REVIEW OF SUPPLY SIDE REMEDIES

THE ROLE OF SUPPLY-SIDE REMEDIES IN IMPROVING CONSUMER OUTCOMES

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Executive Summary

Supply-side remedies can help to protect customers where markets are not working effectively. However, these approaches will only work if regulators get their design right and frequently monitor their impact.

Consumer markets are not working well for everyone. Citizens Advice has found that disengaged consumers are losing out on £4bn a year in five essential markets[1]. In industries as diverse as energy, gyms, and funerals (just to name a few), market investigations have uncovered recurrent problems with evidence of high prices, lower choice, and limited innovation. The Government has challenged regulators to address these problems, most recently in the Consumer Green Paper and its guidance to the Competition and Markets Authority.

One response has been to focus on the demand-side, trying to get customers to act by providing more information such as reminders about how much they could save if they switched providers. The theory is that more savvy and better-informed customers will give firms clearer incentives to offer better deals. This in turn will drive innovation, improved productivity, and value for money.

However, a recent review of demand-side remedies suggests that this may not always be sufficient. Customers put off opening letters encouraging them to switch, or don't take the action that regulators think is in their best interest and remain disengaged and lose out. The evidence shows that simply having a greater number of engaged consumers does not guarantee better outcomes for disengaged consumers. The loyalty penalty super-complaint made to the Competition and Markets Authority by Citizens Advice showed that instead of lowering prices for all consumers, firms often offer significant discounts to attract new and engaged consumers. These discounts are funded by charging higher prices to inactive consumers.

Effective competition relies on consumers being well-informed with a clear understanding of the products they need and how much they expect to use. However, it is not always easy for consumers to understand the products on offer, and to make accurate and informed decisions using the information they hold. We simultaneously see consumers over and underestimate their financial health with some resorting to unarranged overdrafts while others leave savings in easy-access cash accounts with little to no interest rather than investing in interest bearing accounts. Firms can adjust their pricing approaches to capitalise on these behaviours, leaving consumers worse off. For example, many banks charge higher rates on unarranged overdrafts while offering lower rates on arranged overdrafts, despite similar costs. This highlights that while more information can help consumers to better understand their needs, it is unlikely to make them fully immune to the biases that influence their decision making.

This report provides an up-to-date review of the merits of a different approach, shifting the emphasis from customers to regulating providers' behaviour, known as supply-side remedies. It finds that while there are real risks of negative impacts on the market and the potential to create winners and losers, these remedies can be an effective way to protect consumers' interests. The task for regulators is to mitigate these risks through a clear understanding of the problem and careful design of any action they take.

This review is based on an extensive literature review and interviews with regulators and Government. It aims to help inform future decisions on supply-side remedies, ultimately to ensure consumers get a better deal.

Key lessons for policymakers

Supply-side remedies can deliver immediate improvements for consumers experiencing harm and can be time-limited to minimise potential negative impacts.

The benefits of demand-side remedies take time to emerge as they require changes in consumer behaviour in response to new information or processes. In comparison, supply-side remedies place direct restrictions on company behaviour and can deliver immediate benefits. For example, price caps instantly lower prices and banning unfair business practices can rapidly change how products are sold. Supply-side remedies can also reach a wider group of consumers. This means that these remedies may be more appropriate when there is widespread consumer harm, especially if vulnerable groups are particularly badly affected.

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[1] Mobile, broadband, home insurance, mortgages, and savings.

However, regulators can be reluctant to introduce supply-side remedies even when there is evidence of negative impacts on consumers due to concerns about the potential negative effects on the wider market. These impacts, such as reduced competition or innovation, are difficult to forecast in advance. To mitigate this risk, supply-side remedies should be introduced as part of a wider range of actions, with a commitment to review their continued use. Using time-limited remedies strikes a balance between addressing immediate consumer harm and reducing the risk of long-term negative wider market impacts.

The best way to achieve this is to commit to a post implementation review at a fixed point when remedies are introduced. This approach ensures the policy could be removed or extended based on the evidence. For example, the Financial Conduct Authority (FCA) has committed to evaluating the impact of its Single Easy Access Rate (SEAR) cash savings market remedy three and five years following its implementation to assess whether the remedy is still required.

Regulators are right to be cautious about potential negative impacts of supply side remedies. However, these concerns can be mitigated through careful diagnosis of the problem and effective design.

Supply-side remedies are more interventionist than demand-side remedies. If they are designed poorly, they can have a negative impact on competition, innovation, or firm and consumer incentives. In extreme cases, this can result in consumers being worse off overall than before (i.e. regulatory failure). For example, research shows that the four tariff rule in energy reduced innovation without improving consumer engagement.

Regulators need to assess the potential for adverse consequences when deciding whether to introduce supply-side remedies. While this is not straightforward, it is necessary in order for regulators to be able to mitigate these risks through careful remedy design that is tailored to the specific characteristics of the market. In some cases, they may decide that a particular action would be disproportionate based on the results of this analysis.

It is also important to recognise that supply-side remedies can also help to facilitate effective competition. By tackling business practices designed to confuse customers and make it harder for them to switch, they can provide more opportunities for consumer action (searching, negotiating, and switching). Leaving these practices unchecked can mean, in the long-term, that there are fewer firms in the market as new entrants struggle to attract customers. Similarly, if incumbent firms can charge higher prices to inactive customers to offset discounts designed to attract engaged consumers, this can make it more difficult for new entrants and so lead to less competition.

Regulators may be able to overcome uncertainties about the impact of supply-side remedies by harnessing data and technology.

Regulators are required to be proportionate when intervening in markets. They should assess proposed remedies to ensure that the expected benefits outweigh the costs. Reliably estimating the expected impacts of supply-side remedies has been challenging. It requires confidence and accuracy in assessing how firms and consumers could react, and needs to be backed up by the data to estimate the size of the impacts associated with these reactions. Given the potential for supply-side remedies to have negative impacts on competition or innovation, this can lead to regulatory concerns about proportionality and legal risk.

However, this kind of data is now more widely available and is enabling regulators to adopt increasingly sophisticated analytical models which can provide better predictions of the outcomes of their action. For example, they can simulate different options in order to test potential mitigations.

Some regulators are already using these tools to improve remedy design. The price cap on high-cost short-term credit relied on in-depth modelling to simulate outcomes based on different price cap levels. A subsequent review in 2017 showed that the price cap was working well in addressing overall harm to customers with limited impact on competition. Separately, the CMA set up its Data, Technology and Analytics (DaTA) unit in 2018 to enable it to use data science to support its policy work. As these teams mature and share their lessons, this will help regulators to model the impact of supply-side remedies more accurately.

Continuous monitoring and evaluation are essential for effective policy design and regulators should formally share lessons learned.

Examining the impact of remedies is essential to provide practical lessons about what works and help regulators to keep stock of the evolving nature of markets.

The FCA's impact evaluations in 2018 and 2019 have focused on lessons learned and how they can be applied to future policymaking. For example, it used its evaluation of the guaranteed asset protection insurance remedy[2] to inform its package of remedies in the rent-to-own market.

Continuous monitoring and evaluation also provide an opportunity to assess whether existing remedies remain fit for purpose, particularly where there are concerns around wider market impacts or overall effectiveness. For example, the CMA energy market review found that several supply-side remedies introduced to simplify the market were not increasing consumer engagement and these remedies were subsequently withdrawn.

When measures are introduced on a temporary basis, regular market reviews are necessary to determine when they are no longer required, or, alternatively, if they need to be extended. This is particularly true if regulators expect other remedies to address underlying drivers of harm before removing time-limited solutions.

The choice of remedy matters

Regulators face a choice between different supply-side and demand-side remedies and will often introduce a combination of both as part of a wider package of remedies. This decision should be governed by their view of harm in the market and the expected costs and benefits of intervening. This in turn should be based on combining evidence of previous similar interventions with a detailed understanding of the relevant market's dynamics, such as firm and consumer behaviour.

Conclusion

Supply-side remedies are valuable. Their impacts can be both quicker and more widespread than demand-side remedies. Where unfair business practices are widespread, supply-side remedies may be necessary to rebalance a market before regulators can implement demand-side remedies.

It is important to recognise that some regulators face legal barriers on when they can use more interventionist remedies such as price caps. This means that even with better evidence to support the use of supply-side remedies, regulators may currently be limited in what they can do.

Where they can act, worries that supply-side remedies may not always work as expected or hoped should not cause policymakers to shy away from them. Our understanding of how customers and companies respond to these measures is improving every day, and new data analytics mean forecasting their impact is increasingly accurate. This means it is now easier to take action to mitigate the risk of adverse impacts. What is needed is a streamlined review and evaluation process, underpinned by a clear plan of how to evaluate a policy before rolling it out and a commitment to assess whether the remedies are still required at a later date.

What is also clear is that there is little reliable information on the impact of supply-side remedies, particularly regarding wider long-term market impacts. This understandably leads to greater caution by regulators. As the Public Accounts Committee has recommended, it is essential for regulators to understand the impact of their actions to support an evidence-based approach to policy design. Regulators should learn from each other, exchanging best practice and policy design lessons. This will help to ensure that policy interventions are based on experience and really do improve the market.

This review aims to support that work by bringing together the existing evidence on supply-side interventions to inform policymakers as they intervene in markets in the future, and, subsequently, evaluate their impact.

[2] A package of remedies which included restricting firm's ability to conclude a sale on the same day that they introduced the add-on insurance product to the consumer.

Contents

Glossary of Terms

APR	Annual percentage rate, common measure used to compare interest rates across products.
CCR	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
CMA	Competition and Markets Authority. UK Competition regulator.
CONC	The Consumer Credit sourcebook. A set of detailed obligations for credit-regulated activities, including requirements to protect vulnerable consumers.
CPI	Consumer Price Index, a measure of inflation.
CPIH	Consumer Prices Index including owner occupiers' housing costs, a measure of inflation.
CPR	Consumer Protection (Amendment) Regulations 2014.
CRA	Consumer Rights Act 2015.
DaTA Unit	A unit of the CMA focusing on the use of data engineering, machine learning, and artificial intelligence techniques to support regulation.
DCMS	Department for Digital, Culture, Media & Sport.
EBIT	Earnings before interest and taxes, also known as operating profit.
ECO	Energy Company Obligation. A Government energy efficiency scheme that provides funding for home energy efficiency improvements to certain consumer groups.
FCA	Financial Conduct Authority. Industry regulator for financial services.
FSA	Financial Services Authority. Previously responsible for the regulation of financial services in the UK. It has now been split into the FCA and the Prudential Regulation Authority (PRA).
HCSTC	High Cost Short Term Credit, commonly known as payday loans.
IA	Impact assessment. An assessment of the likely costs and benefits associated with a policy proposal. This can be either ex-ante (prior to implementation) or ex-post (following implementation).
LVM	Lifetime value modelling. Pricing approach that assesses current and future value of a customer by a firm.
NAO	National Audit Office. Body for overseeing and scrutinising public spending in the UK.
NEST	Government workplace pension scheme.
OFT	Office of Fair Trading. Previously responsible for protecting consumer interests. Its responsibilities have now been passed on to a number of organisations, primarily the Competition and Markets Authority.
PAC	Public Accounts Committee.
PCW	Price comparison website.

PSR	Priority Services Register. Register of consumers of consumers who require additional support (both financial and non-financial).
RMR	Retail Market Review. A review by Ofgem into the energy market undertaken in 2010-2013 which resulted in several remedies being introduced.
RPI	Retail price index, a measure of inflation.
RTO	Rent-to-own. Purchase of household goods on a hire-purchase or conditional sale basis.
SEAR	Single Easy Access Rate. New proposals from FCA that will require banks to set a single interest rate across all easy-access accounts that have been open for longer than a year.
SMP	Significant market power.
SVT	Standard variable tariff. A contract for energy supply that does not have a fixed-term and whose prices can go up and down with the market. Typically consumers are put on an SVT once their fixed-term tariff ends and they have not chosen another fixed-term tariff.
TOC	Train operating companies. Firms that run passenger train services, lease, and manage stations from National Rail.
UKCN	UK Competition Network. A forum for cooperation between the CMA and UK sector regulators.
UKRN	UK Regulators Network. An association of eleven regulators across the UK/
UTCCR	Unfair Terms in Consumer Contracts Regulations 1999.
ONS	Office for National Statistics.
USO	Universal Service Obligation. Requirement to provide (at a reasonable price) a baseline level of service to every consumer.
WFP	Winter Fuel Payment. Discount on heating bills for certain consumer groups.
WHD	Warm Home Discount. Rebate scheme on energy bills for certain consumer groups.

1 Introduction

This review examines evidence on the role and effectiveness of supply-side remedies in securing better outcomes for consumers.

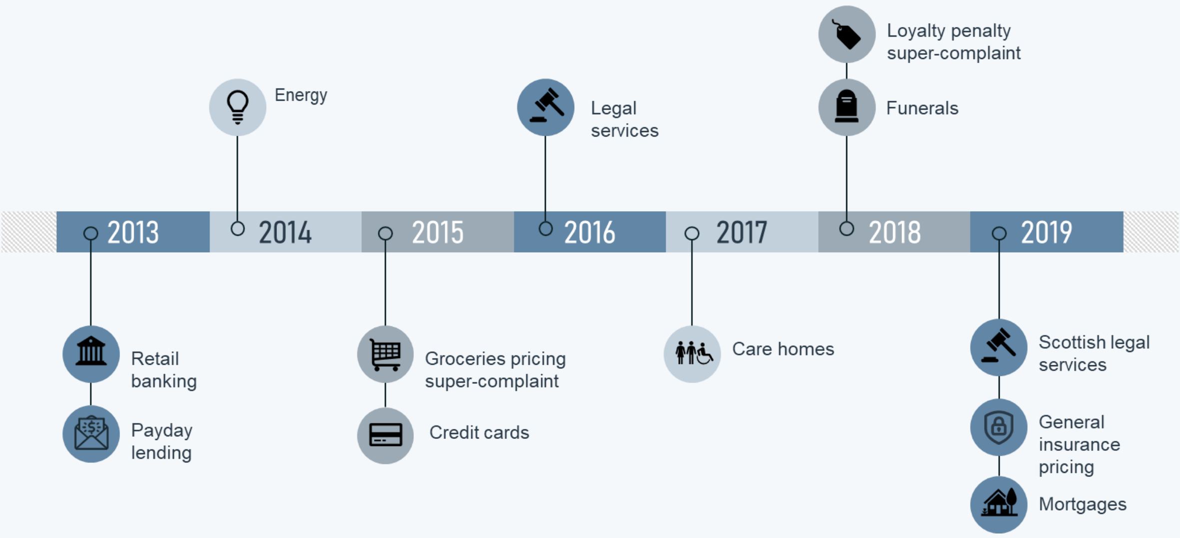
1.1 The current state of consumer markets

Consumer markets are not currently working well for everyone. Several recent market investigations have found recurrent problems leading to high prices, reduced choice, and limited innovation.

- The loyalty penalty investigation has found that firms systematically price discriminate against their disengaged consumers. This is costing consumers £4bn a year across five essential markets.[3]
- The Competition and Markets Authority (CMA) energy markets investigation concluded that the six largest energy providers hold market power over their inactive customers and use this power to raise prices for default tariffs[4].
- In the other markets such as payday lending, firms have been able to capitalise on behavioural biases to raise prices, including in the form of late fees or rollover fees.[5]

The Government has called on regulators to address these challenges, most recently in its Consumer Green Paper and strategic steer to the CMA. It has encouraged the CMA to 'champion consumers' and use its consumer protection and enforcement powers to address practices that are generating consumer harm.[6]

Figure 1: Overview of market studies carried out by the CMA and FCA in consumer markets



Source: PA Consulting

[3] CMA (2018). Tackling the loyalty penalty. Response to a super-complaint made by Citizens Advice on 28 September 2018.

[4] CMA (2016). Energy market investigation. Final report.

[5] Consumer Finance Association (2017). Impact of regulation on High Cost Short Term Credit: How the functioning of the HCSTC market has evolved.

[6] Department for Business, Energy & Industrial Strategy (2019). The Government's strategic steer to the Competition and Markets Authority.

Regulators are now actively investigating how they can facilitate better outcomes for consumers, with options ranging from interventions targeting engagement to more direct remedies[7] on firm behaviour such as price caps. Many have already introduced remedies following their own internal investigations. For example, Ofcom introduced a new 'text to switch' process in July with the aim of making switching mobile providers easier, and the Financial Conduct Authority (FCA) has introduced a price cap on the rent-to-own (RTO) sector.

Looking forward, it will be essential to ensure that irrespective of the type of remedies introduced, these are developed using an evidence-based approach and incorporate recognised regulatory best practice.

1.2 Purpose of this report

This report, commissioned by Citizens Advice, provides an up-to-date review of evidence around the use of supply-side remedies to address consumer harm and their effectiveness in doing so.

It first sets out an overview of the underlying market issues that can contribute to poor consumer outcomes and the potential remedies available to policymakers to address these issues. It then examines the use of supply-side remedies to date to gather cross-sector learnings. In addition to assessing the published literature, several structured interviews with experts within sector regulators and Government were carried out to gain insights from their experience.[8] Finally, this report examines the wider policymaking process for remedy design and review.

This report is not intended to speculate as to the applicability of specific remedies to the current challenges in UK consumer markets, which we leave to future analysis of individual markets. However, it aims to support this work by informing discussions on the use of supply-side remedies in securing better outcomes for consumers.

1.2.1 Scope of the report

This report examines examples of supply-side remedies and their role in addressing poor consumer outcomes, drawing out the common underlying learnings across the sectors.

It is not intended to suggest where remedies could or should be used to address current challenges within UK consumer or prescribe specific recommendations for policymakers. While the robustness of evidence has been considered, we have not carried out an in-depth review of each source. The scope of this review does not include market interventions that fall under the area of antitrust, including divestures, margin squeeze restrictions, and vertical separation.

1.2.2 Structure of this report

The remainder of this report is set out as follows:

- Chapter 2 discusses the underlying drivers of poor consumer outcomes;
- Chapter 3 provides a brief discussion on the tools available to policymakers to address poor consumer outcomes;
- Chapters 4 - 6 examine the evidence on supply-side remedies by remedy type;
- Chapter 7 lays out key lessons for policymakers on the policy making process; and
- Chapter 8 summarises key conclusions on supply-side remedies.

In addition, there are several supporting annexes.

- Annex A provides a more detailed discussion on competition failures;
- Annex B sets out a brief summary of common behavioural biases;
- Annex C sets out a review of select remedies in the energy sector, focusing on the policymaking process;
- Annex D sets out the evidence reviewed for this report; and
- Annex E sets out the literature review methodology.

[7] This review uses the terms 'remedy' and 'intervention' interchangeably.

[8] This included interviews with industry regulators including telecoms and utilities, cross-sector regulatory associations, and Government.

2 Drivers of poor consumer outcomes

Poor consumer outcomes arise from a combination of underlying drivers which fall increasingly beyond traditional market failures.

2.1 How competition can deliver good consumer outcomes

Government has an objective to ensure that markets are well-functioning and deliver good outcomes for consumers. In practice, this means that consumers should:

- Be able to access the goods and services that they need at affordable prices;
- Understand the products that they are purchasing; and
- Have access to effective means of redress when things go wrong.

There should also be incentives for firms to:

- Continue innovating to improve the quality of goods and services;
- Deliver greater choice; and
- Charge lower prices that are closer to the cost of production.[9]

The majority of consumer markets rely on a combination of competition and consumer protection policy to deliver these outcomes. In recent years, the prevailing view has been that 'robust competition is the best single means for protecting consumer interests'[10] and this has been reflected in the UK's regulatory environment.[11]

For competition to work well, both the supply and demand-sides of the market need to be well-functioning and effective. Competition relies on the idea that firms compete to win business from consumers, and that consumers are well-informed, engaged, and empowered when choosing which firm to buy from. This in turn increases competitive pressure on firms to deliver value-for-money for consumers. This process is commonly referred to as the 'virtuous circle of competition' and forms the basis for competition as a tool for delivering good outcomes.

Figure 2: Virtuous cycle of competition

Source: PA Consulting

2.2 The causes of poor consumer outcomes

There are several factors that can prevent markets from delivering good outcomes for consumers. Where competition is the main mechanism for delivering good consumer outcomes, situations that prevent either the supply-side or the demand-side from working well will undermine the achievable benefits of competition. For example, high barriers to entry affects supply-side competition by limiting the number of firms in the market. This can generate market power for existing firms, enabling them to raise prices above a competitive level while also limiting incentives to compete for new customers (e.g. not investing in activities to improve the quality of the good or service).

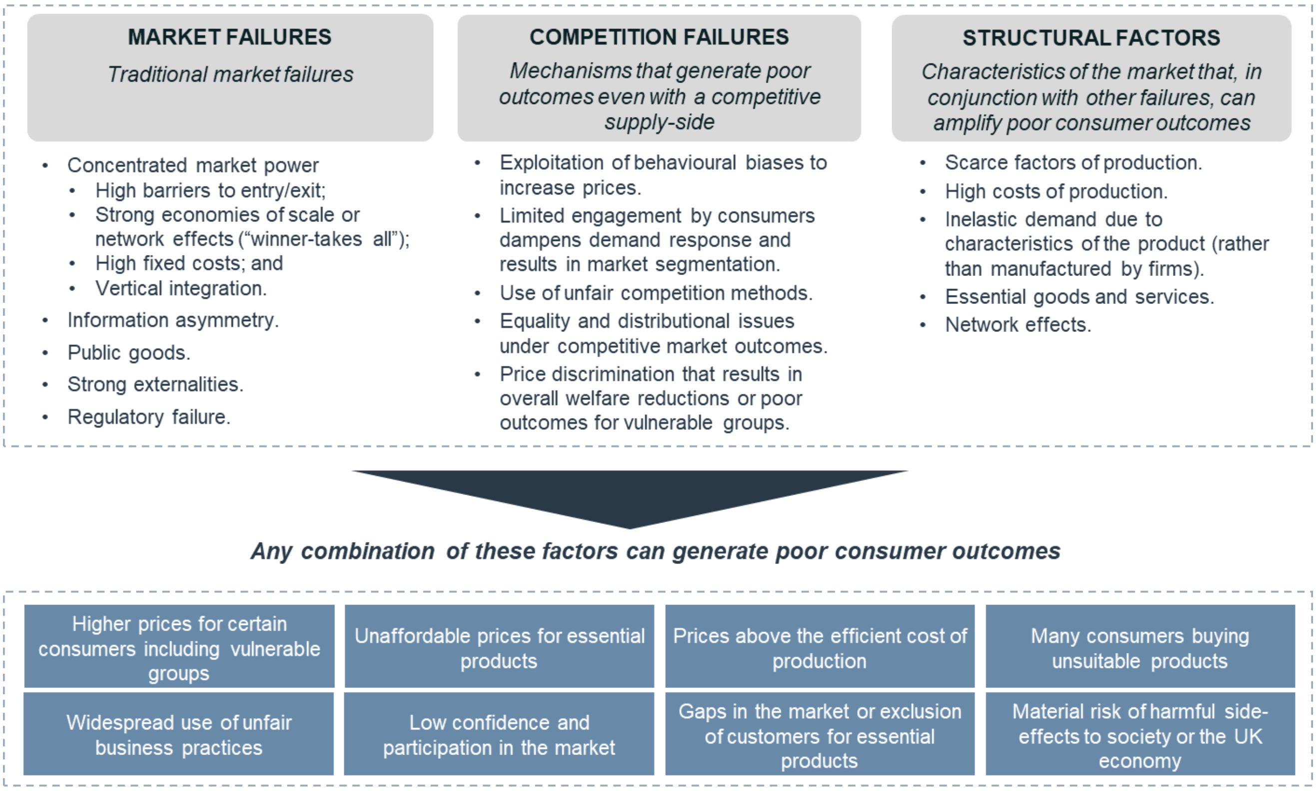
[9] Government Consumer Green Paper (2018). Modernising Consumer Markets.

[10] Timothy Muris, The Interface of Competition and Consumer Protection, paper presented at Fordham Corporate Law Institute's 29th Annual Conference on International Antitrust Law and Policy, New York (31 October 2002).

[11] For example, the primary statutory duty of the CMA is to 'promote competition, both within and outside of the UK, for the benefit of consumers', while the FCA has a 'core objective' to promote competition.

Poor consumer outcomes can persist even when there exists a supply-side competition. For example, difficult search or switching processes can make it harder for consumers to identify and switch to the best deals for their needs. Advances in data analytics have allowed firms to develop more sophisticated pricing strategies that set prices based on factors other than cost[12] and exploit behavioural biases. These practices can worsen consumer outcomes even for engaged consumers and raise the question of whether competition alone is always enough to deliver good consumer outcomes.

