



Helping people get a better deal:

Learning lessons about consumer facing remedies

Prepared by the Financial Conduct Authority and the Competition and Markets Authority,
on behalf of the UK Competition Network

Contents

	Page Number
1. Executive summary	3
2. Introduction	5
3. When competition doesn't come naturally: sources of demand-side problems in markets	7
4. Redressing the balance: overview of remedy options to address demand-side problems	18
5. Driving good consumer outcomes: testing demand-side remedies	39
6. Conclusions, lessons-learned and areas for future focus	50

1 Executive summary

We want people to get a fair deal when acting as consumers in markets. As regulators in the UK Competition Network (UKCN), we have a responsibility to ensure competitive markets operate to benefit consumers, with firms competing to offer good quality, value-for-money options.

The understanding of remedies to address problems in consumer markets has progressed a great deal over the past decade or so, particularly as regulators have reviewed the outcomes of past interventions and as the insights of behavioural economics have continued to influence policy making. Regulators have begun to build their internal expertise, developing more robust testing methodologies to support these types of intervention, and ensuring that remedies are as effective as possible at addressing the root cause of the problem.

However, there is still work to be done. Effective demand-side interventions rely on predicting and influencing consumer behaviour under a range of complex circumstances, against a background of many other factors competing for people's attention. Suppliers will react to any changes, which could amplify the positive effect of the original intervention where firms see a commercial opportunity from embracing greater competition. However, incumbents' reactions might sidestep or manipulate interventions to safeguard their commercial position.

The evaluation of past interventions demonstrates that it is often not enough simply to provide consumers with a surplus of information and expect them to solve everything alone. Where people are making complex, or difficult long-term decisions, we also need to ensure that consumers are properly supported and/or protected.

This paper lays out specific lessons learned about the selection, design and testing of different types of interventions, and summarises them into a set of high-level principles, which are briefly explained below:

- **Understand the problem** – Significant problems can arise on both the demand and supply sides of the market and a combination of supplier and consumer-facing interventions may be needed to deliver better outcomes for consumers.
- **Be bold in identifying possible remedy options** – Think broadly about a range of options and do not rule out radical solutions too quickly.
- **Let consumers stay in control** – The most successful remedies we looked at are those which recognise that consumers are not to 'blame' for poor market outcomes, but provide them with the necessary framework, support and tools to make their own robust decisions.
- **Leverage the experience and resources of the private sector** – Try to learn from relevant private-sector approaches, both in terms of what works well and what does not. It may also be possible to directly involve the private sector in an intervention, by directing their commercial incentives to deliver better consumer outcomes.
- **Test the remedy** – The process of identifying and designing effective remedies benefits significantly from testing. Our initial assumptions about what is likely to work may be incorrect.

- **Good analysis is not enough** – Take account of real-life behaviour, pay careful attention to detailed implementation, use effective communication, demonstrate sound judgement in balancing needs of different groups, and act as advocates for policy reform.
- **Review effectiveness** – Ex-post evaluations of effectiveness can provide important insights and lessons for existing and future interventions, as well as helping other regulators if they encounter similar problems in the future.

The completion of this programme does not signal that the question of consumer-facing remedies has been ‘solved’. Markets, supplier behaviour and technology are constantly changing so, as regulators, we should continually challenge ourselves to raise standards. However, the programme has highlighted a number of important lessons, and emphasised the importance of continuing to evaluate outcomes and work together to ensure that we all continue to learn and improve from past experiences.

In particular, two areas have emerged during the programme which provide the greatest opportunity for further improvements, and on which we intend to focus on in the future. These are discussed in the paper, and summarised below:

- (i) **Consumer diversity and vulnerability** – When price discrimination is possible, suppliers may seek to benefit from characteristics of particular consumers or groups of consumers. This is always a concern to regulators but is particularly acute where it is the most vulnerable who are bearing the greatest costs. These are factors which should be important considerations when designing interventions.
- (ii) **The opportunities and challenges presented by the digital economy** – The increasing importance of the digital economy raises its own challenges regarding speed of change in market and risks for the digitally excluded, while simultaneously providing opportunities for new types of data-based or personalised interventions which warrant additional consideration.

2 Introduction

We want people to get a fair deal when acting as consumers in markets.¹ From mobile phones to mortgages and from legal services to liquefied natural gas, as regulators in the UK Competition Network (UKCN), we have a responsibility to ensure competitive markets operate to benefit consumers, with firms competing to offer good quality, value-for-money options.

It is not always easy. People face real constraints on their time, motivation and mental bandwidth, and their natural instincts under such conditions may be exploited or exacerbated by firms' business models. So how can regulators help the market deliver better outcomes for consumers, either through strengthening consumers' ability to find deals themselves, or by changing how the market operates more broadly?

This paper summarises the work carried out by the UKCN, jointly led by the Competition & Markets Authority (CMA) and Financial Conduct Authority (FCA), covering the design, testing, monitoring and implementation of remedies on consumer markets with a focus on which actions regulators can take to change the way that firms interact with consumers. We present examples across all regulated industries which show what has worked and what has not. Above all, we emphasise the importance of testing and evaluating interventions to make them as effective as possible.

History and work completed to date

Individually, the CMA and sector regulators (referred to in the rest of this document as 'Regulators') have been refining their work in this area. This can be illustrated by the evolution of the CMA's methodology in implementing its consumer-facing remedies arising from market investigations:

- 10 years ago; remedies in Home Credit and Store Cards, were subject to little if any consumer testing before implementation.
- During the last 5 years; the Competition Commission and CMA have sought to carry out consumer research within the constraints of statutory timescales. This has mainly been small-scale qualitative research, but has occasionally included larger scale research where time permitted.
- In the energy and banking market investigations, the CMA placed a greater focus on the use of randomised control trials as a means of testing interventions, but still looked to the relevant sectoral regulators to run these tests.

In 2016, the National Audit Office (NAO) recommended that the Regulators should develop their understanding of consumer behaviour to help inform their proposed remedies.² The Regulators recognised the benefits of this approach and, as a result, the UKCN consumer remedies programme was launched in June 2016.

The aim of this programme of work was to investigate when and how competition authorities and regulators can intervene to tackle problems arising on the "demand-side" of markets to best help consumers. It has acted as a forum for discussing potential approaches, understanding the limits to such approaches and promoting best practice amongst the UK regulators and beyond.

¹ This paper primarily focuses on individual consumers, although many of the findings would likely also apply to SMEs/Microbusinesses.

² [The UK competition regime](#), NAO (February 2016), paragraph 27(h) of the summary.

The programme outputs so far include: a [knowledge bank](#), an archive of academic and policy documents relevant to the design, implementation and testing of consumer-facing remedies and five completed workshops on relevant topics. These workshops involved a wide range of participants from regulators, academia, businesses, consultancies, consumer groups, and policy-makers who are involved or interested in consumer-facing interventions. The topics covered by these workshops were:

- Links between customer behaviour and remedies;
- Enhancing the impact of consumer remedies through research;
- Design, selection and testing of remedies in a practical context;
- Behavioural remedies: design, testing and lessons learnt; and
- Designing remedies that work for consumers in vulnerable situations.

Following this work, a delegation from the CMA and FCA led a discussion at the OECD Competition Committee about when and how demand-side interventions can be used to deliver better outcomes in consumer-facing markets, and to facilitate a wider discussion with international competition agencies who are grappling with similar issues.

For further information, see the [UKCN homepage](#), which includes the [knowledge bank](#) as well as a range of other materials developed during the programme.

Structure of this paper

This paper follows the following structure:

- It starts by providing an overview of the ways in which demand-side problems can lead to poor consumer outcomes in markets;
- It discusses types of remedies to address these issues and some preliminary views on their effectiveness;
- It highlights that the careful design of remedies is integral to their effectiveness and that consumer-focused testing and ex-post evaluation offer a valuable means of learning which remedy is likely to work; and
- Finally, it sets out the key lessons we have learned from the programme, and identifies some future priorities.

3 When competition doesn't come naturally: sources of demand-side problems in markets

How competition leads to good outcomes

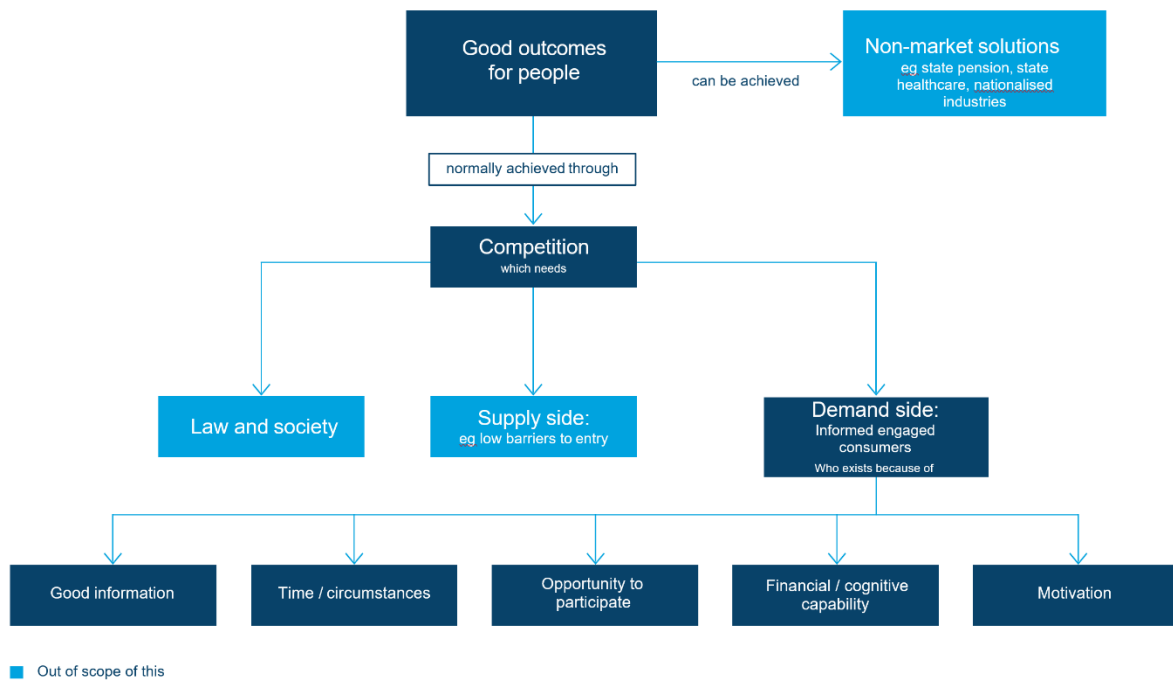
Essential goods and services, such as energy, telecommunications and financial products have an enormous impact on consumer welfare. They make it possible for people to lead the lives they want to lead and to contribute to society. For this reason, good outcomes for consumers in markets form an important part of the objectives of UKCN members. Good outcomes include consumers being able to buy the products they want, need and can afford, understanding what they are getting, being confident in the supply of services and being able to get redress when things go wrong.

One way to achieve this is through non-market solutions. However, this is complex to replicate across the economy, so most consumer markets instead rely on market forces of competition to a greater or lesser degree (see Figure 1 below) to control the supply of goods. In well-functioning, competitive markets, consumers can use their individual choices and collective power to put pressure on suppliers to produce good quality, value-for-money products which meet their needs.

There are some factors required to achieve effective competition. For example, to drive down prices and improve quality, new firms need to have the opportunity to enter the market. Even the threat of new entrants will drive competition amongst those already in the market. This is an example of an effective “supply side” competition (action of suppliers), which is an important requirement for overall effective competition, but is out of the scope of this paper. Effective competition also requires a well-functioning demand side of the market, involving engaged and empowered consumers. This paper describes how regulators can help the demand side of the market work more effectively and deliver better outcomes for consumers.

The factors leading to an effective demand side are set out in Figure 1 below. For example, consumers need accurate information and sufficient time, motivation and opportunity to make good choices, which pressure suppliers to improve their offering. In reality, consumers may be constrained by their circumstances (e.g. limitations on time), and affected by natural human tendencies such as “behavioural biases” (e.g. focusing on a headline price rather than the total costs over the lifetime of the product). For this reason, it is sometimes necessary for regulators to intervene to help consumers better exercise their choice and thereby make the demand-side of the market function more effectively.

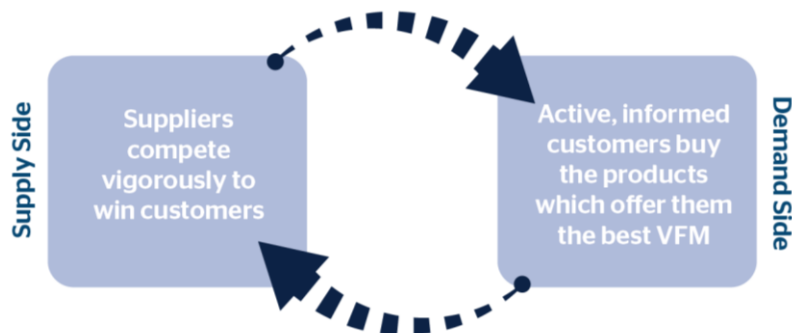
Figure 1: Conditions for good outcomes for consumers



The importance of the demand-side

Both the demand- and supply-sides of any market need to work effectively for its consumers to benefit from low prices, good quality goods and services, high levels of innovation and responsive customer service (see Figure 2).

Figure 2: Virtuous cycle when competition is working well



Where consumers face barriers to making good choices, suppliers may be able to exercise greater market power than they otherwise would. These barriers can relate to accessing relevant information on price or quality, to searching or comparing between suppliers, to switching, to understanding the choices on offer, or by limiting consumers' ability to act upon their intentions.

Regulators may intervene on the demand-side using a wide range of tools, such as market studies, antitrust enforcement, consumer protection cases, or, more generally, in their role as advocates for competition or consumer protection in policy formation. Market studies and

investigations, in particular, are a flexible tool to improve outcomes for consumers, informing intervention on both the supply and demand-side of markets. Market studies allow regulators to assess whether competition in a market is working efficiently and to identify measures to address any issues.³

Understanding the demand-side

As set out above, problems on the demand-side of a market can increase the market power of suppliers and/or lead to competition on those factors that are most visible to consumers to the detriment of other important outcomes. Both of these effects can result in worse outcomes for consumers. This section outlines some of the key reasons why demand-side problems might arise.

