Tackling the loyalty penalty: response to a super-complaint made by Citizens Advice on 28 September 2018

Annexes and Glossary

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Annex A: List of stakeholder submissions

1. In the course of investigating the super-complaint, the CMA invited views form stakeholders and the general public through an invitation to comment published on its website.

2. The invitation to comment requested responses to the following questions:

    - What are your views on the existence, impact and root causes of a 'loyalty penalty' for consumers across markets; including the five identified by Citizens Advice (mobile, broadband, savings accounts, home insurance and mortgages) and any others?

    - Are there circumstances in which you think a 'loyalty penalty' is not problematic, and if so why?

    - What specific additional challenges to vulnerable consumers experience and should there be additional protections?

    - What measures to table any 'loyalty penalty' should be considered, including those suggested by Citizens Advice and any others? Please explain how these measures would effectively address the problem.

3. The following stakeholders provided submissions to our invitation to comment and to the CMA's investigation, in addition to submissions from members of the public.

Association of British Insurers
AgeUK
Atom Bank
Bangor University Business School
Barclays
Behavioural Insights Team
British Insurance Brokers' Association
BGL Group (Comparethemarket.com and Budget Insurance Dial Direct)
Building Societies Association
BT (including EE and Plusnet brands)
CCWater
Centre for Competition Policy
Communications Consumer Panel
Consumer Council Northern Ireland
Düsseldorf Institute for Competition Economics (DICE), Heinrich-Heine University of Düsseldorf
Ecology Building Society
FairbyDesign
Financial Ombudsman Service
Financial Services Consumer Panel

HSBC
ISPA
Just Group
Lloyds Bank
LV=Liverpool Victoria
Money Advice Service
Money Saving Expert
Neos
Nesta
Ismybillfair
Ombudsman Services
Post Office
Sky UK Ltd
Telefonica UK
Three
Trussle.com
UK Finance
University of Warwick, Warwick Business School
USwitch
Virgin Media
Vodafone
Which?

Annex B: Assessing the loyalty penalty in the five markets

Introduction

1. Chapter 2 explained some key evidential questions that are relevant when considering how problematic the loyalty penalty is. These are recapped in Table B1. We have not sought to conduct a complete assessment of these issues in the five markets. In this annex we provide examples from the markets of the types of evidence that are relevant in each category.

2. This annex is structured as follows:

   (a) how the loyalty penalty arises;
   (b) does the loyalty penalty involve action that confuses or misleads people?
   (c) does the loyalty penalty raise average prices?
   (d) does the loyalty penalty lead to harmful distributional effects; and
   (e) is the product/service essential or does it account for a large proportion of expenditure?

Table B1: Key questions when considering how problematic the loyalty penalty is and when to act

Evidential question	Greater desire to act when
Does the loyalty penalty involve confusing or misleading people?	
Does the loyalty penalty pricing itself confuse or mislead people?	People lack awareness or understanding of the pricing practice which leads to poor decision making or undermines their trust or engagement in the market.
Does the loyalty penalty arise because of action by businesses to confuse or mislead, or otherwise make switching or negotiating more difficult?	Action by businesses makes it more likely that customers struggle to assess and act on the loyalty penalty
Does the loyalty penalty raise average prices?	
Does it facilitate the targeting of low prices at rivals' customers or at consumers who might otherwise not buy?	The loyalty penalty is focussed on charging very high prices to the most inactive customers rather than charging low prices to new customers.
Is competition in the market weak, and do people find it hard to choose the right deal?	Upfront competition is weaker, meaning that profits from longstanding customers are less likely to be competed away through low upfront prices.
Does the loyalty penalty lead to harmful distributional effects?	
Who is harmed?	The people paying higher prices are vulnerable in terms of the impact of higher prices or are less able to avoid the loyalty penalty.
How much are these individuals harmed?	The people who pay the high price are harmed a large amount.
How many people are harmed?	A significant group of customers is harmed.
Is the product/service essential or does it account for a large proportion of expenditure?	
Is it essential?	The product or service is considered essential.
Does the good or service constitute a large proportion of consumers' expenditure?	It comprises a large proportion of people's expenditure.

How the loyalty penalty arises in the five markets

3. As explained in detail in chapter 4, there is evidence in each of the five markets that some longstanding consumers are paying more than they would if they negotiated or switched. As set out in chapter 2, this can occur because some consumers are less likely to switch or negotiate, and because suppliers choose to use pricing practices that involve charging those consumers more.

4. Table B2 presents some evidence on the proportion of customers in each market that are less and more active. The five markets vary in terms of how active consumers are, and as a result in terms of the proportion of consumers that are potentially susceptible to paying relatively high prices. Home insurance appears to have the lowest proportion of active consumers and mortgages the largest.

Table B2: proportions of active and less active consumers in the five markets

	New and switching customers	Customers with long tenure
Mobile~	Around 10% of mobile customers switch a year and 10% of mobile customers proactively negotiated, and obtained, a discount or adjusted their service to fit their needs in the 12 months to September 2018.	Overall, 44% of SIM-only, and 13% of handset customers are outside of contract; 10% of SIM-only and 3% of handset customers are more than two years out of contract.
Broadband~	Around 9 to 13% of dual-play customers switch each year, and 7 to 12% of triple-pay customers. In addition, 11% of dual-play and 19% of triple-play proactively negotiated, and obtained, a discount or adjusted their service to fit their needs in the 12 months to September 2018.	Overall, around 40% of customers are out of contract. Around 14% of consumers are more than two years out of contract.
Cash savings#	Only 15% of easy access accounts and 23% of easy access Cash ISAs were switched at least once in the last three years	As of end of December 2013, 33% of balances in easy access products were in accounts more than five years old, while 54% of balances were in accounts more than two years old.
Home insurance	Annual switching levels appear stable at around 20%.†	80% have tenures of more than a year; 31% of consumers have renewed with their insurer on five or more occasions‡
Mortgages§	Over three-quarters of consumers switch to a new deal within six months of moving onto a reversion rate.	Around a quarter of borrowers are currently on a reversion rate (eg a lender's standard variable rate) after the end of an introductory deal. 69% of consumers on a reversion rate in 2016 had been on it for at least five years.¶ The FCA estimates that roughly 10% of regulated residential mortgage consumers (approximately 800,000 people) are inactive (ie appear able to switch, would benefit from doing so, and may be experiencing harm.) A further 30,000 are unable to switch and would benefit from doing so ('mortgage prisoners').

Sources:
† GfK, Financial Research Survey, *Home insurance market report*, 2018.
‡ *FCA, Pricing practices in the retail general insurance sector: household insurance,* 2018, Figure 1.
§ FCA, *Mortgage market study interim report,* 2018, page 23.
¶ Based on looking at the back-book of a sample of 25 firms (representing 85% of the regulated residential mortgage market).
# FCA, *Cash savings market study,* 2015, pages A2-35 to A2-37.
~ Ofcom, *Switching Tracker 2018,* 2018 and Ofcom, *Consultation on end-of-contract and out of contract notifications,* 2018, page 32, Figure 8.

5. Here we summarise some of the reasons behind the lack of switching among those consumers that do not switch in the five markets.

- The FCA's findings for **home insurance** suggest customers often do not switch or negotiate at renewal because they do not anticipate how much they could save or believe the difficulties of switching are prohibitive. Customers also underestimate the benefits to shopping around and overestimate the time it takes to switch.[1]

- For easy access **cash savings**, the FCA found the main reason why consumers considered but did not switch is being put off by the low potential benefits from switching; some also mentioned potential hassle and worrying about something going wrong.[2]

- For **mortgages**, some 'mortgage prisoners' are unable to switch providers because of changes in eligibility criteria since they purchased their mortgage. Among those that can switch but do not, the FCA found that consumers may perceive the time and hassle of switching as a price not worth paying or perceive that they are unable to switch (when they are in fact able to switch to a new lender, or with their current lender and have not received, noticed, or acted on any prompts from their lender or intermediary).[3]

- While Ofcom's research suggests that the main reasons for customers considering but not switching in **broadband, landline or pay TV** are because they negotiated/accepted a new deal with their current provider or that they considered their own provider was still the best/cheapest. Among other reasons, the findings suggest that a small proportion of customers had concerns about and/or had experienced difficulties with the search and switching process.[4]

- In **mobile**, Ofcom research suggests the main reasons for not switching are that customers prefer to stay with a trusted provider or consider their current provider to be the best/cheapest.[5] Qualitative research among less engaged groups suggests engagement is deterred by a lack of knowledge, understanding and confidence, lack of trust in alternative providers, and lack of perceived price transparency and difficulty comparing products and offers due to the perceived complexity of deals and lack of comparability.[6] Other findings (among switchers) suggests some customers experience difficulties such as difficulty cancelling, or obtaining information (eg a Porting Authorisation Code).[7] Ofcom has introduced a new mobile switching process to address these difficulties.[8]

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[1] FCA, *Increasing transparency and engagement at renewal in general insurance markets,* 2015.
[2] FCA, *Cash savings market study,* 2015.
[3] FCA, *Mortgages market study: interim report,* 2018.
[4] Ofcom, *Triple-play switching online research*, 2016, slides 78-81 and slides 98-100. Ofcom considered and rejected further action on switching in broadband on the grounds that the costs of doing so were disproportionate.
[5] Ofcom, *Mobile switching research,* 2016, slides 87-92 and slides 112-114. These were the top two reasons given both by those that had considered switching and had not done so, and those that had not considered switching.
[6] Ofcom, *Consumer engagement with communication services,* 2017.
[7] *Ofcom, Mobile switching research, 2016,* slides 87-92 and slides 112-114. Based on respondents who had actively considered switching and decided not to.
[8] This process will come into effect from July 2019. See Annex C for further details.

6. Table B3 summarises the pricing mechanisms that give rise to a loyalty penalty in each of the five markets. It shows that price walking is more important in insurance and savings, price jumps are important in mortgages and broadband (and in mobile for those with combined handset and airtime deals), and that legacy pricing may also play a role in broadband and insurance.

Table B3: pricing practices that give rise to a loyalty penalty in the five markets

	Introductory or initial prices followed by one-off price jumps	Price walking	Legacy pricing
Mobile	Sometimes§ (in addition, in the case of handset deals, customers sometimes continue to pay the same rate despite their handset value having, in effect, been paid off).#	No¶	Yes, but new tariffs are not always better than legacy deals eg where customers are benefiting from features or allowances which are no longer available in the market.★
Broadband	Yes - customers pay a more expensive rate when their initial introductory/discounted prices expire at the end of the minimum term.~	No¶	Yes† - out of contract customers spend more on average per month than in contract customers.‡
Cash savings	Sometimes - bonus rate products have a relatively high initial interest rate, which after a pre-defined period (the bonus period), is followed by a lower interest rate.	Yes – savings providers, on average, pay lower interest rates on accounts held for a long time than on accounts opened more recently.	No - many customers are on legacy products – these tend to offer worse value but this is as a result of the expiry of bonus rates and price walking.
Home insurance	Prices are personalised based on risk, meaning that there is no clear 'default rate' onto which customers are moved at the end of the initial contracts.	Yes - people who stay with their home insurance provider for a long time pay significantly more than newer customers.	Potentially - there is evidence that some customers are more acutely affected by loyalty penalty pricing because they purchased a legacy product which has been replaced by a newer product.♦
Mortgages	Yes - currently, most mortgage products sold in the UK comprise a short term introductory deal (often at a fixed interest rate) after which the rate changes to another (reversion) rate, often a Standard Variable Rate (SVR) or a rate linked to a benchmark rate. Moving to a reversion rate often involves an increase in interest rate and mortgage payments.*	No – customers of a given lender out of their short term introductory deal receive the same standard variable rate.	No – legacy customers on standard variable rates do exist, however, this is a result of the expiry of short term introductory deals.

Source: FCA, *Pricing practices in the retail general insurance sector: household insurance,* 2018, FCA, *Cash savings market study,* 2015, FCA, *Mortgages market study interim report,* 2018, Ofcom, *Pricing trends report,* 2018, Ofcom, *Consultation on end-of-contract and out of contract notifications,* 2018.

* Although we note that part of this price jump may reflect cost differences between the in contract and out of contract group.

~ Among in contract customers, 75% of dual-play and 57% of handset customers face an automatic price increase at the end of the minimum contract period. Ofcom, *Consultation on end-of-contract and out of contract notifications,* 2018, page 20.

† For example, Ofcom reports that the gap has narrowed between the price of superfast broadband and the price of standard broadband and many people could upgrade at no extra cost. Ofcom, *Pricing trends report,* 2018, *page 2 and 31.*

‡ The data is on the average spend of customers who take broadband bundled with a landline service (dual-play) or with a landline and pay TV service (triple-play). Ofcom noted that this data should be interpreted carefully because of the potential distinction between the 'average spend' and the 'average price', in particular the average spend for a service package could be higher in part if the out of contract customers are generally buying more services within that package compared with in contract customers. Ofcom, *Consultation on end-of-contract and out of contract notifications,* 2018, page 29.

§ Among in contract customers, 11% of SIM-only and 3% of handset customers are on deals with automatic price increases at the end of the minimum contract period. Ofcom, *Consultation on end-of-contract and out of contract notifications,* 2018, page 20.

Mobile customers whose contract includes a mobile handset may be spending more than necessary by continuing to pay the same price after the end of their minimum term, where this price reflects the cost of their handset. Ofcom is currently collecting

further information about customers on mobile handset deals and intends to investigate the length of time that customers remain out of contract and the extent of any overpayment. Ofcom, *Pricing trends report,* 2018.
¶ We understand that providers do tend to increase prices for all customers at least once a year and normally link it to inflation measure; however this does not tend to introduce price differences across customers in line with the loyalty penalty.
★ Ofcom reports that mobile providers are offering a greater number of packages with large, or unlimited data packages. Ofcom, *Pricing trends report,* 2018, *pp13-14 and chapter 6.*
♦ FCA, *Pricing practices in the retail general insurance sector: household insurance,* 2018, paragraph 4.9.[9]

Does the loyalty penalty involve confusing or misleading people?

7. As set out in chapter 2, we will be more concerned about the loyalty penalty where it results from behaviour by businesses that misleads or confuses customers or takes advantage of the way that they make decisions. Chapters 6 and 7 consider in detail how we can help consumers to be more engaged and stop harmful business practices. Chapter 2 also raises concerns about where loyalty penalty pricing practices are confusing or undermine trust in markets.

8. Table B4 presents some relevant evidence on customer perceptions of the loyalty penalty. As set out in chapter 4, the penalty exists in some form (and to varying extents) in each of the five markets. Table B4 shows that while many consumers are aware of the loyalty penalty, large proportions do not realise that consumers who stay with their provider without negotiating may pay more.

9. Citizens Advice also reported that the vast majority of people think that the loyalty penalty is unfair. In its polling, 89% of respondents think providers of essential services should charge loyal customers the same or less than new customers. Furthermore 90% of respondents agree that essential service providers should inform their existing customers when they are eligible for a better deal than the one they currently have. This is supported by related evidence from Ofcom for the mobile market.[10]

[9] An issue was that many businesses had legacy home insurance products on legacy systems. They found it challenging (or impossible) to interface these with newer systems, or to compare the pricing of these products to that of their newer products. This meant that in many cases consumers who were renewing older legacy products supported on old systems were not benefitting from the same level of pricing governance and scrutiny as consumers purchasing new products. The newer products almost always had more dynamic and competitive pricing models and were subject to a much greater level of management oversight and review.
[10] When discussing end of contract notifications for handset customers, research participants said that finding out months down the line that they had been paying over the odds for their mobile aroused much anger and that this tended to be aimed at the provider, who it was felt should have informed them of this. Ofcom, *End of contract notifications- attitudes to and understanding of alternative content options,* 2018, slide 35.

Table B4: Perceptions of the loyalty penalty

Market	Evidence on perceptions of the loyalty penalty
Mobile	53% think providers charge loyal customers more than new customers.† 22% of in contract customers said they thought that their price will go up when their contract comes to an end and 43% said they thought the price would stay the same.‡ Among out of contract customers who are not intending to look for a new deal, 29% trust their provider to ensure they are on the best deal.‡
Broadband	64% think providers charge loyal customers more than new customers.† 53% of dual-play customers who are in contract said they thought that their price will go up when their contract comes to an end.‡
Cash savings	41% think providers offer loyal customers a worse savings rate.†
Home Insurance	60% think providers charge loyal customers more than new customers.†
Mortgages	48% think providers charge loyal customers more than new customers.†

† Citizens Advice, *Excessive prices for disengaged consumers: a super-complaint to the Competition and Markets Authority*, 2018.
‡ Ofcom, *Consumer engagement research,* 2018, slide 20 (Q13) slide 26 (Q14) and slide 29 (Q24).

Does the loyalty penalty raise average prices?

10. As set out in chapter 2, the net effect of the loyalty penalty on average prices (and on total consumer welfare and overall efficiency) depends on the effect it has on competition. If allowing businesses to target lower prices at customers of other businesses leads to a strong enough response from rivals cutting their own prices, this can put downward pressure on prices for all customers, so that average prices fall, even if prices rise for some customers.

11. Whether this is the case depends on a wide range of factors, but the most important of these is whether there is a complete 'waterbed effect' whereby all the profit that businesses make from longstanding consumers is competed away through low prices aimed at attracting customers in the first place.

12. The extent of the waterbed effect largely depends on how fierce competition is for those consumers that do switch or negotiate. Table B5 provides examples of the kind of evidence that is useful for assessing this point from supply and demand side. It shows that some of the five markets are more concentrated than others, with insurance being the least concentrated. In addition, there is also evidence that even where customers do search and switch, there are barriers to them doing so effectively.

Table B5: competition – key indicators

	Supply side – concentration of market shares	Demand side - consumers' ability to choose the right deal
Home insurance	The five largest providers hold a combined market share of 45%.† General insurance markets are typically characterised by many suppliers and relatively free entry. ‡	The current FCA market study into general insurance pricing practices will deepen the FCA's understanding of consumer outcomes in this area.
Mortgages§	There were around 100 active lenders in 2016. The six largest lenders account for around three-quarters of the outstanding balances.	FCA research found that: • Around half of customers use an intermediary to help them decide, and most agree they got a better deal than they would have got on their own • However, there are limitations to the effectiveness of the tools available to help consumers choose a mortgage. This makes it difficult for a significant minority of customers to find the cheapest suitable deal – the FCA estimates that around 30% of consumers (in 2015-2016) could have found a cheaper mortgage with the same key features (eg the duration of a fixed introductory rate) as the product they chose. On average, these consumers paid around £550 per year more over the introductory period compared to the cheaper product. The pattern is similar whether customers used an intermediary or went directly to a lender.
Savings¶	The six largest providers hold a 68% combined market share.	The FCA's 2015 cash savings market study raised the following concerns: • a lack of information being given to consumers about alternative products combined with a proliferation of products potentially impedes competition by creating confusion among consumers; • the link to personal current accounts means that large, well established personal current account providers are able to attract the majority of easy access balances, despite offering lower rates.
Broadband	The four largest providers have a 90% combined retail share (with higher concentration at the wholesale level) #	Ofcom research found that: • around 75% of in contract customers found it very or fairly easy to work out which deal best suited their needs;~ • around 80% are very or fairly confident at understanding the language and terminology used by providers, and at comparing costs across deals.★ But Ofcom has raised concerns that: • consumers do not always know when they should be reviewing their existing deal and shopping around for a new one; • some consumers may have difficulties understanding their needs/usage requirements or may struggle to navigate the range and complexity of prices; and • there may be some practices which impede consumers from leaving, such as having different contract end dates for different services in their communications bundle. ♦
Mobile	The four mobile network operators have a combined retail market share of around 86% (with higher concentration at the wholesale level). #	Ofcom research found that: • around 80% of in contract customers found it very or fairly easy to work out which deal best suited their needs;~ • around 80% are very or fairly confident at understanding the language and terminology used by providers, and at comparing costs across deals.★ But Ofcom has raised similar concerns for mobile as set out for broadband above. In addition, its research found that 25% of customers on a mobile handset contract were unaware of the possibility of moving to a SIM-only deal,▲ and a significant number of consumers on mobile handset contracts allow the contract to roll over beyond the minimum term when the handset may have, in effect, already been paid off.♦

† Based on *IBISWorld, Home insurance industry report, 2017.* The providers are AXA, Aviva, Direct Line, Lloyds and Royal and Sun Alliance. Refers to domestic property insurers only.
‡ FCA, *Increasing transparency and engagement at renewal in general insurance markets,* 2015.
§ FCA, *Mortgage market study*, 2018, paragraphs 1.19, 3.15, 4.7, 4.32.
¶ FCA, *Cash Savings market study report,* 2015.
# Ofcom, *CMR 2018 interactive report data: telecoms,* 2018.
~ Ofcom, *Consumer Engagement Quantitative Research,* 2018, Q44c; slide 29.
★ Ofcom, *Switching tracker 2018,* 2018.
♦ Ofcom, *Helping consumers to engage in communications markets: Call for inputs,* 2017.
▲ Ofcom, *Consumer engagement quantitative research 2018,* 2018, slide 29.

Does the loyalty penalty lead to harmful distributional effects?

13. An assessment of the distributional effects of the loyalty penalty requires an understanding of who gains and loses, how much, and an assessment of whether those that lose include (or disproportionately comprise) vulnerable consumers or those that are unaware of or unable to avoid the loyalty penalty.

14. An understanding of distributional effects involves looking at the composition of customers in the market. Table B2 showed that among the five markets, the proportion of longstanding customers is particularly high in insurance and particularly low in mortgages.

15. Table B6 presents some evidence on the types of consumers that may be more likely to pay the loyalty penalty, and those that may benefit from lower prices upfront. The existing evidence suggests that in most cases the customers that have long tenure include groups that are likely to be vulnerable. However, in several cases, customers with shorter tenure also include groups that may be vulnerable. We note that the FCA and Ofcom plan to collect further evidence on which types of consumers are paying high prices and why, as part of their ongoing work.

16. Chapter 4 of our response sets out existing estimates on how large the loyalty penalty is and how many people are likely to be affected in the five markets.

Table B6: Who are the possible winners and losers from the loyalty penalty?

	Potential losers	Potential winners
Home insurance¶	• Longer tenures (and higher margins) among: over 65s; those who pay monthly; those who auto-renew; those with previous claims and with buildings only insurance. • Of UK adults who have held their home (contents and building) insurance with the same provider for 10+ years, 23% are potentially vulnerable, vs 10% that are 'not potentially vulnerable' consumers.	• Shorter tenures (and lower margins) among private renters with children, those with low credit scores, unemployed renters and those with contents only insurance.
Cash savings†	• Vulnerable consumers are more likely to have held their savings accounts for a long time (10+ years).	• Consumers tend to be more active, the higher their balances.
Mortgages‡	• Those that cannot switch (because of changes in lending eligibility criteria) are more likely to be in arrears. • The demographics of those that can switch but have not done so differ only slightly from the active group.	• Residential mortgage holders are less likely to show characteristics of potential vulnerability. 37% demonstrate these characteristics compared with 50% of all UK adults.
Broadband§	• 65+ less likely to have ever changed provider (55% vs 67% of under 65s).	• Those with the greatest level of financial vulnerability are least likely to have been with their provider for 10 years or more. • 16-34s also more likely to have shortest tenures (43% up to two years compared with 29% overall).
Mobile§	• 65+ more likely to have tenure >10 years (43% vs 21% of under 65), and less likely to have ever changed provider (50% vs 68% of under 65s); 55+ more likely to not have considered or discussed deals elsewhere (86% vs 75% average). • DE social grade less likely to have received a discount in last 12 months (4% vs 9% average). C2DEs more likely than ABC1s not to have considered alternatives elsewhere (78% vs 73%) (but also slightly more likely to have short tenure).	• 16-34s more likely to have been with provider <2 years (36% vs 25% average). • C2DEs slightly more likely than ABC1s to have been with their provider for <two years (28% vs 24%).

¶ FCA, *Pricing practices in the retail general insurance sector: household insurance*, 31 October 2018.
† FCA, *Financial Lives Survey*, 2018.
‡ *FCA, Mortgage market study Interim report*, 2018, pages 20, 48, 53.
§ Ofcom, *Switching tracker 2018*, October 2018.

Is the product/service essential or does it account for a large proportion of expenditure?

17. The five markets highlighted by Citizens Advice are clearly very important to consumers, and some account for a significant proportion of people's expenditure – for example, more than 20% of family spending is on housing including mortgages,[11], around 3% on communications including mobile and broadband, and 1% on home insurance.[12]

18. It is therefore important to investigate and tackle the loyalty penalty in these markets. The FCA and Ofcom have ongoing work in each market aimed at doing so.

[11] ONS, *Housing expenditure by age of household reference person*, UK: Table 2.4, 2017.
[12] *ONS,* Family spending in the UK: financial year ending 2017*, 2017*.

Annex C: Mobile and broadband markets

Introduction

1. In its super-complaint, Citizens Advice said there was evidence of a loyalty penalty in the following communications markets:

   - in the **mobile market** for customers in handset inclusive contracts, as 'providers often continue to charge people who do not shop around the same amount even after they have paid off the full cost of the handset'. It estimated that 34% of UK households were likely to be affected. Its research also found that customers over 65 were more likely to be paying the penalty as they tend to stay longer on their mobile contracts compared to other groups; and

   - in the **fixed broadband market** where customers default onto a more expensive tariff once their original contract comes to an end. It estimated that 43% of UK households (11.3 million in total) were likely to be affected. Its research also found that customers over 65 were more likely to be paying the loyalty penalty as they tended to stay longer on their existing contracts compared to other groups.[13]

2. This annex is structured as follows:

   (a) relevant information about the UK fixed broadband and mobile markets;
   (b) overview of each of the markets, the switching process and the loyalty penalty in these markets;
   (c) Ofcom's approach to vulnerable consumers, including specific rules in place to protect those customers; and
   (d) past interventions to protect consumers and to help them to engage in the markets, and Ofcom's planned future work.

[13] 59% of those aged 65 and over have been in their broadband contract longer than two years, compared to 38% of under 65 year olds, as analysed from a nationally weighted ComRes survey of 3,030 British adults.

Mobile

Market overview

Market shares

3. Ofcom's latest published data on market shares for mobile operators is summarised in Table C1.[14]

Table C1: Retail mobile subscription market share in Q4 2015

Mobile provider	Market share (%)
Vodafone (inc. Talkmobile)	19%
O2 (inc. giffgaff)	27%
EE (inc. Orange and T-Mobile)	29%
Three	11%
Others	15%

Source: Ofcom/operators.
Note: Excludes M2M subscriptions.

