FAIR BY DESIGN
Ending the extra costs of being poor

BEIS: REFORMING COMPETITION AND CONSUMER POLICY

SEPTEMBER 2021

Fair By Design welcomes the invitation to respond to BEIS' consultation on reforming competition and consumer policy.

Please note that we consent to public disclosure of this response.

For more information about this response, please contact [redacted].org.uk

ABOUT FAIR BY DESIGN

Fair By Design is dedicated to reshaping essential services, such as energy, credit and insurance, so they don't cost more if you're poor.

People in poverty pay more for a range of products including energy, through standard variable tariffs; loans and credit cards with higher interest rates; and expensive insurance premiums, by, for example, living in postcodes considered higher risk. This is known as the poverty premium.

We collaborate with industry, government, and regulators to design out the poverty premium.

Our Venture Fund provides capital to help grow new and scalable ventures that are innovating to make markets fairer. Ascension manages the Venture Fund.

The Barrow Cadbury Trust runs our advocacy work on behalf of a group of foundations.

OUR APPROACH TO THIS RESPONSE

On this occasion, we are not responding to every question.

As an organisation dedicated to ending the poverty premium, our principal concerns relate to extra costs of financial services including credit and insurance, which do not feature prominently in the policy consultation.

We have responded to questions 1, 2, 4, 6, 8 and 13.

OUR RESPONSE

Q1. What are the metrics and indicators the CMA and government could use to better understand and monitor the state of competition in the UK?

As acknowledged in the consultation document, "there are markets with stubbornly high levels of consumer harm, where problems are not being resolved, and consumer satisfaction is low."

The poverty premium – the extra costs that low income households spend on essential goods and services such as energy, credit, and insurance – is a consumer harm driven by a failure of competition in these markets.

Fair By Design commissioned research[1] to understand the dynamics of the poverty premium within essential services markets. The headline findings include:

- Low income households are spending the equivalent of 14 weeks' worth of food shopping just to access the same essential services as people who are better off.

- Area-based premiums, particularly in car **insurance**, are the largest contributor to the overall premium, with customers who live in a higher-risk area (20th percentile IMD area) paying nearly £300 per year more on average than those who live in a lower-risk area (50th percentile IMD).

- The penalty for not being on the best **energy** tariff is the second biggest proportion of the poverty premium in 2019, since barriers to switching remain for many of those in poverty. Issues of trust were key to the discussions around switching and reveal substantial dissatisfaction with the current consumer environment, whereby responsibility for getting a good deal falls to the consumer, regardless of their age, capacity, digital skills or ability to invest time in this area.

- **Credit** is expensive when on a low income, whatever form it takes. A sub-prime credit card costs around £200 more a year and personal loans cost more than £500 extra.

[1] University of Bristol, The poverty premium: a customer perspective (2020)

For consumers affected by the poverty premium, the feeling is not that more competition among providers is needed. It is that they are not, and will rarely ever be, the most desirable customers in any given essential services market. Consumers can only go from what they experience and, at present, many low income and vulnerable consumers experience high prices and products and services that have not been designed for them. This is because markets have not been designed inclusively and consumer protection is not meeting the needs of those most vulnerable in society.

Further research commissioned by Fair By Design, on protected characteristics and their link to the poverty premium, found that:

- People from Black, Asian and other ethnic minority households are more likely to be paying extra costs for **energy**, incurred through paying on receipt of a bill, rather than by direct debit, which is usually cheaper. Single parents are more likely to pay for energy through more expensive prepayment meters. This reflects that these groups are more likely to be in low-paid or insecure work, and therefore need more flexible payment methods to help keep control of their finances. People with disabilities are more likely to be paying by either of these methods, than those without disabilities.

- In the **credit market,** high-cost credit premiums are also more prevalent among some low income households. Single parents and under-35s are most likely to have used high cost credit. There is also evidence that Black and Asian households are more likely to have reduced access to bank loans or be excluded from the credit card market.

- People from Black, Asian and other ethnic minority households, lone parents, and disabled people, are most likely to be without **insurance.** The issue of underinsurance is a hidden or 'latent' poverty premium. People go without insurance for a range of reasons including high prices, unsuitable products, or being refused cover. This leaves them excluded from the market and susceptible to paying over the odds when something goes wrong, sometimes having no choice but to resort to expensive credit.

The findings indicate people with certain protected characteristics are disproportionately affected by extra costs when accessing essential services. Intersectionality plays a large role: the more protected characteristics a person has, the more likely they are to be in poverty – and paying a poverty premium. This suggests that markets are discriminating against groups of consumers, albeit indirectly.