One helpful framework for analysing demand-side behaviour is to describe the steps that consumers would need to go through to exercise effective choice, and then identify the barriers that prevent this from happening. A well-functioning market typically relies on consumers being able to follow the ‘three As’:

- **Access** information; for example, on the prices and quality of alternative products;
- **Assess** this information; for example, by comparing rival offers and making an informed choice between them; and
- **Act** on the information; for example, by being able to switch supplier easily or to move to a better product from an existing supplier.

This framework seeks to capture insights both from traditional industrial organisation analysis and behavioural economics. Industrial organisation theory highlights how information asymmetries, barriers to searching, barriers to switching and other obstacles can limit consumers’ ability to choose the best product for them, and how this can result in a reduced incentive for suppliers to maintain or improve the quality of their offering to win customers from their rivals. Behavioural economics draws on psychology and other disciplines to explore how consumers make decisions in practice, and provides a framework for understanding how suppliers may be able to capitalise on behavioural biases.

Because consumers making “rational” decisions about search and switching is not the only (or sometimes the most effective) way to facilitate good outcomes for consumers, alternative frameworks to the Access, Assess, Act model have also been suggested. For example, BAAA (Behaviour, Access, Assess, Act) tries to reflect the influence of the environment in which consumers make choices, such as the effect of changing default options.⁴ Alternatively, the ‘Stages of Change model’ includes the spirit of the ‘three As’ but within a wider framework of decision-making consisting of: (i) Pre-contemplation, (ii) Contemplation, (iii) Preparation, (iv) Action, (v) Maintenance, and (vi) Termination.⁵

The implication of this combination of industrial economics and behavioural insights is that barriers to consumers’ ability to access, assess and act on information can arise from a combination of market characteristics, behavioural biases and actions taken by firms. In particular, demand-side problems can occur as a result of:

³ <http://www.oecd.org/daf/competition/market-studies-and-competition.htm>, OECD website example of market studies.

⁴ <http://www.frontier-economics.com/publication/putting-b-before-aaa/>

⁵ [Personal current account switching: Why don't more people switch and could encourage them to do so?](#), University of Bristol (2016), section 5.2.

- costs, either real or perceived, to exercising choice, such as search and transaction costs;
- limitations in consumer decision-making resulting from behavioural biases or contextual factors; and
- suppliers exacerbating the impact of both these costs and biases in a way that worsens outcomes for consumers.

The following section discusses each of these points in turn.

Costs to exercising choice

A first set of demand-side problems arise from costs and barriers to accessing, assessing or acting on information, or the perception of such costs. Consumers may face barriers to assessing firms' offers and finding the supplier with the best price, quality and/or other characteristics that determines which products they would prefer – "search costs". They may also face barriers to making a change, such as a long or daunting process, or being tied into a contract; here, defined as "switching costs".

Search costs

Where consumers expect to spend time, effort or money (cost of search) to assess which product best satisfies their needs and preferences, they may choose not to search the market and instead choose a firm at random or remain with their current supplier. This is especially true where such search costs are expected to be large relative to the value of the product being purchased. In such circumstances, suppliers' incentives to maintain or improve their competitive offering may be reduced. Box 1 sets out two different markets in which the CMA found that a lack of information increased search costs for consumers.

Box 1: Lack of information on price / quality

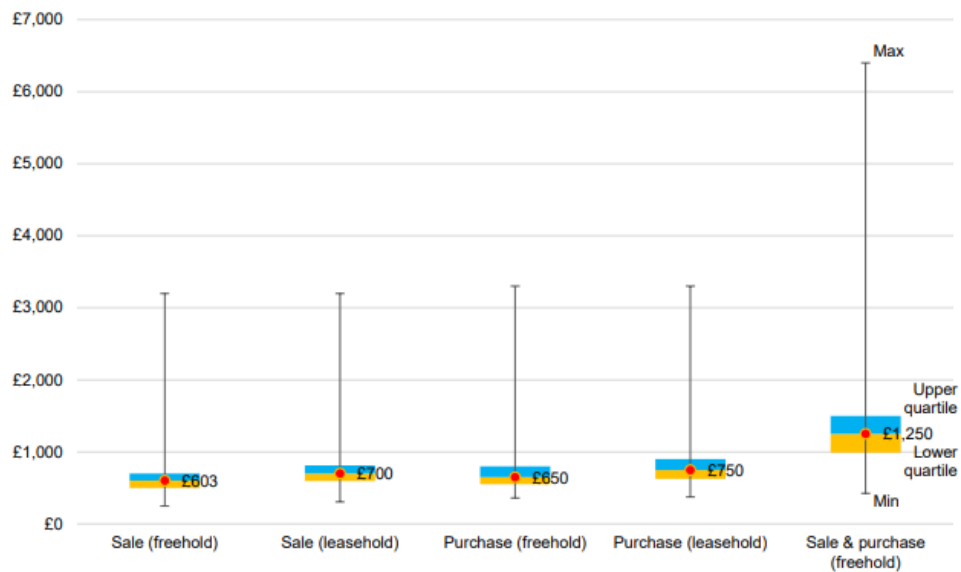
Lack of price information in Legal Services

The CMA looked at the legal services market for individuals and small businesses in England and Wales. The infrequency and the circumstances of the purchase of legal services by individual consumers and small businesses combined with a lack of upfront information from lawyers meant that demand-side pressures to attract consumers were weak, contributing to a shortage of effective competition.

The most common legal services used by consumers relate to significant and stressful life events such as death, breakdown of families and the sale and purchase of residential property. These are difficult circumstances in which to try to choose a lawyer. These circumstantial pressures were further exacerbated by unacceptably low levels of transparency. Even in conveyancing, where around 80% of transactions are conducted for a fixed fee, fewer than one in five lawyers' websites included any form of price information, and actual prices varied widely as shown below:⁶

⁶ [Legal services market study, Final Report](#), CMA (2016).

Figure 3.8: Price dispersion, conveyancing



Source: OMB Research (2016); CMA Figure.

Lack of information on the quality of Private Healthcare

The CMA investigated the market for acute secondary and tertiary private healthcare in the UK. It found that both patients and General Practitioners (who often act as patients' gateway into the private healthcare system) lacked information regarding the quality of healthcare provided by private hospitals and by medical consultants; for example in terms of mortality rates, surgical infection rates, patient satisfaction and measures of improvement in health following treatment. This lack of information was one reason that patients were not able to make informed decisions regarding which hospital and/or consultant to choose for their treatment.

In addition, private hospitals' incentives were to compete primarily on the measures of quality that were most visible to patients, including the hospitality services provided (food, rooms, toiletries, car parking), but which were less important to the overall quality of the service provided than factors relating to the quality of treatment.

Switching costs

Switching costs are the real or perceived costs of time, effort and money that a consumer incurs when changing supplier, as compared to remaining with the current supplier. Switching costs increase the likelihood that consumers will continue to buy from the same supplier and, therefore, become 'locked-in'.

High switching costs and competition

High switching costs in a market do not necessarily lead to weaker competition overall, since they can create incentives for suppliers to compete strongly to attract new customers. However, in some circumstances switching costs can lead to a softening of competition, particularly where suppliers have significant market power. In general, switching costs are likely to be especially

problematic in mature markets, where the proportion of customers that are locked-in rises and opportunities to attract new customers through discounts dries up. When analysing the overall welfare effects of switching costs, it is important to consider what factors may result in a lack of discounting (meaning higher prices for captive customers are not offset, and switching costs make all consumers worse off).⁷

Box 2: Switching costs

Removing practical obstacles to switching (liquefied petroleum gas)

During its investigation into the market for the supply of liquefied petroleum gas ('LPG') to domestic consumers, the CMA identified a number of barriers which resulted in high costs of switching between suppliers and correspondingly low switching rates.

In particular, the CMA observed that suppliers normally retained ownership of the LPG storage tanks on domestic customer premises and required customers who switched suppliers to have their existing tank removed and replaced by a similar tank from the incoming supplier. In addition to the effort/inconvenience of switching tanks, customers faced charges from both the incoming and outgoing supplier, to cover or contribute to the suppliers' switching costs. The level of these charges was unclear as they were not always set out in contracts and depended on the discretion of suppliers. In addition, suppliers included requirements for three-month notice periods in order to switch and put in place lengthy minimum-term contracts, increasing customers' perceived costs of switching.

To facilitate switching in the LPG market, the CMA required suppliers to change their terms and processes to:

- Give customers the right to request the transfer of their tank to an incoming supplier and to cap the price that the incoming supplier would have to pay in such circumstances;
- Standardise and improve the information available on both suppliers and their offers, and on the switching process; and
- Change customer contracts, including restricting notice periods to no more than 42 days and exclusivity periods to no more than two years.

Price discrimination between consumers and Big Data

The existence of actual or perceived switching costs can create a group of "captive" existing customers and gives suppliers an incentive to discount heavily to new customers (since they need to overcome the costs of switching). This is a form of price discrimination. Where suppliers can price discriminate, this may lead to higher prices for captive customers, especially if customers do not anticipate this type of price discrimination when choosing their supplier in the first place. There is a risk that savings from switching benefit those who are most active or have most time (as described in Figure 1), rather than those who are most in need. This can raise questions about fairness and welfare distribution.

The increasing prevalence of detailed customer data and suppliers' increased capability to analyse it is shifting the balance of power between firms and customers. In the absence of reliable and granular data, firms were often obliged to treat any customer as a possible switcher. This means that they were less able to increase prices or decrease quality for long-

⁷ [OFT \(2003\)](#). Further analysis of switching costs.

standing customers without risking losing the more active customers. Improvements in analytics, and Big Data in particular, allow firms to better identify which consumers are likely switchers and which are likely to remain for the long-term. This means it is possible to treat them differently, such as raising prices for long-term customers and offering good deals to likely switchers.

On the other hand, there are a number of ways that firms leverage Big Data to improve their offering to customers. For example, access to insurance could be increased for some consumers if they were previously considered to be non-standard risk for insurance products. In this way, Big Data can help act as a screening mechanism to better profile risk reducing any adverse selection effects. This could in turn increase the choice of insurance products offered to consumers.

Behavioural biases and contextual factors

A second set of demand-side problems can arise from characteristics of consumer behaviour. We distinguish here between underlying 'behavioural biases' that apply generally (for example, arising from cognitive limitations), and contextual factors in particular markets which might affect consumer behaviour (for example, when people are making a distress purchase).

Behavioural biases in decision making

People do not make decisions in a vacuum; they have busy lives and finite time, energy and resources to devote to searching for, learning about and choosing between the offerings of different suppliers. Given their limited time and 'mental bandwidth', people frequently use heuristics or 'rules of thumb' to make decisions; for example, only buying some products when they are on special offer. For consistency with the literature, we refer to such departures from 'textbook' economic decision making as 'behavioural biases'. However, it would probably be better to describe this as 'normal human behaviour'.

While these rules of thumb can often work well for people, they can in certain circumstances lead to consumers making decisions that result in poor outcomes; for example, choosing or sticking with products that are more expensive or unsuitable. Behavioural biases also affect competition; for example, they can reduce the incentive for suppliers to improve their competitive offering or vigorously enter a new market if consumers' "inertia" would result in lowered rewards for that competitive initiative. Suppliers can also learn about consumers' biases and actively exploit them to make choices that may maximise the firm's profits but are further away from the best outcome for the consumer.

Consumers exhibit a range of behavioural biases, which differ in terms of their potential for resulting in poor outcomes. Some of the most widely recognised behavioural biases include:

- **Present bias** – a tendency to give greater weight to payoffs that are closer to the present time when considering trade-offs between two future moments;
- **Reference dependence and loss aversion** – a preference not to assess outcomes in their own right but rather as gains and losses relative to a reference point, often underweighting gains and overweighting losses;
- **Anchor / target effects** – the disproportionate influence on consumers of reference prices, targets or quantities. For example, the suggestion of a minimum monthly repayment for a credit card influences a consumer's decision as to how much to repay, with many repaying smaller amounts than they otherwise would have done;

- **Framing effects** – presenting competitive offerings in different formats, or referring to different contextual information, can make a huge difference to the choices people make; and
- **Overconfidence bias** – the tendency to overestimate our own abilities and knowledge, and therefore taking riskier decisions than we otherwise would.

These behavioural biases differ in terms of their potential for resulting in poor consumer outcomes. Two of the most important outcomes resulting from behavioural biases are the status quo effect and choice overload.

- The status quo effect refers to consumers' preference to maintain the current circumstances or stay with a previous decision or, effectively, not act. It can occur as a result of present bias or reference dependence and loss aversion. A consequence of the status quo effect is that people can be heavily influenced by the specification of the default or 'do nothing' option when making a choice.
- Choice overload refers to the empirical observation that increasing the number of options available to consumers results in a greater tendency for them to delay making a decision as well as an increase in the likelihood that the default option will be chosen. To the extent that consumers fail to make a choice, or make a poor choice, this can result in worse outcomes than when people are offered a choice between a smaller, pre-selected range of options. Choice overload is exacerbated by time constraints, complexity of alternatives and lack of expertise in evaluating the options. Suppliers may exploit choice overload by increasing the range and complexity of options presented to consumers.

Box 3: Behavioural biases

Behavioural biases in payday lending

The CMA and FCA found that users of payday loans demonstrated a number of behavioural biases:

- **Present bias** – Consumers were focused on the immediate need for consumption rather than whether they could repay in the longer term.
- **Overconfidence** – Borrowers were over-confident in their ability to repay a loan which led to them incurring significant interest and late payment fees. Borrowers repeatedly 'rolled-over' loans – paying-off a loan by taking a new loan with the same lender.
- **Framing, salience and limited attention** – Consumers were often influenced by how information on payday loans was presented, focusing on headline repayments without considering all potential costs such as additional fees and charges.
- **Persuasion and social influence** – Lead-generating intermediaries advertised extensively, emphasising the likelihood of being accepted for credit rather than finding the most suitable loan. Borrowers were matched with lenders based on commission receivable. Uncertainty of loan acceptance meant that once borrowers identified a lender who would lend money, borrowers would return to that lender regardless of cost.

Contextual factors affecting how consumers make decisions

Related to the general categories of behavioural bias discussed above, consumer behaviour can also be affected by specific factors and costs that affect decision-making in particular contexts – for example when placed in stressful circumstances. These include:

- cognitive and emotional costs – for example, where a purchasing decision must be made very quickly or unexpectedly, or under conditions of emotional distress (such as in the example of care homes in Box 4 below); and
- scarcity – there is growing evidence that scarcity places high demands on cognitive ‘bandwidth’. Examples include the stress and challenges associated with poverty or ill-health, which result in a reduced ability to make good longer-term decisions.