Take up and type of mobile contracts

4. According to Ofcom, there are over 79 million mobile subscriptions in the UK.[15]

5. There are primarily two different types of mobile contracts available:

- **Pay as you go (PAYG):** where a customer pays for their airtime (calls, texts, data) by topping up their mobile credit in advance. The customer is not tied into a minimum term. PAYG services may be purchased with a handset, or on a SIM-only basis; and

- **Contract (or pay monthly):** where a customer enters into a contract either with a fixed commitment period or on a monthly rolling basis and pays a monthly subscription fee. These types of contracts can either be:

    - **with handset** where the monthly fee may include a payment towards the handset, as well as the airtime. Consumers could either be on a bundled contract or have separate contracts for the handset and airtime – see paragraph 9 onwards; or

    - **SIM-only** where a customer receives a SIM card from their provider with a monthly airtime allowance which they use in a separately

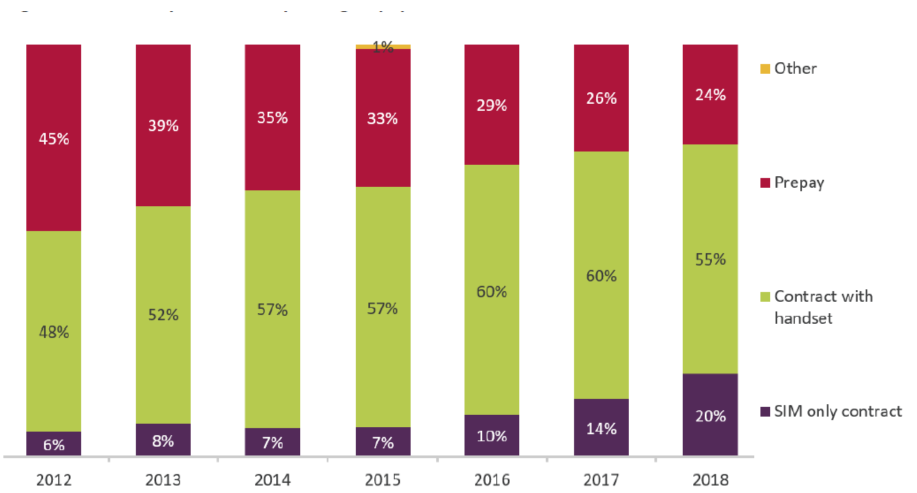
[14] Ofcom does not publish data on mobile market share on a regular basis. The latest figures were used in 2016 for a market review and were published in Ofcom, *Communications market report 2016*, August 2016, page 154.
[15] These are active mobile subscribers who use mobile services on mobile handsets (for example excluding data only subscriptions). Ofcom, *CMR 2018 interactive report data: telecoms*, August 2018.

purchased handset or one which they already own, sometimes acquired with a previous pay monthly mobile service.

6. The majority of mobile customers (76%) take pay monthly contracts. Ofcom research shows that older and less affluent consumers are more likely to be PAYG mobile users (for example only 58% of consumers in the DE socio-economic group and 34% of over 75s take pay monthly contracts).[16]

7. Ofcom has reported an increase in customers on SIM-only contracts with 20% of consumers on such contracts in 2018, up from 14% in 2017.

Figure C1: Take up of mobile packages (%), 2010 to 2018[17]



Source: Ofcom Technology Tracker, data as at W1 2012-2014; H1 2015-2018
Q. Which of these best describes the mobile package you personally use most often?
Base: Adults 16+ who personally use a mobile phone (W1 2012, 2073) (W1 2013, 2070) (W1 2014, 2366) (H1 2015, 2475) (H1 2016, 2494) (H1 2017, 2518) (H1 2018, 2528)

Pay monthly mobile contracts

8. Ofcom's 2018 Pricing Trends report noted that acquiring a handset with a pay monthly contract is a popular way for consumers to get a new handset; approximately two-thirds of pay monthly customers are on one of these tariffs, representing more than 20 million customers.[18]

9. Depending on the provider, consumers can either receive a mobile handset as part of a contract that also includes airtime (combined contract), or they can have separate contracts for the handset and airtime elements (split contract).

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[16] Ofcom, *Pricing trends report*, May 2018, Figure 10. PAYG is also known as 'prepay' or 'prepaid' services.
[17] Ofcom, *Pricing trends report*, May 2018, Figure 11.
[18] Ofcom, *Pricing trends report*, May 2018, page 22.

10. The key features of each are as follows:

- **mobile handset as part of a contract that also includes airtime:** the customer enters into one contract which combines the handset and airtime elements. The customer pays the combined price for the fixed commitment period (not longer than 24 months).[19] At the end of the fixed commitment period, the customer retains ownership of the handset and can either let their contract rollover on a monthly basis paying the same amount, move to another package with the same provider or switch to another provider; and

- **separate contracts for the handset and airtime elements:** the customer enters into one contract for the handset and one contract for the airtime. The customer's monthly bill displays two separate costs for the handset and airtime elements. Once the handset element has been paid off (and that contract ends),[20] the bill will automatically reduce to the cost of the airtime plan only. The handset agreement is a sale of goods contract that falls under the Consumer Credit Act (regulated by the FCA).

11. Of the main mobile providers:

- EE, Three, Vodafone, O2[21] and BT Mobile offer a single contract which combines the handset and airtime elements – these are sometimes referred to as 'combined', 'bundled' or 'handset inclusive' contracts; and

- O2,[22] giffgaff, Tesco Mobile, Virgin Mobile and Sky have separate contracts for the handset and airtime elements – these arrangements are commonly referred to as split contracts. Some of these contracts require consumers seeking to switch their airtime contract to pay off any remaining charges on the handset loan.

Customer tenure

12. In 2017, mobile connections with a fixed commitment period of 24 months accounted for the highest proportion of new pay monthly mobile connections, although this proportion has fallen from 69% in 2012 to 47% in 2017. In addition, the data shows that the proportion of new mobile contracts with a fixed commitment period of 12 months or less (which are typically SIM-only

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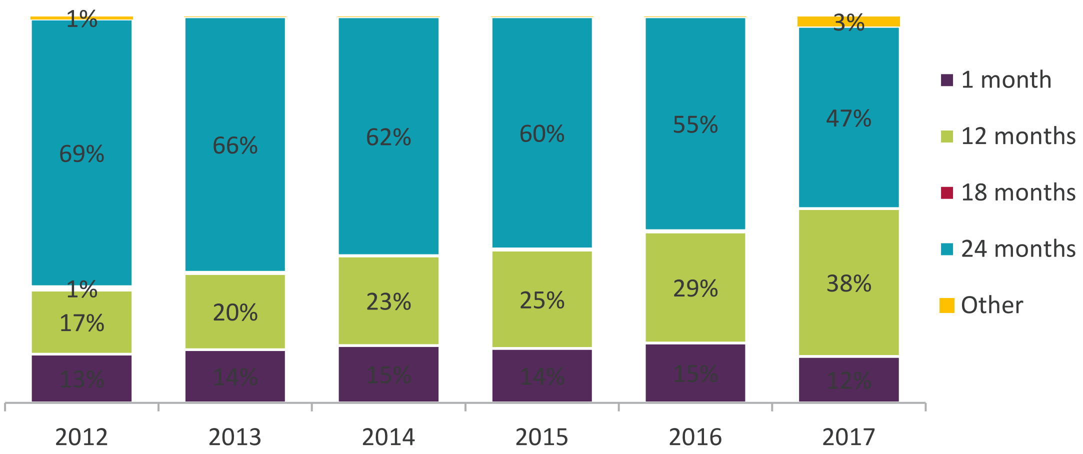
[19] Under Ofcom's general conditions (C1.4) contracts for communication services cannot be longer than two years.
[20] These contracts can be longer than two years – they are not subject to Ofcom's condition C1.4.
[21] Legacy customers or those signed up through third party retailers such as Dixons Carphone.
[22] Direct channels only, ie where the customer takes a contract with O2 directly rather than through a third party retailer such as Dixons Carphone.

mobile services) has increased and accounted for half of new mobile contract sales in 2017.

Figure C2: New pay monthly mobile connections, by contract lengths[23]



Source: Ofcom, using data provided by GfK Retail and Technology Ltd.

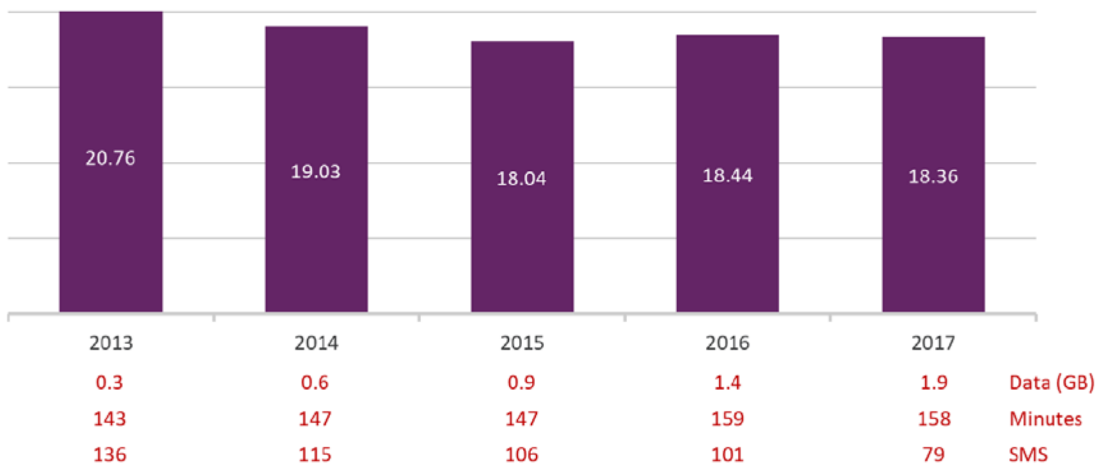
Pricing of mobile services

13. Ofcom's analysis shows that the weighted average price of a basket of mobile services (which changes from year to year to reflect shifting average usage) was £18.36 in 2017.[24] The price of the basket has been relatively flat over recent years despite rapid growth in average data use. The analysis excludes the cost of a handset; including a handset (which can cost more than £500) can skew the results.

[23] Ofcom, *CMR 2018 interactive report data: telecoms*, August 2018.

[24] Ofcom used a pricing model provided by Teligen to identify each of the largest providers' cheapest tariffs to fulfil the SMS, minutes, and data requirements in each year, and weighted these results by provider market shares.

Figure C3: Weighted average monthly prices for average use baskets (excluding handsets), 2013 to 2017 (£ per month)[25]



Source: Ofcom, using data provided by Teligen.
Notes:

- based on prices excluding handset costs.
- adjusted for CPI.

14. To better understand the prices for different types of mobile user, Ofcom has analysed mobile prices based on six baskets of mobile services that are designed to represent a wide spectrum of consumer mobile usage. Figure C4 shows the average monthly prices of the different baskets from 2014 to 2017. Ofcom reported that prices decreased by 14.2% in 2017 across all baskets, including the smaller baskets that may appeal to customers with basic or low use needs.

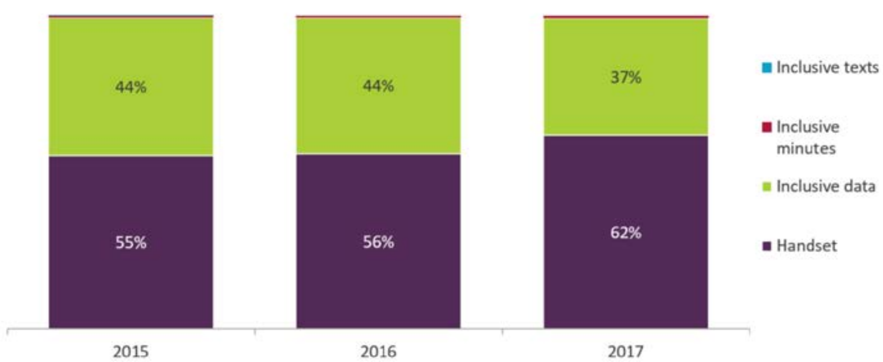
[25] Ofcom, *Pricing trends report*, May 2018, Figure 4.

Figure C4: Weighted average monthly prices of standalone mobile services, 2014 to 2017[26]

Source: Ofcom, using data provided by Teligen
Notes: Excludes handset cost; adjusted for CPI

15. Purchasing contracts with a handset can be a convenient way to obtain an expensive handset as it enables consumers to spread the cost of the device over the fixed commitment period, rather than having to pay for it upfront. Data published by Ofcom shows that between 2015 and 2017 the most important aspect in determining the price of pay monthly mobile services was the type of handset provided with the service, rather than the inclusive usage allowances.

Figure C5: Relative weight of service factors in determining the monthly price of pay monthly mobile services (%): 2016 to 2018[27]



Source: Source: Simplify Digital PCI model.
Note: Based on 24-month pay-monthly contracts; Inclusive text amounts range from 0% to 0.5%

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[26] Ofcom, *Pricing trends report*, May 2018, Figure 5.
[27] Ofcom, *Pricing trends report*, May 2018, Figure 7.

Switching

16. Consumers seeking to switch mobile provider currently must follow either the ‘PAC’ process, or the ‘cease and re-provide’ (C&R) approach:

- under the **Porting Authorisation Code (PAC) process** a consumer wishing to switch and port their number must contact their existing (losing) provider to request and obtain a PAC. The consumer ports their existing mobile number over to their new service by giving the PAC to their gaining provider;

- customers who do not want to port their number can follow the **C&R process** where they contact their losing provider to cancel their old service, including giving any required notice. The customer must separately contact their gaining provider to take out a new service.

New mobile switching process (auto-switch) from 1 July 2019

17. In December 2017, Ofcom issued a decision on reforming the process for switching mobile provider to make it quicker and easier. The new rules take effect on 1 July 2019.

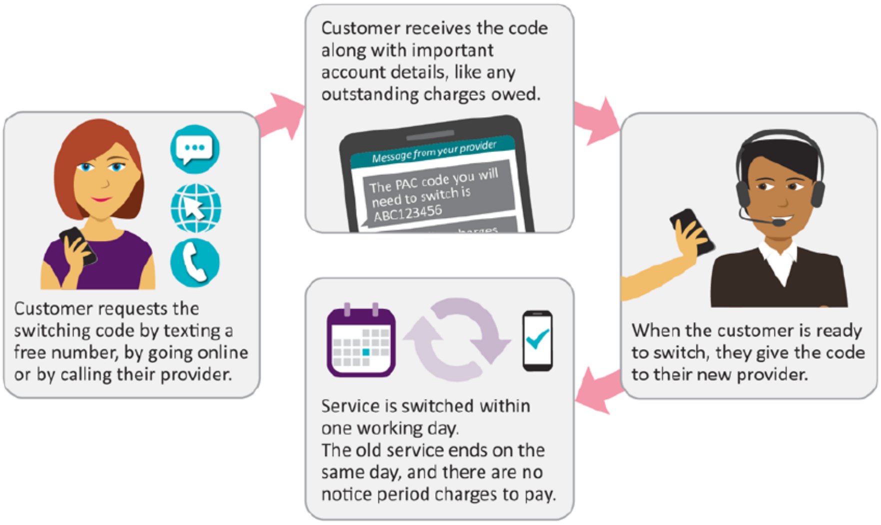
18. In summary, Ofcom decided on the following package of reforms:

- **introduction of a new and simplified way to switch (auto-switch):** consumers will be able to request and automatically receive a unique code by text, or through their online account, which they can give to their new provider to switch and port their number (if they wish to do so). This will remove the need for consumers to call their old provider;

- **banning notice period charges after the switching date:** consumers will no longer have to pay for their old and new service at the same time; and

- **providing clear information to consumers:** mobile providers will be required to provide consumers with clear information, for example on their websites, about the switching and number porting process.

Figure C6: The auto-switch process



Source: Ofcom, *Consumer switching: decision on reforming the switching of mobile communication services*, December 2017, page 46, Figure 5.

Switching levels

19. Ofcom research shows that 10% of mobile customers switched provider in the 12 months to September 2018.[28] Table C2 shows the switching rates for mobile services since 2014.

Table C2: Percentage of customers who switched their mobile service in the 12 months to September

	Sept 2018	Sept 2017	Sept 2016	Sept 2015	Sept 2014
Mobile total	10%	10% ↑	8%	10%	7%

Source: Ofcom Switching Tracker.

Loyalty penalty in mobile

20. Ofcom's consultation on end of contract and out of contract notifications, and its pricing trends report includes data which may give an indication of the existence and size of the loyalty penalty for consumers who take a mobile handset or mobile SIM-only contract.[29]

[28] Ofcom, *Switching tracker 2018*, October 2018. The arrows indicate any significant difference from the previous year at 99% confidence interval.
[29] The analysis is of provider data and the methodology used is set out in Annex 7 to Ofcom's consultation on end-of-contract and out of contract notifications.

21. The data does not allow for analysis of prices paid by consumers who are likely to be vulnerable, for example by age, socio-economic group etc. As part of Ofcom's ongoing work on mobile handsets (see paragraphs 76 to 79) it will be collecting more data to analyse whether there are any specific impacts on particular demographic groups.

22. In contrast to the analysis of dual-play and triple-play prices above, Ofcom found that the average spend for in contract mobile customers is higher than the average spend of customers who are out of contract (see Table C3).

23. It said that this is likely to be the result of a number of factors. First, only a small proportion of mobile contracts are subject to an automatic price increase at the end of the fixed commitment period. In contrast, the monthly price for some mobile customers may fall at the end of the fixed commitment period, if the charge for the handset contract is automatically removed at the end of the fixed commitment period.[30]

24. Second, the higher spend by in contract customers could in part be due to a compositional effect, as providers offer deals with larger data packages and deals with more expensive phones over time. Mobile customers who are in contract may have taken up recent contracts which are on average more expensive than older contracts (more likely to be used by customers who are out of contract).[31]

Table C3: Average spend of customers by contract status[32]

Service	Total customers	Customers out of contract	Average in contract spend (£ per month)	Average out of contract spend (£ per month)	Out of contract relative to in contract spend
Mobile SIM-only[33]	c.15.6 million	c.6.8 million	£17	£15	8% lower
Mobile handset	c.28 million	c.3.7 million	£31	£22	27% lower

Source: Ofcom analysis of provider data.

25. An example of the loyalty penalty in mobile is where customers that take a combined airtime and handset deal (and pay a price that reflects the cost of the handset) continue to pay the same price after the end of their fixed commitment period. Remaining out of contract means that these customers

[30] Particularly where there are separate contracts for the handset and airtime element of the mobile deal.
[31] This is suggested by the fact that the type of handset and inclusive data allowances are the most important factors in determining the price of pay monthly mobile services. Also, there has been an increase in both handset functionality as well as the proportion of mobile tariffs offering large or unlimited data services over time. (See Ofcom, *Pricing trends report*, May 2018, pages 13 to 15.)
[32] Ofcom, *Consultation on end-of-contract and out of contract notifications*, July 2018, page 28, Figure 6,and page 32, Figure 8.
[33] These are mobile SIM-only contracts with fixed commitment periods of greater than 30 days/month.

may be paying a significantly higher price than if they switched to a SIM-only deal.

26. Ofcom's 2018 Pricing Trends report noted consumer research which indicates that 6% of UK pay monthly mobile users with a mobile handset as part of their contract said that they continued to pay their full monthly charge at the end of the fixed commitment period. Ofcom said this suggests that approximately 1.5 million people may be paying more than necessary and that collectively, UK mobile consumers could be overpaying by approximately £330 million each year (assuming an average monthly handset charge of £18.52).[34]

27. However, Ofcom has had some indications that the number of mobile handset customers who are out of contract is greater than the 1.5 million reported above.[35] It also recognises that not all customers who go out of contract on a mobile handset deal necessarily pay higher prices than current SIM-only prices (for example some consumers remain out of contract to benefit from attractive legacy deals).

28. As noted in its September 2018 consultation on mobile handsets,[36] Ofcom is collecting further information to arrive at a more precise estimate of the number of mobile customers who may be out of contract, and continuing to pay (or in effect to pay) for their mobile handsets, the cost of which may already be paid off, and the length of time over which this may be occurring. Ofcom is also intending to understand why consumers do not switch to cheaper or new mobile contracts at the end of their contract, and the extent to which vulnerable consumers may be more adversely affected by this.

Broadband

Market overview

Market shares

29. The market share for fixed broadband connections by the largest Internet Service Providers (ISPs) in 2017 is set out in Table C4.

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[34] Taking account of the error margin of +/- 2%, we estimated that the number of consumers affected was somewhere between just over 1 million to just over 2 million. *Ofcom, Pricing trends for communications services in the UK*, May 2018, page 22.
[35] Ofcom, *Helping consumers to get better deals in communications markets: mobile handsets*, September 2018, page 10.
[36] Ofcom, *Helping consumers to get better deals in communications markets: mobile handsets*, September 2018.

Table C4: Broadband market shares[37]

ISP	% of fixed broadband connections in 2017
BT (including Plusnet and EE)	35.9%
Sky	22.7%
Virgin Media	19.7%
TalkTalk	11.6%
Others	10%

Source: Ofcom/operators.

Take up and type of fixed broadband contracts

30. According to Ofcom, 80% of UK households take a fixed broadband service.[38] Just under eight in 10 households reported purchasing at least two of their communications services as a bundle from the same provider - most commonly broadband with landline services in a 'dual-play' package (31%),[39] or with landline and pay TV in a 'triple-play' package (31%). Some customers take up 'quad-play' packages, which include landline, broadband, pay TV and mobile services (5% in Q1 2018).[40]

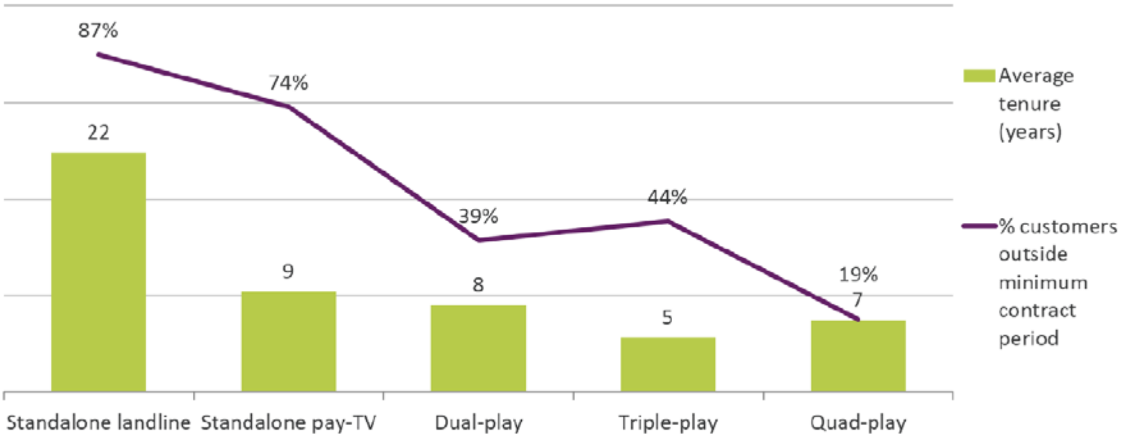
31. Under Ofcom's rules, the fixed commitment period[41] for all communications services cannot be longer than 24 months.[42] Broadband services are typically offered on contracts with a minimum term of 12, 18 or 24 months.[43] At the end of the fixed commitment period, these contracts will generally continue on a monthly rolling basis where the customer can terminate at any time, and without early termination charges, by giving notice to their provider.

Customer tenure

32. Data from Ofcom in the chart below shows that dual-, triple- and quad-play customers are less likely to be outside their fixed commitment period (39% for dual-play, 44% for triple-play, 19% for quad-play) than those buying standalone landline and TV services.

[37] Ofcom, *CMR 2018 interactive report data: telecoms*, August 2018.
[38] Ofcom, *Communications market report 2018*, August 2018, Figure 1.3, page 11.
[39] Partly because most fixed broadband services require a landline voice service to be purchased from the same provider.
[40] Ofcom, *Communications market report 2018*, August 2018, Figure 1.5, page 13.
[41] The fixed commitment period is the fixed period of time over which the communications provider and a customer have entered into an agreement for communications services and for which an early termination charge may be payable by the customer if they cancel their contract during this period.
[42] Ofcom, *General conditions of entitlement*, October 2018, general condition C1.4.
[43] Some providers also offer different minimum terms such as nine months or 30 day rolling contracts.

Figure C7: Average customer tenure and proportion of customers outside the fixed commitment period, by service[44]



Source: Ofcom/operators.
Notes:

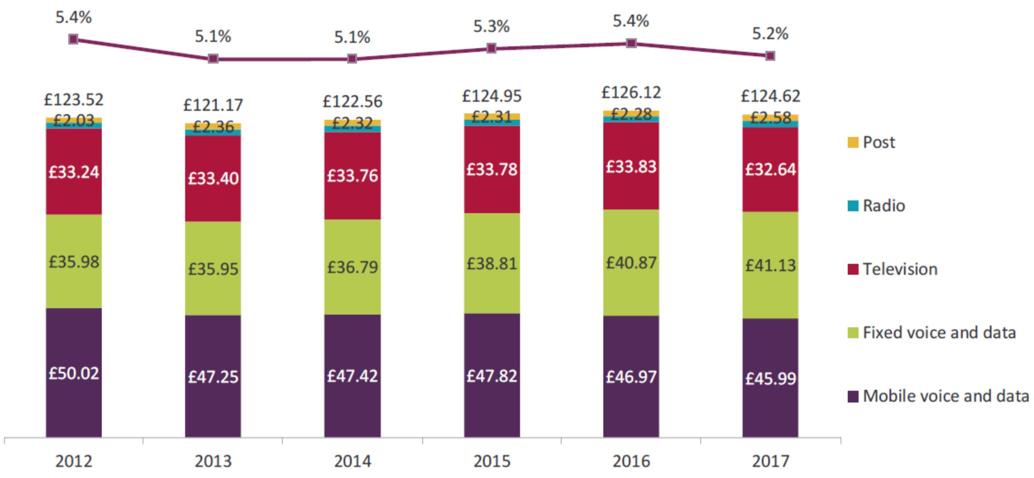
- Data as of Q3 2017.
- Weighted average tenure calculated using number of customer and average tenure from providers for different services/bundles of services.
- Figures have been rounded to the nearest whole number.

