms and contract length, but did not focus on these areas exclusively.
73. The evidence we have relied upon can be categorised into five main types:
- (a) gym and ukactive data and views;
  - (b) the CMA's survey of gym users;
  - (c) data on issues raised by consumers from the Citizens Advice Consumer Helpline Database;
  - (d) desk-based research and industry reports, including academic literature; and
  - (e) data collected during the OFT's investigation.
74. We experienced some challenges in gathering evidence for this evaluation. The two main issues involved collecting relevant data from stakeholders and a lack of contemporaneous information from the time of the original cases.
75. We made assumptions about various gyms and their practices in order to infer values for certain parameters. We provide details of the assumptions that we have made where appropriate throughout the report. We note that whilst relying on assumptions inevitably adds some uncertainty into the estimates of



the impact, we have sought to justify these assumptions where possible and reflect the uncertainty in our estimates by testing the sensitivity of the results to different assumptions.

76. We provide below more information on the different types of evidence we have gathered during the investigation and how we did so.

### ***Questionnaire responses from gyms***

77. We contacted a number of different health and fitness operators as part of this evaluation, including those that were directly involved in the OFT intervention and a range of gyms that were not.
78. In contacting operators that were not directly involved in the OFT intervention, we sought to speak to a collection of the largest operators in the market as well as a few smaller operators. We did not attempt to be exhaustive in this exercise but sought to speak to a range of operators. We also engaged with ukactive, the independent membership body which is made up of over 3,500 health and fitness clubs and organisations.<sup>21</sup>
79. We sent out questionnaires to 15 gym operators. We received a direct response to at least some of our questions from eight operators and a response from ukactive. A number of other operators may have responded to us indirectly through the response from ukactive. Of the participating gym operators, three had been directly affected by the OFT intervention.<sup>22</sup>
80. From these responses we collected some aggregated data, although some limitations on the collection and retrieval of data appear to have restricted the ability of operators to supply some of the data requested.
81. These factors have limited the information available to us in quantifying the benefits of the OFT intervention. We therefore worked with the data that was available and, in places, supplemented this with assumptions that we considered reasonable given the evidence available (eg data from market reports and our survey).

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<sup>21</sup> Members of ukactive include private/public health and fitness clubs, health and fitness suppliers, children's activity providers, corporate brands in the physical activity space, fitness training providers and fitness awarding organisations.

<sup>22</sup> Some of the operators that were party to the OFT intervention either declined to comment or did not respond to the CMA's questionnaire. The CMA attempted to reach these parties on numerous occasions but was unsuccessful.

## **Survey**

82. We commissioned a survey of gym users from Ipsos Mori using its face-to-face omnibus survey.<sup>23</sup> We surveyed consumers who were existing members, or had been a member within the past two years, of a gym on a contract with a minimum term of at least six months. For more detailed information on the survey that we undertook, please see Annexes 2 and 3.
83. We asked gym members a series of questions about their current or past gym memberships, which were intended to:
- (a) reveal which gym the membership was with;
  - (b) how much it cost;
  - (c) whether they had used the membership as they expected;
  - (d) whether they had cancelled it or would like to cancel it; and
  - (e) whether, despite this, they would have remained in the membership if they had been able to pay a lower price and what that price would need to be for them to have stayed.
84. We restricted the timescale for past members to two years from the date of our survey, which took place between November 2015 and January 2016. In doing so, we were mindful that the OFT intervention took place several years ago and felt that there would be little value in surveying people regarding events that had happened so long ago. This is because of issues with them accurately recalling the past. We considered it likely that responses would be more reliable if the membership had been held more recently and thus restricted our survey to the past two years, a period of time after the OFT intervention. We draw upon the results of our survey where relevant throughout our report. Annex 2 contains a more detailed breakdown of the results from the survey.
85. The survey evidence that we have collected has been limited to consumer actions within the current gym landscape. It is worth noting that no contemporaneous survey evidence was available to us from the time of the OFT interventions. We have therefore needed to form a judgement on the extent to which results from our survey can be used to inform an assessment

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<sup>23</sup> An omnibus survey is a survey method where questions on a wide variety of subjects are asked during the same interview. More information about the Ipsos Mori face-to-face omnibus survey can be found here on [its website](#).

of the impact of OFT intervention. We discuss these issues in detail as and when they arise.

### ***Data from investigations***

86. As part of the initial investigations by the OFT into gyms, various pieces of information were collected, either from the parties under investigation or from desk research.
87. This data provided some information on the prevalence of the potential issues investigated at the time of the OFT intervention. The data contained high-level information on the number of consumers potentially affected by the contract terms that were considered to be unfair by the OFT and were subject to its investigation.
88. Where appropriate, we have used data that was collected during the OFT's initial investigations in this evaluation. The information that we have used has been restricted to information regarding gyms' membership and cancellation numbers. The information was often used to supplement information provided by stakeholders or as a basis to inform figures when more up-to-date information was not available.

### ***Consumer issues data***

89. Consumer complaints or issues provide useful information on the ways in which consumers may suffer detriment due to particular practices. The number of complaints or issues received also provides a potential indicator for the overall number of consumers facing that detriment.
90. For example, one of the reasons that the OFT was concerned about contract terms in the gyms sector was the high number of issues that were being raised by consumers about the sector.
91. We used data taken from the Citizens Advice Consumer Helpline Database to consider how the number and types of issues consumers raise about gym services had changed over time.<sup>24</sup> Our analysis on the impact of the intervention on the number of consumer issues can be found in the 'Number of consumer issues analysis' section below. For the reasons set out there on the limitations of the data, we did not use it to directly quantify the impact of the OFT intervention. Instead, we considered that it provided a high-level illustration of how the intervention had affected consumers.

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<sup>24</sup> More information can be found on the [Citizens Advice Bureau website](#)

***Desk-based research and industry reports, including academic literature***

92. In addition to the sources above, we have also used desk-based research to support our evaluation. This included the websites of gym operators as well as industry reports from organisations such as Mintel.
93. These documents provided an overview of the sector and in some circumstances allowed us to see how developments had unfolded over time.
94. We refer to these where relevant throughout this report.

## What changed after the OFT action?

95. The first step in establishing the impact of the OFT's intervention is to identify the changes that occurred as a result of it. We therefore sought to understand if there had been permanent changes in conduct regarding contracts as a result of the action and whether the contracts of gyms were compliant with the spirit of the intervention. Further, we hoped to understand the extent to which the intervention impacted gyms beyond those that had been investigated.
96. In order to explore these questions, we considered whether the contracts currently offered by gyms were consistent with the OFT interventions. We did this using several methods:
- (a) Firstly, we carried out extensive desk-based research. This involved collating gym contracts where possible<sup>25</sup> and comparing them with terms we would expect following the OFT intervention.
  - (b) Secondly, we requested information from a number of gyms and credit reference agencies and used their responses as evidence. We also received a substantial response from ukactive on behalf of its members.
  - (c) Thirdly, we used our consumer survey which provided some information on consumers' awareness of their ability to cancel their membership contracts, the length of contract that they were on and their success rates with cancellations.
  - (d) Finally, we considered evidence from the number of issues raised by consumers about gyms.

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<sup>25</sup> Not all gyms display their membership contract terms online.



## Desk-based research and responses from our request for information

**Table 4: Summary of our findings on what has changed**

<i>Term</i>	<i>Before OFT intervention</i>	<i>OFT intervention</i>	<i>After OFT intervention</i>
Contract lengths	Some over 12/18 months	Secured undertaking requiring the gym to cease offering contracts with a minimum term of over 12 months (Fitness First and Harlands Group Ltd (and associates)) LA fitness minimum 18-month contract provided consumers the ability to cancel their contract within the minimum period by paying an exit fee. The OFT carefully considered this and reserved its position.	Most contracts are 12 months or under, some 14 and 18 months contracts. Some evidence that longer term contracts may still be used by minority of non-investigated gyms.
Cancellation due to a material change of the consumer's circumstances	Not consistently available	Secured undertakings from gyms subject to the OFT intervention, extended consumers' rights to cancel their contract in certain undertakings: extended cancellation rights circumstances (eg medical condition, redundancy, relocation where gym attendance becomes difficult or unaffordable).	Now available in most gyms but degree of flexibility and circumstances covered vary from gym to gym.
Cancellation due to a material change made by the gym	Not widely available	Secured undertaking that extended consumers' rights to cancel their contract in the minimum term due to significant reduction on opening hours or facilities at the consumer's local gym.	Now available in most gyms but degree of flexibility and circumstances covered vary from gym to gym.
Freezing or suspending membership	Uncertainty about availability in many gyms	Secured undertaking that extended consumers' rights to suspend their membership for temporary illness or injury and improve clarity of the implications of freezing account on the minimum term.	Now available in most gyms but prices and terms vary.
Debt collection terms and conditions	A few gyms with harsh, disproportionate procedures	Secured undertaking, requiring the gym to cease using practices that are misleading or aggressive practices.	Debt collection policies have been reviewed and referrals to credit reference agencies lessened.

97. Since the OFT intervention, there appear to have been many changes to gym contracts and practices in line with the changes agreed at the time of the OFT intervention. However, we noticed varying degrees of compliance in all the areas of change.
98. From our request for information, all the operators that responded were aware of the OFT intervention. This included six operators that were not directly subject to the OFT intervention.

### ***Contract length***

99. Where previously minimum contracts were longer than 12 months, often at 18 and 24 months, they are now generally shorter mostly at a 12-month minimum. None of the gyms that responded to our request for information offered contracts longer than 18 months, with the majority offering contracts below 12 months.<sup>26</sup>
100. Gyms offer a more flexible range of contracts, from pay-as-you-go and rolling monthly contracts, to 6 and 12 month minimum terms.
101. Information on Ashbourne's website indicates that it does not offer membership contracts longer than 12 months.<sup>27</sup> On the other hand, another gym appears to offer a 14-month contract, with the option to exit the contract after the initial period of six months by giving notice and some other operators appear to offer contracts with a minimum contract term up to 18 months. The OFT's view was that minimum term contracts that exceed 12 months had the potential for unfairness under the UTCCRs, but decided to reserve its position and not take action against LA Fitness, which was offering 18-month contracts, as it introduced additional rights for the consumer to exit the contract by payment of a fee.<sup>28</sup> As noted, LA Fitness has since been acquired by Pure Gym and we understand that these contracts are no longer available.

### ***Cancellation terms and suspensions***

102. All gyms that we spoke to had a provision for cancellation after the expiry of a minimum period by serving notice. For most gyms, the notice period for a

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<sup>26</sup> LA Fitness continued to operate 18-month contracts following the OFT's investigation, a situation that the OFT continued to monitor. LA Fitness has since been acquired by Pure Gym and we understand that these contracts are no longer offered.

<sup>27</sup> [Ashbourne memberships faq page](#).

<sup>28</sup> We received information that there were some gyms offering contracts of 24 and 36 months duration. This suggests that there might be gyms offering contracts of considerable length and therefore that some members may still be subject to long-term minimum contracts despite the OFT intervention. We did not receive detailed information about these contracts or their exact form. We have passed this information on to the relevant sections of the CMA to consider further.

cancellation was around a full calendar month, with the exception of one gym which had a three-month period in one of its contracts. However, the timing of giving notice (ie the day of the month on which the notice is given) can affect when the cancellation takes effect and hence in practice the effective notice period can be longer than this.<sup>29</sup>

103. A number of 'low cost' or 'budget gym' operators appear to allow consumers to cancel at any time without having a penalty. Consumers pay monthly in advance and the remaining portion of the month is non-refundable should they choose to cancel between payment dates.
104. All the gyms that gave the OFT undertakings have added a cancellation provision for a material change of circumstance (for example health, employment, moving home) but the exact terms and conditions associated with this provision differ between operators. Generally, members need to prove their change of circumstance. For example, in the case of illness and injury a member may be required to provide a doctor's note and for moving home or office the new property/office will often have to be a certain number of miles away from the gym. We note that one gym allows cancellations for injury and loss of employment but not for relocation.
105. The majority of operators appear to consider requests for cancellation with respect to objective criteria as set out above. However, we have found at least one operator that told us it considered cancellations on a case-by-case basis, suggesting that the decision would be at the discretion of the gym based on the circumstances.<sup>30</sup> Another operator states that it will 'make every effort to help in the event of exceptional circumstances', but does not appear to provide any objective criteria for cancellation in such instances.
106. Further, we have received some evidence from a small number of consumer complaints that not all gyms allow cancellation for all changes in circumstances. For example, we are aware of a complaint against one gym that allowed cancellation for serious injury but not for relocation or redundancy.
107. The cancellation notice period linked to a material change in circumstance also varied. Many gyms have the same 30-day, one month or three months'

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<sup>29</sup> For example one gym states 'if you give notice during a month, we will treat it as if we received it on the first day of the following month and the notice period will run from that day. For example, if you need to give us one month's notice to end your membership and we receive your notice on 23 May, your notice will start from 1 June, it will run out on 30 June, your membership will end on 30 June and you will pay one more direct debit (on 1 June) after giving notice. The only exception to this is if you give us notice at the beginning of a month. This means that if we receive notice from you up to and including the fourth day of a month, we will treat it as if we received it on the first day of that month and the notice period will run from that day.'

<sup>30</sup> In this case, we were unable to verify how effectively the policy had been working in practice but were concerned that the policy may not have been benefiting consumers as the original intervention had intended.



notice period as with general in-contract cancellations, but others had shorter notice periods which could even be immediate or within two weeks.

108. However, as before, the date on which the notice is given may affect the actual length of the notice period. For example, if it is given in mid-month, with one gym that would mean that the cancellation would be effective from the beginning of the next month, while with another operator it would mean that the cancellation would be effective at the end of the following month, ie six weeks from the date of notice instead of two weeks.<sup>31</sup>
109. We were not able to perform any meaningful research into how easy it is for gym users to comply with the procedures for cancellation in practice. Whilst we are not able to comment on their prevalence or representativeness, we are aware of some media coverage regarding difficulties with cancellations via telephone.<sup>32</sup> In the 'Evidence from our consumer survey' section below, we discuss the results regarding consumers' ability to cancel their contracts.
110. The OFT intervention also led to some operators increasing the ability for consumers to cancel contracts if the services offered by the gym changed materially. A number of operators now offer provisions to cancel due to issues arising with the day-to-day operation of the club. For example, one operator allows cancellations if they close the whole of the club for more than one month at a time or if they significantly reduce the opening times or facility.
111. Some clubs have introduced terms that allow consumers to suspend and/or freeze their membership for a certain period of time. For example, one gym allows members to freeze their membership for one to three months per membership year, at a charge of £5 per month. Another gym allows membership freezes for all members for the same amount of time but at a cost of £10 per month. In both cases, any months frozen are added to the end of the current membership term.
112. In some instances, the suspension or freezing of the membership is permitted if there is a material change in the consumer's circumstances. For example, one gym's members can freeze membership for a period of 1 to 12 months without charge for the following reasons: pregnancy, illness, injury, redundancy and relocation (both office and home). Members are also given

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<sup>31</sup> The following extract has been taken from one gym's contract: 'if you have an injury or medical condition, become pregnant, move to a different workplace, move house or are made redundant. We will need to receive documents as proof of the change in your circumstances by the 15th of the month in order to cancel your membership at the end of that month. If we receive documents after the 15th of the month your final membership fees will be taken the following month and your membership will be cancelled at the end of that month.'

<sup>32</sup> For example, this [clip from the BBC](#) highlights the difficulties that some members can experience in cancelling their contract by phone.

the opportunity to 'transfer' to another club of the gym if it is a more suitable location.

### ***Debt collection practices***

113. In its investigation, the OFT suggested that operators should avoid the use of aggressive and/or misleading debt collection practices, such as misleading consumers about the possible consequences of non-payment of membership arrears.
114. While some operators agreed to review their debt collection terms and conditions, from the desk-based research we found three clubs that still state in their contracts that they 'may' pass on details to a debt collection company. However, evidence collected directly from credit reference agencies suggested that they currently have no direct dealings with firms in this market in contrast with the situation prior to 2011.
115. We note that part of the concern from the original investigation was that some companies were threatening to use debt collection companies but in fact had a policy not to do so. In this respect, we note that some contracts still mention the debt collection companies but there does not appear to have been any actual contacts made.

### **Evidence from our consumer survey**

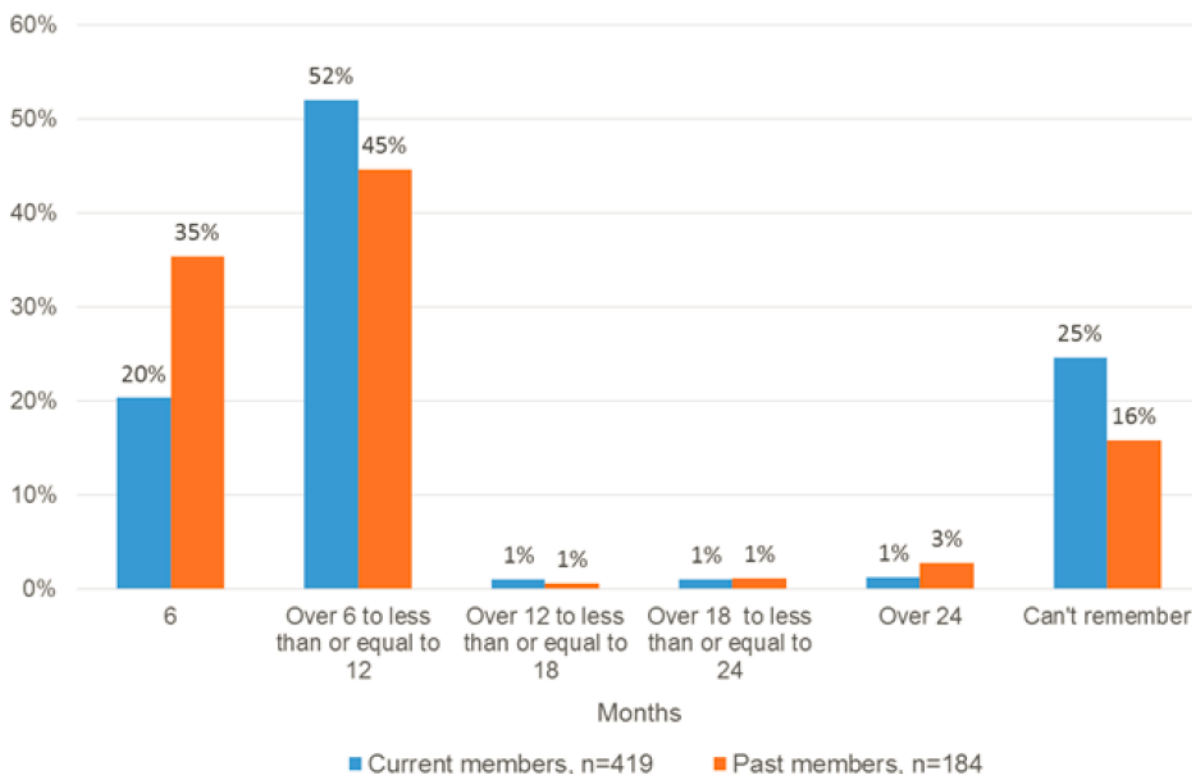
116. The results of our consumer survey provide a high-level overview of consumer experiences of gym contracts which can be indicative of the contract terms offered by gyms and consumers' awareness of those terms. In particular, our survey asked consumers:
  - (a) the length of the minimum term period of the contract;
  - (b) whether they were aware of the ability to cancel the contract if their circumstances changed; and
  - (c) if they had cancelled, the reason for cancellation and whether they had paid a cancellation fee.

### ***Contract lengths***

117. Figure 1 illustrates the contract lengths reported by current and past gym members who were on a minimum term contract of at least six months in our survey. Current gym members were respondents who had a minimum term contract of at least six months. Past members were respondents who had

previously been a member of a gym with a minimum term contract of six months, but were no longer with this gym.

**Figure 1: Length of minimum membership period**



Source: CMA survey, 2015.

Notes:

1. May not sum to 100% due to rounding.
2. 'Q8. (Current) What was the minimum membership period for this contract when you first signed up?' Respondents with more than one membership were asked: 'Please think of the membership with the longest minimum term contract.' A logic check ensured that anyone who said less than six months at Q8 was screened out (even though they had said that their minimum term contract was more than six months prior to this).
3. 'Q21 (Past) What was the minimum membership period for this contract when you first signed up?' Respondents with more than one gym membership were asked to think about the one with the longest minimum term contract. A logic check ensured that anyone who said less than six months at Q21 was screened out (even though they had said that their minimum term contract was more than six months prior to this).
4. Base: Past members of gyms who cancelled within their minimum membership period, or cancelled when it ended or within two months of it ending.
5. Base: Current members.

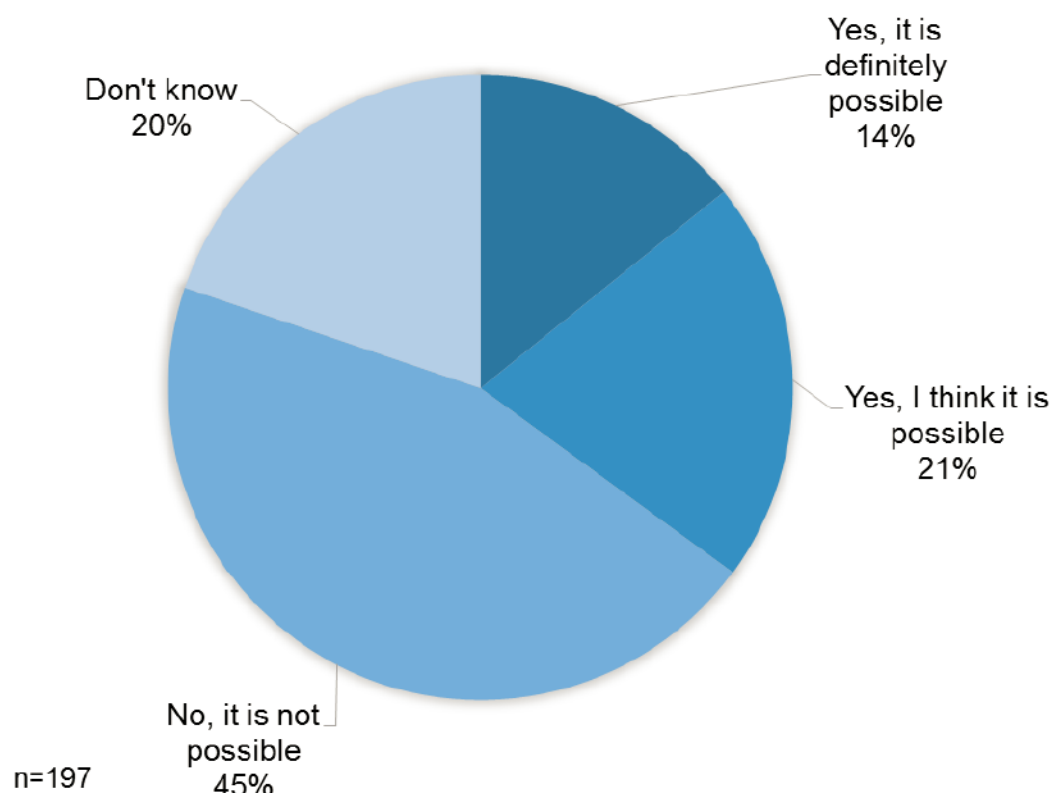
118. The chart shows that the majority of respondents had a contract with a minimum term of 12 months or less. However, the results suggest that there are a relatively small number of members who are on contracts longer than 18 months and even some on 24 months or more.
119. We note that there are a relatively high number of respondents (25% and 16% of current and past members respectively) that were not aware of the length of their contract. This could reflect members whose minimum term expired a long time ago or simply that they did not recall it since they were content with their membership.

120. However, it could also point to some consumers being unaware of the length of their minimum term contracts due to this not being made clear to them at the point of signing up for the gym membership. Further, we note that in light of the evidence that not all consumers may be able to make rational choices upon entering contracts, it is concerning that a high proportion of respondents were not able to state a key feature of their contract, namely the length of the minimum contract term, particularly as many are current members of gyms.

### **Cancellation rights**

121. Our survey asked respondents whether they would be able to cancel their current contract before the end of the minimum term without incurring any fees or being required to pay for the rest of the membership period. Figure 2 below shows the responses that we received.

**Figure 2: Awareness of ability to cancel without incurring extra fees**



Source: CMA survey, 2015.

Note: 'Q13A As far as you are aware, under the terms of your current contract, is it possible to cancel this contract before the end of the minimum membership period without incurring any extra fees?'

Base: Current members still in minimum membership period.

122. Nearly half of those currently in a gym membership contract thought it was not possible to cancel their membership before the end of the minimum period without incurring extra fees. Just over one-third thought it was possible or definitely possible, whilst one-fifth did not know.



123. We note that the question may have been interpreted in a variety of ways by consumers. Furthermore, some consumers may be unaware that they should be able to cancel if their circumstances changed if they had not experienced such a situation. However, the results do appear to suggest that more could be done to ensure consumers understand the terms and conditions of gym contracts. The results could suggest that some members may have considered leaving if they knew this was within their rights as a result of the OFT intervention.

### ***Reasons for leaving***

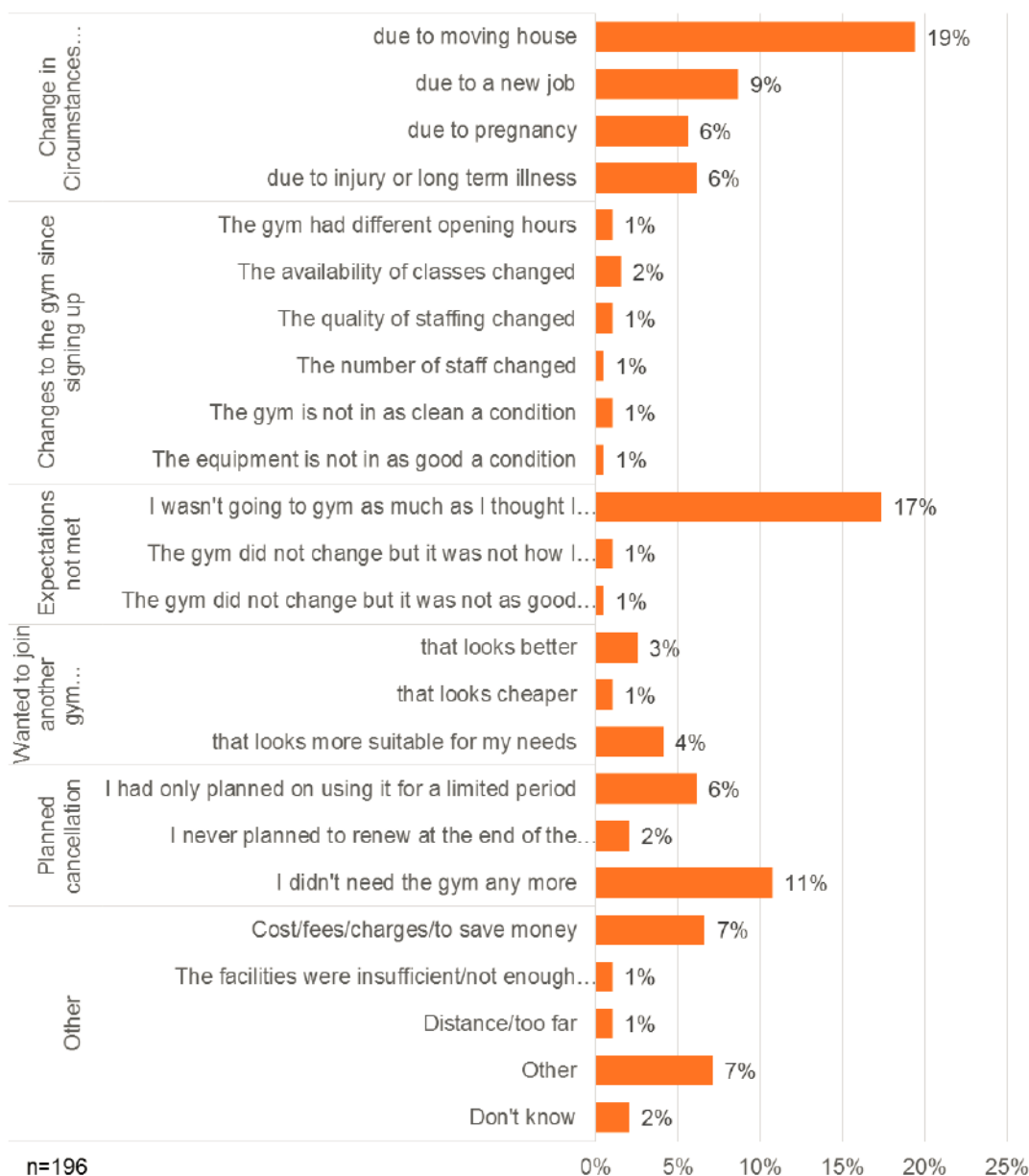
124. The survey asked respondents who had previously left a gym where they had a minimum contract of six months or more the reason why they had left and whether they had done so before the end of the minimum period.

