Notes accompanying John Fingleton's speech given at the first UKCN consumer remedies project workshop

Background

These notes accompany the speech given by John Fingleton of Fingleton Associates at the launch workshop of the UKCN consumer remedies project held at the Competition and Markets Authority on 20 September 2016. The theme of this workshop was 'linkages between consumer behaviour and remedies'.

John's speech revolves around three key questions which he believes regulators should consider before taking action to intervene in markets to address consumer issues. These questions concern the issues of consumer error, consumer learning and the ability of the market to 'self-correct' to provide solutions to consumer issues.

For each of these questions, John provides examples and case studies of past interventions and policies whose effectiveness may have been undermined because the issues noted above were not sufficiently considered at the design stage.

John finishes his speech by providing some concluding remarks around the proper aim and scope of regulatory interventions.

BRIEFING NOTE - Demand Side Remedies

Section	Notes
Introduction	I very much welcome both this working group and the detailed report by Amelia. I have long been an advocate of: ● tackling market problems holistically, with both supply side and demand side interventions; ● Ex-post evaluation for learning and improvement, and to improve ex ante incentives in government and the accompanying opportunity from learning through experimentation; and ● Better consistency across competition authorities. And this work and Amelia's paper support all three of these.
3 questions	1. What do we mean by consumer error and are we identifying it in the right way? 2. How do we take account of consumer learning? Is consistency important? 3. Do we think hard enough about market solutions before we put remedies in place? Use the analogy of parenting teenagers. What parents think are mistakes may not be? Most parents would consider privacy settings their children choose inappropriate. Parents can't stop children make the mistakes they made. And letting the teenager find a solution may be better than the parent imposing one?
Q1. Error	What do we mean by consumer **error** and are we identifying it in the right way? ● Consumer decision making is complex. ● At risk of imposing economic / middle-class assumptions. *At the event, I asked who in the audience had bought a lottery ticket and a show of hands revealed that the vast majority had. I then made the point that there may have been far better betting alternatives available.* Many of the behavioural biases Amelia spoke of have a flip side, such as peace of mind or a quiet life that people value.
Farepack	Good reasons for consumers to invest in an ostensibly "bad value" christmas hampers. HoC Select Committee on Treasury, 13th report found that: The Pomeroy review observed that the double "lock-in" [...] was seen as the key benefit by many customers. (para 66). Agents also deliver hampers and other products to customers, and this aspect of home service is particularly appreciated by elderly customers and less mobile customers and those in rural areas. (Para 65) Customers were generally not concerned at the lack of interest. Customers understood that comparable financial products paid interest, but were aware that the interest from a formal saving product with the same payment levels would be small and would not off-set the perceived advantages of the "hamper" product. (para 67)
CMA Banking & Energy	Is not switching in response to price differentials an error? Are we right to focus so strongly on consumer switching? 5 / 6s of customers happy with their account. People don't wake up in the morning to switch bank accounts, for probably good behavioural reasons.