Figure 3: Drivers of poor consumer outcomes



Source: PA Consulting

To examine the underlying causes of poor consumer outcomes, we categorise these drivers into three broad groups:

- **Market failures**. These focus primarily on the supply-side of markets, examining the incentives of individual firm behaviour, and include monopoly power, asymmetric information, externalities and public goods. It also includes regulatory failure, where the actions and intervention of regulators negatively impact the market and worsen consumer outcomes. Market failures underpin many of the UK's current regulatory frameworks and are well understood by regulators as grounds for intervention.
- **Competition failures.** There is a growing body of research around the ways markets can fail to deliver good consumer outcomes even with a competitive supply-side.[13] Howell and Wilson (2009)[14] define these as 'competition failures': where there is a competitive supply-side, but the market fails consumers in ways that may not be strictly regarded as market failures. Examples of competition failures include exploitation of behavioural biases and cross-subsidisation between consumer groups.
- **Structural factors.** There are several structural factors that can generate poor outcomes for consumers without being considered market or competition failures in themselves. For example, scarce factors of production can

[12] For example, the recent general insurance pricing review by the FCA has highlighted the use of propensity models (likelihood to buy, renew, and buy add-on products), and lifetime value modelling by insurance companies to set prices. This can lead to consumers facing different prices even where they have the same risk profile and cost to serve.

[13] A market with low barriers to entry, largely homogenous goods, and numerous suppliers.

[14] Howell, Nicola & Wilson, Therese. (2009). The Limits of Competition: Reasserting a Role for Consumer Protection and Fair Trading Regulation in Competitive Markets. The Yearbook of Consumer Law 2009

drive up prices through the rationing effect. Where this happens in markets for essential goods and services, this can lead to significant consumer detriment even in the absence of market power or inefficiency. Another example would be 'network effects', where consumers may want to use the same good or service as other consumers, even though there are many suppliers in the market.[15]

It is important to recognise that poor consumer outcomes are often the result of interactions between multiple underlying drivers rather than arising from a single cause. Furthermore, the same outcome can arise as a result of several different combinations of underlying factors and therefore there is no 'one-size-fits-all' remedy for a specific outcome. Instead, regulators require a strong understanding of the underlying characteristics of their specific markets as part of the remedy design process in order to identify the best options.

Payday lending market: Drivers of poor outcomes

The CMA investigation into the payday lending market identified a number of drivers of poor consumer outcomes that span across market failures, competition failures, and structural factors. The interaction between these different drivers ultimately led to high prices for consumers and limited product innovation.

MARKET FAILURES	COMPETITION FAILURES	STRUCTURAL FACTORS
High barriers to entry led to market concentration, with 3 lenders accounting for 70% of total revenues generated from payday lending.	Firms were able to exploit optimism bias to increase late fees and other charges incurred if a consumer did not repay their loan in full and on time	Inelastic demand on price changes meant that firms competed on non-price factors such as speed of access, or online applications.
	Due to the context of short term lending, consumers were less likely to shop around	
	Tariff and product complexity made it difficult for customers to identify best-value products.	

High prices for payday loans

Reduced innovation in pricing structures

The remainder of this chapter will provide an overview of the theoretical literature for market failures, competition failures, and structural factors, and the lessons for policymakers in addressing these issues. Further detail can be found in Annex A.

2.3 Market failures

Dollery and Wallis (1997)[16] defined market failure as the 'inability of a market or system of markets to provide goods and services either at all, or in an economically optimal manner'. Examples of market failures focus on situations where the incentives of individual firms (or consumers) are misaligned with social costs and benefits, resulting in over or under provision of certain goods and services.

Mazzucato (2015)[17] sets out a typology of traditional market failures that make up mainstream frameworks for government intervention, identifying the main types of market failure, which we set out below in Table 1.[18]

[15] This could include online platforms.

[16] Dollery, Brian and Wallis, Joe L., (1997), Market Failure, Government Failure, Leadership and Public Policy, Journal of Interdisciplinary Economics, 8, issue 2, p. 113-126

[17] Mazzucato, Mariana. (2015). From Market Fixing to Market-Creating: A New Framework for Economic Policy. SSRN Electronic Journal. 10.2139/ssrn.2744593.

[18] Mazzucato sets out a fifth type of market failure, 'co-ordination failure' which relates to the creation of macroeconomic business cycles due to miscoordination of expectations and preferences. We consider this to be less relevant to the regulation of supply side markets and have therefore excluded it from the scope of this report.

Table 1: Traditional market failures

Market failure	Definition	Consumer harm
Concentrated market power	Monopolistic or oligopolistic markets[19] with a limited number of firms who can set prices or quality without challenge from its customers or other firms.	Firms are able to raise prices above efficient costs without losing sales to rivals. It also reduces incentives for innovation or cost efficiency.
Information asymmetry	Information asymmetry occurs when one party in a transaction has more information than the other and exploits this knowledge.	This can result in moral hazard or adverse selection, rationing, poor consumer choices, and in the extreme, breakdown of the market.
Public goods	'Non-rivalrous' and 'non-excludable' goods i.e. one person's consumption of a public good does not reduce its availability to others, nor can individuals be deprived of consuming the product. Examples include national defence and public lighting.	Due to the 'free-rider' problem, private companies have very little incentive to provide public goods resulting in under-provision.
Strong externalities	Externalities occur when the production or consumption of goods and services impact third parties and this is not reflected in prices paid.	Private costs or benefits of a good differ from its social costs or benefits and results in over- or under production.[20]
Regulatory failure	While market interventions are designed to mitigate existing issues in the market, there is a risk that they can do more harm than good. This can be due to poorly designed remedies or the evolution of markets that mean remedies are no longer appropriate.	Impacts vary depending on the intervention, but common examples include reduced competition and innovation incentives as well as knock-on impacts on other markets.

Source: PA Consulting and academic literature

Market failures are well established in the economic literature and underpin the UK's regulatory approach to market intervention.[21] Mitigating issues arising from market power has driven the CMA's strong competition agenda and has motivated several supply-side remedies across the sectors. Traditional market failures continue to be relevant in today's consumer markets, and still contribute to generating poor consumer outcomes.[22]

2.3.1 Limitations of focusing on market failures alone

Much of the existing research on market failures has assumed that consumers are fully engaged and free of behavioural biases (examples of these biases are set out in Annex B). This has influenced the way in which regulators have intervened in markets and behavioural considerations have been given lower prominence when designing regulatory interventions.[23]

[19] Market power can arise from several factors including barriers to entry, economies of scale with high fixed costs (natural monopolies), network effects, product differentiation, and vertical integration.

[20] In its recent paper on online market failures and harms, Ofcom suggests that platforms may not fully account for the benefits to their users of making services interoperable with third party services, resulting in under-provision. Ofcom (2019). Online market failures and harms. An economic perspective on the challenges and opportunities in regulating online services.

[21] This is noted in the FCA's 'Economics for Effective Regulation' paper which finds that 'economics frameworks for public policy have traditionally focused on […] information asymmetries, externalities, and market power – as rationales for regulatory interventions'. FCA (2016). Occasional Paper 13. Economics for effective regulation. Another example is Ofcom's legal framework which allows Ofcom to impose price caps only where there is significant market power.

[22] For example, the CMA's review of payday lending found that barriers to entry including the high cost of assessing credit risk, difficulties in establishing a good reputation with potential borrowers, and access to banking services all limited the ability of new entrants to compete with established incumbents in the industry.

[23] FCA (2016). Occasional Paper 13. Economics for effective regulation.

However, it is clear that perfect consumer rationality is an unrealistic expectation and the interaction of behavioural biases with other market imperfections can create a whole new set of failures that lead to poor consumer outcomes. For example:

- The CMA's energy market investigation found despite falling levels of overall concentration in retail supply, the six largest energy companies retained a position of market power over their inactive customer base due to weak consumer response;[24] and
- The same phenomenon appears to be the case in the cash savings market where back-book accounts typically have lower interest rates than accounts that have been opened more recently.[25]

While a more traditional view of competition suggests that the increase in the number of competitors would help to constrain prices across the whole of the market, real world evidence shows that this has not been the case. Instead, firms have been able to price discriminate between their active and inactive customers, using market power over disengaged customers to raise prices.

Market investigations have also shown that even when consumers are engaged, and there is strong supply-side competition, they can still fail to get good deals. The growth in data availability has increased the ability of some sectors to employ more personalised pricing e.g. insurance, meaning that prices no longer reflect just the cost of delivering services but instead incorporate wider factors such as likelihood of renewal.

As our understanding of firm and consumer behaviours continue to evolve, regulators will need to adapt their economic frameworks to spot new drivers of poor outcomes and where they may fall beyond the definition of traditional market failures.

2.4 Competition failures

Competition is a powerful mechanism for protecting consumer interests. Market interventions to promote competition have generated significant benefits for consumers. The CMA estimates that its competition enforcement activities[26] have saved consumers at least £127 million between 2016 and 2019 through lower prices.[27] However, competition policy has historically focused on improving the supply-side of markets, promoting competition through ensuring that there are a sufficiently large number of suppliers and enough consumer choice. Policymakers have only recently begun to explore how traditional market failures can interact with other factors, such as behavioural biases, to create new conditions for consumer harm.

There have also been wider discussions on the ability of competition alone to deliver good consumer outcomes. The CMA has recently proposed a set of reforms centred around consumer protection, stating that 'interventions based on competition alone are not always sufficient to protect the interests of consumers, or to do so in a timely manner'.[28] If regulators are to address poor outcomes in consumer markets, they will need to be prepared to intervene in cases that fall outside of the realm of traditional market failures and, instead, sit within the category of 'competition failures'.

Howell and Wilson (2009)[29] refer to failures that generate poor consumer outcomes even when there exists an efficient supply-side market as 'competition failures'. They argue that while some aspects of 'competition failures' may also be attributable to market failures, it is useful to maintain a distinction between 'market' and 'competition' failures to illustrate that historically only some failures appear to have been considered grounds for market intervention by regulators.

[24] CMA (2016). Energy Market Investigation. Final Report.

[25] FCA (2018). DP18/6. Price discrimination in the cash savings market.

[26] This includes investigating and taking enforcement action against anti-competitive practices, issuing guidance, and targeted compliance initiatives.

[27] CMA (2019). CMA impact assessment 2018/19. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818556/CMA_Impact_Assessment_Report_2018_19_Final.pdf

[28] CMA (2019). Letter from Andrew Tyrie to the Secretary of State BEIS. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781151/Letter_from_Andrew_Tyrie_to_the_Secretary_of_State_BEIS.pdf

[29] Howell, Nicola & Wilson, Therese. (2009). The Limits of Competition: Reasserting a Role for Consumer Protection and Fair Trading Regulation in Competitive Markets. The Yearbook of Consumer Law 2009

In our review of the academic literature, which is set out in full in Annex A, we have identified a number of different competition failures that can occur. We summarise these in Table 2 below and set out some key examples from the academic and regulatory literature.

Table 2: Different forms of competition failure

Competition failure	Overview
Exploitation of behavioural biases	Firms operate in a manner designed to prevent consumers from making choices that are in their best interests. Common examples include generating price complexity to prevent comparison, raising prices on unforeseen add-on products, and opt-out sales tactics which exploit default bias. This can generate market power and allow firms to raise prices for consumers. This includes conferring a competitive advantage to incumbents that are not available to new entrants if large margins are being made on inactive customers.[30]
New methods of price discrimination	Businesses now have access to significantly more information on their consumers and can use this to estimate prices that different consumers are willing to pay, as well as predict their future behaviours such as their propensity to switch. This enables companies to set different prices for consumers based on their price sensitivity. Under price discrimination, two consumers purchasing the same product and incurring the same cost to a firm may be charged different prices.
Unfair methods of competition	Firms are not restricted to competing through lower prices or improved product quality. Instead they can engage in a wider range of methods that are considered to be socially undesirable,[31] for example false advertising and passing-off, in order to decrease costs or increase market share. The UK has consumer protection regulations designed to prevent the use of unfair competition methods. However there is still ambiguity around the exact conduct that falls under the definition of 'unfair competition'[32] and firms can develop new mechanisms. Where regulators find it difficult to monitor and enforce these regulations, or consumers lack easy methods for reporting, illegal practices may still be widespread.
Distributional issues under competition	'The benefits of competitive markets are not evenly spread amongst consumers – competition creates both winners and losers'.[33] These distributional impacts can emerge in several ways. For example, recent the loyalty penalty investigation found that vulnerable consumers are disproportionately impacted by higher prices for the disengaged.

Source: PA Consulting review of academic literature

[30] Ofgem (2011). The Retail Market Review – Findings and initial proposals.

[31] Stucke, Maurice. (2012). Is Competition Always Good? Journal of Antitrust Enforcement. 1. 10.1093/jaenfo/jns008.

[32] Ong, Burton (2011). Competition law and the common law of unfair competition.

[33] Howell, Nicola & Wilson, Therese. (2009). The Limits of Competition: Reasserting a Role for Consumer Protection and Fair Trading Regulation in Competitive Markets. The Yearbook of Consumer Law 2009

Exploitation of behavioural biases: Overvaluation, overconsumption and market power

Firms can structure price tariffs to exploit behavioural biases such as optimism bias by reducing prices for the main product and increasing the cost of add-ons. This can generate wider impacts on the market including high prices, market power, and inefficient allocations.

	STAGE ONE Consumers have the option to purchase a product.	STAGE TWO Secondary purchasing choice (e.g. Add-ons or additional fees)	STAGE THREE Benefit/cost of joint consumption
Credit cards	Purchase made on a credit card	Balance revolved over in the next month	Interest payments due

- **Market power and aggregate prices.** Even if firms make excessive profits through the sale of add-ons, they may choose to pass this all to consumers through lower upfront prices in order to increase market share. However, Heidhues et al (2016)[34] suggests that many products face a lower bound on upfront prices. This means that all the profits from add-on sales cannot be passed to consumers and therefore exploitative tariffs raise overall prices. It goes on to identify the credit market as an example.
- **Inefficient allocations**. Exploitative tariffs can lead to inefficient allocations even if they do not generate market power. Both Gans (2005)[35] and Grubb (2015)[36] conclude that exploitative tariffs lead consumers to overestimate the value of contracts and therefore to overconsume. If firms lower upfront prices and raise the price for add-ons, the overall price may remain the same. However, consumers with optimism bias underestimate their consumption of add-ons and interpret this as a price decrease, leading to too many purchasing at a given price.

These extend beyond distributional impacts and demonstrate the potential for wider market issues arising from exploitative tariffs. The academic literature[37] also suggests that firms have an incentive to develop and adopt new ways to exploit consumers, leading to widespread use of exploitative tariffs.

New methods of price discrimination: Insurance market

Growth in data availability has led to some sectors using more personalised pricing, including setting prices based on factors unrelated to the cost of delivering goods and services. The FCA's insurance market study[38] found that the majority of insurance firms use 'lifetime value' or 'propensity models' to estimate overall expected income over time for a particular customer. This includes estimating their likelihood of purchasing add-ons or policy renewal. This is then used to determine the price offered.

While price discrimination can benefit consumers, the interaction of price discrimination with behavioural biases introduces new welfare implications. New methods of price discrimination make it difficult even for engaged consumers to make informed comparisons and identify the best deals for them. If firms can identify consumers who are more likely to underestimate their likelihood of incurring additional charges (optimism bias), they may choose to offer a lower introductory price on the assumption that they will gain through greater fees in the long run. As the consumer is unaware that they may incur these fees, this will look like a price reduction.

The FCA's research found strong evidence that consumers who pay the highest margins were least aware of how pricing practices in the insurance markets work suggesting that these tactics may be raising prices.

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[34] Heidhues, Paul & Kőszegi, Botond & Murooka, Takeshi. (2016). Exploitative Innovation. American Economic Journal: Microeconomics. 8. 1-23. 10.1257/mic.20140138.

[35] Gans, Joshua. (2005). Protecting consumers by protecting competition: does behavioural economics support this contention?

[36] Grubb, Michael (2015). Overconfident Consumers in the Marketplace, Journal of Economic Perspectives, Volume 29, No.4

[37] Heidhues, Paul & Kőszegi, Botond & Murooka, Takeshi. (2016). Exploitative Innovation. American Economic Journal: Microeconomics. 8. 1-23. 10.1257/mic.20140138.

[38] FCA (2019). MS18/1.2. General insurance pricing practices. Interim report.

2.5 Structural factors

There are inherent characteristics of a market or product that can increase the likelihood of poor consumer outcomes. These can either exacerbate existing market or competition failures, or result in poor consumer outcomes even when markets are truly well-functioning from a competition standpoint.

The essential nature of goods

When consumers cannot afford to buy goods and services that they need (i.e. that are essential), or the quality of these goods and services are poor, this can result in significant consumer detriment. For example, being unable to:

- Afford essentials such as food, water, and energy can result in significant negative health impacts (and their importance has been reflected in the establishment of programmes such as the warm home discount (WHD), which aims to mitigate fuel poverty); and
- Access affordable credit can mean that consumers are forced to choose between going without essential services or to approach alternative (and usually prohibitively expensive) forms of credit.

Other goods and services such as telecommunications services or bank accounts are increasingly important enablers in today's digital economy.

- Consumers who are unable to obtain bank accounts often face significant challenges in meeting day to day requirements such as making bill payments or receiving wages, as well as being excluded from the opportunity to receive discounts for paying through direct debit.
- Without access to the Internet, consumers may be unable to perform essential tasks such as applying for jobs, shopping for groceries, or benefiting from new digital tools such as price comparison websites (PCWs) that would enable them to reduce their total bill expenditure.[39]

The essential nature of these goods and services means that there may be greater justification for policymakers to intervene, either in the presence or absence of traditional market or competition failures.

- High prices may be a result of natural market forces when goods are limited. While this might not be considered a market or competition failure in itself, if these high prices (due to scarcity or cost of production) are for an essential good or service, the impact on consumers, particularly those in vulnerable circumstances, could justify intervention.
- Some products can be more difficult for consumers to compare than others even when firms are not engaging in deliberate obfuscation. Products that have greater technical complexity such as broadband or financial products can be difficult for consumers to understand and make a judgement on which product is right for their needs.
- Similarly, products that are naturally more personalised result in greater heterogeneity and therefore are difficult to compare across companies or against the experiences of friends and family as an informative benchmark.

The impact of price sensitivity

Price sensitivity, or price elasticity of demand, refers to how responsive consumers are to changes in price.[40] Price elasticity of demand interacts with market and competition failures to affect consumer welfare in a number of ways and will differ across markets.

- Some products, due to their inherent characteristics or the circumstances in which they are purchased, have a lower price elasticity of demand and this can make it easier for firms to raise prices while competing on other

[39] While consumers are still able to access traditional high street alternatives, this may be less convenient e.g. due to the cost of time. Furthermore, trends are increasingly moving services away from the high street and the scope of consumer harm may increase in the future.

[40] For example, when consumers have a low price elasticity of demand, even a large increase in price may not significantly reduce the amount that they choose to purchase (at least in proportionate terms). In comparison, for products with a high price elasticity of demand, a small change in price can lead to large proportionate changes in quantity purchased.

product attributes. Where this coincides with the ability to exploit behavioural biases such as optimism bias, this can amplify the risk of excessive prices.[41]

- Products that are purchased relatively infrequently can also be difficult for consumers to evaluate, particularly if there are other factors that make it difficult for them to shop around or make a decision based on reviews.[42] This lack of knowledge (perhaps due to information asymmetries) can change consumers' sensitivity to price as they may not have a good understanding of what should be a reasonable price.
- Firms can design price tariffs to interact with behavioural biases with the intention of tempting consumers into buying products they otherwise would not.[43] This is referred to as 'participation distortion'. The scale of harm resulting from participation distortion will be highest when consumers are more price sensitive. In this scenario, a small perceived price decrease will correspond with a greater increase in purchasing leading to more consumers being tempted into exploitative tariffs.

The ability of firms to reduce prices

Firms can choose to design price tariffs to take advantage of behavioural biases such as optimism bias, reducing upfront prices while increasing the price of add-ons or renewal/out-of-contract prices. The impact this will have on overall prices will depend on the ability of firms to pass these profits back to consumers through competing on upfront prices. In competitive markets, firms may choose to use the profits from add-on products to reduce upfront prices in a bid to increase their market share, and overall prices will remain the same. However, when firms face a price floor on what they can charge for upfront prices, and the potential profits from add-on prices is high, this can result in higher prices overall as firms are unable to pass-through the entirety of these profits to consumers which worsens consumer outcomes.[44]

The underlying cost of supplying goods and services

Markets are efficient when the price charged to a consumer is equal to the marginal cost of supply (i.e. the cost of supplying an extra unit). However, in practice, there are markets where the marginal cost of supply can be so prohibitively high that without intervention, a consumer may have to forego access to services that are considered to be essential. Examples include the provision of postal and telecommunications services to remote and rural locations.

Network effects

Network effects arise when consumers want to be using the same service as other consumers. Each additional user of a good or service increases its value when network effects are present.[45] Recent examples in digital markets include social network platforms, such as Facebook, Twitter and Instagram, where the value in using the service increases with more users joining it (e.g. the ability to interact with more people through the same service). As a result, providers of a popular good or service might find that they are able to use this critical mass of consumers to their advantage (e.g. raising the price or lowering the quality once there is a 'critical mass' of consumers who are 'locked-in' to their product). It can also make entry into the market challenging as consumers may not be willing to accept a potential reduction in services (e.g. connectivity to friends or content) from a new service while the network grows.

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[41] For example, the CMA's investigation into the payday lending market found that due to the perceived urgency of accessing the loan, which consumers may be using to pay for essential living expenses, the most important factor when choosing a loan provider was speed of access rather than price. This meant that consumers were less likely to spend time shopping around for the best deals and reduced incentives for loan providers to compete on headline rates. The focus on speed of access combined with behavioural biases such as short-termism or optimism bias also meant that customers were 'particularly unresponsive to late fees and other charges incurred if a customer did not repay their loan in full and on time'. This allowed lenders to increase these fees without losing large proportions of their customers and led to high overall prices.

[42] For example, the CMA's initial investigation into the funeral markets found that 'people are often poorly prepared, grieving, emotional and under time pressure to arrange a funeral quickly. In addition they purchase a funeral relatively infrequently, and therefore have little knowledge of what is required or what options are open to them'. In combination with other factors, such as limited information online and the iterative nature of price bargaining for funeral services, this meant that the demand for funeral services has been very unresponsive to price changes. CMA (2019). Funerals market study. Final report and decision on a market investigation reference.

[43] Common examples including pricing structures that take advantage of framing, salience, present bias and optimism bias. An example would be subscription with an initial discounted period that then increases which consumers may not remember to cancel. These consumers may not have been willing to pay the full price when taking out the offer. Further detail on behavioural biases can be found in Annex B.

[44] Heidhues, Paul & Kőszegi, Botond & Murooka, Takeshi. (2016). Exploitative Innovation. American Economic Journal: Microeconomics. 8. 1-23. 10.1257/mic.20140138.

[45] There is a reverse impact on some networks, where more users make a product less valuable due to, for example, congestion.

3 Using supply-side remedies to improve consumer outcomes

When markets fail to deliver good consumer outcomes, Government and regulators may choose to intervene, introducing regulation to improve consumer outcomes. Regulation can be targeted towards the demand-side (consumer-facing) or the supply-side (company-facing) and can range from measures to promote competition to more interventionist mechanisms that may go against principles of harnessing market forces.

Not all market interventions are strictly demand- or supply-side. Many remedies impact both sides of the market and supply-side remedies can help consumers to make better choices. For example, standardisation of pricing structures can simplify consumer choice and enable consumers to make like-for-like comparisons. Policymakers can also develop a package of interventions targeting both the demand- and supply-side of a market together.[46]

3.1 Demand side remedies

Demand-side remedies focus on improving consumer outcomes through addressing issues that are limiting consumer response. This may be due to:

- The existence of high search or switching costs;
- Behavioural biases that mean consumers are limited in their ability to make well-informed decisions that maximise their own welfare; or
- The inherent nature of products that mean consumers are less price sensitive.

Common examples of demand-side remedies include:

- **Disclosure remedies**, that increase the information available to consumers when making their purchasing decisions;
- **Shopping around remedies,** such as price comparison websites; and
- **Switching remedies** that make it easier for consumers to change their supplier.

They require consumers to actively change their behaviour in order to drive improvements in market outcomes and increase the proportion of consumers who are rational and engaged.

Traditionally, policymakers have employed demand-side remedies to address issues stemming from disengagement or other behavioural biases rather than supply-side remedies. Demand-side remedies rely on the forces of competition to improve consumer outcomes (e.g. by enabling consumers to make better decisions) and are therefore considered to be 'lighter-touch' with a lower risk of adverse impacts (e.g. reducing or limiting supply or reducing the incentives for firms to innovate). As many competition failures are driven by behavioural biases, demand-side remedies that aim to overcome the influence of heuristics and biases on consumer decision-making directly target the source of the issue.

However, demand-side remedies can be limited in what they can achieve. While they can bring a net-positive effect, it is unlikely that demand-side remedies alone can solve all issues in the market for all customers.[47] Often consumers remain disengaged or continue to be influenced by behavioural biases[48], e.g. consumers have limited capacity to make use of increased information and do not use it in their decision-making.