Contextual factors may affect decision-making even under ‘traditional’ economic assumptions about consumer behaviour. In these situations, consumers may well be acting rationally and optimising their decisions, subject however to the very real and binding constraints imposed by contextual factors they face in real life. For example, even with the best intentions and capability, consumers may be thwarted by limited time.

Moreover, interventions that take account of these contextual factors and costs – and reduce their size or impact – may be effective in helping consumers to achieve the improved outcomes predicted by traditional models.

Box 4: The importance of contextual factors

The urgency and distress of choosing a care home

The CMA market study into care homes found that there were many barriers to people making well-informed choices, including the context in which decisions were made.

Consumer research showed that there was often very little prior consideration of care needs and options by prospective residents, their representatives and their families. Frequently, decisions on care are faced for the first time following a sudden illness, injury or loss of a carer, meaning they are often made with urgency under extremely distressing circumstances. Furthermore, it is very difficult for residents to correct a poor choice, as once settled in a care home they find moving to a different home extremely stressful.

The care system is highly complex with residents and/or their representatives needing to assess their eligibility for funding, and to try to find suitable, affordable care homes that have vacancies. The CMA found that the information and guidance available to residents could be confusing and suppliers often did not clearly provide all the important information people need to make an informed choice, including information on pricing.

Suppliers’ actions that make demand-side problems worse

A final source of market problems can arise as a result of the response of firms to the demand-side factors discussed above. Suppliers often have the ability and incentive to exacerbate search and switching costs and take advantage of behavioural biases. This is sometimes known as

'sludge' (or 'anti-nudge' / 'dark nudge') - where behavioural techniques are used to exacerbate pre-existing problems.⁸

Raising search and switching costs

In some markets search costs may be exacerbated by suppliers. For example:

- Suppliers may fail to make available all the product information needed by consumers to make an informed choice, or delay sharing such information (e.g. until the moment of sale), in particular for one-off purchases;
- Suppliers may introduce irrelevant 'noise' or spurious complexity in the market by complicating their pricing structure or bundling simple products with more complex ones to increase the overall level of complexity and make comparison more difficult, or creating 'spurious differentiation' between products; or
- Suppliers may charge different prices for the same product at different locations, for different brands, or at different times, making it difficult to find the low-priced offer.

If suppliers do not make relevant information readily accessible to consumers, those consumers may not be willing to expend the time, effort or financial cost of finding that information. Therefore, consumers' ability to identify a good value product for them may be less effective. To the extent that a lack of clear and relevant information results in consumers being less responsive to differences in the price or quality of different suppliers' offerings, suppliers may be incentivised to offer worse terms than they would do otherwise.

For example, in the recent legal services market study (see Box 1), the CMA found that very few suppliers published transparent prices or information on service quality. This led to an increase in search costs, and meant that many consumers simply chose their closest or most convenient supplier, or relied on 'word of mouth' recommendations. The market appeared to be locked in a 'low transparency' equilibrium, in which individual suppliers did not have an incentive to deviate by increasing their level of transparency.

Alternatively, a firm could adopt an approach of providing so much information that the consumers find it difficult to compare all the possible choices. For example, a takeaway pizza supplier might have numerous price points and simultaneous offers available for consumers to choose between. Multiple deals might act as a strategy of obfuscation, whereby firms design deals to prevent comparison amongst other vendors on the basis that consumers feel that they must be getting a good deal.⁹

Similarly, suppliers can sometimes act to create or exacerbate switching costs. Contractual terms (such as limited rebates for cancellation) or marketing devices (such as loyalty cards) can have the effect of increasing switching costs or influencing switching decisions.

For example, in its Payment Protection Insurance market investigation, the Competition Commission (CC) identified the rebate policy on single-premium policies (where the entire premium is paid upfront) as a barrier to searching and switching. Where consumers cancelled before the end of a contract, the CC found that rebates on the upfront spend were not given on a pro-rata basis. If a consumer cancelled a PPI policy, the rebate given was typically not enough to take out an identical policy with another supplier. The complexity of the rebate formula also made it difficult for people to compare the relative merits of staying with an existing supplier or

⁸ <http://science.sciencemag.org/content/361/6401/431.summary> for an example of 'dark nudge' techniques.

⁹ Ellison, G. and Wolitzky, A., 2012. A search cost model of obfuscation. *The RAND Journal of Economics*, 43(3), pp.417-441.

taking out a new policy. The CC took the radical step of banning single premium policies so that all PPI policies can be compared and terminated without incurring a financial penalty.

Exploiting behavioural biases and contextual factors

Firms may also be able to exploit behavioural biases. For example, consumers may use heuristics or rules of thumb to decide which products to buy, and suppliers may be able to identify these heuristics and exploit them in a way that makes consumer choice less effective. Examples of this include:

- ‘drip pricing’ where additional, often mandatory, fees or charges are added to the headline price later in the purchasing process when the consumer has already invested time and effort into the purchase process;
- applying artificial time pressures to increase the perceptions of scarcity, for example by giving the impression that a particular offer will shortly sell-out; or
- rely on consumers’ overconfidence that they will use a product or service more than they actually will. Box 5 describes the example of gym contracts.

Box 5: Suppliers’ actions and behavioural biases

Unfair gym contracts

Consumers’ decisions to enter into gym contracts may be affected by behavioural biases. Evidence suggests that consumers typically over-estimate the frequency with which they are likely to visit a gym in future. This creates an incentive for gym operators to exploit overconfidence by locking consumers into long-term contracts which are hard for them to cancel if they find that they use the gym less than they initially anticipated.

Between 2011 and 2013 the OFT took consumer enforcement action against a number of gym operators. The OFT found that some operators:

- Imposed a minimum membership period of a year or more 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
- Imposed long minimum term contracts (12 months or more) with long notice periods and high fees for exiting the contract.

In response, to these investigations into the gym operators’ terms, six operators announced changes to their contracts to remove the unfair terms identified. The OFT wrote to a further 20 gyms asking them to review their own compliance.

An ex-post evaluation conducted by the CMA found that majority of gym operators now avoid using contract terms that were deemed unfair by the OFT. This appeared to be true for the gym sector as a whole, including gyms that were not directly investigated. The evaluation estimated that the action to address unfair terms had saved gym users around £37 million.¹⁰

¹⁰ <https://www.gov.uk/government/news/gym-users-saved-37-million-by-crackdown-on-unfair-contracts>

4 Redressing the balance: overview of remedy options to address demand-side problems

This section sets out several types of remedy options to tackle demand-side problems which can be used to achieve varying objectives, be it improving the information available to consumers, aiding their decision making, reducing search costs or making switching easier.

We give examples of their use across different markets and by different regulators, before drawing some lessons on their effectiveness and how they might best be applied in future. We also draw on existing literature, as identified in the [archive of relevant academic and policy documents](#), including Professor Amelia Fletcher's review of demand-side remedies for Which?.¹¹

There are five main categories of remedy options to tackle demand-side problems explored in this section:

- A. Promoting consumer engagement;
- B. Increasing transparency;
- C. Helping consumers shop around;
- D. Making it easier to switch; and
- E. Controlling outcomes.

There is often some crossover between these categories and a remedy may have multiple aims. For example, an intervention requiring the disclosure of greater or standardised information on the price of products may intend to make it easier for customers to shop around as well as to switch to a better value supplier.

A. Promoting consumer engagement

Where many consumers do not actively engage with a market (either consciously or unconsciously), firms will feel a lower level of competitive pressure. Interventions which cause these consumers (or sometimes, a certain subset of these consumers) to re-engage can therefore increase the overall level of competition in the market. Depending on the ability for firms in the market to price discriminate, this may only require marginal consumers to be engaged. In other circumstances, the relative level of engagement between different consumers (or types of consumers) is also important.

There are a number of approaches which can help promote engagement, which are explained below.

Triggers – this type of remedy seeks to overcome consumer inattention or inertia and may include consumer awareness campaigns or personalised reminders which highlight the gains to be made from shopping around as well as how to do it. It includes sending alerts to consumers at timely moments in their product use or purchase, which can be targeted to increase impact, and make it easier for people to act on the basis of this information.

¹¹ "The Role of Demand-Side Remedies in Driving Effective Competition: A Review for Which?", Amelia Fletcher, Centre for Competition Policy, University of East Anglia (7th November 2016)

Box 6: Remedies to trigger consumer engagement

Reminding people what they paid last year (general insurance)

The FCA recently introduced a requirement on suppliers of general insurance to include last year's premium when sending out renewal letters (or an annualised version of the existing premium, if there have been any mid-term adjustments).¹²

This intervention was based on empirical evidence from randomised controlled trials which demonstrated that the inclusion of last year's premium led to increased switching or negotiation, at least for those customers facing the largest price hikes. Although customers were likely to have had information about the previous year's premiums in their files somewhere, reminding them of this information in the renewal letter, right next to the new premium, was found to have a significant impact in triggering customers to switch to better offers, with 11-18% more customers switching or renegotiating their policies as a result.¹³

Personalised offers of collective switching (retail energy)

In August 2018 Ofgem published the initial results of its active choice, collective switching trial. This aimed to give disengaged customers additional assistance in switching by giving them a straightforward method where they did not need to enter their existing tariff details. If a customer did not exercise their right to 'opt-out', they received personalised letters showing how much they could save by moving to an exclusive tariff negotiated by an Ofgem-appointed independent price comparison service. This allowed them to make an informed choice about whether to start a switch, and whether to choose this specific tariff.

The trial found that over 20% of contacted customers switched energy supplier during the 3-month trial, even though on average they had not switched at all in the previous 6.5 years. This switching rate was an average of 8 times the control group who had not been contacted. Those who switched through the price comparison service saved an average of around £300 a year.

In addition, there is some evidence to suggest that customers in vulnerable situations responded strongly:

- Almost three quarters of customers who switched through the Ofgem-appointed service chose to use the phone (rather than online);
- Of the switches made through the Ofgem-appointed service, 24% were by participants over 75 years of age, with the oldest switcher aged over 100; and
- Customers on the Priority Services Register (a register of more customers in vulnerable situations) were almost as likely to switch their energy deal as anyone else.

Trialling potential engagement remedies (standalone landline telephone services)

During its review of the market into standalone landline telephone services, Ofcom found that retail prices had been increasing over time, while wholesale costs had fallen, for customers who do not buy landline and broadband together in a bundle.¹⁴ It identified that entrants faced high barriers to acquiring customers, due to low levels of engagement and low willingness to switch supplier, leading to prices above the competitive level.

¹² Increasing transparency and engagement at renewal in general insurance markets, FCA (December 2015).

¹³ <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-12.pdf>

¹⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0015/107322/standalone-landline-statement.pdf

Ofcom proposed a remedy package to address these concerns. This included requiring BT to reduce retail prices for these customers and trial (and if successful, implement) communications to encourage greater consumer engagement. This includes providing information on potential savings and switching process, acting as a prompt to engage and facilitating customers' response to this information. BT agreed to these proposals for voice-only customers (who do not take broadband from any supplier). BT also agreed to help people who buy a telephone service from one supplier and broadband from another to take advantage of the deals on offer in the market, by explaining that they could get a better deal if they purchased services as part of a bundle.

Ofcom is working with BT to develop and trial the communications to voice-only customers, to investigate the form of communication that has the best prospect of increasing engagement for these customers.

Delaying add-on decisions – particularly where products or services are sold as add-ons to a primary purchase (e.g. extended warranties for retail products), there can be pressure on consumers to make a decision about the add-on without having had the chance to properly assess it. Remedies include introducing a “cooling-on” period, in which the customer must actively accept the purchase again after a delay before it is confirmed or activated. This reduces the point-of-sale effect, putting consumers in a better position to engage with individual decisions.

Box 7: Remedies delaying add-on decisions

Splitting high-cost bundled services (Guaranteed Asset Protection (GAP) insurance)¹⁵

In the general insurance add-ons market study, the FCA found that stand-alone GAP insurance was around half the price of what is charged for it when sold by vehicle sellers as an add-on. More than half of those who bought this product had not considered buying it prior to purchase, and less than a fifth had shopped around.

The FCA did not consider that point-of-sale warnings (as required for extended warranties) would be sufficient to overcome these concerns. Instead, the FCA imposed a four-day deferral period before any add-on sale could be finalised, during which the customer must opt-in to the purchase. This should reduce vehicle sellers' point-of-sale advantage, encouraging consumers to positively engage with the purchase, and giving them a chance to shop around.

Removing misconceptions of bundle benefits (payment protection insurance (PPI))

The Competition Commission's review of the PPI market found that customers perceived that taking PPI would increase their chances of being given credit. Together with the bundling of PPI with credit and the limited scale of stand-alone provision of PPI, this acted as a barrier to customers making an informed decision about the PPI product itself.

To address this, and other sources of point-of-sale advantage, the Competition Commission imposed a remedy prohibiting the sale of PPI at the point of sale of an underlying credit product until after seven days after the credit sale. This remedy aimed to address consumer

¹⁵ GAP is typically sold alongside a car and covers the difference between the sale price of the car and its replacement value at the time of any insurance claim.

misperceptions about PPI and to encourage consumers who wished to purchase PPI to positively engage with this decision, and to search and shop around.