125. We asked this in order to provide an indication of how gyms had been complying with the OFT intervention in practice. As a result of the OFT intervention consumers who had experienced a material change in circumstances should be able to leave their contracts before the end of the minimum term. It could therefore be a concern if we saw no evidence of consumers doing so.

126. The figure below summarises the reasons why respondents did not renew their gym membership or cancelled at the end of the minimum membership period.

127. Frequent reasons included moving house (19%), not going to the gym as much as I thought (17%), not needing the gym anymore (11%) and a new job (9%).

**Figure 3: Reasons for not renewing gym membership**



Source: CMA survey, 2015.

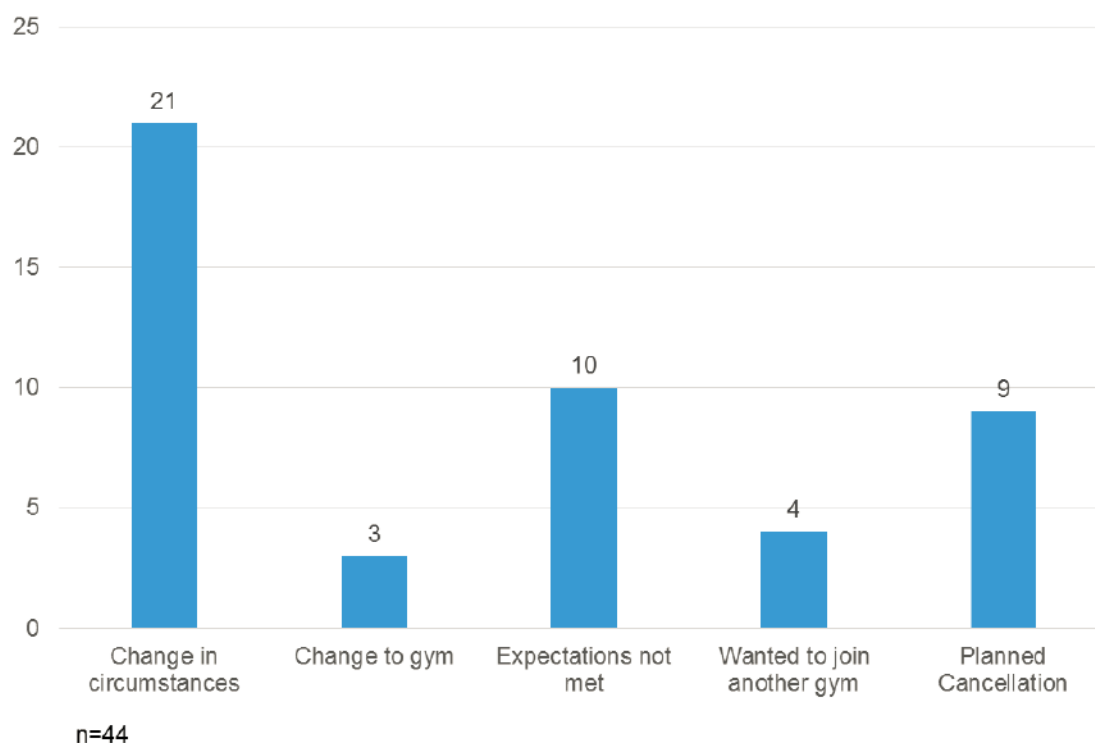
Note: 'Q25 What was your main reason for cancelling/ending your membership once the minimum membership period had ended?'

Base: Past members of gyms who cancelled when their minimum membership period ended or within two months of it ending.

128. The question was also asked of respondents who had cancelled within their minimum membership period the reasons why they had cancelled. The number of responses we received to this question was low, as there was only a small number of respondents who had cancelled within the minimum term in the sample. Due to the small sample size these numbers should be interpreted with caution. Numbers have been aggregated into general reasons (changes in circumstances, changes to the gym since signing up, expectations not met, wanted to join another gym, planned cancellation and other) due to the small number of responses.

129. 21 of the 44 respondents who answered this question cited a change in personal circumstances (such as moving house, a new job, pregnancy, injury or long-term illness) as a reason for cancelling, ten respondents' responses related to their expectations not being met (eg the gym not being what they expected).

**Figure 4: Reasons for cancelling gym membership**



Source: CMA survey, 2015.

Note: 'Q25 What was your main reason for cancelling/ending your membership once the minimum membership period had ended?'

Base: Past members of gyms who cancelled within their minimum membership period.

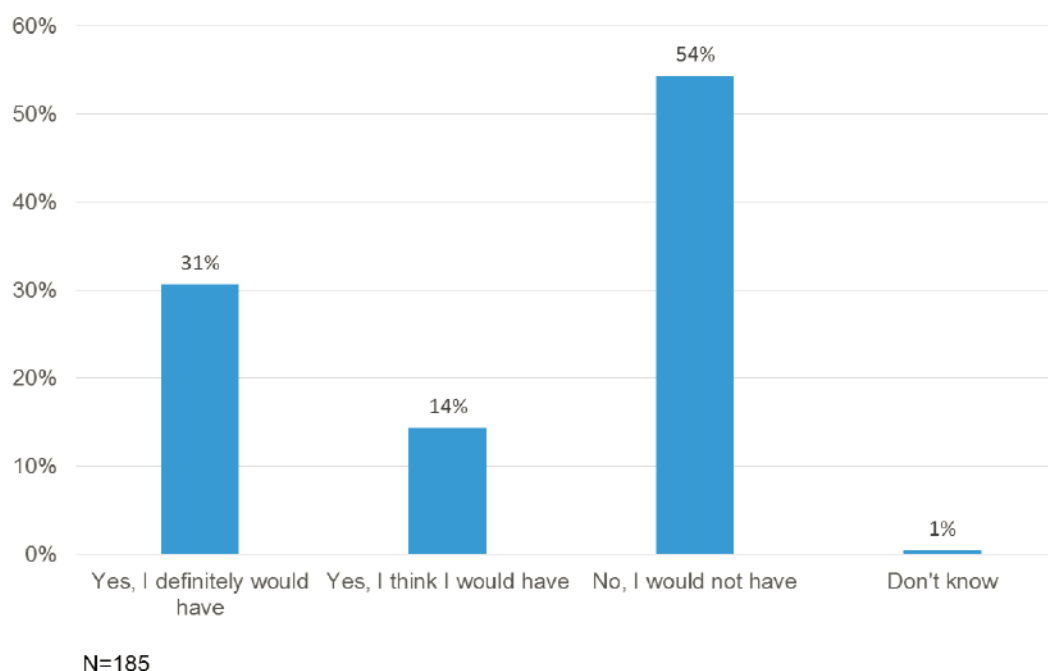
130. It should be noted that there are several reasons why the respondents with reasons to leave might not have wanted to cancel their contracts before the expiry of the minimum term or were not able to do so. For example:

- (a) The change in circumstance could have occurred near the very end of the contract meaning there would be little difference in cancellation and non-renewing for the consumer, especially with long notice periods.
- (b) There could be nuances in the reasons for consumers wanting to leave their gym not captured by the survey. For example, a consumer may have got a new job that provided subsidised gym access. In such a case, the reason for wanting to leave might not be relocation as such, but the availability of an alternative gym.

(c) The survey allowed respondents to provide more than one reason for leaving the gym. The reasons above may therefore not be the main reasons for wanting to leave the gym although we asked respondents to indicate the main reason for leaving.

131. Those who did not cancel within the minimum membership period were asked if they would have cancelled within the minimum membership period if they had been able to. Of those who were asked this, 45% said that they would have definitely cancelled or thought they would have liked to cancel.

**Figure 5: Past members, would have cancelled if had been able**



Source CMA Survey, 2015.

Note: 'Q28 If you had been able to cancel this contract without incurring any fees, would you have liked to cancel it early and not wait for the end of the minimum membership period?'

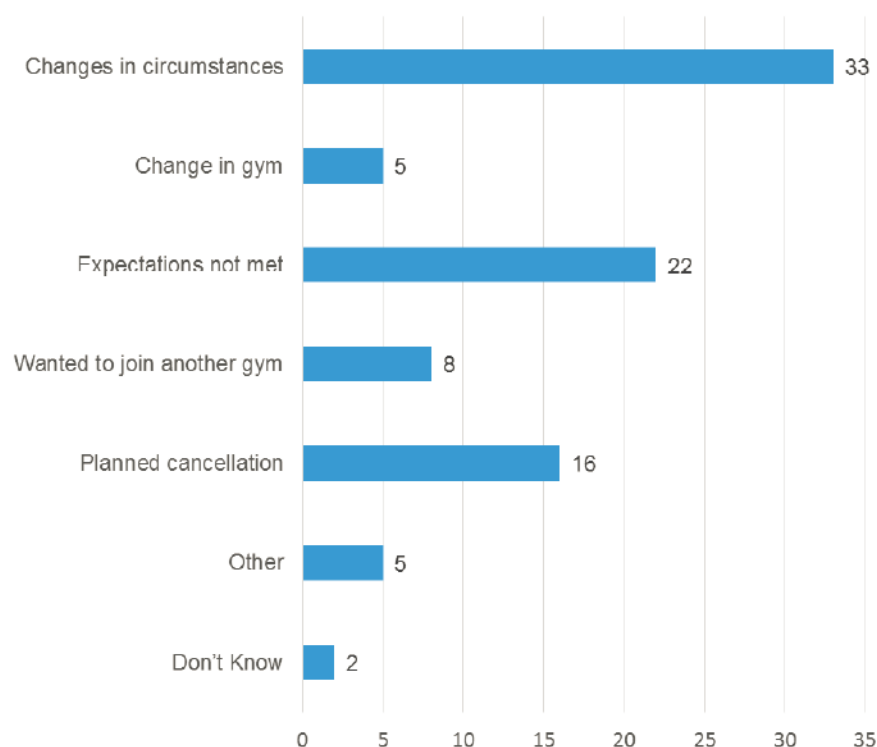
Base: Past members who did not cancel prior to the minimum period ending.

132. The figure below shows the reasons why past members who did not cancel during the minimum membership period did not renew at the end of their minimum membership period. This gives an indication of whether consumers are aware of their rights to cancel as a result of the OFT intervention, and whether some consumers are maintaining their gym membership until their minimum period has ended when they could have cancelled during the minimum membership period due to a change in material circumstances.

133. Of the 87 respondents who answered this question, 33 cited changes to their circumstances (such as moving house, a new job, pregnancy, injury or long-term illness), whilst five cited changes to the gym (the gym had different opening hours, availability of classes changed, quality of staffing changed, number of staff changed, the gym is not in as clean a condition and the equipment is not in as good a condition).



**Figure 6: Reasons for cancelling at the end of the membership term (for those who wanted to cancel during the membership term)**



Source: CMA survey, 2015.

Note: 'Q25 What was your main reason for cancelling/ending your membership once the minimum membership period had ended?'

Base: Past members who did not cancel prior to the minimum period ending and wanted to cancel during the minimum membership period (n=87).

134. Although these findings are based on small sample sizes, they suggest that some respondents did not exit their contracts despite appearing to have a material change in their circumstances, which they should have been able to do without cancellation fees following the OFT intervention. However, in interpreting this analysis it is worth noting that the reasons why they did not renew may have differed from the reasons why they wanted to cancel during the minimum membership period.
135. In our survey, we also asked respondents who had cancelled their membership if they had to pay a cancellation fee (for respondents who made regular payments) or were offered a pro-rata refund (for those who paid upfront). We are particularly interested in whether consumers were able to cancel minimum term contracts without penalty if their circumstances had changed materially.
136. Table5 shows the reason that the respondent gave for cancelling and whether they were able to leave without penalty.

**Table 5: Cancellation penalties for respondents with changing circumstances**

	<i>No penalty</i>	<i>Some form of penalty</i>
Change in circumstances due to moving house	6	3
Change in circumstances due to a new job	3	3
Change in circumstances due to pregnancy	1	0
Change in circumstances due to injury or long-term illness	3	1

Source: CMA survey, 2015.

Note: 'Q25 What was your main reason for cancelling/ending your membership once the minimum membership period had ended?'

Base: Past members who did cancelled prior to the minimum period ending (n=20).

137. The sample size is very low and may not therefore reflect the sector as a whole. However, of the respondents in this situation, most who cancelled their contract did not pay a cancellation fee or receive a refund on an upfront payment. Seven respondents did pay a fee or did not get a refund on an upfront payment, despite seemingly leaving their gym due to a change in their circumstances.
138. There could be a number of reasons for respondents not being able to cancel without any form of penalty as discussed above in paragraph 130. It could also be due to different gyms having a different definition of what may constitute a material change.
139. Overall, the survey suggests that some consumers are able to cancel their minimum term contracts due to material changes in circumstances such as those highlighted in the OFTs interventions. Although these findings are based on only a very small subset of consumers and the numbers are very small, this is an encouraging finding.
140. However, there were a number of past members who wanted to cancel their contract due to a change in their circumstances but did so only at the end of their minimum membership. It is not clear from our research why consumers took this approach. It could be due to a lack of consumer awareness of their ability to cancel their membership if their circumstances change or gyms not allowing such cancellations. A high number of respondents to our survey were not aware that they might be able to leave their contract before the end of the minimum term. This could suggest some of those not cancelling their contract do not know that they can do so without penalty.
141. Overall, the survey evidence suggests that contract terms have significantly improved since the OFT intervention. However, the CMA and its consumer enforcement partners should remain alert to developments in the sector to ensure compliance, especially with regard to cancellation terms, if future complaints or issues arise.

## Number of consumer issues analysis

142. One of the triggers of the OFT intervention in the gyms sector was the high number of complaints by gym users. Therefore, we considered how the number of complaints and reported consumer issues have evolved over time and whether this provided any insights into the impact of the OFT intervention.
143. The number of issues raised by consumers can be illustrative of the changes in the market, the level of compliance and the prevalence of consumer issues. Given the limitations of this data that we set out below, we did not use any information on the issues raised by consumers to quantify the impact of the OFT intervention. Notwithstanding this, the numbers can be illustrative of the changes in the market, the level of compliance<sup>33</sup> and the prevalence of consumer issues.
144. In the remainder of this section we note some of the caveats and limitations of the data before presenting our main findings from the analysis of consumer issues.

### ***Relevance and limitations of consumer issues data***

145. Consumer issues data may help explain the impact of the OFT intervention on consumers. This is because fair terms and conditions are likely to reduce consumer detriment. Since consumers raise issues or complain only when they encounter a problem, the number of raised issues is expected to fall after the OFT intervention if it has led to increased compliance and a better consumer experience.
146. However, there are three main caveats to the above reasoning.
- (a) First, a reduction in the number of consumers facing problems could have been caused by other changes in the market which are unconnected to the OFT intervention.
  - (b) Second, not all consumers who face a problem choose to complain or raise an issue. Whether they would or not depends on the trade-off between the cost of complaining and the expected outcome or

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<sup>33</sup> We considered comparing the number of issues raised about gyms that were subject to the OFT intervention and those that were not to explore whether the number of issues raised concerning the former decreased more than the number concerning the latter. However, we consider that this analysis would not have been meaningful for two reasons. First, we did not manage to obtain data on gym memberships for most of the individual gyms involved in this analysis. Without controlling for changes in the number of members, the comparison would be unable to untangle the effects of the intervention and changes in the number of members at each gym. Second, it is reasonable to assume that a number of non-enforced gyms have also changed their practices as a result of the OFT intervention, either because of the warning letters they received or because of the broader deterrence effect of the enforcement actions.

compensation. Therefore, a reduction in issues raised can also be attributed to a fall in the willingness to complain, rather than an actual fall in the number of problems. This could be especially the case if, for example, the proportion of consumers using social media rather than traditional channels to complain has increased.

- (c) Third, the OFT intervention could have, at least temporarily, led to an increase in consumers raising issues. This is because clearer contract terms and the publicity around the OFT's intervention could have raised consumer awareness. This increased awareness could have led to more consumers complaining and requesting compensation. Therefore, an increase in the number of issues raised (or only a small decrease) after the OFT intervention would not necessarily mean that the intervention had no (or little) impact.

147. Notwithstanding these caveats and data limitations discussed below, evidence from the number of issues raised, in conjunction with other qualitative and quantitative evidence, can be informative of the OFT intervention's impact.

### **Background**

148. The analysis below looks at trends in the number of consumer issues raised and explores whether there was any change after the OFT intervention. The analysis is based on consumer issues data from the Citizens Advice Consumer Helpline Database which covers more than 2,500 gyms in the UK. For each case Citizens Advice records, amongst other things:
- (a) the name of the gym;
  - (b) the date;
  - (c) a summary of the issue; and
  - (d) the category it falls into.
149. There are some limitations to this data of which we were aware when analysing and interpreting trends:
- The figures are limited by the way issues are recorded by Citizens Advice. Citizens Advice works as a call centre/advice office which citizens can contact in case of any issue with a business. Therefore, the number of



issues registered by Citizens Advice depends, among other things, on the public awareness of this service.<sup>34</sup>

- The way Citizens Advice's operators choose which category issues belong to is, at least to a degree, subjective and might change or be revised over time.

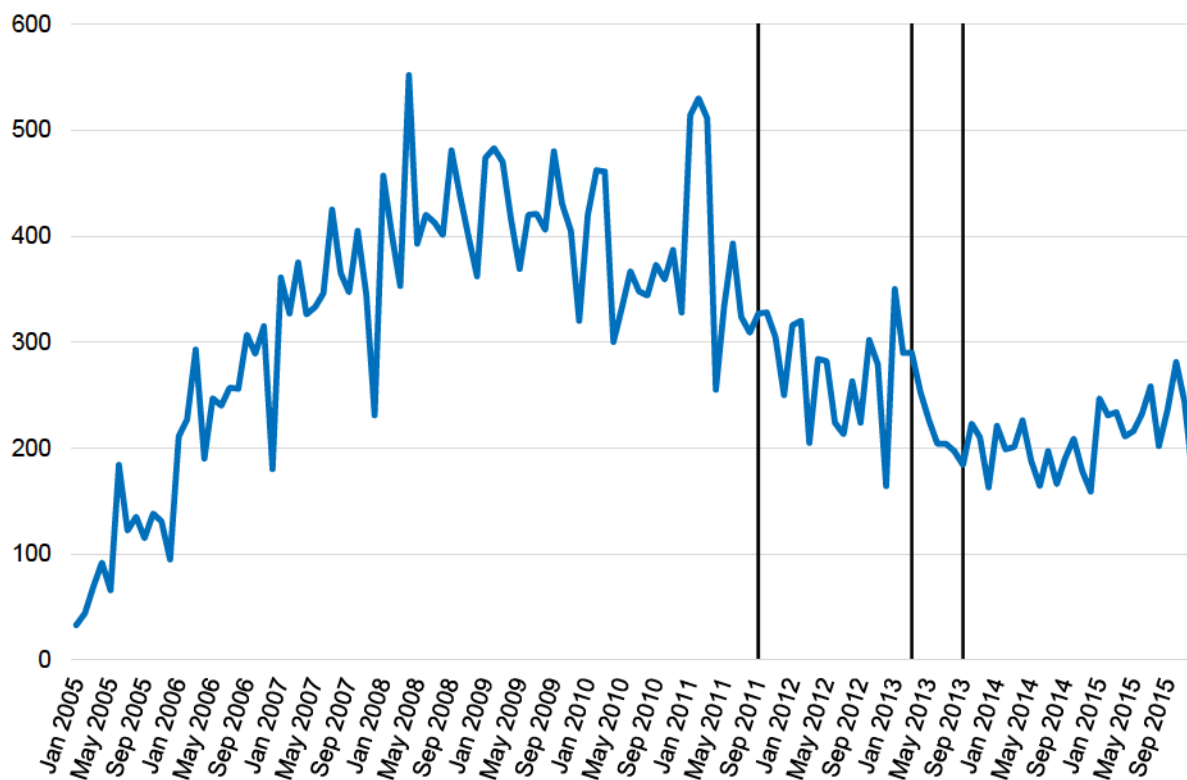
#### *Number of issues raised*

150. The total issues raised against gyms followed a clear trend over the course of the last decade. Figure 7 shows the rise and fall in the number of issues raised from January 2005 to the end of 2015. Key dates of the OFT intervention are represented by vertical black lines, starting with the Ashbourne verdict and then agreeing undertakings with other gyms.
151. Arguably, at least part of the rise in the total number of issues is due to Citizens Advice's collection procedure and history. For example, the popularity of the service is a crucial factor affecting the number of people using Citizens Advice's service.
152. On the other hand, multiple factors, including industry business changes, might have affected the decline in issues from the end of 2009.

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<sup>34</sup> We have not attempted to adjust the number of issues raised about gyms to take into account the total number of issues being raised to Citizens Advice.

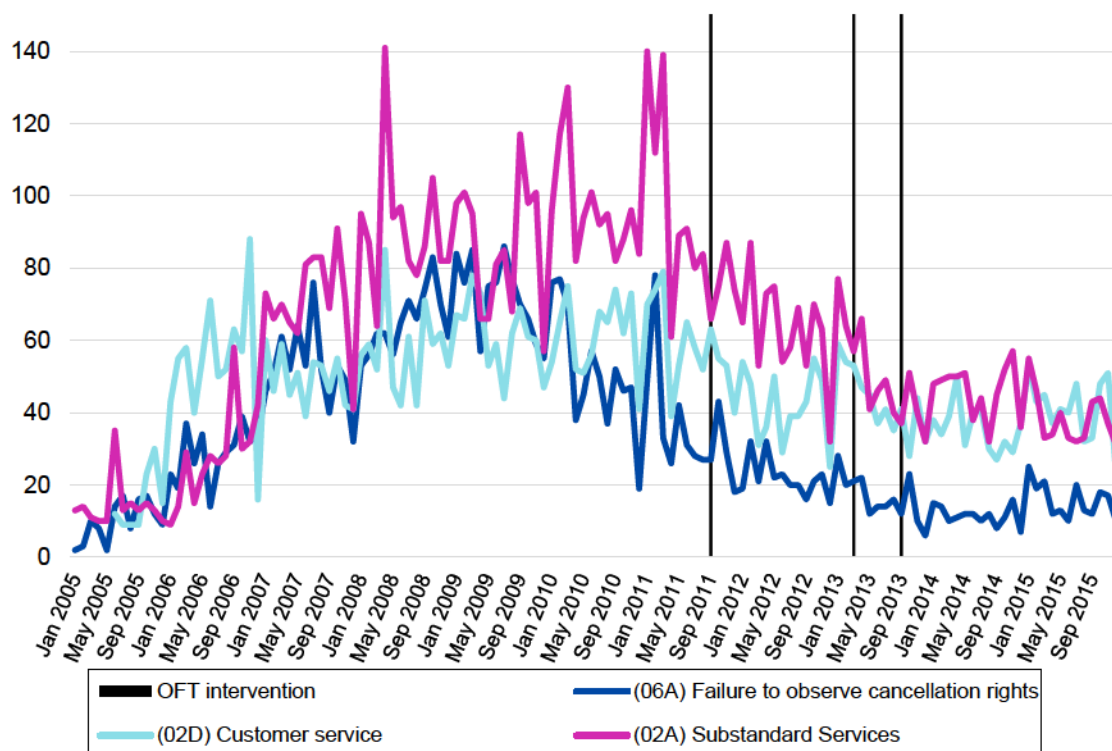
**Figure 7: Total number of issues raised against gyms between 2005 and 2015**



Source: CMA analysis of Citizens Advice issues data. Black vertical lines denote key points of the intervention.

153. Citizens Advice assigns each issue to a category. Figure 8 shows how the three most common categories of issues against gyms have changed over time, where popularity is measured as the sum of all issues over the past decade.
154. All three categories, namely ‘failure to observe cancellation rights’, ‘consumer services’ and ‘substandard services’, follow a similar pattern – one that resembles the total number of issues pattern. A relatively stable period between 2007 and mid-2011 follows a soar in issues that started in 2005 (and possibly before); from mid-2011 all three categories gradually decrease. This decrease in the number of issues reported coincides with the OFT intervention.

**Figure 8: Top three reasons to raise an issue about a gym**



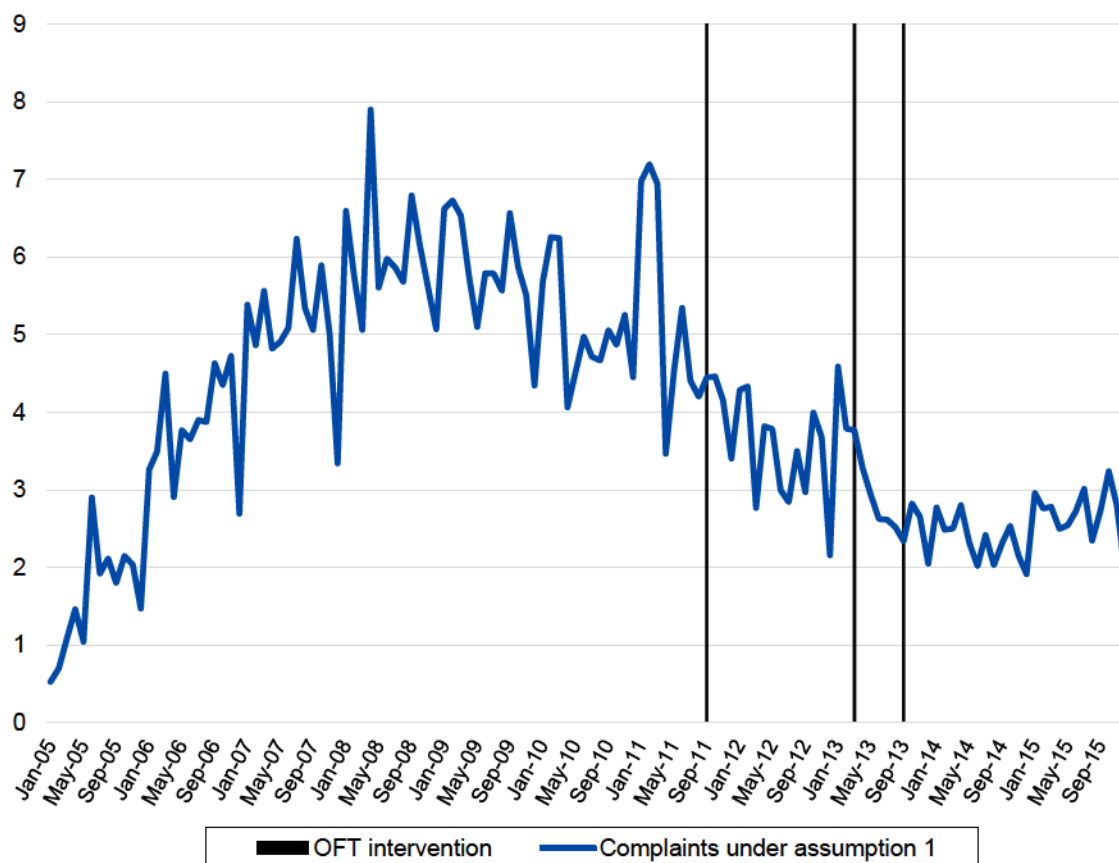
Source: CMA analysis of Citizens Advice issues data. Black vertical lines denote key points of the intervention.

155. During the decade 2005 to 2015, the business environment in the health and fitness club industry substantially changed. This is reflected in the number of members across the UK.
156. As the number of gym members is likely to affect the number of issues raised, we wanted a control for the changes in the number of gym memberships when analysing the issues data. To do this we used data provided by ukactive as a starting point. The dataset contained annual figures for UK gyms' members from 2010 to 2015. We adjusted and extended these figures to obtain monthly membership numbers from 2005. The results we present below are robust to an alternative set of assumptions.

***Trend in issues raised per 100,000 members***

157. As shown in Figure 9, issues per 100,000 members follow a similar trend as total issues raised. After an initial surge, the number of issues gradually fall from 2009. The OFT intervention seems to accelerate the decline in its initial stages. From the end of 2013, after the conclusion of the OFT intervention, the number of issues per 100,000 members stabilises at around 2.5 every 100,000 consumers.

**Figure 9: Number of issues raised against gyms per 100,000 members**



Source: CMA analysis of Citizens Advice issues data. Black vertical lines denote key points of the intervention.

### **Categories of issues**

158. Disaggregated data on issue categories permits a more detailed analysis of the changes in the number of issues per 100,000 members.<sup>35</sup> Arguably, ‘unfair terms’ and ‘unfair business practice’ are two categories likely to have been affected by the OFT intervention. These types of issues concern terms and conditions in the gyms’ membership contracts or business practices carried out by gym staff.