[46] For example, the FCA's package of remedies in the overdraft market included a mix of demand- and supply-side remedies: stopping firms from charging higher prices for unarranged overdrafts than for arranged overdrafts; banning fixed fees for borrowing through an overdraft – no daily or monthly fees, or fees for having an overdraft facility; requiring firms to price by a simple annual interest rate; issuing new guidance to reiterate that refused payment fees should reasonably correspond to the cost of refusing payments; and requiring firms to do more to identify customers who are showing signs of financial strain or are in financial difficulty and implement a strategy to reduce repeat use. FCA (2019). PS19/16: High-Cost Credit Review: Overdraft policy statement.

[47] Fletcher, Amelia (2016). The role of demand-side remedies in driving effective competition.

[48] Ibid.

Real world evidence has also shown that the presence of engaged and rational consumers is not always enough to protect the disengaged.[49] Instead, the ability of firms to discriminate can mean that the opposite is true, with engaged consumers benefiting from the presence of the disengaged consumers. New methods of margin optimisation and lifetime value modelling mean that even engaged consumers face higher prices than their peers despite costing the same amount to serve.[50]

Finally, demand-side remedies are not immune to unintended negative impacts. For example, while tools such as PCWs have helped to reduce search costs for many consumers, economists are beginning to explore the ways in which they can generate new issues.[51] If consumers rely on a single source for price comparison, that source could hold a monopoly in the provision of information to consumers and sellers may be charged inefficiently high prices to list their products. This cost is then passed on to consumers. The algorithms used to rank products on price comparison websites may also incentivise sellers to increase hidden charges or quality restrictions.[52]

3.2 Supply-side remedies

Supply-side remedies target the behaviour of companies, restricting the structure, market, and price of the products and services sold. In doing so, they aim to directly change behaviours that are generating poor consumer outcomes; whether from unfair contract terms, excessive prices, or restriction of access to essential services.

Supply-side remedies are already widely-used to address traditional market failures. In the absence of a competitive supply-side, there is little competitive pressure for dominant firms to reduce prices, increase quality, and sustain innovation to deliver continuous improvement for customers. In these cases, it is widely accepted that direct supply-side interventions are required to ensure consumers have access to reasonably priced and high-quality products. Examples include well established price control frameworks in utilities (energy, water, and wholesale telecommunications) and postal services, as well as universal service obligations in postal and water sectors.

However, supply-side remedies can also offer valuable tools to address challenges outside of traditional market failures. The CMA has recently stated that 'interventions based on competition alone are not always sufficient to protect the interests of consumers, or to do so in a timely manner'. Supply-side remedies can offer an alternative approach and recent price caps in the financial services and energy sectors explicitly target exploitation of behavioural biases.

The section summarises the theoretical benefits and limitations of supply-side remedies. The remainder of this report will examine the existing evidence of supply-side remedies in practice by remedy type, identifying examples of where they have previously been used by regulators and policymakers to address consumer harm and their relative success. Specifically, this report will consider three broad categories of supply-side remedies: (1) Price caps, (2) Targeted support, and (3) Limits on firm behaviour.

[49] Further detail on the theoretical literature can be found in Annex A.

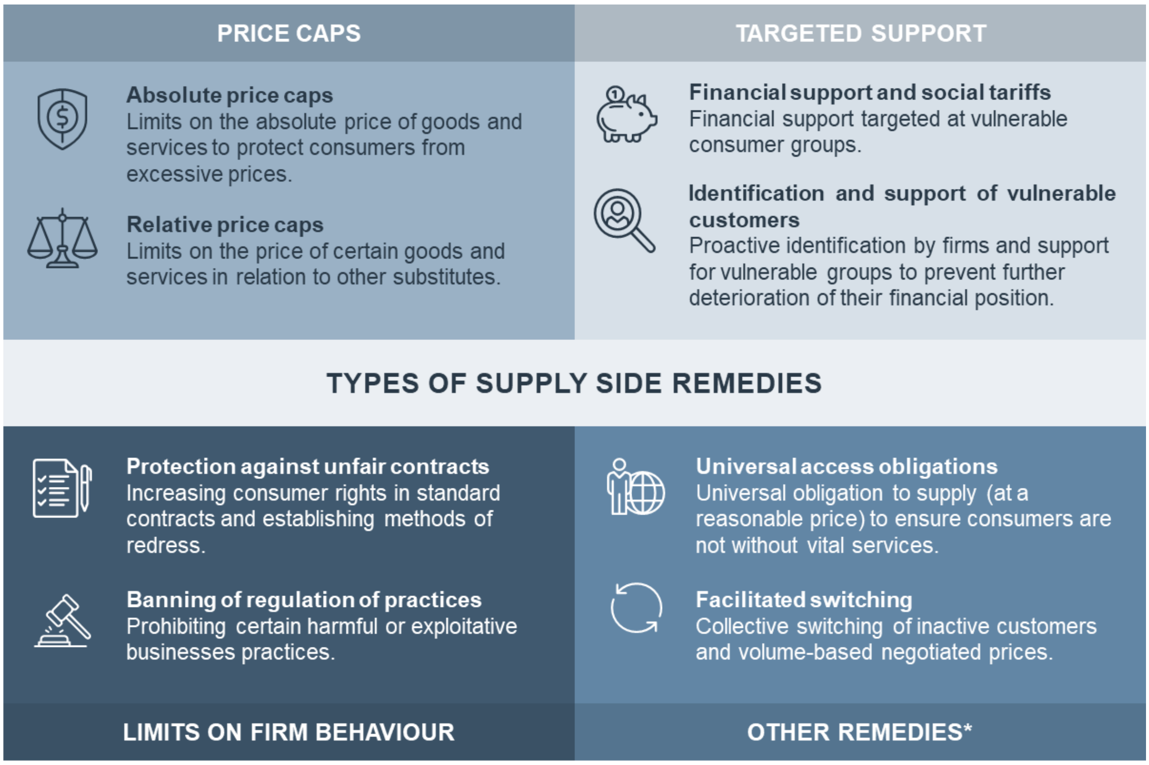
[50] FCA (2019). MS18/1.2 General insurance pricing practices. Interim report. Market Study.

[51] The FCA's recent insurance market study begins to consider these risks. It reviews the role that PCWs play in the insurance market, their revenue streams, and the impact they have on competition. They find that direct and PCW only insurers have a higher proportion of add-on revenue compared to other firms and speculate that this may be because these firms keep headline rates low to compete.

The CMA's investigation into Digital Comparison Tools found that commissioners charged by PCWs are lower than many direct acquisition costs and this was likely to be passed on as savings to consumers. However, it did identify specific contracts types that between PCWs and suppliers that could restrict competition.

[52] Armstrong, Mark. (2008). Interactions between Competition and Consumer Policy. Discussion Papers in Economics (08-01). Department of Economics, University College London, London, UK.

Figure 4: Types of supply-side remedies



* Not reviewed in detail as part of this report.

Source: PA Consulting

3.2.1 Benefits of supply-side remedies

Empowering consumers to take control of their choices

Research has found that consumers have difficulty in managing complex choices. Where consumers face an overwhelming number of choices, this can lead to decision fatigue, default bias, and choice deferral that prevents consumers from searching for better deals.[53] Lack of consistency in pricing structures, price obfuscation, and product bundling can make it difficult for consumers to easily compare their options and make the right choice for their needs. Firms benefit from weaker competitive pressure arising from choice complexity, and have an incentive to actively generate confusion, for example through deliberately complex tariffs or spurious differentiation.

Demand-side remedies that focus on increasing information disclosure or making the switching processes easier can struggle to effectively address these issues. In comparison, supply-side remedies can directly remove these practices from the market, making it easier for consumers to make effective choices.

Improving consumer outcomes from effective competition

Even when there is strong supply-side competition, firms can still use exploitative tariffs, offer unfair conditions, or offer lower quality products and services if the demand response of consumers is weak.[54] This means that even when consumers do engage with the market, they are unable to find good deals.

In these scenarios, supply-side interventions can help to create an environment where competition improves rather than undermines consumer outcomes. For example, a ruling against unfair contract terms and debt collection practices in health and fitness club contracts has led to significant improvements across the market while still allowing for competition through improved facilities and lower membership costs.

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[53] Iyengar, S. and Lepper, M. (2000). When choice is demotivating: Can one desire too much of a good thing?'. Journal of Personality and Social Psychology, 79(6), pp.995-1006.

[54] Centre for Competition, 2016. 'The Role of Demand-Side Remedies in Driving Effective Competition.' Accessed that the following address: https://www.regulation.org.uk/library/2016-CCP-Demand_Side_Remedies.pdf

Directly delivering uniform outcomes

Supply-side remedies allow policymakers to make direct interventions on price, access, and business practices. This can be particularly helpful in markets where poor outcomes are widespread or where competition failures mean that the presence of rational engaged consumers is insufficient to protect all consumers from high prices.[55] Similarly, where natural market forces mean that some consumers are unable to access essential services, regulators may choose to introduce universal service obligations (USOs) to address shortfalls in service provision.

Supply-side remedies can be introduced on a temporary basis alongside a wider package of remedies designed to reform the underlying market. This approach allows policymakers to use supply-side remedies to provide immediate relief for consumers until other solutions are in full force, at which point they can be removed.

3.2.2 Limitations of supply side remedies

Although supply-side remedies can offer several benefits for consumers, they also have a number of limitations including a higher risk of regulatory failure. Supply-side remedies directly change the behaviour of firms, sometimes in ways that go against market forces, and therefore they have a higher risk of adverse impacts on the wider market if policies are not designed with mitigations in mind.

Policymakers should ensure that the remedy design process includes a careful and comprehensive assessment of the wider market along with taking the time to seek feedback from stakeholders. The findings from these processes should be used to iterate proposed remedies and help to mitigate potential risks arising from market intervention.

Contraction of supply and softening of competition

Supply-side remedies often require policymakers to make a direct judgement on the desired outcomes of the market. However, determining the desired state of the market is not easy. For example, absolute price caps require regulators to set the value of the price cap. Ideally this should be set at a level that covers the efficient costs of delivering the good or service, and adjusted for wider considerations such as innovation and investment needs or provide headroom to maintain price competition and switching incentives.[56]

However, there is always a risk that the price cap will be set at a level that makes it unprofitable to operate in the market. If this is the case, firms may be forced to exit the market or potential competitors may choose not to enter resulting in higher market concentration. This lower level of competition can result in worse consumer outcomes in the long term, particularly if price caps are then subsequently removed. Other supply-side remedies that have a high cost of implementation and administration, or place requirements on suppliers to serve less profitable consumers such as USOs, can also raise concerns around supply and disproportionately impact smaller companies.

Exclusion of certain consumer groups from the market

Rather than exiting the market all together, firms may choose to recoup loss of revenue resulting from supply-side remedies by refusing to serve certain groups of the market. For example, the introduction of price caps on payday loans resulted in fewer consumers being accepted based on their risk profile.[57] While some consumers may be better off from not purchasing a product, if consumers are shut out from essential markets, or turn to illegal suppliers, this will lead to significant consumer detriment.

Waterbed effects

The 'waterbed effect' occurs when firms react to lower revenues from one product by increasing prices (or removing discounts) elsewhere. This can lead to certain consumer groups subsidising the consumption of others.

Even with the waterbed effect, supply-side remedies can generate a net increase in consumer welfare when they alleviate the burden on vulnerable consumers. However, it does require regulators to make a decision on 'winners' and 'losers' of a remedy, acknowledging the fact that there may be some consumers who are worse off as a result.

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[55] For example, the default tariff cap in the energy market is designed to protect disengaged consumers who are experiencing the 'loyalty penalty'. Another example is the payday loans market where many consumers value speed of access over prices, weakening price competition.

[56] For example when setting the pre-payment and default tariff caps, Ofgem set the cap at a level that provided sufficient headroom for suppliers to compete under the cap. This is expected to maintain price competition and switching incentives which is particularly important as these price caps are temporary measures.

[57] FCA (2017). FS17/2. High-cost credit. Including review of the high-cost short-term credit price cap.

When firms choose to cross-subsidise by raising prices on products that are primarily used by vulnerable consumers, this can lead to a net decrease in consumer welfare.

The scale of the waterbed effect relies on several specific market factors, including the degree of competition in the market for other products offered by firms and consumer price sensitivity for those products. Regulators can also directly restrict companies from raising the prices of other products to recoup lost revenues although it is not clear how easily these kinds of requirements can be monitored and enforced.

Reduction in innovation incentives

One of the primary concerns associated with supply-side remedies is their impact on investment and innovation incentives. Supply-side remedies that reduce profitability, e.g. by reducing prices to efficient levels, can reduce the ability of firms to invest in costly innovation.[58] Even if innovations are appropriable and can generate greater revenues in the future, practical issues around timing, cashflow, and wider financeability can mean that firms choose not to undertake costly upfront investments.[59] If firms are also unable to earn higher revenues as a result of this investment, this further reduces innovation incentives.

Supply-side remedies can also directly inhibit the ability of firms to innovate. Banning business practices reduces the degree of freedom firms have in structuring their products which may be to the detriment of consumers when this results in lower choice. Concerns about the impact on innovation incentives have shaped decisions around the introduction of supply-side remedies. For example, Ofcom cited concerns around weakening incentives for investment in full-fibre networks when assessing the introduction of social tariffs for broadband.[60]

[58] There is an extensive literature examining the relationship between competition and innovation incentives.

[59] For example, some suppliers reported that following the introduction of the four-tariff rule in energy, they were unwilling to use up one of their tariff slots on riskier innovative tariffs that would have lower take-up in early years and therefore lead to lower market share. CMA (2016). Energy market investigation. Final Report. Appendix 8.2: Impact of the Retail Market Review.

[60] Ofcom (2019). Helping consumers to get better deals: A review of pricing practices in fixed broadband.

4 Price caps

High prices can be a key indicator that markets are not working well for consumers. Consumers may be forced to choose between accepting high prices, which can lead to financial hardship, or cutting back on their consumption, which could impact their wellbeing.

The welfare implications of unaffordable products and services can be particularly severe for essential goods such as basic utilities, and products that help to alleviate a further decline in circumstances such as credit. Policymakers may therefore choose to introduce remedies that cap or limit prices to ensure these goods and services remain financially accessible for all as well as reflecting efficient prices.[61]

Key Lessons: Price caps

- Price caps can be used to address new challenges beyond traditional market failures, such as limiting the ability of firms to exploit behavioural biases.
- There are legitimate concerns that price caps may be distortionary, restricting incentives to innovate or reducing the ability of smaller firms to compete in the market. However, the likelihood and scale of these impacts vary from market to market and depend on individual market characteristics, remedy design, and implementation approach. Use of supply-side remedies should be assessed on a case by case basis and supported by detailed analysis.
- Price caps are likely to be more relevant than social tariffs (price caps for specific groups) when high prices affect the majority of consumers and when vulnerable consumers are not disproportionately affected by high prices. However, as they are a broader remedy, they require careful consideration, precise design and often should be imposed **only as the remedy of last resort**.
- When supply-side competition exists, price caps should either be time limited with a clear path to resolving underlying issues through alternative remedies, or subject to regular ex-post market reviews to ensure they remain fit for purpose.

4.1 Types of price caps

Price caps come in several forms and regulators face many options when designing these remedies.

- **Choice of product scope.** Regulators must decide the specific products on which to place a price cap. This may be at the individual product level, either because they are the only relevant product or because they act as price anchors.[62] Alternatively, regulators may choose to cap the average revenue on a basket of goods, allowing companies to retain relative pricing flexibility across products within the basket.
- **Form of price restriction.** Price caps can either be absolute (a maximum price that firms cannot exceed) or relative (prices for products are restricted in relation to other products). For example, the recent overdraft market reforms prevent firms from charging higher prices for unarranged overdrafts than for arranged overdrafts, rather than setting an absolute cap on interest rates.
- **Review and reset mechanism:** Price caps are regularly reviewed to ensure that they remain fit for purpose. Many price caps will automatically adjust year on year in line with inflation. However, regulators can also determine the duration between wider reviews to reset the starting point of a price cap.

[61] This report does not consider rate of return regulation which allows firms to earn a fixed return on its assets.

[62] For example, the cap on second class stamps is intended to constrain the price of first class stamps.

4.2 Evidence on price caps

There are several examples of price caps, primarily within utilities and financial services. This review has focussed on the examples summarised in Table 3.

Table 3: Price cap remedies considered

Sector	Remedy	Description
Energy	Energy default tariff cap	Temporary cap on standard variable and default energy tariffs (cap applies to cost per kWh not total bills).
	Energy prepayment price cap	Temporary cap on prepayment meter customers on non-fixed deals and without an interoperable smart meter.
Telecommunications	Voluntary broadband pricing commitments	A series of voluntary pricing commitments across broadband providers. These differ by provider and include capping the difference between in and out of contract prices and capping the price of broadband for customers who can't access superfast broadband.
	Standalone landline price cap	Voluntary price reduction by BT for land-line only customers of £7/month (representing a reduction of 37%).
Gambling	Maximum stakes in Fixed Odds betting terminals	Mandatory maximum stake of £2 on fixed odds betting terminals.
Financial Services	Rent to own price caps	Price cap on RTO products, including a total credit cap of 100% and requirement to benchmark base prices against retail prices.
	Price caps on High Cost Short Term Lending	A set of remedies to address excessive cost of payday loans including a cap on interest rates, fixed default rates, and a total cost cap of 100%.
	Cap on pension management fees	Cap on management fees set to 0.75% per year.
	Overdraft charges restrictions	Set of reforms to reduce the cost of unarranged overdrafts including a ban on setting unarranged overdraft interest rates above arranged overdrafts.
	EU interchange fee caps	Interchange fee capped at 0.2% of the value of a transaction for debit cards and 0.3% for credit cards.
Postal services	Price caps on postage stamps	Safeguard price caps on second class stamps for standard letters and a basket cap on second class large letters and small/medium parcels weighing up to 2kg.

Source: PA Consulting

4.3 Underlying issues targeted by price caps

While price caps have traditionally been used to address market power, recent examples have sought to reduce the exploitation of disengaged consumers and other behavioural biases.

Price caps are widely used to mitigate high prices resulting from market power. There are long established price controls in industries considered to be natural monopolies including wholesale telecommunications, non-retail energy,[63] water, and postal services.[64] However, policymakers are increasingly using price caps to address new challenges in consumer markets beyond traditional issues of market power.

Several recent price caps have sought to reduce price discrimination experienced by disengaged customers, recognising that engaged customers may not place sufficient limits on firm behaviour.

- **Retail energy default tariff cap.** The CMA's investigation of retail energy markets[65] concluded that the largest energy suppliers retained a position of unilateral market power over their inactive customer base, the majority of which were on SVTs priced significantly above cost.
- **Voluntary broadband price commitments.** Broadband providers have been able to price discriminate against their inactive customer base by charging out of contract customers higher prices that than those who switch or recontract. In order to reduce the price differential for inactive customers, Ofcom have negotiated a series of voluntary price commitments. These vary across broadband providers, but include measures to allow out of contract customers to access the same deal as new customers when they recontract and capping the price difference between in and out of contract prices.

Price caps have also been used to address the exploitation of behavioural biases that affect engaged consumers, such as optimism bias or short-termism.

- **High cost short term lending price cap.** The CMA found that that optimism bias was contributing to many customers overpaying for payday loans. Survey evidence concluded that customers underestimate their likelihood of late repayment, leading them to disregard the price of late fees or default charges. Firms were then able to exploit this by raising the price of additional charges with 50% of lender revenues coming from rolled over or refinanced loans.[66] The FCA's remedies included capping fixed default rates and introduced a total cost cap of 100% to ensure that borrowers never pay back more in fees and interest than the amount borrowed. Both these remedies reduce the ability of firms to profit by exploiting optimism bias.
- **Overdrafts price restrictions.** The FCA's review of the overdrafts market found that banks consistently charged higher rates for unarranged overdrafts than arranged overdrafts despite no difference in cost. By aligning rates for arranged and unarranged overdrafts, banks can no longer benefit from consumers overestimating their future financial health.

Some market-wide price caps have been imposed to protect vulnerable consumers.

Regulators have introduced price caps on welfare grounds to protect vulnerable consumers even when they do not identify a specific market or competition failure. Examples include limits on demerit goods (products and services whose consumption is considered to be negative), or essential products. Unlike social tariffs which are motivated by the same reason, these price caps affect all customers in the market irrespective of their personal circumstances.

- **Fixed odds betting terminal maximum stakes**. The Department for Digital, Culture, Media and Sport (DCMS) has recently introduced a cap on the maximum stakes for fixed odds betting terminals. This was primarily motivated by the desire to protect problem gamblers who were heavy users of these machines.[67] DCMS also found that fixed odds betting terminals were concentrated in areas of high deprivation, increasing the scale of consumer harm.
- **Voluntary broadband price commitments**. Ofcom's review of broadband pricing found that while vulnerable consumers were not disproportionately impacted by higher prices for out of contract customers, this issue still impacted some vulnerable consumers. In line with their duty to all vulnerable customers, Ofcom proceeded to negotiate a series of voluntary broadband commitments, specifically to protect these customers.

[63] The introduction of retail energy tariff caps, which we discuss in this chapter, is relatively recent. Immediately following the privatisation of retail energy, transitional price caps were put in place. However, Ofgem abolished these in 2002 on the basis that 'the evidence is overwhelming that competition is effective across all social groups and all methods of payment'.

[64] Postal services are an example of price caps at the retail level and were introduced on the basis that 'Royal Mail continues to be a near monopolist in letters'. Ofcom (2019). Review of the Second Class Safeguard Caps 2019. Price caps for second class standard letters, large letters and parcels up to 2kg.

[65] Ibid.

[66] OFT (2013). Payday lending compliance review Final Report.

[67] DCMS (2018). Government response to the consultation on proposals for changes to Gaming Machines and Social Responsibility Measures.

- **Rent-to-own price caps.** The introduction of price caps on the rent-to-own market focused on protecting vulnerable consumers who were paying too much for household goods.[68]

Policymakers are increasingly introducing price caps as a temporary stopgap as part of a wider package of remedies.

Regulators are increasingly implementing time-limited price caps, with a fixed end-date or a commitment to review their continued use at a fixed point in time. Price caps are a more direct market intervention, which should be more regularly reviewed. In some cases, 'price caps may be used as a one-shot regulatory tool while competition emerges',[69] or as a stopgap measure while less invasive and potentially distortionary longer-term remedies are found.

- **Retail energy price caps**. The CMA's energy market investigation recommended several long-term remedies designed to address current features of the market driving poor consumer outcomes. It was recognised that these would 'take time to implement before they start to address features we have identified'.[70] The CMA also expected that the roll-out of smart meters would play a key role in improving consumer engagement. However, smart meter rollout is not estimated to be completed until 2024. In the meantime, the CMA recommended a pre-payment energy price cap to immediately address consumer detriment during the transitional period. This was subsequently extended to include a separate price cap on default tariff caps on the same basis.

  Citizens Advice has undertaken further research on potential remedies that may need to be introduced to ensure protection for consumers remains after the removal of these price caps,[71] examining eight different models.

4.4 Evidence on the effectiveness of price caps

An effective price cap should strike the right balance between protecting consumers from excessive prices, maintaining investment incentives, and enabling the entry of new firms. If the level of a price cap is set too high it will fail to protect consumers from excessive prices above cost. On the other hand, if the price cap is set too low this may negatively impact competition as firms will exit the market (or choose not to enter), or have limited resources to invest in future innovation. Firms can also respond to the introduction of price caps by raising prices elsewhere, impacting consumers who are already on good deals.

The remainder of this chapter assesses the evidence around the effectiveness of price caps, highlighting where they have been able to reduce harm or had adverse impacts on competition or investment.

Price caps can reduce the ability of firms to use exploitative pricing methods to capitalise on behavioural biases.

Even if there exists a large number of suppliers, consumers can still face high prices as a result of exploitative pricing. Price caps can reduce the ability of firms to exploit behavioural biases.

- **High cost short term credit price caps.** In 2015 the FCA imposed caps on High Cost Short Term Credit (HCSTC) market including caps on additional charges. A review of the cap by the Consumer Finance Association (CFA)[72] found that the cost of credit had fallen and that there has been a fundamental shift away from exploitative tariffs that relied on consumers incurring late fees, extending loads, or refinancing. It estimated that lenders now received over 80% of revenues from the original contractual interest of the loan, compared to 60% in 2013. It concluded that lenders no longer benefited from behavioural biases.
- **Energy default tariff price cap.** By capping the price of energy to reflect its underlying cost, the default tariff price cap limits the ability of firms to cross-subsidise discounts to new customers by raising prices for inactive customers significantly above cost. This has already led to significant savings for the 11 million customers on SVTs, with an estimate saving of £1bn over 2019.[73]

[68] FCA (2019). Rent-to-own price cap – feedback on CP18/35 and final rules. Policy statement PS19/6.

[69] King, S, Department of Economics, The University of Melbourne. Principles of price cap regulation.