Redesigning markets to promote greater engagement – in some cases, Regulators may be able to redesign a market (or parts of a market) to allow consumers to engage in new or different ways. These interventions can include taking advantage of technological changes and shaping the adoption of new technology to maximise the benefit to consumers from innovation. Such an approach can be complex to implement, but can also provide great opportunities for improving consumer welfare. An example of this approach is the CMA’s Open Banking remedy, which is discussed in Box 8 below:

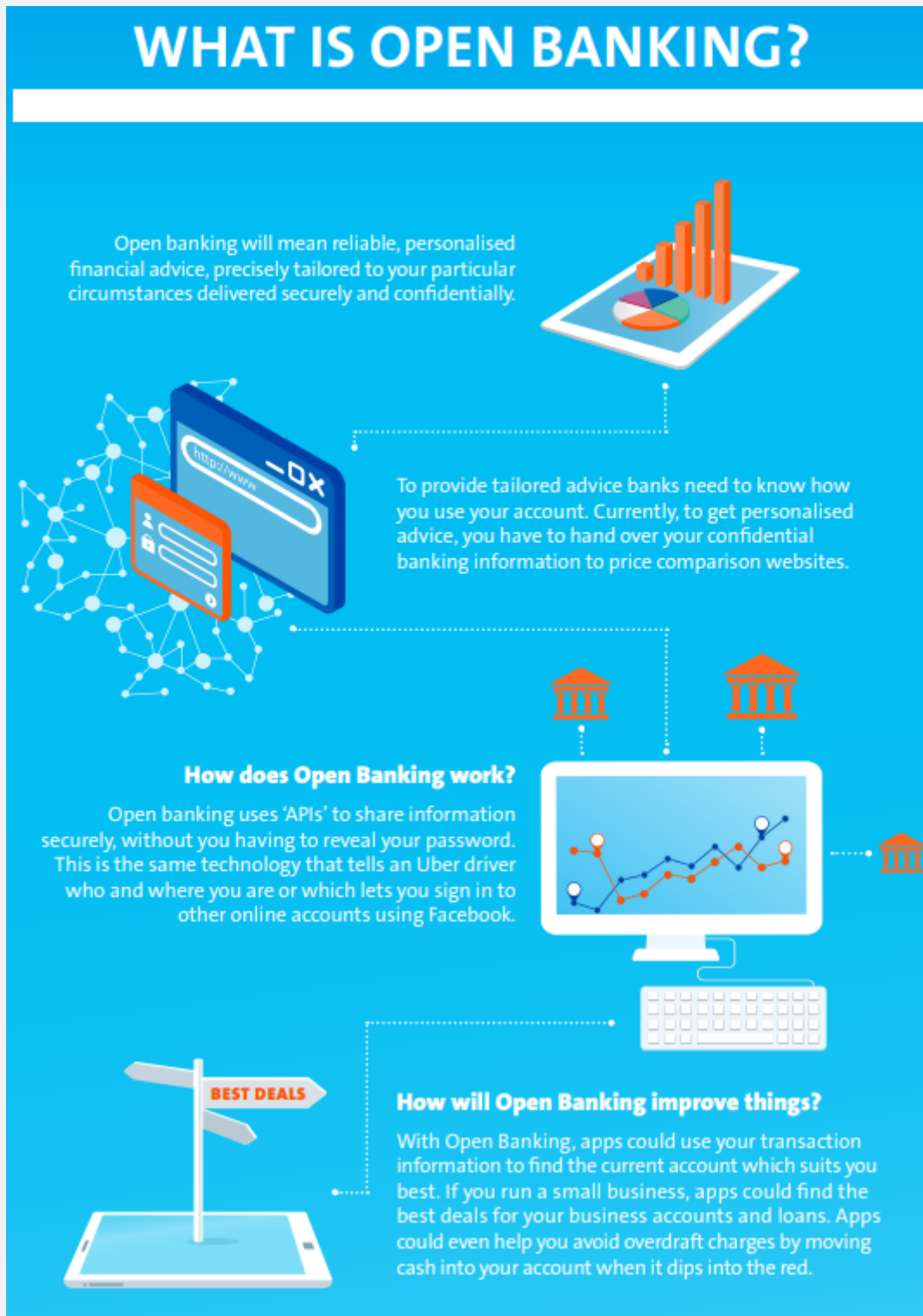
Box 8: Redesigning markets

Open Banking (retail banking service)

Following a market investigation into the effectiveness of competition in the UK retail banking market, the CMA implemented a remedy requiring banks to implement ‘Open Banking.’ Open Banking allows customers to share their current account data through secure, standardised and open Application Programming Interfaces (APIs) with trusted third parties without having to disclose their online credentials to them. This allows, for example, consumers and SMEs to use digital comparison tools to obtain bespoke advice on the best current account for them. It also facilitates account aggregation applications (or ‘apps’) which allow them to look at all their payment accounts in one place. In addition, Open Banking enables ‘sweeping’ services which can automatically move money into and out of a consumer’s current account ensuring that bank overdraft charges are avoided and a better rate of interest is paid on current account balances. Potentially most importantly, opening up access to this rich dataset should leverage market forces to develop new approaches for consumers, helping them engage with these decisions.

UK and European law ensures that all firms involved in these aggregation and comparisons services are regulated by the FCA and that consumers are protected (in particular that these firms must first have customers’ explicit consent).

Illustrative example of Open Banking solution shown below:



Changing the choice architecture – encouraging consumers to make active, rational choices based on accurate information is an appealing way to ensure good consumer outcomes, because it allows people to express their preferences. However, there can be significant challenges to making consumers active and engaged. Often, it is simply not possible. The environment in which consumers make decisions in reality the “choice architecture” has a huge and often underestimated influence on behaviour. For example, the presence of default options often results in a majority of people taking them up, even when people make very different decisions when they are actively engaged. Where default options (or softer versions, such as ordering options by suitability, or making suitable options more immediate) are likely to result in positive outcomes, they can be an extremely effective tool to influence consumer behaviour.

Box 9: Remedies which change choice architecture

Removing the default option (internet browsers)

In January 2009, the European Commission announced an investigation into the bundling of Internet Explorer with Windows operating systems from Microsoft due to concerns that the tying of Internet Explorer to the Windows operating system might harm competition between web browsers, undermine product innovation and reduce consumer choice.

In December 2009, the Commission accepted a remedy in which Microsoft agreed to install a pop-up box function which prompted Windows customers to make an active selection from a list of twelve popular browsers, including Internet Explorer.

Changing the default option to a better outcome (pensions)

In the 2008 Pensions Act, the UK Government introduced the requirement that employers above a certain size must automatically enrol employees into a pension scheme, unless the employee actively opts out of this default. This has led to a large increase in the pension savings of UK citizens, and demonstrates the potential influence which changing default options can exert.

Creating a new default option (fixed-term tariffs in retail energy)

Despite significant efforts to encourage customers to make an active decision to switch or stay with their current supplier when their fixed-term energy contract comes to an end, many still do not do so.

In 2017, Ofgem allowed energy suppliers to provide a suitable default fixed-term tariff for customers to roll onto at the end of their fixed-term contracts. This fixed-term tariff must have no penalties for terminating early, be the same price or cheaper than the variable tariff they would otherwise have rolled on to, and must be similar in nature to the customer’s original fixed-term tariff.¹⁶

¹⁶ https://www.ofgem.gov.uk/system/files/docs/2017/10/decision_letter_-_default_tariffs_for_domestic_customers_at_the_end_of_fixed-term_tariffs.pdf

Promoting consumer engagement: lessons learned

Engagement remedies can be effective at increasing competitive pressure, particularly where consumer disengagement is an unconscious rather than conscious decision. However, interventions which require consumers to 'do all the work' may impose costs on consumers, in terms of time or cognitive bandwidth, and may not be effective in all markets and for all consumers. Interventions which result in consumers getting good outcomes through positive choice architecture, which require relatively limited engagement such as automatically enrolling consumers for the best available package, with possible opt out, are an alternative.

The following lessons can be learned regarding the use of engagement remedies:

- **Working with the market can increase the impact** – Where it is possible to identify intermediaries with incentives aligned with consumer interests, involving them in the design, testing and implementation of interventions can result in improvements, while reducing the ongoing requirements for the regulator. This can also help to rebuild consumer trust in markets if it has been eroded over time. One example is working with market participants to create an environment for transparent and accurate price comparison websites to develop.
- **Default choices can be highly influential** – Changing the default option can have a very large impact on the outcome across the total customer-base, benefiting the majority while still providing consumers with the ability to exercise effective choice if they prefer an alternative option.
- **Suppliers' ability to price discriminate may alter the right approach** – Where firms can price discriminate, we might expect them to offer lower prices to engaged consumers than those who are less engaged. In these circumstances, remedies enhancing engagement may only benefit the few already engaged and not the rest. As prices fall for the engaged, the prices for the unengaged may fall less, be unchanged, or even rise. If a regulator was designing an intervention into this type of market, they would need to assess the associated risk of worsening outcomes for a subset of the market (particularly where these consumers may be more vulnerable), even if overall welfare should increase.
- **Robust testing is highly desirable** – Engagement remedies can often be quite difficult to design up-front, as the circumstances in which consumers will choose to engage with a market may be unclear. In particular, there may be times where a consumer's decision not to engage appears economically rational, such as where the expected return is below the expected cost of the engagement. Therefore, it is particularly important to rigorously test remedy options to identify an approach that will have the greatest positive effect on behaviour and outcomes (as described in the section 0 of this paper).
- **The tone of language is important** – When designing engagement remedies, use of certain terms can be detrimental. Terms frequently used in academic literature or technical documents such as 'disengagement', 'inertia', 'weak response', and 'wrong/suboptimal decisions' can appear to blame consumers for poor outcomes, even when that is not the intention. This could cause a negative public response to the intervention itself, undermining its effectiveness and/or distracting from its aims.

B. Increasing transparency

Remedies which increase transparency (sometimes referred to as “disclosure remedies”) can play a key role in supporting effective competition. They ensure people have access to information and may help them to compare products and services and make informed decisions. This might include putting information in the public domain which is not currently available, requiring it is presented in a clear and comprehensible way and ensuring that it is not misleading.

Policy-makers need to be aware that our interventions are not taking place in a vacuum, and that consumers receive a constant barrage of information from a wide variety of different sources. Accordingly, any messages will need to compete for consumers’ attention or risk being drowned out and hence not having the anticipated benefits. Approaches to address this include targeting the timing of interventions to relevant trigger points when consumers are most likely to engage with the information being provided (eg at the point of making a decision). These factors can also limit the extent to which transparency measures will be able to resolve deep-seated problems.

There are a variety of sub-categories of disclosure remedies, which are explained below. All of these types of disclosure remedy may be used to help either new or existing customers make better purchasing decisions. They are often combined with other approaches (such as engagement, shopping around or switching remedies) to form a complementary remedies package.

Addressing information asymmetries, by putting information into the public domain that was not previously available to customers, or by providing customers with specific details they require to make a good decision, can help to inform consumers. The information could be about the quality of the good or service, the value consumers get out of the product (e.g. number of successful insurance claims), or some other element such as the price or the terms of sale.

Box 10: Disclosure to address information asymmetries

Exposing the worst deals to greater scrutiny (cash savings)

In its 2015 Cash Savings Market Study, the FCA found that accounts that were opened a long time ago generally pay lower interest rates than those opened more recently. Despite this, the FCA found that a significant number of consumers do not move their money to accounts that might pay more interest - even with the same supplier.

To address this, the FCA piloted in 2015 and 2016 publishing the lowest possible rate that customers could earn across all easy access savings accounts and easy access cash ISAs (‘sunlight remedy’). This aimed to raise awareness of firms’ strategies towards their longstanding customers and to give firms an incentive to offer better interest rates to existing customers, especially those with products no longer on sale.

The FCA noted this information was not targeted at individual consumers directly but rather towards market commentators, consumer groups and the media. While the pilot is unlikely to have directly encouraged firms to pay better interest rates on accounts with the lowest interest rates, it was successful in attracting significant media attention, which drew attention to poor rates.¹⁷

¹⁷ <https://www.fca.org.uk/publications/discussion-papers/dp18-6-price-discrimination-cash-savings-market>

The FCA is now considering whether to take forward the sunlight remedy, along with other interventions on the supply-side to address the wider issue of longstanding customers receiving lower rates

Improving consumer awareness and understanding of the range of products available and their relevant characteristics. This type of disclosure remedy goes beyond simply putting information in the public domain, for example ensuring that the information should be provided in a clear and comprehensible way or should be displayed prominently. Such remedies may also raise awareness of major market changes, such as the Digital Switchover described in Box 11 below.

Box 11: Disclosure to improve consumer awareness and understanding

The UK's switch to digital TV

Between 2006 and 2012 the UK Government sought to convert all UK citizens from analogue to digital TV. The aim of this was to improve the availability of digital terrestrial TV while releasing valuable spectrum for other uses (particularly 4G mobile phones). This was a Government policy, enforced by DCMS and Ofcom, and coordinated by Digital UK, a purpose-built organisation.

This was a major project, with the risk of causing serious disruption to TV users through the total removal of existing services (as analogue transmitters were turned off). However, the process was described as an 'unqualified success' with coverage of 98.5% of households by the end of the programme, and an estimated net benefit to the UK of £1.1bn - £2.2bn.

Some of the most important factors of success, which have implications for regulatory interventions, were identified as:

- Generate sufficient awareness of the process, including through traditional and social media where possible;
- Understand the views and needs of consumers before taking action;
- Minimising the requirements on consumers themselves;
- Provide additional assistance to groups of consumers which need it;
- Make use of trigger points / time-sensitive communications.

Using reputational concerns can pressure firms into changing their behaviour. An early example of this approach was the food standards requirement sometimes referred to as "scores on the doors".¹⁸ This can be particularly important when building or rebuilding consumer trust within a market. Moreover, reputational regulation allows high performing suppliers to demonstrate their virtue, and in doing so highlight the lesser performance of others. For example, firms may spend money actively advertising or promoting their own results, which is likely to increase both the level of awareness and the impact of the remedy.

When designing these forms of remedy, it is important to ensure that any results used to communicate relative performance are easily understandable to their audience, independently verified, and robust. Some examples of this are shown in Box 12 below.

¹⁸ <https://www.food.gov.uk/safety-hygiene/food-hygiene-rating-scheme>

Box 12: Disclosure to leverage reputational concerns

Using reputational pressures to protect disabled consumers (airport accessibility)

As part of their ongoing aim at protecting disabled consumers, the Civil Aviation Authority (CAA) conducts regular accessibility assessments for UK airports. Airports are required to ensure that disabled passengers and those with reduced mobility are not delayed at airports more than other passengers and record the timings for assistance. Their performance is measured across three different areas, (i) timeframes for providing assistance; (ii) disabled user satisfaction; and (iii) effectiveness of consultation with disability organisations.

The CAA published the result of these annual surveys on its website for larger airports, which was picked up by a number of major national media outlets which subsequently wrote articles on the best and worst airports for passenger assistance. The increased consumer awareness and understanding of the airports' performances exerts competitive and reputational pressure on airports to improve their performance. It has been successful at driving improved performance.

Creating league tables of performance (retail banking)

Following its retail banking market investigation, the CMA required a twice annually survey of customer satisfaction ratings (to reflect service quality) which banks must display prominently. This was intended to allow people to easily compare different banks on the quality of the service they provide, and so judge if they're getting the most for their money or could do better elsewhere.

Customers are asked how likely they would be to recommend their bank on a number of measures, such as overall customer service, online and mobile banking, overdrafts and services in branches. These results are published online and firms are required to display them in bank branches and in leaflets. Firms are also required to publish standardised information about the availability of services (days, times, channels, and personal helplines); resilience; and speed of their services.