159. Figure 10 shows the number of issues raised in these two categories over time. The time series for ‘unfair business practice’ is particularly interesting. It is relatively stable at around 0.5 issues every 100,000 members from 2007 to

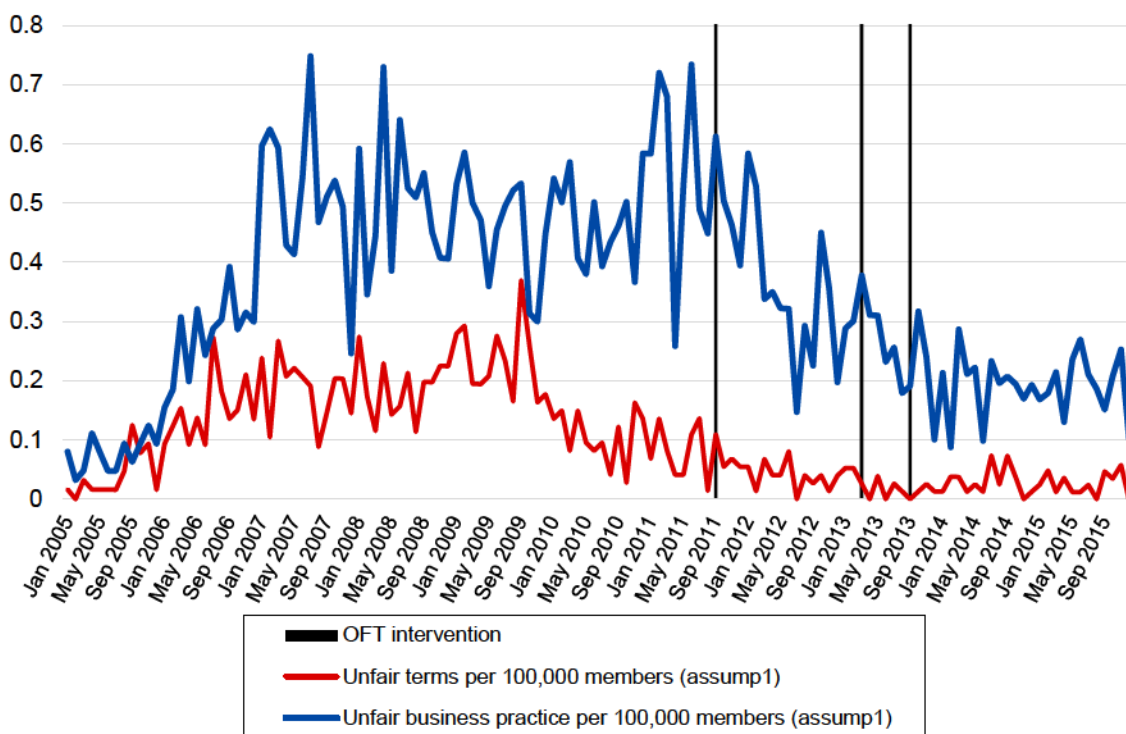
<sup>35</sup> We considered comparing the number of issues raised about gyms that were subject to the OFT intervention and those that were not to explore whether the number of issues raised concerning the former decreased more than the number concerning the latter. However, we consider that this analysis would not have been meaningful for two reasons. First, we did not manage to obtain data on gym memberships for most of the individual gyms involved in this analysis. Without controlling for changes in the number of members, the comparison would be unable to untangle the effects of the intervention and changes in the number of members at each gym. Second, it is reasonable to assume that a number of non-enforced gyms have also changed their practices as a result of the OFT intervention, either because of the warning letters they received or because of the broader deterrence effect of the enforcement actions.



early 2012, their number drops to around 0.2 soon after the OFT enforcement action against Ashbourne and keeps decreasing during the entire enforcement phase.

160. As discussed in paragraph 146, factors that are independent of the OFT intervention could have also affected the number of issues raised by consumers over time. As we cannot control for these factors, it is not possible to establish a causal link between the OFT intervention and the change in the number of issues raised. Nonetheless, the observed decrease around the time of the OFT intervention is consistent with the intervention having a positive impact on gyms' behaviour and the number of problems consumers face.<sup>36</sup>

**Figure 10: Number of issues per 100,000 members per category**



Source: CMA analysis of Citizens Advice issues data. Black vertical lines denote key points of the intervention.

<sup>36</sup> Our analysis of the number of consumer issues raised does not control for the total number of issues reported to Citizens Advice on any issue. We note that recent [analysis by Citizens Advice](#) suggests that there may have been an increase in the number of issues raised by consumers about gyms in the last year (which was not covered in our analysis). The Citizens Advice analysis does not appear to adjust the figures for changed in the total number of consumers that are using gyms, but does provide an adjustment for the overall level of issues reported.

## Conclusion

161. Desk-based research and evidence from stakeholders suggest that many gyms have made changes to their contract terms since the OFT intervention and the majority of gyms avoid using contract terms in relation to contract length, cancellation terms, suspension and debt collection practices that were deemed unfair by the OFT. This appears to be true for the gyms sector as a whole, including gyms that were not directly subject to the intervention. In this sense, there has been substantial improvement in the terms offered in the sector since the OFT intervention.
162. However, there is some indication that there still exist some contracts in the sector with minimum contract lengths of longer than 12 months. The evidence also suggests that there is some variation in how cancellation terms are used and applied by gyms. While most gyms now have some provision for cancelling minimum-term contracts before the end of the minimum term in case of a material change in the member's circumstances, it is unclear how this is working in practice in a minority of gyms.
163. We consider that due to the relatively small sample of individuals who wished to cancel contracts, we need to interpret findings from our consumer survey with a degree of caution. Nonetheless, our consumer survey provides a largely encouraging picture, with very few consumers being on contracts with a minimum length over 12 months and a high number of respondents being able to cancel without incurring fees. Whilst there are low sample sizes in our survey, it appears to be the case that at least some consumers are benefiting from the ability to cancel a contract during a minimum period if their circumstances change.
164. On the other hand, given the number of respondents who did not cancel their contract before the end of the minimum term but reported cancelling due to a change in circumstances, there is some uncertainty about the application of cancellation terms in practice for all gym members. Further, we note that there may be some issues concerning consumers' awareness of their ability to cancel contracts if their circumstances change and there may be consumers who are not taking advantage of opportunities to save money through early cancellation, including some who may not be aware of their ability to do so.
165. Similarly, whilst we do not consider that our analysis of the issues data has provided any substantive conclusions, we observe that the number of issues reported appear to decrease around the time of the OFT intervention and do not seem to have risen since. This provides some support for the idea that the OFT intervention has led to some changes in the industry, albeit we note that there may be some issues remaining due to continued issues arising.

166. On the whole, the sector appears to have made significant improvements to contract terms since the OFT intervention. However, in light of some of the findings from our consumer survey, the CMA and its consumer enforcement partners should remain alert to developments in the sector to ensure compliance, especially if future complaints or issues arise.

## Counterfactual

167. When assessing the impact of the OFT's work, we considered the impact relative to what would have happened without OFT intervention. We refer to what would have happened absent the OFT action as the counterfactual.
168. We want to compare two versions of the world – one in which the changes, in this case the OFT's intervention, occurred; and one in which they did not. We would then be able to compare the outcomes and be reasonably confident that the differences could be explained by the OFT intervention.
169. However, we are only able to observe how the UK gyms market has evolved since the OFT intervention, not what would have happened if it had not occurred. We must therefore consider what would have been the most likely outcome absent the OFT intervention.
170. For simplicity, we will consider what would have happened without any OFT interventions in the sector and not what would have happened if only certain parts of the action had taken place.
171. We consider that there are several plausible theories for how the UK gyms market would have evolved without the OFT intervention.
172. Broadly speaking, these changes can be grouped at two extremes:
- (a) Things would have continued as before, with gyms offering membership contracts with the same terms as before the intervention.
  - (b) Everything would have changed in any event, with gyms making changes to their contract terms even if the OFT had not intervened.
173. The impact that the OFT intervention has had differs substantially between both of these extreme counterfactuals. If contract terms would not have changed absent OFT intervention, then it is reasonable to attribute the changes that have taken place in the market to the OFT. On the other hand, if the changes that have taken place would have occurred anyway, for example as a result of some market developments, then the OFT's intervention cannot reasonably be attributed to having caused the changes. In practice, disentangling these effects is challenging.
174. Of course, there is no reason that there would be such an extreme outcome. In fact, it is likely that the correct counterfactual would be somewhere in between. In this case, it is important to consider when gyms would have begun to make changes to their contract terms.



175. There are several potential hypotheses for why gyms' contracts may have changed even absent the OFT intervention. For example:
- (a) Changes in the competitive landscape which would lead to gyms having to react to the offerings of competitors and change their contract terms.
  - (b) Changes in nature of gym demand, where gyms need to change the nature of their offering in order to attract consumers.
  - (c) Pressure from consumers becoming more aware of the exploitative nature of the contract terms and therefore put more pressure on gyms to change them and threaten to switch.
176. For our purposes, we need to come to a view on whether the impact changes in contract terms have had on consumers are attributable to the OFT intervention, and if so, the extent of the impact. However, even if it is likely that some of the changes would have occurred anyway, this is not to say that the OFT intervention had no impact. In such a case, we would need to consider over what period of time is reasonable to attribute the impact of changes to the OFT intervention (eg before the changes would have occurred anyway).

***Our approach to defining the counterfactual***

177. Our approach to defining the relevant counterfactual has been to:
- (a) explore what has happened in the sector since the OFT intervention;
  - (b) consider the external pressures that might have led to similar changes occurring; and
  - (c) then seek to understand how those pressures have changed over time.
178. To do this we have spoken to stakeholders in the industry, such as gyms and their trade associations, and analysed industry data produced by companies such as Mintel.
179. An alternative approach could have been to identify a comparator market similar to the UK gyms market a few years ago but which did not see a similar intervention. We would then compare how things had changed in that market over time compared to the UK, and tentatively infer that the differences were due to the OFT action. However, in this case, we did not identify a comparator to which we could compare the state of the gyms sector. This is partly due to the differences between how gym firms have operated across countries and

differences between how other sectors operated in the UK, as well as a lack of data to compare outcomes.

### ***Third party views***

180. As part of this evaluation, we contacted a number of gyms.<sup>37</sup> We asked these gyms for their views on what the impact of the OFT intervention had been and, in particular, the extent to which the changes may have occurred anyway.
181. We received responses on this issue from several gyms, including operators that were investigated by the OFT and some that were not. A number of gyms offered their views on what the impact of the OFT intervention had been and on changes in the markets in general. On the whole, gyms acknowledged that the OFT interventions had led directly to changes in the gyms sector. Every participant that the CMA spoke to was aware of the OFT interventions regarding gym membership contracts and what they meant for their business.
182. However, the majority of participants highlighted that there had been significant changes in the competitive landscape since the OFT's intervention and that, absent the OFT intervention, this would have been likely to affect the contract terms that gyms were able to offer.
183. In particular, several gyms told us that the growth in operators such as Pure Gym, The Gym and Xercise4less, often referred to as 'budget gyms', had had a huge impact on the sector. We were told that these gyms tended to offer consumers access on either a non-contract basis or flexible contract basis and that this had had an impact on the terms generally available to consumers from other gyms. In particular, gyms suggested that there may have been changes to the contract terms offered by gyms irrespective of the OFT intervention due to this competitive pressure.
184. As an example, one participant told the CMA that:
- Since the OFT's initial investigation into unfair contract terms in the sector, the landscape has transformed dramatically. Whilst some operators had already made these changes and others were already assessing their contract terms and wider consumer offerings prior to the investigation, this intervention acted as a catalyst for change, speeding up a process that was underway.

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<sup>37</sup> For more information on who we contacted and the responses received, see paragraph 79.

There is little doubt that in recent years low cost and higher end clubs have taken share from mid-market clubs.

185. We received similar responses from a number of other operators, supporting the idea that the OFT intervention had acted as a catalyst but that there may well have been changes taking place anyway. In particular, some gyms referred specifically to the increased competition in the sector due to the growth of the budget gym model. One operator even noted that the effect of the budget gyms would have put pressure on gyms seeking to rely on contracts with long minimum commitment periods.
186. Another participant went further and suggested that contract terms themselves may be totally redundant in the future and that the market had become more competitive over time, reducing the likelihood that uncompetitive practices would survive.<sup>38</sup>
187. Other participants suggested that at least part of the changes could be attributed to the OFT intervention. For example, gyms indicated that the OFT's intervention had made consumers more aware of their contractual rights and raised awareness regarding contract lengths, which impacted on their decisions in the sector.

### ***The gyms sector in 2016 v 2011***

188. We considered the wider changes that have taken place in the UK gyms sector since the OFT intervention, in particular since the first action in 2011.
189. Based on market reports<sup>39</sup> and participant views, the most significant changes besides the OFT intervention in the UK health and fitness sector in the past years appear to be the following:
  - (a) Growth of the budget sector: Including the entry and expansion of multiple budget gym operators and the entry of a sports retailer (SportsDirect) into the gyms sector. As Mintel (2015) points out, the success of these gyms has brought new people into the market but might have also stolen some business from mid-market operators. As the growth of budget gyms was mentioned by most of the stakeholders and is likely to have had the most significant impact on market structure and gym offers in the past few years, we consider this development in more detail below.

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<sup>38</sup> However, we note that it is not always the case that competitive pressure leads to better outcomes for consumers with respect to contract terms, particularly if consumer biases are affecting how consumers evaluate potential contract options.

<sup>39</sup> Mintel Health and Fitness Clubs (2015); Keynote Health Clubs & Leisure Centres Report (2014).



- (b) Increase in the number of single service focused studio operators:  
Another development in the market that industry reports and ukactive pointed out is the increased pressure on 'mid-market' gyms from boutique fitness studios and single service focused studio operators charging on a pay-as-you-go basis for class-based concepts, such as military fitness based classes.
- (c) Changes in consumer behaviour: Mintel (2015) highlights that the number of consumers participating in 'keep fit' and running activities, which are often commitment-free and often cost-free, has increased in recent years.<sup>40</sup> The growing range of these alternative forms of exercise available to consumers have put increased pressure on gyms as consumers are looking for more flexible membership options and are becoming more savvy about value for money of fitness activities.
- (d) Mergers and acquisitions: After the proposed merger between Pure Gyms and The Gym Group was abandoned in July 2014,<sup>41</sup> Pure Gym acquired LA Fitness in May 2015. As LA Fitness was subject to the OFT's enforcement action and the acquisition has affected the contracts available to consumers, we have taken this into account in our impact assessment.

### ***Expansion of budget gyms***

190. As noted above, gyms consistently pointed to the growth of budget gyms, such as The Gym and Pure Gym, increasing competition in the sector and putting pressures on operators to change their practices.
191. We also noted that LA Fitness, one of the operators investigated by the OFT which agreed to make changes to its terms, was acquired by Pure Gym in May 2015. Pure Gym does not offer contracts with minimum terms, instead it offers memberships on a monthly basis. Assuming that this acquisition would have occurred irrespective of the OFT intervention, this would suggest that the contract terms for LA Fitness consumers would have changed in any event in 2015.
192. The figure below shows how the number of Pure Gym and The Gym venues has increased between 2011 and 2015. It shows that there has been a large increase since 2011 and that there is a particularly large step change between

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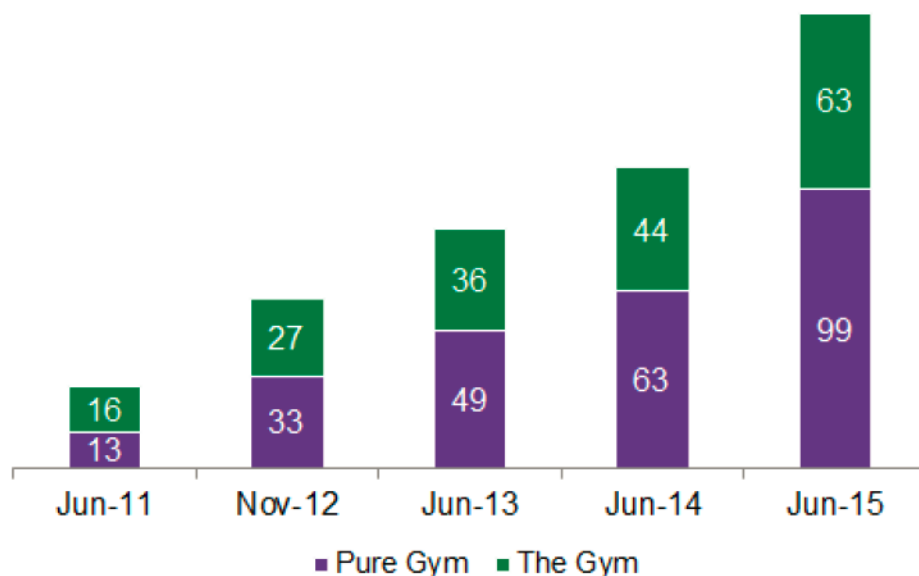
<sup>40</sup> Participation in fitness activities was boosted by, among others, the 2012 Olympic Games in London and related health and fitness campaigns. See eg Keynote (2014) Health Clubs & Leisure Centres Report.

<sup>41</sup> See the [Pure Gym/The Gym case page](#) on the CMA webpages.



June 2014 and June 2015.<sup>42</sup> This 51% growth compares with an estimated 13% growth in the total number of clubs between 2013 and 2014.

**Figure 11: Number of Pure Gym and The Gym venues, June 2011 to June 2015**



Source: Mintel, Health and fitness clubs UK, July 2015.

193. We note that despite this growth, the Mintel figures suggest that these two operators account for around 5% of the total number of gym clubs in the UK. Further, if budget gyms had expanded the appeal of gyms to bring new consumers to the market, then their expansion might not coincide with increased competitive pressure on other gyms.
194. However, we note that there are other budget gym operators than these two and the strong message received from participants on the importance that the emergence of budget gyms had had on the sector.
195. We also considered whether it might be the case that the reduction in membership contract lengths as a result of the OFT intervention had been a factor in the growth of the budget gyms due to consumers' increased ability to switch. Whilst a couple of gyms suggested that the OFT intervention did have the effect of increasing switching in the industry, not all operators investigated were using contract terms longer than 12 months prior to the OFT intervention. We were also told that budget gyms appear to attract a number of consumers who have not previously been a member of another gym.<sup>43</sup> No participant suggested that the OFT intervention had directly led to an increase in the growth of budget gyms and we have not seen any other evidence to

<sup>42</sup> This change does not include the acquisition by Pure Gym of 43 clubs from LA Fitness in 2015, further increasing their number.

<sup>43</sup> Mintel Health and Fitness Clubs (2015).

suggest that the OFT intervention has led to an increased take up of budget gyms.

### **CMA analysis**

196. It is undeniable that the gyms sector in the UK has changed significantly since the OFT first intervened in the sector in 2011.
197. We note that a number of participants expressed their views that gyms would have had to change their contract terms in response to this competition, irrespective of the OFT intervention. Several, though, did state that the OFT intervention acted as a catalyst for change and had an impact in and of itself.
198. As a starting point, we note that the last OFT action in the sector closed in September 2013. We thought that, since market conditions had not induced changes in these latter gyms, they would not have done so for any other gyms at this point in time either. We therefore considered that it was reasonable to assume that any benefits due to changes in gyms' contract terms up until September 2013 could be attributed to the OFT intervention.
199. Beyond September 2013, there is a high degree of uncertainty about how much of the detriment avoided can be attributable to the OFT intervention.
200. On the one hand, the significant rise in the availability of non-contract gyms, together with other market developments summarised in paragraph 189, may have put some pressure on gyms to change their offerings, particularly if the trend continues.
201. On the other, there are still a number of gyms offering minimum term contracts to consumers. Whilst it is the case that the majority of these are offering shorter term deals as well, it seems reasonable to infer that they could also still be offering some longer term contracts beyond 12, or even 18 months, were it not for the OFT intervention. Further, we note that the budget gyms still held a reasonably modest share of the market shortly after the intervention and that competitive pressure may not have been sufficient to force changes in gyms' behaviour due to the nature of the biases affecting consumer choices.
202. On the whole, we consider that it is difficult to ascertain with any degree of certainty what the consumer detriment would have been due to gyms' contracts if the OFT had not intervened in the sector. We believe it is best to be prudent and take a cautious approach in the face of such circumstances.
203. Therefore, and noting that the number of budget gyms rose significantly from June 2014 to June 2015, but not so significantly from 2013 to 2014, we

consider that the OFT intervention can be considered to be responsible for the reduction in consumer detriment until June 2014 at the very least.<sup>44</sup>

204. Due to the uncertainty regarding the counterfactual, we test the sensitivity of our estimates of the impact of the OFT intervention to a number of different dates.

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<sup>44</sup> We consider that this is likely to be a very conservative assumption. Absent the intervention, there may be at least some consumers who would have suffered detriment if the OFT had not taken action in the sector. This could be, for example, due to some consumers having a lack of alternatives in a particular area and therefore being unaware of offerings from other gyms.

## Quantifying the impact

205. In this section we develop estimates for the impact of the OFT intervention and explain how we have arrived at these.
206. As set out in paragraph 63, we have focused our estimates on the changes in cancellation terms and restrictions on longer term contracts.
207. In addition to the quantitative estimates for these two areas, we discuss some of the other impacts that may have occurred as a result of the OFT intervention. This includes the potential impact of the intervention on increasing consumer switching between gyms and any unintended consequences of the action, such as an increase in prices for gym users.
208. Our discussion of the unintended consequences of the action also considers the potential for the interventions to have increased the costs to consumers in other ways.

## Changes to cancellation terms

209. Prior to the OFT intervention, many consumers were unable to cancel their gym contracts after having had changes in their circumstances relating to their health, finances or location without paying a large fee (often the value of the rest of their contract).
210. There were also gyms that reduced their cancellation notice period as a result of the OFT intervention. After the intervention, consumers are now broadly able to cancel if they have relocated, lost their jobs, become pregnant or been injured/suffered an illness.<sup>45</sup>

## *Reduction in detriment*

211. The direct benefit of these changes will be the difference in consumer surplus before and after the changes. Put another way, this is the decrease in detriment to consumers. Before the changes, the consumers were locked into paying for contracts that they did not want to be on or had to pay large cancellation fees to exit.
212. We assume that such customers do not derive benefits from having the gym memberships that they wish to cancel and therefore that the value of their change in surplus is equal to the change in the cost of cancellation (or of staying in the contract and paying the fees till expiry). Given that, by definition,

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<sup>45</sup> The few exceptions to this are set out in paragraph 105.



the contracts in question are only cancellable due to significant changes in circumstances, this seems to be a reasonable assumption.

213. In addition to the fees, consumers may also have benefited psychologically from the intervention, for example due to avoided stress from complaining. We have not attempted to measure or quantify these benefits. We consider above how the number of consumers reporting issues related to gyms has changed over time and whether this indicates reduced stress for consumers.
214. We note that much of the reduced consumer detriment will result in a transfer from operators to consumers.<sup>46</sup> However, since we are interested in the benefits to consumers, we do not consider these costs in our estimates. We consider if there were any unintended consequences of the OFT intervention later in the report.

### **Approach to quantifying reduced consumer detriment**

215. To estimate the impact of the changes in contract cancellation rights for consumers, one needs to identify:
- (a) the number of consumers that have been affected by the change;
  - (b) the amount they have each saved in total; and
  - (c) multiply (a) by (b).
216. We did not have the data to be able to directly identify the number of consumers that had cancelled without charges and the amount that they had saved due to changes in their circumstances since the intervention. Therefore, we followed the approach summarised below.
217. In estimating the reduced consumer detriment, we:
- (a) estimated the number of gym users who have been able to cancel as a result of the OFT intervention (cancellers) by:
    - (i) estimating the number of gym users who were in minimum term contracts with the relevant gyms from the time of the intervention up to the counterfactual date, June 2014;<sup>47</sup> and

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<sup>46</sup> We note that there may be other considerations about improved market efficiency and reduction in deadweight loss due to improvements in market functioning. We have not attempted to quantify the impact of this in our estimates. However, we consider these factors qualitatively in the wider assessment.

<sup>47</sup> We focused this assessment on the seven gyms that made explicit changes in this area as a result of the OFT intervention.

- (ii) estimating how many of these cancelled their contract during this time due to reasons of pregnancy, ill health, relocation or financial distress, for example due to redundancy;<sup>48</sup>
- (b) estimated how much they saved due to the intervention by:
- (i) estimating the average period of time left on their minimum term contracts when they cancelled; and
  - (ii) estimating the average monthly fee that they would have paid if they had not cancelled; and
- (c) multiplied (a) by (b) to estimate the total consumer benefits.
218. This provided us with an estimate of the total consumer detriment avoided as a result of the changes in cancellation terms due to changes in material circumstances.
219. We provide details on the sources of information we have used for each of these steps below.
220. The next section sets out how we have derived estimates for the various steps in the methodologies set out above. In a later section, we consider the sensitivity of our results to some of the assumptions that we have made.

### ***Estimating the number of cancellers***

221. As noted above, we were not able to obtain comprehensive data on the exact number of consumers who had been able to cancel as a result of the intervention.
222. We had information for some operators on:
- (a) membership numbers including, for some gyms, how this had changed over time;
  - (b) the number of consumers who had cancelled contracts over certain periods of time, including whether this was within or outside of the minimum term contract for some operators; and
  - (c) the reasons that some members had given for leaving their contracts.

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<sup>48</sup> Not all of the gyms covered made the same changes to cancellation terms. We therefore adjusted our estimates to reflect this where necessary. Paragraphs 104–106 explain which changes were made by different gyms.

223. Further details on the information we have used in each of these areas is provided below.

#### *Membership numbers*

224. We did not have information on the number of users on minimum term contracts at the relevant gyms. We therefore estimated the number of members that the gym had between the time of the intervention and the relevant counterfactual.<sup>49</sup>

225. We had some information on membership numbers for five of the operators directly affected by the OFT intervention. The three main sources for these numbers were:

(a) information supplied as part of this evaluation;

(b) information supplied at the time of the OFT investigation; and

(c) published market reports, such as Mintel 2015.

226. For some gyms we had no direct information on their number of members. For these gyms, we used a range of methods to estimate the relevant number of members that they had. We used desk research of the relevant companies' websites and other sources to see if there were sources for member numbers. For one operator, we found a press article quoting a number of relevant members. This number was consistent with the number of members per club as other operators and we therefore considered it a reasonable estimate.

227. For another operator, we knew its approximate number of clubs and assumed that it would have had the same average number of members per clubs as other similar operators. We noted that there are many reasons why the members per gym would vary across operator, but considered that this was a reasonable assumption in the circumstances.<sup>50</sup>

228. To account for the uncertainty in the membership numbers of operators, we performed some analysis to assess how sensitive our estimates were to

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<sup>49</sup> We note that it is possible that the intervention itself led to an increase in membership numbers due to the increased attractiveness of gyms following the changes. In this case, some of the members that signed up following the intervention may not have signed up if the intervention had not occurred, potentially overestimating the reduction in consumer detriment. However, we note that an increase in gym membership would also be a benefit of the intervention and that we have been unable to estimate this. We therefore consider that not correcting for this possibility is unlikely to affect the robustness of our estimated benefits significantly.

<sup>50</sup> We found some evidence from the original case files that the number of members per gym of this operator was consistent with those of others, although note that this covered a very small proportion of the operator's clubs.

different assumptions about membership numbers. This analysis is described below in paragraph 253.

229. Where possible, we updated membership numbers to reflect changes in the number of members over time. This analysis showed a mixed picture of growth and decline in membership numbers over time for the relevant gyms. Given this, we assumed that membership numbers remained constant at gyms where we had no data over time.

#### *Cancellations within period*

230. We estimated the proportion of gym members that had cancelled their minimum term contract before its expiry.
231. We were provided with two main sources of information regarding cancellations for gyms:
- (a) evidence from operator's responses to the CMA's questionnaire; and
  - (b) evidence gathered at the time of the investigation.
232. The evidence provided information for some gyms on the number of their consumers who were cancelling each month. It also provided information on the number who were cancelling within the minimum term of their contract.
233. This data was provided by two operators. One was provided at the time of the original intervention and the other as a response to our information request.<sup>51</sup>
234. We considered that, conceptually, the figure relating to cancellations after the intervention would be more appropriate. Before the OFT intervention, if consumers were unable to cancel without incurring fees then they might not have done so. There are therefore two types of cancellers contained within the data after the intervention:
- (a) users who will cancel even if they had to pay a fee; and
  - (b) users who will only cancel if there is not a fee to pay.
235. Cancellation data before the intervention will only capture the first of these types. We would therefore expect the OFT intervention to increase the number of members leaving within the minimum term.

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<sup>51</sup> We have assumed that the data from these two operators can be generalised to other gyms. However, these two operators account for a relatively small proportion of UK gym members and we note that there is a risk that these two operators may not be representative of other gyms.