[70] CMA (2016). Energy Market investigation. Summary of final report.

[71] Citizens Advice (2020). When the cap no longer fits. Discussion paper on protecting energy consumers when the price cap ends.

[72] CFA (2017), Impact of regulation on High Cost Short Term Credit: How the functioning of the HCSTC market has evolved

[73] Ofgem (2020). Press Release. Savings on energy bills for millions as price caps fall

While price caps can have a greater impact on smaller companies, there is limited evidence that they have led to widespread exit of small and medium companies.

Price caps can disproportionately impact certain types of companies or distort firm incentives. For example, in industries with high fixed costs, smaller companies may be less able to absorb lost revenues from price caps. This can lead to smaller firms exiting the market, or being deterred from market entry, reducing competition to the detriment of consumers.

The likelihood of these impacts depends on several factors including the level at which the cap is set, the characteristics of the market, and the type of price cap mechanism. This review has found limited evidence to suggest that the price caps reviewed have led to SMEs exiting the market.

- **High cost short term credit cap.** The FCA's evaluation of the HCSTC market found that rather than weakening competition, the concentration of the top three lenders decreased following the introduction of the cap. This was driven by the growth of smaller lenders and new market entrants.[74]
- **EU credit interchange cap.** The European Payments Council has raised concerns that the interchange cap has benefited larger retailers more than small and medium retailers. It reports that many acquiring banks[75] have chosen not to pass on the entirely of the interchange fee savings to small and medium retailers due to the smaller margins they make on SME transactions.[76] However, the EU has yet to publish a full ex-post review that assesses these claims.[77] In terms of the wider success of the scheme, analysis of the scheme in Italy has concluded that the ceiling imposed on interchange fees has been successful in reducing merchant fees and increasing the rate of acceptance of card payments.[78]

Price caps can allow a reasonable rate of return and reduce the risk of suppliers becoming financially unsustainable.

One primary concern surrounding the use of price caps is that the level of the cap will be set too low, preventing firms from making a reasonable return. This in turn could lower investment, innovation, and lead to firms exiting the market. Evidence suggests that policymakers can design price caps to mitigate this risk.

- **Second class stamp price cap.** Royal Mail maintains a near monopoly on the delivery of letters and is subject to a price-cap on second class standard letter stamps to ensure that postal services remain affordable for all consumers. This price cap is designed to account for falling letter volumes and the cost of Royal Mail's universal service obligation. Rather than setting the price cap based on cost of delivery, Ofcom sets it at a level designed to allow Royal Mail to maintain a reasonable EBIT margin.[79] Its subsequent review found that the current level of safeguard caps had not prevented Royal Mail from making a commercial return on these products.
- **Second class safeguard caps.** In addition to a price cap on second class stamps for standard letters, Royal mail has a basket cap for second class large letters and small and medium parcels. Regulating at the basket level allows Royal Mail to retain a degree of commercial flexibility on these products as it can still vary relative prices across products within the basket.
- **Retail energy price caps.** Both the default tariff cap and the prepayment cap are adjusted twice a year to reflect the estimated costs to supply energy over the next price cap period. This means that when the underlying cost of energy increases, this is reflected in the level of the price cap. For example, the increase in oil prices earlier in 2019 resulted in an increase in the price cap, with £74 of the £117 increase in the default tariff cap accounted for

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[74] FCA (2017). High-cost credit. Including review of the high-cost short-term credit price cap. Feedback Statement FS17/2.

[75] When consumers use a credit, debit, or prepayment card to make a purchase, the retailer's bank (the acquiring bank) pays an interchange fee to the bank that issued the card to the customer (issuing bank). This forms part of the fee that banks charge retailers. Retailers typically incorporate interchange fees in the price charged to customers. This may be through card specific charges e.g. credit charge fees, or overall price increases which affect all customers, including those who pay in cash.

[76] European Payments Council News and Insight. Accessed at the following address: https://www.europeanpaymentscouncil.eu/news-insights/insight/18-months-impact-interchange-fee-regulation-european-union-cards-market

[77] This is anticipated to be published mid-2020.

[78] Ardizzi G, Zangrandi M.S (2018). The impact of the interchange fee regulation on merchants: Evidence from Italy.

[79] Ofcom (2019). Review of the Second Class Safeguard Caps 2019. Price caps for Second Class standard letters, large letters and parcels up to 2kg.

by higher wholesale energy costs.[80] By recognising that a high proportion of costs are not in the control of suppliers, the price cap aims to mitigate the risk that some energy suppliers may exit the market if wholesale energy costs rise.

However, the potential benefits to consumers from increased investment can outweigh short-term gains from lower prices. In these circumstances, regulators may choose to introduce narrower social tariffs or targeted support to vulnerable consumers rather than market wide price caps. For example, Ofcom recently concluded that a price cap that equalised in- and out-of-contract prices would 'reduce providers' profitability, weakening the incentives for future investment – at a time when network investment is particularly important'.[81]

Price caps can impact the supply or pricing strategy to certain consumer groups. However, the overall welfare impact is not always negative, and mitigations can be put in place.

Firms can respond to the introduction of price caps by changing their supply or pricing decisions for certain consumer groups:

- **Restriction of supply to less-profitable customers.** Firms can choose not to supply less profitable or riskier customers, leaving them unable to access products and services essential to their wellbeing.
- **Waterbed effect.** Reductions in prices in one part of a firm's operations can lead to an increase in prices elsewhere (or withdrawal of benefits such as cashback offers on credit cards).

In both cases, the welfare impact of these effects is not clear-cut. When firms employ price tariffs that exploit behavioural biases, this can lead to consumers purchasing products they would have been better off not buying in the first place.

- **High cost short term credit.** The introduction of price caps in the payday loans market resulted in many consumers being refused loans due to their risk profile. However, the FCA's review of the HCSTC cap concluded that the price cap was not too tight, noting that firms were operating under the price cap, and consumers who are declined for HCSTC do not generally appear to have been harmed.[82] Survey data found that 63% of consumers turned down for loans since the introduction of the cap believed that it was 'for the best' and 60% subsequently chose not to borrow at all.[83]

In the case of the waterbed effect, the net welfare impact depends on who are the 'winners and losers'. Where the 'winners', are primarily those in vulnerable circumstances, this can result in a net welfare improvement, even if other customers face higher prices.

- **Unarranged overdrafts.** Following the announcement of the alignment of unarranged and arranged overdraft rates, several large banks announced significant rate increases for arranged overdrafts. However, the FCA's ex-ante analysis concludes that even if banks increased their arranged overdraft rates to account for lower unarranged overdraft rates, 'the net effect would be better for consumers overall'[84] as the change would reduce the burden on vulnerable consumers who are the primary users of unarranged overdrafts.[85]
- **Broadband prices.** Ofcom found that vulnerable consumers were not disproportionally represented in those currently paying higher prices due to being out of contract. This influenced their view of the overall potential harm of the waterbed effect and contributed to their decision not to introduce more targeted price caps to protect disengaged customers.[86]

Policymakers can also incorporate mitigations into the remedy design and implementation process to make it more difficult for firms to refuse to supply consumers or cross-subsidise loss of revenue by raising prices elsewhere.

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[80] Ofgem (2019). Energy price caps explained. Accessed at the following address:
https://www.ofgem.gov.uk/system/files/docs/2019/02/information_for_elected_representatives_and_stakeholders.pdf

[81] Ofcom (2019). Helping consumers get better deals: A review of pricing practices in fixed broadband.

[82] FCA (2017). High-cost credit. Including review of the high-cost short-term credit price cap. Feedback Statement FS17/2.

[83] FCA (2017). FCA regulation of high cost short term credit infographic. Accessed at the following address:
https://www.fca.org.uk/publication/documents/infographic-fca-regulation-high-cost-short-term-credit.pdf

[84] FCA (2019). High-cost Credit Review: Overdrafts policy statement.

[85] The FCA has also requested

[86] Ofcom (2019). Helping customers get getter deals: A review of pricing practices in fixed broadband.

- **Retail energy price caps.** In the energy market there are restrictions on disconnection (although it is not illegal) and therefore energy suppliers are likely to continue supplying even with price caps. This may result in wider impacts such as the waterbed effect.
- **Workplace pension fee cap.** The workplace pension fee cap was combined with a ban on price discrimination of members based on their current contribution to the scheme.[87] As the remuneration for pension funds is capped and based on the volume of contribution, small savers might become unattractive to serve. For this reason, the government established a supplier of last resort (NEST) to ensure universal access to the pension market.
- **Rent-to-own price cap.** Alongside the total credit cap for RTO products, the FCA also introduced two requirements that limit the ability of firms to raise prices elsewhere. Firstly, firms are now required to benchmark product base prices against retail prices which limits their ability to cross-subsidise lower interest rates with base prices. Secondly, the FCA explicitly prevented firms from increasing their prices for goods and other services sold alongside RTO agreements.[88]
- **Unarranged overdrafts.** Following announcements from several major banks that they plan to raise arranged overdraft rates to c.40%, the FCA has written an open letter requesting details on how they have set their new rates.[89] The letter also reminds banks of their duties to support customers who may be worse off and requests details on the specific measures banks will be taking.

Price caps should form part of a wider package of reform including measures to address universal access and increase consumer engagement.

Poor consumer outcomes are rarely the result of a single cause but instead arise from a range of factors. It follows that multiple remedies may be required to fully address these drivers of harm. While this review has found that price caps can reduce prices and consumer detriment, they are not a panacea for all poor consumer outcomes.

- **Energy market price caps**. Both the cap on prepayment tariffs and default tariffs are intended to be temporary measures to mitigate consumer harm, while other remedies make longer-term adjustments to the market including interventions based on the rollout of smart meters.
- **High cost short term credit price cap**. The CMA review of the payday loans market included a review of the HCSTC price cap. It concluded that while the cap has lowered prices and has therefore mitigated some of the harm consumers were experiencing from high prices, even with the cap in place there remained scope for consumer harm. On this basis, they recommended a further suite of remedies, including measures to promote the use of PCWs, disclosure remedies, and solutions that would promote data sharing and allow consumers to shop around without adversely impacting their ability to access credit.[90]
- **Overdraft price restrictions**. The FCA identified various drivers of harm in the unarranged overdrafts market, including complex pricing structures, high level of fees, and repeat use of what they considered to be high cost lending. To reflect the complex market environment, they proposed a holistic suite of remedies spanning demand and supply-side remedies of which price caps were one element.[91]

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[87] FCA, 2015, https://www.fca.org.uk/news/press-releases/fca-publishes-final-rules-charges-workplace-pension-schemes

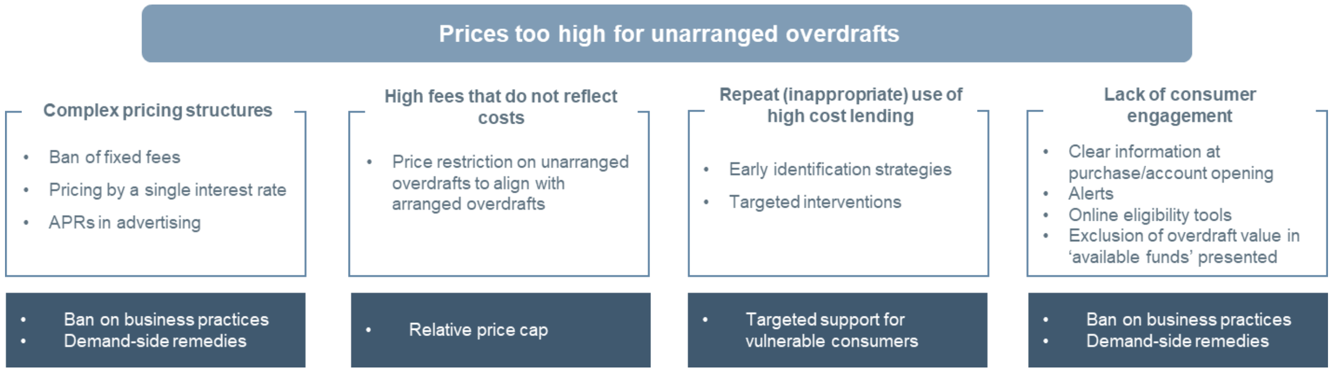
[88] FCA (2019). Rent-to-own price cap – feedback on CP18/35 and final rules.

[89] FCA (2020). Open letter from FCA to banks regarding new overdrafts pricing. Accessed at the following address: https://www.fca.org.uk/publication/correspondence/overdraft-pricing-letter-firms.pdf

[90] CMA (2015). Payday lending market investigation. Final report.

[91] Further detail can be found in FCA consultation paper CP18/13, High-cost Credit Reviews: Overdrafts (May 2018). Page 6.

Figure 5: Overdraft market reforms



Source: PA Consulting and FCA overdrafts consultation paper and policy statement

Price caps in markets with supply-side competition are not intended to replace incentives for consumers to shop around. Regulators should ensure that price cap remedies are supported by a wider package of interventions that target the underlying cause of high prices including use of demand-side remedies to increase engagement.

- **Default tariff cap.** Although the default tariff cap limits the price of energy for SVTs in line with costs, there remain significant savings for consumers switching to fixed tariffs.[92] Consequently, increasing customers engagement in the market remains a key policy objective. This is particularly important given concerns that price caps may reduce switching incentives as consumers believe that they are already on the best deals.

Some regulators are constrained by their legal powers around the introduction of price caps.

Regulatory precedent has typically centred around promoting competition, with the use of price caps limited to regulating natural monopolies. This has shaped the legal framework for regulators and introduced legal barriers to the use of price caps.

- **Energy default tariff cap.** In the run up to the introduction of the energy default tariff cap, there was significant debate around whether the introduction of a market-wide cap was within the regulatory remit of Ofgem.[93] While Government believed that this within Ofgem's power, Ofgem itself maintained that without legislation, a market-wide cap would be open to legal challenge, either through appeal to the CMA or judicial review. This resulted in the introduction of the Domestic Gas and Electricity (Tariff Cap) Act 2018.
- **Ofcom price-cap restrictions.** Ofcom has stated that 'because promoting competition between providers is one of the key objectives of the Code, it strictly limits the circumstances in which regulatory authorities may impose price controls or caps'.[94] This means that Ofcom can only introduce caps where a firm has significant market power, limiting their ability to deploy caps to solve other issues.

The Government has announced that it plans to legislate to give regulators, including the FCA and Ofcom, new powers to address the loyalty penalty which may help to mitigate these barriers.[95]

[92] House of Commons Library (2019). Briefing Paper. Energy bills and tariff cap.

[93] Ibid.

[94] Ofcom (2019). Helping customers get getter deals: A review of pricing practices in fixed broadband.

[95] Government press release, 18 June 2019. New powers to fine firms that exploit consumer loyalty. Accessed at the following address: https://www.gov.uk/government/news/new-powers-to-fine-firms-that-exploit-consumer-loyalty

5 Targeted support for vulnerable consumers

Many regulatory authorities have statutory duties and obligations to protect vulnerable consumers, and research into the loyalty penalty has shown that vulnerable consumers can experience the greatest harm from consumer markets. This has motivated several market interventions targeted at protecting these groups.

Policymakers target support to vulnerable consumers in two ways:

- **Social tariffs and financial support**. These remedies aim to reduce the cost of goods and services for certain consumer groups either by offering discounted rates or absolute rebates on the prices they pay.
- **Identification and protection of vulnerable customers**. These remedies place requirements on firms to proactively identify and support vulnerable consumers to help them avoid further hardship.

Key Lessons: Targeted support for vulnerable consumers

- These remedies aim to directly mitigate harm rather than target the underlying cause of unaffordable prices. Consequently, they should be offered as part of a wider package of remedies that includes measures to reform the underlying market.
- Social tariffs have been effective in reducing consumer harm. However, many programmes struggle to target customers that would benefit the most and often rely on broad criteria to determine eligibility (such as age). Poor targeting can lead to non-eligible customers subsidising customers who do not actually require financial support. There is significant opportunity for technical innovation and data sharing to improve identification and targeting of vulnerable customers and various pilots have demonstrated the ways in which data sharing can support these endeavours.
- The introduction of social tariffs has led to concerns around competition, particularly the impact on SMEs who are less able to absorb these costs. However, careful policy design including sector wide cost apportionment schemes can help to mitigate these issues.
- These remedies can be a win-win for firms and consumers. For example, reducing the cost of bad debt for the firm, while improving customer perceptions.

5.1 Social tariffs and financial support

Financially vulnerable consumers may struggle to afford vital services such as electricity and water. In this circumstance, consumers may be forced to either cut back on their use of essential services or continue to use services which they cannot afford, worsening their financial position. To avoid these undesirable outcomes, policymakers may require businesses to offer rebates or discounted 'social' tariffs to specific groups of consumers.

5.1.1 Types of social tariffs and financial support

Social tariffs and financial support schemes can vary in several ways:

- **Form of support**. Policymakers can require companies to provide financial support to specific consumer groups in the form of discounted tariffs (social tariffs) or directly through rebates. Financial support can also be offered in the form of 'in-kind' benefits where consumers receive discounts on specific products designed to save them money, for example home insulation.
- **Level of consumer engagement**. Social tariffs and financial support can either require consumers to actively apply or alternatively automatically identify and enrol eligible customers. More recently, there have been a growing number of examples which have placed this responsibility on companies.

- **Degree of regulatory intervention**. Social tariffs and financial support programmes may be offered through regulation and legislation or negotiated on a voluntary basis. For example, BT and KCOM are required to offer affordable telephony services, but have chosen to extend this to broadband services.
- **Private versus public.** Financial support for essential products can be funded through industry or by Government. While government-funded programmes are excluded from this review, we consider several examples to identify learnings that can apply to industry-funded initiatives.
- **Link to other remedies.** Social tariffs and financial support are closely linked to both USOs and price caps. For example, BT and KCOM are required to offer social tariffs for low income customers as part of their USO for landline services.

5.1.2 Evidence on social tariffs and financial support

These remedies are more common in markets for essential products that exhibit high prices, rapid growth in prices, or the use of pricing tariffs or bundling that make it difficult for some consumers to access good deals.

The following section assesses a number of examples of social tariffs and financial support schemes which are summarised in the table below.

Table 4: Social tariffs and financial support schemes reviewed

Sector	Scheme	Description and eligibility
Energy	Warm Home Discount	One-off discount directly applied on energy bills offered by energy suppliers with over 250,000 customers.[96] Two eligible groups: (1) A core group receiving pension credit (2) A broader group for low income customers. The core group automatically receive the discount while the broader group must apply to their supplier.
	Energy Company Obligation (also known as Affordable Warmth, previously Warm Front)	Obligation for energy suppliers to deliver energy efficiency and heating measures to low income homes. Eligibility is based on state benefits and customers are required to apply to their energy supplier.
	Winter Fuel Payments	Government funded tax-free annual payments to individuals over 60 paid into the customer's bank account.
Water	WaterSure social tariff	Water bills capped to the average price that other customers pay. Eligibility is based on high essential water use and customers are required to apply to their water company.
	Water company commitments to dealing with problem debt	Water companies have schemes to support consumers in debt, including 'payment matching' and 'payment holiday' schemes.
Telecommunications	Telephony and broadband social tariff	Requirement on BT and KCOM to provide access to telephony services at reduced prices for low income customers on certain state benefits. Both have voluntarily extended this to include broadband services.
	Voluntary broadband price commitments	Ofcom has negotiated a series of voluntary price commitments designed to protect vulnerable consumers.

[96] This threshold is currently being phased downwards to include more small suppliers, although the total value of support available will remain the same.

Sector	Scheme	Description and eligibility
		These vary across company and include annual price reviews with vulnerable customers and automatic discounts where appropriate if consumers do not respond.
TV programming	Over 75s TV licence	Free TV licences for over 75s. In future, eligibility will be restricted to low income households based on pension credit benefit.
Transport	Statutory railcards	Discounts for young and student travellers, disabled travellers, and those aged over 60 after purchasing the relevant railcard. All train operating companies are required to participate in statutory railcard programmes.
	English National Travel Concessionary Scheme	Government funded free bus travel for senior and disabled people. Consumers are required to apply through their local authority.

Source: PA Consulting

5.1.3 Underlying issues targeted by social tariffs

Social tariffs and financial support for vulnerable groups are typically introduced on welfare grounds.

Policymakers can choose to mandate that firms offer social tariffs or financial support to certain groups even when it is not clear that there exists a wider market or competition failure.

- **Telephony social tariffs.** The requirement for BT and KCOM to provide a social tariff for telephony services is motivated by the objective to bring 'benefits to those with low incomes who have difficulty affording telephony services, customers with disabilities who need particular services or facilities and customers in rural areas for whom the actual cost of a service might otherwise be prohibitively expensive'.[97]
- **Water: payment matching.** Ofwat require water companies to set out their approach to improving debt management and protecting vulnerable consumers.[98] In response, ten water companies have chosen to introduce 'payment matching', where companies forgo debt for customers who make regular payments[99], as well as 'payment holidays' that temporarily delay payments.[100]

Social tariffs and financial support can ensure that wider sector objectives do not leave the most vulnerable consumers in society worse off.

There are examples where social tariffs and financial support arrangements have been introduced to ensure vulnerable consumers are not made worse off by sector wide policies.

- **WaterSure.** The move to metered water bills is a fairer way of billing consumers and incentivises consumers to use water efficiently. However, there were concerns that metered bills would leave low income customers who are likely to spend an above-average proportion of their income on water worse-off.[101] The vulnerable groups scheme (WaterSure) was introduced to ensure that 'consumers that have to use high volumes of water due to medical or other conditions do not have to reduce essential consumption for fear of increases in their bills'.[102]

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[97] Ofcom (2006). Review of the Universal Service Obligation.

[98] As part of the latest price review PR19.

[99] For example, United utilities offers a Payment Matching Plus scheme for customers with significant amounts of debt. For every £1 repaid, the company will match it with £1. After six months, the company contribution will increase to £2. After 2 years of regular payments, all remaining debts will be paid.

[100] Ofwat (2019) UK Government priorities and our 2019 price review draft determinations

[101] Walker, Anna (2009). The Independent Review of Charging for Household Water and Sewage Services. Final Report. (Also referred to as the Walker Review).

[102] Public Services International Research Unit, University of Greenwich (2008). Poor choices: Water.

- **Community Energy Savings Programme (now the Energy Company Obligation).** This programme places an obligation on major energy suppliers to offer free or low cost energy efficiency measures to low income areas. This scheme supports energy efficiency and helps permanently reduce energy bills for low income households.

5.1.4 The effectiveness of social tariffs and financial support

The majority of remedies focus on the immediate mitigation of consumer harm and this is the focus of their ex-post assessments. While there are some studies, mostly in the energy sector, that more robustly evaluate direct and indirect impacts, the majority of studies only evaluate the direct impact of financial support on recipients.

Social tariffs and financial support have reduced the number of consumers who are unable to afford essential services.

The evidence suggests that these remedies have been successful in reducing the number of consumers who are unable to access essential services and the degree to which households need to cut-back on other important expenditures in order to afford these essentials.

- **Warm Home Discount.** The WHD, which provides a direct discount on energy bills, successfully delivers both health and financial benefits. Evaluation of the scheme found that households who received the WHD benefit from a small increase in indoor winter temperature and a potential improvement in health. The impact evaluation also found that households chose to spend the money saved on other household essentials such as food, other bills, and other purchases such as furniture.
- **Railcards.** There are several railcards that are funded by Train Operating Companies (TOC) including railcards for younger people, seniors, and those with disabilities. These include a mix of voluntary and statutory schemes, and all TOCs are required to offer discount card schemes for young and student travellers, disabled passengers, and those over 60.[103] While our review found no formal ex-post evaluations, the disabled persons railcard is estimated to save an average of £131 a year.[104] Further, a recent trial of the 26-30 railcard (a voluntary scheme) found that participants were encouraged to make journeys to visit friends or relatives and rail journey patterns increased.[105] It is likely that the statutory railcard schemes have similarly increased the use of rail travel and helped connect communities.
- **Free TV licences for people aged over 75.** Free TV licences for those aged over 75 were reported to deliver improved mental health outcomes, where survey evidence highlights the role of the service in providing much wanted company and entertainment to some elderly recipients.[106]

We also consider evidence from Government funded social programmes. While these may not technically be supply-side remedies, they target the same objectives as industry funded remedies. For example, the Winter Fuel Payments (WFP) programme, which has been shown to raise fuel spending among eligible households. One evaluation found that it was responsible for almost half of the reduction in excess winter mortality since 1999/2000,[107] while another evaluation suggested it has led to a statistically significant reduction in certain infections.[108]

Social tariffs and financial support are often offered as part of a wider package of reform, particularly as they do not target the underlying cause of unaffordability.

As the CMA has recently highlighted, supply side remedies can often deliver improvements in consumer outcomes at pace, allowing policymakers to introduce social tariffs and other forms of financial support alongside other remedies.

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103 The TAS Partnership Limited, House of Commons (2019). Review of Reduced and Concessionary Fares in England outside London.