Following the publication of the first set of results in August 2018, First Direct (the bank which was rated as being top for overall service as well as some other metrics) published full page advertisements in a number of national newspapers, further raising public awareness of the remedy.

Facilitating the process of comparing products to aid shopping around and switching. This type of disclosure remedy focuses on ensuring information is made available to consumers in a standardised way to aid comparison or that the information disclosed is sufficiently complete and accurate to avoid misleading consumers. It can also involve creating new forms of information to aid comparability.

Providing personalised information on product use may also aid switching. For example, information about charges incurred can help a consumer to compare offers based on their own real usage.

Box 13: Disclosure to facilitate comparison across products

FCA research into payday loan price comparison websites

The FCA used an online experiment to test a number of proposals for payday loan price comparison websites.¹⁹ This found, among other insights, that requiring customers to click through to a second page to see all the loans significantly reduced the likelihood that customers chose the best value loan, as did not providing the total amount payable for each loan. This is consistent with behavioural evidence that people often make poorer choices because of relatively small barriers such as needing to click through, or larger barriers such as having to make a calculation. Many of these findings, such as the requirement to display the total amount payable, formed part of the final rules for payday loan price comparison websites.²⁰

Standardising the layout of statements (retail energy market)

Following its major Retail Market Review (RMR), Ofgem specified information to be disclosed to consumers about their energy tariffs. This information was required to be provided in both bills and annual statements in a standardised way, including using a standardised layout.

Increasing transparency: lessons learned

Evidence on the effectiveness of disclosure remedies is mixed, with some improving consumer engagement while others have been ineffective. For example, disclosure remedies implemented in the UK banking market over recent years have had varying degrees of success:

- The auto-enrolment into unarranged overdraft and unpaid item text alerts for UK banking customers who are about to go into unarranged overdraft was found, in an ex-post evaluation, to reduce unpaid item charges by 21-24% and overdraft charges by 25%.²¹
- In a field trial involving over 1 million customers, the FCA found that just-in-time alerts on arranged overdrafts saved the average consumer £0.28 – 0.45 in total overdraft charges per month. However, there was mixed evidence for the effectiveness of early warning alerts (when a customer's balance is low).²²
- A previous natural experiment found that providing annual summaries of account usage and charges had no discernible impact on the level of charges incurred or the average balance.²³

The following lessons can be learned regarding the use of disclosure remedies:

- **Disclosure alone may not be enough** – Over time, it has become increasingly clear that information disclosure alone may not be enough to influence consumers' decision making. There is some evidence that simply providing more information can have a negative effect on competition if it is provided in an unhelpful or disengaging format.²⁴

¹⁹ <https://www.fca.org.uk/publication/occasional-papers/op16-23.pdf>

²⁰ <https://www.fca.org.uk/publication/consultation/cp-15-33-cma-remedies.pdf>

²¹ <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-36.pdf>

²² <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-40.pdf>

²³ <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-10.pdf>

²⁴ Persson, P. (2018) "Attention manipulation and information overload," Behavioural Public Policy, vol 2(01), pages 78-106; and Financial Conduct Authority (2015) "CP15/32: Smarter Consumer Communications: Removing certain ineffective requirements in our Handbook". See: <https://www.fca.org.uk/static/documents/consultation-papers/cp15-32.pdf>.

Therefore, pure disclosure needs careful choice of design, or to be used in combination with other types of intervention.

- **Promote consumer awareness and attention to disclosure** – To ensure consumers are affected positively by the disclosure, Regulators need to closely focus on its timeliness and message prominence to ensure that the message is clear within the surrounding 'noise'. In addition, consumer awareness and attention can be affected by who authors the disclosure (the “messenger”) and where the disclosure appears. It will often be necessary to embed the disclosure within a wider communications strategy, eg using traditional and/or social media to highlight its existence.
- **Consider disclosing both relative and absolute measures of performance** – Including both relative and absolute measures may put performance in context, and be more understandable for consumers. Relative measures may also help high performing suppliers to communicate their virtue, which can improve consumer awareness of the intervention as well as applying additional pressure on poorer performers.
- **Rules may need to be prescriptive to ensure disclosures are clear** – Interventions may need to go beyond simply stating that information should be clear and comprehensible to consumers and dictate precisely how information should be provided – for example by specifying a set format.
- **Testing can be valuable in understanding how consumers make decisions** – Policymakers may not be a good judge of what information consumers pay attention to. Testing can ensure that the message is understandable, and that disclosures really do enhance consumer decision making. This is discussed further in section 4.
- **It is essential to ensure compliance with disclosure remedies** – Limited compliance by firms will reduce the impact of a remedy. Monitoring and reporting can be used to supervised compliance and are discussed further in section 4.

C. Helping consumers shop around

'Shopping around' remedies support effective competition by making it easier for consumers to compare products and services and make informed decisions. Remedies may facilitate the development of search and comparison tools, ensure better information is available to consumers to compare products or simply encourage or prompt shopping around. While there is some cross-over with disclosure remedies, we include remedies which go beyond this, for example by enabling better third-party comparison and decision-making tools.

Shopping around remedies can also be grouped into two broad sub-categories, which are explained below.

Enhancing the collation of information to facilitate search and comparison. This may take the form of simply collecting relevant information in one place or it may either support or directly require the provision of additional functionality, for example the ability to compare products and services on price or some other factor – commonly referred to as 'digital comparison tools' (or DCTs).

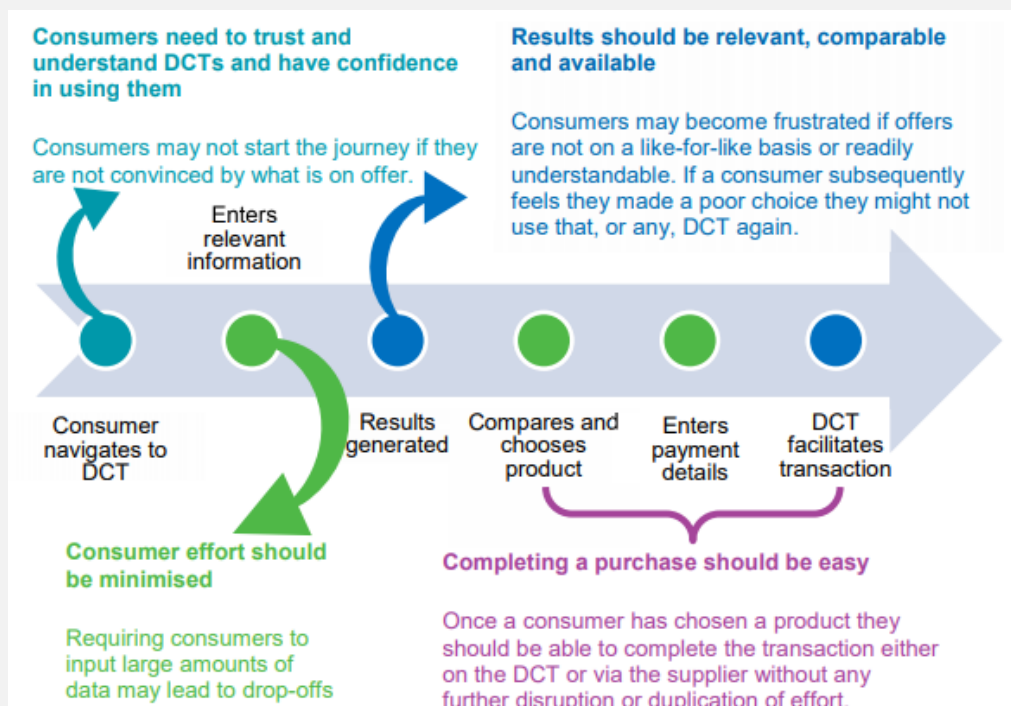
Box 14: Remedies to support the development of comparison tools

Principles for supporting DCTs (digital comparison tools)

The CMA conducted a market study into digital comparison tools in 2017 and found that while DCTs provide significant benefits, more could be done to ensure that these benefits would be felt as widely as possible. In particular, it noted that the following principles which regulators could take to make comparison easier and more effective:

1. **Acting as a catalyst for innovation** – taking action to encourage and incentivise the market to address consumer detriment. This includes challenge funds and prizes and nonfinancial support to develop services with desired functionality.
2. **Developing infrastructure and interfaces** – putting in place the structures to develop industry-wide approaches to data interchange and access to supplier, regulatory and DCT data. This includes developing open APIs and standardised metadata.
3. **Improving DCT access to comparable product information** – making supplier data available and particularly in common formats and structure. This might vary by sector and range from working with industry to identify standard products and add-ons or in certain cases compelling the sharing of product information with DCTs and other third parties.
4. **Improving DCT access to consumer information** – taking a range of possible actions to help consumers by improving their ability to access and share data held about them. This might include giving consumers the right to grant DCTs permission to access personal data held by incumbent suppliers, DCTs and government, to deliver more accurate and relevant comparisons.
5. **Facilitating comparison with open data** – improving the availability of information on suppliers to DCTs and others. Relevant data held by regulators and government on suppliers and products should be published in a machine-readable format under a suitable open data licence with appropriate frequency.

Schematic of a good DCT experience:



Enabling consumers to use their personal information to facilitate comparison – This type of remedy focuses on ensuring consumers can give permission for firms to access to personal information to aid more effective comparison of products. Such information, for example regarding a consumer’s usage patterns, can help consumers identify the product or service which best suits their needs. Consumers often do not collect this information themselves, it is recorded by their existing product or service supplier. Remedies might require incumbent suppliers to provide this information directly to consumers or, with consumers’ permission, to digital comparison tools or other third parties to help consumers better compare the different offers available to them.

Box 15: Remedies to provide consumers with access to personal data

Providing personalised quotes (annuities)

The FCA has set out final rules which will require firms to provide a personalised annuity quotation ranking, so that consumers can easily identify if they could be getting a better deal by shopping around and switching supplier.²⁵ This was informed by research which showed that the largest increase in shopping around occurred when consumers were shown a personalised communication that showed the amount, as annual income, they could gain from shopping around and switching.²⁶

Empowering consumers to uncover the value of their energy data (retail energy)

Consumer survey and panel work carried out for Ofgem found that just 31% of consumers surveyed recalled seeing personal projections, and there was a lack of awareness that these could be used to make comparisons across suppliers. There is currently no consistent and automated way for consumers to allow sharing of their energy data with third parties.

Following its recent energy market investigation, the CMA has recommended that DECC (now BEIS) expand the midata for energy initiative and make participation mandatory for all energy suppliers. The midata project will look to standardise a range of data fields that will be sharable directly with price comparison websites (with consumers’ consent), rather than placing the burden on consumers of downloading (and then uploading) the data.

Helping consumers shop around: lessons learned

Similar to disclosure remedies, there is mixed evidence in terms of the impact of shopping around remedies. For example, shopping around remedies targeted at the extended warranties market in the UK have had varying degrees of success:

- A requirement on those selling extended warranties to tell consumers that they are free to shop around had some success in raising consumer awareness. The evaluation found that 74% of consumers realised that they did not have to make an immediate decision on extended warranties. Shopping around, while still low, increased significantly from 4% to 15%.²⁷

²⁵ <https://www.fca.org.uk/publication/policy/ps17-12.pdf>

²⁶ <https://www.fca.org.uk/your-fca/documents/research/increasing-consumer-engagement-in-the-annuities-market>

²⁷ [Evaluating the impact of the Supply of Extended Warranties on Domestic Electrical Goods Order 2005](#), OFT (2008)

- However, a price comparison website developed for comparing extended warranties has been found to be of limited use, with very few suppliers listed, including only one selling stand-alone extended warranty cover.

The following lessons can be learned regarding the use of shopping around remedies:

- **Encourage the development of commercial digital comparison tools** – This is often better than regulator-designed tools, as commercial organisations have strong incentives to market their sites effectively and to make them as user-friendly as possible. The CMA’s DCTs principles in Box 14 above provides additional specifics on good practice approaches to ensure the DCT functions well for consumers.
- **Governance of digital comparison tools is important** – Good governance can ensure comparison tools operate effectively, for example that their rankings are not distorted by supplier commissions and that they keep their information on products and services updated. Regulation or accreditation of comparison websites can be used to address such issues.
- **Remove the burden on consumers** – With consumers’ permission, remedies which facilitate direct sharing of consumer data with digital comparison tools can help consumers to make better decisions.
- **Bear in mind that digital comparison tools will not be used by all consumers** – Most digital comparison tools are provided online and therefore consumers who do not use the internet will unlikely be able to search out the best online deals. This is of particular concern if online prices are significantly lower than those available offline.

D. Making it easier to switch

Switching remedies enhance competition by making switching easier or less costly, thereby reducing consumer inertia and increasing the likelihood that consumers will switch suppliers or move to a better product with the same supplier. Consumers do not actually need to switch suppliers to drive effective competition. It is enough that suppliers face a real risk of losing customers and alternative suppliers a real opportunity to win them.

Switching remedies can be separated into two sub-categories, which are explained below.

Remedies that involve changing contractual restrictions. This type of remedy prohibits the use of contract terms that serve to disincentivise consumers from switching their supplier, for example by imposing cancellation fees, having short windows for giving notice to terminate or automatic renewals.

Box 16: Remedies to reduce contractual constraints on switching

Banning termination fees on ‘evergreen’ contracts (retail/microbusiness energy)

As part of its 2013 Retail Market Review, Ofgem banned termination fees for evergreen energy contracts (ie contracts which have no expiry date), to facilitate consumers switching away from these highly priced default tariffs. Following its recent energy market investigation, the CMA extended this remedy to microbusinesses.

Preventing double payment when switching (mobile telecoms)

Ofcom has noted that difficulties avoiding having to pay for 30-day notice periods at the end of mobile contracts can mean that consumers ‘double pay’ for up to one month when switching supplier. Such a cost might be expected to inhibit switching. Ofcom is bringing in new mobile switching reforms from July 2019 that will ban suppliers from charging a customer for notice once a switch has taken place.

Remedies that make switching quicker, easier, more reliable or more attractive. These remedies seek to encourage switching by addressing consumer concerns about the time that switching supplier may take and the risk of switching, as well as the ease and reliability with which it can be done. Such remedies may include introducing collective switching, switching services, setting minimum quality guarantees for the switching process (for example time limits) and requiring number portability (where consumers are able to keep their identification number, such as phone numbers or bank account numbers, when changing supplier).