236. However, we noted that some of the cancellers who only cancelled when they were able to do so without incurring significant costs may have derived some benefits from being a member of a gym, and hence it was not worth cancelling if this was costly. If this were the case, the benefit to them of the changes would be less than the amount of money they saved through cancelling their membership as they would lose the membership that had some value to them.
237. Further, we noted that the response to our information request covered data for only one month and that this month was January, a month unlikely to be typical for gym memberships due to the higher influx of new members.
238. We therefore took the average of the two numbers, which were 0.33% (from the OFT investigation) and 0.9% (CMA questionnaire).<sup>52</sup>
239. Based on this, we assumed that 0.6% of a gym's members would cancel within a month. As above, we consider that there are many ways in which this figure may vary across gyms, but that this is the best estimate available to us.

#### *Cancelling due to changes in circumstances*

240. We wanted to estimate the proportion of within-term cancellers that cancelled due to changes in circumstances.
241. We were provided with two main sources for this information:
- (a) evidence supplied by two gyms in response to our questionnaire on the reasons consumers had cancelled their membership; and
  - (b) evidence from our consumer survey on why consumers had cancelled or wished to cancel their membership.
242. The information supplied by gyms was not split between cancellers before the end of the minimum term and cancellers after. For the purposes of our estimates, we assumed that there would not be a large difference between these two groups. However, we note that members within their minimum term who cancel are more likely to do so due to changes in their circumstances than members who cancel when their minimum term has already expired. This is because members outside of their minimum term are generally able to cancel for a variety of reasons without incurring significant costs whereas members still inside their minimum membership term are not. We consider

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<sup>52</sup> We considered whether the consumer survey would provide an alternative estimate. However, as we asked respondents about current and past memberships over a period of time, it was not possible to calculate the proportion who had cancelled contracts as a proportion of total gym members for a particular period.

therefore that being unable to focus on members who are within their minimum term contract may lead to us underestimating the proportion of users who benefited from the OFT intervention.

243. The evidence from the two gyms implied a similar proportion of users cancelling due to changes in circumstances as our consumer survey.<sup>53</sup> The gyms data suggested a proportion of around 38% to 41% compared to 40% from the survey.
244. For our main estimate, we have used the average of our three sources and assumed that 40% of cancellers within term did so due to material changes in their circumstances. As noted in paragraph 104, there were differences in the changes made to cancellation terms at some gyms. We have therefore broken down the cancellations data per type of change in circumstance to allow us to capture the fact that not all gyms allow cancellation for all types of changes.

#### *Estimating how much cancellers saved*

245. We sought to estimate the direct financial saving that members who cancelled enjoyed due to the intervention.
246. We assumed that consumers who cancelled over the period saved the costs of the membership that they would have incurred if they had not been able to cancel.<sup>54</sup>
247. We used our consumer survey to estimate the average length of time cancellers had left on their contracts after cancelling. We also asked respondents for details about the cost of their gym membership.<sup>55</sup>
248. The average time that past members had left on a contract when they cancelled in our survey was 3.2 months.
249. We also had data on fees provided by stakeholders and from the initial OFT investigation. We considered that the average fee charged by each individual affected gym would be the most appropriate estimate to use. The pricing

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<sup>53</sup> In interpreting the data provided by gyms, we considered that reasons identified as personal should also be attributed to changes in circumstances. We note that this category could potentially capture a range of reasons for wanting to cancel a membership but noted that there were a wide range of specified reasons available to members, and that these were likely to capture reasons for leaving other than changes in circumstances. In this respect, it is encouraging that the results of the survey suggest a similar degree of cancellations due to changes in circumstances, where reasons for cancelling were specified.

<sup>54</sup> We note that for some consumers there may have been a small discount available on the value of the remaining contract length if it was cancelled. We were unable to take account of this in our estimates and note that therefore this would reduce the amount of savings for individual consumers due to the intervention.

<sup>55</sup> Due to small sample sizes, we have averaged fee data across all respondents who had a minimum contract period of six months rather than for gyms individually.

structure of gyms is complex and we therefore sought to identify typical monthly prices for each operator.<sup>56</sup> For most gyms we did not have pricing information over time, and we were therefore unable to adjust for changes in prices over time.

250. For simplicity, we also did not attempt to control for the effect of inflation in gym prices by applying a general adjustment.

### **Summary of assumptions used**

**Table 6: Assumptions used for changes in cancellation term estimates**

<i>Data</i>	<i>Estimate</i>	<i>Source</i>
Members cancelling within contract per month	0.6%	Initial OFT investigation and information request response
Proportion of cancellers due to changes in circumstances	40%	Information request response from gym operators
Average length of time left on contract when cancelling	3.2 months	Consumer survey
Monthly fee assumed	Varied per gym, from £34–£45 per month	Initial OFT investigation and information request response

### **Quantitative estimate**

251. Combining the above assumptions, we estimate that the total benefit to consumers of the OFT intervention in allowing cancellation due to changes in material circumstances is £29.5million.<sup>57,58</sup>
252. This covers the period from the Ashbourne judgment in August 2011 to June 2014.<sup>59</sup>

### **Testing our assumptions for cancellation terms**

253. We tested the sensitivity of our estimate in two main ways:

- (a) Taking the average monthly fee for users from our consumer survey rather than the average of the specific gym. This implied a monthly price

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<sup>56</sup> Many operators offered multiple contract options and some varied the prices by location. Where this was the case, we calculated simple unweighted averages across locations for what appeared to be the most standard membership package.

<sup>57</sup>This was calculated as: NUMBER OF MEMBERS x PROPORTION OF MEMBERS CANCELLERS PER MONTH x PROPORTION OF CANCELLATIONS DUE TO CHANGES IN CIRCUMSTANCES x AMOUNT SAVED PER CANCELLER x NUMBER OF MONTHS OF INTERVENTION.

<sup>58</sup> We have adjusted for current prices using CPI data from the Office for National Statistics.

<sup>59</sup> We consider the impact of discounting and the net present value of the intervention in a later section.

of £29.39 a month. We note that this covered a number of operators not directly involved in the OFT intervention, including budget operators, and is therefore likely to represent a lower bound.

- (b) Varying the estimates of membership numbers for operators for whom we had no direct membership information. We did this by assuming that they had the lowest number of members per club out of the operators contained in the Mintel 2015 report. This was 958 members per club.<sup>60</sup>

254. The table below summarises how these changes in assumption affected the estimates of the changes in cancellation terms relating to changes in circumstances.

**Table 7: Sensitivity analysis for cancellation estimates**

<i>Sensitivity</i>	<i>Estimate</i>	<i>holding</i>
	<i>everything else constant</i>	
Monthly fee from survey	£18.8m	
Lower membership numbers	£15.5m	

## Changes in cancellation notice period

255. As noted above, in addition to affecting the ability to cancel in the face of changing circumstances, one gym also made changes to its notice period due to the OFT intervention, reducing it from three months to one month for all cancellations within and outside the minimum contract term. Another gym introduced a cooling-off period in its contracts in response to the OFT intervention. This change is also likely to have resulted in consumer benefits if some consumers realise that they would not use the gym as much as they thought shortly after signing up to a minimum term contract.<sup>61</sup> As we did not receive any evidence on the number of members taking advantage of this cooling-off period and we did not have sufficient evidence to make informed assumptions about the likely number of these users, we did not estimate the impact of these changes.

256. To capture the benefits from changes in cancellation notice periods, we:

- (a) estimated the number of consumers who cancelled contracts in the time between the change and the counterfactual date, and benefited from the shorter notice period;

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<sup>60</sup> This compared to an average of 3,600 members per club.

<sup>61</sup> See for example Loewenstein et al (2002) discussed in Annex 4. This paper shows how the implementation of a cooling-off period, which allows the consumer to rescind a long-term contract within a few days of the transaction, may help to correct for consumers' projection bias and increase welfare.



- (b) to avoid double-counting, removed consumers who would have been captured above as they cancelled due to changes in circumstances;<sup>62</sup>
- (c) estimated the average fee that consumers paid at the gym involved;
- (d) multiplied the number of consumers and their fee by the length of notice period now avoided (two months); and
- (e) adjusted the result to reflect that not all consumers were harmed by longer notice periods.

### ***Number of gym users benefiting from the change***

257. We were provided with data on the number of cancellations by contract type (eg one-month contract, six-month contract, etc) for January 2015. We used this data as a starting point to calculate the percentage of members who cancel their long-term contract (ie a contract with a minimum term of six months or more) per month. As the number of people signing up for gym membership in January is typically higher than in other months, we would expect the number of contract expiries (of one-year contracts) and hence the number of cancellations (or non-renewals) to also be higher.
258. We had data from a gym showing the pattern of signing up for contracts across the year. We used this data to adjust the January cancellation numbers to capture the likely number of cancellations of an average month.<sup>63</sup> We then used this number to calculate the percentage of cancellations per month for 2015 and applied this percentage to membership numbers for the relevant benefit period (from the date of contract changes to June 2014).

### ***Membership fee and adjustment of benefits***

259. We used the average monthly membership fee of the gym in question to attach a monetary value to the change in the notice period. As the reduction in the length of the notice period was two months, we considered that the benefit of the change could be as much as two months' worth of membership fee per cancellation. However, not all members who cancel their contract are likely to consider the length of the notice period and the amount paid during this period

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<sup>62</sup> We note that some consumers who cancel within terms are likely to have benefited from these shorter notice periods on top of the benefit gained from the ability to cancel. However, it is challenging to modify the relevant benefit calculations to reflect this (for example because some of the assumptions we used were not specific to the given gym). The cautious approach of removing within minimum term cancellations from our calculations in relation to shorter notice periods means that our benefit calculations of this change are likely to underestimate the real impact.

<sup>63</sup> We made an adjustment to the number of cancellations of one-year as well as six-month contracts using the relevant monthly data of membership sign-ups.

as detriment. This is because some consumers may take into account the length of the notice period when deciding about the timing of contract cancellation.

260. At the same time, we assumed that there is a significant proportion of consumers who would like to stop going to the gym as soon as they cancel the contract or shortly after (eg because of changes in their circumstances or because of better terms offered by other gyms). For these users, a longer notice period is detrimental and hence the change due to the OFT intervention is a clear benefit. We considered it reasonable to assume on a cautious basis that at least 20%<sup>64</sup> of consumers who cancel their contracts would like to leave the contract as soon as possible. Therefore, we multiplied the estimated monetary value of the shorter notice period by 0.2.

### **Quantitative estimate**

261. Combining the above assumptions, we estimate that the benefit to consumers from the shorter notice period used by one of the gym operators as a result of the OFT intervention is £1.23 million.<sup>65</sup>

### **Changes in contract length**

262. We considered that the reduction in minimum term contract length may have affected some consumer groups differently:
- (a) Longer term contracts may have exploited consumer biases and lead to some detriment that has been reduced by the OFT's intervention.
  - (b) Longer term contracts may have been beneficial to some consumers who benefited from lower fees. These consumers may be worse off as a result of the OFT's intervention.
263. For (a), we would like an estimate of the monetary savings for consumers as a result of not being subject to contracts that they wished to cancel for as long a period of time. For these consumers, assuming the value of remaining in the gym contract was minimal, the total benefit will be the avoided gym fees.

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<sup>64</sup> As discussed in paragraph 242, our estimate for the proportion of 'cancellers' who wanted to cancel due to material changes in circumstances is around 40%. As not all these changes are likely to be completely unforeseen (eg relocation) and hence some users would take the length of the cancellation term into account when deciding about the timing of cancelling the contract, we assumed that less than 40% of people who cancel outside the contract term benefit from the shorter notice period. To be on the conservative side, we used 20% as an assumption.

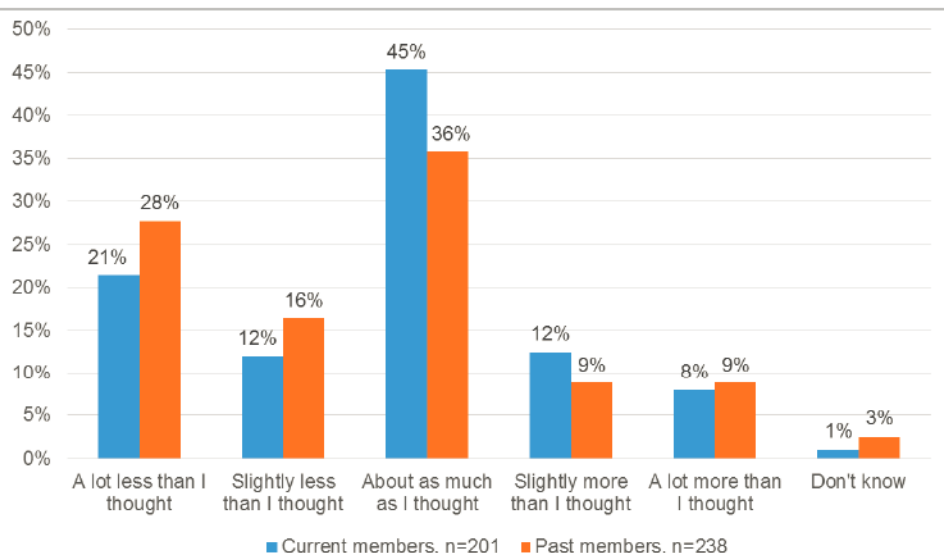
<sup>65</sup> As with the other estimates, expressed in current prices using CPI.

264. For (b), the cost would be the increase in fees applicable to members as a result of the move. We consider the evidence relating to this effect in a later section on unintended consequences of the intervention.

### ***Detriment from long-term contracts***

265. Before estimating the size of the reduced consumer detriment due to shortening of contract lengths, we considered whether we had any evidence on the existence of the detriment to long contracts supporting the findings from the economic literature.
266. Based on the literature, we considered that one of the ways in which long contracts would be harmful would be due to individuals being over-optimistic at the start of the contract period and overestimating the amount they would use their gym. Therefore, if consumers were consistently overestimating their gym usage at the start of their contract then we felt this could suggest the potential for harm from long minimum term contracts.
267. We noted that reduced usage compared to expectations would not necessarily imply that the user would want to leave their contract. We also noted that the reduction in expectations could be accounted for by individuals changing their circumstances rather than being over-optimistic as such.
268. Nonetheless, we considered whether we had any evidence on consumer's usage patterns compared to their expectations.
269. Our consumer survey asked respondents how their usage of the gym compared to what they had expected when they signed up. The results are shown in Figure 12.

**Figure 12: Actual usage compared to expected usage from CMA survey**



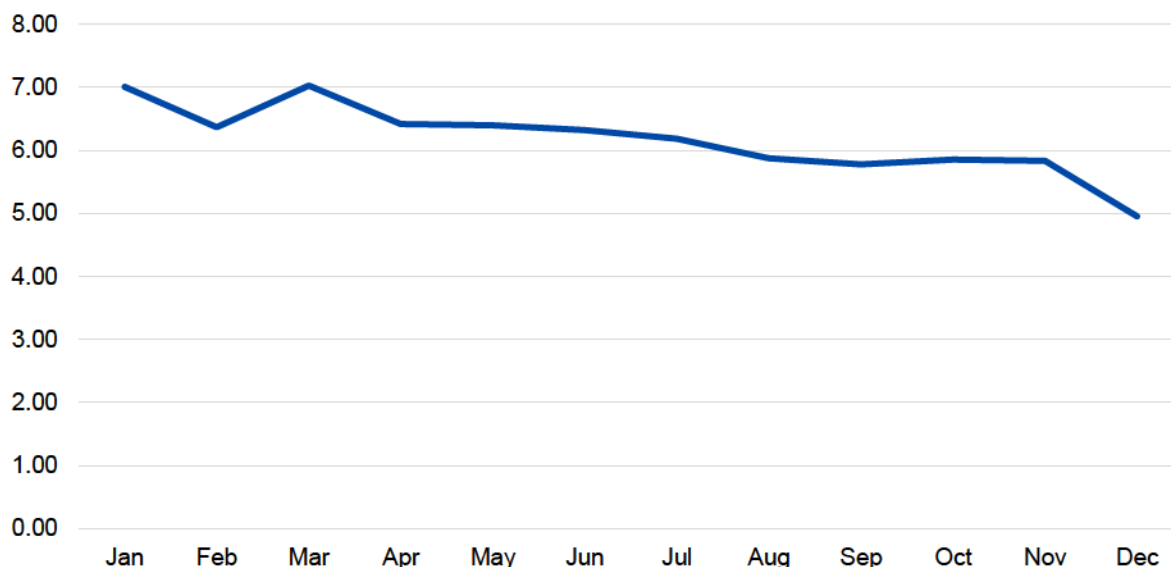
Source: CMA consumer survey.

270. The responses to the survey suggest that between 33% and 44% of gym users ended up using their memberships less than they thought they would. However, we also note that over half of respondents stated that they used the gym as much, or even more, than they had expected. There are several reasons to be cautious about drawing inference from these results, not least because there may be biases in the respondent’s recollection of how much they expected to use the gym. Respondents may also find it difficult to remember how much they expected to use the gym and may assume that their expectations matched their actual usage.
271. However, the fact that over a third of current member respondents stated that they used the gym less than they thought is likely to indicate that optimism bias is an issue for longer term gym contracts. This is especially true given that we expect some respondents to have felt reluctant to admit that they had underused their membership.<sup>66</sup> Further, the CMA notes that the proportion may have been even more pervasive with longer term contracts on offer.
272. In addition, we were provided with monthly data on visits per member for a year by one gym operator. The data is provided in the figure below.

<sup>66</sup> Such biases are often referred to as social desirability or acceptance bias and reflect the desire of respondents to be accepted socially.



**Figure 13: Gym visits per member over time**



Source: CMA analysis of data provided by a gym operator.

273. The figure shows that average usage per member reduces slightly over the year, from around seven visits per user per month in January to around six visits per user per month from August.<sup>67</sup> The graph is unlikely to be surprising to many; tales of gym users joining in January only for their enthusiasm to drain by the end of the year are not uncommon, and this appears to be supported by the figures. Whilst it may be the case that members expect to use the gym more in some months than others, the usage figures appear to suggest that average usage declines over time, given that a slightly higher proportion of members join in January.<sup>68</sup>
274. Overall, we consider that the analysis above provides some additional evidence, in combination with the academic literature, to suggest that gym users can be subject to biases when signing up to a gym. Long term minimum contracts which lock consumers into fixed periods can therefore create the potential for consumers to pay more overall than if they were aware of their future usage patterns.

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<sup>67</sup> We consider that the reduction in December may be expected due to lack of gym use in that month on account of the Christmas period and therefore do not attach much weight to this reduction. Similarly, the fact that February is a shorter month than others may account for the dip in usage at that time.

<sup>68</sup> We did not have access to figures from this operator on the amount of joiners by month. Data provided by one operator indicates that 11% of joiners in 2010 occurred in the month of January. Whilst this was higher than other months, it does not seem to be substantially so.

### ***Estimating the reduction in consumer detriment***

275. Our approach to estimating reduced consumer detriment due to shorter minimum term contracts is to try to estimate the number of consumers that were previously suffering detriment due to longer contracts and the level of that detriment. We would then take this value as the amount of detriment avoided by the OFT intervention.
276. One issue in estimating the amount of consumer detriment is that minimum term contracts are difficult and/or expensive to exit. We would like to estimate how many consumers that were on longer-term contracts would have wanted to leave before the end of the minimum period and hence were likely suffering detriment due to the contract length.
277. We considered that consumer detriment would be felt by consumers who had not made an optimal choice when signing up in the face of their later preferences. Other consumers however could still be obtaining the value they expected and be happy with their decision to enter a long-term contract. We therefore needed an approach to discern between these groups of consumers.
278. We used the following steps to estimate the reduced consumer detriment from the reduction in contract lengths:
- (a) First, we estimated the number of consumers who benefited from shorter term contracts due to the intervention by:
    - (i) identifying the contract length changes that resulted from the OFT intervention;
    - (ii) estimating the number of members who would have been on longer term gym contracts absent the OFT intervention; and
    - (iii) estimating the proportion of these members that would have liked to have cancelled the contract sooner than allowed by the longer term contract.
  - (b) Estimated the reduced detriment for these individuals by estimating:
    - (i) the average monthly fee avoided as a result of the intervention;<sup>69</sup>

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<sup>69</sup> As before, some consumers may have received a small discount on the value of the remaining contract length if it was cancelled. We were unable to take account of this in our estimates and note that therefore this would reduce the amount of savings for individual consumers due to the intervention.

- (ii) whether the individuals placed any value on the remaining months on the gym contracts that they held;
  - (iii) the number of months that users would have saved paying the fee; and
  - (iv) the reduction in harm to these individuals as the difference between the cost of membership and the value of membership.
- (c) Combined the numbers above to estimate the avoided detriment for the period involved for every year from the OFT intervention up to June 2014.

279. We provide more information below on the methods used to estimate the parameters above.

#### *Estimating the number of consumers who benefited*

280. We did not receive comprehensive data regarding the number of members who had directly left long-term contracts following their expiry over the relevant period. Instead, we were able to obtain information from some operators on the number of consumers that they had on long-term contracts.

281. For some gyms, we did not have information on the number of users that were on different contract types before the intervention. For these operators we therefore had to assume that the proportion of users on these contracts is similar between the different operators.<sup>70</sup>

#### *Number of members who would like to leave*

282. We used information from our consumer survey to indicate the proportion of consumers who are in minimum term contracts and would like to cancel them. This gave us an estimate of 12.4%.<sup>71</sup>

283. We surveyed gym members who held contracts within the last two years. By construction, these contracts will be of shorter length because of the OFT intervention. We consider that there are good reasons to believe that the proportion of consumers who wanted to leave their contract immediately after the intervention may differ compared to those responding to our survey. This could be due to differences in their characteristics or the fact that a longer

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<sup>70</sup> We note that this may not be the case given that the different operators offer a range of different contract types to consumers.

<sup>71</sup> We considered that one way to infer this proportion would be to consider the number of individuals prior to the intervention who were on each contract who left the gym in question shortly after the minimum term period expired. Whilst this may not be a perfect measure, leaving right after expiry might imply that the user would have liked to leave sooner, although they may have just wanted to switch gyms. However, we were unable to obtain information from operators on the amount of users who left contracts directly after minimum term expiry.

contract provides a longer period over which preferences could change. For this latter reason, we consider that the estimate from more recent consumers may be an underestimate of the proportion of consumers on the longer term contracts that would have liked to leave.<sup>72</sup>

#### *Fees and value of membership*

284. We estimated the relevant cost of a month of gym membership using the same methodology described in paragraphs 249 and 250.
285. We considered whether it was reasonable to assume that the value of the gym to a consumer who wished to exit their contract was negligible, noting that a gym user wanting to cancel a contract that offered a service at a set price did not necessarily value the service at zero (but presumably valued it less than the cost as they wished to cancel). Any gym use, even if less than expected, presumably still has value. The benefit is therefore likely to be somewhere between the value of that gym use (possibly pay per use cost) and the amount paid.
286. To estimate the value that consumers might place on gym contracts in these circumstances, we used results from our consumer survey.
287. The survey asked respondents who had cancelled or would like to cancel a minimum term contract the price they would need to be offered in order to stay at the gym. We considered that this provided an estimate of the value they placed on the gym.
288. For each user, we then compared this response to the amount they paid for the gym to calculate the proportion of the fee that they valued. We consider that one minus this proportion could be considered as detriment avoided from the OFT intervention.
289. We found that on average, respondents valued their membership at 32% of the level of the fees they were charged. We therefore considered that 68% of the value of the fees avoided could be considered avoided consumer detriment.

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<sup>72</sup> We note however that it could be argued that consumers who selected longer term contracts may have done so for the precise reason that they were less likely to change their preferences and therefore may actually have been less likely to want to leave the contract.



### *Number of months of savings*

290. We assumed that a consumer who wanted to leave a long-term contract was as a result of the intervention able to do so and that, absent the intervention, they would have had borne the full cost of that membership.
291. The total savings to consumers will therefore depend on the total number of months for which consumers are now not paying for membership.
292. For many consumers, this would be the difference between the original contract length (eg 24 months) and the new maximum length contract at that gym (eg 12 months). At the point of the intervention however, some members are likely to have been between these points (eg 18 months into a 24-month contract). For these consumers, the intervention will have saved them the remaining time on their contract.
293. To account for this, we assumed that consumers were uniformly distributed across the time period of a contract. This meant, for example, that we assumed that half of the consumers on a 24-month contract would have been on that contract for 12 months or less, and the other half had been on it for over 12 months. We were then able to use these assumptions to estimate the total amount of savings that consumers made as a result of the intervention.

### **Summary of assumptions used**

**Table 8: Assumptions used in contract length estimates**

<i>Data</i>	<i>Estimate</i>	<i>Source</i>
Reduction in contract length	Varied by gym. Assumed consumers uniformly distributed across length of contracts.	OFT undertakings with gyms and desk research
Proportion of members who wished to exit long-term contract	12.4%	Consumer survey
Monthly fee assumed	Varied per gym, from £34–£45 per month	Initial OFT investigation and information request response

### **Quantitative estimate**

294. Combining the above, our estimate for the value of the reduction in consumer detriment due to changes in minimum term contract length is £6.3 million.<sup>73,74</sup>

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<sup>73</sup> This was calculated as: NUMBER OF MEMBERS x PROPORTION ON LONGER TERM CONTRACTS x REDUCTION IN CONTRACT LENGTH x FEES AVOIDED x ADJUSTMENT FACTOR FOR UNIFORMLY DISTRIBUTED MEMBERS x ADJUSTMENT FOR VALUE OF THE MEMBERSHIP

<sup>74</sup> In current prices. This adjustment was made using CPI.

This covers the period from the Ashbourne judgment in August 2011 to June 2014.<sup>75</sup>

295. One of the key inputs to the above estimate was an assumption about the number of members that were on long-term contracts prior to intervention, which is uncertain due to a lack of data on the number of relevant members on these contracts. We note that our estimates would vary proportionally according to the number of members and so a doubling of the number of users would more or less double the estimate.

## Total quantifiable benefits

296. The table below sets out our main estimates for the total reduction in consumer detriment as a result of the OFT intervention.

**Table 9: Estimates of quantifiable benefits**

<i>Area</i>	<i>Main estimate (£,million)</i>
Cancellations	29.5
Notice period	1.2
Long contracts	6.3
Total	37

Source: CMA calculations.

297. The numbers above are based on assuming no attributable benefits beyond June 2014 and only consider changes to cancellation terms and changes in contract length.
298. The wider assessment section below considers some of the wider impacts of the OFT work.

## Discounting benefits over time

299. The above sections measure the amount of benefits that have accrued to consumers due to the OFT intervention. It considers saved money from a consumer in 2011 to have equal value as money saved in 2014, once adjusted for changes in the price level.
300. However, when considering the value of the intervention from a point in time, it can be useful to take into account the fact that individuals tend to discount the future. In this respect, a pound saved today will not have the value of a pound saved in five years' time, even when accounting for changes in the price level.

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<sup>75</sup> We consider the impact of discounting and the net present value of the intervention in a later section.

301. Given the relatively short time period for which we have attributed benefits, we consider that the total benefit estimates above are a reasonable representation of the impact of the OFT's work. Nonetheless, for completeness we have considered what the total discounted value of the benefits would be taken from the time of the Ashbourne intervention.
302. We have taken the discount rate from the HM Treasury's *The Green Book*, 3.5% and followed the approach recommended there.<sup>76</sup>
303. We find that the discounted net present value of our main estimate from the date of the Ashbourne judgment is £34.6 million.

***Sensitivity of estimates to the counterfactual assumption***

304. Our estimates have been based upon a number of assumptions. As described in the counterfactual section, the date at which we consider the benefits of the OFT intervention to have stopped is highly uncertain.
305. In our main estimates, we have adopted a cautious approach and assumed that no benefits arose after June 2014. We consider that this is very conservative given that, whilst the budget gyms did expand substantially in that year, they still held a reasonably low market share (below 10%).
306. We considered how our estimates of the impact would change if we extended the counterfactual date by one, two and three years. We assumed that the benefits would be of the same magnitude per year as in our main estimate. The table below sets out how the benefits to consumers would change if an alternative counterfactual date were used.

**Table 10: Sensitivity of estimates to the counterfactual**

<i>Alternative counterfactual</i>	<i>Estimated benefits to consumers (£ million)*</i>
June 2015	52.2
June 2016	68.5
June 2017	84.8

Source: CMA calculations.

\* Adjusted for current prices using CPI. Non-discounted.

307. The quantified benefits of the OFT intervention increases significantly as the counterfactual date is extended. For example, if we were to assume that benefits from the changes were attributable until June 2015 instead of June

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<sup>76</sup> HM Treasury, [The Green Book](#), p26

2014, the total estimated benefits increase to £52.2 million. Extending this a further year gives us a figure of £68.5 million.