104 Disabled Persons railcard website. Accessed at the following address: https://www.disabledpersons-railcard.co.uk/

105 Letter from The Rail Delivery Group to the Transport Committee (2019). Accessed at the following address: https://www.parliament.uk/documents/commons-committees/transport/paul-plummer-to-lilian-greenwood-millennial-railcard-28012019.pdf

106 House of Commons briefing paper (2019). Free TV licences for the over-75s.

107 Iparraguirre, J. (2014). Have winter fuel payments reduced excess winter mortality in England and Wales? Journal of Public Health, 37(1), pp.26-33., https://doi.org/10.1093/pubmed/fdu063.

108 Crossley, T. and Zilio, F. (2018). The health benefits of a targeted cash transfer: The UK Winter Fuel Payment. Health Economics, 27(9), pp.1354-1365.https://doi.org/10.1002/hec.3666.

- **Warm home discount.** The WHD was intended to complement other governmental schemes including the Affordable Warmth target, Winter Fuel Payment (WFP), and the Cold Weather Payment'.[109] This recognises that promoting investment in improved energy efficiency is a more effective way to bring long-term change to fuel poverty while still providing short-term support.[110]
- **Voluntary broadband price commitments.** The voluntary broadband price commitments have been introduced alongside a wider package of demand-side remedies designed to promote switching; including end of contract notifications and information disclosure requirements. Taken together, these remedies aim to strengthen the competitive constraint that engaged consumers place on broadband pricing, while reducing the ability of firms to cross-subsidise between active and inactive consumers.

Success depends on accurately targeting the right population through the eligibility criteria.

Social tariffs and financial support programmes are primarily motivated by the need to alleviate harm for the most vulnerable in society. However, in order to practically administer these schemes, eligibility criteria are often tied to state benefits as a proxy for need. There is a risk that the eligibility criteria may miss out consumers who could benefit from the support, or unintentionally include people who do not require financial support. This is a concern as social tariffs are funded through cross-subsidisation across different consumer groups.

There remains a trade-off between ensuring that the scheme is able to benefit its whole target audience, while minimising the number of people who are eligible but have limited need of financial support.

- **Telephony social tariffs.** BT Basics is targeted at low income customers who rely on a landline and make a low number of calls. Eligibility is based on receipt of state benefits. However, prior to BT Basics, BT offered social tariffs through its Light User Scheme, which provided a discounted tariff based on low usage as a proxy for low income. This eligibility criteria meant that both low income and higher income households were able to benefit from the discount, including those who wanted cheap services for second homes. Only 60% of users were from low income households.[111]
- **Warm Home Discount.** There have been concerns raised around the targeting of the WHD as the eligibility criteria takes no account of fuel use or need. A review found that WHD eligible households already tended to be warmer and use less energy than non-eligible homes due to the type of dwelling.[112]
- **Winter Fuel Payments.** Similarly, the intended purpose of the WFP scheme was to tackle fuel poverty among pensioners and eligibility is currently based on age. However, a review found that 'as a fuel poverty measure, WFPs are very poorly targeted' with only 12% of recipients thought to be fuel-poor'.[113]
- **Warm Front Scheme (now replaced by the ECO).** Poor targeting is also an issue with the Warm Front scheme. Consumers on means-tested benefits, such as Jobseeker's Allowance or Working Tax Credit were eligible for support. However, the eligibility criteria also extended to benefits that are not means-tested as well as age. Consequently, c.70% of the households eligible to enter the scheme didn't need the support and 35% of households in fuel poverty were not eligible.[114]

A review conducted by the Joseph Rowntree Foundation suggests that the dynamics of poverty in the UK makes it particularly difficult to target those likely to be fuel poor. This is because a large group of households move in and out of poverty quite quickly and some low income households are more likely to move from one home to another. The review therefore calls for a flexible approach that can determine quickly when households are in fuel poverty and when they move in and out of it.[115]

[109] Department for Business, Energy and Industrial Strategy. Evaluation of the Warm Home Discount Scheme. Synthesis evaluation report.

[110] Ibid.

[111] Ofcom (2006). Review of the Universal Service Obligation.

[112] Department for Business, Energy & Industrial strategy (2018). Evaluation of the Warm Home Discount Scheme. Synthesis Evaluation report.

[113] House of Commons Library (2019), Winter Fuel Payments update.

[114] JRF (2011) Tackling fuel poverty during the transition to a low-carbon economy.

[115] JRF (2011), 'Tackling fuel poverty during the transition to a low-carbon economy', https://www.jrf.org.uk/report/tackling-fuel-poverty-during-transition-low-carbon-economy

Accurate targeting is essential if these remedies are to raise overall consumer welfare as the costs are often passed on to non-eligible customers.

Social tariffs and other forms of targeted financial support are typically funded through cross-subsidy between consumer groups.[116] Specifically, when the lost revenue from lower prices cannot be fully compensated by higher usage or reduced costs, companies will instead pass on at least a proportion of this cost to non-eligible consumers. The level of pass-through may be particularly high in markets that already suffer from imperfect competition or in which consumers have low price sensitivity.

- **Warm home discount.** The ex-ante IA[117] anticipates that large suppliers will be able to offload 100% of the cost of delivering the scheme to their customers in part due to existing lack of competition.

The net welfare impact of this cross-subsidy will depend on the ability of schemes to accurately target those that most need support. Even if prices are higher for non-eligible consumers, this can result in a net gain in consumer welfare when social tariffs reach those in need of support, and when they relate to essential products. In comparison, when schemes are poorly targeted, this can lead to non-eligible consumers, including non-protected vulnerable consumers, subsidising pricing for those who do not require additional support and lower overall consumer welfare.

Even if the eligibility criteria of targeted support programmes were able to perfectly capture the intended audience, this does not guarantee that all vulnerable consumers are protected. Social tariffs may be aimed at a narrower group of vulnerable consumers. For example, the WaterSure tariff is targeted specifically at low income customers with a higher than average essential water use. However, there may be other groups of consumers who also struggle to pay their water bills even if their usage is not higher than average. If non-protected consumer groups are also less price sensitive, this can lead to firms choosing to raise prices for these customers to fund social tariffs. In order to mitigate this impact, policymakers should take care either to extend the eligibility criteria where possible, or to introduce social tariffs alongside other remedies.

- **Energy prices.** The CMA's energy market investigation found that large energy suppliers hold market power over their inactive consumer base. Furthermore, vulnerable consumers are more likely to be disengaged with the market.[118] In the absence of additional protections, there is a risk that energy companies may choose to fund the cost of social tariffs such as the WHD by raising prices for inactive customers which would disproportionately impact vulnerable consumers. However, the introduction of both the prepayment tariff cap and the default tariff cap, both of which are broader price caps, are likely to limit the ability of energy companies to do so.

Finally, when assessing the cost per head of social tariffs, it is important to recognise that costs may be indicative of lower take-up rather than implementation costs. For example, WaterSure costs for non-participating customers are on average 49p a year[119] (estimate from 2012, non-adjusted), while the WHD costs are around £14 per household[120] which is significantly higher. While these differences may be due to true differences in scheme costs, they may also be due to the higher take-up of social tariffs in the energy sector[121] and the fact that all water suppliers are required to offer WaterSure whereas only large suppliers are obligated to offer the WHD.

Consumer awareness varies, significantly but new technologies can help to increase enrolment.

The majority of social tariffs and financial support programmes require consumers to actively apply, and therefore the programme reach is heavily dependent on the customer engagement and awareness process. A recent review by the National Audit Office (NAO) found that uptake of social tariffs across sectors is inconsistent. For example, there are 2.2 million WHD customers in energy compared to 350,000 on social tariffs in telephony and only 260,000 on discount schemes in the water sector.[122]

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[116] Although this is not always the case. We provide examples of social tariffs that are self-funding through the output expansion effect or reduction in debt recovery costs later in this chapter.

[117] Department for Business, Energy and Industrial Strategy (2018). Warm Home Discount Scheme 2018/19. Final Stage Impact Assessment.

[118] CMA (2018). Tackling the loyalty penalty. Response to a super-complaint made by Citizens Advice on 28 September 2018.

[119] Defra (2012). Changes to WaterSure as a result of the introduction of Universal Credit.

[120] Department for Business, Energy, and Industrial Strategy (2018). Warm Home Discount Scheme 2018/19. Final Stage Impact Assessment.

[121] NAO (2017). Vulnerable consumers in regulated industries.

[122] ibid.

Low take-up of social tariffs and financial support can be a result of the method and medium over which they are advertised. For example, recent research from the Office for National Statistics (ONS) found that 24% of those aged over 65 have not used the internet for the last three months.[123] Given that elderly consumers often fall within vulnerable groups, if these schemes are primarily advertised online this can adversely impact take-up.

Low take-up could also suggest that the products offered on social tariffs do not meet the needs of consumers or the application process itself is a barrier to take-up.

- **BT basic.** Ofcom's found that 73% of people on income support were unaware of social tariffs. Of these people, many reported that they were not interested in a landline or wished to bundle their landline with other services. Both KCOM and BT now offer social tariffs that bundle landline and internet services and are better suited to evolving consumer needs.
- **Warm home discount.** An evaluation of the WHD found that Broader Group customers[124] felt that energy suppliers should better promote the scheme, with many stating that they had come across the scheme 'by chance'. However, many energy suppliers reported that they had deliberately chosen to keep the Broader Group schemes low profile rather than increasing customer engagement to avoid being oversubscribed.[125]
- **Railcards.** Policymakers can try to increase awareness and avoid incentives for firms to keep a 'low-profile' by setting a minimum marketing requirement. In the case of railcards, all participating carriers have minimum marketing requirements that oblige them to ensure that railcards are sold and promoted at designated stations and licenced travel agents.[126] A similar approach has been taken by Ofwat in the recent PR19 price control, which places explicit performance commitments on water companies to contact households regarding the Priority Service Register.[127]
- **WaterSure.** Both the Water White Paper in 2012 and the more recent NAO report found that take-up of WaterSure is particularly low despite promotion by water companies. These reports do not investigate in detail the reasons for low engagement, which could be due to lower customer awareness despite promotional activities by suppliers.[128]

Schemes that automatically identify and enrol eligible consumers will be more effective in increasing participation, and improvements in data analysis can enable automatic enrolment while keeping the cost burden on firms low. Automatic enrolment can also help to address issues associated with lack of internet access among vulnerable consumers.

- **Warm home discount.** A data matching process was used to identify eligible customers in the Core Group for the WHD, whereas Broader Group participants had to manually apply and be assessed by suppliers. Suppliers reported that the cost of data matching the Core Group were minimal and 'considerably lower on a unit cost basis than the cost of delivering rebates to the Broader Group'.[129]

Choices around participation requirements and cost apportionment can impact wider market impacts, including firm incentives and competition, and often involve trade-offs.

Social tariffs and other programmes of financial support that are funded through industry are not cost free. In addition to direct costs, they also often come with administrative costs. Policymakers have been concerned with the best way

[123] ONS (2019). Internet access – households and individuals, Great Britain: 2019.

[124] Participants of the Warm Home Discount are split into two groups: (1) The core group who receive the Guarantee credit element of pension credit which are largely automatically matched and automatically offered the discount, and (2) The broader group who are eligible under wider criteria, such as means-tested benefits.

[125] Department for Business, Energy and industrial strategy. Evaluation of the Warm Home Discount Scheme (2018). Synthesis Evaluation report.

[126] House of Commons Library. Briefing Paper SN01904 (2017). Rail Fares and ticketing.

[127] Ofwat (2019). PR19 final determinations. Reporting guidance – Common performance commitment for the Priority Service Register.

[128] Another reason may be that eligible recipients of WaterSure find it more difficult to judge the savings they will make. Unlike other schemes that offer a set rebate, WaterSure caps bills at the average price. Calculating the potential savings requires consumers to first find out what the average value is, and then make an estimate against their forecast uncapped bill. Finally, WaterSure is only available to people who have a high essential need for water, including those with medical conditions. Demonstrating eligibility in this case requires either a GP stamp which can be costly in terms of time, or a doctors certificate which consumers must pay for.

[129] Ibid.

to apportion both the costs and responsibilities. For example, there are concerns that when only a proportion of companies are required to offer social tariffs, this can affect the willingness of eligible consumers to switch, even if they could make greater savings. However, evidence to support this theory is limited.

- **Warm home discount.** Currently the WHD is only required to be offered by energy suppliers with more than 250,000 customers. This could prevent customers from switching to new suppliers, even when they could make savings through cheaper tariffs. The WHD has recently been amended to extend the obligation to all suppliers with over 150,000 customers.[130] While this change might have some benefits, concerns have raised about the impact of imposing this cost burden on smaller suppliers.

Policymakers also face a decision on how best to share the cost of social tariffs between companies, and the incentives this can have on willingness to serve vulnerable consumers.

- **Warm home discount.** Rather than each company shouldering the cost burden of delivering social tariffs to their customer base, the scheme costs are shared equitably between different suppliers to ensure no supplier is disadvantaged by having a greater number of eligible customers. This is important to avoid the risk that firms may be less willing to serve vulnerable customers.
- **Railcards.** Card revenues from railcards are allocated across train operators pro-rata to the share of revenue from fares bought with the relevant card. Similarly, each participant's share of the marketing budget and other scheme costs are set according to its share of revenue. This process ensures that costs and revenues are shared proportionally, and all participants are required to disclose information on the sale of railcards to ensure that shares are calculated fairly.

Social tariffs can bring benefits to firms, creating a win-win for firms and consumers.

Several firms have reported that social tariffs and financial support programmes can also bring benefits to the firm, explaining the existence of voluntary social tariffs. For example, energy suppliers have reported a positive impact on their reputation and profile along with a positive impact on customer satisfaction levels.[131] Similarly, a pilot of extending the senior railcard discount to apply to bus pass holders concluded that 'the scheme has also improved the perception of both the DfT and train companies'.[132] These increases in customer satisfaction can be particularly valuable to regulated firms that face reputational or financial incentives for maintaining customer satisfaction.

Finally, when social tariffs result in the 'output expansion' effect, they can be a win-win for firms and consumers by encouraging more people to consume services that they would otherwise have chosen not to purchase. For example, analysis of the 26-30 railcard concluded that the additional journeys taken as a result of the discount would likely offset any lost revenue.[133] Similarly, Ofwat has found that several companies offer voluntary social tariffs which are win-win because the reduction in income can be funded through cost savings such as lower debt recovery costs.[134]

5.2 Identification and protection of vulnerable customers

Consumers may find themselves in vulnerable circumstances that affect their ability to engage with markets. Often, this can result in these individuals suffering from poor market outcomes as they are less able to represent their own interests. For example, the CMA found that many people suffering from poor mental health have difficulties with certain types of communication and may become overwhelmed when considering the thought of shopping around. It also found that elderly customers may have a greater propensity towards default bias, that can lead them to missing out on deals for new customers or be at greater risk from practices such as price-walking.[135]

The same barriers that prevent vulnerable consumers from shopping around for the best deals can also prevent them from applying for targeted financial support schemes such as social tariffs or from contacting their supplier to discuss

[130] Department for Business, Energy and Industrial Strategy (2018). Warm Home Discount Scheme. The Government Response to the Warm Home Discount Scheme 2018/19 Consultation.

[131] Department for Business, Energy and Industrial strategy. Evaluation of the Warm Home Discount Scheme (2018). Synthesis Evaluation report.

[132] Department for Transport (2016). Evaluation of Concessionary Bus Travel. The impacts of the free bus pass.

[133] Letter from the Rail Delivery Group (Paul Plummer) to the Transport Committee, House of Commons. Accessed at the following address: https://www.parliament.uk/documents/commons-committees/transport/paul-plummer-to-lilian-greenwood-millennial-railcard-28012019.pdf

[134] Ofwat (2016). Affordable for all. How can we help those who struggle to pay their water bills?

[135] CMA, Customer vulnerability: Challenges and potential solutions, 2019

options such as payment plans. This could lead them to fall behind on their payments and have essential services cut off that further worsen their situation even when support exists. In these circumstances, consumers would have benefited from earlier engagement with their supplier and there is a growing view that firms have a greater role to play in supporting these customers. Some regulators are placing greater requirements on suppliers to proactively identify vulnerable consumers and offer support to help them avoid further financial hardship.

5.2.1 Types of identification and protection remedies

These remedies are designed to create a more inclusive approach to providing goods and services and are broad in scope. The examples reviewed below cover several different schemes that vary in the requirements placed on companies, the stakeholders involved, and the type of support offered. Notably, remedies for the proactive identification and protection of vulnerable consumers include requirements for both outcomes and implementation.

- **Outcomes versus activities.** Market interventions that place a duty on firms to actively identify and protect customers can include requirements both on the identification process e.g. data sharing requirements, and the actual protection offered once these individuals are identified e.g. payment plans for customers in debt.
- **Principles based versus more prescriptive requirements**. Policymakers can vary the degree of flexibility offered to firms in their approach to identifying and protecting consumers. A principles based approach can allow firms to better tailor their support to their individual operating model. However, in other instances policymakers may need to be more prescriptive, particularly where there has been a history of poor compliance and protection of vulnerable consumers. Often, policymakers can use a mix of approaches to strike an appropriate balance.
- **Voluntary versus statutory.** Requirements on firms can form part of their regulatory requirements or licence conditions. For example, energy suppliers are required to proactively identify vulnerable consumers as part of their licence conditions. In other examples, such as the recent broadband commitments, regulators may negotiate voluntary commitments with suppliers.

Many remedies place additional requirements on firms to proactively identify and engage with vulnerable consumers. However, there is also a role for third parties such as independent sector specific consumer advocacy bodies. These represent consumers as a whole and help to deliver changes in business practices that benefit consumers. While we have not reviewed these as part of this report, they can complement other market interventions.

5.2.2 Evidence on identification and protection of vulnerable consumers

There are several examples of remedies that seek to identify and support vulnerable consumers in the utilities, finance and telecommunication industries. Although robust evaluation of their effectiveness is limited, evidence from post implementation reviews give some insight into their direct impact.

Table 5: Identification and protection of vulnerable consumers remedies reviewed

Sector	Scheme	Description and eligibility
Energy	Priority Services Register	Suppliers are required, as part of their license conditions, to maintain a register of customers in need.
	Proactive engagement and payment options	Suppliers are required to offer customers a range of payment options when they become aware that a customer may be struggling to pay their bills.
Water	Priority Services Register	Suppliers are required to maintain a register of customers who would benefit from special assistance.
	Proactive assistance for vulnerable consumers	Schemes for proactive identification and support of vulnerable consumers varies across water companies. For example, Severn Trent has previously provided specialist advisors to support customers fill out application forms.
Broader utilities	Data sharing pilots	A review of pilot data sharing schemes primarily between energy and water, as well as third parties such as local

Sector	Scheme	Description and eligibility
		authorities and healthcare providers to support identification of vulnerable consumers.
Telecommunications	Voluntary broadband commitments	Ofcom negotiated voluntary commitments. These vary across broadband supplier and include proactively identifying vulnerable consumers to discuss pricing and switching.
Financial services	Consumer Credit Sourcebook	Obligations for credit-regulated activities including requirements to identify and protect vulnerable consumers.

Source: PA Consulting

In addition to the evidence reviewed above which relates to existing interventions, there is a large body of work currently ongoing regarding protection of vulnerable consumers. The FCA's recent proposed guidance for firms on the fair treatment of vulnerable customers,[136] and Ofcom's new 'Fairness Framework' both set out actions for firms to better support these customers.

5.2.3 Underlying issues targeted by identification and protection remedies

Remedies designed to encourage proactive protection of vulnerable consumers are typically introduced on welfare grounds. However, they explicitly target issues related to low engagement and go hand in hand with targeted financial support schemes.

Many remedies seek to reduce barriers, so consumers receive the financial benefits they are entitled to.

There are several reasons why consumers may not register for support, even when it is offered by their suppliers. This includes issues relating to awareness or the cost (time or financial) of applying, as well as reluctance to be associated with the label of vulnerability. Regardless of the underlying reasons, regulators are placing a greater responsibility on firms to actively engage with those who may be in vulnerable circumstances.

- **Energy sector.** Energy suppliers are required to maintain a priority services register (PSR) as part of their licence conditions, and to provide information, advice, and other free services to customers on this register. However, a review by Ofgem found that many consumers were unaware of the PSR and the benefits it could offer them.[137] In response, Ofgem has introduced a requirement for suppliers to 'take all reasonable steps to identify customers in vulnerable situations, and offer to place them on the register'.
- **Voluntary broadband commitments.** Ofcom has recently negotiated a series of voluntary agreements with broadband providers. These differ by company and include agreements for annual price reviews with customers identified as vulnerable to ensure that they are on the best deals for their needs, along with automatic discounts for customers who do not respond. Even if consumers are not able to engage with the application process for social tariffs, they will still benefit from lower prices.
- **Water sector PSR.** Similar to energy suppliers, water suppliers also maintain a PSR that identifies consumers that may require additional support. In its latest price control (PR19), Ofwat has recognised that some customers may need additional support to register, and has introduced a requirement for all water suppliers to ensure that at least 7% of their customers are on the PSR by 2025. This is in addition to a performance commitment on actual and attempted contact.[138]
- **Water sector company specific commitments.** Under the current water regulatory framework, companies are free to offer voluntary commitments to support vulnerable consumers, in addition to industry wide performance

[136] FCA, Guidance consultation: Guidance for firms on the fair treatment of vulnerable customers, 2019

[137] Ofgem press release. More consumers in vulnerable situations to receive help under the Priority Services Register. Accessed at the following address: https://www.ofgem.gov.uk/publications-and-updates/more-customers-vulnerable-situations-receive-help-under-priority-services-register

[138] Ofwat (2019). PR19 final determinations. Reporting guidance – Common Performance commitment for the Priority Service Register.

commitments. For example, Severn Trent which has proactively identified customers with long term debt-issues and provided in house support to complete application forms for financial support.[139]

- **Unclaimed Life Insurance Benefits Model Act and Lost Life Policy Locator.** This policy requires companies to proactively identify deceased individuals and give unclaimed benefits to their respective families. It was implemented as family members were often unaware that they were entitled to these benefits.

These remedies are also designed to prevent consumers in vulnerable circumstances from experiencing further hardship.

Policymakers may require firms to put procedures in place to prevent further financial hardship for vulnerable consumers. This is slightly different from the goal of social tariffs, which aim to prevent consumers from entering financial hardship in the first place.

- **Energy: debt support.** Ofgem expects that all energy suppliers take reasonable steps to ensure their customers have the ability to meet their debt repayment arrangements and that their actions do not 'exacerbate existing vulnerable situations or create new ones'.[140] Consequently, energy suppliers are required to offer customers a range of payment options when they have reason to believe that customers may be struggling to pay their bills. This includes payments in regular instalments, through direct deductions from social security benefits, or, as a last resort, installation of a prepayment meter. Repayment plans should be based on the consumer's ability to pay in order to ensure that this does not result in self-rationing or self-disconnection.
- **Energy: use of debt collectors.** Some consumers, such as those suffering from mental illness, may be less able to deal with debt collectors. Where energy suppliers choose to use debt collection agencies, Ofgem will hold the supplier accountable for the actions of these third parties.
- **The Consumer Credit sourcebook (CONC).** The CONC sets out several obligations for credit-regulated activities and requires firms to establish 'clear and effective policies and procedures to identify vulnerable customers and to deal with such customers appropriately'.[141] The guidance makes specific reference to customers seeking debt advice under credit agreements or hire agreements, noting that they may be vulnerable due to their financial circumstances. Research by the FCA suggests that early intervention can limit the issues created by a 'debt spiral'[142] and the FCA has previously investigated firms over compliance with the CONC including timely referrals to free advice services.[143]

Recent updates to consumer protection guidance has been designed to ensure firms recognise that the definition of vulnerability is broad, and some vulnerabilities can be temporary.

There are several definitions being used across sector regulators to define consumer vulnerability. Some define vulnerability through consumer characteristics and conditions, while others focus on their ability to access the market. There has also been a growing recognition that vulnerability may be temporary, such as a change in personal circumstances (bereavement, job loss etc.), and extend beyond more established criteria such as income and age. Recognising this, many regulators are encouraging firms to better identify vulnerable consumers through specially trained staff or best practice guidance, as well as introducing practices that support customers to self-identify as vulnerable. This includes building consumer trust which is particularly important for some consumer groups such as those suffering from mental health issues.

- **Energy sector**. As part of its new Consumer Vulnerability Strategy,[144] Ofgem has undertaken research with stakeholders to understand barriers of uptake of existing support schemes. It concluded that some consumers may be reluctant to self-identify as vulnerable, particularly those suffering from mental health conditions, and this makes it difficult for firms to support their customers. In response, Ofgem is asking firms to demonstrate evidence

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[139] Ofwat (2016). Vulnerability focus report.

[140] Ofgem (2018). Vulnerable consumers in the energy market: 2018.

[141] FCA (version updated 20/12/19). Consumer credit sourcebook. Chapter 8. Debt advice.

[142] FCA (2014). Consumer credit and consumers in vulnerable circumstances.