Pricing of broadband services

33. Ofcom reports that the average monthly household spend on fixed voice and data services in 2017 was £41.13. This has increased gradually in real terms over recent years, largely due to consumers migrating to superfast broadband (which tends to be more expensive than standard broadband services) and increasing household fixed broadband take up.

[44] Ofcom, *Pricing trends report*, May 2018, Figure 31.

Figure C8: Average household spend on communications services[45]



Source: Ofcom/operators/ONS.

Notes:

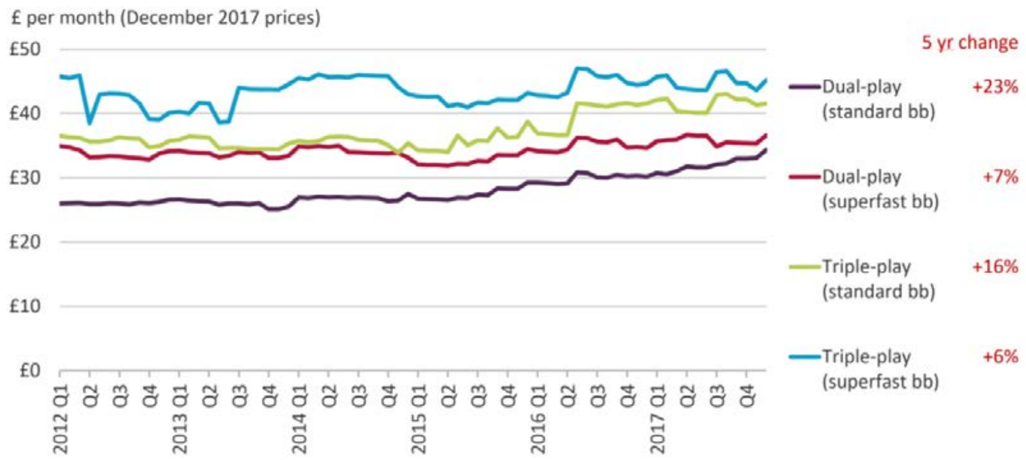
- Adjusted for CPI (2017 prices).
- Historic telecoms figures have been re-stated, so are not comparable to those published in previous reports.
- Television and Radio includes spend on licence fee.
- Television excludes spend on subscriptions, download-to-own and pay-per-view through online on-demand and streaming services.
- Post spend data provided by ONS.

34. Figure C7 shows the average monthly tariffs of residential dual-play and triple-play bundles that include standard or superfast broadband services – in particular it shows that the average monthly price premium for superfast broadband over standard broadband has declined in recent years.[46]

[45] Ofcom, *Communications market report 2018*, August 2018, Figure 1.2.

[46] Ofcom, *Pricing trends report*, May 2018, Figure 21. Superfast broadband is now available to 93% of UK premises (27.2 million). Ofcom, *Connected nations update*, October 2018.

Figure C9: Average available dual-play and triple-play monthly tariffs



Source: Ofcom / Pure Pricing UK Broadband Updates

Notes: Represents average of the cheapest available tariff of BT, Plusnet, Virgin Media, TalkTalk, Sky and EE in December each year; excludes promotional discounts and rewards/vouchers/bill credits; adjusted for CPI (December 2017)

35. Ofcom's Pricing Trends report noted that almost all dual- and triple-play bundles were offered with some type of promotional discount in Q3 2017. On average, 94% of all dual-play plans and 97% of triple-play plans offered by the UK's largest residential fixed telecoms providers had some element of discount in Q3 2017. When promotional discounts are considered, average dual-play standard broadband bundle prices fell by 18% in real terms between Q4 2015 and Q1 2018.[47]

Switching

36. There are two different processes for switching broadband services depending on whether the customer is switching within the Openreach network (for example BT, EE, Sky, TalkTalk) or between platforms (for example from a provider using the Openreach network to Virgin Media which uses a cable network).

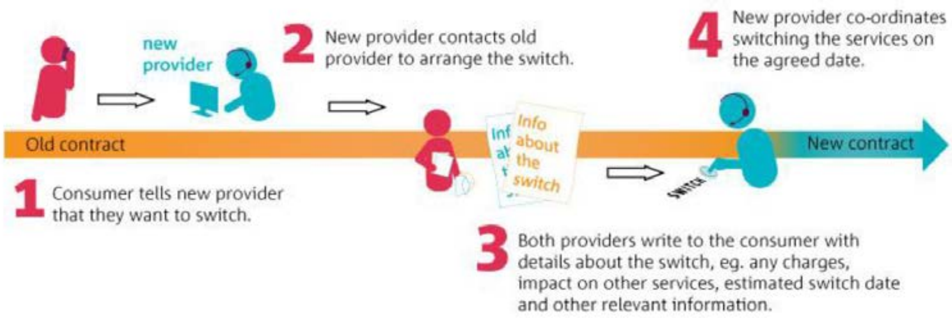
Switching broadband within the Openreach network[48]

37. If a consumer is switching within the Openreach network, the consumer contacts the new provider they want to switch to. The new provider contacts the old provider and arranges the transfer of the service(s). The consumer does not need to contact the old provider. This is a regulated gaining provider-

[47] Based on the mean of the lowest priced standard broadband dual-play bundles offered by BT, Plusnet, TalkTalk, Sky and EE/Orange. Results should be treated with caution as promotions change frequently.
[48] Or within the KCOM platform in Hull.

led switching process for landline and broadband services and is referred to by Ofcom as the 'notification of transfer' process.[49]

Figure C10: Consumer steps for switching within the Openreach network



Source: Ofcom, *Making switching easier and more reliable for consumers*, 2016, page 19, Figure 2.

38. The old and the new provider both send letters (by post or, with the consumer's agreement, electronically) informing the consumer about the switch. These letters inform consumers about the implications of switching (such as any early termination charges) so they can make an informed decision about whether to go ahead with the switch or stay with their old provider.

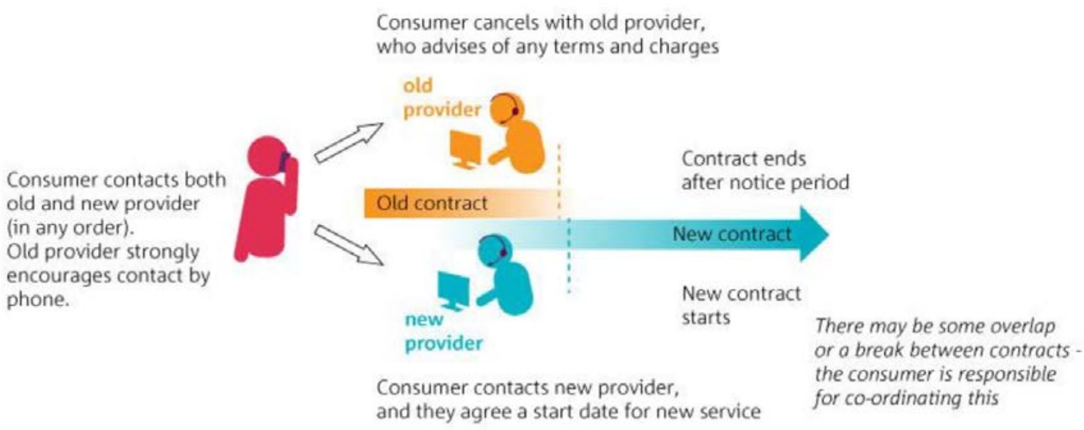
39. Ofcom rules require that switches between providers within the Openreach network take a minimum of 10 working days.[50] Providers therefore align their notice periods with this process.

Switching broadband between different platforms

40. If the consumer wishes to switch between providers that use different platforms (for example moving from a provider using the Openreach network (BT, Sky, TalkTalk) to Virgin Media's cable network, they need to contact the old provider to cancel their service(s) and contact the new provider to arrange the start of the new service(s).

[49] As required under Ofcom's rules in C7 of the General conditions of entitlement.
[50] This is so that a consumer can stop the switch if they have not agreed to it or have changed their mind.

Figure C11: Consumer steps for switching between platforms



Source: Ofcom, *Making switching easier and more reliable for consumers*, 2016, page 18, Figure 1.

41. Providers usually include a requirement for consumers to give up to 31 days' notice if they want to cancel their contract. In most cases, the consumer has to cancel the old service(s) by phone although some providers do offer email, webchat or post options.

Switching levels

42. Table C5 sets out Ofcom's research on the proportion of customers that have switched at least one service in their dual-play or triple-play bundle in the 12 months to September.[51]

Table C5: Percentage of customers who switched their service in the 12 months to September

	Sept 2018		Sept 2017		Sept 2016		Sept 2015		Sept 2014	
	Total	Excl. home move	Total	Excl. home move	Total	Excl. home move	Total	Excl. home move	Total	Excl. home move
Dual play	13%	9%	17%	14%	14%	12%	12%	11%	7%	7%
Triple play	12%	7%	12%	10%	8%	7%	12%	10%	7%	6%

Source: Ofcom, *Switching tracker 2018*, October 2018.

Loyalty penalty in the broadband market

43. Ofcom's July 2018 consultation on end of contract and out of contract notifications includes data which may give an indication of the existence and

[51] Ofcom, *Switching tracker 2018*, October 2018. The arrows indicate any significant difference from the previous year at 99% confidence interval.

size of the loyalty penalty for consumers who take broadband as part of a dual-play or triple-play bundle.[52]

44. The data shows that out of contract consumers who purchase dual-play and triple-play services on average spend more than consumers who are in contract.[53] This would suggest that consumers often incur a financial penalty for staying out of contract. The data also shows that a significant number of consumers are out of contract for dual- and triple-play services.

45. Ofcom asked providers to report on the average spend for customers who are in and out of contract. As shown in Table C6, out of contract dual-play customers spend on average 19% more than those who are in contract and out of contract triple-play customers spend on average 26% more than those who are in contract.

Table C6: Average spend of customers by contract status[54]

Service	Average in contract spend (£ per month)	Average out of contract spend (£ per month)	Out of contract relative to in contract spend
Dual-play	£35	£41	19% higher
Triple-play	£52	£65	26% higher

Source: Ofcom analysis of provider data.

46. Data collected from major providers indicates that a significant proportion of consumers on dual-play and triple-play services are outside their fixed commitment period. This is set out in Table C7.

Table C7: Number and proportions of customers in/out of contract[55]

Number of customers (in millions)	Dual-play	Triple-play
Total	c.11.5	c.10.6
Out-of-contract (any duration)	c.4.3	c.4.4
Estimate of proportion (%) of customers who are out of contract		
Any duration	37%	41%
Up to 1 month	2%	3%
1 month to 3 months	3%	4%
3 months to 6 months	4%	4%
6 months to 12 months	7%	8%
12 months to 24 months	9%	10%
More than 24 months	14%	13%

Source: Ofcom analysis of provider data.
Note: Due to rounding, the percentage of customers who are out of contract for different durations does not necessarily add up to the overall percentage of customers who are out of contract.

47. Ofcom's July 2018 consultation noted that some consumers may face an automatic price increase when they reach the end of their fixed commitment

[52] The analysis is of provider data and the methodology used is set out in Annex 7 to Ofcom's consultation on end of contract and out of contract notifications.
[53] Ofcom uses the term 'end of contract' as this is how telecoms consumers tend to talk about the end of their fixed commitment period or 'minimum term'. Where it refers to 'end of contract' or being 'in contract' or 'out of contract', this refers to customers' fixed commitment period.
[54] Ofcom, *Consultation on end-of-contract and out of contract notifications*, July 2018, page 28, Figure 6.
[55] Ofcom, *Consultation on end-of-contract and out of contract notifications*, July 2018, page 32, Figure 8.

period[56] and it set out data on the number of customers on these types of contracts.

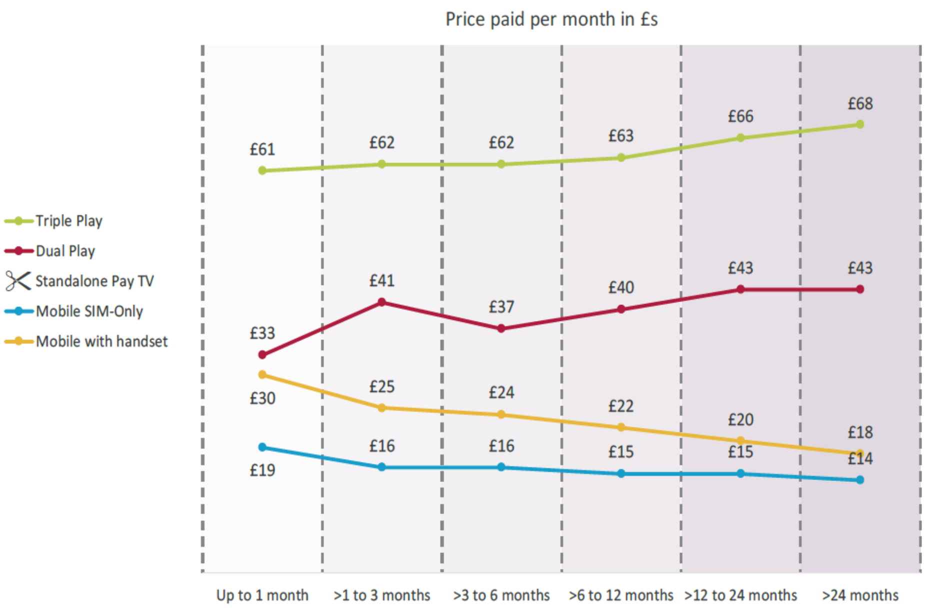
Table C8: Proportion and number of customers on deals with an automatic price increase at the end of the fixed commitment period[57]

Service	Proportion of in contract customers	Number of customers (millions)
Dual-play	75%	c.5.4
Triple-play	57%	c.3.6

Source: Ofcom analysis of provider data.

48. Ofcom also asked providers to report on the average spend of out of contract customers according to the time elapsed since the end of their fixed commitment period. The data suggests that on average consumers of dual-play and triple-play services spend more, the longer they have been out of contract.

Figure C12: Average spend of out of contract customers, by service and length of out of contract[58]



Source: Ofcom analysis of provider data.

49. Ofcom noted in its consultation that this evidence should be interpreted carefully, as the difference in the average spend of out of contract and in contract customers may under or overstate the extent to which customers pay higher prices after the end of their fixed commitment period.

50. It said this was because of the potential distinction between the average spend and the average price. For example, the average spend for a service

[56] For example, this could be due to the expiry of a price discount at the end of the fixed commitment period.
[57] Ofcom, *Consultation on end-of-contract and out of contract notifications*, July 2018, page 27, Figure 5.
[58] Ofcom, Consultation on end-of-contract and out of contract notifications, July 2018, page 29, Figure 7.

package could be higher in part because the group of out of contract customers is generally buying more services within that package compared with the corresponding group of in contract customers.[59] If so, at least part of the reported difference in average spend could be explained by this difference in the composition of the package, rather than solely reflecting that out of contract customers pay higher prices for the same package of services.[60]

51. Alternatively, if the group of out of contract customers is generally buying fewer services within a package than the corresponding group of in contract customers, the difference in the average prices they pay for these services could be larger than the reported difference in average spend.

52. Ofcom recognised that differences may exist in the average packages purchased by in contract and out of contract customers of dual-play and triple-play packages.[61] However, it considered that the difference between the average in contract and out of contract spend reported in Table C7 could be as a result of out of contract consumers of these services:

- being subject to a price increase at the end of their fixed commitment period; and/or
- failing to secure promotional discounts providers offer to new customers, or 'retention' or 'loyalty' discounts their existing provider may offer to customers who negotiate or threaten to leave.[62]

53. Less active consumers may face higher prices, as providers target their best offers at more active consumers. For example, Ofcom's Pricing Trends report finds that the importance of standard or 'list' prices in driving competition is declining, particularly for bundled services, as providers target new customers with discounts or introductory offers.[63]

54. Non-discounted prices (sometimes called 'list' prices) are typically paid by consumers who are outside their fixed commitment period. Ofcom reports that, in the five years to Q3 2018, the average list prices for standard dual-

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[59] In Sky's response to Ofcom's consultation on end-of-contract and out of contract notifications (page 8), it said that its own data shows that many of Sky's longer tenure customers spend more because they take either more products or better products.
[60] The data also does not account for any connection or activation fees charged to new customers, which would increase the in contract spend. Nor do these estimates take into account the search and switching costs that active customers incur.
[61] In dual-play and triple-play, it is possible that a larger proportion of in contract customers purchase bundles which include superfast broadband. If this is the case, this would imply that the difference between the average in contract and out of contract spend may understate the extent to which customers pay higher prices when they go out of contract.
[62] For example, Ofcom research shows that 11% of dual-play and 19% of triple-play customers proactively negotiated, and obtained, a discount or adjusted their service to fit their needs in the 12 months to September 2018. Ofcom, *Switching tracker 2018*, October 2018.
[63] Ofcom, *Pricing trends for communications services in the UK,* May 2018.

play bundles and superfast bundles increased by 16.5% and 6.5% respectively in real terms during this period.[64] Inactive consumers do not benefit from such discounts, and the sophisticated use of price discounting may also make it harder for some consumers to identify the best contract for them.

55. Ofcom is also concerned that consumers who do not move to a new deal may not benefit from the continuing improvement in services and price over time. For example, many people could upgrade their broadband at no extra cost – as superfast broadband coverage continues to increase, the gap has narrowed between the price of superfast and standard broadband services.[65]

56. As part of Ofcom's review of price differentials in the fixed broadband market (see paragraphs 80 to 84) , it is in the process of gathering more detailed data from providers about the prices that customers pay for superfast and standard dual-play services by contract status and tenure. Preliminary data obtained suggests that, on average, out of contract standard broadband dual-play customers pay more than consumers who are in their first contract for superfast broadband with the same provider.

57. The data obtained so far also appears to be consistent with the analysis in Ofcom's July 2018 consultation as it suggests that out of contract customers continued to pay significantly more than other consumers in Q3 2018. The data also suggests that re-contracted consumers pay more than those who are in their first such period with a provider.[66]

58. For the review, Ofcom will be working with providers to understand the data they hold on vulnerable consumers and to evaluate the impact of price differentials on those consumers. While the data obtained under the review so far is not generally sufficient to make robust observations about the extent to which vulnerable consumers may be more likely to pay more for their dual-play broadband service, the data does suggest that people over 65 are more likely to be on standard broadband than people who are under 65. This could mean that people who are over 65 are at greater risk of paying more than they

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[64] Data from Simplify Digital. Ofcom, *Helping consumers get better deals: consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband,* December 2018, page 125.

[65] Ofcom launched a Boost your Broadband information campaign in December 2018 to help consumers get the best broadband deal. As part of this, a new website is now available to help broadband users check their options, decide what they need and get clear independent advice on how to go about getting the best broadband deal for them.

[66] For more details see: Ofcom, *Helping consumers get better deals: consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband*, December 2018, pp 121-136.

need to, especially if they are out of contract on a standard broadband service.

59. Ofcom will be engaging with providers to confirm these and other preliminary findings and to obtain a better understanding of their impact on consumers.

Vulnerable consumers

60. Ofcom has a statutory duty to consider the needs of consumers with disabilities, who are elderly, or on low incomes.[67] It has rules which require providers to take into account certain characteristics when giving consideration to vulnerable consumers, namely ‘age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances, such as bereavement’ – see paragraph 66 onward.

61. Ofcom recognises that some people’s ability to participate in communications markets and society is affected by factors such as age, disability, income or geographical location. However, it has also noted that there are people whose circumstances make them vulnerable but who do not necessarily fall within defined groups. Life events such as bereavement or illness can temporarily reduce people’s ability to participate in society and/or increase their dependence on certain communications services.

62. In addition, it has noted that market trends such as increased tariff complexity and some price discrimination practices may present particular issues for some of those in vulnerable circumstances. Conversely, not everyone in a ‘potentially vulnerable’ group has difficulty in participating in the communications markets or is disadvantaged by the deal they have chosen.

63. Ofcom has taken a wider view of consumer vulnerability that recognises these short and long term causal factors and the dynamic nature of vulnerability.[68] It has developed a working definition, to help identify and target its work and interventions.

64. Ofcom considers that a vulnerable consumer is one who is at significantly greater than average risk of negative outcomes in the market. These can include:

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[67] Ofcom’s statutory duties are set out under the Communications Act 2003. Ofcom introduced new General Conditions (C5.2-5.5), effective from 1 October 2018, that aim to ensure that communications providers give sufficient consideration to the particular needs of people with disabilities and people whose circumstances may make them vulnerable.
[68] Ofcom website on consumer vulnerability.

- having limited access to, or ability to understand, information;
- being less able to buy, choose or access suitable products; and
- being unlikely to be served by the market, for example because of disability or location.

65. Ofcom's 2017 'Access and inclusion report' examined the take up and use of communications services by disabled consumers and consumers in vulnerable circumstances.[69] The next report is due to be published in January 2019 and will look at inclusion in the communications market. The report will include updates of many of the metrics included in the 2017 Access and Inclusion report (including disability research) and a section on consumer engagement.

Ofcom rules

66. A new Ofcom rule took effect on 1 October 2018 which requires all regulated providers to establish, publish and comply with clear and effective policies and procedures for the fair and appropriate treatment of consumers whose circumstances may make them vulnerable.[70]

67. Such policies and procedures must include, as a minimum:

- practices for ensuring the fair and appropriate treatment of consumers who the regulated provider has been informed or should otherwise reasonably be aware may be vulnerable due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement;

- how information about the needs of consumers who the regulated provider has been informed or should otherwise reasonably be aware may be vulnerable will be recorded and the different channels by which these consumers will be able to make contact with, and receive information from, the regulated provider; and

- how the impact and effectiveness of the policies and procedures are monitored and evaluated.

[69] Ofcom, *Access and inclusion report*, March 2017.
[70] General Conditions of entitlement, General Condition C5.

68. Ofcom is currently discussing with providers how they are complying with the new conditions and is working with industry to identify examples of best practice.

Social tariffs available for those on low incomes

69. As designated universal service providers (USP) for landline services, BT and KCOM (which operates in Hull) are required to make social tariffs for landline available for people on low incomes.[71] Both providers have added a basic broadband offering to their landline social tariff.[72] The tariffs provide certainty to customers on how much they pay for these services each month.

70. Ofcom is also responsible for designating a USP to deliver a universal service obligation (USO) for broadband.[73] It is currently consulting on proposals to designate BT and KCOM as the USPs and its consultation included a proposal to apply a safeguard cap set at £45 per month to ensure affordable services. The USO legislation does not make provision for a social tariff but Ofcom has indicated in its consultation that it will be seeking voluntary commitments from BT and KCOM (should they be designated as the USPs) to offer their broadband social tariffs to USO customers, and to upgrade the tariff to meet the technical specifications in the obligation.[74]

Previous and ongoing relevant work

71. Table C9 sets out some of relevant remedies and interventions Ofcom, and other related regulators, have undertaken in the communications market over recent years to help consumers engage or protect inactive customers from harm. These range from information remedies, including reputational remedies (publishing comparative supplier data) to improvements to the switching process, and enforcement against existing sector specific regulations.

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[71] BT Basic and KCOM's Social Access Package.
[72] BT Basic + Broadband.
[73] In March 2018, the government introduced legislation for a Broadband Universal Service Obligation (USO), which will give homes and businesses the right to request a decent broadband connection. To receive a broadband USO service, people must meet certain eligibility criteria set by the government.
[74] Ofcom, *Delivering the broadband universal service*, December 2018.

Table C9: Timeline of previous interventions

2006	Ofcom introduced an accreditation scheme for price comparison websites which requires the price comparison calculations of landline, broadband, mobile and TV services offered by accredited providers to be accessible, accurate, transparent and comprehensive.[75]
December 2008	Ofcom introduced a voluntary code of practice for broadband speeds under which ISPs covering over 95% of broadband customers committed to provide better information to consumers about the speeds they will be able to achieve from their broadband service.[76] The Code has been reviewed and updated a number of times; a revised Code will take effect on 1 March 2019.[77]
September 2009	Ofcom introduced new rules to prevent mobile mis-selling by prohibiting mobile providers and those selling their products/services from engaging in dishonest, misleading or deceptive conduct. The rules also require providers to give consumers certain information at point of sale.[78]
May 2011	Ofcom made a number of changes to its consumer protection rules (via the General Conditions) to implement the revised European Electronic Communications Code.[79] In particular this included rules which required providers to: • to make certain contract information available to consumers ('in a clear, comprehensive and easily accessible form'); • allow consumers to exit contracts penalty-free if the provider made a change to the contract which could cause the consumer 'material detriment'; • ensure that their conditions and procedures for contract termination do not act as a disincentive to switch; and • offer at least one contract of 12 months and ensure that no contracts exceed 24 months.
December 2011	Ofcom introduced a rule which banned automatically renewable contracts for landline and broadband services offered to consumers and small businesses.[80] Specifically this rule means that these customers cannot be entered into a new minimum contract term without providing their 'express consent'.
January 2014	Ofcom published guidance which required providers to give consumers and small businesses at least one month's notice and the ability to exit the contract without penalty for any increases to the monthly subscription price (or prices) beyond those agreed at the point of sale.[81]
June 2015	• Ofcom introduced rules which required all switches on the Openreach network (for landline and broadband services) to follow a harmonised gaining provider led notification of transfer process. It also extended its rules protecting consumers from harm caused by mis-selling to broadband services.[82] These mis-selling rules

[75] Ofcom, *Accreditation scheme for price calculators,* May 2013.
[76] Ofcom, *Broadband speeds code of practice*, December 2008.
[77] Ofcom, *New voluntary codes of practice on broadband speeds*, (from 1 March 2019).
[78] Ofcom, *Protecting consumers from mis-selling of mobile telecommunications services: statement*, March 2009.
[79] Ofcom, *Changes to general conditions and universal service conditions: statement on implementing the revised EU Framework*, May 2011.
[80] Ofcom, *Automatically renewable contracts: decision on a general condition to prohibit ARCs*, September 2011. Ofcom has now extended this rule to mobile contracts under the revised General Conditions which took effect on 1 October 2018 - Ofcom, General conditions of entitlement, general condition C1.3.
[81] Ofcom, *Price rises in fixed term contracts: decision to issue guidance on general condition 9*.6, October 2013.
[82] Ofcom, *Consumer switching: A statement and consultation on the processes for switching fixed voice and broadband providers on the Openreach copper network*, August 2013.

	specify the information that providers must provide to customers at the point of sale. • Ofcom undertook an 18 month enforcement programme to assess communication providers' cancellation arrangements and the impact those had on the ability of customers to exit their contracts quickly, conveniently and without error.[83] Under this programme, Ofcom carried out a formal investigation into Sky's cancellation procedures which resulted in Sky making a number of improvements to its cancellation and termination arrangements.[84]
October 2016	Following a joint study with Ofcom, the Advertising Standards Authority issued guidance requiring broadband providers to publish a combined line rental and broadband price in their advertising. The guidance also requires that any compulsory upfront costs and introductory discounts are also presented and made clear.[85] Previously suppliers had published separate prices for each element (broadband, line rental, upfront costs) and research found that customers found this confusing and misleading.
April 2017	Ofcom started publishing its annual Comparing Service Quality report which shows the quality of service offered by the UK's main broadband, mobile and landline providers to their customers. The purpose of the report is to shine a light on providers' performance to help consumers make more informed decisions, and to give providers additional incentives to improve the quality of the service they provide. In particular, the report publishes comparative supplier data on: • customer satisfaction; • number and relative proportion of customer complaints; • average call waiting times; and • satisfaction with complaints handling.[86]
June 2017	Ofcom opened an enforcement programme into early termination charges (ETCs) to ensure that (i) providers are taking appropriate steps to make customers aware of any applicable ETCs when they are signing up to a fixed commitment period and (ii) terms and conditions imposing ETCs on consumers comply with Ofcom's rules and are fair for the purposes of the Consumer Rights Act.[87] Under this programme, Ofcom recently concluded two formal investigations into Virgin Media[88] and EE[89] in which it found the companies had charged excessive early termination fees and fined the companies a combined total of £13.3 million.
April 2018	BT's voluntary offer to reduce its monthly line rental price for its landline-only customers took effect. This was a response to Ofcom's review of the standalone landline market which proposed regulated price reductions due to concerns that competition was not working well for landline-only customers. BT also agreed that line rental and call tariffs for those customers would be safeguarded, with increases capped at the rate of inflation (CPI) each year. In addition, BT committed to:

[83] Ofcom, *Own-initiative monitoring and enforcement programme into cancellation and termination arrangements*, December 2016.
[84] Ofcom, *Own-initiative investigation into Sky's compliance with rules about cancellation and termination arrangements*, August 2017.
[85] ASA/CAP, *Tougher approach to broadband price claims in ads, news release*, May 2016.
[86] Ofcom, *Choosing the best broadband, mobile and landline provider: comparing service quality 2017*, May 2018.
[87] Ofcom, *Enforcement programme into early termination charges*, September 2018.
[88] Ofcom, *Investigation into Virgin Media's early termination charges*, November 2018.
[89] Ofcom, *Investigation into EE's early termination charges*, November 2018.