Box 17: Remedies that make switching quicker, easier or more reliable

Switching bank account (Current Account Switch Service)

The Current Account Switching Service (or CASS) is a service which allows consumers and small businesses to switch current accounts easily and quickly. While CASS is broadly seen as a high quality service and a highly positive development, a 2015 evaluation by the FCA found that awareness and confidence in CASS is lower than expected and that it has led to only a small increase in switching volumes.²⁸ In addition, the FCA found a number of aspects of the process that may still be inhibiting consumers from switching banks.

Drawing on this evidence, and following its own market investigation into retail banking, the CMA proposed a number of remedies in respect of CASS, and accepted CASS undertakings in a number of areas. These include that a long-term promotional campaign be undertaken to raise the public profile of, and consumer confidence, in CASS; and that the period of account redirection be extended indefinitely for customers that want this. The CMA is also requiring customers’ previous banks to guarantee the provision of transaction history on the old account once an account is closed. This is considered particularly important for SMEs, for which loss of access to their previous transaction history following a switch of banks can make it harder (or at least it is perceived by SMEs that it can make it harder) to secure business loans.

Complex processes to switch supplier (landline / broadband)

In 2013, Ofcom found that some consumers found it difficult to switch their landline and/or broadband services between suppliers on the Openreach network because there were a number of different processes (often involving multiple different steps), and switching itself caused a loss of service for some consumers (20%).²⁹ The switching process used depended upon the services being switched (landline, broadband or both) and the underlying wholesale service and technology used by the new supplier and the previous supplier. For some switches, the switching process relied heavily on actions of the customer’s previous supplier, who had little incentive to make the switch happen.

To mitigate this, Ofcom decided to harmonise to a single “gaining provider led” process for switching services within the Openreach network, where consumers only need to contact their new (“gaining”) supplier who will coordinate the switch without having to cancel with

²⁸ <https://www.fca.org.uk/publication/research/making-current-account-switching-easier.pdf>

²⁹ https://www.ofcom.org.uk/_data/assets/pdf_file/0033/76569/consumer_switching.pdf

their old supplier. Ofcom also required better information to be provided to customers on the implications of switching (eg any early termination charges) as well as implementing a number of measures to mitigate the impact of erroneous transfers.

Not having to speak to old supplier to switch (mobile telecoms)

Ofcom found that a significant minority of mobile switchers were experiencing difficulty switching their service due to having to speak to their old supplier to switch. As a result Ofcom are introducing reforms from July 2019 to allow customers to send a free text message to the supplier they wish to leave. Customers would then receive a text back, which includes a unique code to pass on to their new supplier who will arrange the switch within one working day. Customers would be able to follow this process whether they are taking their mobile number with them or not. They would also be able to request their unique switching code via their online account, should they prefer.

Collective switching (retail energy)

The CMA's market investigation into energy found that there has been significant growth in the number of collective switching schemes since 2012, but these have still been small in terms of the number of participants. In addition, suppliers were able to re-establish a degree of price discrimination between the more price-sensitive consumers (here, collective switchers) and their longer-term customers by cutting prices only to the former.

In carrying out its own review of collective switching, Ofgem also found some risks for consumers relating to transparency of process and clarity of offers, the handling of Warm Homes Discount and exit fees, and the provision of relevant information to inform decision-making. This has led Ofgem to expand its Confidence Code accreditation to cover collective switching services as well as price comparison websites.

Making it easier to switch: lessons learned

As with other types of demand-side remedies, there is good evidence that some interventions designed to facilitate switching can be effective. For example, academic studies have found strong empirical evidence that mobile phone number portability is effective in driving competition. For the EU, Cho, Ferreira and Telang (2014) find that the introduction of number portability decreased mobile prices by 7.9% on average.

In contrast, some other switching remedies have not always achieved the desired impact. As noted above, an evaluation of the Current Account Switching Service in the UK found that consumer awareness and confidence in the service was lower than had been expected and its introduction had only led to a small increase in switching volumes.

The following lessons can be learned regarding the use of switching remedies:

- **Measures designed to overcome financial barriers to switching can be very effective, as can remedies which reduce the 'hassle factor'** – For example remedies which remove cancellation fees and therefore directly reduce the cost of switching.
- **Interventions can prevent suppliers from practices which increase costs or exploit behavioural biases to limit switching** – For example, complex termination procedures and auto-renewal practices can all make switching unduly difficult and can be altered through remedies.

- **Consumer awareness of the switching process can be useful** – Consumers may have misconceptions about the difficulty of switching supplier. Where this is the case remedies may need to focus on addressing these misconceptions as well as actions to reduce switching costs. This can be done through promotional or marketing activity, although it may be particularly challenging for ‘evergreen’ products.
- **‘Fixing the plumbing’ may not be sufficient** – if there are also problems related to consumer engagement, then improving switching processes may need to be accompanied by other measures.

E. Controlling outcomes

One way to consider remedies is as a hierarchy of interventions, starting from providing information, to changing choice environment, to controlling product distribution, to controlling products (e.g. bans).³⁰ In certain cases, the remedies described so far, and supply-side measures aimed at, for example lowering entry barriers, may be ineffective in driving effective competition, may only act slowly, or may not sufficiently protect the interests of some consumers. In these cases, outcome control remedies may be used instead of, or alongside other measures.

Outcome control remedies specify what services suppliers are and aren’t allowed to offer and at what price. They can take different forms, which are explained below.

Rules regarding how a product is sold, or who it may be sold or marketed to. Where Regulators have concerns around particularly complex products, or easily misinterpreted information being relied on by consumers, they may require suppliers to control how it is sold. For example, consumers wishing to purchase a specific product may be required to take professional advice first, or suppliers may only be permitted to sell certain products to suitably-qualified consumers who are able to understand the risks. In some cases, this can take the form of an outright ban.

Box 18: Remedies setting rules around how a product is sold

Ensuring mortgages are affordable (mortgages)

Under FCA rules, suppliers of mortgages (and certain other retail products) are required to carry out affordability assessments before making loans. This reflects the fact that intrinsic biases (such as myopia and over-confidence) can result in consumers taking on unaffordable levels of debt. Firms may compete to provide such debt, leading to competition effectively occurring on ‘the wrong basis’.

Controlling the promotion of highly complex products

Under FCA rules, firms cannot freely promote certain riskier products to ordinary retail investors. These products described as ‘non-mainstream pooled investments’ or ‘non-readily realisable securities’. Promotions for these products are restricted because of the particular risks involved (notably the risk of significant capital losses or liquidity risk). Firms may only promote such products to certain types of retail investor, including those certified as ‘high net worth investors’ or ‘sophisticated investors’.

³⁰ FCA Occasional Paper 1: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf>

Restrictions on product characteristics, quantity of products, or pricing structures. This type of remedy may take the form of requiring minimum quality standards, limiting the number of different products a supplier can offer consumers to reduce complexity, or requiring that certain groups of consumers are offered the same or similar prices.

Box 19: Restrictions on product characteristics or price discrimination

Simplification and non-discrimination (retail energy for domestic customers)

As part of its 2013 Retail Market Review, Ofgem introduced restrictions on the number and type of tariffs that energy suppliers could offer domestic customers. These included:

- Limiting the number of tariff choices a consumer would face to four;
- Standardising tariff structures;
- Creating rules designed to simplify bundles, discounts and reward points; and
- Proposals to facilitate collective switching.

These interventions were intended to make it easier for domestic consumers to understand and compare energy tariffs across suppliers, addressing concerns that the proliferation of energy tariffs was confusing to customers and creating barriers to searching and switching.

Previously Ofgem also introduced a non-discrimination requirement in energy. There were two elements to this: a ban on price-discrimination between customers on the basis of payment type and a ban on undue discrimination in terms and conditions. The latter was designed to prevent energy suppliers from charging higher mark-ups to consumers in their home regions – where they still had a high proportion of loyal customers – than in other regions.

Price regulation. Even in markets where there are plenty of suppliers, if the demand-side of a market is not working well, suppliers may have a degree of market power which they can exploit by charging high prices. Price regulation can limit the extent to which suppliers are able to do this. In competitive markets, Regulators have generally avoided long-term price regulation, since overriding market signals can reduce or remove the benefits which competition can bring. However, transitional price regulation (where other interventions are expected to address the concerns, but price caps are need for a period before the other remedies take effect) or safeguard price caps (where the cap acts as a ‘ceiling’ to ensure that no consumers are overly exploited, but where there is scope for competition below this level) may be more appropriate.

Box 20: Price regulation

Safeguard cap on short-term credit (payday lending)

In response to concerns about the Payday lending market (see Box 3), the UK Government introduced legislation requiring a cap on the cost of short-term credit. This cap was put in place by the FCA in January 2015 and structured in a way to try and account for the existence of behavioural biases.³¹ It took the following form:

³¹ “Detailed rules for the price cap on high-cost short-term credit Including feedback on CP14/10 and final rules”, FCA, November 2014.

- For all high-cost short-term credit loans, interest and fees must not exceed 0.8% per day of the amount borrowed.
- If borrowers do not repay their loans on time, default charges must not exceed £15. Interest on unpaid balances and default charges must not exceed the initial rate.
- Borrowers must never have to pay back more in fees and interest than the amount borrowed, ie a total cost cap of 100%.

In addition, the FCA introduced a package of measures which have changed the payday lending market. This includes limits on the number of times that payday loans could be rolled over before being repaid; limits on the number of attempts to collect payments using continuous payment authorities; and a stronger focus on affordability.

Transitional cap (retail prepaid energy)

During its energy market investigation, the CMA found that prepayment customers have a more limited choice of tariffs available and have higher barriers to accessing and assessing information and additional actual and perceived barriers to switching. As part of its remedy package, the CMA placed a price cap on all electricity and gas suppliers with regard to pre-payment customers until at least 2020 which is expected to save these customers around £300m per year.

More recently, the UK Government passed legislation to implement a price cap on the standard variable tariff (the default tariff) for all customers. Ofgem was tasked with designing and implementing this broader price cap, in particular, setting the level of the cap.

Controlling outcomes: lessons learned

As for other types of remedies, the effectiveness of measures to control outcomes depends on their design and the context in which they are put in place. For example, a 2017 review of the payday lending price cap (see Box 20) found that the cap has been successfully set at a level which has allowed the market to continue to exist, albeit with some firms exiting the market.³² This means that the price cap has been kept high enough to incentivise further entry in the market whilst also reducing the number of borrowers getting into either extreme difficulty and/or repeated lending cycles than previously. Therefore, although some consumers have been denied access to this product, there has been a net benefit.

In contrast, the CMA found that the ‘Simpler tariffs’ rules introduced in the energy market (see Box 19) failed to reduce complexity to a level that overcame the need for price comparison websites to help make choices, but at the same time limited useful tariff innovation. As a result, the CMA recommended that Ofgem remove these requirements.

Conclusions on the effectiveness of remedies to address demand-side problems

In addition to the specific lessons set out above, there are a few points to bear in mind when designing remedies to address demand-side problems:

- **Tailor the design for consumers** – When designing a demand-side intervention to promote a particular behaviour, the UK Behavioural Insights Team recommends that the intervention should make such change Easy, Attractive, Social and Timely (EAST).³³ User

³² <https://www.fca.org.uk/publication/feedback/fs17-02.pdf>

³³ [Behavioural Insights Team - EAST](#).

design (see section 4) might also be undertaken. This is likely to be particularly relevant when behavioural biases are an important factor;

- **Demand-side interventions can have distributional effects** – Regulators may wish to give special consideration to the problems faced by particular groups of consumers, especially those who are most vulnerable;
- **Outcome control remedies can directly override market signals**, so their design and use needs to be carefully considered to avoid being harmful or even anticompetitive, for example, by limiting innovation. It is beneficial to retain a degree of competition where possible, and allow consumers to continue to exercise choices (eg by setting a safeguard price cap at a level which would still allow for a degree of innovation and price competition below the cap);
- **Testing interventions with consumers and refining the remedy design** can boost effectiveness. While we may attempt to predict the effect of an intervention, it is through robust consumer testing that the most effective approaches can be developed. We consider this point in the next section.

5 Driving good consumer outcomes: testing demand-side remedies

Why is testing necessary?

Many of the remedies discussed in this document aim to try and change consumer behaviour in some way, for example to get consumers to shop around more, help them make more informed choices and switch to an alternative product or supplier which better suits their needs. However, designing a remedy which is successful in changing consumer behaviour in the way intended is not straightforward and takes much refinement and development.

As described in section 2, consumers often behave in ways which traditional models of consumer behaviour might find unexpected. For example, they may not always act in their own self-interest or may overestimate the likelihood that they will take action in the future. Even when consumers act rationally, it can be hard to predict their rational behaviour in a complex system. To design effective consumer-facing remedies we need a proper understanding of how consumers behave, derived from evidence rather than assumptions which can be inaccurate. To do this we should test our ideas and then reassess them before deciding whether the remedy can be implemented and, if so, in what form.

Testing can be used to diagnose market features which can lead to harm (eg in relation to drip-pricing).³⁴ It can be used to compare how different remedies perform in relation to their objectives. It can also be used to screen a number of different remedies to come up with a smaller set of most likely options which can then be tested further. Once an attractive remedy has been identified, testing can be used to consider the detailed design and implementation features and how these affect the performance of the remedy. This fine tuning of remedy design can help maximise the positive impact of interventions.

Testing can also play a useful role when completing cost benefit analysis or impact assessment for consumer-facing remedies. This is where the effects of an intended policy are evaluated, ideally by quantifying the expected impact. Some methods of testing may not always provide a precise calculation of an intervention's impact but can help establish the direction of the impact and help estimate its overall magnitude, and ideally any distributional effects.

Before testing – things to consider

Before testing consumer remedies there are a number of important factors to consider³⁵:

- **At what stage to test?** Testing can be useful at many different stages of remedy development. This can include during the diagnosis of the problem, remedy design, implementation or to help with monitoring or evaluation. The earlier testing is incorporated the more scope there is for it to ensure the remedy is effective.
- **What are the remedy aims and objectives?** The objectives of the remedy should be defined in as much detail as possible. This is key when designing remedy tests – identifying what outcome the researcher is seeking to observe and measure.
- **What do you know already?** A good understanding of consumers' attitudes and behaviours can help when designing a remedy and coming up with possible options for

³⁴ "How does selling insurance as an add-on affect consumer decisions?", FCA Occasional Paper 3, March 2014.

³⁵ [European Commission Applying Behavioural Sciences to EU policy-making](#) for further information.

testing. This can be gained from a review of existing literature including results from any previous testing exercises including qualitative research and engagement with stakeholders.