308. Given the conservative nature of our counterfactual assumption, we considered that it was not unrealistic to assume that the OFT intervention would have continued to benefit consumers up until June 2016. We therefore took £68.5 million as an upper-end estimate of the quantified benefits to customers from the OFT intervention.

## **Overall sensitivity analysis**

309. In paragraphs 253 and 254, we discussed the sensitivity of our quantified estimates to changes in cancellation terms. This gave us a lower bound of £15.5 million. Combining this with estimates for the benefits of changes to notice periods and changes to contract lengths, this provides a lower bound estimate of the total quantifiable benefits of £23.1 million.
310. Therefore, combining this with our sensitivity around our counterfactual date, the sensitivity testing gave us a range of estimates for the total quantifiable benefits of the OFT intervention of £23.1 million to £68.5 million.<sup>77</sup>

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<sup>77</sup> Adjusted for current prices using CPI. Non-discounted.



## Non-quantified benefits

311. In quantifying the benefits of the OFT intervention, we focused on changes in contract cancellation terms and reductions in minimum contract term. This is not to say that we consider these were the only benefits of the OFT intervention. Indeed, the intervention covered a number of other terms than just these two.
312. For example, the " section discusses changes regarding suspension rights, cooling-off periods and the use of credit reference agency checks. We believe that these changes can be attributed to the OFT action and would have benefited at least some consumers. Full details of the changes made by gyms as a result of the intervention can be found in Annex 1.
313. Further, our estimated impact only includes monetary savings of gym consumers. There may be a range of other benefits beyond this, such as increased consumer welfare from the ability to switch gyms more cheaply when circumstances change, reduced stress for gym or former gym users due to fairer contract terms and savings for consumers in terms of time spent complaining or administering gyms contract disputes.
314. In addition, we considered whether there might be other benefits to the OFT intervention beyond those attributable to members of the operators the OFT intervened on themselves. We thought that these might have fallen into several categories with benefits to:
- (a) members of other gyms than those directly investigated by the OFT;<sup>78</sup> and
  - (b) reduced switching costs increasing competition in the industry and leading to better outcomes for consumers across the market.

## Members of other gym operators

315. As part of its intervention, the OFT sent out letters to 20 operators advising them on the terms that were likely to be considered unfair and recommending that they make sure that they are compliant.
316. The quantification in this evaluation has focused on the changes made by the seven operators that were investigated by the OFT and changed their terms

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<sup>78</sup> We also considered that the intervention had the potential to affect contract terms in other industries. However, we have not investigated these effects in detail in this evaluation. This is because we considered that: (1) An investigation into other sectors would have been an intensive exercise and we decided to prioritise other areas of investigation and (2) whilst the role of evaluation is to consider the effect of interventions, it did not seem appropriate for it to seek to conduct reviews of compliance across different sectors.

directly as a result. These gyms accounted for between 30% and 51% of members of UK gyms at the time of the investigation.<sup>79</sup>

317. We consider that the intervention may have also caused these gyms and others to make changes to their contract terms. This may have been because they received a letter from the OFT but could also have been due to their awareness of the intervention, for example through the press. If these other operators were deterred from using unfair terms as a result of the intervention and therefore made changes to their contract terms that benefited consumers, then this should also be seen as a benefit attributable to the OFT's intervention.<sup>80</sup>
318. As explained in paragraph 78, we contacted a number of operators that were not directly investigated by the OFT. Overall, we have found little evidence that operators in the sector are using terms that deviate from those suggested by the OFT intervention.
319. As we were unable to fully survey operators within the UK, we have not been able to fully explore the extent to which other operators changed their terms as a result of the OFT intervention and the detriment avoided by their members as a result.
320. A number of operators that were not investigated by the OFT confirmed that they were aware of the intervention and ensured compliance as a result. In addition, ukactive, the membership body for health and fitness organisations, updated its code of conduct to reflect the OFT intervention.<sup>81</sup>
321. We consider that these points suggest there has been a reduction in consumer detriment for gym members beyond those of the operators directly investigated by the OFT. Whilst we have not attempted to quantify the size of that impact in this case, we note that, as an upper bound, the OFT intervention may have directly affected only 30% of the market.
322. Assuming that the rest of the sector was deterred by the intervention and made changes to their contract terms in September 2013, then this would imply an additional benefit of the OFT intervention of £8.5 million.<sup>82</sup>

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<sup>79</sup> See footnote 15.

<sup>80</sup> We also considered that the OFT intervention in the gyms sector may have had a deterrence effect in other sectors that operate contracts with minimum terms. However, we did not conduct any detailed analysis into the contract terms offered in other sectors in this evaluation.

<sup>81</sup> The specific wording from the Code of Practice is: '4.1 Office of Fair Trading - Ensure that any written contracts for members are in accordance with The Office of Fair Trading's publication, 'Guidance on Unfair Terms in Health and Fitness Club Agreements' (March 2002), and the enforcement case from 2013.'

<sup>82</sup> In this scenario, we assume that the rest of the market was using terms similar to the investigated gyms before the intervention and that they made similar changes as a result of the intervention. This is an upper bound

## Increased level of switching

323. The OFT intervention made it easier for a number of consumers to leave their gym contract due to fairer cancellation terms, increased provision to cancel or because they were no longer bound to a contract for a long period of time. We considered that this might have led to more consumers being able to switch gyms and, as a result, prompting operators to increase the quality of their service to capture a share of switching consumers.
324. A number of gyms informed the CMA that switching had increased in the sector since the OFT intervention. However, the majority of these pointed to other industry developments, such as the increased scale of budget gyms, as a cause for this rather than the OFT intervention.
325. We also note from our quantification of the benefits of the intervention that not all gym users are likely to have been directly affected by the action. Without evidence to the contrary, we therefore consider it unlikely that the OFT intervention in itself led to significantly greater switching levels in the gyms sector. However, we do note that the intervention would almost certainly have led to an increased ability to switch providers for some consumers.

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estimate, as we are aware that at least some other gyms had terms that were not considered unfair by the OFT. See for example paragraph 47. The estimate is adjusted for current prices using CPI.

## Unintended negative consequences of the OFT action

326. Markets comprise of numerous suppliers and consumers and as such the interactions between these parties over time will be complicated. This makes it difficult to foresee every potential outcome from a well-intentioned intervention and leaves open the possibility of interventions having effects other than those intended.
327. In this case, we thought that there might be two main negative and unintended effects that could have occurred following the OFT's intervention:
- (a) Gyms being able to use other measures to exploit consumers and recoup lost profits from changing contract terms and contract lengths, such as increasing gym prices for at least some users or changing contract terms to the disadvantage of some consumers.<sup>83</sup>
  - (b) The changes increasing the costs of running gyms which affected their ability to supply their services (beyond reducing profits due to the changes in contract terms).

### Contract terms

328. We considered whether the contract terms offered by gyms had been altered in ways not envisioned by the OFT intervention. In particular, we looked for ways in which we thought it was plausible that contract terms were leading to consumer detriment in new ways so that, instead of reducing consumer detriment, the intervention only changed how gym contracts led to consumer detriment.
329. We relied on desk-based research of contract terms from a number of gym operators, focusing on those that had been directly affected by the OFT intervention.
330. Our research did not find any indication that contracts now included new terms designed to cause or lead to consumer detriment since the OFT intervention. This finding is only tentative however, and should not be construed as a categorical clean bill of health for the gyms sector. That is not the role of this evaluation. For example, we were only able to explore these

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<sup>83</sup> We note that if these changes were profitable for gyms to implement on their own then we might have expected them to be made independently of the intervention. However, we also note that the OFT intervention placed restrictions on the contract terms available to gyms and therefore it may have changed how gyms seek to maximise their profits post intervention, potentially leading to new practices or higher prices.



issues based on published contract terms and not in the level of depth needed to conduct a thorough assessment under consumer law.

331. We also note that, as shown in Figure 7, the level of issues raised about gym operators has not increased since the intervention and in fact appears to have decreased over time. This could be an indication that there has not been an increase in consumer detriment since the OFT intervention, although the fact that there continue to be some issues being reported might indicate that some issues in the sector remain.

## **Gym profitability**

332. The reduction in consumer detriment from the changes to gym contracts largely represents a transfer between gyms and their consumers. We would expect at least a part of this transfer to lead to a reduction in profitability for operators, at least for some of their consumers.
333. We did not analyse in detail the effect of the intervention on profitability.
334. However, we collected some high-level accounting data on profitability from some gyms in order to assess how operator profitability had changed since the intervention. We did not conduct any detailed analysis of this data or examine the underlying numbers in detail. The profitability data from operators does not provide any evidence that the OFT intervention substantially reduced profitability for operators overall. For example, one operator investigated by the OFT told us that its profitability had been maintained over the period.
335. This could suggest that the operators have been able to maintain profitability in other ways, perhaps by increasing prices or finding other ways to raise money from consumers. However, we do not consider it appropriate to make such an inference because there are many factors affecting profitability. For example, after the OFT intervention, operators may have reduced their cost base or made extra efforts to attract new members. It could even be possible that the OFT intervention increased confidence in the sector and therefore stimulated more demand for gym services. Further, we have not been able to control for any changes in costs for operators.
336. Another key factor that we would expect to affect profitability would be the competitive landscape, something which appears to have changed significantly for gyms. We note that some of the operators faced by the OFT intervention have subsequently changed ownership, further complicating the picture.

## Effect on gym prices

337. We noted that it might have been the case that the OFT intervention led to increased prices for gym users. We thought that this could have occurred if:
- (a) the amount paid by all consumers for gym services increased; or
  - (b) consumers who were previously on minimum term contracts over 12 months saw the amount they paid to gyms increase.
338. For one gym we were able to compare prices from the time of the intervention and prices in place today. The pricing structure of the gym was complex, with a large number of prices available for each location. However, comparing the prices since the evaluation reveals that whilst some prices have increased, others have also decreased, suggesting a mixed picture of overall fees.
339. We also received evidence from gyms that the price per month was typically lower for longer contract lengths than for shorter contract lengths. However, we were unable to conduct an analysis of how the intervention had affected the price for consumers due to removing longer term contracts.
340. We did not conduct any detailed analysis on the changes in prices of gyms before and after the evaluation.<sup>84</sup>

## Cost to gym operators

341. At the time of the OFT intervention, various arguments were made to the OFT that the contract terms employed by gyms were required in order for them to lower costs. If this were the case, then the intervention may have led to increased costs to gyms.
342. As part of our evaluation, we sent questionnaires to several operators that were subject to the OFT intervention.<sup>85</sup> These information requests asked respondents what the impact had been of the OFT's enforcement action as well as questions on their profitability and contract length.

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<sup>84</sup> We note that, as suggested by third parties, there have been a number of changes in the gyms sector since the OFT intervention that may have led to increased competitiveness in the sector. If this were true, it may reduce the value in any comparison of prices. Further, notwithstanding this, we did not have the data required to conduct such an analysis. Fee structures in the gyms sector are highly complex, with a range of different contract types being offered to consumers and many operators varying prices across location. This means that calculating the relevant price for any particular gym would be difficult even if we had had the data for more operators.

<sup>85</sup> More information on the gyms contacted can be found in paragraphs 77–81.

343. None of the operators that responded to this question told the OFT that the intervention had led to significant increases in costs or created other significant unintended consequences.

***Conclusion***

344. Our evaluation has not revealed any evidence that there have been significant unintended consequences of the OFT action. However, due to the lack of available data we consider that we must be cautious in reaching any definitive conclusions in this regard.

## Lessons learnt

345. One of the most important reasons that we undertake ex-post evaluations of previous cases is to understand how things have developed and whether we might have done things differently. It is also to understand what has gone well in order to ensure we maintain best practices.
346. On the whole, we have found that the OFT case team carried out their work professionally and with a high degree of diligence. We received no compelling evidence that any major part of the case should have been taken in an alternative way.<sup>86</sup>
347. We also consider that the OFT intervention has, on the whole, met its objectives of reducing consumer detriment faced by gym users. We did not consider whether the objectives of the intervention could have been achieved through alternative means.
348. However, as with the majority of cases, we consider that there may be some lessons to draw from this case that could be useful for future cases. These cover areas where we think best practice was used and some where there may be potential for improvement in the future. These lessons can be split into two broad categories:
- (a) maximising benefits of the intervention; and
  - (b) increasing our ability to measure the impact of the intervention.
349. We have not undertaken a review of other similar decisions either by the OFT or other organisations. As such, the thoughts below reflect the evaluation team's judgements on potential ways to improve impact in the future. We do not consider that they should be interpreted as criticism of the OFT or the intervention.

### Maximising the benefit of the intervention

350. We note that the OFT intervened in the sector in a number of stages, taking enforcement action with one large operator and investigating other clubs thereafter. On the whole, this appears to have been a successful strategy.

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<sup>86</sup> The CMA received representation from one operator that the OFT focused its attention on a few specific gyms and did not enforce findings more widely. This included some accusations regarding not taking action on other operators that were highlighted as having potentially unfair terms. We note that the CMA and its consumer enforcement partners have continued to monitor the sector for unfair terms.



351. Despite this success, we consider that there are some factors that could lead to future similar cases yielding the maximum amount of benefits as possible.

### ***Time between Ashbourne case and investigations into other gyms***

352. We note that there was a period of time between the enforcement action against Ashbourne and the end of investigations against other operators. The gap between the Ashbourne judgment and starting the investigation was four months and the investigations themselves took between several months and a year. It is also the case that at least one of the investigations into other gyms led to no major changes.

353. The evidence that we have collected in this evaluation suggests that some of the operators that made changes last were also the largest. Focusing resources on the largest non-compliant operators could increase the benefits to consumers.

354. We acknowledge that there are many difficulties and trade-offs to consider in the timing of such cases. These include the desire to treat parties that are in similar circumstances similarly. There is also a clear judgement to be made on when to take follow-up enforcement action given that the rest of the industry would be hoped to comply with any intervention in the sector.

355. It is also a fairly uncontroversial statement that, all things equal, it would be better to wrap up cases sooner rather than later. However, we also note that in the context of this case where we consider the period of benefits to be less than one year for some operators, the period of time between actions was significant. In this context, it is important to deliver benefits to consumers as soon as possible.

356. Nonetheless, by targeting the largest non-compliant operators first the OFT was able to deliver substantial benefits to consumers.

### ***Monitoring and compliance***

357. We have found that, by and large, the gyms that were investigated by the OFT and entered into undertakings as a result appear to be complying with them.<sup>87</sup> We therefore consider that the overall picture from this evaluation is a positive one.

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<sup>87</sup> We note that the OFT, CMA and consumer enforcement partners continued to monitor the sector following the intervention.

358. However, whilst we have received evidence that the OFT intervention had a major and positive impact on the wider gyms sector, we did receive some unconfirmed evidence that there may be some gyms operating in the market using terms not entirely consistent with the OFT intervention. We consider that remaining alert to these issues and taking action where necessary could ensure compliance on an ongoing basis.
359. Our review of contracts and evidence from stakeholders also suggests that there is some degree of flexibility in gyms' interpretation and application of the contract terms covered by the OFT intervention (eg cancellation terms when there is a material change in users' circumstances). In some cases this may mean that consumers are still incurring significant costs (eg up to three months of membership fees because of the notice period) when they exercise their right to cancel the contract. It could therefore maximise impact in some cases by being more specific about the application of contract terms or specifying best practices. However, we acknowledge that without established case law this will be difficult in practice.

### ***Promoting findings within the sector***

360. ukactive, the membership body for health and fitness organisations, updated its code of conduct to reflect the OFT intervention. This organisation covers more than 3,500 gyms so the change they made to their code of conduct as a result of the OFT intervention is likely to have had a widespread impact. It appears that this link was very useful in ensuring changes across the whole gyms sector in this case.
361. Working together with industry organisations to influence business behaviour appears to help to maximise impact and this is something we would encourage in future projects. Maintaining links with the industry association in ensuring compliance could also be useful in ensuring maximised benefits to consumers.

### **Increased ability to measure the impact of the intervention**

362. We note that this evaluation, and others like it, would be made easier if there were a greater understanding of the level of consumer detriment from a particular behaviour at the time of the enforcement action.
363. In many cases it will be difficult to evaluate past detriment from practices that are no longer in existence and therefore contemporaneous evidence could help understand the impact of interventions.

364. This is a difficult task and will inevitably not be possible in some cases. Further, consideration will need to be given to the added value of such work at the time of the investigation and the potential trade-off with delivering fast-paced work that benefits consumers.
365. We consider that there are likely to be some circumstances where a small amount of information could add significant value to a future evaluation but be collected at minimal costs. These are likely to be circumstances where the relevant detriment is likely to affect a particular group of consumers in well-understood ways and basic information relating to the size of this group is readily available from firms in the industry. For example, in this case information on the number of consumers affected by different contract terms, such as long-term contracts, provided a useful basis for estimating the impact of the intervention for some operators, but would have been very useful to collect from other operators as well.
366. Taking into account the arguments above, we consider that some ways in which evaluations could be made easier in the future could be:
- (a) to the extent possible, collecting more detailed information on the number of individuals, and their costs, who are directly involved in the activities that are part of the intervention; and
  - (b) if relevant to understanding the detriment, using consumer surveys to understand the prevalence of consumer behaviours that may be leading to detriment. Whilst this is likely to be disproportionate in the vast majority of cases, it could be useful in understanding the nature of harm in some cases.

## Annex 1: Contract changes following OFT action

### Summary of undertakings agreed in March 2013

<i>Health and fitness club</i>	<i>Summary of changes to terms and conditions, associated documents and sales process</i>
Bannatyne's Fitness Limited	<ul style="list-style-type: none"><li>• Extended provision for cancellation during the minimum term in the following circumstances:<ul style="list-style-type: none"><li>– illness or injury which would preclude the consumer from using the gym for two months or more, and</li><li>– loss of employment (redundancy or otherwise).</li></ul></li><li>• Bannatyne's contract also provides for consumer cancellation during the minimum term when the company makes material changes or variations to the membership.</li><li>• The notice period to cancel a contract with a 12-month minimum term has been reduced from three months to one month before and after the expiry of the minimum term.</li><li>• Bannatyne's has:<ul style="list-style-type: none"><li>– clarified that it does not roll over minimum term contracts;</li><li>– improved its contract terms to clarify that the contract continues on a month-by-month basis after the expiry of the minimum term; and</li><li>– committed to explaining this in the sales process.</li></ul></li><li>• Bannatyne's has committed to review its standard debt collection letters and not to use ones that the OFT considered misleading.</li></ul>



David Lloyd	<ul style="list-style-type: none"> <li>• Extended provision for cancellation during the minimum term where the consumer is: <ul style="list-style-type: none"> <li>– suffering from a medical condition</li> <li>– made redundant or declared insolvent</li> <li>– relocates 10 miles from a club</li> <li>– or, for any other reason where the consumer can show his circumstances have changed which makes attendance at the gym or continued membership unreasonable.</li> </ul> </li> <li>• David Lloyd's contract also provides that consumers in the minimum term can cancel due to significant changes at club or due to an increase in fees above a specified rate.</li> <li>• Extended provision for consumers to suspend their membership.</li> <li>• Revised membership description – 'flexible membership', which is an initial minimum term of three months and 'standard membership', which is an initial minimum term of 12 months, and improved clarity of associated notice periods: <ul style="list-style-type: none"> <li>– 'flexible membership' can be cancelled with one month's notice and</li> <li>– 'standard membership' can be cancelled with one month's notice to end at the expiry of the twelfth month, after which (outside of the minimum term) consumers are required to give three months' notice.</li> </ul> </li> <li>• David Lloyd has committed to explaining notice periods in the sales process and to notify consumers before the end of minimum term that the membership will continue and that they will be required to give three months' notice to cancel.</li> <li>• Introduced provision for consumers to switch between flexible and standard membership.</li> <li>• Introduced a cooling off period.</li> <li>• Introduced revised important points document to give consumers an overview of the key contract terms.</li> </ul>
Fitness First	<ul style="list-style-type: none"> <li>• Ceased offering contracts with a minimum term of over 12 months.</li> <li>• Extended provision for cancellation during the minimum term in circumstances which make continued use of the gym 'not possible'. Examples given are: injury; pregnancy; move of workplace or house; redundancy. Consumers are also able to freeze their membership contract.</li> <li>• Fitness First has: <ul style="list-style-type: none"> <li>– clarified that it does not roll over minimum term contracts</li> <li>– improved its contract terms to clarify that the contract continues on a month by month basis after the expiry of the minimum term</li> <li>– committed to explain this in the sales process.</li> </ul> </li> <li>• Introduced a 'product presenter' to give prospective members an overview of key contract terms.</li> <li>• Improved clarity that Fitness First will not claim the outstanding balance and will offer pro-rata refunds where the company cancels the membership for serious breaches by the consumer.</li> <li>• Improved clarity regarding the secondary payment mechanism - term revised to make it clear when this will be used and Fitness First has committed not to use where there is a legitimate dispute.</li> <li>• Removed the exclusion for liability caused by its personal trainers.</li> </ul>

Source: OFT website

## Undertakings agreed in September 2013

<i>Health and fitness club</i>	<i>Summary of changes to terms and conditions, associated documents and sales process</i>
Dave Whelan Sports Ltd	<ul style="list-style-type: none"> <li>• Extended provision for cancellation in the minimum term where the consumer:               <ul style="list-style-type: none"> <li>– suffers a genuine and serious illness or injury which would preclude the consumer from using the gym for at least two months,</li> <li>– is made redundant or loses their job,</li> <li>– moves house or relocation of principal place of employment more than 10 miles from a DWS club that they are entitled to use.</li> </ul> </li> <li>• Extended provision for cancellation in the minimum term due to significant reduction in opening hours or facilities at the consumer's local DWS club.</li> <li>• Improved clarity of the duration of the membership and associated cancellation provisions. References to 'annual membership' removed.</li> <li>• Improved clarity that the membership continues after the minimum term on a month-by-month basis unless notice to cancel is given for direct debit members and that pre-paid membership will come to an end unless renewed with the member's consent.</li> <li>• Commitment to explaining the membership duration in sales literature and in the sign-up process.</li> <li>• Contract term removed that permitted the gym to terminate in the event of unspecified breaches by a consumer. New term inserted giving DWS provision to cancel the membership should the consumer:               <ul style="list-style-type: none"> <li>– harass, threaten or abuse DWS staff or members of DWS,</li> <li>– maliciously damage DWS property,</li> <li>– commit any illegal act whilst on DWS facilities.</li> </ul> </li> <li>• Contract term that permitted the gym to retain sums paid by consumers where they attempted to cancel a pre-paid contract early revised to provide for reimbursement of membership fees paid in advance on a pro-rata basis (subject to a £25 admin fee and the six-month minimum term).</li> </ul>

LA Fitness	<ul style="list-style-type: none"> <li>• Contractual provision for cancellation in the minimum term where the consumer: <ul style="list-style-type: none"> <li>– has lost their job due to redundancy, contract loss or is suffering severe financial hardship;</li> <li>– has sustained an injury, a long-term illness, or becomes pregnant;</li> <li>– moves away and there is no LA Fitness gym within a reasonable distance (10 miles) from their home or workplace.</li> </ul> </li> <li>• Extended provision for cancellation in the minimum term in the event of material changes.</li> <li>• Ceased using 24-month minimum term contracts.</li> <li>• Will continue to use 18-month minimum term contracts.</li> <li>• (In the OFT's view minimum term contracts that exceed 12 months have the potential for unfairness under the UTCCRs in the health and fitness sector. LA Fitness has introduced provision for consumers signed up to an 18-month minimum term to terminate their contract at any time during the minimum term by payment of an exit fee. The OFT has considered this continued use of a minimum term of longer than 12 months in the light of all of LA Fitness's business practices, including the number of members on each minimum membership term it offers, the proposed exit fee, and other data. The OFT has decided, having carefully considered all the circumstances surrounding the use of this term, to reserve its position and will continue to monitor this issue.)</li> <li>• LA Fitness has: <ul style="list-style-type: none"> <li>– clarified that it does not roll minimum terms from one year to the next,</li> <li>– improved clarity that the contract continues on a month-by-month basis after the expiry of the minimum term,</li> <li>– committed to explain this in the sales process.</li> </ul> </li> <li>• Contract term that permitted the gym to terminate in the event of minor breaches by a consumer revised to give LA Fitness provision to cancel the membership for: <ul style="list-style-type: none"> <li>– late payment not rectified within 28 days following written notice,</li> <li>– material breach of gym etiquette or conduct (such as abuse of staff or equipment).</li> </ul> </li> <li>• Contract terms which limited LA Fitness's liability for loss or damage caused to the consumer revised so that consumers can recover any appropriate loss for loss or damage caused by LA Fitness' negligent act or omission.</li> <li>• Contract term that permitted the gym to debit a consumer's alternative method of payment removed. LA Fitness confirmed that the term had not been used or relied upon.</li> <li>• Ceased using purported Consumer Credit Act 1974 agreements and other references to 'credit' removed from contract terms.</li> <li>• LA Fitness committed to review the standard correspondence it and its agents use for communicating with consumers with membership arrears.</li> </ul>
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<p>Harlands Group Ltd (and associates)</p>	<ul style="list-style-type: none"> <li>• Extended provision for cancellation during the minimum term where the consumer: <ul style="list-style-type: none"> <li>– relocates 15 miles from a club,</li> <li>– suffers from an illness, injury or medical condition which prevents exercise for 3 months,</li> <li>– is made redundant or loses their livelihood,</li> <li>– becomes pregnant.</li> </ul> </li> <li>• Extended provision for cancellation in the minimum term where services or facilities are not provided or fall below the standard reasonably expected.</li> <li>• Extended provision for consumers to suspend their membership for temporary illness or injury and improved clarity of the implications of a membership 'freeze' on the minimum term.</li> <li>• Ceased using and recommending minimum terms of over 12 months. Existing contracts will be not enforced for any longer than 12 months.</li> <li>• Improved contract terms to clarify the contract continues on a month-by-month basis after the expiry of the minimum term.</li> <li>• Harlands will contractually require its clients to explain key membership features as part of the sales process.</li> <li>• Contract term that allowed Harlands to terminate the contract in the event of minor breaches by the consumer revised to include examples of the types of consumer behaviour that Harlands considers unacceptable (that is, criminal activities on the facilities) which would result in membership termination.</li> <li>• 'Fixed-sum Loan Agreement' revised to comply with Consumer Credit Act 1974 requirements.</li> <li>• Suite of standard debt collection correspondence and staff training materials used to communicate with consumers in arrears revised in line with the standards published in OFT guidance, for example the Debt Collection Guidance, the Irresponsible Lending Guidance and the CSA/DBSG guidance on standard letters.</li> </ul>
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Source: OFT website



## Annex 2: Consumer survey

### Introduction

1. The CMA commissioned the market research agency Ipsos Mori to include a suite of questions in its face-to-face Omnibus Survey. The objectives of this research were to provide an understanding of:
  - (a) the prevalence of minimum terms contracts;
  - (b) the behaviour and attitudes of consumers who have taken out minimum term contracts;
  - (c) the reasons why consumers cancel minimum term contracts or do not renew at the end of the minimum term; and
  - (d) obtain an estimate of the reduction in consumer detriment that has occurred as a result of the changes made by gyms to the minimum contract periods on offer.

### Survey method

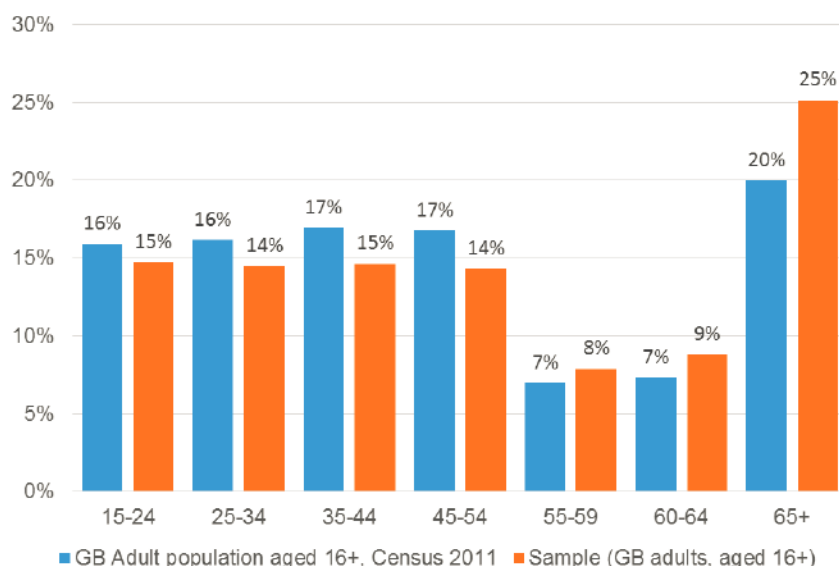
2. Ipsos Mori's face-to-face Omnibus Survey is a weekly survey of the adult population of Great Britain. Interviews take place in people's homes using in-home computer assisted personal interviewing (CAPI). This survey is based on a large representative sample of adults aged 16 and above.
3. Interviewing occurred between 1pm and 9pm, with 50% conducted during the evening and at weekends and 50% conducted during week days. Interlocking quotas were set within region and are based on age, gender and working status.
4. The survey was in field between 20 November 2015 and 3 January 2016. As there is a seasonal element to gym membership with more people likely to join in January, it was planned that the fieldwork would finish prior to Christmas. However, the fieldwork period overran slightly due to weather disruption. As the majority of the fieldwork was conducted prior to Christmas, the impact of this is likely to be minimal.
5. A total of 7,955 participants were asked the screener questions for this survey to ascertain whether they had held relevant gym memberships, with a total of 690 interviews obtained.
6. We aimed to get a sample of both current and past members. The interviews with past members were used to understand the reasons why people cancel

and do not renew gym memberships. The interviews with current members were aimed at understanding the attitudes of gym users that are currently on, or have recently held, gym contracts with a set minimum term of six months or more in order to understand the prevalence of potential behaviour that could lead to consumer detriment, such as overestimating their gym usage prior to signing up for a gym membership with a minimum term contract of six months or longer.