[143] FCA (2018). Dear CEO letter: The FCA's expectations of debt packager firms providing debt advice and counselling. Accessed at the following address: https://www.fca.org.uk/publication/correspondence/dear-ceo-fca-expectations-debt-packager-firms.pdf

[144] Ofgem (2019). Consumer Vulnerability Strategy.

of greater support for customers to self-identify, for example the establishment of care teams trained to recognise vulnerable situations and talk to these customers.

- **Financial services.** The FCA's recent guidance on the fair treatment of vulnerable customers states that 'if firms are not aware of the range of vulnerabilities in their target market or customer base, they may not offer the option for tailored services or support',[145] and recommends that firms should be proactive in understanding the nature and extent of vulnerability. This includes ensuring that staff can recognise a range of indicators of actual and potential vulnerability.

Stronger requirements on firms to proactively identify and protect vulnerable customers may be necessary to drive a fundamental culture shift.

In some cases, firms may not consider the protection of vulnerable consumers to be part of their wider business culture and this can lead to firms placing a low priority on providing support for these consumers. For example, the FCA recently concurred with concerns submitted by consumer organisations that 'some firms do not ensure that the fair treatment of vulnerable consumers is fully embedded into their business.[146] By requiring firms to proactively reach out to vulnerable consumers, along with providing dedicated training for staff on how to better support these customers, this can precipitate a broader culture shift.

5.2.4 Evidence on the effectiveness of protection and identification remedies

Many protection and identification remedies are relatively new and there are a limited number of ex-post reviews. Key lessons from the available evidence are set out below and supplemented by broader post-implementation reviews and wider research in consumer protection policies.

There is emerging evidence to suggest that firms have been successful in proactively identifying consumers and that this has led to improved outcomes.

Remedies that require firms to proactively identify and support vulnerable consumers have been successful in reducing consumer harm, including preventing consumers from spiralling into further debt and accessing available financial support.

- **The Consumer Credit sourcebook (CONC).** A review by the FCA found that firms were improving how they proactively identified and helped financially struggling consumers, and several case studies provided evidence of consumers being able to repay their missed payments quickly as a result of the support.[147]
- **Energy PSR.** Since the changes to the PSR licence commitments, which include requirements for suppliers to proactively identify and contact customers who may be eligible for the PSR, the number of consumers on the PSR has increased each year. In 2018, 24% of electricity customers were on the PSR, representing a 12% increase from 2017, and 24% of gas customers were on the PSR representing an annual increase of 19%.[148]

Post-implementation reviews have highlighted issues in compliance and consumer experiences vary across firms.

Policies that require firms to proactively identify and protect consumers can represent a significant change in the approach of firms to vulnerable consumers, particularly in industries where business practices have previously harmed these consumers.[149] As a result, firms may not comply with policies to proactively identify and protect vulnerable consumers, either intentionally or because they do not have a clear understanding of the policies.

Given the nature of these remedies, and the people it is designed to protect, it is difficult for consumers to report firms that are not compliant. It may be appropriate therefore for policymakers to require firms to train their staff in proactive

[145] FCA (2019). Guidance consultation. Guidance for firms on the fair treatment of vulnerable customers.

[146] Ibid.

[147] FCA (2019). Guidance consultation. Guidance for firms on the fair treatment of vulnerable customers.

[148] Ofgem (2019). Vulnerable consumers in the energy market 2019.

[149] For example, the FCA refused authorisation to a debt management firm that was advising vulnerable consumers to enter into debt solutions that were unsuitable for their circumstances. https://www.fca.org.uk/publication/guidance-consultation/gc19-03.pdf

support of vulnerable consumers and provide evidence that this has taken place, along with monitoring compliance following implementation.

- **The Consumer Credit sourcebook (CONC).** The FCA review found that while most firms were complying with requirements, there remained instances where firms were not treating consumers fairly. This included failing to identify on indicators of vulnerability and repeatedly missing opportunities to intervene before the situation deteriorated further. There were also some lenders whose practices failed to consider the situation of the consumer, leading to greater financial and emotional distress that could have been avoided.
- **FCA fair treatment of vulnerable customers.** The FCA identifies the policy/practice cap as another source of poor consumer outcomes. Even when firms have implemented policies designed to protect vulnerable consumers at the senior levels, without sufficient training for frontline staff who are responsible for delivering these policies, they can fail to be effectively implemented.
- **Energy proactive engagement and payment options for debt.** Ofgem expects suppliers to proactively support consumers who are struggling to pay their bills, including being put on an affordable payment plan. However, some suppliers are calculating repayments based on set time horizons rather than making appropriate considerations on whether payments are affordable given individual circumstances.[150]

In some cases, regulators can set measurable indicators for firm compliance. For example, under the new water regulatory framework, water suppliers are required to record the number of customers they have contacted regarding the PSR, along with the total proportion of consumers registered as formal performance commitments. Where there are a larger number of firms in the market, requirements for firms to self-report can reduce regulatory burden.

In order for firms to understand the dimensions of vulnerability, companies should engage with consumer stakeholder groups and provide staff training programmes.

There also remains a sizeable number of firms that consider the definition of vulnerability to be restricted to low income or elderly consumers rather than recognising that it can be a result of a much broader set of circumstances. For example, Ofgem's 2019 review of vulnerable consumers found that several small and medium suppliers reported they had low numbers of PSR eligible customers as their customer base was primarily younger customers leading Ofgem to raise concerns that 'some still seem to have a perception that vulnerability is mainly defined by age'.[151]

Failure of firms to recognise wider definitions of vulnerability means that firms will attempt to support only a subset of their vulnerable consumers. Policymakers should provide guidance to firms on ways in which they can better understand customer vulnerability to support these remedies, including proactive engagement with customer groups and staff training. They should also ensure that learnings are shared across companies particularly as more sectors introduce requirements on firms to proactively identify and protect consumers.

There are substantial gains from better use of data, including intelligent debt segmentation and data sharing. This can help to overcome issues with eligibility criteria for social tariffs.

One consistent theme across the evidence reviewed has been the potential for better data analytics and data sharing to support identification of vulnerable consumers. Companies have previously raised difficulties in identification of consumers as a key barrier to proactive engagement. However, growth in data availability, analytics, and open data initiatives can bring significant improvements to identification and regulators have identified several examples of best practice.

- **Ofgem consumer vulnerability strategy**. Ofgem's updated customer vulnerability strategy explicitly calls out 'improving identification of vulnerability and smart use of data' as one of their five focus areas.[152] The potential for data from smart meters offers one opportunity for suppliers to better support consumers when their usage changes, for example in preventing self-disconnection for pre-payment meter customers.

[150] The Ofgem review in 2019 (Vulnerable consumers in the energy market) found that some suppliers do not set up default arrangements when they are unable to contact a customer identified as in debt which can result in higher arrears and result in problem debt. While default arrangements are not covered by the rules on debt (SLC 27.8), this shows that wider cultural changes may be required for firms to proactively identify new ways to support vulnerable consumers.

[151] Ibid.

[152] Ofgem (2019). Consumer Vulnerability Strategy.

- **FCA analysis of transactions data**. FCA guidance for the fair treatment of customers identifies an example of best practice use of data analytics to identify potentially vulnerable customers. The firm analysed its own transaction data to identify patterns of behaviour and financial stress and developed a customer segmentation model by financial health. This allowed the firm to provide better support to vulnerable consumers, including sending SMS messages that directed customers to tools that they could use to better manage their finances.[153]

The move to open data also offers significant opportunities for different companies, both within the same sector and across sectors, to share information that can better identify vulnerable consumers.

- **Energy PSR.** A review of the PSR in 2016 concluded while all companies were required to share data on their vulnerable customers, 'the arrangements for recording and sharing vulnerability data across suppliers and network operators are inconsistent and inefficient'[154]. In response, Ofgem aligned its PSR needs codes (indicators of vulnerability) in both gas and electricity to enable better data sharing between suppliers and distribution companies. While the causal impact of this has not been calculated, the number of customers registered on the PSR has increased since the reforms.

The UK Regulators Network (UKRN) has recently focused on exploring the potential for increased data sharing. This includes sharing data across different sectors to create a single PSR, as well as working with third parties such as local authorities and hospitals to better identify vulnerable consumers. We summarise some of the key examples below. Further detail including key enablers for success can be found in the UKRN report[155] and follow-up report.[156]

- **United Utilities and Electricity North West pilot.** United Utilities (water) and Electricity North West (energy) undertook a 14-week two-way data sharing pilot to share their PSR data. The companies found that 80%-90% of the existing energy needs codes were relevant in water making it easier to identify vulnerable consumers based on PSRs in the other sector. As a result of the data sharing agreement, United Utilities registered an average of 180 additional customers per month to their PSR. The pilot was so successful that both companies have agreed to continue sharing data as part of their standard business practices.

  This approach to cross-sector data sharing brings significant benefits to both firms and consumers. By pooling customer information, both firms were able to develop a more complete dataset. From the point of view of consumers, a data sharing approach not only allows more support to reach those that need it, it also means that consumers are not required to repeat conversations across sectors that may be difficult or uncomfortable.

- **Wellington Healthy Homes.** Wessex Water and Western Power Distribution worked in collaboration with the Wellington Medical Centre, the Centre for Sustainable Energy, and Taunton Deane Borough Council to better identify and support vulnerable consumers suffering from cold homes. By combining health data from the medical centre with usage data from Western Power Distribution, potentially vulnerable consumers were identified. Wessex Water also promoted the scheme with its existing PSR customers in the local area, offering advice and support including energy crisis packs, energy saving, water saving, and benefits advice.

Proactive identification and protection of vulnerable consumers can also help to overcome issues with eligibility criteria for social tariffs.

One of the limitations of more prescriptive social tariffs and financial support is that they require policymakers to identify an appropriate proxy for need in order to set the eligibility criteria. This needs to strike a balance between ease of implementation and accuracy of targeting. However, more principle-based requirements on firms to identify and protect vulnerable customers can prompt companies to harness the considerable amounts of customer data they hold to better identify customers who would benefit from support.

For example, analysis of transactions data in financial services found that the combination of a low average balance combined with heavy overdraft usage was a sign of financial stress. While this would not be suitable for eligibility criteria of social tariffs, it can be used as a basis for firms to target individual customers and provide tailored support and help to reach customers that may otherwise lack support.

[153] FCA (2019). Guidance consultation. Guidance for firms on the fair treatment of vulnerable customers.

[154] Ofgem (2016). Priority Services Register Review: Statutory Consultation.

[155] UKRN (2017). Making better use of data: identifying customers in vulnerable situations. A report for water and energy companies October 2017.

[156] UKRN (2018). Making better use of data to identify customers in vulnerable situations. A follow-up report November 2018.

6 Limits on firm behaviour and consumer redress

Firms can engage in a variety of behaviours that generate poor outcomes for consumers. Rather than competing on price and quality, firms may choose to engage in unfair methods of competition such as passing-off or intentional price complexity. Where these behaviours are widespread, this can prevent even engaged consumers from finding good deals and interventions that limit these practices may be necessary.

The scope of these measures can be broadly categorised into two groups:

- **Unfair contract terms and mis-selling.** Regulators can introduce general consumer protection regulation to ensure that there is a fair balance of power between firms and consumers. These include regulations that place restrictions on standard contract terms and set out sales standards to ensure consumers are not misled or bullied into making purchases. These regulations typically span across all markets rather than being sector specific, although regulators can use them as the basis for sector-specific principles.
- **Banning and regulation of business practices.** Regulators can introduce restrictions in specific business practices observed in their relevant markets that are generating poor consumer outcomes.

In both cases, restrictions on firm behaviour is typically accompanied by measures of consumer redress or enforcement action in the event of a breach.

Key Lessons: Limits on firm behaviour

- It can be difficult to pinpoint the exact behaviours that are driving consumer harm, and mis-diagnosis can lead to inappropriate remedy design and regulatory failure. However, new analytical tools and data provided by the private sector can support diagnosis and simulate potential outcomes.
- While introducing limits on firm behaviour can negatively impact innovation or competition, it can also enable more effective competition when existing practices are preventing market entry or the ability of smaller firms to compete.
- When designing mitigations to negative impacts on innovation or competition, regulators must ensure that these are relatively costless for firms or risk firms simply choosing not to engage.
- Regular evaluation of firm compliance is critical for ensuring these remedies are effective. This should be on an ongoing basis, with evidence suggesting non-compliance is common even after market investigations and enforcement action.
- Many of these remedies rely on a degree of consumer response and therefore their impacts may be limited. It may therefore be appropriate to introduce them alongside a wider package of remedies.

6.1 Protection against unfair contracts, mis-selling, and consumer redress

Widespread use of unfair contract terms or poor business practices can mean that even engaged consumers who shop around fail to find good deals. Alternatively, standard contractual agreements may be long and complex to understand, making it difficult for consumers to understand whether what they're buying truly meets their needs.

In either case, widespread use of unfair contract terms can lead to consumers being misled into expensive contracts that do not meet their needs and generate a significant power imbalance between firms and consumers. For example, insurance products carry differing levels of coverage and consumers can end up purchasing policies that do not reflect their actual needs if these differences are not clearly explained. These situations can be particularly harmful for consumers who are in financial difficulty, or if their wellbeing depends on purchasing the right products.

6.1.1 Types of protection against unfair contracts, mis-selling, and consumer redress

There are two broad types of remedies that seek to protect consumers against unfair contracts and support consumer redress:

- **General consumer protection regulations**. The creation of regulation specifying how consumers should be treated by businesses and which applies across all firms. In the UK, general consumer protection is primarily delivered through the Consumer Rights Act 2015[157] and the Consumer Contract Regulation 2013. These regulations form the basis for sector regulators to investigate specific cases where firms fail to meet their requirements.
- **Sector or product specific remedies.** Policymakers can introduce regulation, or negotiate voluntary agreements, that place stronger consumer protection requirements in specific sectors or in response to specific issues. For example, the Energy Act 2013 awarded Ofgem the power to impose consumer redress orders against companies in response to breach of licence obligations, while the PPI mis-selling compensation scheme was designed specifically to compensate consumers who were mis-sold PPI.

These are typically accompanied by consumer redress and enforcement measures which offer additional choices:

- **Proactive versus reactive consumer redress.** Policymakers may require that firms provide compensation in the event of breach of commitments. This can be reactive (requiring consumers to apply) or automatic.
- **Punitive versus restorative fines.** When regulators fine firms following a breach of obligations, the value of the fine can be set at a level to compensate consumers affected or at a level designed to act as a deterrent for non-compliance. Regulators may incorporate both when setting the total value of a fine, separating these into a consumer redress element and a penalty element.
- **Method of payment.** Consumer compensation can either be direct or indirect. For example, rather than fining companies, regulators can instead choose to require firms to invest a certain amount into improvements designed to prevent the same issue from happening again or deliver wider consumer benefits.

6.1.2 Evidence on protection against unfair contracts, mis-selling and consumer redress

Sector	Remedy	Description
Energy	Energy Act	Powers for Ofgem to impose consumer redress orders for breach of licence obligations.
Telecommunications	Voluntary codes of practice on Broadband Speed	Voluntary code of practice for broadband suppliers including right to exit without penalty if speeds are slower than they should be.
	Automatic compensation Scheme	Broadband and landline customers automatically receive compensation in the event of delayed repairs, service disruption, missed appointments, or delays to the start of new services.
	Ofcom investigations into unfair contract cases	Ofcom investigation into individual complaints regarding unfair contract terms.
Fitness	Investigation into unfair terms in gym contracts	Investigation into gyms and fitness clubs for violations of the Unfair Terms in Consumer Contracts Regulations (UTCCR). Led to revisions on cancellation rights and greater transparency on key membership features.
Financial services	PPI mis-selling compensation Scheme	Compensation scheme for mis-selling of PPI claims by UK banks.
	PPI Competition Commission Investigation	Investigation by the Competition Commission on competition within the PPI market. Resulted in several remedies to be introduced in the market.

[157] The Consumers Rights Act 2015 supersedes the Sale of Goods Act, Unfair Terms in Consumer Contract Regulations, and the Supply and Goods and Services Act.

Sector	Remedy	Description
	FCA investigations	FCA investigations into unfair behaviour in relation to financial products.
General	Consumer Rights Act	Consolidation of existing consumer rights and introduction of new rights on digital content.
	Alternative Disputes Resolution Regulations	Regulations that provide for alternative dispute resolution bodies (ADR) and require businesses to provide information on the relevant ADR to its customers. It does not however require firms to participate in ADRs.
	Consumer protection (Amendment) regulations	Regulation increasing the rights of consumers who have been misled or bullied into entering a contract.
	Consumer contract (Information, Cancellation, and additional Charges) Regulations	Regulation designed to increase transparency for people buying goods and services.
	Unfair Terms in Consumer Contracts Regulations	Consumer rights regulation including restrictions on standard contract terms. Now superseded by the Consumer Rights Act 2015.

Source: PA Consulting

6.1.3 Underlying issues targeted by protection against unfair contracts and consumer redress

General consumer protection regulation is necessary to support effective competition.

In order for competition to work effectively, both the demand and supply sides of the market must be well functioning. This means that consumers should be able to make well-informed decisions and exert consumer choice when products do not meet their needs. If this is not the case, for example due to complex and unclear contract terms or restrictive contracts, this will limit competitive pressure on firms. The introduction of consumer protection regulations can help ensure competition works effectively by empowering consumers and improve the demand-side of markets.

- **Consumer Rights Act 2015**. The key economic rationale for the reform of Consumer Rights Act (CRA) (which includes restrictions on unfair contract terms and requirements for consumer redress) was 'empowering consumers and hence supporting more effective competition'.[158]
- **Consumer Contract Regulations 2013.** The Consumer Contract Regulations (CCR) were intended to improve consumer choice through increasing contract transparency and therefore allow people to make more informed purchasing decisions.[159] This in turn was expected to improve competition.
- **Voluntary codes of practice on Broadband Speed**. Recent changes to the voluntary broadband codes of practice introduce commitments for broadband providers to provide more realistic speed estimates at the point of sale, as well as strengthening consumer rights to exit their contracts when minimum speeds are not delivered. These changes are intended to help engaged consumers make better purchasing choices as well as making it easier for consumers to switch when companies do not deliver the services that they are paying for.[160]

[158] House of Commons Library (2017). Briefing Paper. Consumer Rights Act 2015.

[159] Department for Business, Energy and Industrial Strategy (2019). Statutory Report on the Implementation of the Consumer Contracts (Information, Cancellation and Additional charges) Regulations 2013.

[160] Ofcom (2018). Better broadband speeds information: Voluntary codes of practice.

These remedies prevent firms from using unfair methods of competition and realign firm incentives to invest in innovations that improve consumer outcomes.

Firms are not restricted to competing through lower prices or improved product quality. Instead, firms can try to make higher profits by engaging in unfair practices such as overly restrictive contract terms or passing-off. Not only does this worsen outcomes for customers, it can also make it more difficult to distinguish between legitimate and rogue traders. In the extreme, legitimate traders find it harder to compete and exit the market.

Firms also have incentives to develop new ways to exploit consumers (exploitative innovation), including contract innovations with deceptive features. These exploitative innovations may then spread across the industry as other firms choose to adopt deceptive practices.[161] By preventing firms from using exploitative contracts, policymakers can realign firm incentives to focus on innovations that genuinely deliver better outcomes for consumers such as lower prices, improved quality, or better consumer choice.

- **Consumer Protection (Amendment) Regulations 2014**. Research by the NAO in 2011[162] found that there remains widespread use of unfair commercial practices including misleading or aggressive practices. In response to these findings, Government introduced the Consumer Protection (Amendment) Regulations in 2014 (CPR) which give consumers new rights when they have been misled or pressured into buying goods or services.
- **Investigation into unfair terms in gym contracts.** The OFT investigated several gyms and fitness centres to determine whether their contracts breached the UTCCR. This included use of minimum membership periods with limited rights to cancellation in the event of a change in circumstance, along with misleading debt collection practices. This investigation spanned across several large gym and fitness providers[163] suggesting that even engaged consumers may struggle to find fair contracts.

Consumer redress measures are intended to compensate affected consumers and act as a deterrent for future non-compliance by firms. They address both actual harm incurred and the underlying drivers.

Consumer protection regulations typically consist of two parts. Firstly they set limits on contract terms and the ways in which these contracts are sold to consumers. Secondly, they establish consumer remedies in the event of a breach.

Several recent changes have focused on making it easier for consumers to receive compensation.

- **Automatic compensation scheme.** Several large broadband providers have signed up to the Automatic Compensation Scheme which provides automatic compensation in the event of delayed repairs or start of a new service.[164] The scheme was introduced following a review by Ofcom that found limiting the amount of customer involvement was an effective way to ensure that consumers are compensated quickly and easily.[165]
- **Consumer Protection Regulations 2014.** The CPR set out simplified and standardised remedies for consumer redress that apply whenever a trader's actions were misleading or aggressive irrespective of whether or not consumers were actually harmed.[166] This removes the burden of providing evidence of actual losses as well as providing a much stronger incentive for firms to comply with the regulations.
- **Alternative Dispute Resolution Regulations.** ADRs provide a low cost way for consumers to resolve disputes with companies without requiring them to engage in costly legal action. ADRs are typically free for consumers and remove barriers to consumer redress that exist when customers are required to go through the courts.[167]

In addition to remedies that make it easier for consumers to receive compensation for poor firm behaviour, many regulations also aim to change the underlying incentives for firm compliance. This is primarily through the use of

[161] Heidhues, Paul & Kőszegi, Botond & Murooka, Takeshi. (2016). Exploitative Innovation. American Economic Journal: Microeconomics. 8. 1-23. 10.1257/mic.20140138.

[162] NAO (2011). Protecting consumers – the system for enforcing consumer law.

[163] This included investigation into Ashbourne Management Services Limited which drew up membership agreements and collected payments for over 700 gym clubs, Harlands Group which managed over 900,000 customer contracts, and LA Fitness, David Whelan Sports, Bannatyne Fitness, David Lloyd Leisure and Fitness First which collective held almost 1.5 million customers.

[164] Consumers are still required to report the issue to their providers but are no longer required to proactively request compensation.

[165] Ofcom (2017). Communications providers' voluntary code of practice for an automatic compensation scheme.

[166] Department for Business, Energy and Industrial Strategy (2018). Misleading and aggressive commercial practices: New private rights for consumers. Guidance on the Consumer Protection (Amendment) Regulations 2014.

[167] House of Commons Library (2017). Briefing Paper. Alternative Dispute Resolution (ADR) and consumer disputes.

punitive fines. By setting penalty fines above the value of any profits that a firm could make by breaching consumer protection regulations, and ensuring that there are good detection measures in place, policymakers can remove incentives for non-compliance.

- **Energy Act 2013.** Ofgem's have stated that penalties for non-compliance are designed to discourage future poor behaviour. This means that the level of penalty will be set to 'ensure that companies do not gain from non-compliance' and 'the Authority is determined that any penalty should be set at a level that will deter future non-compliance and incentivise compliance by all companies'.[168]
- **PPI mis-selling investigation and compensation.** The PPI investigation found that firms were incentivised to deliberately mis-sell these products. An interview with a former bank manager revealed that employees were incentivised to sell on a performance related bonus system even if they knew that PPI protection was not required, with those not meeting sales targets punished by management.[169,170] Fines issued by the FCA in relation to PPI mis-selling (over and above consumer compensation paid) hopes to remove these incentives and realign consumer and firm objectives.

Policymakers may also choose to introduce punitive fines when firms do not comply with consumer redress measures to ensure that consumer protection regulations are working as intended.

- **PPI mis-selling compensation mishandling**. The FCA fined several banks for failing to handle PPI complaints fairly. This included a £117m fine for Lloyds Banking Group who unfairly rejected PPI claims[171] along with a £20m fine for Clydesdale Bank who failed to take into consideration all relevant information when assessing PPI claims along with providing false information to the Financial Ombudsman Service which deliberately deleted PPI information.[172]

6.1.4 Evidence on the effectiveness of protection against unfair contracts and consumer redress

Existing consumer protection regulations offer a good basis for protecting consumers and regulators should focus on ensuring compliance across all firms.

The current consumer protection regulations offer a good basis for protecting consumers. However, compliance in some sectors has been poor and consumers would benefit from regulatory efforts to improve market-wide compliance. This includes issuing more detailed sector specific guidance where relevant to support firm compliance.

- **Investigation into unfair terms in gym contracts.** The OFT investigation into unfair gym and fitness contract terms found that several gyms were in breach of fairness requirements of the UTCCR.[173]
- **Consumer contracts Act (2013)**. A post-implementation survey of stakeholders found that that majority agreed that the Consumer Contracts Act (2013) was able to meet its stated objectives. However, feedback on enforcement found a 'general wish for improved enforcement of consumer law'.[174]
- **PPI mis-selling**. As part of its PPI mis-selling investigations, the FSA found multiple breaches of the existing FSA Handbook provisions.[175]

[168] Ofgem (2014). Financial penalties and consumer redress decision letter dated 6 November 2014.