Therefore, the number of firms or active market participants are not the only metrics of healthy competition. Nor are they the most important. The metric we are concerned with, is how many consumers *benefit* from market competition to meet their particular needs and – especially in essential services – at a price they can afford. As such, we recommend that development of an **annual measure of the poverty premium, led by the Competition and Markets Authority (CMA).**

The CMA's previous work in the adjacent area of the loyalty premium and the cross-market nature of the poverty premium means that the CMA has a significant role to play in its measurement – and elimination.

Progressing an annual measure of the poverty premium would also build on the CMA's own 2018 work on vulnerability[2], which discussed a potential poverty premium measure, and a subsequent feasibility study by NatCen.[3]

In its paper, the CMA noted that "matching transaction data to a recurring survey has the further advantage of potentially reducing the need for ad hoc surveys to be undertaken across regulated markets. It would offer opportunities for understanding the experiences of vulnerable consumers over time and whether there are particular groups facing specific difficulties at a given point in time. It could also offer a baseline against which regulators could consider how and why particular problems are occurring, allowing for the identification of trends and potentially informing future case selection and remedy development."

The CMA went on to say that this approach: "could be used to provide a robust, consistent basis for measuring the poverty premium over time. It could also be used to assess outcomes associated with other dimensions of vulnerability, for example to determine whether a premium is paid by people with disabilities, or by other groups such as those with mental health problems, the elderly, people who are time poor, or have poor digital skills."

As government acknowledged in the consultation paper: "there is increasing evidence that our competition and consumer policies are failing to keep pace with the challenges of the 21st century." The poverty premium is one such challenge and measuring it will help identify solutions that will very likely involve a mixture of both social and regulatory policy. As well as remedies to address consumer harm, the CMA, as a cross-market regulator, can subsequently challenge where the UK's competition and consumer protection system is currently too weak, and too cumbersome and slow, to tackle consumer harms effectively.

Q2. Should the CMA have a power to obtain evidence specifically for the purpose of advising government on the state of competition in the UK?

We are supportive of providing the CMA with a power to obtain information for its State of Competition reports.

We agree that this would allow the CMA to gather information that may fall out of scope of its existing evidence-gathering powers.

This would help provide as full a picture as possible for more informed analysis and decision making, as well as help identify instances where the CMA's remit/consumer protection system may need to be extended.

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[2] CMA, Consumer vulnerability: challenges and potential solutions (2019)

[3] NatCen Social Research, Advice on the Measurement of the Poverty Premium across UK markets (2019)

Q3. Should government provide more detailed and regular strategic steers to the CMA?

We have not answered this question.

Q4. Should the CMA be empowered to impose certain remedies at the end of a market study process?

We are generally supportive of empowering the CMA to impose certain remedies at the end of a market study process.

This could help stem the tide of consumer harm if a market is determined as having 'adverse effects', without waiting for the completion of a longer investigation.

Q5. Alternatively, should the existing market study and market investigation system be replaced with a new single stage market inquiry tool?

We have not answered this question.

Q6. Should government enable the CMA to impose interim measures from the beginning of a market inquiry?

As per our response to Question 4, we are generally supportive of empowering the CMA to act as soon as possible if evidence of harm is clear.

Q7. Should government enable the CMA to accept binding commitments at any stage in the market inquiry process?

We have not answered this question.

Q8. Will government's proposed reforms help deliver effective and versatile remedies for the CMA's market inquiry powers?

We are supportive of government's proposals to give the CMA a power that requires businesses to participate in trials to test different ways of implementing the CMA's consumer-facing remedies, for example (as given in the paper), how to present required information to consumers.

In the example trial given in the paper, firms' actions might include "testing:

- which medium to use (for example: text message, email, letter, website pop-up).
- when the message should be presented (for example: before a renewal, at certain times of the year, at the outset of a purchase process).
- how the message is presented (for example: what does it say, does it stand out to consumers, is it on the face of a website or in a pop-up)."

We welcome opportunities for direct engagement by firms with consumers. The most effective way for firms to recognise and respond to consumers' needs (including those with protected characteristics and other diversity characteristics) is through the seeking of expertise and insights from end-users – as suggested in the government's approach.

Starting with the consumer is a key principle in Inclusive Design. Fair By Design, in partnership with the Money Advice Trust, has created two guides on inclusive design:

1. One for firms.
2. One for regulators. This is discussed further below.

We agree that "having these powers [to require firms to participate in trials] available to the CMA could help ensure … the most comprehensive remedies possible."