	• improve its communications with its landline-only customers to provide information on potential savings and the switching process; and • issue an annual statement to split-purchase customers (ie those who take landline from BT and broadband from another provider) detailing the total spend of these customers to stimulate engagement.[90]
October 2018	• Ofcom's rule prohibiting automatically renewable contracts was extended to mobile services.[91] • Ofcom guidance on contract requirements came into effect – the guidance sets out Ofcom's likely approach to investigating whether certain conditions or procedures for contract termination could act as a disincentive to switch. It covers areas such as: communication options offered to consumers seeking to cancel, maximum notice periods, agent behaviours and training for retention calls.[92]
November 2018	Ofcom published decision to introduce a price cap on 118 (directory enquiry) numbers following concerns about steep price rises. The new price cap will protect consumers from unexpectedly high bills and make directory enquiry services more affordable. The price cap takes effect on 1 April 2019.[93]
June 2019	Ofcom's new rules for mobile switching takes effect – see paragraphs 17 and 18.[94]

Ongoing and planned work

End of contract and annual best tariff notifications

72. In July 2018 Ofcom proposed to set new general conditions that would require communications providers to send end of contract notifications and one-off out of contract notifications to their residential and small business customers.[95] The purpose of these proposals was to ensure customers are informed at an appropriate time about changes to their price or service, so that they can consider taking action.

73. Since that time, the European Electronic Communications Code (EECC) was formally approved by the EU Parliament and the EU Council. The EECC contains provisions that overlap and, in some cases, go beyond the proposals set out in Ofcom's July 2018 consultation.

74. As a result, Ofcom published a subsequent consultation on 14 December on stronger measures that align with the requirements of the EECC.[96] The consultation proposes the following:

[90] Ofcom, *Review of the market for standalone landline telephone services: statement*, October 2017.
[91] Ofcom, *General conditions of entitlement, C1.3.*
[92] Ofcom, *Guidance under general condition C1 – contract requirements*, October 2018.
[93] Ofcom, *Directory Enquiries (118) review: statement,* November 2018.
[94] Ofcom, *Decision on reforming the switching of mobile communications services*, December 2017.
[95] Ofcom, *Consultation on end-of-contract and out of contract notifications*, July 2018
[96] Ofcom, *Helping consumers get better deals: consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband*, December 2018.

- **broadband, mobile, home phone and pay TV companies must send their residential and business customers end-of-contract notifications.** Residential customers would receive a standalone notification between 10 and 40 days before the end of their fixed commitment period. The notification would include the end date of the fixed commitment period, the services currently provided and the price paid, any changes to the service and price at the end of the fixed commitment period, and information about the notice period required to terminate the contract. Business customers would receive a similar notification;

- **all customers would also receive information on the best tariffs providers have available at the end of their fixed commitment period.** This would give information about the best tariffs that their provider currently offers, which should include at least one SIM-only deal for customers on bundled handset and airtime contracts. This would also include information on discounts available to new customers to ensure that customers are made aware of these deals and can see if they are losing out and should think about switching;

- **all customers who remain out of contract would be given information about their contract and their provider's best tariffs at least annually.** This means that those consumers would be informed of the best tariffs for the services they buy and can see if they are on the best deal;

- **providers would have six months from the date of Ofcom's final decision to implement these changes.** Companies will need time to change their systems, so they are ready to send millions of customers notifications via text, email or letter; and

- **Ofcom will assess the impact of the notifications.** It will monitor the effectiveness of the notifications. For example, it will explore with providers the potential to conduct randomised control trials to assess the extent to which the notifications result in customers taking action.

75. Ofcom's consultation closes on 1 February 2019 and it will seek to publish a statement as soon as possible, setting out its final decision.

Mobile

76. In September 2018, Ofcom published a consultation which set out its concerns that many consumers on bundled handset and airtime deals do not take action at the end of their fixed commitment period when their contract

rolls forward and they continue to pay the same price.[97] It noted that in many cases, this includes the cost of the handset which they have already paid off.

77. In the consultation Ofcom identified some potential solutions to address its concerns. These included achieving greater transparency measures relating to the different cost elements of customers' mobile packages and the introduction of fairer tariffs that would apply at the end of the fixed contract period.

78. Ofcom also considered other options including mandating split contracts, ie requiring separate contracts for the handset and airtime elements, where the handset payments stop at the end of a fixed period. It noted concerns that split contracts could also lead to unintended consequences depending on how providers chose to set handset and airtime prices, for example whether split contracts had the effect of tying consumers into longer contracts with providers, disincentivising switching and denying them the benefits of competition.

79. Ofcom's consultation on mobile handsets closed on 7 November. Ofcom is currently reviewing the responses and intends to publish detailed proposals to take forward in 2019.

Broadband

80. Ofcom also recently launched a review of price differentials in the fixed broadband market.[98] The review will have a particular focus on vulnerable people, which may include people who are older, on low incomes, or who have a physical or mental illness.

81. Fixed broadband providers are choosing to charge customers different amounts for an equivalent or substantially similar service based on whether the customers is in or out of their fixed commitment period. Ofcom is concerned that this pricing practice may be leading to some consumers paying more than they need to for their broadband service.

82. Ofcom's review will establish the scale of any harm caused and who is affected. It will include:

- a detailed examination of the differences in prices by contract status along with the characteristics of consumers paying higher prices. It will explore

[97] Ofcom, *Helping consumers to get better deals in communications markets: mobile handsets*, September 2018.
[98] Ofcom, *Helping consumers get better deals: consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband*, December 2018, page 121-136.

the reasons why some consumers do not shop around to find a better deal and pay more than others; and

- an assessment of the pricing practices used by providers, what drives firms to price differently, and whether this leads to poor outcomes for certain customers.

83. While Ofcom considers that its proposals for end of contract and annual best tariff notifications will make a significant difference in helping to address some of its concerns, its review of price differentials will consider what more may need to be done, including looking at whether further targeted intervention may be needed, particularly to protect more vulnerable consumers.

84. Ofcom intends to publish its findings in summer 2019. This will set out its view on the extent of consumer harm and any remedies it considers are appropriate. This will be followed by a final statement in early 2020.

Availability of data

85. Ofcom currently has a programme of work looking at new ways to use data to benefit and help engage consumers, including how to implement data portability in telecoms.

86. Ofcom will be releasing two APIs to make fixed and mobile coverage data from its Connected Nations report available at premises level on a request by request basis.[99] This data is already released in Ofcom's coverage maps and apps, but it considers that there is significant benefit in wider access to the data, which will allow consumer facing websites and apps to present the coverage data within their own offerings and services.

[99] Ofcom, *Connected Nations API,* December 2018. Ofcom's Connected Nations reports track progress in improving the availability of telecommunications services across the UK and nations.

Annex D: Cash savings, home insurance and mortgages markets

Introduction

1. In its super-complaint, Citizens Advice said there was evidence of a loyalty penalty in the following financial services markets:

Table D 1: Citizens Advice loyalty penalty findings[100]

Market	Percentage[101] %	Penalty[102] £	Total cost of the penalty £m
Cash savings	37	48	1136
Home insurance	47	13	708.5
Mortgage	10	439	526.8

2. Citizens Advice polling[103] suggests that awareness of the loyalty penalty varies by market:

- in the **cash savings market** 41% of consumers thought longstanding consumers are likely to pay more than new consumers;
- in the **home insurance market** 60% of consumers thought longstanding consumers are likely to pay more than new consumers; and
- in the **mortgages market** 48% of consumers thought longstanding consumers are likely to pay more than new consumers.

3. This annex is structured as follows:

(a) relevant information about the UK cash savings, home insurance and mortgage markets;

(b) overview of each of the markets, the switching process and the loyalty penalty in these markets.

(c) the FCA's approach to vulnerable consumers, including evidence from their Financial Lives Survey; and

(d) past interventions and work to make markets work better for consumers and the FCA's planned future work.

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[100] Citizens Advice, *Excessive prices for disengaged consumers,* September 2018, Table 1 and 2.
[101] Percentage of people likely to be paying the loyalty penalty
[102] The individual cost of paying the loyalty penalty
[103] Citizens Advice, *Excessive prices for disengaged consumers*, September 2018, Figure 2.

Cash savings

Market overview

4. Around 72% of UK adults held a cash savings product in 2017,[104] with savings per account averaging £5,900.[105] Key characteristics of a savings account include the interest rate, product features such as internet, branch and phone access, the provider's brand and service proposition, and whether the consumer already holds other products with a provider, in particular a personal current account.

5. Businesses' strategies in relation to savings are largely driven by their wider balance sheet management aims. That is, they do not focus on simply attracting the largest possible in-flow of retail deposits but rather assess their need for deposits (and at what price) in the context of their lending strategy. Several internal and external factors influence the volume of savings a provider wishes to generate and the interest rate it is prepared to offer. Internal factors include the margins it can achieve and capital and liquidity requirements. External factors include the competitive landscape, the macroeconomic environment, the cost and availability of alternative funding sources and regulatory and government initiatives.[106]

6. Six providers hold roughly two-thirds of all cash savings balances, although there are over 100 savings providers in the market. The larger six providers' overall market share of savings by value fell from 63% in March 2015 to 56% in September 2016.[107] Additionally, their share of new business fell from 59% in March 2015 to 45.6% in September 2016.[108]

7. The 2015 market study found that the market was not working well for many consumers. In particular, it found that significant amounts of consumers' savings balances are in accounts opened long ago; these receive lower interest rates than newer accounts.

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[104] FCA, *Financial Lives Survey*, June 2018, page 119 quotes 87% for any cash savings product, including current account savings. The Financial Lives figure for a savings account with a bank, building society, or NS&I is 59%. The 72% cited here includes any savings account with a bank, a building society, a cash ISA, premium bonds, NS&I, and with a credit union (page 177). Citizens Advice refers to easy access cash saving accounts and Cash ISAs but not current account savings accounts or premium bonds, so this is an approximate figure.
[105] FCA, *Cash savings market study*, January 2015, page 15.
[106] FCA, *Cash savings market study*, January 2015, page 22.
[107] FCA, *Sector views 2018*, April 2018 based on GfK FRS data six months to March 2015 and September 2016.
[108] *FCA*, *Sector views 2018*, April 2018 based on GfK FRS data six months to March 2015 and September 2016.

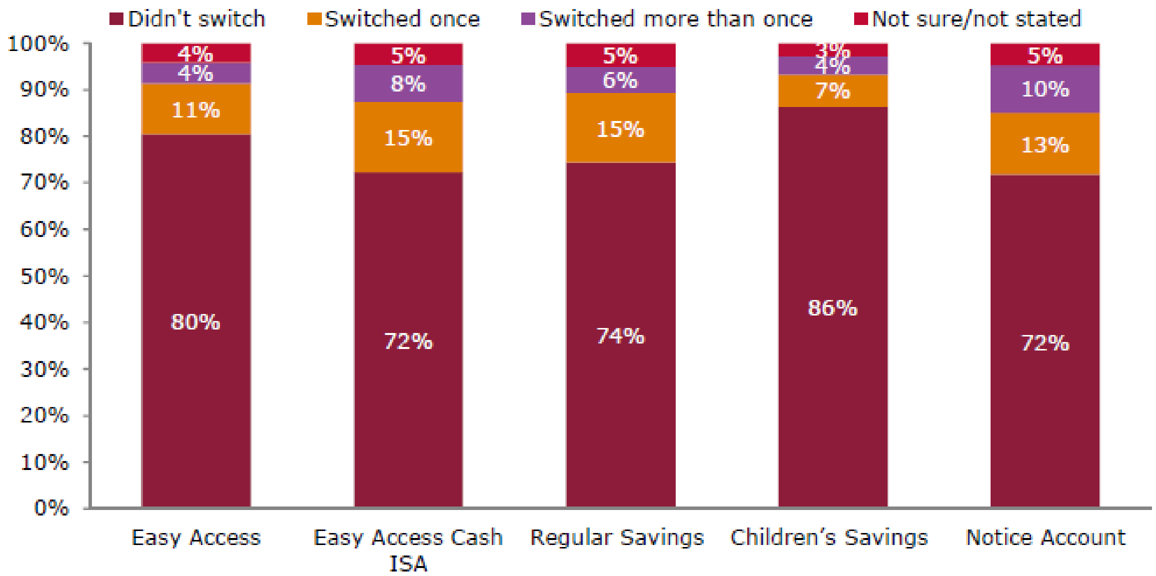
Switching

8. The consumer survey, as part of the market study, showed that most variable interest rate savings accounts had not been switched in the last three years. In particular, only 15% of easy access accounts and 23% of easy access Cash ISAs were switched at least once in the last three years (see Figure D1).

9. For these two types of products, about half of switching activity was internal as consumers switched between different accounts offered by the same provider rather than between providers. Switching rates are high in the first and second year from account opening, and reduce substantially afterwards, on average.[109]

10. Based on respondents' total balances in their accounts at the time of the consumer survey, the balances of active savings accounts switched at least once, internally or externally, in the last three years (see Figure D1) amounted to about 26% of total easy access balances and 28% of easy access Cash ISA balances.

Figure D1: Proportion of active savings accounts switched at least once, internally or externally, in the last three years



Source: FCA, *Cash savings market study*, January 2015, Figure 36.

11. However, taking respondents' balances at the time of the consumer survey as a proxy for balances in their accounts at the time of switching, the survey shows that consumers tended to become more active as the size of balances in the account increased.

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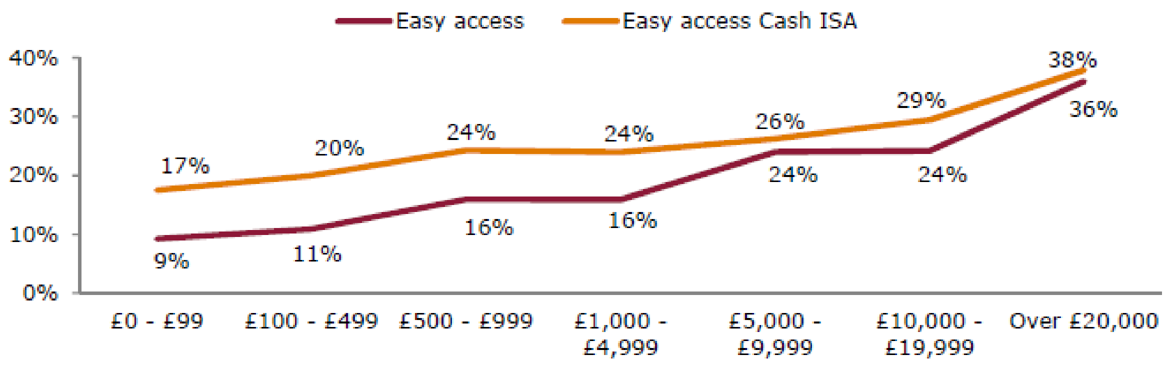
[109] FCA, *Occasional Paper 41*, July 2018, Figure 4.

Figure D2: Proportion of accounts switched, internally or externally, at least once in the last three years by current balances in the account



Source: FCA, *Cash savings market study*, January 2015, Figure 37.

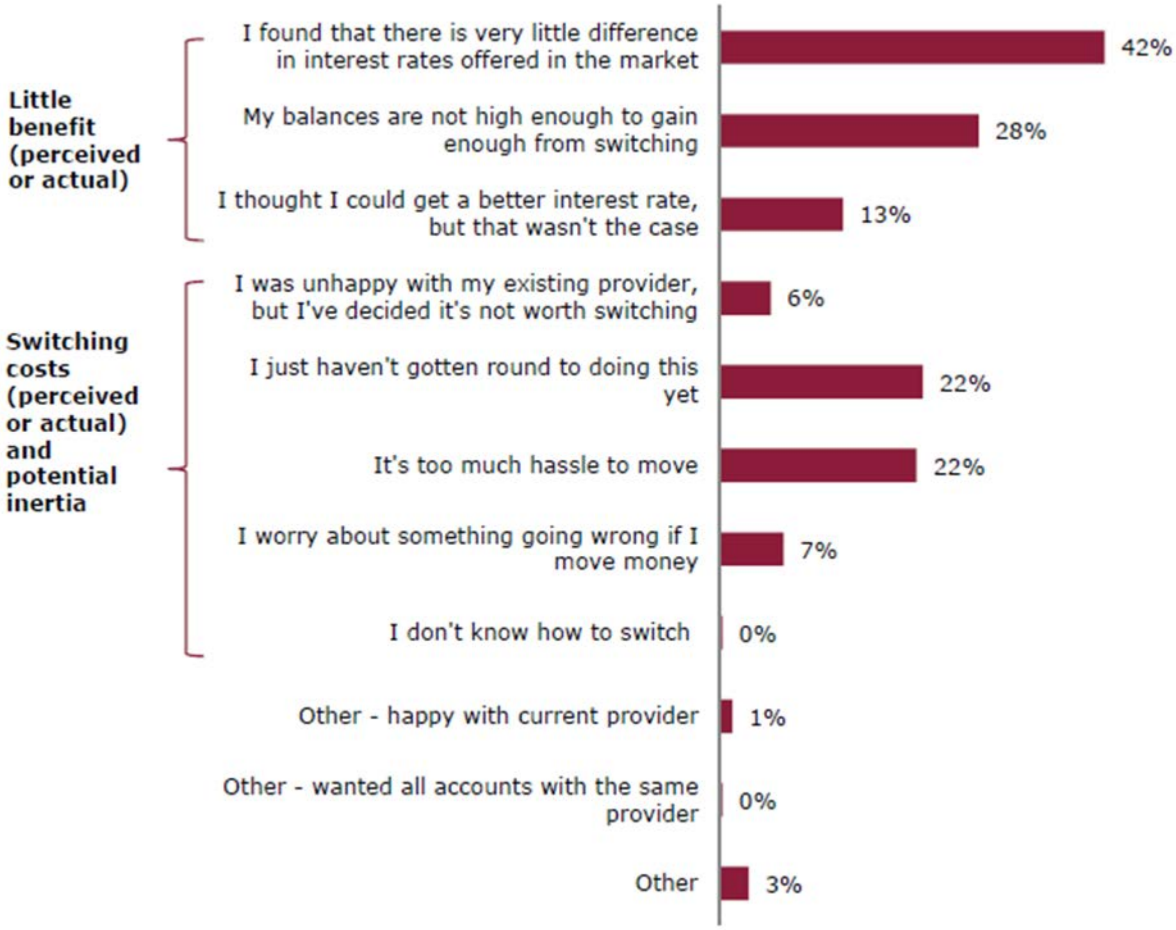
Reasons why some long term cash savings market consumers are not switching

12. For easy access accounts, among consumers who considered switching but did not switch, the main reason is being put off by the low potential benefits from switching, though some refer to the potential hassle and worrying about something going wrong (see Figure D3).[110]

13. It appears that the switching costs are largely perceived rather than actual, as account opening and balance switching is not particularly onerous, albeit there are some areas for improvement. Only 1% said that they had not switched because they were 'happy with current provider'.[111]

[110] FCA, *Cash savings market study*, January 2015.
[111] FCA, *Cash savings market study*, January 2015.

Figure D3: Reasons why account holders considered but did not switch their easy access accounts (proportion of accounts)



Source: FCA, *Cash savings market study*, January 2015, Figure 15.

Loyalty penalty in the cash savings market

14. The FCA's 2015 market study found that the causes for longstanding consumers receiving lower rates than new ones were as follows:

(a) **proliferation of products**: often providers have a wide range of products on their books as new products are frequently introduced and older products are withdrawn from sale or no longer marketed to new consumers. In 2014 there were around 350 easy access products offered on the market and just over 1,000 that that are no longer on sale to new consumers. This created concern about adverse effects on competition because of the confusion it can create for consumers;

(b) this also **facilitates the payment of different interest rates on different products**, potentially resulting in higher interest rates on new products and lower interest rates on older products. To the extent that this occurs, the competitive effects are similar to the use of bonus products. One difference, however, is that while post bonus rates can be clearly

communicated to consumers at the point of sale, the potential change in future interest rates is less transparent with a product replacement strategy;

(c) **a lack of transparency** being given to consumers about the interest rate they receive and about alternative products. Despite the level of interest rate being one of the top three features that consumers say they are looking for in an easy access account (alongside convenience of access and a reputable provider), respondents could not even guess the interest rate on half of easy access accounts and, for respondents whose account with the highest balance was an easy access account, 63% of respondents did not know whether their existing provider offered the same savings product with a different interest rate. When coupled with an abundance of products, it is difficult for consumers to know whether or not they are getting a good deal on their existing savings account. Many consumers have little reason to shop around for a new account with their existing provider because they may not know that their provider offers a comparable product with a higher interest rate;

(d) consumers being put off switching by the **expected 'hassle':** 80% of easy access accounts have not been switched in the last three years. Some consumers do not switch or do not consider switching, as the potential benefit from switching is low due to low balances and/or small differences in interest rates available in the current low interest rate environment. The benefits in cash terms of switching will increase if and when interest rates increase. Some consumers' perception that switching is a hassle arises in part because of the significant variations between providers in how easy they make account opening and switching services, even though the process for opening a new savings account can, in many cases, be fairly straightforward; and

(e) **link to personal current accounts as primary product.** Large, well-established personal current account providers are able to attract the majority of easy access balances, despite offering lower rates. Consumers' desire for convenience of access to their accounts seems to be a significant factor that drives them to use the same provider for their savings account and personal current account. In order to compete for consumers, challenger businesses have to offer significantly higher interest rates than are offered by the large personal current account providers.

Home insurance

Market overview

15. There are two types of home insurance, which are frequently purchased together as combined cover:

- buildings insurance, which covers damage to the structure of homes such as walls, floors and the roof. Having buildings insurance is usually a condition of a mortgage; and
- contents insurance, which provides cover for items usually kept in the home such as furniture, televisions and personal belongings.

16. In June 2018:

- there were 13 million combined policies in the UK market, in addition to 6.8 million contents only policies, and 1.1 million building only policies;[112] and
- the average cost of contents insurance was £203; £317 for buildings insurance and £292 for combined cover.[113]

17. The FCA Financial Lives Survey (FLS) shows that 49% of UK adults hold a combined buildings and contents insurance. Age plays a factor in home insurance product ownership, as Table D2 shows. For example, 31% of 25 to 34 year olds have home contents and buildings cover, this rises to 63% for 55 to 64 year olds.

Table D2: Proportions of UK adults who have either in their own or joint names home insurance[114]

	All UK adults (%)	18 to 24 (%)	25 to 34 (%)	35 to 44 (%)	45 to 54 (%)	55 to 64 (%)	65+ (%)
Home contents & buildings cover	49	7	31	51	64	63	60
Home contents only cover	12	6	13	13	10	13	16
Home buildings only cover	6	1	4	7	7	8	8

[112] GfK Financial Research Survey, *Home insurance market report*, June 2018.
[113] GfK Financial Research Survey, *Home insurance market report*, June 2018.
[114] FCA, *Financial Lives Survey 2017*, page 178.

Switching

18. Annual switching levels appear stable at around 19% between 2010 and 2018.[115] More specifically, in June 2018[116] 19% of home insurance buyers were switchers, 23% renewed but sought at least one other quote, while 43% renewed without gathering any other quotes. The remaining 10% were new buyers or re-entrants.[117]

19. In home insurance, the FCA's diagnostic work preceding its market study of the general insurance market shows that 31% of policy holders have renewed with their insurer more than five times.[118]

20. The 2015 FCA Consultation Paper on increasing transparency and engagement at renewal found that home insurance consumers often do not switch or negotiate at renewal because they do not anticipate how much they could save from doing so or believe the difficulties of switching are prohibitive. Consumers underestimated the benefits to shopping around and overestimated the time it takes to switch.