## Survey demographics

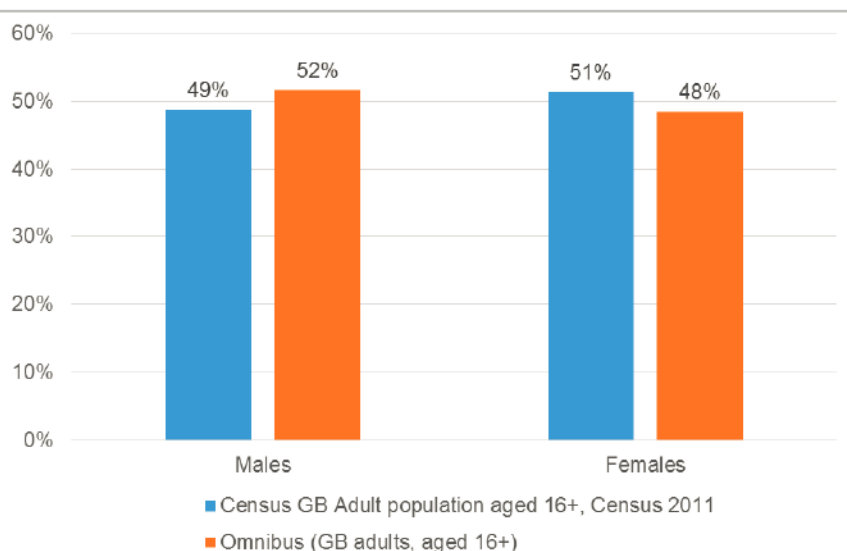
- The full unweighted omnibus sample for the period the survey was in field was broadly in line with the UK population as a whole in terms of age and gender. A slightly higher proportion of the sample was aged over 55 than the general population, (42% versus 34%), whilst the proportion of males was slightly higher.

**Figure 1: Distribution of full omnibus sample and population of GB by age**



Source: CMA Survey, 2015

**Figure 2: Distribution of full omnibus sample and population of GB by gender**

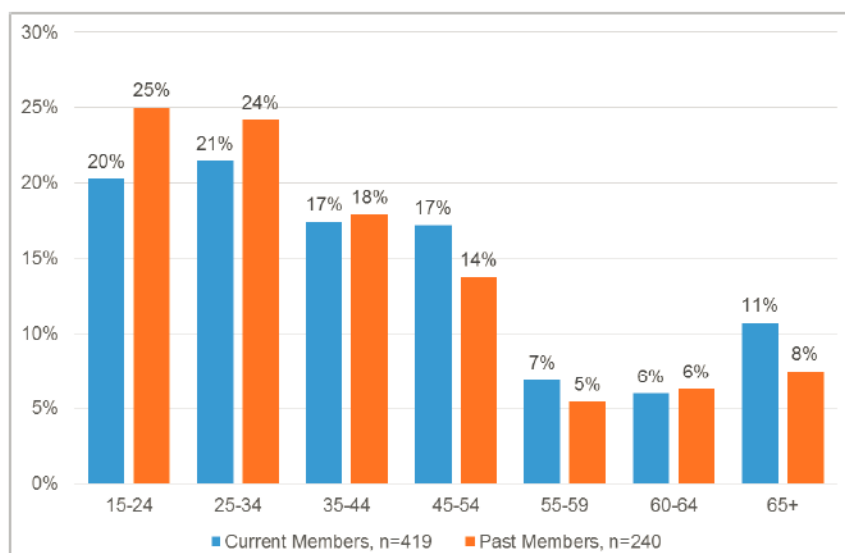


Source: CMA Survey, 2015

## Gym membership

8. When asked if they were currently a member of a gym, 16% of respondents said that they were currently the member of a gym. As a proportion of respondents who were currently members of a gym, 43% had originally signed up for contracts with a minimum length of six months or longer. As a proportion of the total sample this was 7%. Just under half of people who had signed up for a gym membership of six months or more were still in their minimum membership period.
9. Respondents were also asked if they had any gym memberships within the past two years which had ended. Of the total sample, 11% had previously been a member of a gym within the past two years. Of these 63% had signed up to contracts with a minimum term period of six months or more; which equates to 5% of the total sample.
10. The majority of both past and current gym members were aged 44 or under, with past members tending to be younger than current members, with 59% and 67% respectively aged 44 or under. For both groups, the percentage of members in each age group generally fell with age until increasing again at retirement.

**Figure 3: Age of current and past members**

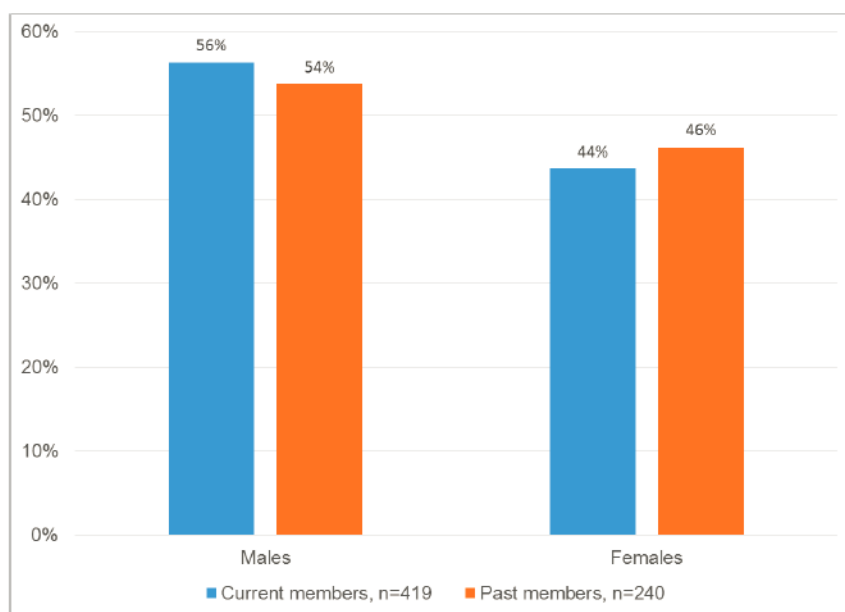


Source: CMA Survey, 2015

Base: Current members (current members were defined as people who were currently a member of a gym (Q1) which had originally had a contract length of six months or more (Q2) and either paid for their membership or don't know who paid (Q3A)) and past members (past members were defined as people who had been a member of a gym in the previous two years (Q4/Q5) which had a contract length of six months or more (Q6) and either paid for their membership or don't know who paid (Q6A)).

- Both current and past members had a higher proportion of males than females.

**Figure 4: Gender of current and past members**



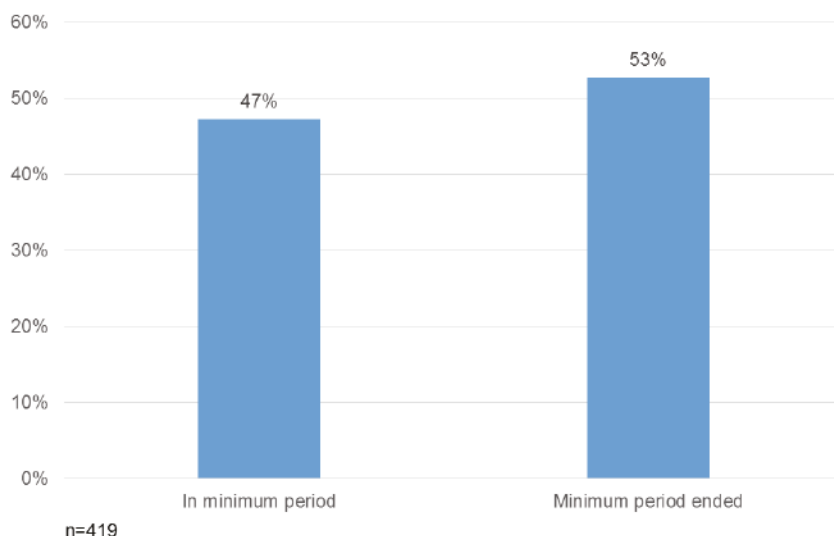
Source: CMA Survey, 2015

Base: Current and past members

- The proportion of current members who were still in the minimum term of their gym contract and the proportion of members whose contract had finished were broadly similar, at 47% and 53% respectively.



**Figure 5: Current members in minimum contract term and out of minimum contract term**



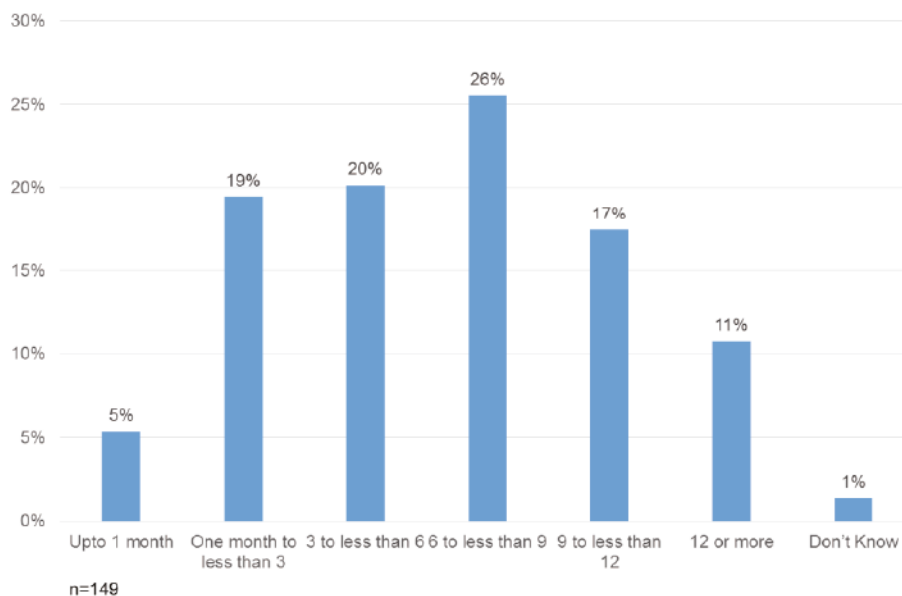
Source: CMA Survey, 2015

Note: 'Q3. As far as you are aware, has the minimum membership period for this membership ended?' (Respondents who had more than one gym membership were asked if any of the minimum membership periods had ended.)

Base: Current members.

- Respondents who were still in their minimum membership period were asked how long they had left of their current gym membership. Just under half (45%) had less than six months, whilst just over half had between 6 and 12 months left (54%).

**Figure 6: Length left of current gym membership**



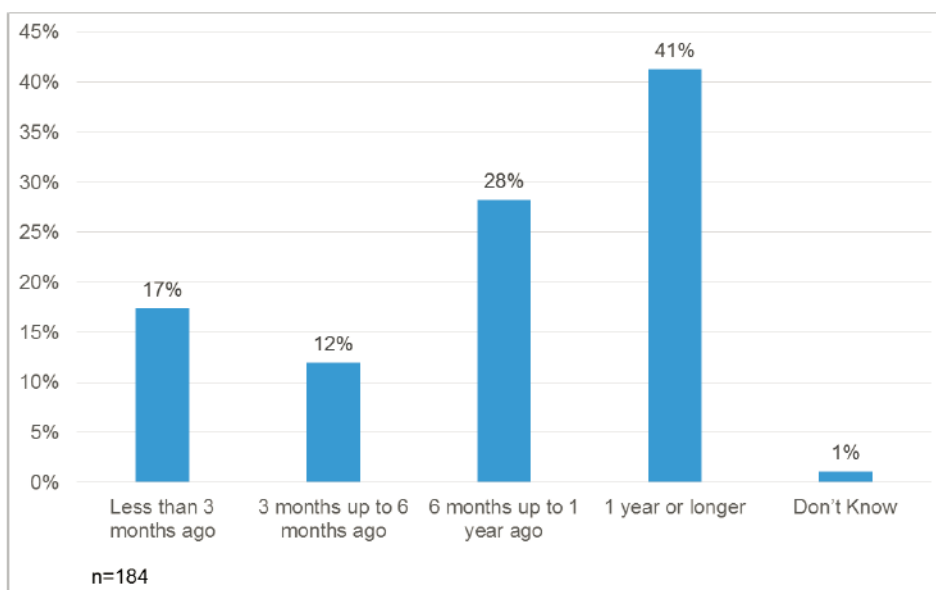
Source: CMA Survey, 2015

Note: 'Q12 How long is left until the minimum membership period of your current gym membership contract ends?'

Base: All who are still in current membership period and knew the length of their minimum membership period at Q8 (19 respondents did not provide a response for this question).

14. Of those who were past members, the majority of memberships had ended within the past year (57%), although 41% had ended a year or longer ago. A very small proportion didn't know when the membership had ended (1%).

**Figure 7: How long ago membership ended**



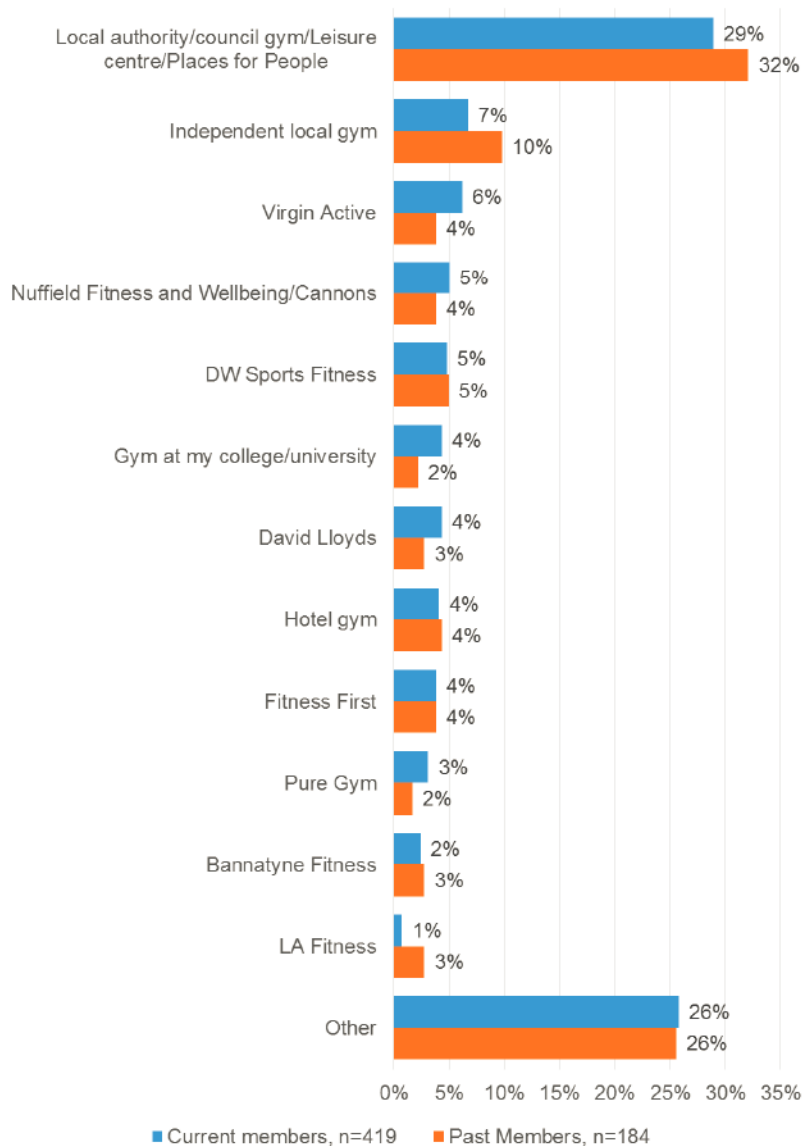
Source: CMA Survey, 2015

Note: 'Q20 How long ago did this membership end?'

Base: Past members of gyms who cancelled within their minimum membership period, or cancelled when it ended or within two months of it ending.

15. Figure 8 shows the top ten most common responses given by current and past members as to which gym they belong to. Both current and past members were most likely to belong to a local authority gym, council gym, leisure centre or 'Places for People'. For both current and past members a large number of respondents had gym memberships with 'other' gyms. This includes respondents who selected 'other' and also gyms included in the pre-coded list with not many responses. For both groups, the number of respondents who were members of individual named gym chains was too small to do any analysis broken down by individual gym chain.

**Figure 8: Membership of gyms**



Source: CMA Survey, 2015

Notes:

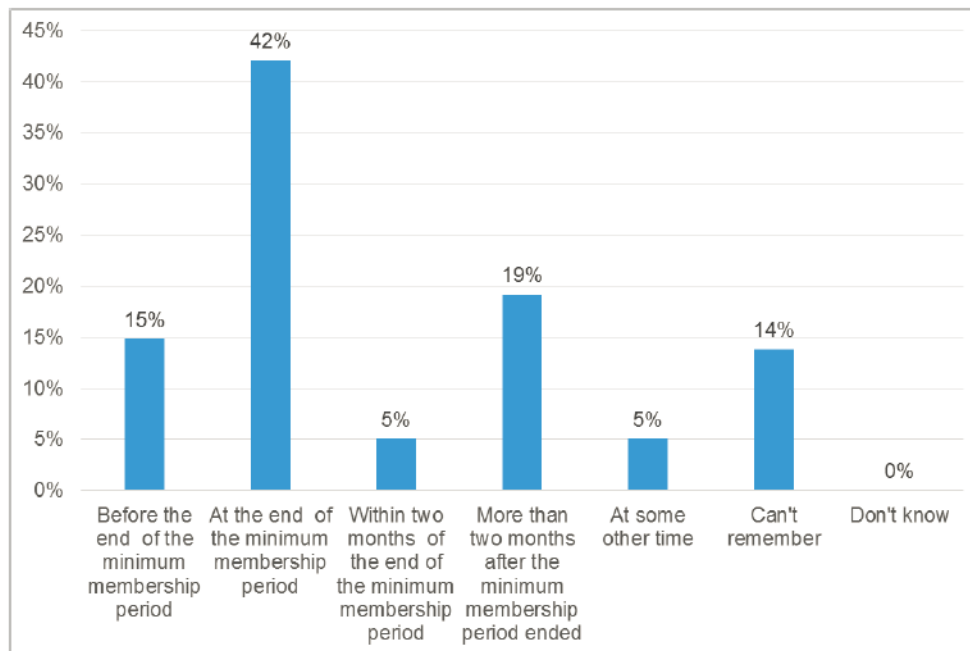
'Q7 (Current) Which gym is this contract with?'

'Q19 (Past) Which gym was this contract with?'

Base: Current members and past members of gyms who cancelled within their minimum membership period, or cancelled when it ended or within two months of it ending.

16. Respondents who had had a gym membership which had ended in the past two years were asked how the gym membership ended. Only 15% of respondents cancelled their gym membership before the end of the minimum membership period. 47% of respondents cancelled at the end or within two months of the minimum membership period. Almost one in five cancelled more than two months after the minimum membership period had ended. Those who cancelled more than two months after the gym membership had ended were screened out at this point.

**Figure 9: How gym membership ended**



Source: CMA Survey, 2015

Note: 'Q18 Which of the following statements, if any, best describes when this membership contract ended?' (Respondents with more than one previous gym membership with a minimum term contract of 6 months or more which had ended in the past two years were asked to think about the contract with the longest minimum contract period.)

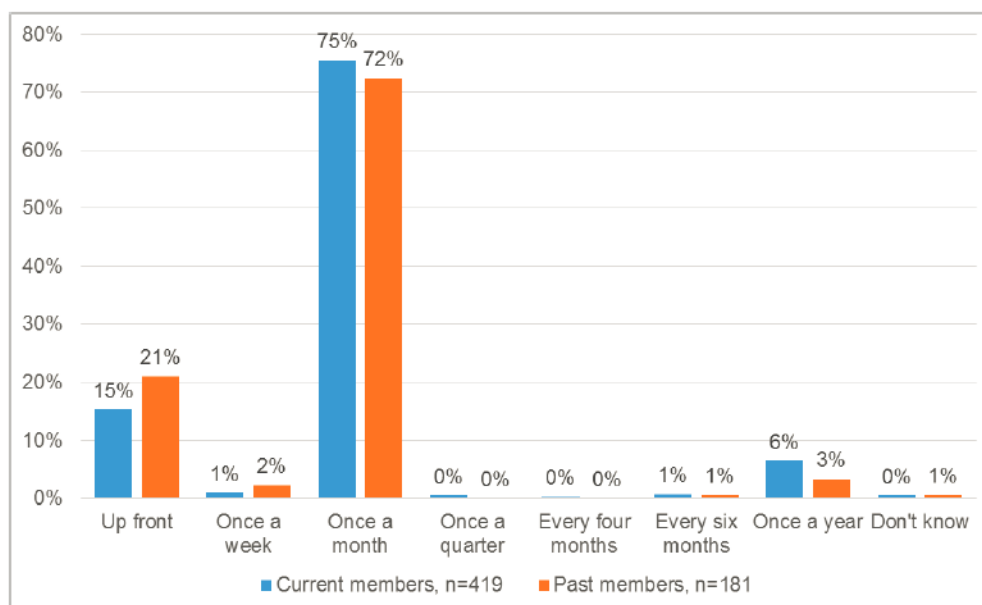
Base: All past members. (Respondents were coded as past members if they cancelled within their minimum period, or at the end of the minimum period or within two months of the minimum period ending.)

## Paying for gym membership

17. There was very little difference between current and past members in how often they paid for their gym membership. The majority (around three-quarters) paid once a month, whilst some also paid upfront. Very few respondents paid for their gym membership at any other frequency.



**Figure 10: How often pay for current gym membership**



Source: CMA Survey, 2015

Notes:

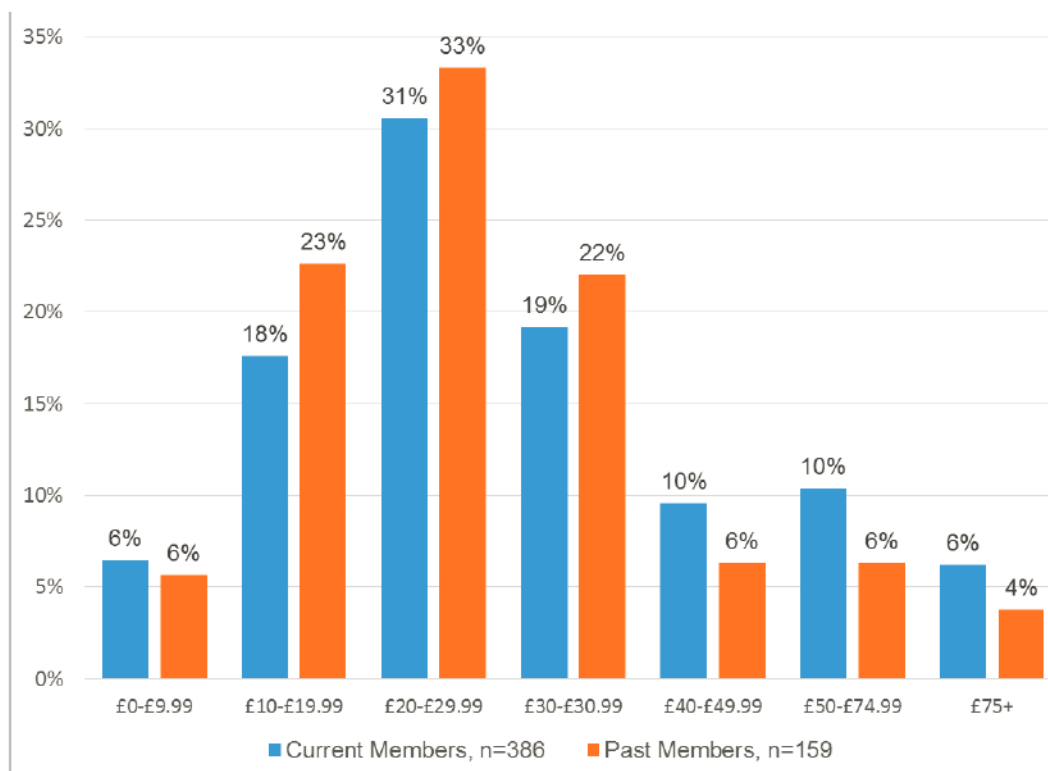
'Q9 (Current) How often do you pay for your current gym membership?' (Respondents with more than one membership were asked to think about their longest minimum term contract.)

'Q22 (Past) How often did you pay for this gym membership?'

Base: current members and past members of gyms who cancelled within their minimum membership period, or cancelled when it ended or within two months of it ending.

18. The majority of both current and past members paid between £20 and £29.99 per month, when the cost per month was calculated. Current members, on average tended to pay more for their gym membership than past members. The mean amount paid by current members was £37.80, whilst for past members this was £29.39.

**Figure 11: Monthly cost of gym membership**



Source: CMA Survey, 2015

Notes:

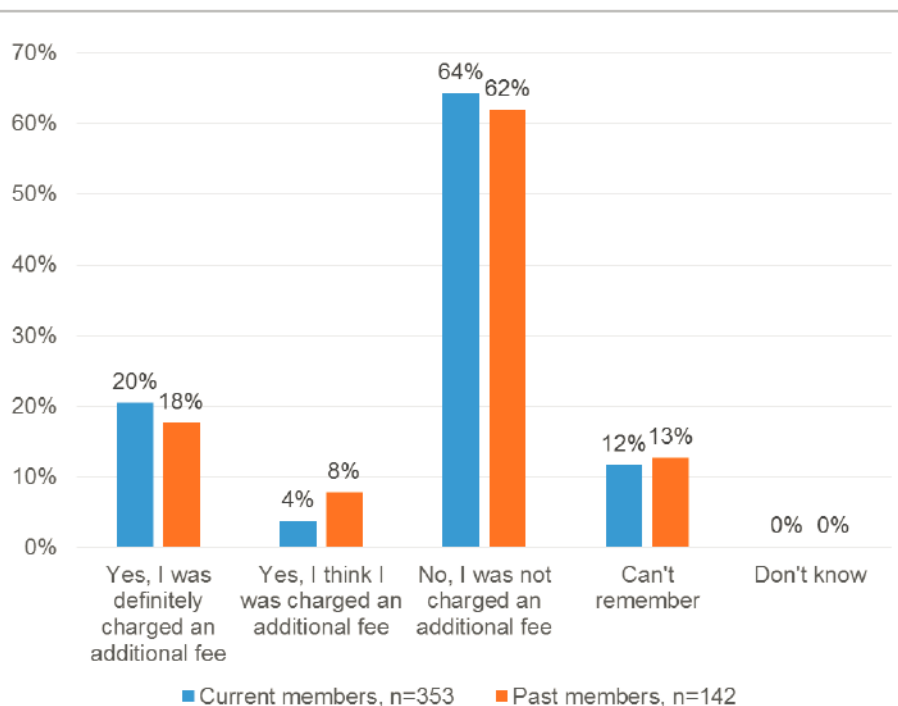
1. 'Q10 (Current) Approximately how much are your regular payments, not including any optional extras such as locker rental, personal training sessions etc.?' (Respondents who paid up front (Q8 and Q21) were asked: 'Approximately how much did you pay for your gym membership, not including any optional extras such as locker rental, personal training sessions etc.?')

2. 'Q23 (Past) Approximately how much were your regular gym membership payments, not including any optional extras such as locker rental, personal training sessions etc.?'

Base: Current members who knew how often they pay (it was not possible to calculate the monthly amount paid by some respondents, because some respondents had provided an upfront amount at Q10 but had not specified a contract length at Q8 (N=6), or because an amount was not provided at Q10 (N=25)) and past members who know how often they pay (it was not possible to calculate the monthly amount paid by some respondents, because some had provided an amount at Q23 and paid upfront but not specified a contract length at Q21 (n=5) whilst other did not specify an amount at Q23 (n=16)).