- **How much time and resource do you have?** Testing takes time and resources (money, know-how, etc) to be conducted properly, and this needs to be accounted for in any project plans. Some testing exercises can take months and cost large amounts, whereas others can be completed quickly and cheaply, and these constraints may affect the choice of method.

What type of testing to use?

There are a range of testing options which can be used to test consumer-facing remedies. The main methods discussed here are:

- Qualitative research
- Surveys
- User design
- Experiments including laboratory testing
- Field trials

The right choice of method will depend on the research question and the time available. Often several different testing methods may be used to see if they arrive at similar findings and to build a more accurate picture of what works. This is particularly important when developing an understanding of the consumer decision-making process, and investigating the possible existence and effect of behavioural biases.

The main advantages and disadvantages of different testing methods are summarised in the table below. Each testing method is then discussed in more detail.

Testing type	Pros	Cons
Qualitative research	<ul style="list-style-type: none"> • Provides rich nuanced information on beliefs and attitudes. • Consumers can express themselves freely as not constrained by pre-established questions (as in a survey) • Allows for follow-up questions and discussions. 	<ul style="list-style-type: none"> • Information generally not representative of the larger population due to small sample sizes. • Relies on consumers answering honestly and understanding their own motivations and preferences. • Actual consumer behaviour may differ from reported behaviour.
Surveys	<ul style="list-style-type: none"> • Large representative sample means results generally applicable to population. • Can provide robust answers to some types of questions (eg use of multi-sourcing) 	<ul style="list-style-type: none"> • Responses often limited by question and answer options. • Relies on consumers answering honestly and understanding their own motivations and preferences. • Actual consumer behaviour may differ from reported behaviour.
User design	<ul style="list-style-type: none"> • Provides detailed information on motivations, actions and barriers of consumers. 	<ul style="list-style-type: none"> • Small sample.

	<ul style="list-style-type: none"> • Uncovers hidden barriers or parts of the customer journey which cannot be observed through other means. 	
Laboratory / online experiments	<ul style="list-style-type: none"> • Reliable in establishing causal effects. • Can be used to establish general principles which can be applied to other markets. 	<ul style="list-style-type: none"> • Artificial environment means results may not hold true in the real world. • Gives information about the direction but not the magnitude of effects
Field trials	<ul style="list-style-type: none"> • Reliable in establishing causal effects. • Take place in natural setting so results extrapolate well to the real world. 	<ul style="list-style-type: none"> • May need specialist input to design.

Qualitative research

Qualitative research methods focus on understanding consumers' knowledge, attitudes, beliefs and fears and are commonly used to diagnose problems. They can tell researchers about how consumers think they will behave in different circumstances and provide insights as to the drivers behind this. Common types of qualitative research include consumer focus groups, semi-structured interviews and participant observation.

Qualitative research methods can provide valuable insight into consumers' decision-making process which may be missed by other testing methods. It may allow the researcher to gauge the emotional response which consumers display through tone and the language they use, particularly when discussing complex or sensitive issues. They can be useful in understanding **why** consumers think they do something, rather than recording **what** they do or **how** they do it. In addition, qualitative research does not require a large sample size and allows a significant amount of information, including quotations, to be collected in a relatively fast and cost-effective way.

However, qualitative research lack internal and external validity: the limited sample and reliance on self-reporting means the results may not hold true in other contexts. Qualitative research methods are therefore good complements to other methods of consumer remedy testing.

Surveys

Surveys use structured questionnaires to elicit information on consumers' attitudes, beliefs and expectations. They can also be used to elicit information about historical behaviour/reasoning, and potentially how consumers think they might behave in the future following an intervention, although this information may not always be accurate due to limitations in predictive capabilities.

Surveys can be carried out relatively quickly and cost-effectively and, provided samples are sufficiently large and representative, allow robust inferences to be drawn about the population of consumers as a whole.

However, the design of the survey questionnaire can limit the richness of the information collected. In addition, it can be difficult for consumers to predict how they might behave and answers are limited by how well consumers understand and articulate their own motivations.

User design

User design involves interviewing, shadowing and observing users of a customer journey and provides detailed information on how changes might affect this process. User research might include observing participant interactions with suppliers (e.g. in a shop or using a website), asking them to talk through this process and eliciting how they are feeling at different points in the journey.

User design helps to design and test effective interventions by starting from a design perspective and recognising that even the best interventions will not succeed unless they take account of real-life behaviour and psychological barriers. This type of research tends to involve a small sample of participants because of the amount of detail collected from each person.

Laboratory experiments

Experiments systematically study how people's behaviour varies across different conditions. In a laboratory experiment, participants are assigned to different circumstances ("conditions") and their behaviour is observed and compared. The controlled nature of this process allows researchers or policymakers to identify causal links between the circumstances and their associated differences in behaviour with far greater confidence than can normally be achieved by simply observing consumers' choices in real life. Laboratory experiments can be used to diagnose problems or to test remedies.

In a laboratory experiment, the researcher will manipulate one element whilst keeping all other relevant elements stable. The aim is to draw conclusions about the effect of the policy element on participants' actual behaviour, without any uncontrollable factors or noise.

This means that laboratory experiments are reliable in establishing causal effects – they have high internal validity. Identifying causal links is very important, both in helping to diagnose the root causes of consumer behaviour but also in predicting the effects of consumer-facing remedies. In addition to this, they can also help uncover the mechanism by which consumer behaviour changes, rather than just observing the outcome.

Because laboratory experiments are used to test the underlying incentives that influence consumer behaviour and therefore on which an intervention is built their results can often establish general principles which can apply across a range of real-life markets. In other cases, the requirement to make the testing environment as realistic as possible means that the results can be quite specific to the environment tested.

Laboratory experiments are generally quick and easy to carry out and can often be done with small sample sizes, saving time and money. However, as with qualitative research, laboratory experiments are often challenged for a lack of external validity due to their artificial nature. It can be hard to know whether participants will behave similarly in the real world. Although external validity can be improved through experimental design, laboratory experiments are sometimes followed by other types of testing.

An example of a laboratory experiment is set out in Box 21.³⁶

³⁶ [OFT Research](#). Further details.

Box 21: Using laboratory experiments

OFT's experiment to test the impact of price framing

The OFT, conducted a laboratory-based experiment to consider whether or not the way prices are presented or 'framed' to consumers affects consumer decision making and welfare.

The laboratory environment simulated real consumer choice with goods on offer from multiple stores and with consumers able to buy multiple units. A baseline presentation of price, where consumers see simple 'per unit' prices was tested as well as several other approaches to displaying the price including:

- Drip-pricing where the consumers see only part of the full price up front and price increments are dripped through the buying process.
- Complex pricing where the unit price requires some computations, for example '3 for the price of 2'.
- Time limited offers where the special price is only available for a pre-defined short period of time.

The experiment involved 166 participants each of whom participated in the unit-pricing baseline and two price frames. Each participant completed 30 rounds of the experiment to determine whether any effects of the price frames could be overcome through experience.

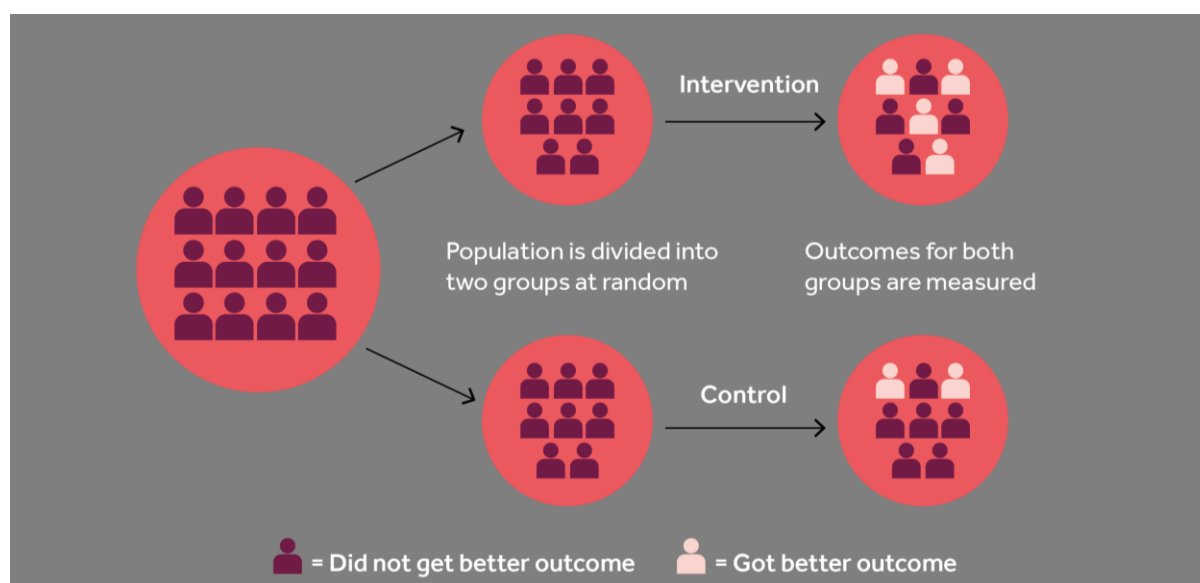
The results showed that participants made more mistakes and achieved lower consumer welfare under the price frames tested compared to straight unit pricing (the baseline). In particular, drip pricing and time-limited offers generated the biggest welfare losses and were the price frames where participants made the most errors. With these price frames participants were more likely to buy at the first shop rather than continuing to shop around. The results of this experiment informed the OFT's work on principles for fair advertising of discounts with supermarkets.

Field trials

Ideally, from a research perspective, people's behaviour should be observed going about their everyday activities without any interference from observers. This provides the most representative observation of behaviour and is one of the principles underpinning field trials.

Field trials are increasingly used to test public policy interventions. In its simplest form, a field trial, a type of Randomised Control Trial ('RCT'), divides a target population randomly across two groups: the control group and the treatment group. For the control group nothing is changed, while the treatment group faces the policy intervention being tested. Any differences between the two groups can then be attributed to the impact of the policy intervention rather than being due to other external factors. Field trials can therefore be very reliable in determining causal effects.

Figure 3: The process of conducting an RCT³⁷



Field trials robustly conducted in this way have a number of benefits over other research designs; they can establish causality reliably and they allow us to estimate the size and impact of the effect.

Field trials use real consumers who experience the intervention in a natural setting. By comparison, a laboratory or focus group consumers may focus far too much on a remedy than they would in real life where they may only give it cursory attention. This means the results of field trials may be more likely to accurately predict of the effects of the intervention if it was implemented in that form.

The main disadvantage of RCTs is that they require specialist input which could create time and cost limitations. A researcher must allow sufficient time to design and test different treatments as well as for data collection and analysis of the results. To obtain results which are statistically significant the sample size needs to be sufficiently large and should be representative of the consumers to which the remedy will be applied.

It may be more efficient to conduct RCTs with the co-operation of existing suppliers. Existing suppliers are likely to have access to customers, and may have information on the ethnographic, personal circumstances, or usage patterns of these customers. Involving these suppliers, and being able to leverage their understanding and resources, can result in a more efficient process than would be possible otherwise. In other circumstances, the participation of existing suppliers may be an integral part of the tests conducted (eg if testing whether a letter received from an existing supplier which encourages shopping around has a greater impact than a similar letter from a Regulator). However, it is important for the Regulator to remain in control of the testing process: while some suppliers may be keen to be involved in the RCT process, others may be resistant, particularly where the success of the remedy does not align with their own commercial incentives.

Once completed, RCTs build causal evidence that can be used to challenge conventional wisdom and test competing hypotheses. In addition, they provide quantitative information that allows researchers to determine the magnitude of the effect.

³⁷ <https://www.fca.org.uk/publication/corporate/how-when-we-use-field-trials.pdf>

An example of a field trial is set out in Box 22 below.

Box 22: Using field trials to get customers to actively engage when choosing the amount to repay on their card

The FCA used field trials to test whether disclosure remedies and choice architecture remedies - removing an explicit option to repay the minimum when setting up a direct debit - would help customers to actively engage when choosing the amount to repay on their credit card debt.³⁸ This followed concerns that long-term minimum-payers took much longer to clear their debt and paid much more overall.

In a field trial of credit card users, the choice architecture intervention did not ultimately reduce credit card debt. It did cause many more people to choose higher direct debit amounts as intended, and it successfully moved people away from minimum repayments, but these changes did not result in lower levels of debt. This is partly because consumers offset higher direct debit payments with lower manual repayments (which can be made in addition to direct debit repayments) and partly because it discouraged some people from setting up a direct debit at all, resulting in some missed payments for these customers. In another trial, targeting information to consumers with a direct debit already set up for the minimum amount caused only a small decrease in minimum payments and did not reduce debt.

The FCA has focused on understanding the trade-offs that need to be made when deciding when and how field trials should be used.³⁹ Field trials help to assess what remedies are likely to be effective by testing intervention on a subset of real consumers. They are attractive because show us the causal effect of interventions on real consumers before implementing remedies.

The FCA considers three questions when deciding whether to run a trial:

- Is the field trial possible and appropriate?
- Is the evidence from a field trial important for policy decision?
- Is a field trial proportionate?

The importance of evaluation

Ex-ante testing, using the above methods, is a very important way to understand the likely effects of an intervention, which can help to reduce unintended consequences, refine the policy before implementation, and reduce costs for those implementing the remedy. In addition, after implementing a consumer-facing remedy it is also important carry out an ex-post evaluation of its effectiveness.

Evaluation is an assessment of whether a policy is delivering its expected benefits, including measuring outcomes and impact. Evaluations can generate valuable information and contribute to a wide range of initiatives and objectives. Key reasons to undertake evaluation include:

³⁸ <https://www.fca.org.uk/publication/research/research-note-helping-credit-card-users-repay-their-debt-summary-experimental-research.pdf>

³⁹ <https://www.fca.org.uk/publication/corporate/how-when-we-use-field-trials.pdf>

- **To better understand the effect of the remedy** – Evaluating the remedy can reveal whether aspects of the design or implementation would have been more effective if done differently.
- **To understand supply-side reactions** – The reaction of suppliers is difficult to predict or test in advance of implementing any remedies, but post-implementation evaluations can reveal this.
- **To ensure remedies remain fit for purpose** – Markets change over time, in some cases very quickly, for example due to changes in consumer behaviour, technology or new entrants. A remedy which was effective at a particular point in time may need to be amended or removed completely further down the line. Evaluation helps to ensure remedies continue to deliver their intended objectives.
- **To provide evidence to inform future decision making** – Evaluations can provide sound evidence of which interventions work and are effective. This information can be used to inform the development and testing of new policies, and to improve the effectiveness of existing ones.
- **To provide accountability** – Evaluations can demonstrate how funding has been spent, what benefits were achieved and assess the return on resources. This can help satisfy external scrutiny requirements.