21. Price of policy is the main reason for switching in about 80% of cases. Other reasons for switching include: policy features, other brand relationship, previous knowledge about the provider, and ability to pay in instalments.[119]

22. The likelihood of switching between providers increases with stated dissatisfaction levels.[120]

Loyalty penalty in the home insurance market

23. Where consumers are inactive, businesses can operate a price walking strategy, where they gradually increase prices and after a few years prices reach a level considerably above the price for new consumers and the cost of supplying insurance. As a result, inactive consumers can be very profitable.[121]

24. The FCA's recent diagnostic work on retail home insurance found that while many consumers have been with their provider for a relatively short period there may be a sizeable group of consumers who have stayed with their insurer for several years. In particular, 31% of consumers have renewed with

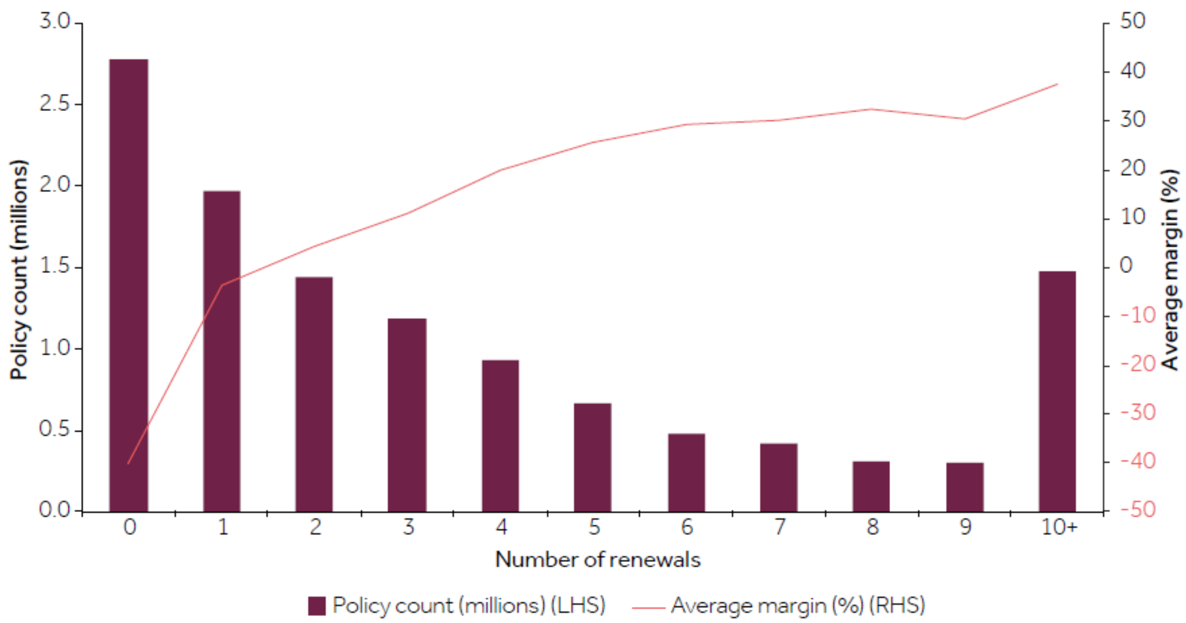
[115] GfK Financial Research Survey, *Home Insurance Market Report*, June 2018.
[116] Time period: six months rolling.
[117] GfK Financial Research Survey, *Home Insurance Market Report*, June 2018.
[118] FCA*, General insurance pricing practices: terms of reference,* October 2018, pp 7-8.
[119] GfK Financial Research Survey, *Home Insurance Market Report*, June 2018.
[120] GfK Financial Research Survey, *Home Insurance Market Report*, June 2018.
[121] FCA*, General insurance pricing practices: terms of reference,* October 2018, page 7.

their insurer on five or more occasions. In addition, on average, margins appear to increase with tenure, at least in the first few years.

25. The abovementioned diagnostic work suggests that price competition to attract new consumers can be intense with some businesses willing to make losses until the second year of renewal. Businesses may expect that a proportion of initially loss-making consumers will not switch in future and become profitable longer term. While not all price increases are problematic, the FCA considers that they may be harmful if they exploit consumers' inertia over time.

26. Figure D4 shows policy count and average margins by number of renewals, based on the FCA's diagnostic work.

Figure D4: Policy count and average margins by number of renewals



Source: FCA, *Pricing practices in the retail general insurance sector: Household insurance*, October 2018, Figure 1.

27. The FCA's market study terms of reference provides further analysis of the evidence obtained through the diagnostic work. It suggests that some categories of consumers differ in average tenure and the average margin they pay:[122]

(a) the subgroups reported in the diagnostic work that on average have been with their provider for less time include private renters with children, those with low credit scores, unemployed renters and those with contents only

[122] Not all firms in the sample for the diagnostic work were able to provide data on each sub group. Therefore some of the subgroup information is based on a small sample of firms. The market study will explore the impact of different consumer characteristics at a more granular level.

insurance. Insurance providers also tend to earn lower margins on groups of consumers who have been with them for fewer years; and

(b) the subgroups reported in the diagnostic work that on average have been with their provider longer includes those who are over 65 years old, those who pay monthly, those who auto-renew, those who have made previous claims and those who have buildings only insurance. Firms also tend to earn higher margins on groups of consumers who have been with the insurer for longer.

28. Other forms of pricing and distribution strategies can also lead to different consumers paying different prices for similar products. These include the pricing of add on products,[123] different charges for paying monthly or annually, or by varying the quality or level of insurance coverage. Each of these could impact on the overall price that a consumer will pay for their cover.

29. The 2015 FCA Consultation Paper on renewals provides the following analysis of causes of market failure:

(a) general insurance markets are typically characterised by many suppliers and relatively free entry. The concerns addressed are 'not classical market failures regarding market power' but market failures relating to consumer behaviour, and these in turn can be exacerbated by how businesses respond to known consumer behaviour; and

(b) when consumers need to purchase a new insurance policy, they are usually sensitive to price and shop around, putting pressure on businesses to keep prices low and provide quality cover and service. When consumers have signed up to a policy and businesses offer to renew it at the end of the current term, consumers can be significantly less price sensitive.[124] Where consumers do not respond by either negotiating or switching this gives businesses incentives to increase renewal prices above the competitive level, potentially allowing them to earn excess profits on these consumers. The fact that policies can automatically renew without further consumer engagement can exacerbate consumer inertia. And where consumers do not engage with the renewal information, their ability to make an informed decision may be

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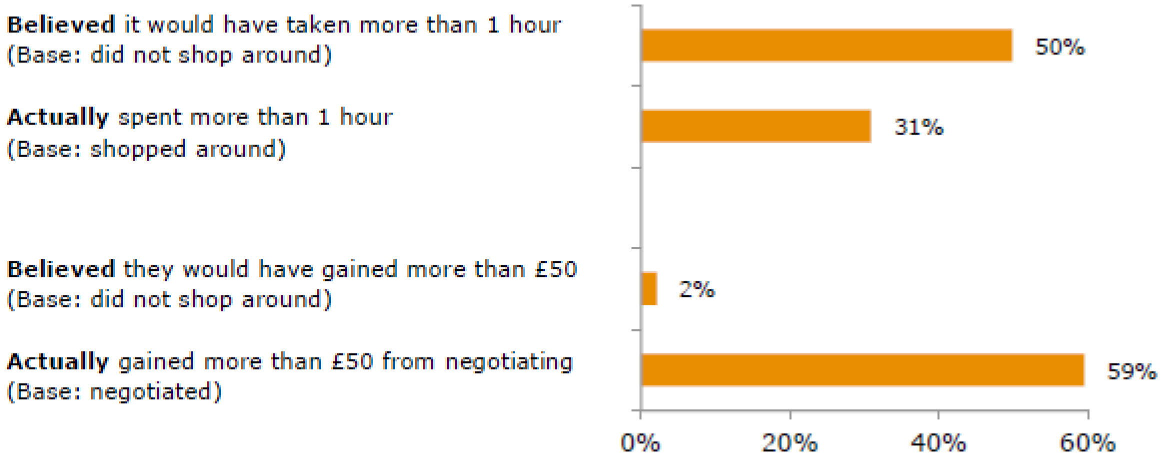
[123] The FCA's general insurance add-ons market study showed that consumers pay less attention to add-ons, instead focusing on the primary insurance product, and therefore buy add-ons that they do not need or understand.
[124] As explained below, the FCA has made it mandatory for firms to disclose last year's premium on renewal letters and include prompts for consumers who are renewing more than a certain number of times (ICOBS 6.5).

compromised. At the same time, auto-renewals is one method of avoiding any harm from being uninsured.

30. Other 2015 FCA research on encouraging consumers to act at renewal suggests that home insurance consumers underestimate the benefits to shopping around and overestimated the time it takes to switch, see Figure D5.

Figure D5: Home insurance costs and benefits to shopping around



Source: FCA, *Occasional Paper 12*, December 2015, Figure 4.

Mortgages

Market overview

31. In the UK, 33% of all adults purchased the property they currently live in with the help of a mortgage or loan.[125] There are around 8 million regulated, first-charge[126] residential mortgages in the UK. Worth at least £1 trillion, this is one of the largest retail financial markets.

32. To take out a mortgage, consumers need to meet certain criteria set by a lender, for example they need to demonstrate their ability to afford to service the mortgage.[127] As such, mortgage holders are not entirely representative of the overall population. For example, residential mortgage holders are more likely to be working (90% of residential mortgage holders are working compared to 63% of all UK adults) and have higher household incomes

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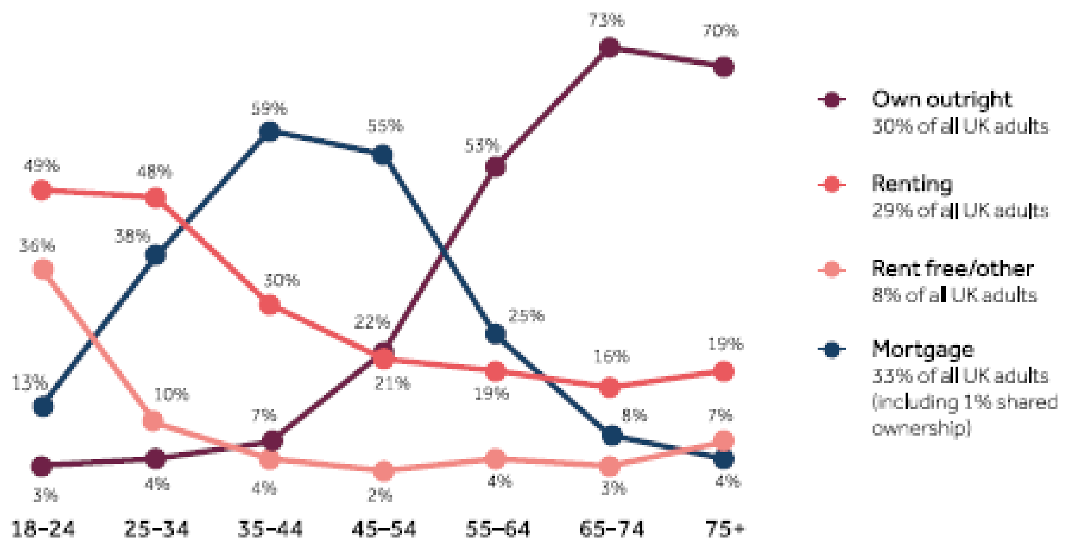
[125] FCA, *Financial Lives Survey 2017,* October 2017, page 116.
[126] A first-charge residential mortgage is the original residential mortgage taken on any one property eg a new mortgage for house purchase, a re-mortgage (new lender), internal product switch (same lender). It does not include commercial mortgages, second-charge or buy-to-let mortgages.
[127] FCA, *Mortgage market study interim teport*, May 2018, pp50-51. The Mortgage Credit Directive requires lenders that are taking on new consumers to undertake a full affordability assessment even where the consumer is not borrowing more. However, lenders have flexibility to help their existing borrowers as FCA rules allow lenders to offer new products to existing borrowers, providing they are not borrowing more, without undertaking new affordability or credit checks.

compared with all UK adults (25% have household incomes of between £30,000 and £50,000, and 21% have household incomes of between £50,000 and £70,000, compared to 18% and 11% of all UK adults respectively). Some 3% of residential mortgage holders have a household income of under £15,000 compared with 15% of all UK adults.[128]

33. Residential mortgage holders are also more likely to consider themselves to be confident and savvy consumers of financial services (58%, compared to 51% of all UK adults). They also have higher levels of confidence in managing their money (42% have high levels of confidence in managing their money compared with 37% of all UK adults).[129]

34. Owner occupation (including those who are buying with the help of a mortgage) increases with age. These findings are summarised, showing differences by age, in Figure D6.

Figure D6: Home ownership by age



D13 (REBASED). *Which of the following best describes how you occupy the property you currently live in?* Base: All UK adults (u-w: 12,696/w: 12,690), excluding 'don't know' responses (1%).

Source: FCA, *Financial Lives Survey 2017*, Figure 8.5.

Lenders

35. There were around 100 active lenders in 2016. The six largest lenders account for around 75% of the outstanding balances – market concentration has remained broadly stable in recent years. In the lifetime mortgage market, ten lenders were responsible for almost all lifetime mortgage sales in 2016

[128] FCA, *Mortgage market study interim report*, May 2018, page 19.
[129] FCA, *Mortgage market study interim report*, May 2018, pp19-20.

meaning the market is much more concentrated (albeit much smaller in size).[130]

36. As in many markets, different lenders target different consumer types. For example, larger high street lenders tend to focus on the mainstream market, with challenger and specialist lenders competing for those consumers with less common circumstances. Building societies cover a range of segments, from mainstream national, through regional, to some specialist markets.

Intermediaries

37. Mortgage intermediaries range from larger providers with thousands of mortgage advisers, to consisting of a single adviser. An intermediary can either be directly authorised (DA), or the appointed representative (AR) of a DA business. With around 4,000 directly authorised intermediaries currently active in the market, the sector is not particularly concentrated.[131]

38. Intermediaries are remunerated for these services by fees paid by the consumer or commission payments paid by the lender, or both. Commission is typically paid as a percentage of the loan value.

Other firms

39. A number of firms operating in related sectors also play a role in introducing consumers to intermediaries or lenders. Examples include estate agents and developers. Mere introduction is generally not a regulated mortgage activity.

40. In the UK, some mortgage books[132] have been sold to firms that are not authorised to conduct mortgage business. Some resulted from the sale of the assets (mortgage books) of failed lenders, post crisis. The administration of these accounts must be carried out by a regulated firm.

Product-specific data

41. The personal and financial circumstances of consumers, the property, and lenders' risk appetite will determine how much consumers can borrow, from whom, and at what price. There are also regulatory factors here such as the

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[130] Lifetime mortgages enable older consumers to borrow money secured against their home while maintaining residence. Lifetime mortgages accounted for just 1% of the total of mortgages arranged in 2016. FCA, *Mortgage market study interim report*, May 2018, page 16.
[131] FCA, *Mortgage market study interim report*, May 2018, page 17.
[132] Collective reference to describe a firms outstanding mortgages. Usually comprising a back book (longstanding mortgage consumers) and a front book (recently acquired mortgage consumers).

FCA's responsible lending rules, prudential requirements and the Financial Policy Committee macroprudential levers.

42. There are many products available to consumers from the 100 or so lenders active in the market. This reflects a range of different features available such as the ability to make over and/or underpayments, the portability of the mortgage when moving property, and offset mortgages where interest payments are reduced to take into account savings held with the mortgage lender.

43. The number of products available to consumers increased from fewer than 5,000 in 2012 to more than 7,000 in 2016.[133]

44. However, this total number of products cannot be equated with the number of products available to an individual consumer. For example, interest rates for different loan-to-value (LTV) levels could constitute different products, but LTV is not often something over which an individual consumer would typically exercise a genuine choice. For specific LTV bands in April 2016 there were:

- around 1,500 products available between 70 and 75% LTV; and
- around 300 between 90 and 95% LTV.

Average prices

45. The average SVR increased from 4.22% to 4.44% between 2012 and 2016. Over the same period, the average introductory rates for two-year fixed deals decreased from 4.16% to 2.23%.[134]

46. The price of a mortgage is typically presented as a combination of interest rate (%) and fees (£) in the form of a monthly payment and the annual percentage rate of charge.[135] Before they apply for a mortgage, consumers are presented with an illustration[136] setting out the costs of the mortgage, including whether there are any fees or charges, who these are payable to and whether these will be paid upfront or rolled-up into the loan.

47. Industry-led initiatives in recent years have sought to enhance the transparency and comparability of mortgage fees and charges. Notably, the Council of Mortgage Lenders and Which? have collaborated to produce a standardised tariff, which has been widely adopted by lenders.[137]

[133] FCA, *Mortgages market study interim report*, May 2018, page 18.
[134] Bank of England statistics as cited in FCA, *Mortgages market study interim report*, May 2018, page 47.
[135] FCA, *FCA Handbook*, *Mortgages* and Home Finance: Conduct of Business Sourcebook (MCOB) 10 and 10A.
[136] FCA, *FCA Handbook*, MCOB 5 and 5A, European Standardised Information Sheet or Key Facts Illustration.
[137] CML, *Transparency of mortgage fees and charges*, March 2018.

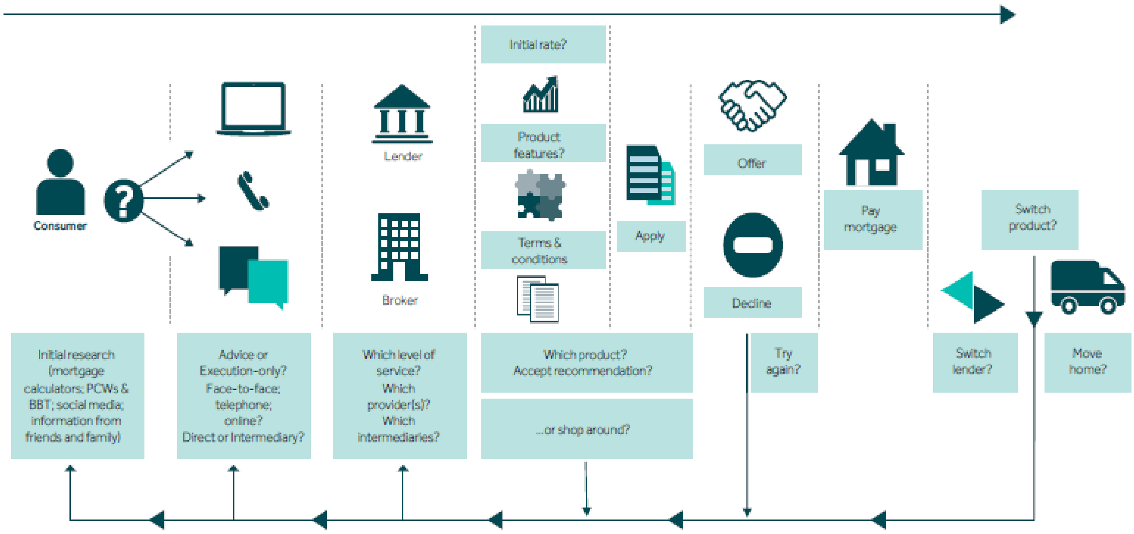
Average length of contracts

48. The market has evolved into one where consumers typically take out a long-term contract (eg a mortgage with a term of 30 years) but then switch regularly to get the best deal (eg every two to five years). Almost all borrowers (almost 95%) choose a fixed-rate product.

Switching

49. Figure D7 illustrates some of the main decision points associated with the consumer mortgage-buying journey (which includes switching), though the actual route taken varies with individual consumers' circumstances and preferences.

Figure D7: Consumer mortgage buying journey



Source: *FCA, Mortgages market study interim report,* May 2018, Figure 3.9.

50. Table D3 sets out some of the key decisions consumers face as they explore the range of mortgage deals available. For each, the FCA considered what an effective decision might look like.

Table D3: Key decisions made by consumers as part of finding a mortgage

	What would an 'effective decision' look like?
'Which products do I qualify for?'	Consumers correctly identify the products for which they qualify so they consider the full range available to them but do not waste time considering products for which they do not qualify
'How much do they cost?'	Consumers assess and compare costs of the different products for which they qualify. In comparing costs they consider all elements of price

	including up-front costs, initial and future monthly costs and any other fees.
'Which mortgage offers best value given my needs and preferences?'	Consumers identify which products and features meet their needs and add value. Taking account of combinations of price and features they assess which product offers the best value for their particular needs and preferences.
'Should I use an intermediary or buy directly from a lender; which intermediary or lender should I choose; and do I need advice?'[138]	Consumers make an informed decision about how best to access the market, given their needs and preferences (for example convenience, face to face interaction, speed of service, quality of advice, help with paperwork etc)

Source: *FCA, Mortgages market study interim report, May 2018, Figure 4.*

51. Research previously carried out for the FCA[139] indicates that many mortgage consumers of various types (for example first time buyers, home movers, and switchers) undertake a certain degree of pre-application research. An important part of this is gaining a sense of how much they may be able to borrow and how much this is likely to cost them monthly.

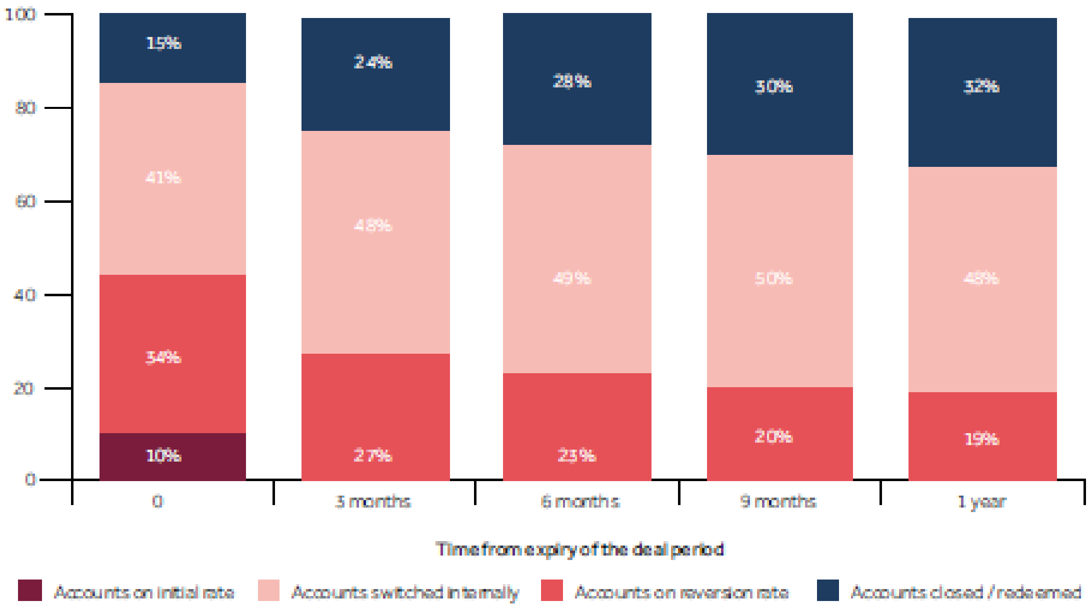
52. The FCA Financial Lives Survey 2017 also found that one-fifth (22%) of those taking out a residential mortgage (or switching product) in the past three years did not compare mortgages from two or more lenders by looking at the products, prices or terms and conditions. Reasons cited included trust, satisfaction or loyalty towards their existing lender, believing they are unable to switch to another lender, or the perception that shopping around is not beneficial or takes too much time.[140]

Switching rates

53. Switching behaviour in the mortgage market indicates that consumers are more active with their mortgage compared to some other retail financial products. Figure D8 shows switching over time from the expiry of the introductory deal period for mortgages maturing in 2015. In the six months following the expiry of an introductory deal, over three-quarters of consumers switched to a new mortgage deal either with their existing or another lender (or redeemed their mortgage). The remaining 23% stayed on the reversion rate. After six months, the number of consumers on a reversion rate does decline further, but more slowly. The FCA considers those that switch within six months of moving onto a reversion rate as being active.

[138] Advice may be mandatory in certain circumstances such as in the market for lifetime mortgages.
[139] FCA, *Mortgage market study interim report*, May 2018, page 23.
[140] FCA, *Mortgages market study interim report*, May 2018, pp23-24.

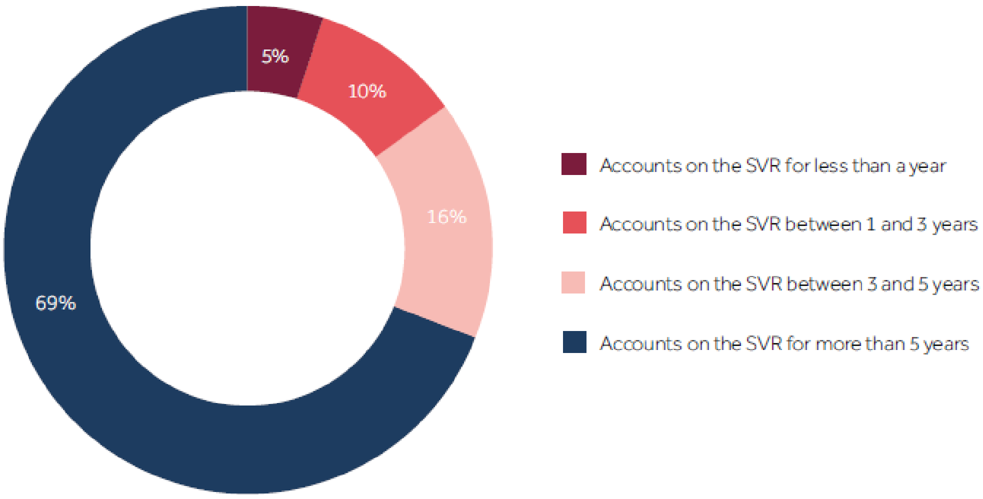
Figure D8: Switching rates, over time, from the end of the introductory period



Source: FCA, *Mortgages market study interim report*, May 2018, Figure 6.2.

54. Figure D9 shows, looking at the back book of a sample of 25 firms (representing 85% of the regulated residential mortgage market), that 69% of consumers on a reversion rate in 2016 had been on it for at least five years.

Figure D9: Regulated residential mortgage accounts on reversion rate in June 2016



Source: FCA, *Mortgages market study interim report*, May 2018, Figure 6.3

55. The frequency of re-mortgaging is tied to the length of introductory deals which is liable to change with market conditions.