19. The majority (almost two-thirds) of both current and past members were not charged an additional fee (such as a joining fee) when they signed up for their gym contract. However almost one in five of both current and past members were charged a joining fee when they signed up for their gym contract. Just over one in ten of both groups couldn't remember whether they were charged a fee when they first joined.

**Figure 12: Charged a joining fee**



Source: CMA Survey, 2015

Notes:

'Q11 (Current) When you first took out your membership, were you charged a fee in addition to the regular payment amount? This may have been called an admin fee, a joining fee or an activation fee.'

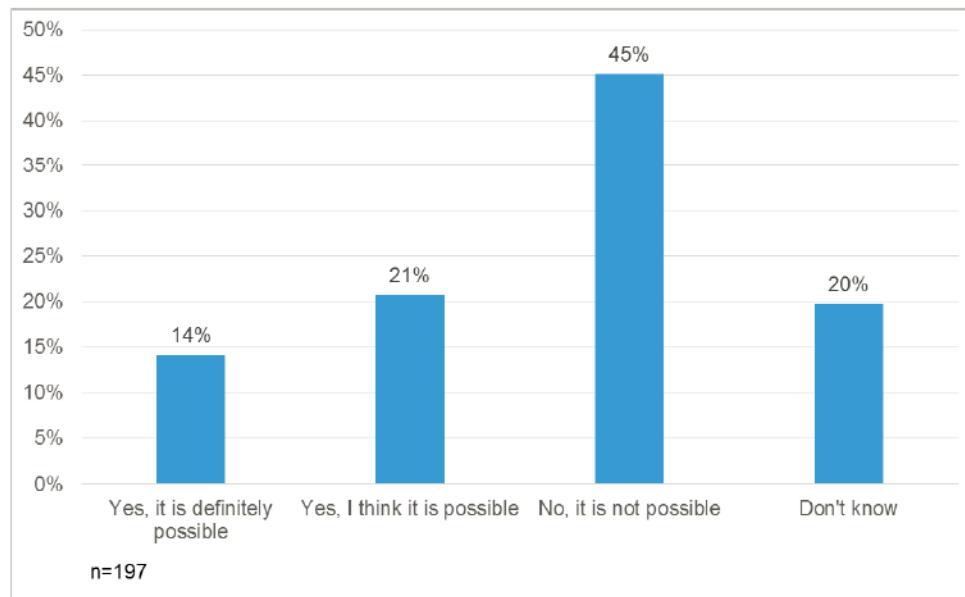
'Q24 (Past) When you first took out your membership, were you charged a fee in addition to the regular payment amount? This may have been called an admin fee, a joining fee or an activation fee.'

Base: Current members who make regular payments (Q9) and past members who made regular payments (Q22).

## Cancelling gym membership

20. One in five participants weren't aware whether or not it was possible to cancel their minimum term contract before it had expired without incurring any extra fees (and also getting a refund for the amount paid upfront if they had paid for the contract upfront). Just over a third (35%) thought that it was possible, whilst 45% thought that it was not possible.

**Figure 13: Awareness of ability to cancel without incurring extra fees**



Source: CMA Survey, 2015

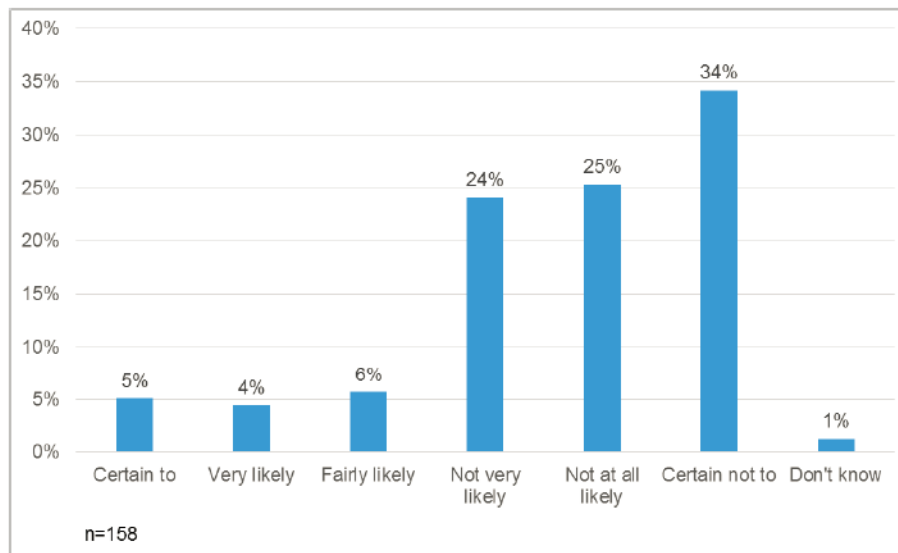
Note: 'Q13A As far as you are aware, under the terms of your current contract, is it possible to cancel this contract before the end of the minimum membership period without incurring any extra fees?' (Respondents who had paid upfront were also told they would receive a refund for the amount they had had left on the membership fees they had paid upfront.)

Base: Current members still in minimum membership period. (One respondent had missing values for this question.)

21. Respondents who were still in their current membership period were asked how likely they would be to cancel their contract before the end of the minimum membership period. Just over a third (34%) said that they were certain they would not cancel before the end of the minimum membership period. Whilst 15% said that they would be likely to cancel before the end of the minimum membership period.



**Figure 14: How likely to cancel before end of minimum membership period**



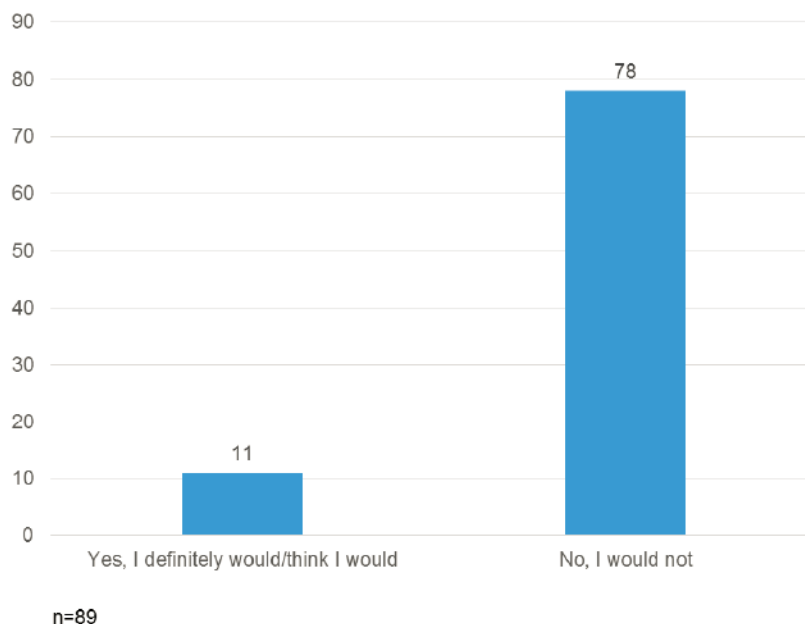
Source: CMA Survey, 2015

Note: 'Q13B How likely are you to cancel this contract before the end of the minimum membership period?'

Base: Current members who are still in current membership period and knew whether they could cancel (Q13A). (For respondents who paid upfront it was also added to the question that they would get a refund for the fees paid upfront. Respondents who had less than 2 months remaining of their minimum contract were asked how likely they would be to not renew or cancel at the end of the minimum period.)

22. When asked how likely they would be to cancel this week if they were able to cancel without incurring any fees, only 11 respondents said they would, whilst 78 said that they would not.

**Figure 15: How likely to cancel this week without incurring fees**



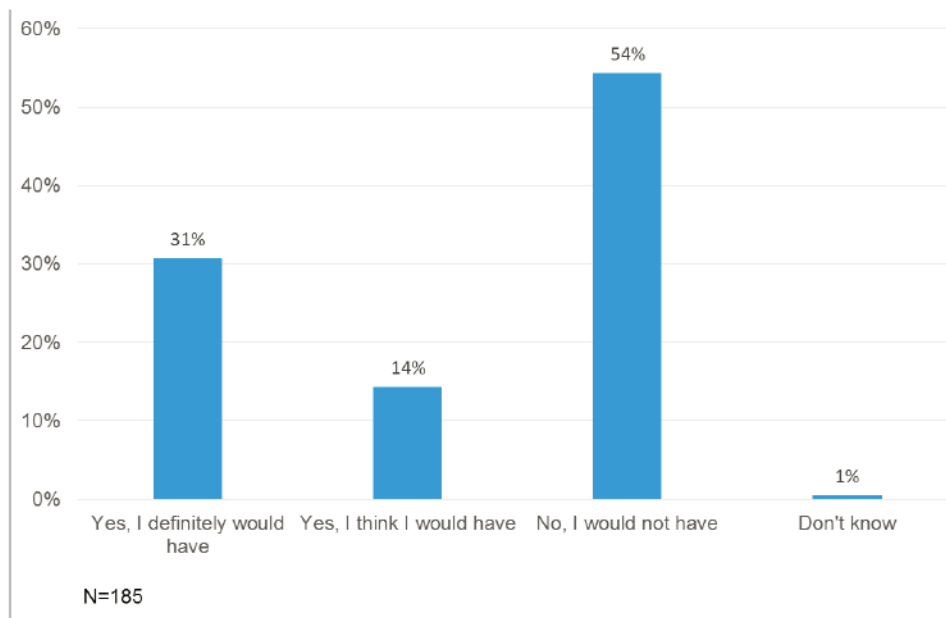
Source: CMA Survey, 2015

Note: 'Q13C If you were able to cancel this contract this week without incurring any fees, would you do so?' (For respondents who paid upfront it was also added to the question that they would get a refund for the fees paid upfront.)

Base: Current members who were still in minimum membership period and do not believe they have the option of cancelling before the end of the minimum contract (Q13A).

23. Past members who cancelled at the end of their minimum membership period were asked if they had wanted to cancel during their minimum membership period. Just over half said that they would, whilst just under half said that they would not have liked to cancel.

**Figure 16: Past members, would have cancelled if had been able**



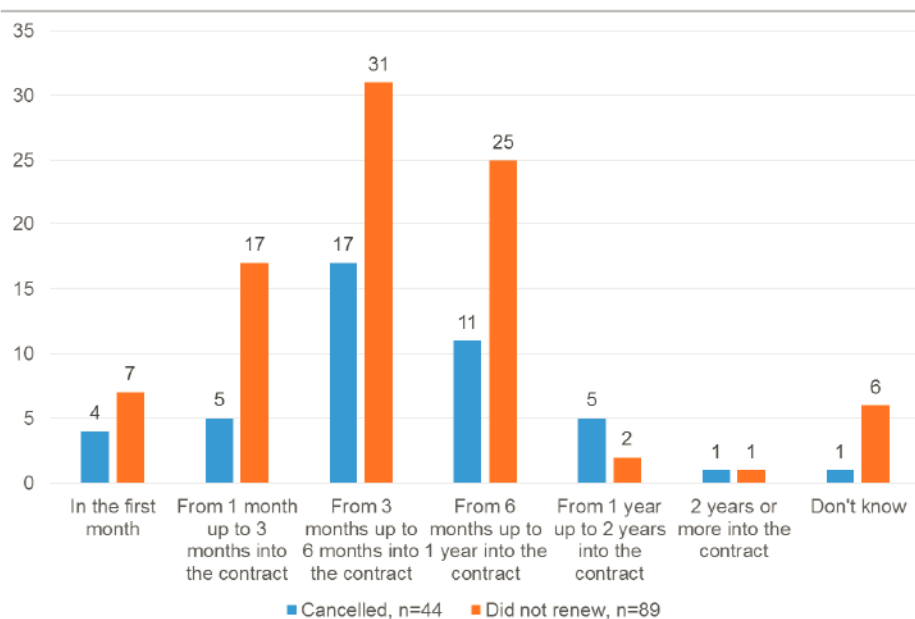
Source: CMA Survey, 2015

Note: 'Q28 If you had been able to cancel this contract without incurring any fees, would you have liked to cancel it early and not wait for the end of the minimum membership period?' (Respondents who had paid upfront were asked: 'If you had been able to cancel this contract without incurring any extra fees and get a refund for the time left on the membership fees you paid up front, would you have liked to cancel it early and not wait for the end of the minimum membership period?')

Base: Past members who did not cancel prior to the minimum period ending.

24. The distribution of the amount of time into the minimum term contract where people who cancelled or wanted to cancel was similar, with the most common answer being within three to six months into the contract. Only a small number, (both groups) wanted to cancel within the first three months. Numbers are provided rather than percentages as the number of respondents is low, and thus should be interpreted with caution. If consumers significantly overestimated their future value of contracts, they may have entered into long-term contracts that were ultimately poor value for them

**Figure 17: How far into contract would have liked/did cancel**



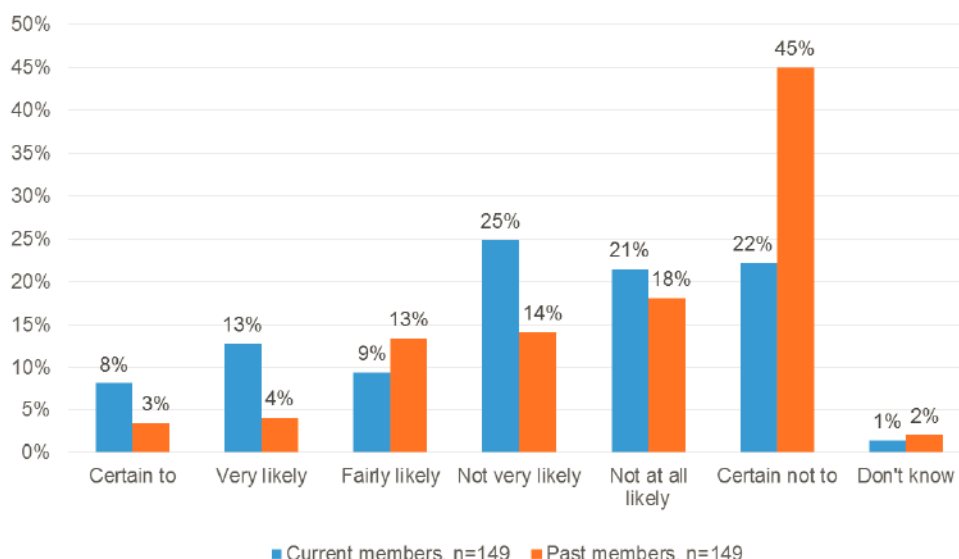
Source: CMA Survey, 2015

Note: 'Q29 If cancelled: How far into the minimum membership period did you cancel? A rough idea is fine, if you can't remember exactly when. If would have liked to cancel: How far into the minimum membership period would you have liked to cancel, if you could? A rough idea is fine, if you can't remember exactly when.'

Base: Past members cancelled (Q18) and past members who wanted to cancel (Q28).

25. We asked respondents how likely they would have been to have signed up to a contract with a minimum period of 24 months, in order to gauge whether respondents would have been tempted into contracts with a minimum term of 24 months if these were still on offer. Current members were more likely to say that they would have signed up to a contract of 24 months or more, whilst past members were more likely to say they would have been less likely to sign up to a contract of 24 months or more. It should be noted that due to a scripting error question 16 was only asked to respondents who were current members within their minimum term. It is possible that due to this, the responses may be slightly more biased towards answering that they would be less likely to sign up, as these people are still in their current membership period and may want to cancel, rather than current members who are still in their current membership period and have continued their membership voluntarily. In addition, this question should be interpreted with a note of caution, due to its hypothetical nature. The question refers to a decision made in the past and to an option which was unlikely to have been available at the time. It is also possible that being asked prior questions about their gym membership (such as whether they would have liked to cancel their gym membership) may also prime or bias their response to this question.

**Figure 18: How likely to have signed up to a 24 month contract**



Source: CMA Survey, 2015

Notes:

'Q16 (Current members) Now thinking back to when you signed up for your current membership contract, how likely or unlikely would you have been to sign up if it had only been available with a 24-month minimum membership period?'

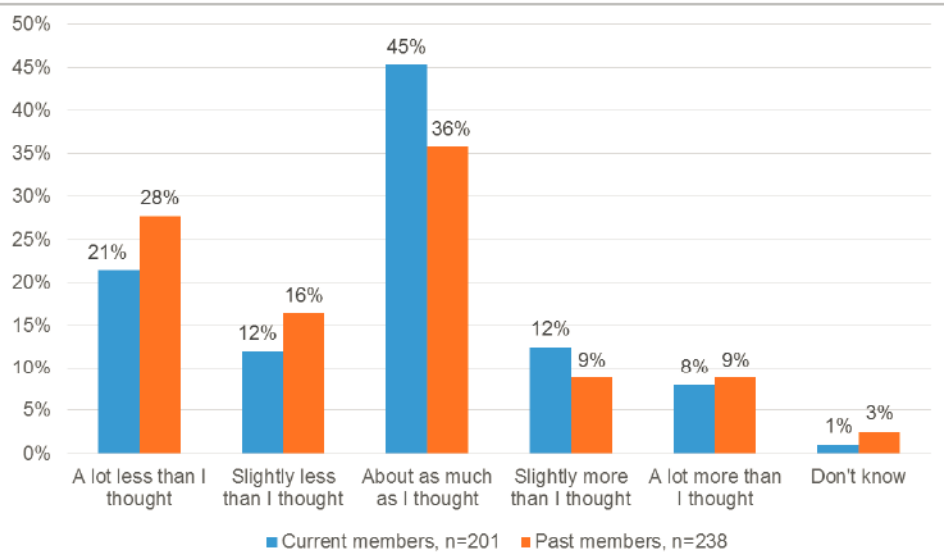
'Q31 (Past members) Now thinking back to when you signed up for this contract, how likely or unlikely would you have been to sign up if it had only been available with a 24-month minimum membership period?'

Base: All current members in minimum contract period with a contract of 6 months or more as specified at Q8 (due to a scripting error this question was only asked to respondents who were still in their current gym membership period) and all past members with a contract of 6 months or more as specified at Q21.

## Gym usage

26. Past members were more likely to say that they had used the gym less often than they had originally thought compared to current gym members were (44% compared to 33%). Current members were slightly more likely than past members to respond that they used the gym more often than they had originally thought (20% versus 18%). As with the previous question, this question should be interpreted with caution, as it is quite possible that responses may be subject to recall bias as this requires the respondent to remember how often they would use the gym when they first signed up, which could be a long time ago, particularly in the case of past members. Again, it is also possible that the questions asked previously about whether or not they would like to cancel could have primed their response to this question.
27. It should be noted that it was intended that Q17 would be asked to all current gym members, however due to a scripting error this question was only asked to current members who were still in their minimum term. This may bias results slightly towards underestimating usage as those who are out of their minimum term but still members may be more likely to have accurately estimated or overestimated their use, meaning that they have maintained their membership.

**Figure 19: Gym usage expectations**



Source: CMA Survey, 2015

Notes:

'Q17 (Current members) Overall do you think you use your gym more, less or about the same as you thought you would when you signed up?'

'Q32 (Past members) Thinking back to the time when your contract ended, overall do you think you used your gym more, less or about the same as you thought you would when you signed up?'

Base: All current members in minimum contract period (due to a scripting error this question was only asked to respondents who were still in their current gym membership period) and all past members (two respondents had missing responses for this question).



## Annex 3: Survey Questionnaire

(New Screen)

INTERVIEWER: PLEASE SHOW SCREEN UNTIL OTHERWISE INSTRUCTED  
(DP: please underline SHOW, showscreen)

(NEW SCREEN)

INTERVIEWER READ OUT: The following questions are about membership of health and fitness clubs, including gyms. We will refer to them as gyms throughout this set of questions.

(NEW SCREEN)

**ASK ALL**

**PG01**

Are you currently a member of a gym?

If you have a membership that is suspended (i.e. you are not paying for or using the gym at the moment, but still have the membership) please include this membership.

**SINGLE CODE, ALLOW DK**

1. Yes, I am currently the member of **one** gym
2. Yes, I am currently the member of **more than one** gym
3. No, I am not currently a gym member

**ASK ALL CURRENT GYM MEMBERS (ALL CODE 1 or 2 AT PG01)**

**PG02**

Some gyms require consumers to take out a membership contract that commits the consumer to a minimum membership period of 6 months or more.

**[IF PG01 = 1]** Did your current membership contract include a minimum membership period of 6 months or more when you first took it out?

**[IF PG01 = 2]** Did at least one of your current membership contracts include a minimum membership period of 6 months or more when you first took it out?

**SINGLE CODE, ALLOW DK**

1. Yes, definitely
2. Yes, I think so
3. No

**ASK ALL CURRENT GYM MEMBERS WITH A MINIMUM MEMBERSHIP CONTRACT OF 6 MONTHS OR MORE (ALL CODE 1 or 2 AT PG02)**

**PG03**

**[IF PG01 = 1]** As far as you are aware, has the minimum membership period for this membership ended?

**[IF PG01 = 2]** As far as you are aware, has the minimum membership period ended for any of the memberships that you hold?

**SINGLE CODE, ALLOW DK**

1. Yes, definitely
2. Yes, I think so
3. No

**ASK ALL CURRENT GYM MEMBERS WITH A MINIMUM MEMBERSHIP CONTRACT OF 6 MONTHS OR MORE (ALL CODE 1 or 2 AT PG02)**

**PG03A**

Who paid/pays for your current membership?

If you have more than one current gym membership, please think of the membership with the **longest** minimum term contract.

**SINGLE CODE, ALLOW DK**

1. I pay for full cost of the membership
2. I share the cost with somebody else in my household
3. I share the cost with someone else who is not in my household
4. Someone else pays for my membership

**ASK ALL CURRENT GYM MEMBERS WITH A MINIMUM MEMBERSHIP CONTRACT OF 6 MONTHS OR MORE (ALL CODE 1 or 2 AT PG02)**

**PG03B**

And for which, if any, of the following reasons, did you join your current gym?

If you have more than one current gym membership, please think of the membership with the **longest** minimum term contract.

**MULTICODE, ALLOW DK, RANDOMISE**

1. I was encouraged to do so by a GP or other health professional
2. I joined as part of a physiotherapy programme
3. To help treat a specific injury or condition
4. To help to lose weight
5. To help improve my fitness
6. To help to build muscle
7. To socialise
8. To support someone else
9. To feel good about myself
10. To help fight stress
11. To have time for myself
12. To keep training in the winter when I cannot train outside
13. To join a specific class (e.g. Yoga, Pilates, Spin classes)
14. I was training for a particular event
15. Other (please specify)

**ASK ALL CURRENT GYM MEMBERS (ALL CODE 1 or 2 AT PG01)**

**PG04**

At any point in the last two years, were you the member of any other gym(s)? We mean a gym/gyms that you are no longer the member of.

**SINGLE CODE, ALLOW DK**

1. Yes, I have been the member of **one other** gym during the past 2 years

2. Yes, I have been the member of **more than one other** gym during the past 2 years
3. No, I have not been a member of any other gyms during the past 2 years

**IF 3 IN PG04 AND 4 IN PG03A CLOSE (NOT INTERESTED IN MEMBERSHIPS THEY DO NOT PAY FOR AS MOST OF THE QUESTIONS ARE NOT RELEVANT TO THEM)**

**ASK IF NOT CURRENTLY A MEMBER (ALL CODES 3 OR DK AT PG01)**

**PG05**

At any point in the last two years, were you the member of a gym(s)?

**SINGLE CODE, ALLOW DK**

1. Yes, I have been the member of **a** gym during the past 2 years
2. Yes, I have been the member of **more than one** gym during the past 2 years
3. No, I have not been a member of any gyms during the past 2 years

**[ASK IF MEMBER OF A GYM IN THE PAST 2 YEARS (PG04 OR PG05 = 1 or2)]**

**PG06**

**[IF CODE 1 or 2 AT PG05] {Some gyms require consumers to take out a membership contract that commits the consumer to a minimum membership period of 6 months or more.}}**

**[IF CODE 1 AT PG04 OR PG05] Did your previous membership include a minimum membership period of 6 months or more when you first took it out?**

**[IF CODE 2 AT PG04 OR PG05] Did any of your previous memberships include a minimum membership period of 6 months or more when you first took it out?**

**SINGLE CODE, ALLOW DK**

1. Yes, definitely
2. Yes, I think so
3. No

**ASK ALL PREVIOUS GYM MEMBERS WITH A MINIMUM MEMBERSHIP CONTRACT OF 6 MONTHS OR MORE (ALL CODE 1 or 2 AT PG06)**

**PG06A**

Who paid for your membership?

If you had more than one gym membership, during the past 2 years please think of the membership with the **longest** minimum term contract.

**SINGLE CODE, ALLOW DK**

1. I paid for the full cost of the membership
2. I shared the cost with somebody else in my household
3. I shared the cost with someone else who is not in my household
4. Someone else paid for my membership

IF 4 IN PG06A AND NOT A CURRENT MEMBER CLOSE (WE ARE NOT INTERESTED IN MEMBERSHIPS THEY DO NOT PAY FOR)

**ASK ALL PAST MEMBERS (PG04 OR PG05 = 1 or2) WITH CONTRACT OF 6 MONTHS OR MORE (1-2 IN PG06)**

**PG06B**

Thinking of your previous gym membership...

For which, if any, of the following reasons, did you join the gym?

If you had more than one gym membership, during the past 2 years please think of the membership with the **longest** minimum term contract.

**SINGLE CODE, ALLOW DK**

1. I was encouraged to do so by a GP or other health professional
2. I joined as part of a physiotherapy programme
3. To help treat a specific injury or condition
4. To help to lose weight
5. To help improve my fitness
6. To help to build muscle
7. To socialise
8. To support someone else
9. To feel good about myself
10. To help fight stress
11. To have time for myself
12. To keep training in the winter when I cannot train outside
13. To join a specific class (e.g. Yoga, Pilates, Spin classes)
14. I was training for a particular event
15. Other (please specify)
16. ROUTING CONDITIONS

**If PG01 = Code 1 or 2 (current member) and PG02 = Code 1 or 2 (yes minimum term) and PG03 = Code 1 or 2 (yes finished), TREAT AS CURRENT AND THEN (IF ALSO PG06 = CODE 1 or 2) AS PAST**

**If PG01 = Code 1 or 2 (current member) and PG02 = Code 1 or 2 (yes minimum term) and PG03 = Code 3 (no not finished), TREAT AS CURRENT AND THEN (IF ALSO PG06 = CODE 1 or 2) AS PAST**

**If PG01 = Code 1 or 2 (current member) and PG02 = Code 1 or 2 (yes minimum term) and PG03 = DK (dk if finished), TREAT AS CURRENT AND THEN (IF ALSO PG06 = CODE 1 or 2) AS PAST**

**If PG01 = Code 1 or 2 (current member) and PG02 = Code 3 (no minimum term) and PG05 = Code 3 or DK (not a past member/dk if past member), CLOSE**

**If PG01 = Code 1 or 2 (current member) and PG02 = Code DK (dk if minimum term) and PG05 = Code 3 or DK (not a past member/dk if past member), CLOSE**

If PG01 = Code 1 or 2 (current member) and PG02 = 3 or dk (no minimum term/dk if minimum term) and PG05 = Code 1 or 2 (past member) and PG06 = Code 1 or 2 (yes minimum term), TREAT AS PAST

If PG01 = Code 1 or 2 (current member) and PG02 = Code 3 or DK (no minimum term/dk if minimum term) and PG05 = Code 1 or 2 (past member) and PG06 = 3 or DK (no minimum term), CLOSE

If PG01 = 3 or DK (not a current member/dk if a current member) and PG05 = Code 1 or 2 (past member) and PG06 = Code 1 or 2 (minimum term), TREAT AS PAST

If PG01 = Code 3 or DK (not a current member/dk if a current member) and PG05 = Code 1 or 2 (past member) and PG06 = Code 3 or DK (not a minimum term/dk if minimum term), CLOSE

If PG01 = Code 3 or DK (not a current member/dk if a current member) and PG05 = Code 3 or DK (not a past member/dk if past member), CLOSE

**THE PAST AND CURRENT MEMBERS SECTIONS ARE RANDOMISED FOR RESPONDENTS WHO ARE BOTH**



**ASK ALL CURRENT MEMBERS WHO HAD MINIMUM TERMS (PG01 = 1 or 2 AND PG02 = 1 or 2 AND PG03A = 1-3)**

**CURRENT MEMBERS SECTION**

**(NEW SCREEN)**

INTERVIEWER READ OUT:

<<[TEXT SUB IF CODE 1 or 2 AT PG01 AND ALSO CODE 1 or 2 AT PG03: {For the questions that follow, please think about your current gym membership contract where the minimum membership period has ended.}]

INTERVIEWER: IF RESPONDENT HAS 2+ CURRENT MEMBERSHIP CONTRACTS WHERE THE MINIMUM MEMBERSHIP PERIOD HAS ENDED, THEY SHOULD ANSWER ABOUT THE CONTRACT WITH THE LONGEST MINIMUM CONTRACT PERIOD]

[TEXT SUB IF CODE 1 or 2 AT PG01 AND ALSO CODE 3 AT PG03: {For the questions that follow, please think about your current gym membership contract where the minimum membership period has not ended.}]

INTERVIEWER: IF RESPONDENT HAS 2+ CURRENT MEMBERSHIP CONTRACTS WHERE THE MINIMUM MEMBERSHIP PERIOD HAS NOT ENDED, THEY SHOULD ANSWER ABOUT THE CONTRACT WHERE THE MINIMUM PERIOD WILL END FIRST]

[TEXT SUB IF CODE 1 or 2 AT PG01 AND ALSO CODE DK AT PG03: {For the questions that follow, please think about your current gym membership contract with a minimum membership period of six months or more.