[169] Gladstone Brookes Ltd (2019). Bank Manager spills the beans on PPI mis-selling. Accessed at the following address: https://www.gladstonebrookes.co.uk/blog/2019/07/22/ppi-mis-selling-tactics-released/

[170] FSA (2006). Treating customers fairly – towards fair outcomes for consumers.

[171] FCA (2015). Press release. Lloyds Banking Group fined £117m for failing to handle PPI complaints fairly. Accessed at the following address: https://www.fca.org.uk/news/press-releases/lloyds-banking-group-fined-%C2%A3117m-failing-handle-ppi-complaints-fairly

[172] FCA (2016). Press release. Clydesdale Bank fined £20,678,300 for serious failings in PPI complaint handling. Accessed at the following address: https://www.fca.org.uk/news/press-releases/clydesdale-bank-fined-%C2%A320678300-serious-failings-ppi-complaint-handling

[173] HTML version of the High Court Judgement. Accessed at the following address: http://www.bailii.org/ew/cases/EWHC/Ch/2011/1237.html

[174] Department of Business, Energy, and Industrial Strategy. Statutory Report on the Implementation of the Consumer Contracts (Information and Cancellation and Additional Charges) Regulations 2013.

[175] FSA (2010). The assessment and redress of Payment Protection Insurance complaints. Feedback on the further consultation in CP10/6 and final Handbook text.

Investigations into non-compliance have delivered both direct and indirect benefits to consumers, and can help to address underlying incentives for poor behaviour as well as compensating consumers.

Enforcement of existing consumer protection regulations and consumer redress have achieved positive outcomes for consumers by directly compensating affected consumers as well as reducing firm incentives to exploit consumers.

- **Investigation into unfair terms in gym contracts.** A review of the OFT action on unfair gym membership was found to reduce customer detriment by an estimated £37 million for 750,000 gym members[176] and reduced stress for consumers in resolving contractual disputes with their gym supplier.
- **PPI mis-selling consumer redress programme.** An interim update of the PPI consumer redress programme by the FCA found the that programme was working well with over £16bn repaid to consumers.[177]
- **FCA investigations.** A review from the NAO found that redress payments and increased fines have greatly reduced incentives for firms to mis-sell to consumers.[178]

Continual assessment of compliance is essential for these remedies to be effective and compliance can remain poor even after regulatory intervention.

In order for these remedies to be effective, regulators need to have effective monitoring processes. This should include monitoring compliance with consumer redress measures. This review has found that while enforcement action has been effective in bringing significant benefits to consumers, there remain firms that are in breach of consumer protection regulations. If consumers are unaware of their rights, it is far more difficult for regulators to monitor compliance as members of the public are unable to report breaches.

- **Investigation into unfair terms in gym contracts.** The CMA review of the investigation into unfair gym contracts found evidence that a small minority of firms continued to offer contracts that breached the UTCCR and there remains variation in how cancellation terms are used and applied. There also remain consumers who are unaware of their rights to cancellation.[179]
- **FCA investigations and PPI complaints mishandling.** The NAO review into FCA action against mis-selling concluded that bank's handling of complaints has been poor and consumers have required further investigations by the FCA and Ombudsman to receive the compensation that they are entitled to.[180] This is particularly clear in the case consumer redress for mis-sold PPI where the FCA have issued several fines to companies regarding the inappropriate handling of PPI complaints and incorrect refusal of compensation.

There is significant variation across sectors on the use of statutory enforcement powers versus voluntary commitments. The trade-offs and net impact of these differences are not yet fully understood.

The FCA has formally several issued final notices to companies over the fair treatment of customers. This includes the £117m fine for Lloyds over mishandling of PPI complaints as well as more recent examples such as the c.£24m fine issued to the Prudential Assurance Company over failing to inform its customers that they may get a better deal from shopping around.[181]

In comparison, the energy sector commonly accepts use of alternative actions[182] to resolve cases of firm wrongdoing[183]. While cases resolved through alternative actions have similar financial implications for firms,

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[176] CMA (2016). Unfair contract terms: evaluation of OFT consumer enforcement case.

[177] FCA (2014). Redress for payment protection insurance (PPI) mis-sales. Update on progress and looking ahead

[178] NAO (2016). Financial services mis-selling: regulation and redress.

[179] CMA (2016). Unfair contract terms: evaluation of OFT consumer enforcement case.

[180] NAO (2016). Financial services mis-selling: regulation and redress.

[181] FCA (2019). Final Notice to the Prudential Assurance Company Limited.

[182] When deciding whether or not to open a case against a firm, Ofgem may choose to use 'alternative action' to bring a company into compliance. This can include entering into dialogue with the firm to understand actions they have already taken to compensate affected consumers and prevent a repeat of the behaviour happening in future, agreement of a period of reporting, requirement to engage independent auditors, or voluntary payments. For example, rather than opening a formal investigation into mis-selling by British Gas, Ofgem accepted a voluntary £1m compensation package consisting of £566k of direct compensation to affected consumers and £434k to a Trust to support vulnerable consumers.

[183] We are not aware of any instances where Ofgem has used its formal consumer redress powers for breaches relating to mis-selling.

alternative actions do not always require an admission of wrongdoing. This is thought to encourage firms to self-report potential breaches as well as reducing the time taken to issue compensation compared to a formal investigation and enforcement action.[184]

This difference in approach illustrates the trade-offs that exist in the enforcement approach taken by regulators. On the one hand, more frequent use of statutory enforcement powers may act as a stronger deterrent to future wrongdoing. On the other hand, a more flexible approach can encourage self-reporting and allow compensation to reach consumers in a timelier manner. Further investigation into these trade-offs and their net impact on firm incentives will help policymakers to strike the right balance.

There is limited evidence that consumer protection regulations have generated negative impacts.

Many consumer protection regulations aim to support demand-side competition by making it easier for consumers to switch providers and make more informed decisions. While evidence on the wider market impacts of consumer protection remedies on competition and innovation is limited, we refer to the CMA's review of the OFT intervention on gym contracts which does consider these impacts.

- **The intervention may have increased switching for some consumers.** The OFT intervention made it easier for consumers to leave their existing gym contracts when facing a change in circumstances. While the CMA concluded that the changes were unlikely to have significant impacts on switching, it did recognise that it will have benefited some consumers.
- **Waterbed effect for contract terms.** The CMA examined whether the new rules on contract terms resulted in gyms introducing new contract innovations creating consumer detriment elsewhere. This is similar to the waterbed effect for prices and means that net consumer detriment would remain unchanged. However, the CMA found no evidence that revised gym contracts incorporate new terms designed to disadvantage consumers. Complaints about gym contracts have also reduced over time.
- **Reduction in profitability has not led to decreased competition.** Restricting the ability of firms to use exploitative contracts can reduce firm profits. If lower margins result in firms existing the market, this can reduce competition. On the other hand, removing the ability of firms to use unfair methods of competition can reduce barriers to entry and force companies to compete on price and quality.

  While the CMA did not carry out detailed analysis in its evaluation, feedback from gym operators found that the intervention has not led to increased costs or created other negative unintended consequences. There has been growth in the budget sector of gyms with entry of a sports retailer (SportsDirect) into the gym market as well as an increase in single service focused studio operators.

6.2 Banning and regulation of business practices

Companies may choose to employ unfair business practices that are specific to individual sector or products. In these cases, regulators can introduce remedies that target these individual behaviours.

6.2.1 Types of remedies that ban and regulate of business practices

Market interventions that prohibit certain business practices are varied and reflect the range of choices that firms make when deciding how to structure, market, and price their products and services. We set out several examples below, recognising that these remedies are typically reactive to specific practices considered to deliver poor outcomes.

- **Limits on price discrimination.** Price discrimination based on behavioural biases can disproportionately impact vulnerable consumers and regulators may move to limit the ability of firms to do so.
- **Standardisation of tariff structures.** When consumers find it difficult to compare products, this can lead to lower engagement and prevent consumer from identifying the best deals even when they do shop around. Policymakers may therefore introduce standard tariff structures to make it easier for consumers to compare products.

[184] Ofgem (2017). Enforcement Guidelines.

- **Wider selling practices**. Firms can employ wider sales tactics to increase profits, including use of product bundling and opt-out sales. Where these result in too many consumers buying products that they do not need, or higher prices due to weaker competition, policymakers may choose to intervene.

6.2.2 Evidence on banning and regulation of practices

While there are several examples of regulators intervening to ban certain business practices, we have found a relatively limited amount of ex-post evidence. This may be due to the relative recency of these remedies.

Table 6: 6.1.2 Evidence on banning and regulation of business practices

Sector	Remedy	Description
Energy	Simpler choices rules	Set of reforms designed to make it easier for consumers to understand and compare energy tariffs. This included a ban on tiered tariffs, standardisation of tariff structures, and limits on the number of tariffs a firm could offer.
	Restrictions on geographic price discrimination	Ban on offering different terms to customers based on geography when this did not reflect differences in cost.
Financial services	Deferred opt-in period for Guaranteed asset protection insurance	Deferred opt-in period for customers when add-on guaranteed asset protection (GAP) insurance is sold as part of a vehicle purchase. GAP insurance can no longer be introduced and sold on the same day.
	Ban on opt-out selling	Ban on opt-out selling of add-ons for financial services along with greater information requirements.
	Gender neutral insurance pricing	Ban on price discrimination based on gender.
Gambling	Age and identification verification	Requirements for gambling operators to verify age before a consumer can deposit funds into an account or gamble either with their own money or a free bet/bonus.

Source: PA Consulting

6.2.3 Underlying issues targeted by regulation of practices

Remedies that limit the specific business practices are often intended to increase market engagement.

As is the case with regulation of unfair contract terms, remedies that limit certain business practices are often intended to support the demand-side of the market. Where business practices are considered to make it harder for consumers to make effective purchasing decisions, regulators can step in to create universal standards across the market.

- **Simpler choices rules.** Ofgem's Retail Market Review (RMR) identified three key barriers to consumer engagement: (1) The large number of tariffs and complex structures, (2) Gaps and lack of clarity in information provided to consumers, and (3) Lack of trust and poor supplier conduct. Together they were thought to be limiting the ability of consumers to shop around and find good deals leading to higher prices and lower quality services. In order to address the first of these barriers, Ofgem introduced the Simpler Choices Rules aimed at increasing engagement and therefore effective competition.[185]
- **Ban on opt-out selling**. The FCA found that opt-out selling exploited default bias as consumers were more likely to stick with the preselected option. This meant that they often bought add-ons that they neither understood nor

[185] Ofgem (2013). The Retail Market Review – Final domestic proposals. Consultation on policy effect and draft licence conditions.

required. For example, one firm reported that they achieved successful sales of 80% when motor legal expenses insurance was sold as an opt-out product compared to 40% when it was sold on an opt-in basis.[186] This led the FCA to ban opt-out selling on financial services.

- **Deferred opt-in period for GAP insurance.** The FCA concluded that GAP insurance sellers benefited from a point-of-sale advantage which was then compounded by behavioural biases. By introducing add-on products late in the sales process, consumers are less likely to shop for deals.[187] Furthermore, when products are sold as opt-out rather than opt-in, default bias means that consumers are more likely to purchase if they don't need the product. Finally, consumer inertia meant that very few consumers cancelled their GAP insurance after purchasing.[188] To address these issues, the FCA introduced a deferred opt-in period for sales of GAP insurance policies.

Banning of certain business practices can also attempt address more traditional market failures such as local market power although there is limited evidence on success.

Restrictions on business practices can also help to address traditional market failures when they occur on a smaller scale. The FCA found that when add-ons are sold alongside a main product, consumer attention is typically focused on the primary product and they are less likely to shop around for add-ons.[189] This is referred to as the point-of-sale advantage. The introduction of a deferred opt-in period for GAP insurance was designed to mitigate the point-of-sale advantage and encourage consumers to shop around for lower prices. However, the FCA's ex-post impact evaluation found that the remedy had a limited impact on prices, lowing them by just 2% - 3%. Potential reasons include increased customer segmentation rather than greater competition across add-on and standalone insurance providers.[190]

6.2.4 Evidence on the effectiveness of banning and regulation of practices

The evidence on banning and regulation of practices has been mixed. While some remedies have delivered benefits to consumers, others have led to worse outcomes and have been subsequently removed from the market i.e. the four-tariff rule for energy. Moreover, banning and regulation of practices that relate to price discrimination can sometimes lead to higher but fairer prices and therefore their net impact needs to be carefully evaluated.

When drawing lessons on effectiveness for these remedies, it is important to differentiate between poor outcomes that are due to the theoretical basis for the remedy and those due to its design or implementation. We explore the implications of the policy design process on success in more detail in Chapter 7.

It can be difficult for regulators to accurately identify business practices that are contributing to poor consumer outcomes and correct diagnosis is a key determinant of remedy success.

Remedies that regulate business practices can tackle the underlying drivers of poor consumer outcomes, particularly when these take advantage of behavioural biases. For example, regulation of business practices has previously been used to address cognitive limitations that reduce engagement or over-purchasing due to default bias and inertia.

However, businesses employ a wide range of different tactics when designing and selling products, and understanding which of these are the primary driver of poor outcomes is difficult. Nonetheless, the success of these remedies depends on accurate diagnosis.

- **Simpler Choices rules.** Ofgem concluded that the large number of tariffs led to lower low engagement in the energy market. In response, it limited the number of tariffs that suppliers could offer. However, post implementation review of these remedies found that this had very little impact on consumer engagement. Consumers who already shopped around were likely to use PCWs and the number of tariffs had little to no impact

[186] FCA (2015). General Insurance Add-ons Market Study – proposed remedies. Banning opt-out selling across financial services and supporting informed decision making for add-on buyers**

[187] FCA (2015). General Insurance Add-ons Market Study – proposed remedies. Banning opt-out selling across financial services and supporting informed decision making for add-on buyers**

[188] FCA (2014). Guaranteed Asset Protection insurance: a competition remedy.

[189] House of Commons Treasury Committee (2012). Financial Conduct Authority. Twenty-Sixth Report of session 2010-2012.

[190] FCA (2018). Evaluation Paper 18/1: An evaluation of our guaranteed asset protection insurance intervention.

on their purchasing decision. Disengaged customers faced more significant barriers such inattention, lack of confidence,[191],and difficulties in the search and switching process itself.[192]

- **Deferred opt-in period for GAP insurance**. The FCA concluded that GAP sellers were benefitting from behavioural biases and this was leading to higher prices and overconsumption. However, the intervention had a much greater impact on sales than prices suggesting that there may be other reasons contributing to high prices.[193] The ex-post impact evaluation speculates that the market for add-on GAP insurance and standalone insurance serve different customers segments and the two do not compete for customers. Consequently, there remains limited competition for add-on sellers due to their point-of-sale advantage.
- **Ban on opt-out selling**. While the FCA has not undertaken an ex-post impact evaluation of its policy to ban opt-out selling of financial services, evidence submitted by insurance sellers showed sales were significantly higher under opt-out sales mechanisms. This kind of empirical evidence is extremely valuable as part of the remedy design process and can act as a proxy for trials when it is not feasible for regulators to carry out their own experimental trials.

Policymakers should consider whether business practices allow firms to deliver consumer benefits outside of price. Not doing so risks remedies bringing overall consumer detriment.

When deciding whether or not to ban certain business practices, policymakers should pay particular regard to whether they are a mechanism for delivering consumer benefits other than price. For example, banning business practices that enable product innovation may result in poorer outcomes for some consumers and regulators should include mitigations that maintain positive firm incentives.

Policymakers also should be forward-looking when considering the interaction of business practices with wider technological trends. Where harm arising from business practices can be addressed in the medium-term through technological innovations, policymakers should consider whether alternative temporary measures are better suited to improving overall consumer welfare.

We examine the impact of the four-tariff rule based on the analysis undertaken by the CMA as part of its energy market investigation.

- **Impact on innovation.** Throughout the remedy design phase firms consistently raised concerns around the potential impacts on tariff innovation.[194] Firms expressed reluctance to use up one of their slots on riskier tariffs and referred to existing tariffs that would need to be withdrawn as they failed to meet new requirements on tariff structures. Ofgem did make a provision for suppliers to apply for an exception in order to test new innovative tariffs. However, responses to the final consultation show that firms were unclear on the criteria for these exceptions[195] and several firms withdrew popular tariffs as a result of the RMR.[196]
- **Impact on vulnerable consumers**. Following the RMR, energy suppliers withdrew tariffs that offered benefits to consumers, including vulnerable consumers. For example, Scottish Power, SSE, Centrica, EDF Energy, and E.ON all reported that they had removed prompt payment discounts to comply with the RMR which was particularly popular with the elderly. Others also reported that the RMR meant they could no longer offer low standing charge tariffs suitable for vulnerable consumers and those with lower usage.

  Impact on sector-wide green objectives. The energy sector has a wider objective to promote green energy, and some firms raised concerns that the RMR changes would limit their ability to offer green tariffs. In the early stages of the remedy design, Ofgem consulted on the option to introduce an exception to the RMR rules for green tariffs. Ultimately the choice was made not to provide automatic exceptions. Instead a process was put in place

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[191] CMA (2016). Energy market investigation. Final Report. Appendix 8.2: Impact of the Retail Market Review.

[192] CMA (2016). Energy market investigation. Final Report.

[193] FCA (2018). Evaluation Paper 18/1: An evaluation of our guaranteed asset protection insurance intervention.

[194] Ofgem (2013). The retail market review – Final domestic proposals.

[195] First Utility response to the Retail Market Review – Final Domestic proposals. Accessed at: https://www.ofgem.gov.uk/sites/default/files/docs/2013/05/first-utility-final-domestic-proposals-response_0.pdf

[196] CMA (2016). Energy market investigation. Final Report. Appendix 8.2: Impact of the Retail Market Review.

that allowed suppliers to introduce 'trial tariffs' subject to Ofgem agreement. However, in the post implementation review, green tariffs were withdrawn by several energy suppliers.[197]

- **Wider competition impacts**. Policymakers should also consider whether there are knock-on impacts on other markets that interact with the market subject to intervention. In the case of the RMR, the regulations on discounts meant that PCWs were no longer able to negotiate exclusive discounts with energy suppliers. This softened competition between PCWs, which are widely used by consumers looking to switch suppliers, and may have reduced the ability of PCWs to generate savings for consumers.

The welfare impact of restrictions on price discrimination is mixed and firm responses depend on wider characteristics of the market.

In both examples of restrictions on price discrimination, ex-post review has shown mixed results for consumers. Banning price discrimination can ensure that prices reflect the cost of provision. However, this does not always mean that price differentials are reduced and when there is limited competition in the market, firms may have the ability simply to equalise prices at a higher level rather than adjusting prices to reflect costs.

The overall impact of limiting price discrimination will depend on the underlying characteristics of the market, including the scale of cost differences between different consumer groups and the degree of market power. As a general rule, limits on price discrimination should aim to ensure that consumers are not left paying different prices that cannot be justified by differences in cost or risk profile.[198] Consequently, while data on price differentials can be useful, this needs to be taken in the wider context of profitability.

- **Ban on geographic price discrimination.** Ofgem's ban on geographic price discrimination was designed to prevent energy suppliers from charging higher prices to inactive customers in their home regions (former monopoly areas) compared to new out-of-area customers.[199] While this has led to a decrease in price differentials, increasing firm profits suggest that firms have equalised by raising prices for out of region consumers and generated worse consumer outcomes.[200]
- **Gender neutral insurance pricing**. The ban on gender price discrimination in insurance pricing was introduced as part of wider gender equality objectives in the EU, with men typically paying more for insurance. Since the introduction of the regulation, the differential between motor insurance for men and women has actually increased. This is due to the fact that insurers are now pricing insurance based on individual risk profiles rather than proxying by gender alone.[201] While this has led to higher prices for men, these prices now better reflect the underlying cost and risk factors of delivering insurance to consumers and is therefore a fairer and more efficient outcome.

[197] CMA (2016). Energy market investigation. Final Report. Appendix 8.2: Impact of the Retail Market Review.

[198] This includes instances where firms price products based on the estimated likelihood of future switching.

[199] Ofgem (2008). Energy Supply Probe – Initial Findings Report.

[200] Waddams, Zhu (2013). Pricing in the UK retail energy market, 2005 – 2013.

[201] FT (2018). The gender premium gap: why women pay less for motor insurance

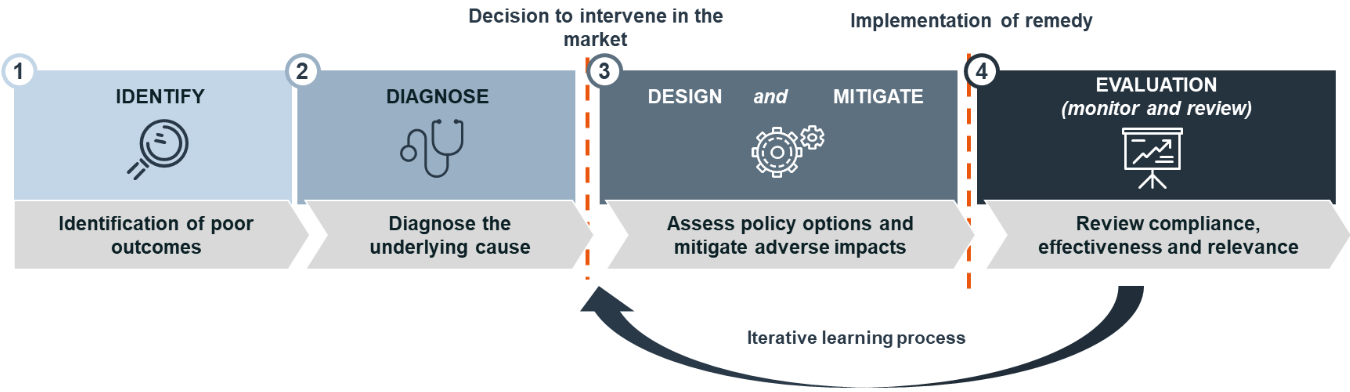
7 Lessons for policy makers

The process by which policymakers choose to intervene, develop, and evaluate remedies are important determinants of success. Seemingly similar policies can have different impacts depending on their design and implementation. Consequently, when assessing the success of remedies, it is important to identify where impacts are a result of the policymaking process rather than the underlying economic rationale.

There has been a significant amount of work on effective process for remedy design, including the FCA's 'Economics for Effective Regulation' framework and the UK Competition Network (UKCN) consumer remedies project, along with NAO and PAC reviews of consumer protection regulation. The following chapter discusses these findings alongside the evidence reviewed for this report and sets out recommendations on the policymaking process.

7.1.1 The policymaking pathway

Figure 6: The policymaking pathway



Source: PA Consulting

Effective policy design typically consists of four key stages:

1. **Identification of poor outcomes**. As a first step, policymakers must know that poor consumer outcomes exist in the market. Although this may appear obvious, this stage will define all subsequent stages of the policymaking process, determining the ultimate objectives of any market intervention.

   The scope of poor consumer outcomes has evolved over time, with changes in the ability of firms to exploit behavioural biases and technological innovations generating new potential mechanisms for consumer harm. Recognising that the definition of 'poor consumer outcomes' is not static is essential to ensuring that regulators can keep pace with the ever-evolving nature of consumer markets. Not doing so risks exposing consumers to significant amounts of harm before policymakers step in.

2. **Diagnose the underlying cause.** In order for remedies to be effective and induce long-term change, remedies must target the underlying cause of poor outcomes which requires a robust diagnostic exercise. Understanding these precise drivers is not an easy process and requires engagement with consumers and firms in addition to analysis of empirical evidence. The limitations of each approach should be taken into consideration when forming final conclusions. For example, while survey data can provide valuable insights into consumer experiences, they may themselves be subject to limitations (e.g. representativeness, survey design and consumers' inherent behavioural biases).

3. **Assess remedy options and mitigate adverse impacts.** The remedy design phase requires policymakers to account for the specific aspects and characteristics of the market that will determine both the effectiveness of any remedy, and the risk of unintended consequences. Choices around companies in scope, apportioning of cost burden, and interactions between individual remedies will all influence the effectiveness of a market intervention.

4. **Evaluation.** It is important that policymakers do not stop at the implementation phase, but instead look to continuously evaluate the impact of their interventions. The term 'evaluation' spans a wide spectrum of activities,

from monitoring firm compliance with remedies to robust ex-post analysis of causal impact, all of which are valuable to policymakers.

7.2 Specific considerations for supply-side remedies

Below we set out recommendations for policymakers when undertaking the policymaking process, with particular regard to the use of supply side remedies.