Price differentials

56. While over 75% of consumers switch to a new deal within six months of moving onto a reversion rate, not all consumers would benefit from switching or experience harm from not doing so. Some consumers may rationally decide to pay a higher reversion rate or remain on their existing reversion rate.[141] When assessing which consumers may be experiencing harm the FCA excludes:

- consumers in arrears by one monthly payment or more, since the FCA expect lenders to treat such consumers fairly including making reasonable efforts to agree with the consumer how that shortfall can be cleared, and consideration of forbearance options given the consumer's individual circumstances;[142]

- consumers close to paying off their mortgage, as a change in the interest rate has limited impact on the monthly payments for small value loans with short repayment terms and is unlikely to outweigh the monetary and non-monetary costs of switching to a new product;

- (for consumers unable to switch) consumers paying less than the lowest standard variable rate currently offered in the market (in the period of analysis this was 3.69%). Most consumers paying 3.69% or less are unlikely to benefit from switching as the rates they pay are often comparable to those payable on introductory deals (for example because they are benefitting from legacy terms and conditions); and

- (for consumers that appear able to switch but do not) consumers paying less than a new two-year fixed deal with their existing lender (in the period of analysis for June 2016).

Loyalty penalty in the mortgages market

Demand-side issues[143]

57. Consumer perception appears to be the main reason for consumers remaining on reversion rates:

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[141] FCA, *Mortgage market study interim report*, May 2018, pp48-49.
[142] FCA authorised firms must be compliant with all relevant MCOB rules when dealing with consumers with mortgage arrears. FCA, *Management of long-term mortgage arrears and forbearance*, December 2018.
[143] FCA*, Mortgage market study interim report,* May 2018, page 53.

- some consumers may perceive the time and hassle of switching as a price not worth paying; and

- some might perceive that they are unable to switch (when they are in fact able to switch either to a new lender, or with their current lender) and have not received, noticed, or acted on any prompts from their lender or intermediary.

58. Developments in the market and in the economy more broadly might also impact on the number of consumers that remain on reversion rates. In particular:

- the population of consumers paying relatively low legacy reversion rates is likely to shrink over time, as these reversion rates were typically linked to contracts extended prior to the 2008 financial crisis; and

- borrowers on reversion rates have not recently experienced an environment of materially increasing rates, reducing incentives to engage with the market. However, should the base rate rise further, consumers may see their monthly payments increase and may be prompted to consider switching.

Supply-side

59. While a consumer may be able to exit a mortgage contract before its term, their ability to do so may depend on the extent of any early repayment charges, the availability of deals and/or factors beyond their control (such as changes in house prices impacting their LTV). While consumers on an introductory rate may benefit from switching during the introductory period (taking into account exit charges), failing to switch after the end of an introductory deal is more likely to lead to harm.

60. Lenders have very different approaches to dealing with existing consumers on reversion rate. Some treat all consumers in a similar way while others target consumers they perceive to be more likely to switch to another lender.

61. The FCA estimates that on average each inactive consumer could have saved around £1,000 per year in the first two years and around £100 per year for the rest of the term of their mortgage by switching in June 2016. Those with an interest-only mortgage could have saved the most, saving on average over £2,000 per year in the first two years. These figures assume consumers switched only once and to the most popular available product that they qualified for, with their existing lender, rather than shop around for the best deal available to them. The FCA estimate almost all consumers who would

benefit from switching once could have increased their savings further by switching more than once.[144]

Vulnerable consumers

FCA's definition of vulnerable consumer

62. The FCA has an operational objective to secure an appropriate degree of protection for people in financial markets and defines a vulnerable consumer as 'someone who, due to their personal circumstances is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care'.[145] It identifies four key drivers that could lead to consumers being 'potentially vulnerable' related to:

- low financial resilience;
- a recent life event such as a divorce;
- low financial capability; and
- a health issue that affects day-to-day activities a lot.

63. These categories are not definitive or exhaustive but aim to help the FCA and businesses to identify and understand both the permanent and temporary situations that can indicate potential vulnerability in consumers of financial services.

64. The FCA consulted on and published its 'Approach to consumers' in July 2018 as well as a Discussion Paper on the case for introducing a duty of care in early 2019.[146] The FCA will consult on guidance for firms on the identification and treatment of vulnerable consumers. The guidance will seek to provide clarity on its expectations on firms and ensure good outcomes for all consumers, particularly vulnerable consumers.

Longstanding consumers

65. The FCA Financial Lives Survey found that longstanding consumers[147] are more likely to show characteristics of potential vulnerability, as Table D4

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[144] FCA, *Mortgage market study interim report, May 2018, page 52.*
[145] FCA, *Approach to consumers*, July 2018. In this document the FCA sets out how it considers vulnerable consumers as a regulator. The FCA Mission states that understanding vulnerability is central to how the FCA makes decisions. It states that consumers in vulnerable circumstances are more susceptible to harm and generally less able to advance their own interests. The FCA Mission makes clear that the FCA will prioritise consumers who are unable to shop around over consumers who can shop around but choose not to do so. For example, the FCA will prioritise consumers who are vulnerable because they cannot exit an existing contract or have a restricted choice of alternative providers.
[146] FCA, *A duty of care and potential alternative approaches*, 17 July 2018.
[147] Consumers who have held their product or account for 10 years or more with the same provider.

shows. For example, 31% of those showing characteristics of potential vulnerability have held their savings account for 10 years or more show, compared with 27% of consumers overall

66. Older consumers are more long-standing consumers as Table D4 shows. For example, while 16% home insurance consumers have been with their provider for at least ten years, this rises to 43% of those 65 and over.

67. Those with physical or mental health conditions are also more likely to be long-standing, as Table D4 shows. For example, 37% who have physical or mental health condition have held their home insurance for 10 years or more, compared with 16% of consumers overall.

68. There are also differences between those who consider themselves to be knowledgeable when dealing with financial matters and those who do not, as Table D4 shows. For consumers of home insurance, cash savings and mortgages, those with higher levels of knowledge are less likely to be long-standing consumers. For example, around 23% of home insurance consumers who rate their financial knowledge as low have held their insurance with the same provider for at least ten years, compared with 16% of consumers overall.

Table D4: Proportions of consumers who have held their product for 10 years or more with the same provider

	All consumers	Showing characteristics of potential vulnerability	Aged ≥65	Physical or mental health condition	Low financial knowledge
Home insurance	16% (All)	23%	43%	37%	23%
Cash savings	27% (All)	31%	43%	34%	28%
Mortgage	31% (All)	37%	72%	48%	34%

Source: FCA, *Financial Lives Survey 2017*, Table 9.10

Cash savings

69. For further details, the FLS Table 18 shows a breakdown of cash savings product holdings, and the tenure of product ownership against the following demographic characteristics: age, gender, employment status, qualifications (education level), household income, potential financial resilience (as defined by the FCA), use of internet, home ownership, region within UK.

Mortgages

70. Compared to all UK adults, residential mortgage holders are less likely to show characteristics of potential vulnerability. These characteristics are demonstrated in 37% of all UK adults with mortgages compared with 50% of

all UK adults. Although they are more likely to feel burdened by their bills and credit commitments (26% of residential mortgage holders feel their bills and credit commitments are a heavy burden compared to 10% of all UK adults), residential mortgage holders would generally be better able to cover living expenses without having to borrow any money or seek help from friends/family if they lose their main source of household income.[148]

71. The FCA Mortgages Market Study found 2.04 million consumers were on a reversion rate for 6 months or more, as Figure D10 shows. Turning to those consumers who are thus likely to face higher prices and/or be characterised as vulnerable:

- Consumers who cannot switch are more likely to:
    - Be self-employed and have an interest-only mortgage. This aligns with the idea that these consumers have characteristics that are now considered higher risk by lenders and cannot now switch because of (i) major changes to lending practices during or immediately after the crisis, and (ii) the subsequent regulatory responses aimed at preventing a return to past poor practices;[149]
    - be in arrears;[150] and
    - have a mortgage with firms that offer no new products to new or existing consumers. Mortgage accounts can legitimately be sold on to firms that are not authorised to lend. There are also consumers with mortgages with firms that, although still authorised to lend, are no longer active.[151]
- Consumers who do not switch are slightly different from other residential mortgage holders but the differences do not help explain the reasons why these consumers appear to be inactive.[152] The proportion of inactive consumers who would have benefited from switching in the mortgage market is low compared to other financial markets, but the FCA estimates that roughly 10% of regulated residential mortgage consumers are inactive.[153]

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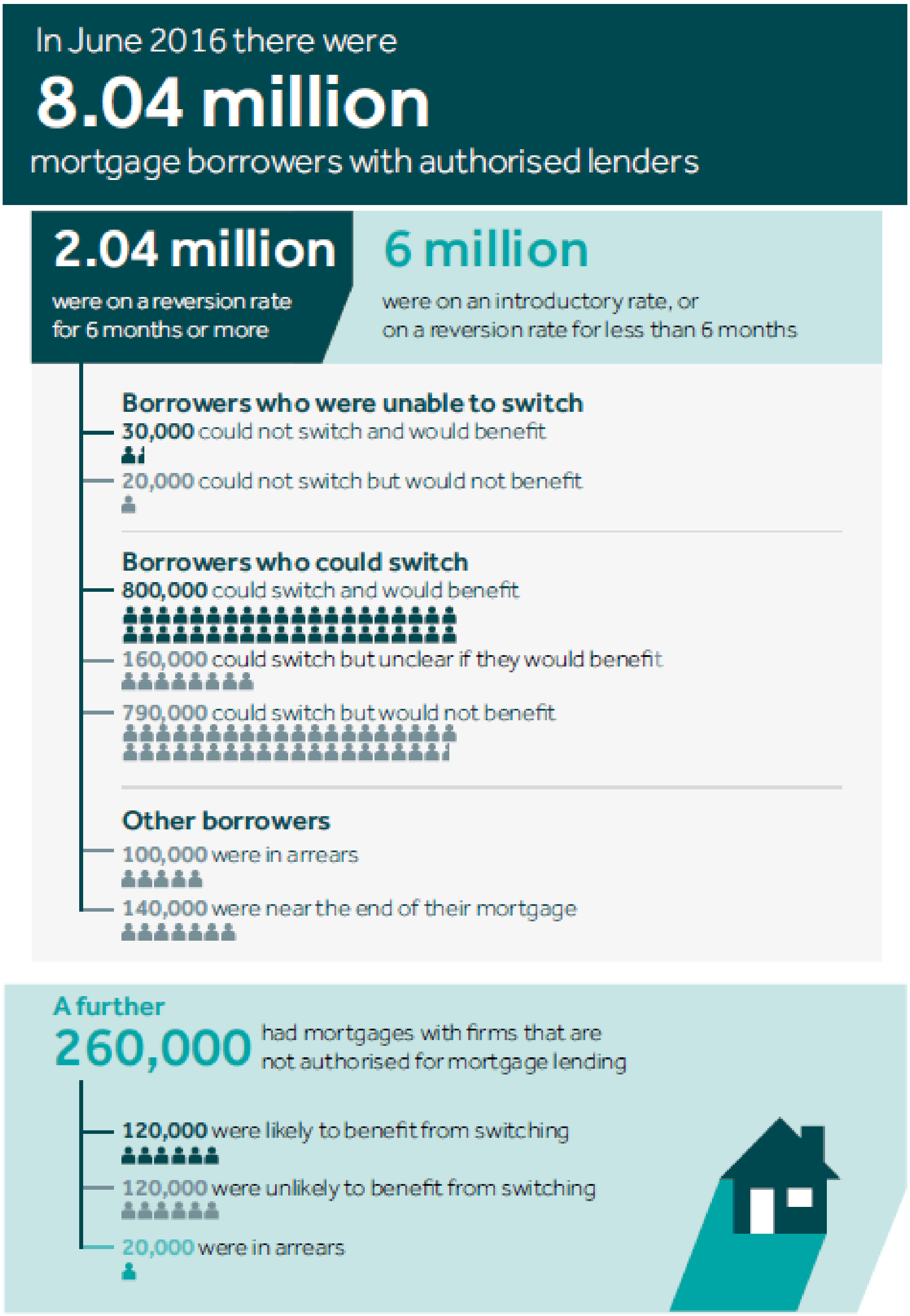
[148] FCA Financial Lives Survey as cited in FCA, *Mortgages market study interim report*, May 2018, page 20.
[149] FCA, *Mortgage market study interim report*, May 2018, page 51.
[150] FCA, *Mortgage market study interim report*, May 2018, page 48.
[151] FCA, *Mortgage market study interim report*, May 2018, page 54.
[152] FCA, *Mortgage market study interim report,* May 2018, page 53.
[153] FCA, Mortgage market study interim report, May 2018, page 52.

Figure D10: Summary of consumers who do not or cannot switch mortgages



Source: FCA, *Mortgage Market Study Interim Report*, Figure 6.1.

Previous and ongoing relevant work

Past work

Cash savings

December 2015	FCA introduced a package of remedies to address some of the harm related to the loyalty penalty: • **Disclosure remedies** – aimed at improving the information made available to consumers by providers, both at or before the point of sale and post sale. These remedies include a standardised summary box and improvements to the presentation, frequency and timing of consumer communications. • **Switching remedies** – focused on making the process of switching easier. These remedies included speeding up the Cash ISA switching process and facilitating switching between accounts offered by providers. • **Convenience remedies** – with the aim of reducing barriers to account aggregation services or other potential solutions that would enable consumers to view and manage savings across more than one provider. This was taken forward as part of the revised Payment Services Directive (PSD2). • **Sunlight remedy** – improving transparency of interest rates available to new and existing consumers, aimed at raising awareness of providers' strategies towards their longstanding consumers. To achieve this the FCA published data on the lowest-paying interest rates available on easy-access cash savings accounts and easy-access cash ISAs.
July 2016	FCA published the findings of randomised controlled trials (RCTs) which showed that the switching box and return-switching form had modest effects on consumer behaviour in the easy access cash savings market. The interventions increased switching within providers, but not to higher-paying products available from other providers.
December 2016	FCA published data on the lowest-paying interest rates available on easy-access cash savings accounts and easy-access Cash ISAs biannually, for 18 months in 2015-16 (ie the FCA implemented the sunlight remedy from their 2015 work).
December 2017	FCA introduced new rules to increase the salience of information about current account services. This aimed to reduce barriers to accessing and assessing information about service quality that contributed to low consumer engagement in the current account market. The rules required providers to publish information about current account services, including account opening and service availability. Many of the service metrics had direct read-across for cash savings products.
January 2018	The revised Payment Services Directive (PSD2) and the CMA's Open Banking remedy were introduced. These initiatives aim to: • enhance consumer protection; • introduce new and convenient ways for consumers to manage their finances between providers and facilitate switching and shopping around; and • enhance competition in retail banking through, for example, increasing transparency and reducing search costs.
July 2018	FCA published Discussion Paper DP18/6 and accompanying research which considered price discrimination in the easy access cash savings market. The documents explored the merits of taking forward any further regulatory interventions in the market. The alternatives explored ranged from less intrusive demand-side remedies to a complete ban on price discrimination. The FCA's current preferred policy option is a supply-side remedy which would require providers to set a single variable interest rate to apply to easy access cash savings accounts and easy access Cash ISAs, respectively, after a set period of time (eg 12 months). This would be called the basic savings rate (BSR).

Home insurance

August 2016	FCA adopted new rules and guidance to address concerns about levels of consumer engagement and the treatment of consumers by firms at renewal, and the lack of competition that resulted from this. The new rules required firms to disclose last year's premium at each renewal; include text to encourage consumers to check their cover and shop around for the best deal at each renewal; identify consumers who had renewed with them four consecutive times, and give those consumers an additional prescribed message encouraging them to shop around. The guidance prescribed how firms can maintain records to demonstrate compliance, including keeping a record of premiums.
September 2016	FCA issued a Call for Inputs to gain a better understanding of how retail general insurance firms were using data and analytics, and the potential impact on consumer outcomes and competition in the market. The FCA found broadly positive consumer outcomes resulted from the use of Big Data. It could be used by firms to transform how consumers dealt with insurance firms, allowing firms to develop new products as well as reducing form-filling, streamlining sales and claims processes. The FCA Feedback Statement identified two areas where the use of Big Data had the potential to leave some consumers worse off. Big Data changes the extent of risk segmentation so that categories of consumers may find it harder to obtain insurance. The FCA was also concerned about the potential that Big Data might enhance firms' ability to identify opportunities to charge certain consumers more.
April 2017	In its 2017/18 Business Plan, the FCA announced it would undertake further diagnostic work on general insurance pricing practices and the concerns raised.
October 2018	FCA published results of diagnostic work on pricing prices in household insurance. The work identified the following issues relating to firms' current pricing practices: • Firms failing to have appropriate and effective strategies, governance, control and oversight of their pricing practices and activities, such that they are unable to reliably assess and evidence whether they were treating their consumers fairly. • Differential pricing leading to some identifiable groups of consumers paying significantly higher prices than other identifiable groups of consumers with similar risk and cost to serve characteristics. • The risk of discriminating against consumers through using rating factors in pricing based (directly or indirectly) on data (including third party data) relating to or derived from protected characteristics.

Mortgages

April 2014	Changes to the FCA's Mortgages Conduct of Business rules (MCOB) came into force on 26 April 2014 following the Mortgage Market Review (MMR). These rules aimed to deliver a mortgage market which works well for consumers and was sustainable for all participants. The FCA made the following changes to its sales standards: • Ensured that the responsibility for assessing affordability rests squarely with the lender, by putting affordability at the heart of the lending decision process. • Required firms to provide advice when making interactive sales (eg face to face or telephone), with very limited exceptions. • Introduced an execution-only sales channel without advice, for limited use in particular scenarios. • Increased professional standards (all sales staff required to hold a Level 3 mortgage qualification). • Removed the requirement for advisers to recommend the 'most suitable' mortgage product. • Introduced a duty for firms to act honestly, fairly and professionally in the best interests of their consumers.
July 2015	The FCA's Thematic Review in July 2015 assessed the quality and suitability of mortgage advice provided by businesses. The review found that some businesses were engaging consumers in focused, relevant, discussions leading to suitable recommendations with good rationale. However, overall, the quality of advice in the mortgage market was mixed: • Some businesses delivered advice with little or no structure meaning advisers typically failed to ensure they had sufficient understanding of consumers' needs and circumstances on which to base their recommendations. • Other businesses placed heavy reliance on completion of point-of-sale application systems, allowing little flexibility for advisers to apply judgement or adapt delivery to meet individual consumers' needs.
May 2016	The FCA's Thematic Review assessed how their responsible lending rules had affected businesses, consumer outcomes and competition in the marketplace. The review found that: • businesses recognised and positively engaged with the aim of FCA responsible lending rules; • there was no evidence of previous poor practices like self-certification of income or interest-only lending without a credible repayment strategy; • where lending is affordable, the FCA did not see evidence that the rules had prevented businesses lending responsibly across particular groups, for example older borrowers and the self-employed; • improvements could be made to some aspects of businesses' affordability assessment process, monitoring and record keeping • most lenders were using the flexibility afforded by FCA rules when dealing with their own existing mortgage consumers. However, some firms could be more proactive and consistent when making use of exceptions. • market data showed that the responsible lending rules did not appear to have had a material impact on lending volumes. However, it is anticipated that the rules will have a greater impact as interest rates rise and affordability is stretched.

Other

September 2016	FCA published an Occasional Paper setting out underlying economic principles and policy considerations relevant to analysis of price discrimination and cross subsidy to help understanding of when intervention may or may not be appropriate. It illustrated this discussion with examples from retail financial markets, based on recent work undertaken by the FCA and other regulators.

Ongoing and planned work

Cash savings

72. The FCA will publish a Feedback Statement to the discussion paper concerning the easy access cash savings market. If it decides to take forward any proposals, it will publish a Consultation Paper in 2019.

Home insurance

73. Alongside its diagnostic work in October 2018, the FCA also published the General insurance pricing practices market study – terms of reference (MS18/1) and Fair pricing in financial services – Discussion Paper (DP18/9).

74. The market study will look into retail home and motor insurance pricing practices. Principally, the market study aims to deepen the understanding of:

- consumer outcomes from pricing practices and what drives this;
- the fairness of pricing practices; and
- the impact of pricing practices on competition

75. It will consider all potential remedies (if any) that may be required to make the market work well for consumers. The FCA plans to publish the Interim Report of its market study in summer 2019.

76. The Discussion Paper (DP18/9) launched a public debate on the fairness of certain pricing practices in financial services, focusing on the following pricing practices:

- businesses charging different prices to different consumers based solely on differences in consumers' price sensitivity (also known as price discrimination); and
- businesses charging existing consumers higher prices than new consumers.

The aim of this debate for the FCA is to seek stakeholder views on its approach to fairness in price discrimination so that the FCA may take these into account when considering whether and how to intervene in the markets it regulates.

Mortgages

77. The Mortgage Market Study: Interim Report set out current FCA thinking on potential remedies to improve how the market works, in light of its findings. Stakeholders had until 31 July 2018 to comment on the interim report before the FCA publish their final report around the beginning of next year.

78. In the final report the FCA will set out its final findings, a summary of feedback received and intended next steps, including in which areas the FCA and/or industry should lead and a more definitive implementation timeframe.

79. The FCA invited views on whether and how to enable consumers on an active lender's reversion rate to switch to a better deal in certain circumstances,[154] specifically if they:

- took out a mortgage or last switched prior to the tightening in lending criteria during and immediately post crisis;
- are up to date with payments (and therefore demonstrating they are able to afford the mortgage at the current interest rate);
- are not looking to borrow more; and
- have applied for an internal switch (following the lender's usual process).

80. On 31 July 2018 the FCA welcomed a cross-industry voluntary commitment by UK Finance, the Building Societies Association and the Intermediary Mortgage Lenders Association to help existing borrowers on reversion rates who are up-to date with repayments but are currently ineligible to move to an alternative product provided by their lender because of stricter affordability criteria.[155]

81. This cross-industry commitment applies only to consumers of those lenders that can offer alternative products to their existing borrowers. Many authorised lenders already offer their existing consumers the opportunity to switch. However, lenders have undertaken to write to any qualifying borrowers by the end of 2018 if they have not already done so. Consumers do not need to take any action and will not be obliged to switch if they do not wish to. To qualify, the following standard principle-based criteria will apply. Consumers will need to:

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[154] FCA, *Mortgage Market Study Interim Report*, May 2018, pp78-79.
[155] FCA, *Response to Mortgage Lenders' commitment to help longstanding borrowers*, July 2018.

- be first charge owner-occupiers;
- be existing borrowers of an active lender;
- be on a reversion rate;
- be looking for a like-for-like mortgage;
- be up to date with payments;
- have a minimum remaining term of two years; and
- have a minimum outstanding loan amount of £10,000.

82. The FCA also invited views on proportionate and effective ways of engaging with inactive consumers, such as asking lenders to contact affected consumers, a year or so after moving onto a reversion rate, giving them a simple and straightforward means of moving to a cheaper mortgage.

83. But a remedy of this kind would need to consider pre-contractual disclosure requirements, in particular those mandated by the Mortgage Credit Directive, as well as other relevant rules.

84. The FCA would also need to consider whether any communication encouraging consumers to switch should contain additional information about the risks and benefits of doing so.

85. Where businesses are no longer lending, or a mortgage book has been sold to entities not authorised for mortgage lending, the FCA has far fewer options to improve the ability for consumers to switch to a new rate.

86. The FCA has begun discussions on possible solutions for inactive lenders with relevant businesses, consumer groups and government.

Annex E: Estimates of the loyalty penalty and criteria for measuring the loyalty penalty

Introduction

1. This annex is structured as follows:

   (a) a summary of estimates on the size of the loyalty penalty in the five markets identified by Citizens Advice in the super-complaint; and

   (b) our proposed principles for measuring the loyalty penalty.

Estimates of the loyalty penalty

Available estimates of the loyalty penalty

2. Table E1 summarises available estimates of the loyalty penalty in the five markets identified in the super-complaint.

Table E1: Summary of estimates of the loyalty penalty

Market	Number of people/ households (proportion of customers) potentially affected	Total loyalty penalty (per year)	Average penalty per 'loyal' person/ household (per year)	Definition of the penalty	Source
Mobile (handset inclusive)[a]	1.5 million (6%)	**£330 million**	£222	Overpayment based on estimated average monthly handset charge when acquired with a pay monthly mobile service and number of pay-monthly mobile handset contract customers who said they continued to pay the same price outside of their contract period.	Ofcom, 2018.
	4 million (34%)	£473 million	£264	Difference between the initial fixed term contract price and continuing price for people who remain on the contract longer than the initial fixed term length.	Citizens Advice, 2018.
Broadband[b]	8.7 million[c] (37% of dual-play and 41% of triple-play customers)	**£990 million**	£112 (£72 for dual-play and £156 for triple-play)	Difference between average spend per customer for 'in contract' and 'out of contract' customers and number of customers 'out of contract'.	CMA calculations based on Ofcom, 2018.
	11 million (43%)	£1,1280 million	£113	Difference between price paid after and during the initial contract period (based on cheapest basic broadband contract) for households which began their current broadband contract at least three years ago.	Citizens Advice, 2018.
Savings accounts[d]	Not known	**£1,136 million**	£48 (typical customer for cash ISA only)	Difference in the average interest rate offered to accounts less than two years old and more than five years old, for people with saving accounts that are more than five years old.	Citizens Advice, 2018 based on FCA, 2018.
Home insurance[e]	12.4 million (47%)	**£709 million**	£13-90, depending on tenure (£57 on average)	Difference between policy price after renewal and the policy price offered to new customers, for people who renew with their provider (ie everyone who has been with the provider with more than a year).	Citizens Advice, 2018 based on FCA, 2015.
Mortgages[f]	0.8 million[g] (10%)	**£800 million**	£1,000	Potential savings consumers who remained on the reversion rate for six months or more could make if they switched to a new two-year fixed	FCA, 2018.

				deal with the same provider, taking into account that some consumers actively choose to stay on the reversion rate.	
	1.2 million (10%)	£527 million	£439	Difference between standard variable rate and fixed rate (also considering fees associated with switching) for people on standard variable rates.	Citizens Advice, 2018.

Sources and notes:

[a] Estimates are based on Ofcom (2018b), page 22, and Citizens Advice (2018), *Excessive prices for disengaged consumer: a super-complaint to the Competition and Markets Authority*, September 2018, page 51. Note that Ofcom (2018a) finds that the average mobile handset spend is 27% lower outside the initial contract terms than within the initial contract terms and the average spend for SIM-only mobile is 8% lower outside the initial contract term than within the initial contract term.