INTERVIEWER: IF RESPONDENT HAS 2+ CURRENT MEMBERSHIP CONTRACTS WITH A MINIMUM MEMBERSHIP PERIOD, THEY SHOULD ANSWER ABOUT THE CONTRACT WITH THE LONGEST MINIMUM CONTRACT PERIOD]>>

New Screen)

INTERVIEWER: PLEASE DO NOT SHOW SCREEN UNTIL OTHERWISE INSTRUCTED

(DP: please underline DO NOT. Not show screen)

**ASK ALL CURRENT MEMBERS WHO HAD MINIMUM TERMS (PG01 = 1 or 2 AND PG02 = 1 or 2 AND PG03A=1-3)**

**PG07**

Which gym is this contract with?

**SINGLE CODE, ALLOW DK**

DO NOT PROMPT.

1. Local authority/council gym / Leisure centre / Places for People
2. Better Gyms / Greenwich Leisure Limited
3. Bannatyne Fitness

4. Club Motivation / Bodyclub
5. Curves
6. David Lloyds
7. DW Sports Fitness
8. Esporta
9. Fitness First
10. Gym Box
11. LA Fitness
12. Livingwell
13. Nuffield Fitness and Wellbeing (including Cannons)
14. Pure Gym
15. Reebok (Canary Wharf)
16. Spirit Health Clubs
17. The Gym
18. Total Fitness
19. Virgin Active
20. Hotel gym [INTERVIEWER PROBE ON WHETHER RUN BY GYM COMPANY, IF SO CODE AS COMPANY SPECIFIED ]
21. Gym at my college/university [INTERVIEWER PROBE ON WHETHER RUN BY GYM COMPANY, IF SO CODE AS COMPANY]
22. Gym at my workplace [INTERVIEWER PROBE ON WHETHER RUN BY GYM COMPANY, IF SO CODE AS COMPANY]
23. Gym in building where I live [INTERVIEWER PROBE ON WHETHER RUN BY GYM COMPANY, IF SO CODE AS COMPANY]
24. Other brand or independent/single-site club (please specify)

**ASK ALL CURRENT MEMBERS WHO HAD MINIMUM TERMS (PG01 = 1 or 2 AND PG02 = 1 or 2 AND PG03A=1-3)**

**PG08**

What was the minimum membership period for this contract when you first signed up?

[IF PG01 = 2] Please think of the membership with the **longest** minimum term contract.

If you are unsure, please give your best estimate of the number of weeks or months  
**NUMERIC FIELD, ALLOW DK**

INTERVIEWER: PROBE ON WHETHER RESPONDENT HAS SPECIFIED A NUMBER OF WEEKS OR A NUMBER OF MONTHS AND RECORD AMOUNT WITH CORRECT PRECODE

1. Number of weeks [NUMERIC FIELD, RANGE 1 – 156]
2. Number of months [NUMERIC FIELD, RANGE 1 – 36]
3. Can't remember

(New Screen)

INTERVIEWER: PLEASE SHOW SCREEN UNTIL OTHERWISE INSTRUCTED  
(DP: please underline SHOW, showscreen)

(If less than 24 weeks/6 months and also PG06 = Code 1 or 2, GO TO PG18.)

If less than 24 weeks/6 months and PG06 = Code 3 or DK, CLOSE.)  
ASK ALL CURRENT MEMBERS WHO HAD MINIMUM TERMS CONFIRMED AS 6 MONTHS OR MORE (PG08\_1 = 24 OR MORE OR PG08\_2 = 6 OR MORE)

**PG09**

[IF PG03A = 1-3 How often do you pay for your current gym membership?

[IF PG03A = DK] How often are your current gym membership payments made?

[IF PG01 = 2] Please think of the membership with the **longest** minimum term contract.

**SINGLE CODE, DK**

1. I/We paid for the full membership up front
2. I/We make a payment once a week
3. I/We make a payment once a month
4. I/We make a payment once every three months (once a quarter)
5. I/We make a payment once every four months
6. I/We make a payment once every six months
7. I/We make a payment once every 12 months (once a year)

ASK ALL CURRENT MEMBERS WHO HAD MINIMUM TERMS CONFIRMED AS 6 MONTHS OR MORE AND WHO KNOW HOW OFTEN THEY PAY (PG09 = 1-7)

**PG10**

[TEXT SUB IF CODE 2-7 AT PG09: {Approximately how much are your regular payments, not including any optional extras such as locker rental, personal training sessions etc.?}]

[TEXT SUB IF CODE 1 AT PG09: {Approximately how much did you pay for your gym membership, not including any optional extras such as locker rental, personal training sessions etc.?}]

Please give your best estimate to the nearest pound, if you're unsure, please give your best estimate **NUMERIC FIELD, ALLOW DK**

1. [IF PG09 = 1 Upfront amount [NUMERIC FIELD, RANGE 1 – 9999]
2. [IF PG09 = 2 Per week [NUMERIC FIELD, RANGE 1 – 9999]
3. [IF PG09 = 3 Per month [NUMERIC FIELD, RANGE 1 – 9999]
4. [IF PG09 = 4 Every three months (per quarter) [NUMERIC FIELD, RANGE 1 – 9999]
5. [IF PG09 = 5 Every four months [NUMERIC FIELD, RANGE 1 – 9999]
6. [IF PG09 = 6 Every six months [NUMERIC FIELD, RANGE 1 – 9999]
7. [IF PG09 = 7 Every 12 months (annually) [NUMERIC FIELD, RANGE 1 – 9999]

ASK ALL CURRENT MEMBERS WHO HAD MINIMUM TERMS CONFIRMED AS 6 MONTHS OR MORE AND WHO MAKE REGULAR PAYMENTS (PG09 = 2-7)

**PG11**

When you first took out your membership, were you charged a fee in addition to the regular payment amount?

This may have been called an admin fee, a joining fee or an activation fee.

**SINGLE CODE, ALLOW DK**

1. Yes, I was definitely charged an additional fee
2. Yes, I was charged an additional fee
3. No, I was not charged an additional fee
4. Can't remember

**ASK ALL CURRENT MEMBERS WHO MAKE REGULAR PAYMENTS AND PAID AN ADDITIONAL FEE**

**PG11A**

Approximately how much was the additional fee?

If you are unsure, please give your best estimate to the nearest pound

**NUMERIC FIELD, RANGE 1-9999, ALLOW DK**

**(IF CODE 1 or 2 AT PG02 AND ALSO CODE 1 or 2 AT PG03, GO TO PG16.)**

**ASK ALL WHO ARE STILL IN CURRENT MEMBERSHIP PERIOD (PG02 = 1 OR 2 AND PG03 = 3)**

**PG12**

How long is left until the minimum membership period for your current gym membership contract ends?

**[IF PG01 = 2 and PG03=1 or 2] Please think of the membership with the **longest** minimum term contract. If you are unsure, please give your best estimate of the number of weeks or months**

**[IF PG01 =2 AND PG03=3] Please think about the membership that will end the soonest. If you are unsure, please give your best estimate of the weeks or months.**

**NUMERIC FIELD, ALLOW DK**

INTERVIEWER: PROBE ON WHETHER RESPONDENT HAS SPECIFIED A NUMBER OF WEEKS OR A NUMBER OF MONTHS AND RECORD AMOUNT WITH CORRECT PRECODE

1. Number of weeks **[NUMERIC FIELD, RANGE 1 – 156]**
2. Number of months **[NUMERIC FIELD, RANGE 1 – 36]**
3. Can't remember

**ASK ALL WHO ARE STILL IN CURRENT MEMBERSHIP PERIOD (PG02 = 1 OR 2 AND PG03 = 3)**

**PG13A**

**[TEXT SUB IF CODE 2-7 AT PG09: As far as you are aware, under the terms of your current contract, is it possible to cancel this contract before the end of the minimum membership period **without** incurring any extra fees?**

**[TEXT SUB IF CODE 1 AT PG09: As far as you are aware, under the terms of your current contract, is it possible to cancel this contract before the end of the minimum membership period **without** incurring any extra fees and get a refund on the time left on the membership fees you paid up front?**

**SINGLE CODE,**

1. Yes, it is definitely possible
2. Yes, I think it is possible



3. No, it is not possible
4. Don't Know **[MUST BE SHOWN ON SCREEN]**

**ASK ALL WHO ARE STILL IN CURRENT MEMBERSHIP PERIOD (PG02 = 1 OR 2 AND PG03 = 3)**

**PG13B**

**[TEXT SUB IF CODE 2-7 AT PG09 AND PG13A = 1-2 AND PG12 IS GREATER THAN 2 MONTHS OR GREATER THAN 8 WEEKS]:** How likely are you to cancel this contract before the end of the minimum membership period?

**[TEXT SUB IF CODE 2-7 AT PG09 AND PG13A = 3 AND PG12 IS GREATER THAN 2 MONTHS OR GREATER THAN 8 WEEKS]::** If you were able to cancel this contract before the end of the minimum membership period without incurring any fees, how likely would you be to do so?

**[TEXT SUB IF CODE 1 AT PG09 AND PG13A = 1-2 AND PG12 IS GREATER THAN 2 MONTHS OR GREATER THAN 8 WEEKS]:** How likely are you to cancel this contract before the end of the minimum membership period?

**[TEXT SUB IF CODE 1 AT PG09 AND PG13A = 3 AND PG12 IS GREATER THAN 2 MONTHS OR GREATER THAN 8 WEEKS]:** If you were able to cancel this contract before the end of the minimum membership period without incurring any fees and getting a refund for the time left on the membership fees you paid upfront, how likely would you be to do so?

**[TEXT SUB IF PG13A =1 OR 2 AND PG12 IS LESS THAN 2 MONTHS OR LESS THAN 8 WEEKS]:** How likely are you to cancel or not renew this contract before or at the end of the minimum membership period?

**[TEXT SUB IF PG13A =3 AND PG12 IS LESS THAN 2 MONTHS OR LESS THAN 8 WEEKS]:** How likely are you to cancel or not renew this contract at the end of the minimum membership period?

**SINGLE CODE, ALLOW DK, FORWARD/REVERSE CODES 1-6**

1. Certain to
2. Very likely
3. Fairly likely
4. Not very likely
5. Not at all likely
6. Certain not to

**ASK ALL WHO ARE STILL IN CURRENT MEMBERSHIP PERIOD AND DO NOT HAVE THE OPTION OF CANCELLING CONTRACT BEFORE MINIMUM MEMBERSHIP PERIOD (PG13A = 3)**

**PG13C**

**[TEXT SUB IF CODE 2-7 AT PG09:** If you were able to cancel this contract **this week** without incurring any fees, would you do so?

**[TEXT SUB IF CODE 1 AT PG09:** If you were able to cancel this contract **this week** without incurring any fees and getting a refund for the time left on the membership fees you paid up front, would you do so?



**SINGLE CODE, ALLOW DK**

1. Yes, I definitely would
2. Yes, I think I would
3. No, I would not

GO TO PG14  
GO TO PG14

**ASK ALL WHO WOULD, OR ARE LIKELY TO CANCEL CONTRACT BEFORE END OF MINIMUM CONTRACT (CODE 1 OR 2 AT PG13C OR CODES 1-3 AT PG13B)**

New Screen)

INTERVIEWER: PLEASE DO NOT SHOW SCREEN UNTIL OTHERWISE INSTRUCTED

(DP: please underline DO NOT. notshowscreen)

**ASK ALL WHO WOULD, OR ARE LIKELY TO CANCEL CONTRACT BEFORE END OF MINIMUM CONTRACT (CODE 1 OR 2 AT PG13C OR CODES 1-3 AT PG13B)**

**PG14**

[TEXT SUB IF PG13C = 1 OR 2 What is your **main reason** for saying that you would cancel this contract before the end of the minimum membership period?

[TEXT SUB IF PG13C = 3, DK OR NO ANSWER AND PG13B = 1-3 What is your **main reason** for saying that you would be likely to cancel this contract before the end of the minimum membership period?

INTERVIEW: DO NOT PROMPT, DO NOT PROBE.

INTERVIEWER: IF NECESSARY, REMIND RESPONDENT THAT CANCELLING WOULD NOT INVOLVE ANY FEES

INTERVIEWER: IF RESPONDENT SAYS THEY WANT TO MOVE TO ANOTHER GYM, PROBE TO FIND OUT WHY THEY DON'T WANT TO STAY WITH CURRENT GYM.

IF RESPONDENT SAYS THAT GYM IS TOO EXPENSIVE OR NOT GOOD VALUE FOR MONEY, PROBE ON WHETHER THIS WAS BECAUSE THEY WOULD LIKE TO CHANGE TO ANOTHER GYM, THEY HAVEN'T USED AS MUCH AS THEY THOUGHT OR WHETHER GYM IS NOT AS GOOD AS THEY THOUGHT.

**MULTICODE, ALLOW DK**

**Changes in circumstances (SCRIPT AS HEADER, NOT CODE)**

1. Change in circumstances due to moving house
2. Change in circumstances due to a new job
3. Change in circumstances due to pregnancy
4. Change in circumstances due to injury or long term illness

**Changes to the gym since respondent signed up (SCRIPT AS HEADER, NOT CODE)**

5. The gym has different opening hours to when I signed up,
6. The availability of classes has changed
7. The quality of staffing has changed
8. The number of staff has changed
9. The gym is not in as clean a condition as when I signed up
10. The equipment is not in as good a condition as when I signed up

**Expectations not met (SCRIPT AS HEADER, NOT CODE)**

11. I'm not going to gym as much as I thought I would or not going at all
12. The gym has not changed but it is not how I thought it would be
13. The gym has not changed but it is not as good as I thought it would be

**Would like to join another gym (SCRIPT AS HEADER, NOT CODE)**

14. Would like to change to another gym that looks better
15. Would like to change to another gym that looks cheaper
16. Would like to change to another gym that looks more suitable for my needs
17. Other (please specify)

(New Screen)

INTERVIEWER: PLEASE SHOW SCREEN UNTIL OTHERWISE INSTRUCTED

(DP: please underline SHOW, showscreen)

**ASK ALL STILL IN MINIMUM MEMBERSHIP PERIOD AND MAKING REGULAR PAYMENTS WHO WOULD CANCEL OR BE LIKELY TO CANCEL IF IT WERE POSSIBLE (CODE 1 OR 2 AT PG13C, CODES 1-3 AT PG13B) AND (CODE 2-7 AT PG09)**

**PG15**

Please imagine that you were able to cancel your current membership contract, without incurring any fees, and had decided to cancel.

If the gym tried to change your mind by offering you the same contract but with a lower regular payment amount, what amount would you be willing to pay?

You have told me that at the moment you pay is currently [PIPE IN AMOUNT SPECIFIED AT PG10]

**NUMERIC FIELD, ALLOW DK/NULL**

INTERVIEWER: DO NOT PROMPT ON AMOUNT BUT PROBE ON REGULARITY AND RECORD AMOUNT

1. [IF PG09 = 2 Per week [NUMERIC FIELD, RANGE 1 – ANSWER AT PG10\_2]
2. [IF PG09 = 3 Per month [NUMERIC FIELD, RANGE 1 – ANSWER AT PG10\_3]
3. [IF PG09 = 4 Every 3 months [NUMERIC FIELD, RANGE 1 – ANSWER AT PG10\_4]
4. [IF PG09 = 5 Every four months [NUMERIC FIELD, RANGE 1 – ANSWER AT PG10\_5]
5. [IF PG09 = 6 Every six months [NUMERIC FIELD, RANGE 1 – ANSWER AT PG10\_6]
6. None – would not stay under any circumstances
7. Don't know

**ASK ALL WITH MINIMUM TERM CONTRACTS OF 2 YEARS OR LESS [IF CODE 1 or 2 AT PG01 AND ALSO CODE 1 -3 AT PG03 AND Q8 = less than 104 weeks/24 months]**

**PG16**

Now thinking back to when you signed up for your current membership contract, how likely or unlikely would you have been to sign up if it had **only** been available with a **24-month minimum** membership period?

**SINGLE CODE, ALLOW DK, FORWARD/REVERSE CODES 1-6**

1. Certain to
2. Very likely
3. Fairly likely
4. Not very likely
5. Not at all likely
6. Certain not to

**ASK ALL CURRENT MEMBERS WHO HAD MINIMUM TERMS (PG01 = 1 or 2 AND PG02 = 1 or 2)**

**PG17**

Overall do you think you use your gym more, less or about the same as you thought you would when you signed up?

IF MORE OR LESS ASK: Is that a lot more/less or a little more/less?

**SINGLE CODE, ALLOW DK, FORWARD/REVERSE CODES 1-5**

1. I use the gym a lot less than I thought I would when I signed up
2. I use the gym slightly less than I thought I would when I signed up
3. I use the gym about as much as I thought I would when I signed up
4. I use the gym slightly more than I thought I would when I signed up
5. I use the gym a lot more than I thought I would when I signed up

## Annex 4: Literature review

1. In this section, we present a summary of the academic economic literature we consider relevant to inform this evaluation.
2. There is a large body of economic literature suggesting that long-term contracts can be detrimental for consumers. It is shown that new consumers tend to over-predict the usage of gyms when they sign-up for a contract and, in turn, gyms may have an incentive to exploit consumer cognitive biases so as to encourage them to engage in long-term contracts (eg consumers are keener to sign-up for a long-term contract if they are offered a discount on the price). The literature also shows that consumers often have poor understanding or no awareness of their contract terms (eg add-ons or cancellation terms) and firms have an incentive to exploit such myopic consumers. These findings suggest that the OFT intervention resulting in shorter contracts and better cancellation terms is likely to have reduced the detriment from the exploitation of consumer biases.
3. In this report we did not intend to present an exhaustive list of all relevant papers. However, we consider that our summary below covers the most important themes and insights for our evaluation.

### General discussion of the literature

4. A large number of papers have analysed the contract theory of firms and an important reference in this field is Tirole (1988). The basic assumptions of this strand of literature are that consumers are rational decision makers who choose the contract that maximises their surplus and that consumers have rational expectations about their future consumption. An extensive part of the literature on contract theory analyses long-term contracts between wholesale suppliers and retailers but there is only a limited amount of literature focusing specifically on the implications of contract length and cancellation terms in consumers contracts.
5. The following section summarises some of the papers related to the analysis of the decisions taken by consumers when signing contracts. This literature suggests that consumers do not behave rationally and often incorrectly estimate their usage or attendance when deciding to sign-up for long-term memberships.
6. The below review of literature related to consumers' engagement with firms through contracts and its implications are divided into three groups:



- (a) The first set of papers illustrates the main reasons why consumers may take wrong decisions. The literature highlights that consumers may fail to make choices that maximise their utility because of imperfect information and imperfect rationality. This strand of literature also shows that firms may have incentives to exploit consumers who suffer from cognitive biases or lack information about a product.
- (b) The next subsection looks at papers that analyse consumers' perceptions about their future usage of a service when signing a contract. Most of the papers on consumers' perception on usage reflect that consumers are not able to estimate correctly their future utility and they are generally over-optimistic when engaging in long-term contracts.
- (c) The last set of papers analyse and quantify consumers' detriment when joining a gym under different contract lengths. The findings obtained from these empirical papers suggest that a significant proportion of consumers that subscribe to long-term contracts end up making a suboptimal choice, given their attendance frequency, and they would have been better off paying per use instead.

## **Cognitive biases and firms' contract design**

7. Epstein (2006)<sup>88</sup> describes how consumers might suffer from cognitive biases and make bad decisions as a result. He also shows that firms may exploit consumers' cognitive biases by using commercial strategies such as drip pricing, discounts, bundling goods, and the like. However, the paper argues that there are correcting forces to consumers' cognitive biases such as consumer learning or experience, or in some cases sellers may have incentives (eg to steal consumers from a competitor) to educate consumers and offset their irrational choices.
8. Along the same lines Bar-Gill (2008)<sup>89</sup> considers the behavioural economics of consumer contracts. He sets out a four step process for analysing contract terms: (i) identifying if consumers misperceive costs and benefits of purchasing the products; (ii) exploring whether sellers respond strategically to consumers' misperception by redesigning contracts and pricing schemes; (iii) assessing whether sellers' strategic response to consumer misperception is welfare reducing; and (iv) considering whether legal intervention is warranted and desirable.

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<sup>88</sup> Epstein, R. A. (2006). Behavioural economics: human errors and market corrections. *University of Chicago Law Review*, 73(1): 111–132.

<sup>89</sup> Bar-Gill, O. (2008). The Behavioural Economics of Consumer Contracts. *Minnesota law review*, 92(3):749-802.



9. In contrast with Epstein (2006), Bar-Gill (2008) provides evidence that systematic mistakes may persist in some markets and that sellers might respond to consumers' wrong decisions by redesigning their products, prices and other terms. In this study, the author suggests that it is necessary to conduct a case-by-case analysis and regulation should be based upon the results (welfare outcome) of a market specific inquiry.
10. Gabaix and Laibson (2006)<sup>90</sup> analyses the situation when consumers have a poor understanding of their contract conditions or when they are unaware of the add-ons related to the service they consume. These authors discuss the topic with two types of consumers: 'myopic' and 'educated' consumers, and how firms might have incentives to shroud some of the characteristics (specifically the add-ons) to exploit the myopic consumers. Contrary to other papers (Shapiro, 1995, Jovanovic, 1982; Milgrom, 1981), which postulate that competitive pressure should preclude firms from shrouding attributes, these authors find that shrouding may be an optimal strategy even in competitive markets. In fact 'educated' consumers are better-off under shrouding as they are able to avoid the additional costs (the add-ons) hidden by the firm. On the other hand, from the firm's perspective, revealing shrouded attributes is sub-optimal since educated consumers will prefer to buy under shrouding and myopic consumers can be exploited.

### **Consumers' perceptions on future utility when signing up to a contract**

11. Loewenstein et al (2003)<sup>91</sup> discusses the existence of a 'projection bias' which means that consumers tend to exaggerate the future utility they will obtain from goods they buy in the present. The authors support their findings using experiments about consumers' valuations in different situations and, in addition, they present a formal model of inter-temporal utility. As an example, the authors discuss how their theoretical model could be applied to the case of a health club offering long-term contracts. In this context, the authors suggest that consumers may tend to project their current enthusiasm in using the gym into the future, but later this feeling wanes and they decide not to attend. Thereby, rather than making profits on single visits, gym companies might exploit peoples' projection bias and trap new consumers in expensive long-term contracts by entitling them to use the gym in the future with low-cost or free visits. Moreover, these authors discuss how the implementation of a cooling-off period, which allows the consumer to rescind the contract within a

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<sup>90</sup> Gabaix, X., and Laibson, D., 2006. Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets. *Quarterly Journal of Economics*, 121(2): 505–540.

<sup>91</sup> Loewenstein, G., O'Donoghue, R., Rabin, M., 2003. Projection Bias in Predicting Future Utility. *Quarterly Journal of Economics*, 118(4):1209–1248.

few days of the transaction, may help to correct for this projection bias inefficiency.

12. Tanner and Carlson (2008)<sup>92</sup> find that consumers are unrealistically optimistic when buying goods or services and do not foresee the use they will make of them. These authors test this hypothesis of over-optimism by running a series of experiments on different types of individuals. In each experiment, the survey sample was randomly assigned to two groups (plus a control group): Group 1 answering a question about their ideal behaviour with respect to a particular situation and then responding to a second and more specific question (focal question) that was more realistic; Group 2 only responded to the focal question. Interestingly, the authors find that respondents in the first group, who were first asked about their ideal behaviour, gave a better estimate about their usage in response to the focal question than those consumers in Group 2 who only responded to the focal question.
13. One of the experiments ran by these authors was related to exercise frequency and respondents were asked the following questions:
  - (a) Ideal question: In an ideal world, how many times per week (on average) will you exercise in the next month?
  - (b) Focal question: How many times per week (on average) will you exercise in the next month?
14. The response of Group 1 was that they would exercise 5.03 times on average per week in an ideal world (question 1) in contrast with 3.73 weekly exercise in response to the focal question (question 2). For Group 2 the response to the focal question was 4.72 on average. The authors argue that this result is in line with a learning process that consumers might experience when they test their future behaviour and enable them to make better decisions.
15. We note, however, that there has been some criticism of the studies showing that people are over-optimistic. For example Harris and Hahn (2011)<sup>93</sup> highlight that the over-optimism bias might be due to purely statistical reasons. In particular, they argue that findings on over-optimism are sometimes based on experiments suffering from sampling constraints and the response scales used to analyse these cases, and highlight the rarity of truly

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<sup>92</sup> Carlson, K., Tanner, R.J., 2008. Unrealistically Optimistic Consumers: A Selective Hypothesis Testing Account for Optimism in Predictions of Future Behaviour. *Journal of Consumer Research*, 35(5): 810-822.

<sup>93</sup> Harris, A. J. L., Hahn, U., 2011. Unrealistic Optimism About Future Life Events: A Cautionary Note. *Psychological Review*, 118 (1): 135–154.

negative events. Hence, the authors suggest that the literature might be incorrectly estimating the over-optimistic behaviour of consumers.

## Empirical studies on gyms' contracts

16. A prominent paper on gyms contracts is an empirical study by Della Vigna and Malmendier (2006).<sup>94</sup> These authors draw on a panel dataset that contains 7,752 consumers' contracts from three gyms in the USA in the period 1997 to 2001. Their quantitative results indicate that a significant number of consumers do not choose the best contract according to their actual usage of the gym. First, the authors find that 80% of consumers choosing a flat-rate monthly membership would have been better off if they had paid per visit to the gym. Indeed, consumers are expected to pay more than \$17 per visit using a monthly contract even though they could pay \$10 per visit using a ten-visit pass. Because of not choosing the right type of contract, consumers forego savings of \$600 on average during their membership. The authors also find that low attendance consumers delay cancelling their contract despite small transaction costs.
17. In addition, these authors combine the original dataset with a survey analysis to study why consumers may not take rational decisions when signing a gym contract. The findings from the survey point towards consumers usually having unrealistic expectations about their future attendance to the gym.
18. In a similar vein, Garon et al. (2014)<sup>95</sup> draw on a dataset with information on the actual attendance of 1,171 consumers across 14 health clubs in Quebec between 2011 and 2012, and combine it with a consumer survey about future attendance expectations and measures of 'self-control problems'. As in the previous paper, the authors find that gym members are over-optimistic regarding their attendance when they sign the contract and that this bias towards optimism can be very costly (average and median foregone savings of \$277 and \$229 respectively for individuals who make a mistake with the contract). In fact, using the objective number of actual visits per month, the average cost of gym contracts is \$26.9 per visit in contrast with the \$14.9 cost of a single visit. Using the data on gym visits and the survey data, the authors find that 41% of members would be better off paying the fee for a single visit each time they go to the gym rather than signing a long-term contract.

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<sup>94</sup> DellaVigna, S., Malmendier, U., 2010. Paying Not To go To The Gym. *American Economic Review*, 96: 694-719.

<sup>95</sup> Garon, J.-D., Masse, A., Michaud, P.-C., 2013. Health Club Attendance, Expectations and Self-Control. *Cirpee Working Paper*.

19. The paper by Acland and Levy (2013)<sup>96</sup> uses a sample of 120 subjects and also finds that new gym members over-predict how often they will go to the gym, by around a factor of three. People have self-control problems such as present bias on predicting gym usage (they are willing to attend the gym in the future but in reality they under-value exercise) and they are naïve about this self-control problem causing them to be over-optimistic. These findings are based on an experiment on a sample of 120 students who are randomly divided into three groups and provided with different incentives, through economic compensations, to attend the gym. The results on this experiment show that there is a habit formation amongst gym members but they are not aware of it. Incentivising gym attendance creates a short-run habit but this erodes when there is a break in attendance (eg winter vacation period).

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<sup>96</sup> Acland, D. and Levy, M., 2013. Naivete, projection bias, and habit formation in gym attendance. *Working paper series, Social Science Research Network*.