	More extreme version in financial services is to avoid ex post error? This seems particularly dangerous in terms of moral hazard, and has caused the market for financial advice to dry up.
	Bottom line: important to have a better understanding of actual consumers and their behaviour and to be extremely sceptical of "irrationality".
Q2. Learning	How do we take account of consumer **learning**? ● Consumers can learn experientially (from their own mistakes) and vicariously (from the mistakes of others). Do we know enough about what are the benefits of experiential learning? I suspect not. ● Closing down sales are a good example. Are people really mislead when they don't close down? If they are mislead once, is that sufficient to intervene? If closing down sale claims are a way of advertising low prices, would we also be chilling competition as well as preventing consumer learning by having a high threshold for intervention? ● Suppose consumers are mislead by an extended warranty. If they are well-off consumers we might think the harm will be relatively small and it may make them and others around them more vigilant. But if it is a poor consumer who, as a result, has to take out a payday loan for a new washing machine, we might be more concerned about the costs of learning. ● Children exposed to **more dirt** in early years grow up to have **less asthma**. (Effects of early-life exposure to allergens and bacteria on recurrent wheeze and atopy in urban children. Journal of Allergy and Clinical Immunology, 2014) ● When **playgrounds are made safer, children just play harder**. And they hurt themselves more when they play on less safe playgrounds. (A paper by David Ball (2002) "Playgrounds-risks, benefits and choices", founds that: Removing unexpected or hidden "hazards", such as broken glass and rusty nails, does decrease injury by a significant and meaningful amount). **Making the play area demonstrably safer,** such as lowering the height of climbing frames and putting in soft flooring **does not decrease injury,** explained by children adopting more risky behaviour when playing in a safer environment. In fact, **injuries increased** in some areas as children over-estimated the ability of the soft flooring to cushion a fall. **Teaching children about safe play** with small rewards (treats) for following risk minimising play, **does decrease injury** by a significant and meaningful amount. (quoting Heck et. al. from 2001 looking at a small scale n=380 study in Norwich in the UK).
	OFT 2012 study on impact of remedies on doorstep selling ● consumers confidence increased, ● but also that the proportion of consumers making price comparisons prior to purchasing on the doorstep has declined.
externalities	Externalities come in in several ways. First, vicarious learning means that errors have positive externalities so in considering the harm from any "error" we should balance not just the learning for that individual, but also that for others around them. This may be particularly important in an era of social networking. Do we know if vicarious learning is higher or lower among millennials? Second, there is an externality whereby if firms are made responsible for customer risk, they will likely become risk averse. They may reduce innovation and experimentation, or withdraw from the market. ● Ofgem Retail Market Review. Less ability to differentiate. Less competition. In the 2013 RMR Ofgem limited suppliers to offering up to four "core" tariffs per fuel and prohibited

	two-tier tariffs with a view to make tariffs simpler. In 2016 the CMA found that it impacted suppliers' ability and incentives to compete on the range of tariffs and discounts offered to domestic customers and proposed withdrawing the simpler choices component of Ofgem's RMR rule. Or they may just retreat from the market ● Financial Advice. Firms responsible for consumer purchasing mistakes. Retreat, in part, from market.
	Third, consistency across regulators may involve externalities. If we patronise consumers in some markets and throw them to the wolves in others, then we risk losing many of these benefits. So there is third policy externality. Paternalism by a regulator in one market may undermine the efforts of a less paternalistic regulator in another.
	Not enough for a regulator to act in isolation. Must think about the impact of actions across time and across markets. MIRs are less well suited to this.
Q3: Market solutions	● It is important to remember that market failures often precipitate market responses. Restaurant reviews are a simple example of a market solution to asymmetric information, and illustrative of a whole class of intermediaries who facilitate consumer choice. Companies themselves can do much to give people incentives and information to help them switch. ● And there are many examples where active consumers protect the naive, although possibly unfairly (see Vickers and Armstrong on contingent charges) ● So when we see a market failure, we should probably ask whether the market could solve it. Of course, if we don't allow much error in the first place. Regulators should be careful about mandating price comparison websites on the basis that, if they were likely to work well, they might already exist. A less interventionist approach is to ask the question why they don't exist and see if there are minor measures that can facilitate them. The CMA's remedy on open banking and APIs might meet that test. Where a remedy requires companies to make it easier for consumers to switch away from them, then CMA focus on trust in reviews is also the right kind of systematic approach. And all of this assumes that the law on deception is strongly enforced.
Remedy testing	1. Need a good framework that is consistent across regulators. Our very fragmented enforcement system makes it increasingly difficult for regulators to trust in consumer learning and the market. In particular, the diffuse decision making in MIRs makes it difficult to admit to a framework. 2. Doing ex post reviews of the type Amelia has done is great, but it means the learning cycle for policy makers is very long. This is another good reason for ex ante testing and the use of behavioural trials. 3. The MIR framework is not well-suited to ex ante testing of remedies for several reasons because the nature of the process leaves very little time for this. Will be worse if just one year. 4. The UIL process may be more suited to this. So would the market study process, but it lacks the teeth. 5. Sector regulators like the FCA who have the power to compel and the ability to do this probably have the best potential to make a difference.
Conclusion	On supply side, we don't stipulate prices or market structures. Or even have a strong prior on what is appropriate. We work on the process: ensuring entry, contestability etc.

	But on demand side we risk imposing the market outcome. And if we do that in some markets, it could become a slippery slope where we end up with less engaged consumers, and more risk averse suppliers. In conclusion: ● We should think hard about what is consumer error. ● We should recognise that consumer error can have benefits. ● We should explore market solutions. Our job is not to make markets perfect.