[b] Estimates based on Ofcom (2018a), *Consultation on end-of-contract and out of contract notifications*, July 2018 (pages 28 and 32) and Citizens Advice (2018), *Excessive prices for disengaged consumer: a super-complaint to the Competition and Markets Authority*, September 2018, page 51. For the price difference, Ofcom (2018b), *Pricing trends in communication services in the UK*, May 2018, page 44 finds that the average monthly spend for customers outside the initial contract term is £7 higher for dual-play, £12 higher for triple-play and £7 higher for quad-play than spend within the initial contract terms. This gives an annual difference of £84, £144 and £84 respectively.

[c] This consists of 4.4 million dual-play and 4.3 million triple play contracts.

[d] Estimate from Citizens Advice (2018), *Excessive prices for disengaged consumer: a super-complaint to the Competition and Markets Authority*, September 2018, page 51, using information from *FCA (2018b), Price discrimination in the cash savings market*, July 2018. There is no publicly available figure on the number of people paying a loyalty penalty in savings accounts. However, based on FCA (2018b), 19% and 33% of balances for cash ISAs and easy access cash savings are held in accounts that were opened more than five years ago.

[e] Estimate from Citizens Advice (2018), *Excessive prices for disengaged consumer: a super-complaint to the Competition and Markets Authority*, September 2018, page 50, using information from FCA (2015), *Encouraging consumers to act at renewal*, December 2015.

[f] Estimates are based on FCA (2018a), *Mortgages market study interim report*, May 2018, page 44. and Citizens Advice (2018), *Excessive prices for disengaged consumer: a super-complaint to the Competition and Markets Authority*, September 2018, page 51.

[g] The number for affected policies relates to residential mortgages. The FCA estimated that consumers pay a reversion rate higher than a benchmark rate on a further 120,000 mortgages. However, the amount of overpayment could not be estimated for these consumers due to a lack of available data.

Other estimates of price differences

3. In broadband, we have analysed data on prices submitted by ismybillfair.[156] While this data does not provide a robust estimate of the loyalty penalty, as it covers (self-reported) bill data from a non-representative sample of customers who purchase broadband services, it consists of a large sample of observations and hence gives some useful information on price dispersion. Our analysis of the data on prices for broadband services suggests that those customers who pay more than the standard list price[157] pay approximately £120 more a year on average than the standard list price,[158] which is broadly consistent with estimates

[156] Ismybillfair is a 'check and challenge' website for household bills. The data provided to us was a sample of nearly 30,000 records of bill details entered by users of ismybillfair.com. For better comparability, we only analysed the price dispersion of packages that did not include TV services (approximately 10,000 observations).
[157] As sourced by ismybillfair from publicly available information, the list price comparison for each customer's stated bill reflects differences in the broadband services they purchase (such as differences in broadband speed).
[158] £160 more than the promotional price.

on the price difference by Citizens Advice and based on Ofcom data (see Table E1).[159]

4. Which? has also undertaken similar analysis of the difference between the price paid for broadband by customers who had been with their provider for more than two years and new customers, for a number of broadband providers.[160] The Which? research showed that for many providers the difference was over £100 per year, with BT (£220) and Virgin (£191) having the largest differences. This is consistent with our analysis of the ismybillfair data which also shows that BT and Virgin have the largest difference between the promotional new customer price and the price offered to new customers.

For how long could customers be paying a loyalty penalty?

5. In order to better understand how individual customers are affected by the loyalty penalty, we also considered information on the length of time for which customers could be paying a loyalty penalty. If a customer stays with their provider after the initial contract term has come to an end for longer than a year, the loyalty penalty that customer pays in total could be higher than the average annual loyalty penalty presented in Table E1.

6. For example, in mortgages, 69% of consumers on a reversion rate in 2016 had been on it for at least five years[161] and the average duration of being on the reversion rate is more than four years.

7. Ofcom analysis shows that for broadband packages, more than half of customers beyond their initial contract period stay out of contract for more than a year, with many of these customers (more than 30% of out of contract customers) staying for more than two years. For handset inclusive mobile, nearly half of those beyond their initial contract term stay out of contract for more than a year, with nearly a quarter of all out of contract customers staying for more than two years.[162]

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[159] In addition, our analysis of ismybillfair data shows that 46% of customers had bills that were greater than the standard price offered by the same provider for the same service (and 81% paid more than the promotional price).
[160] Which? *Broadband firms exploiting customers who don't switch or haggle, Which? reveals*, 7 December 2018.
[161] FCA, *Mortgages market study interim report*, May 2018.
[162] Ofcom, *Consultation on end-of-contract and out of contract notifications*, July 2018

Key criteria for calculating the loyalty penalty

8. To support our recommendations in paragraph 4.54 of our response, we set out the following key principles for calculating the loyalty penalty which we recommend regulators and providers should follow:

    - Regulators should aim to go beyond using a broad definition of loyal customers (for example every longstanding customer even if they may have renegotiated their contract with the provider) and **should take steps to collect and interrogate data to identify a set of customers who indeed pay a higher price than new customers and who would benefit from taking out a different deal.**[163]

    - Regulators should also aim to go beyond calculating the average loyalty penalty **and understand how the size of the loyalty penalty varies between different customer groups** (for example based on tenure or vulnerability).

    - Estimating prices paid by loyal customers is complicated by issues of comparability as in many of these markets the products or services are relatively bespoke (for example insurance) or change over time (for example mobile). Therefore, care should be taken to identify the different elements of the product or service each customer is purchasing, before identifying the correct loyal customer and comparator prices that should be used for calculating the price difference, and **comparison should be on as much of a like for like basis as possible.** In addition, the comparator price should preferably be a price that a loyal customer could realistically achieve if they were to become more active and include items such as connection or activation fees that active customers will incur when changing product. Using more extreme market prices as comparators (such as those based on short term promotional offers which are not reflective of what the majority of new customers pay) may overstate the extent of the loyalty penalty. Generally, the more granular level at which loyal customer and comparator prices are identified, the more accurate assessment of the loyalty penalty will be.

    - It is preferable to **estimate the price differences (in terms of the actual price paid by the customers rather than the list price)[164] for different product bundles** (for example in telecoms) **or for different cohorts of**

[163] Factors to consider include: whether longstanding consumers are paying more than a benchmark charge; if they are subject to automatic renewal or default terms when a contract comes to an end; and whether there is evidence that the customer has renegotiated their deal.
[164] Actual transactional expenditure is generally the most accurate method to estimate these prices. If this data is unavailable, estimates based on published or provider quoted prices or customers' stated bill values can be indicative if appropriately caveated.

customers sharing similar risk profiles (for example in insurance) **and aggregate these differences to calculate the total loyalty penalty**, rather than seeking to calculate a single differential based on average 'loyal customer prices' and 'new customer prices' across several bundles or product specifications. In addition, regulators should be cautious about making comparisons across products and services offered by different providers as, even though the descriptions of product bundles can appear similar, there can be significant differences in the products or services supplied.

- Most calculations of the loyalty penalty will be estimates of price differences based on a snapshot of data collected at a particular point in time. The true loyalty penalty will be the compound effect of price differences over a period of time. These snapshots are informative, but **regulators could also consider the length of time that an individual continues to experience the high price**, especially when making comparisons about the loyalty penalty paid by different customer groups.

- **Calculations of the aggregate loyalty penalty should be based on estimates of price differentials and customer numbers calculated in a consistent way**; ie covering the same time period and same population of customers.

- **Data from providers and regulatory reporting data is likely to give more reliable information on customer tenure, prices and product characteristics** (ie the number of people outside initial contract terms or those who have not switched for a certain period of time, as well as the prices paid and services purchased by different group of customers). Therefore, this type of data is generally preferred to consumer survey data, which is subject to a number or response biases (such as recall bias), to collect information on tenure, product characteristics and prices paid.

- Certain types of information that would help to more accurately identify the characteristics of loyal customers (for example related to vulnerability) and their search behaviour may not be available from provider data. Therefore, more sophisticated **estimates that aim to understand the reasons behind being a longstanding customer and how different groups (such as vulnerable consumers) are affected by the loyalty penalty are likely to need to utilise some form of consumer survey data**.

- Therefore, **a combination of data from surveys and providers is likely to result in the most robust and complete estimates of the loyalty penalty**, especially if these different sources of data can be linked (for example when a customer's contract and bill data can be directly linked to a set of survey responses by the same customer). Surveys covering several markets can also provide information on the total number of people paying a loyalty penalty and whether people pay a loyalty penalty in more than one market.

Annex F: Legal framework

1. In order to inform our views on potential enforcement and remedy options in response to the Citizens Advice super-complaint, we have considered the applicable legal framework. This is comprised of the following, which we set out in this annex:

   (a) general consumer law, which broadly speaking applies across all markets of the economy;

   (b) financial services rules made by the FCA under the Financial Services and Markets Act 2000 (FSMA);

   (c) communications rules made by Ofcom under the Communications Act 2003 (CA); and

   (d) the powers of the CMA and the regulators - the FCA and Ofcom.

General consumer law

Consumer Protection from Unfair Trading Regulations 2008[165]

2. The Consume Protection from Unfair Trading Regulations 2008 (CPRs) came into force on 26 May 2008 and implement the EU wide Unfair Commercial Practices Directive (UCPD) into UK law. The UCPD is a maximum harmonisation directive, meaning that it constrains governments from introducing certain protections which go beyond those permitted.[166] However, it already aims to provide a high level of protection for consumers, and the CPRs must be interpreted to achieve this. The CPRs are principles-based law which apply to all commercial practices a business engages in. Most infringements of the CPRs give rise to potential criminal liability, as well as being enforceable in the civil courts under Part 8 of the Enterprise Act 2002 (EA). In some circumstances, where they are victims of misleading actions or aggressive practices, consumers can bring private actions for redress, including compensation.

3. There are two broad types of practice that are prohibited by the CPRs: those which are unfair if they cause consumers to take a different decision; and those which are banned in all circumstances.

[165] For further guidance, see OFT, *Consumer protection from unfair trading guidance on the UK regulations, May 2008*.
[166] Financial services are excluded from the maximum harmonisation nature of UCPD.

Commercial practices which are unfair if they cause consumers to take a different decision

4. These practices are only unfair if they are likely to cause the '**average consumer**'[167] to take a different '**transactional decision**':[168]

   (a) **General prohibition.** A commercial practice is unfair if it contravenes the requirements of professional diligence (meaning the standard of care and skill expected of honest traders acting in good faith) and it materially distorts or is likely to distort the economic behaviour of the average consumer regarding the product (regulation 3, CPRs). Examples may include:

   - operating a call centre which handles cancellations, with insufficient staff to process calls, with the result that some consumers who phone to cancel do not complete the process because it is too time consuming;
   - failing to keep records of consumers' preferred contact details up to date with the result that renewal notices are sent to an address that the consumer does not regularly use.

   (b) **Misleading action.** Where a trader gives false or deceptive information to a consumer, and this is likely to influence their decision making (regulation 5, CPRs). Examples of misleading actions could include:

   - telling consumers their renewal price is the best deal, when in fact the trader makes better deals available;
   - informing consumers that their previous year's premium was £135 when in fact it was a different amount.

   (c) **Misleading omission.** Where a trader fails to provide or hides material information, or provides it in a way that is unclear, unintelligible, ambiguous or at the wrong time. What is material will depend on the circumstances, but it is generally defined as information the average

[167] The 'average consumer' is taken to be a representative of the group to which the commercial practice is directed or targeted, who is reasonably well informed, observant and circumspect, taking into account social, cultural and linguistic factors. However, where an identifiable group of consumers is particularly vulnerable to the practice or to the underlying product because of a characteristic such as their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, then the average member of that group is the relevant average consumer.

[168] A transactional decision is any decision taken by a consumer in relation to products such as whether to enter a shop, buy a product, pay a debt, or exercise a right to cancel, or seek a refund or replacement.

consumer needs to make an informed decision (regulation 6, CPRs). Examples of misleading omissions could be:

- failing to tell the customer a contract will be renewed;
- failing to provide clear information about how to cancel a contract.

(d) **Aggressive practice.** When a trader significantly impairs the average consumer's freedom of choice or conduct through the use of harassment, coercion or undue influence and so causes or is likely to cause him to make a different decision. In determining whether a practice is aggressive, it is important to look at its timing, nature and persistence, exploitation by the trader of any circumstance that would influence the consumer, whether the trader erects non-contractual barriers to hinder the consumer from exercising their rights, and whether the trader is exploiting a position of power to apply pressure (regulation 7, CPRs). Examples of aggressive practice may include:

- hindering the consumer from terminating a contract or switch provider, for instance by routinely failing to answer calls, deliberately putting consumers on hold or requiring them to use processes that are unnecessarily onerous;
- using pop ups or other unsolicited messages to hassle consumers to opt in to an automatic renewal mechanism;
- overriding a consumer's choice not to automatically renew a product.

Commercial practices that are always unfair

5. Commercial practices that are always unfair are **banned practices.** The list of 31 specific practices which will be unfair in all circumstances. There is no need to consider the likely effect on consumers (schedule 1, CPRs). Relevant examples include:

- falsely stating a product will only be available (at all or on particular terms) for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice (paragraph 7, schedule 1, CPRs). This could occur when a consumer seeking to cancel a product is offered a 'one time only deal' to induce them to agree new terms, when the deal is in fact routinely offered to such consumers;

- making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product (paragraph 12, schedule 1, CPRs).

- passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions (paragraph 18, schedule 1, CPRs). This could apply where a consumer is told that the offer they have received is the best the trader makes, when in fact new customers are receiving better offers;

- including in marketing material an invoice or similar document seeking payment which gives the impression that the consumer has already ordered the marketed product when this is not the case (paragraph 21, schedule 1, CPRs). Traders risk engaging in this banned practice if they use automatic renewal practices without securing the consumer's express agreement to the renewal;

- making persistent and unwanted solicitations by telephone, fax, email or other remote media except in circumstances and to the extent justified to enforce a contractual obligation (paragraph 26, schedule 1, CPRs). This could apply where a trader uses pop ups or other messaging on a consumer's computer to remind them to opt in to automatically renew a product;

- failing systematically to respond to pertinent correspondence in order to dissuade a consumer from exercising his contractual rights (paragraph 27, schedule 1, CPRs: second limb). This could apply where consumers, who are required to contact the trader to terminate a contract, face delays in getting a response;

- demanding immediate or deferred payment for products supplied by the trader, but not solicited by the consumer (paragraph 29, schedule 1, CPRs). As with paragraph 21, a trader risks infringing this where they fail to secure proper agreement to an automatic renewal. Further, regulation 27A of the (amended) CPRs provides that where paragraph 29 is infringed, the consumer has no obligation to pay for such items supplied and can treat them as a gift.

Consumer Rights Act 2015 Part 1 - supply of goods, digital content and services

6. Part 1 of the Consumer Rights Act 2015 (CRA) sets a number of standards that traders have to comply with when supplying goods, digital content or services. It also provides for certain remedies available to consumers if these standards are not met. Some of these provisions are relevant to the issues we have looked at in responding to the Citizens Advice super-complaint.

7. Goods and digital content must be of satisfactory quality (section 9 and section 34, CRA). Where they are not, the consumer has rights ranging from the right to reject the product (in the case of goods) to a right to a repair or replacement or a price reduction (which may be as much as 100%). In situations where consumers have signed up to a subscription for the supply of goods, failure by the trader to provide satisfactory goods in respect of even one instalment may entitle the consumer to cancel the whole contract (section 26, CRA). If this is so, then a term requiring the consumer to continue receiving the goods for a minimum period may well not be effective against the consumer (further information on unfair terms is provided later in this annex).

8. Services must be provided with reasonable care and skill (section 49, CRA), and where no price is actually agreed the consumer must pay only what is reasonable (section 51, CRA). Where a service is provided on an ongoing basis, such as under a subscription, it is likely that the whole package of services must be provided with reasonable care and skill, including activities connected with renewal, renegotiation and exit of the contract. Where a trader fails to carry out their services with reasonable care and skill, they are in breach of contract, and the consumer may pursue them for damages, as well as taking steps to end the contract or obtain a price reduction.

Consumer Rights Act 2015 Part 2 - unfair terms

9. Part 2 of the CRA is concerned with the fairness of contract terms or notices used by traders in their dealing with consumers and applies to nearly all kinds of sales involving consumers, including sales of goods, services and digital content. The CRA applies a test of fairness to contract terms which takes into account the subject matter of the contract, the circumstances existing when the term was agreed and all the other terms of the contract or any other relevant contract. If a term is unfair it is not binding on consumers, and reliance on such a term by a trader may give rise to criminal liability (as a misleading action and/or aggressive practice under the CPRs) as well as an obligation to refund money taken from consumers under the term.

10. A term or notice is unfair if it creates a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer and contrary to the requirement of good faith.[169] Certain terms are automatically unfair (blacklisted). All terms must be 'transparent', meaning that they must be not only grammatically intelligible, but clearly presented and

[169] For further discussion of how this fairness test applies, see CMA, *Guidance on the unfair terms provisions in the CRA 2015 (CMA 37)*, 31 July 2015 .

explained so that the consumer can properly understand the nature and effect of the contract and their rights and obligations (section 68, CRA). Schedule 2 to the CRA sets out a 'grey list' of terms which are presumptively unfair.

11. Certain terms are not subject to the fairness test if they specify the main subject matter of the contract or the assessment is of the appropriateness of the price payable under the contract. However, this exemption only applies if the term is transparent and prominent, and not included on the grey list.

12. Examples of grey list terms which may be relevant to the issues we have considered in responding to the super-complaint include terms which:

- require the consumer to pay for services which have not been supplied, because the consumer has decided not to perform the contract (paragraph 5, schedule 2, CRA). This would be relevant where a consumer who is in a fixed minimum period, decides to terminate the contract early. A term which requires them to continue to pay for and receive services could be unfair;

- require the consumer to pay a disproportionately high sum in compensation where the consumer decides not to perform the contract or has failed to fulfil their obligations (paragraphs 5 and 6, schedule 2, CRA);

- automatically extend a contract of fixed duration where the deadline fixed for the consumer to prevent the roll over is too early (paragraph 9, schedule 2, CRA). Although the grey list term refers to the relevance of the consumer being in a position to stop the roll over, in principle any automatic extension of a contract of fixed duration is under suspicion of unfairness, where the consumer has not expressly agreed to the roll over upfront;

- permitting the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract (paragraph 11, schedule 2, CRA). This grey list term underlines the importance of setting out in a contract the basis on which future prices will be set. Where a contract is designed to roll over without the consumer having to take any action, it is particularly important that it is made very clear upfront how the price will be set on each renewal. The requirement for a valid reason means both that there must be clear criteria set out in the contract which remove the ability for traders to alter the price at their discretion, and that the impact of this term must be properly explained to the consumer; and

- allowing the trader to decide the price after the contract has been agreed, where the method of determining the price has not been agreed up front (paragraph 14, schedule 2, CRA). This would be relevant where on renewal the contract purports to permit the trader to set the price at their discretion.

13. Other types of term which could be unfair include:

- those which require consumers to use an especially onerous method to exit their contract, when there is no legitimate business reason for this;
- those which require consumers to keep on paying for products even where the products are not of satisfactory quality or are not supplied with reasonable care and skill.

Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013

14. The Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) implement the Consumer Rights Directive 2011 into UK law and require, among other things, that certain relevant pre-contractual information must be provided before the consumer becomes bound by a contract. The CCRs also provide consumers with cancellation rights in certain circumstances for contracts made at a distance or away from business premises (sometimes called ‘doorstep contracts’). They also restrict surprising charges by requiring that all payments are properly authorised and opt outs are not used. They do not apply to financial services such as insurance (see regulation 6 for exemptions).

15. A feature of the Citizens Advice super-complaint is a concern that consumers face charges which come as a surprise. The CCRs aim to stop surprise charges by a range of measures:

- where a consumer enters into a contract online which is covered by the CCRs, any order is only valid if the consumer explicitly acknowledges the obligation to pay (regulation 14, CCRs). Consequently, if a contract is set to renew for more money, this should only occur if the consumer explicitly acknowledges this;

- further, the consumer cannot be required to pay for anything beyond the remuneration they have agreed for the trader’s main contractual obligation unless they give their express consent before the contract is concluded (regulation 40(1), CCRs). This consent cannot be inferred by the use of defaults or pre-ticked boxes (regulation 40(2), CCRs). In the case of a contract for supply of a product for one year, it is this supply which is the trader’s main contractual obligation. The consumer can only be asked to pay for any further supply where they have expressly consented to the renewal in advance;

- among the information that the trader under a distance contract has to give or make available to the consumer (regulation 13 CCRs) are:

  - the total price for the product, or
  - if a contract is for an indeterminate duration, the total monthly costs and the duration of the contract, or
  - if it is to be extended automatically, the conditions for terminating it.

  This information must be given to the consumer on a durable medium as soon as possible after the conclusion of the contract (regulation 16, CCRs).

- this information may not be changed without the consumer's express agreement (regulation 13(7), CCRs). This means that should the trader wish to change the price as part of an automatic renewal or roll over arrangement, they may not be able to do so unless the consumer actually agrees to it;

- a breach of the information provisions entitles the consumer to their rights under Part 1 of the CRA such as to obtain a price reduction or to reject goods supplied.

Enforcement powers under Part 8 of the Enterprise Act 2002

16. The CMA, FCA and Ofcom (among others) are all enforcers under Part 8 of the EA. Part 8 EA allows enforcers to apply to court for an Enforcement Order to stop infringements of a large list of consumer protection laws, and to obtain enhanced measures such as redress for consumers, as well as to improve consumer choice and business compliance. Infringements are acts or omissions which contravene specified provisions of consumer law and which harm the collective interests of consumers.

17. An Enforcement Order is a civil court order requiring a business to stop infringing UK and/or European consumer protection laws. One Order can relate to a number of different laws and a breach of an Order is punishable as contempt of court.[170]

FCA regulation and rule-making powers

18. In addition to the rules noted throughout the relevant chapters in our response, we set out here the rules likely to be of most relevance to the

[170] For further guidance regarding the CMA's approach to consumer protection enforcement, refer to CMA, *Consumer protection enforcement guidance: CMA58*, 17 August 2016.

issues raised in the super-complaint. We also indicate those areas where the FCA may be able to pass fresh rules to address problems identified in the super-complaint, if necessary. These rules are in addition to the FCA's ability to enforce consumer law, covered in the preceding section.

19. In discharging its general functions, the FCA must, so far as is reasonably possible, act in a way which is compatible with its strategic objective and which advances one or more of its three operational objectives:

(a) securing an appropriate degree of protection for consumers;

(b) protecting and enhancing the integrity of the UK financial system; and

(c) promoting effective competition in the interests of consumers in the markets for regulated financial services (or services provided by a recognised exchange in carrying on regulated activities in respect of which it is exempt from the general prohibition by virtue of section 285(2) of FSMA).

Relevant FCA principles for firms and rules

20. The FCA has powers, including under section 137A FSMA, to make rules applying to authorised persons which could address the concerns such as those highlighted in the super-complaint. Regulated financial services firms must comply with the rules laid down by the FCA in the FCA Handbook. We set out here a non-exhaustive summary of the principles and rules likely to be of most relevance to the issues raised in the super-complaint in the three financial markets (cash savings, home insurance and mortgages).

21. The factors that the FCA must consider before making rules include:

(a) how the proposed rule fits with the FCA's strategic objective to make markets work well;

(b) whether the rule is necessary or expedient to advance one or more of the FCA's operational objectives (such as consumer protection or competition in the interests of consumers);

(c) how the rule would promote competition in the interests of consumers, including whether there would be any adverse competition effects;

(d) whether any interference with human rights (such as the right to property) would be justified in terms of the balancing of the public interest;

(e) the views of the public to a consultation setting out the FCA's analysis on cost-benefits and the legal basis for the rule; and

(f) whether the Prudential Regulation Authority (PRA) has views on the rule's potential impact on the PRA's objectives.

22. The FCA has a number of powers to target financial services firms it believes breach its rules. As firms must be authorised to carry on regulated activities,[171] restriction or cancellation of that authorisation can act as a major deterrent. In addition, the FCA conducts supervisory, competition and consumer enforcement work, applying its high level principles for businesses and detailed sector-specific rules that all authorised firms are required to comply with.

23. In addition, insurance firms are under a duty imposed by the EU Insurance Distribution Directive to 'act honestly, fairly and professionally in accordance with the best interests of customers'.[172]

Principle 6: Customers' interests

24. Principle 6 requires that a firm must pay due regard to the interests of its customers and treat them fairly, often shortened to 'treating customers fairly' (TCF).[173] Principle 6 is supported by six customer outcomes that underpin that obligation:[174]

- Outcome 1: consumers can be confident they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- Outcome 2: products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- Outcome 3: consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- Outcome 4: where consumers receive advice, the advice is suitable and takes account of their circumstances.
- Outcome 5: consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.

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[171] These activities are set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO).
[172] Insurance Distribution Directive (EU) 2016/97
[173] FCA, *FCA Handbook*, PRIN 2.1.
[174] FCA, *FCA Mission: Approach to consumers*, July 2018, page 14.

- Outcome 6: Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

Principle 7: Communications with clients

25. A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

26. In addition to these general principles, the FCA enforces a number of specific rules which are relevant to the issues identified in the super-complaint. We set out a number of them in the following section. For example, insurance firms are under a duty imposed by the Insurance Distribution Directive (IDD). The implementation of the IDD has recently lead to a new FCA rule being introduced: ICOBS 2.5-1:

> (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its customer (the customer's best interests rule).

27. The IDD introduced a new standardised insurance product information document across retail general insurance policies.[175] This presents key information (such as main features and exclusions, the customer's obligations and scope of cover) in a standardised way using colours and icons to draw the customer's attention.

Rules prohibiting harmful business practices

Existing rules: provision of information

(a) ICOBS 4.3-6 requires insurance companies to disclose to consumers information on the nature of the remuneration received by its employees in relation to an insurance contract, including remuneration that is not guaranteed or which is contingent on meeting certain targets;

(b) ICOBS 6.1.5 requires insurance companies to give a customer appropriate information about a policy in good time;

(c) ICOBS 6.1.10 A provides that firms must provide information about a general insurance contract to a consumer in the form of a standardised

[175] FCA, *PRIIPs disclosure: Key Information Documents,* 3 December 2015.

disclosure document harmonised at EU level; (see recent developments above);

(d) when insurance is bought in connection with other goods and services, ICOBS 6.1.13 requires firms to disclose an insurance premium separately from any other prices and advise customers whether buying the policy is compulsory;

(e) ICOBS 6.5 requires insurance companies to provide the previous year's price on renewal of general insurance contracts of 10 months or more;

(f) BCOBS 2.2 provides that a firm must take reasonable steps to ensure that communications or financial promotions in relation to retail banking services including savings accounts, are fair, clear and not misleading.