Historically, firms and their designers have tended to anticipate how consumers will use products and services. They have also relied on quantitative data rather than actual lived experiences. This has often meant that biases were built into the end product, and that products and services were designed for 'average' consumers rather than around real people's lives.

Bringing in the customer voice is particularly pertinent because of slower-than-expected progress on diversity within firms. For example, people from higher socio-economic backgrounds held 89 percent of senior roles in financial firms.[4] In addition, fewer than 1 in 10 management roles in financial services are held by people from Black, Asian or other racially minoritised communities.[5] This suggests a lack of diversity in thought and may inhibit understanding and serving a diverse range of customers, including those on low incomes, for example.

Inclusive design would enable firms to design the implementation of remedies – and products and services – around real people's lives rather than assumed consumer lives. By doing so, they will increase the efficacy of the remedy.

Inclusive design for regulators

Alongside measuring the poverty premium, an inclusive design approach will also help with the CMA meet its commitment to "doing more to understand the issues facing consumers, in particular those who are vulnerable, for whatever reason."[6]

The CMA has previously recognised the value of inclusive design principles: "A key theme arising from our [vulnerability] work is that there is no such thing as an 'average' vulnerable consumer…When it comes to designing remedies and providing broader support for vulnerable consumers, we therefore need to be mindful of the needs of a broad range of consumers. The principle of 'inclusive' or 'universal' design is helpful here. This involves designing products or services so they are accessible to, and usable by, as many people as possible."[7]

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[4] FCA, CP21/13: a new Consumer Duty (2021)
[5] Ibid
[6] https://www.gov.uk/government/consultations/cma-annual-plan-consultation-202021
[7] CMA, Consumer vulnerability: challenges and potential solutions (2019)

However, it does not commit to the same principles for itself. We therefore recommend that the CMA should lead by example, and adopt inclusive design methods in its own work, from its approach to understanding consumer needs and through to remedy design.

This is because, in order for markets to be truly inclusive, the regulatory environment must also be inclusive. Firms and competition alone will not lead to equitable outcomes for consumers. Firms naturally design products and services to those consumers who yield the most profit. However, in essential services markets, all consumers need to be served, even those less profitable to serve. Where markets are not designed inclusively, this results in negative outcomes and harm for consumers and further erodes trust. Groups of consumers fall through the cracks and can miss out altogether – becoming excluded.

Engaging directly with consumers is also important as the civil society sector does not always have the resource to adequately represent consumers, and is not always reflective of the most vulnerable itself.

Fair By Design's offer is that we can support the CMA. Our work is led by the lived experience of consumers in poverty and in vulnerable circumstances. We regularly engage with consumers in vulnerable circumstances and facilitate events for businesses, regulators and professional bodies, so they can understand issues from the point of view of 'people not like them'. This is vital if organisations are to fully understand problems for consumers and, importantly, to understand the best and most appropriate solutions.

We have not answered Questions 9 – 12

Q13. Should the CMA Panel be retained, but reformed as proposed above? Are there other reforms which should be made to the panel process?

Although the CMA's Panel members have experience, ability and skills in competition economics, law, finance, and business, we feel they are not necessarily representative of consumers – especially low income and/or vulnerable consumers – in terms of (1) knowledge of markets and (2) their needs and expectations of the market.

As discussed above, a lack of diversity in thought can lead to decision-making based on assumed consumer lives and biases. Although very sound *technically,* this 'group think' can easily rationalise why markets are why they are. Such Panels are removed from the low income and vulnerable *experience* of the market – as well as what the best solutions look like to the people living on low incomes and in vulnerable circumstances. For example, when setting a price cap, how often are the people who are most affected by a price cap given a voice in the discussion? How often are low income people asked for their advice, to *co-design* a solution that actually meets their needs, rather than the views of economists? It is a question of valuing the lived experience of people in poverty or on low incomes/in vulnerable circumstances alongside that of the learned expertise of policy designers.

The CMA should therefore ensure they have practical ways of co-designing their market interventions. Measures it can take to ensure different perspectives are considered could include 'shadow' panels, or inviting "experts by lived experience" to relevant meetings, facilitated by trusted, expert intermediaries. Further guidance is presented in the inclusive design guide for regulators mentioned above and available here.

Although government is considering reducing the Panel's involvement to final decisions on theories of harm and remedies, in line with Inclusive Design principles, we recommend that consumer input is embedded throughout an investigation, from the exploratory phase ("Discover" in the Double Diamond methodology)[8] to the co-design of potential remedies ("Develop").

We have not responded to Question 14 onwards.

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[8] Fair By Design & Money Advice Trust, Inclusive Design in Essential Services (2021)