Overview of how to conduct an evaluation⁴⁰

Steps for conducting an evaluation	
1	Identify evaluation framework
2	Identify evaluation questions
3	Select evaluation approach to be used
4	Identify evidence requirements and how to collect
5	Consider practical arrangements
6	Conduct the evaluation
7	Use and disseminate the findings

The evaluation of a remedy requires a framework within which the evaluation can be designed, data analysed and results interpreted. To build this framework, the assumptions, processes, impacts and outcomes (both intended and unintended) of the intervention should be identified and articulated.

Evaluation can consider many questions but most will relate to three broad areas. These then drive the evaluation approach employed:

- Questions around **how the remedy was delivered** should be considered using **process evaluation**;
- Questions around **what difference the remedy made** are best evaluated using **impact evaluation**; and
- Questions around **whether the benefits of the policy justified the costs** should be considered using **economic evaluation**.

⁴⁰ [The Magenta Book](#) informs guidance set out. Additional information is available in the FCA's [Ex post impact evaluation framework](#).

The evidence requirements for each of these different types of evaluation will vary. The research methods discussed earlier in this section can be used to help gather this evidence as set out in the table below.

Evaluation type	Overview	Method
Process evaluation	Process evaluation is concerned with the processes associated with the remedy, the activities involved in its implementation and the pathways by which the remedy was delivered.	Process evaluations can employ a wide range of data collection and analysis techniques. They will often include the collection of qualitative and quantitative data from different stakeholders, using, for example, group interview, one to one interviews and surveys.
Impact evaluation	Impact evaluation involves a focus on the outcomes of the remedy. It may consider what the outcomes were, any observed changes and how big they were, how changes varied across consumers and any unintended outcomes.	Impact evaluation relies on being able to isolate the effect of the policy from all other potential influences. To test this, it is necessary to estimate – usually on the basis of statistical analysis of quantitative data – what would have happened in the absence of the policy, known as the counterfactual.
Economic evaluation	Economic evaluation considers whether the outcomes of the policy were justified, including whether the benefits outweigh the costs. A key type of economic evaluation is Cost Benefit Analysis (CBA), which usually happens before the policy is implemented.	CBA aims to quantify as many of the costs and benefits of a policy as possible, including wider social and environmental impacts. This means that CBA can examine the overall justification for a policy as well as compare different policies.

Planning an evaluation involves considering a range of practical matters including the governance structure, the resources required, budget and timing. Developing an evaluation plan at an early stage, ideally before implementation, will help to ensure that all the important steps have been considered. Key considerations include:

- **Governance** – It is important for an objective evaluation that the team responsible for conducting an evaluation are independent of the team who were responsible for the implementation and delivery of the remedy. This could mean the evaluation is undertaken by external contractors or the team is kept at arm's length.
- **Resources** – Any evaluation will require significant input from a range of people with different skillsets, including policy makers and analysts. It is important to think about the resource required early.
- **Budget** – The cost of doing an evaluation may be queried and it is therefore important that evaluation is proportionate to the risks, scale and profile of the remedy. There should be sufficient budget to conduct a robust evaluation rather than risk an inconclusive or weak result. This may include considering trade-offs such as undertaking the evaluation in-house rather than relying on external contractors.

- **Timing** – The choice of when to conduct an evaluation will, in part, depend on the evaluation questions. A process evaluation may be useful to iron out any problems early on, whereas with an impact evaluation, time will need to be allowed for the impact of the remedy to appear.

Evaluation can be built into the design and implementation plans for a remedy. One way regulators can build evaluation into policy implementation is through pilot schemes or phased implementation where a remedy can be tried out on a smaller scale and evaluated before being implemented more widely.

It is also possible to include limits to the interventions themselves so they do not continue indefinitely. The longer an intervention is in place, particularly in dynamic markets, the more likely it is to create unintended consequences or cease to have the full effect sought. Sunset clauses can help to ensure remedies only stay in place until a particular time, or until a particular event takes place and it can limit the potential for unintended consequences.

Even where sunset clauses and limits are built into the design and implementation plans for a remedy it is still good practice to ensure the remedy is evaluated within an appropriate timescale to ensure it delivers the changes sought, and remains fit for purpose given the potential for other changes to influence the effectiveness of a remedy.

Box 23: Remedy evaluation

Ex-post analysis and review of remedies at the CMA

The CMA has two programmes exploring the impact and ongoing need for its existing remedies; the evaluation and remedy review programmes.

The evaluation programme originated in 2004 with the aim of ensuring that learning points from past remedies were captured and fed into remedies policy and practice. The learning points from this research feed into the development of CMA policy and practice on remedies and, at an earlier stage, informed the development of the Competition Commission's guidance on merger remedies, since adopted by the CMA.

Regular remedy reviews assess whether existing remedies remain appropriate or if they should be varied or removed. These reviews can also provide useful insights on the selection and design of future remedies, particularly understanding how their effects may vary over time. For new remedies, the CMA will consider including a sunset clause. If no sunset clause is in place, the CMA will aim to review it within 10 years. In addition, the CMA has initiated a programme of reviewing remedies which it inherited from its predecessor bodies, which has resulted in over 100 reviews of old remedies since 2014. The CMA also carries out review of remedies at other times, including in response to requests from parties, or where circumstances change in a particular market, such that the existing remedy may no longer be appropriate and could need to be varied or superseded to continue to deliver the outcome sought.

Ex-post evaluation of the GAP insurance intervention

In 2015, the FCA intervened in the add-on GAP insurance market with two measures to address harm identified. This required provision of information by vehicle sellers to consumers and a pause in the sale process, to better enable customers to assess whether GAP insurance was needed and to encourage shopping around if so. In 2018, the FCA published an evaluation of this policy which found a positive impact: add-on GAP insurance sales were 16-23% lower than if the intervention had not happened and prices were 2-3% lower than they would otherwise have been for those who bought add-on GAP insurance.⁴¹ The evaluation process followed the FCA's ex-post impact evaluation framework.⁴²

Once an evaluation is completed it is important to draw together all strands of the research to provide a full answer to the original research question. It is important to consider whether the results present a consistent picture. Evaluation results should be set in the context of other knowledge about the intervention and the context in which it was delivered.

Given the time and resources entailed in conducting an evaluation, the results should be well disseminated to ensure maximum value is gained from it, for example by making sure the results can inform other policy work, and to help inform the design of future interventions.

⁴¹ <https://www.fca.org.uk/publication/corporate/gap-insurance-intervention-evaluation-paper.pdf>

⁴² <https://www.fca.org.uk/publication/discussion/dp18-03.pdf>

6 Conclusions, lessons-learned and areas for future focus

The understanding of remedies to address problems in consumer markets has progressed a great deal over the past decade or so, particularly as regulators have reviewed the outcomes of past interventions and as the insights of behavioural economics have continued to influence policy making. Regulators have begun to build their internal expertise, developing more robust testing methodologies to support these types of intervention, and ensuring that remedies are as effective as possible at addressing the root cause of the issue.

However, there is still work to be done. Effective demand-side interventions rely on predicting and influencing consumer behaviour under a range of complex circumstances, against a background of many other factors competing for people's attention. Suppliers will react to any changes, which could amplify the positive effect of the original intervention for firms which benefit from the opportunity of more competition, although others' reactions might sidestep or manipulate interventions to safeguard their commercial position.

The evaluation of past intervention demonstrates that it is often not enough simply to provide consumers with a surplus of information and expect them to solve everything alone. Where people are making complex, or difficult long-term decisions, we also need to ensure that consumers are properly supported and/or protected.

This paper has laid out specific lessons learned about the selection, design and testing of interventions, which may be summarised into a short set of high-level principles:

- **Understand the problem** – As regulators, we need to understand both the demand- and supply-side of the markets we oversee. Significant problems can arise on both sides of the market and a combination of supply- and demand-side interventions may be needed to deliver better outcomes for consumers. Interventions to improve competition need to be carefully designed and targeted, with a clear focus on the improvements that are sought to market outcomes. For example, both the scale of consumer harm and its distribution have profound implications for the right intervention.
- **Be bold in identifying possible remedy options** – It is challenging, in a 'noisy' environment, to develop information remedies that make a difference for consumers, but experience suggests that very 'light touch' interventions may not be sufficient to tackle entrenched problems. Regulators should think broadly about a range of options and should not rule out radical solutions too quickly, for example on the grounds of perceived proportionality.
- **Let consumers stay in control** – Consumers consistently interact with firms, and, while they can sometimes face real difficulties in exercising effective choice, are often in the best position to judge their own needs. The most successful remedies are those which recognise that consumers are not to 'blame' for poor market outcomes, but provide them with the necessary support and tools to make their own robust decisions. This does not mean that consumers need to do all of the work, and much can be done to frame the choices that consumers are offered, for example by introducing regulatory safeguards that ensure acceptable outcomes by default.

- **Leverage the experience and resources of the private sector** – The private sector has always attempted to influence consumer behaviour, often in a constructive and competitive fashion (eg by offering a better product than an alternative supplier). We should try to learn from relevant private sector approaches, both in terms of what works well and what does not. It may also be possible to directly involve the private sector in an intervention, by directing their commercial incentives to deliver better consumer outcomes. Examples of this include providing better suppliers with an opportunity to highlight their performance (eg in the CAA’s airport accessibility remedy), or through the introduction of disruptive business models or intermediaries (eg in the CMA’s Open Banking remedy).
- **Test the remedy** – The process of identifying and designing effective remedies benefits significantly from testing. Our initial assumptions about what is likely to work may be incorrect or may lead to the implementation of remedies that have unintended harmful consequences. The FCA and some other regulators have set out the circumstances under which different types of evidence will be of most value and this could help others to make such decisions.
- **Good analysis is not enough** – Although economic analysis is important in assessing both the problem and potential remedies, it is often insufficient to result in an optimal outcome. To be truly effective, we also need to take account of real-life behaviour, pay careful attention to detailed implementation, use effective communication, demonstrate sound judgement in balancing societal needs, and act as advocates for policy.
- **Review effectiveness** – Ex-post evaluations of effectiveness can provide important insights and lessons for existing and future interventions, as well as helping other regulators if they encounter similar concerns. As regulators, we should be open about when our remedies have failed to have the intended effect, as well as celebrating effective interventions.

Areas of future focus

The completion of this programme does not signal that the question of consumer-facing remedies has been ‘solved’. Markets, supplier behaviour and technology are constantly changing so, as regulators, we should continually challenge ourselves to raise standards. However, the programme has highlighted a number of important lessons, and emphasised the importance of continuing to conduct evaluations and collaborate with other agencies to ensure that we all continue to learn and improve from past experiences.

In particular, there are two areas which have emerged during the programme which represent the greatest opportunity for further work, and on which we are intending to particularly focus on in the future. These are (i) consumer diversity and vulnerability, and (ii) the opportunities and challenges presented by the digital economy. Each of these is described in more detail below:

Consumer diversity and vulnerability

The underlying concerns in a market, and the interventions designed to address these concerns do not necessarily affect all consumers equally. Particularly where some degree of price discrimination is possible, suppliers may seek to benefit from characteristics of particular consumers or groups of consumers. This is always a concern to regulators but is particularly acute where it is the most vulnerable who are bearing the greatest costs.

There are a number of ongoing programmes of work looking at the risks associated with vulnerability of consumers in different markets, and we consider that specific additional work on considering the effects of potential remedies would be valuable. During this project, we shared current thinking and insights about potential approaches, but there is scope for expanding this understanding further to ensure that the most needy in society are adequately supported and protected.⁴³

Initial approaches identified include:

- **Targeted interventions for specific consumer groups** who might be identified through deeper data analysis, eg heavy overdraft users;
- **Inclusive design**: if you design for more vulnerable groups, everyone can benefit, eg through the use of simpler language;
- **Outcome controls, particularly where some people are unable to exercise effective choice** so that they cannot be exploited, an early example of which was the prepayment meter price cap in the retail energy market;
- **Technology-based solutions** so that applications can be developed to support particular groups, eg applications to help control or prevent compulsive shopping.

This year the CMA has started a proactive programme of work on consumer vulnerability.⁴⁴ The objectives of this programme are to improve understanding of the challenges facing groups of customers in vulnerable circumstances who are at high risk of experiencing poor outcomes in markets, with a view to informing case selection, diagnosis of problems and the development of remedies. The programme is still ongoing, and covers a number of areas including: expert roundtables in England and the Devolved Nations; commissioned quantitative research into measurement of the 'poverty premium'⁴⁵ and qualitative research with vulnerable consumers; and a major conference on how to better support vulnerable people in getting the most possible from efficient, competitive markets.⁴⁶

Opportunities and challenges of the digital economy

The ongoing growth of the digital economy is another area of particular focus. Again, this project has not been unique as identifying this topic as one of interest (eg there is much ongoing work on the implications of algorithms in the context of consumer law),⁴⁷ but there are specific opportunities and challenges associated with the design and use of remedies in a digital world.

Initial views around the opportunities and challenges include:

- **The opportunity to redesign markets** to provide consumers with an easier way to interact with markets in the way they would prefer, eg the CMA's Open Banking remedy;
- **The opportunity to develop specific, personalised tools** to assist consumers in ways which previously would have been impossible, eg digital comparison tools;
- **The opportunity to improve testing**, as well as reducing the time and expense required, for example through online, live tests with consumers;
- **Increasing risk from price-discrimination** through improved ability to personalise aspects of the service, which could result in worse outcomes for those unable to properly exercise their effective choice;

⁴³ "[Designing remedies that work for vulnerable consumers](#)". Material from fifth workshop.

⁴⁴ As set out in the [2018/19 CMA Annual Plan](#).

⁴⁵ The notion that low-income consumers pay more for the same goods and services as better off consumers.

⁴⁶ Further information about the CMA's programme of work on vulnerable consumers can be found on its webpage - <https://www.gov.uk/government/publications/vulnerable-consumers>.

⁴⁷ [Algorithms and Collusion: Competition Policy in the Digital Age](#), OECD (2017).

- **Increasing risk that those without access to the internet**, or who are disinclined to use it, will not benefit from certain types of intervention. Regulators need to consider this when selecting and designing their interventions; and
- **Increasing risk of speed of change within markets**, as the digital economy is relatively capital-light. Both regulators and their interventions will need to be more flexible to cope with these changes.