(g) In relation to savings accounts in particular, BCOBS 2.2A.1 requires firms to ensure that direct offer financial promotions in relation to savings accounts include a summary box which sets out detailed information to enable consumers to compare savings accounts, including about interest rates and how they may change over time;

(h) BCOBS 3 requires firms to provide distance marketing information in a durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer, unless an exception applies;

(i) BCOBS 4.1.1 requires firms to provide or make available to banking customers appropriate information about a retail banking service and any deposit made in relation to that service in good time, in an appropriate medium and in easily understandable language and in a clear and comprehensible form so that the banking customer can make decisions on an informed basis;

(j) in particular, BCOBS 4.1.2(3)(c) guidance provides that where a firm proposes to exercise a power to make a material change to any rate of interest to the disadvantage of a customer, the firm should provide reasonable notice to the banking customer on paper or in another durable medium before the change takes effect, taking into account the period of notice required by the banking customer to terminate the contract for the retail banking service.

(k) BCOBS 4.1.2(4) guidance provides, that in such circumstances, the notification should, where applicable, (i) refer to the fact that the firm offers a comparable retail banking service for which the banking customer is eligible; (ii) indicate that the banking customer may move to that retail banking service or a retail banking service provided by another firm; and

(iii) indicate that the firm will assist the banking customer to move to another retail banking service if he wishes to do so;

(l) BCOBS 4.1.2(5) guidance provides a firm should provide notice of the expiry of any introductory, promotional or preferential rate of interest to the banking customer on paper or in another durable medium within a reasonable period before that rate of interest ceases to apply;

(m) similarly, BCOBS 4.1.2(6A) guidance provides that firms should notify banking consumers of the expiry of the fixed term in relation to a fixed term savings account on paper or in another durable medium within a reasonable period before the end of the fixed term;

(n) for mortgages, MCOB also contains a large number of detailed rules on financial promotions and communications with customers, on pre-contract disclosures and the content of the ESIS (European standard information sheet), on distance contracts, on advance notice of interest changes, and on disclosure of other post-sale events (including, where relevant, notice of the sale of the mortgage to a third party).

Existing rules: ease of switching

(a) BCOBS 5.1.5 and 5.1.5A provide that a firm must provide a prompt and efficient service to enable banking customers to move to a retail banking service provided by another firm or the same firm respectively;

(b) GEN 7 prevents firms from using premium rate numbers for customer call handling.

Existing rules: contract cancellation procedures including exit fees and auto-renewals

(a) ICOBS 7.1.1 mandates a minimum 14-day cancellation or ‘cooling off’ period, allowing the customer to cancel an insurance policy without penalty;

(b) ICOBS 7.2.2 prevents insurance companies charging customers in the event of cancellation, fees other than for the service actually provided by the company in accordance with the contract;

(c) BCOBS 6.1 provides that a banking customer (except as provided for in BCOBS 6.1.2), has a right to cancel a contract for a retail banking service (including a cash deposit ISA but excluding a cash only lifetime ISA) without penalty and without giving any reason, within 14 calendar days;

(d) BCOBS 6.2.1 provides that there is no right to cancel: (i) a contract (other than a cash deposit ISA) where the rate or rates of interest payable on the deposit are fixed for a period of time following conclusion of the contract; (ii) a contract whose price depends on fluctuations in the financial market outside the firm's control that may occur during the cancellation period; or (iii) a cash deposit CTF (other than a distance contract);

(e) MCOB 12.3.1R prevents mortgage providers from imposing an early repayment charge, excluding charges that can be expressed as a cash value and reasonable pre-estimates of the costs as a result of the customer repaying the amount due under the contract before the contract has terminated.

Enforcement work

28. Where it is appropriate and proportionate to do so, the FCA may investigate and take action where firms do not comply with FCA rules. Examples of published enforcement action which relate to practices referred to in the super-complaint (see chapter 7 in particular) include:

(a) In the general insurance sector, the FCA decided that Stonebridge breached principle 6 by failing to pay due regard to the interests of its customers in the UK and treat them fairly.[176] Its business strategy of maximising sales of insurance was implemented at the cost of the fair treatment of its customers. In particular:

- There were deficiencies in the sales process guides designed by Stonebridge to facilitate the sales calls, known as call flows, which were designed in a manner that channeled customers who had families automatically towards the broader and costlier family cover.

- The sales process encouraged sales personnel to make use of cancellation rights to secure sales. Customers were encouraged to purchase the insurance by being informed that they could cancel their policies within 30 days and not incur any fees if they did not consider the policy suitable for their needs.

- When customers wanted to cancel their policies, the customer services personnel presented barriers to cancellation. Stonebridge's training process encouraged these personnel to overcome customers'

[176] FCA, *FCA Final Notice 2014: Stonebridge International Insurance Limited*, August 2014.

objections which resulted in customers not succeeding in cancelling policies despite several attempts.

(b) Also in the insurance sector, the FCA decided that Porta Verde failed to pay due regard to the interests of its customers and treat them fairly in breach of principle 6.[177] Specifically, Porta Verde failed to take reasonable steps to ensure that concerned general insurance companies:

- did not pressurise or mislead customers to conclude insurance contracts for satellite television equipment or emergency home plumbing and drainage cover over the telephone; and

- obtained the appropriate consent from customers during telephone sales calls before concluding insurance contracts for satellite television or emergency home plumbing and drainage cover on behalf of those customers.

(c) In the credit card market, the FCA found that Vanquis breached principle 6 as it did not pay due regard to the interests of its customers and failed to treat its customers fairly.[178] This included failing to make proper disclosure of product charges. The FCA considered that there were deficiencies in Vanquis' sales calls in that customers were not made aware on the call that the Repayment Option Plan (ROP) attracted interest: the cost of the ROP was charged as a purchase transaction which meant that the ROP attracted interest at the card rate which was compounded unless the account balance was paid in full at the end of each month.

29. Other previous enforcement work focusing on principle 6 includes the 2013 action against Swinton for mis-selling and not treating customers fairly in its telephone sales of monthly add on policies (including in the area of breakdown cover and home emergency cover), which resulted in a fine of £7.8 million as well as penalties imposed against the firm’s senior management in 2014.[179] Also, a fine against Homeserve Membership Ltd of £30.6 million for mis-selling of home emergency and repairs insurance cover, and providing inadequate information to customers.[180]

30. Please see further detail regarding past enforcement work in Annex D.

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[177] FCA, *FCA Final Notice 2013: Porta Verde Financial Services Limited*, October 2013.
[178] FCA, *Final Notice 2018: Vanquis Bank Limited*, February 2018.
[179] FCA *Final Notice to Swinton Group Limited,* 16 July 2013.
[180] FCA *Final Notice to HomeServe Membership Ltd,* 12 February 2014.

Market studies

31. In October 2018, the FCA launched a package of work, including a market study, into how general insurance firms charge their customers for home and motor insurance. This work will focus on firms' pricing models and strategies and whether this leads firms to take advantage of particular customers; the information that firms provide to consumers when they renew insurance; the impact of contractual terms such as auto-renewal; and how firms address their responsibilities to treat customers, including vulnerable consumers, fairly.

32. The FCA is also undertaking a market study into helping customers find the best priced mortgage deal and, also assisting longstanding borrowers who are unable to switch to a better deal.[181]

33. The FCA conducted a market study into cash savings in 2015 and found that the market was not working well for many consumers.[182] In particular, it found that significant amounts of consumers' savings balances are in accounts opened long ago; these receive lower interest rates than newer accounts. For further details on this work, please refer to Annex D.

Ofcom regulation and rule-making powers

34. In addition to the rules noted throughout the relevant chapters in our response, we set out here the rules likely to be of most relevance to the issues raised in the super-complaint. These rules are in addition to Ofcom's ability to enforce consumer law.

General conditions

35. Ofcom's general conditions are imposed on all telecoms providers of electronic communications services, under powers laid down by the Communications Act 2003 (CA). These include those conditions that Ofcom considers appropriate for protecting the interests of end users of these services. Ofcom's general conditions reflect the provisions of the European Regulatory Framework for the communications sector, which set out certain mandatory consumer protection requirements on a minimum harmonisation basis.[183] This has been under review and a revised version, referred to as the European Electronic Communications Code (EECC), is expected to enter into force in late December 2018.

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[181] FCA, *FCA calls for more innovation to help consumers find the best mortgage deal*, 4 May 2018.
[182] FCA, *Cash savings market study report*, January 2015.
[183] In particular, the Universal Service Directive (USD) as amended by the Citizens Rights Directive - Directive 2009/140/EC and Directive 2009/136/EC.

36. Member states will have two years to transpose the requirements of the EECC. The EECC requires the imposition of obligations in a number of areas, including:

- the provision of clear information to customers at point of sale and in their contracts. This includes, but is not limited to, information on price (such as the price of the individual elements of a bundle of services, or of services and terminal equipment, to the extent that these elements are marketed separately) and information on cancellation and termination rights and procedures;

- the publication of information by providers of certain communication services in open data formats;

- the making available of third party price and quality comparison tools;

- contract duration and termination, including a requirement to send customers notifications and best tariff advice before their contract is prolonged (ie turns into a monthly rolling contract). The EECC also requires the provision of annual best tariff advice to end users and the right of end users to terminate an automatically prolonged contract (when allowed under national law) with a maximum one month notice period and without incurring any costs [184] Additionally end users must be given the right to terminate their contract in response to any contractual changes unless these are beneficial, required by law, or of a purely administrative nature;

- the provision of a consumption monitoring tool for internet access and voice services; and

- switching or all internet access and voice services (including a requirement that this should be led by the gaining provider).

37. Currently, Ofcom's general conditions include a number of specific requirements relating to the practices highlighted in chapter 7 of our response. This includes rules regarding minimum terms and information that must be included in broadband and mobile contracts; a requirement for providers to give notice to customers of any contract changes and give customers the right to exit without penalty if the changes are of material detriment and, of particular relevance, a requirement for communications providers to ensure their procedures for contract termination do not act as disincentives for end

[184] For further details, see Annex C.

users against changing their communications provider.[185] In addition, it has a number of detailed rules setting out the processes providers are required to follow when customers are switching providers.[186]

Powers to make new rules

A significant market power condition

38. Ofcom can impose Significant Market Power (SMP) conditions where it identifies that a provider enjoys a position in relation to a market which is equivalent to dominance (section 87 CA). Under section 91 CA, where Ofcom identifies a provider has a SMP in a retail market, it can impose obligations on that provider in relation to its provision of services to end users. Such obligations may include appropriate price cap measures. However, before imposing such measures at the retail level, Ofcom must be satisfied that it is unable to fulfil its duties by imposing wholesale obligations.

A universal service condition

39. Under section 67 CA, Ofcom can impose universal service conditions on designated universal service providers in order to secure compliance with the obligations set out in the universal service order issued by the Secretary of State for Digital, Culture, Media and Sport. This includes conditions relating to tariffs (the BT Basic tariff is an example of a universal service condition).

A general condition

40. As noted above, Ofcom can also impose general conditions on all providers of electronic communications services. These include those conditions that Ofcom considers appropriate for protecting the interests of end users of these services (section 51(1)(a) CA). Under section 58(1)(aa) CA, Ofcom also has a specific power to set general conditions which impose tariff principles and maximum prices for the purposes of protecting consumers in relation to the use of communication services by means of telephone numbers.

41. In order to set any general conditions, Ofcom must be able to demonstrate that the condition is:

    (a) objectively justifiable;

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[185] Ofcom general condition C1.3
[186] Ofcom general condition C7 (broadband) and C8 (mobile), as well as condition B3 relating to number portability when consumers are switching.

(b) not unduly discriminatory;

(c) proportionate; and

(d) transparent.

42. As stated earlier, the EECC is expected to enter into force in late December 2018. Unlike the existing framework, the majority of the consumer protection measures within the EECC are being imposed on a full harmonisation basis. This means that, if the EECC is transposed into UK law, Ofcom will not be able to impose conditions which go beyond the requirements set out in the EECC in relation to the subject matters covered by it.

43. The EECC does not include specific price capping powers for Ofcom beyond those that already exist in the SMP framework and those in relation to telephone numbers.

Other powers

Gaining provider-led switching

44. As set out in Annex C, Ofcom has put in place a gaining provider switching process for broadband providers that operate on the Openreach platform (general condition C7). This condition includes a number of specific provisions aimed at preventing consumers being ‘slammed’ (switched without their consent) during the switching process. In particular, this involves a specified process for sending letters to the customer during the transfer period to notify them that they are being switched, and an ability for the customer to terminate the switch without charge during that period without unreasonable effort, as well as a requirement for providers to keep records of the customer’s consent to be switched.

45. In addition, with effect from July 2019, Ofcom has put in place an auto-switch process for mobile services, which will mean customers can obtain a switching code either via text, online or via phone which they can give to their new provider to switch and either port their number or switch their contracts without porting the number (this will be implemented in a revised version of its general condition C7). The revised rules will also ban notice period charges after the switching date, so that consumers no longer have to pay for their old and new service at the same time and will require the provision of clear information to consumers about the switching and number porting process.

Conditions prohibiting harmful business practices

46. Ofcom's general conditions include a number of specific requirements relating to the practices set out in chapter 7 of our response.

Provision of information

47. General condition C1 sets out minimum terms and information that must be included in broadband and mobile contracts in a 'clear, comprehensive and easily accessible form'. This information includes, among others, the minimum service quality levels, details of prices and tariffs, duration of the contract and conditions for cancellation

48. General condition C7 which applies when a customer is switching broadband services, and condition C8, which applies to the selling of mobile services, also contain information requirements. They require that providers take reasonable steps to ensure that at the point of sale, and before entering into a contract, consumers are provided with key information about the service they are signing up to in a clear, comprehensible, prominent and accurate manner (such information includes the customer's cooling off period, the key charges and the contract length).

49. See also Annex C for additional guidance/codes of practice relating to the provision of information in the broadband and mobile markets (for example the ASA guidance on broadband pricing, and Ofcom's Broadband Speeds Code of Practice).

Ease of switching

50. Currently, porting of mobile numbers and their activation should be completed within one business day from the receipt of the request to port them. In addition, and from July 2019, providers of most mobile services will be required to complete the porting process within one day of the SIM being activated or where SIM activation has already taken place, within one day of the submission of the relevant switching code by the customer (this will be implemented in a revised version of Ofcom's general condition C7).

51. In all other cases, porting of numbers and their subsequent activation shall be completed within one business day once all necessary validation process have been completed, the network connection is ready for use by the relevant subscriber, and the donor provider has received a request to activate the porting of these numbers from the recipient provider (as per Ofcom's revised general condition B3.4).

Contract cancellation procedures, including exit fees and auto-renewal

52. Under its General condition C1.3, Ofcom requires broadband and mobile providers to ensure that their procedures for contract termination ‘do not act as disincentives for end-users against changing their communications provider’.

53. As part of the same condition, Ofcom has specific that providers must not ‘at the end of any fixed commitment period, renew domestic or small business customers’ contracts for a further fixed commitment period unless [the] provider has first obtained express consent from each customer concerned’.

54. Ofcom has published guidance on its interpretation of condition C1.3, in which it has indicated that a condition or procedure could act as a disincentive where it could cause unreasonable effort, hassle or undue difficulty to a consumer seeking to end their contract.[187] The guidance includes a requirement for providers to offer a range of communication options for customers seeking to exit their contracts, sets out good practices in relation to identification and verification procedures for contract termination and the handling of retention conversations with consumers seeking to exit. The guidance also clarifies the circumstances under which a customer may be considered to have given their ‘express consent’ to a prolongation.

Cost variation procedures

55. Under general condition C1.6 Ofcom requires regulated providers to:

(a) give their subscribers adequate notice not shorter than one month of any contractual modifications likely to be of material detriment to that subscriber;

(b) allow their subscribers to withdraw from their contract without penalty upon such notice; and

(c) at the same time as giving the notice in condition C1.6(a), inform the subscriber of its ability to terminate the contract without penalty if the proposed modification is not acceptable to the subscriber.

56. According to general condition C1.7, changes of material detriment include an increase in the core subscription price payable at any point during the customer’s fixed commitment period. Ofcom has published guidance on the

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[187] Ofcom, *Guidance under General Condition C1 – contract requirements*, October 2018, paragraph 7.

application of general conditions C1.6 and C1.7, including in relation to the notification method and contents.[188]

End of contract and best tariff notifications

57. Subject to the consultation process, Ofcom's consultation on the implementation of the requirements to send customers notifications of the end of the fixed term of any contract and of 'best tariff' advice (when fixed terms end and annually thereafter)[189] would result in it making new general conditions.

Enforcement work

58. Ofcom has published enforcement guidelines which set out how it takes action against non-compliance with these regulations[190] and it is pursuing a range of enforcement cases in its markets relating to the practices discussed chapter 7 of our response. This includes:

(a) an ongoing enforcement programme into early termination charges (ETCs) to ensure that these fees are not excessive and are fair and transparent.[191] As part of this programme, Ofcom recently concluded two formal investigations into Virgin Media and EE in which it found the companies had charged excessive ETCs and fined the companies a combined total of £13.3 million;[192]

(b) recent enforcement programme into communication providers' cancellation arrangements and the impact those had on the ability of customers to switch easily.[193] This resulted in providers making a number of improvements to their procedures to make it easier for consumers;

(c) Ofcom also carried out a formal investigation into Sky's cancellation procedures which resulted in Sky changing a number of its practices.[194] Following work under that programme, Ofcom has subsequently published guidance to providers setting out best practice on cancellation

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188 Ofcom, *Guidance under General Condition C1 – contract requirements*, October 2018.
189 Ofcom, *Helping consumers get a better dea*l, December 2018.
190 Ofcom, *Enforcement guidelines for regulatory investigations,* 28 June 2017.
191 Ofcom, *Enforcement programme into early termination charges*, September 2018.
192 Ofcom, *Investigation into Virgin Media's early termination charges*, November 2018. Ofcom, *Investigation into EE's early termination charges*, November 2018.
193 Ofcom, *Own-initiative monitoring and enforcement programme into cancellation and termination arrangements*, December 2016.
194 Ofcom, *Own-initiative investigation into Sky's compliance with rules about cancellation and termination arrangements*, August 2017.

procedures and its likely approach to investigating practices in this area;[195] and

(d) an enforcement programme looking into landline and broadband providers' compliance with the rules in relation to sales and marketing. In particular, consumers reported sales staff giving false and misleading information to consumers, as well as applying unacceptable pressure, and most concerningly, consumers being switched to another service without their consent (known as 'slamming'). As a result of this programme (which it closed in 2016), it reported a significant drop in complaints and that those complaints have remained consistently low.[196] We understand that Ofcom continues to monitor complaints in this area and has taken action where it identifies companies breaching its rules.[197]

Market studies

59. In addition to consumer enforcement cases, Ofcom has the power to launch investigations into the functioning of an entire market, rather than the behaviour of particular providers.

60. In September 2018, Ofcom published a consultation regarding bundled handset and airtime deals in the mobile market, focussing on the concern that consumers continue to pay the same price when their contract rolls forward after their initial minimum contract period. Ofcom has also recently announced an investigation into price differentiation in the broadband market. See Annex C for further details of this ongoing work.

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[195] Ofcom, *Guidance under General Condition C1 – contract requirements*, October 2018.
[196] Ofcom, *Own-initiative investigation: Monitoring and enforcement of Fixed-Line Providers' compliance with rules concerning their sales and marketing activities and their use of Cancel Other,* 29 March 2016
[197] For example, in 2017 Ofcom issued a £300k fine to True Telecom for breaching these rules, see Ofcom, *Own-initiative investigation into True Telecom's compliance with GC22, GC9 and relevant consumer protection legislation,* 20 October 2016.

Glossary

Term	Definition
Add ons	An additional product that a consumer buys as part of the service. This applies to both telecoms and financial services products.
Airtime	A mobile service including the provision of a SIM, which enables a customer to make and receive mobile voice calls and SMS, and/or use data services through a mobile handset.
API	Application programming interface, a means by which to electronically transfer data from one party (eg a **DCT**) to another party (eg a supplier).
Auto-renewal	An automatic renewal or continuation of a contract after it expires. See also: **roll over**.
Automatic switching services	Also referred to as **concierge services**.
BSR	Basic Savings Rate. Proposed intervention by FCA into cash savings accounts, which would require firms to have a single default interest rate onto which easy access cash savings accounts and ISAs revert after a set period of time. (eg one year). Individual providers could decide the level of their BSR, and would be able to vary it, subject to applicable legal requirements.
Broadband	A data service or connection to the internet which has generally replaced narrowband (dial-up) connections.
Broadband speed	The speed at which data is transmitted over a broadband connection, usually measured in megabits per second (Mbit/s).

Bundle	A combination of more than one service (e.g. broadband and landline or pay TV and broadband) which is provided by a single communications provider.
Cash ISA	Interest-bearing cash savings accounts. These accounts enable consumers to store their cash and generate an interest rate return, but they typically offer limited transaction functions compared to current accounts.
Citizens Advice	A registered charity and government-funded provider of consumer education, providing advice, advocacy and education to consumers in Great Britain.
Collective switching	A service (using an intermediary) which seeks to negotiate exclusive 'group' tariffs or deals and offers these to consumers. Also known as automatic switching services.
Concierge services	Intermediaries who provide continuous help and advice to customers, including alerting them to offers or suppliers which might suit their needs better and, automatically switching them to a better tariff. (where authorised to do so).
CPRs	Consumer Protection from Unfair Trading Regulations 2008
CPA	Continuous Payment Authorities. A mechanism which authorises a business to regularly take payments from a customer's bank account or credit card whenever the business considers it is due. It is often used in relation to subscriptions.
CRA	Consumer Rights Act 2015
CRF	EU Common Regulatory Framework. EU law which covers fixed and wireless telecoms, internet, broadcasting and transmission services.
DCT	Digital comparison tool. Web-based, app-based or other digital intermediary services used by consumers to compare and potentially to switch or purchase products or services from a range of businesses.
Digitally excluded	A person who lack internet access and/or has low levels of digital literacy.

Disengaged consumer	A consumer who does not actively engage in a market ie. monitorsof offers available on the market to compare with the services provided by their existing supplier.
Dual-play	Landline and broadband services provided by a single communications provider.
EA02	Enterprise Act 2002.
EECC	European Electronic Communications Code 2018 is a set of common rules which regulate the telecoms industry including the digital market and is expected to enter into force in December 2018.
Exit fees	A fee charged on early termination of a contract or early withdrawal of funds from before a previously agreed date.
FCA	The Financial Conduct Authority regulates the financial services industry in the UK.
Inertia	Consumers' tendency not to switch.
Intermediary	Firms or individuals who connect suppliers and consumers, for example credit or insurance brokers, **PCW**s, **concierge/automatic switching services**.
Legacy deals	A contract or tariff which some existing customers may be on, but which is no longer available for new customers.
Legacy pricing	The introduction of new, cheaper, tariffs and products while retaining expensive **legacy deals** for existing customers.
Loyalty penalty	Where businesses charge higher prices to customers that stay with them, than they do to new customers or those that negotiate. It is a form of **price discrimination**.
Ofcom	Office of Communications, the UK regulator for communications services (including landline, broadband and mobile).
Ofgem	The Office of Gas and Electricity Markets, the UK regulator of energy.

Out of contract	Refers to customers who are outside of the minimum contract period but are still paying for a service (e.g. broadband, mobile, landline) provided by the provider.
Pay TV	A subscription-based TV service, usually charged at a monthly fee, offering multichannel television channels beyond those available free-to-air. It can be delivered through cable, satellite, digital terrestrial and/or the internet.
PAYG	Pay as you go, is a mobile service where customers only pay for the calls/SMS/data they use.
PCW	Price comparison website, provides price comparison information about products or services, for example motor insurance. A type of **DCT**.
Price control	A form of regulation which controls the price to be charged for specified goods and services.
Price discrimination	Where customers are charged different prices for the same product or service despite having the same costs to serve.
Price jump	A one-off price rise after the end of an initial contract term onto a higher rate.
Price walking	Gradual price increases over time that vary across customers depending on tenure, and may also depend on the customer's previous response to price increases, or on other customer characteristics.
Quad-play	Landline, broadband, pay TV and mobile provided by a single communications provider.
Roll over	An automatic renewal or continuation of a contract after the expiry of the current term, unless one of the involved parties gives a notice of its discontinuation. See also: **auto-renewal**.
SIM-only	A contract between a mobile network provider and a customer whereby the customer is only paying for the monthly network service and not a handset.
Smart data	Smart data is a term used to denote data-driven technologies and services to improve consumer outcomes in regulated markets. It can help consumers and/or

	intermediaries, in understanding their usage and the products most suited to their needs.
Standard broadband	Broadband services that deliver download speeds of less than 30Mbit/s, typically over a copper telephone line.
Superfast broadband	Broadband services that deliver download speeds of 30Mbit/s or higher, typically over a fibre-to-the cabinet connection or coaxial cable (on Virgin Media's network).
Sludge	Business practices which 'appear intentionally designed to discourage behaviour which is in the consumers' best interests, see Richard Thaler, *Nudge not sludge*, Science Magazine, Vol. 361, Issue 6401, pp. 431.
Subscription Trap	Where customers unknowingly sign up to a subscription, often in response to an offer of a free trial and find it difficult to cancel or get a refund.
SVT/SVR	Standard Variable Tariff or Rate; a standard price which does not vary across customers but can vary over time, onto which customers are moved after the expiry of their initial contract term.
Switching	The process of changing to another service provider.
Triple-play	Landline, broadband and pay TV services provided by a single communications provider.
Tying effect	Linking prices together through restricting the difference between them, can cause a tying effect. This is where businesses may have weaker incentives to cut prices to attract or retain customers, because if they do so they will also be required to cut prices for other customers.
Vulnerable consumers	Individuals with certain characteristics who can be at risk of facing particularly severe, persistent problems across markets.
Universal service provider	A designated provider to deliver the universal service obligation. BT (and KCOM) in Hull are the universal service providers for landline services.
Waterbed effect	An effect where reducing the profits a firm can expect to make from longstanding customers may reduce the

	incentive and ability for firms to offer low upfront prices. As a result, upfront prices to new customers may rise.