Key Lessons: The policymaking process for supply-side remedies

1. Policymakers should ensure that they have a clear and detailed understanding of poor consumer outcomes, and use this as the basis for diagnosis, remedy design, and evaluation. This includes ensuring agreement across all key stakeholders on the objectives of any intervention.
2. Regulators should recognise the limitations of different research methods and employ a range of different approaches to avoid mis-diagnosis of the market.
3. The diagnostic stage provides an opportunity for policymakers to consider whether a wider package of complementary remedies is required, including a mix of supply and demand-side remedies.
4. Policymakers should not immediately rule out the use of supply-side remedies but instead consider whether careful remedy design or use of temporary measures can help to mitigate potential risks.
5. Attitudes and legal powers around the use of supply-side remedies vary across sectors. Consumers would benefit from a more joined-up approach across different regulatory bodies.
6. Policymakers should keep in mind the practical constraints for implementation when choosing remedies including data availability and the ability to monitor compliance. Not doing so will increase the risk of regulatory failure and may worsen consumer outcomes.
7. Monitoring compliance may be necessary as supply side remedies require firms to directly change their behaviours. This should be supported by easy to use reporting mechanisms for non-compliance.
8. Regular evaluation of remedies will improve the design of supply-side remedies, and identify when remedies are no longer required.
9. There are a range of options for ex-post review of remedies, and even middle-ground measures such as regular reviews of the market can offer valuable learnings.

7.2.1 The identification phase

1. **Policymakers should ensure that they have a clear and detailed understanding of the specific issue(s) and consumers who are affected.**

Precise identification of the issue at hand is a critical first step of policy development and is particularly important for supply-side remedies which typically require post-implementation reviews. If the objectives of an intervention are not clearly defined, this will limit the ability to evaluate their effectiveness and can also act as a barrier for other regulators to adopt similar remedies even when they could bring significant benefits to consumers.

- **Winter Fuel Payments.** There remains disagreement on the precise objective of the Winter Fuel Payments scheme, with some arguing that the objective was to tackle fuel poverty, while others viewed it simply as a way to increase the income of pensioners.[202] While both are related to the concept of 'affordability', they imply very different measurements of success.

The PAC has raised the importance of setting clear outcomes and targets, stating that 'regulators are not clear enough about what they are trying to achieve for consumers'.[203]

[202] House of Commons Library (2019). Briefing Paper CBP-6019. Winter Fuel Payments update.

[203] House of Commons Committee of Public Accounts (2019). Consumer Protection.

7.2.2 The diagnostic phase

2. **Regulators should recognise the limitations of different research methods and employ a range of different approaches to avoid mis-diagnosis of the market.**

Supply-side remedies have a greater potential for market distortions or unintended impacts than demand-side remedies as they directly change the behaviour of firms and can act against market forces. For this reason, mis-diagnosis of poor consumer outcomes and inappropriate remedy design can have significant impacts on the market and lead to regulatory failure.

When regulators are undergoing the diagnostic process, it is important to consider input from a wide range of stakeholders, in addition to recognising the limitations of specific data sources. For example, while consumer surveys and workshops are an invaluable source of information for regulators, policymakers should be aware of biases that can emerge in survey responses and adjust for this both through the survey design process and use of supplementary analysis or revealed preference methods.

Not only is misdiagnosis and poor remedy design detrimental for the market in which the remedy has been introduced, it can also affect the appetite of regulators to introduce similar remedies in the future, even when they could be appropriate and suitable. This risk can be mitigated through robust ex-post impact evaluation that clearly identifies the reasons for failure or success. Combined with an improved approach to best practice sharing between different regulatory bodies, this can help to overcome any reluctance to use supply-side remedies based simply on prior experiences.

3. **The diagnostic stage provides an opportunity for policymakers to consider whether a wider package of complementary remedies is required, including a mix of supply and demand-side remedies.**

The underlying causes of poor consumer outcomes rarely appear in isolation. Instead, poor outcomes are typically the result of several underlying drivers interacting with one another to generate high prices, poor business practices, or lower quality and innovation. Rather than relying on a single remedy to act as a silver bullet, addressing these issues may require policymakers to introduce a broader package of 'different, but complementary interventions'.[204] Designing the right package of interventions should begin at the diagnostic stage, grouping underlying causes of consumer harm against potential solutions.

- **Overdraft pricing restrictions.** The FCA's investigation into the overdrafts market identified several drivers of harm, including complex price structures, high fees, repeat usage, and lack of engagement. On this basis, they set out a wider package of reforms designed to target each area consisting a mix of different supply-side and demand-side remedy types.

7.2.3 The remedy design phase

4. **Policymakers should not immediately rule out the use of supply-side remedies but instead consider whether careful remedy design or use of temporary measures can help to mitigate potential risks.**

There has been some reluctance to use supply-side remedies, particularly when they go against the principles of harnessing competition. For example, a common concern around the use of price caps is the impact on supply and market entry. As a result, policymakers have historically used supply-side remedies to tackle issues resulting from the lack of supply-side competition and existence of market power.

However, supply-side remedies can be valuable tools to address issues beyond traditional market failures, for example tariffs designed to exploit behavioural biases. The FCA recommends that 'at the early stage of remedy design it is generally worth considering a range of both remedies and mitigants' and this will be important in the context of the evolving nature of consumer harm. This is echoed in the UKCN's learnings on consumer remedies which recommends policymakers 'be bold in identifying possible remedy options' and 'do not rule out radical solutions too quickly'.[205]

Our review has highlighted several examples where supply-side remedies can deliver immediate change in the market. This includes price caps and social tariffs which can immediately reduce the prices that people pay, even if they do not always directly address the underlying causes of high prices. When designing remedies, policymakers

[204] FCA (2016). Economics for effective regulation. Occasional paper 13.

[205] UK Competition Network (2018). Helping people get a better deal: Learning lessons about consumer facing remedies.

should consider the benefits of introducing temporary supply-side remedies that can bring immediate benefits alongside longer term solutions that will change the underlying drivers of poor outcomes.

As is often the case, when it comes to remedy design the devil is in the detail. Choices around companies in scope, proportioning of any cost burden, and the degree of flexibility, all play a key role in determining the final response of businesses and consumers. For example, the WHD reconciliation mechanism is designed to apportion the cost of the scheme to ensure that no supplier is disadvantaged by having a higher proportion of eligible consumers. This has helped to mitigate any perverse incentives for energy suppliers to avoid supplying eligible customers. However, while policymakers can draw valuable lessons from previous examples, it is important to acknowledge that just because a remedy has been successful in one market, this does not automatically mean that it will be equally applicable elsewhere, and policymakers will need to evaluate potential remedies on a case by case basis.

5. **Attitudes and legal powers vary around the use of supply-side remedies. Consumers would benefit from a more joined-up approach across different regulatory bodies.**

Unlike demand-side remedies, which rely on the forces of competition to deliver improved consumer outcomes, supply-side remedies can sometimes move against market forces. This is particularly true for remedies such as price caps, social tariffs, or universal service obligations.

The friction between competition and consumers is reflected in both the remit and the culture of regulators and can impact both their ability and willingness to consider supply-side remedies.

- **Ofcom legal restrictions**. Ofcom has recently raised the fact that they have strict limitations on when they can impose price caps, which is currently limited to providers who have significant market power (SMP). This limitation is a result of their key objective to promote competition.[206] However, there are ways in which poor outcomes can persist in competitive markets and price caps and social tariffs have been successful in mitigating these issues.

These differences in legal powers (and cultures) are likely to have contributed to variations in the approach to addressing consumer harm across different regulators which has been raised as a concern by the PAC.

- **Approach to addressing price discrimination against inactive customers.** The CMA review of the energy market concluded that ability of large energy providers to charge higher prices to their inactive customer base was a market power issue which resulted in the introduction of targeted price caps. In comparison, Ofcom recently concluded that 'the affordability of broadband in general and the fairness of certain pricing practices (such as price differentials linked to contract status) as largely separate issues' and determined that the introduction of price caps was unnecessary. [207]

6. **Policymakers should keep in mind the practical constraints for implementation when choosing remedies including data availability and the ability to monitor compliance. Not doing so will increase the risk of regulatory failure and may worsen consumer outcomes.**

Due to their more prescriptive nature, supply-side remedies often have greater data requirements to support appropriate diagnosis, design, and implementation. For example, the specific circumstances that can affect consumer vulnerability may vary across different industries. Remedies such as social tariffs that aim to target these consumer groups may fail if there is insufficient data to accurately identify them, and policymakers are forced to rely on alternative proxies that are poor indicators of need.

7.2.4 The evaluation phase

7. **Monitoring compliance may be necessary as supply side remedies require firms to directly change their behaviours, as is putting in place easy to use reporting mechanisms for non-compliance.**

Monitoring compliance with market interventions is essential to ensure that consumers receive consistent outcomes across the market. There may be genuine reasons for non-compliance by companies, for example lack of clarity on the remedy, or alternatively firms may seek to circumvent market interventions. Regardless of the reasons, setting SMART[208] measures of compliance can help regulators to ensure firstly that remedies have been adopted and to

[206] Ofcom (2019). Helping consumers get better deals: A review of pricing practices in fixed broadband.

[207] Ofcom (2019). Helping consumers get better deals: A review of pricing practices in fixed broadband.

[208] SMART objectives refer to quantifiable indicators of success that are specific, measurable, attainable, relevant, and time-bound.

identify barriers to take-up for future learning. Ensuring that consumers are firstly aware of the behaviours they should expect from companies, and have simple and easy ways to report non-compliance can also help regulators to better identify non-compliance.

8. **Regular evaluation of remedies can improve the design of supply-side remedies, and identify when remedies are no longer required.**

Ex-post review of remedies is essential to enable continuous improvements in policymaking. They provide practical lessons about what works and why. Markets are dynamic and so are the behaviours and actions of firms, particularly in the face of rapid technological innovation. Continually updating the stock of regulatory best practice will enable policymakers to better design remedies that can achieve their stated policy goals while minimising the risk of distortions.

- **FCA ex-post impact evaluation framework**. The PAC's review of regulation concluded that the FCA has the most developed approach to programme evaluation across regulators. By building in evaluations as an integral part of the FCA mission and committing to a programme of ex-post analysis,[209] the FCA has already begun to reap the benefits of iterative learning. For example, their evaluation of the guaranteed asset protection insurance intervention found that the intervention had a greater impact on reducing sales than reducing prices, as well as the risk of surveys overstating the impact of the evaluation on switching in the ex-ante IA. These findings have already fed into the design and ex-ante IA of the rent-to-own market (FCA paper CP18/22).

In the case of temporary measures, ex-post reviews allow regulators to identify when remedies are no longer required, or alternatively need to be extended because other remedies have not been successful in transforming the market. For example, the CMA review of the energy market points to the rollout of smart meters as being a key enabler of better consumer outcomes. However, the smart meter rollout has already been delayed. Further delays may mean that temporary price caps on prepayment meters and default tariffs need to be extended again.

9. **There are a range of options for ex-post review of remedies, and even middle-ground measures such as regular reviews of the market can offer valuable learnings.**

While in an ideal world all remedies would undergo a robust ex-post impact evaluation that empirically estimates the causal relationships between the remedy and market outcomes, in practice this is unlikely to be achievable, particularly as the impact of supply-side remedies can be more difficult to isolate from wider market trends. Ex-post reviews take significant time and resource, and regulators are limited in the number of remedies they can review in this manner.

However, even middle-ground measures such as periodic reviews of consumer outcomes in markets where remedies have been applied can be valuable. While they may not empirically demonstrate the causal relationships between remedy and outcomes, they can provide an indication of effectiveness or potential distortions (or lack thereof).

This review has highlighted the relative scarcity of ex-post reviews of existing supply-side remedies, or even periodic reviews of markets to reassess consumer outcomes. We therefore agree with both the NAO and PAC's recommendations that regulators should work together to develop common principles and methodological approaches to measuring the effectiveness and impact of their remedies. We are hopeful that we will continue to see progress in this area given the current sentiment towards greater ex-post work, and the recognition that reviews can complement policymaking. As policymakers continue to introduce supply-side remedies, we expect that this should include a clear plan to monitor, review and evaluate their impact.

7.3 Case study: Energy market reforms

In order to illustrate the importance of each stage of the policymaking process, this section sets out a high level evaluation of the remedies introduced in the energy market to promote consumer engagement and constrain prices to efficient levels. This evaluation is not intended to be exhaustive but is instead aims to provide an illustration of the lessons that can be learnt from reviewing the policymaking process of previous remedies.

[209] FCA (2018). Ex post impact evaluation framework.

The energy market offers several learnings for policymakers due to the relatively frequent number of market reviews since the market was opened up to competition, and the evolution of remedies that have been implemented. This section focuses on the following remedies:

- The RMR four-tariff rule (2013);
- The pre-payment price cap (2017); and
- The default tariff price cap (2019).

We set out the key learnings below, with further detail in Annex C.

Accurate diagnosis of underlying drivers of consumer harm requires policymakers to consider a wider range of evidence and over-reliance on one source of information should be avoided where possible.

The four-tariff rule shows that accurately diagnosing the underlying drivers of poor consumer outcomes is not easy. The remedy was originally intended to reduce barriers to consumer engagement by making it easier for consumers to compare different tariffs. However, subsequent review by the CMA concluded that the remedy did not appear to have any impact on consumer engagement and that the number of tariffs was not a primary driver of complexity.

This misdiagnosis of the market is likely to have been driven, at least in part, by the evidence used to assess the underlying drivers of poor outcomes. Ofgem based its diagnosis primarily on the basis of theoretical literature and broad consumer engagement. Feedback from consumers stated that they found the number of tariffs 'confusing' but did not necessarily specify that this was the primary reason for not switching.

In the post implementation review, evidence submitted by academics found that none of the non-switchers in Ofgem's own tracking survey cited complexity of tariffs as a reason for not switching and other feedback suggested that the barrier related to the ability to compare tariffs rather than the number of tariffs. Evidence from Australia found the state with the highest switching rate also had the highest diversity in tariffs.[210] The CMA also concluded that the number of tariffs was unlikely to be the primary driver of low switching. Disengaged consumers faced several other barriers to switching, and those who were minded to shop around typically used PCW. These consumers are likely just to look at the first page and therefore the number of tariffs is irrelevant.

Supplementing the diagnosis process with evidence on the relationship between number of tariffs and switching from other geographies, more specific consumer engagement with non-switchers, and better consideration of existing market solutions such as PCWs may have allowed Ofgem to better understand the cause of disengagement.

Policymakers should undergo a similar level of analysis to understand firm response to remedies as consumer responses, including the role of non-regulatory solutions.

As part of the design process for the RMR, Ofgem undertook both quantitative and qualitative testing with consumers to understand the impact of proposals around simpler tariff structures. However, testing and analysis of remedies with firms to understand their response is equally as important, and the impact this has on the wider market including innovation incentives and competition. For example, several firms raised concerns that restricting the number of tariffs would reduce their ability to offer innovative tariffs that reflected consumer preferences. Review by the CMA found that this was indeed the case, with tariffs relating to online discounts and green energy removed as a result of the regulation as suppliers were unwilling to use up slots for riskier tariffs or those with lower take-up.

Further engagement with energy suppliers at the remedy design stage to understand exactly which tariffs they were planning to remove in the event of the four-tariff rule may have allowed Ofgem to design the tariff in a way that avoided these responses, for example through exceptions of tariffs that reflected wider sector objectives.

Similarly, consideration of the interaction of remedies with non-regulatory solutions such as PCWs may have helped Ofgem to design their remedies in ways that reinforce the benefits that PCWs can deliver rather than acting against them. The CMA review found that by restricting the number of tariffs firms can offer, it negated the ability of PCWs to negotiate exclusive discounts with energy suppliers, softening competition between PCWs leading to worse consumer outcomes. The final IA for the RMR remedies does not appear to consider interaction with PCWs.[211]

[210] CMA (2016). Energy market review. Final report. Appendix 8.2: Impact of the Retail Market Review.

[211] Ofgem (2013). The Retail Market Review – Final Impact Assessment for domestic proposals.

In comparison, the subsequent energy market review by the CMA explicitly considers the ability of smart meters to address existing issues in the market, and explicitly ties the duration of the pre-payment price cap to their rollout.

The energy market is a prime example of the importance of regular ex-post review which has worked well to minimise the impact of regulatory failure.

One of the key learnings from the four-tariff rule, and the RMR more generally is the importance of ex-post analysis, including reviews that are not designed to detect causal impacts but instead simply assess the status of the market post implementation. Ofgem's decision to review the market again in 2014 allowed them to clearly identify that the remedies introduced were not having their desired impact and paved the way for new remedies including the pre-payment and default tariff cap as well as the removal of the four-tariff rule.

Similarly, the mid-term review of the pre-payment tariff cap allowed the CMA to make revisions to the methodology for setting the cap which was underestimating the cost of serving pre-payment customers. Without this revision, the risk of wider distortions of the market including restriction of supply or reduction in quality as a result of the price cap would be higher and may reduce the overall benefits to consumers of the cap. This mid-term review also identified the need to extend the duration of the pre-payment cap (and the associated default tariff cap) from 2020 to 2023 to reflect the delay in the rollout of smart meters.

Going forward, it will be important for Ofgem to continue regularly monitoring the market to evaluate the impact of remedies and adjust them as necessary. This iterative process of review and design minimises the risk and scale of regulatory failure, improves outcomes for consumers, and provides learning for future policymaking.

8 Conclusion

This review brings together evidence on the use of supply-side remedies to address consumer harm, as well as examining the importance of the policymaking process in determining success.

Supply-side remedies have been successful in addressing consumer harm across several markets, lowering prices, improving competition, and helping consumers to avoid buying products and services that they do not need. They can bring immediate protection to consumers experiencing significant harm and may be introduced as temporary measures while longer term remedies take full effect. Where there are unfair business practices or failures due to market power, supply-side remedies can be necessary to fix a market that is delivering poor outcomes before regulators can implement demand-side remedies. Several examples have illustrated the ways in which supply-side remedies can tackle the underlying drivers of consumer harm by adjusting firm incentives as well as the ability to exploit behavioural biases.

However, like any form of market intervention, supply-side remedies may not always work as expected or hoped. While policymakers will attempt to anticipate the impact of a market intervention as part of the ex-ante IA, there is always a risk that firms and consumers will respond in unexpected ways, or that other changes in the market will interact with remedies in an unforeseen manner. There is some evidence to suggest that they can coincide with less desirable impacts on access, competition, and investment. However, in other instances, post-implementation review has found that competition has strengthened after the remedy with lower market concentration and increased market entry. The precise risk of negative impacts will depend on the factors characterising each specific market, and its interaction with complementary markets. Policymakers should therefore ensure that they have a thorough understanding of the wider market dynamics when designing any market interventions.

Finally, this review also highlights the relative scarcity of reliable ex-post impact evaluations of existing supply-side remedies, particularly regarding wider long term market impacts. This may have contributed to caution around their use by regulators. Evaluations are incredibly valuable to policymakers as they provide practical lessons about what works and why. We echo the Public Accounts Committee's recommendations earlier this year that it is essential for regulators to understand the impact of their actions to support an evidence-based approach to policy design.

The combination of more consistent measurement of the impact of interventions along with increased knowledge sharing across organisations can only help to ensure that policy interventions are being appropriately used to improve market outcomes. This review contributes to that exercise by bringing together available insights on supply-side interventions and hopes to be built on by regulators in the future as they intervene in markets and then, subsequently, evaluate their impact.

Annex A Literature on competition failure

A.1 Competition with behavioural biases

Under traditional economic models, consumers are assumed to be perfectly rational i.e. fully engaged and free of behavioural biases that may limit their decision-making abilities. However, the growth of behavioural industrial organisation is challenging these assumptions and has led to the development of theoretical models that examine firm behaviour in the presence of behavioural biases. These models seek to understand whether firms have an incentive to exploit behavioural biases, the market forces that result in these practices becoming widespread, and the ways in which they can generate consumer harm.

Firms have an incentive to generate choice complexity to increase profits.

Originally coined by satirist Scott Adams, economists have adopted the term 'confusopoly' to describe the situation where rather than competing on price or quality, companies choose to deliberately confuse buyers. This can be achieved through several methods. Firms can introduce multi-part tariffs that partition prices, making it more difficult for consumers to anticipate the full cost of a product at the point of purchase. Alternatively, they can use complex terminology or exclude important information, making it harder for consumers to assess quality.

Firms can benefit from generating choice complexity in a number of ways. Spiegler (2016)[212] provides a synthesis of models of choice complexity and deliberate obfuscation, examining the circumstances in which firms have an incentive to raise the equilibrium level of choice complexity. It finds that when choice complexity relates to the intrinsic complexity of a format (rather than arising as a result of co-ordination, for example inconsistent pricing units across firms), firms will choose to manufacture complexity in order to make higher profits.

Armstrong (2015)[213] also examines the incentive for firms to engage in raising choice complexity through tariff differentiation, making it more difficult for consumers to compare prices across firms. It predicts that 'firms engage in 'tariff differentiation' to obtain positive profits, just as firms in more traditional oligopoly models engage in product differentiation.' However, unlike product differentiation which can lead to new products that are valued by consumers, tariff differentiation does not increase the welfare of consumers.

These papers also examine the impact of firm incentives under varying degrees of competition. They find that an increase in competition can actually result in greater incentive to obfuscate, rather than delivering better outcomes. Consequently, 'interventions that may seem a priori to foster competition (e.g., increasing the number of competitors, harmonizing description of formats to improve comparability) end up exacerbating equilibrium choice complexity and possibly harming consumer welfare'.[214]

These findings offer several applications for consumer markets. For example, consumers may experience default bias, the tendency to avoid making an explicit choice when the choice is cognitively or emotionally demanding. If consumers are also required to opt-out of purchases, firms can raise their profits by generating choice complexity to encourage default bias and therefore the likelihood that consumers fail to opt-out of buying products they don't need. Spiegler concludes that 'as far as net consumer welfare is concerned, opting in may be superior to opting out', referencing the practice of autorenewal for insurance products.

Firms can structure price tariffs to raise aggregate prices and generate inefficient allocations.

Firms can take advantage of optimism bias through multi-part tariffs designed to promote overconsumption. This in turn can lead to consumers purchasing products that they don't need or paying higher prices.

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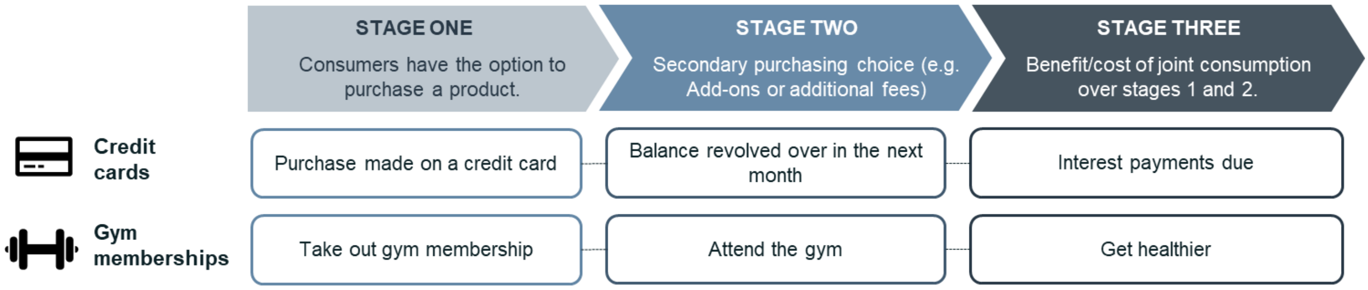
[212] Spiegler, Ran. (2016). Choice Complexity and Market Competition. Annual Review of Economics. 8. 1-25. 10.1146/annurev-economics-070615-115216.

[213] Armstrong, Mark (2015). Search and ripoff externalities. Review of Industrial Organisation, Volume 47, Issue 3

[214] Spiegler, Ran. (2016). Choice Complexity and Market Competition. Annual Review of Economics. 8. 1-25. 10.1146/annurev-economics-070615-115216.

Gans (2005)[215] examines this through the use of add-on products; products that are sold alongside a primary product. For example, overdraft facilities are often sold alongside current accounts.

Figure 7: Structure of add-on products



Source: PA Consulting

Gans finds that where consumers exhibit short-termism or optimism bias, and are unaware of this fact, they tend to under-estimate the costs they will incur in later stages (or overestimate the value of products in stage 1). As a result, they tend to overconsume the initial product for a given price, leading to welfare reductions even when the market is competitive. For example, in the case of gym contracts, the OFT found that consumers tend to overestimate their future attendance when signing up for gym contracts, as well as underestimating the likelihood that they may want to cancel their contracts in the future.[216] Both these factors meant consumers were willing to accept a higher price or longer contract than would have otherwise been the case if they could fully predict future consumption.

Grubb (2015)[217] formalises the different ways in which optimism bias may impact consumer decision making, and the impact this has on firm incentives. It states that 'firms naturally prefer consumers to overvalue contracts as much as possible, because that allows firms to both charge more for contracts and to sell more contracts. Hence, firms selling to overconfident consumers design contracts with an additional goal in mind: either to maximize the amount by which consumers overvalue contracts or to minimize the amount by which consumers undervalue contracts'. It goes on to set out two ways in which optimism bias can impact decision making:

- **Mis-forecasting usage:** Consumers can misjudge their future usage (either due to over-optimism about their own self-control, or due to over-precision of usage estimation) and therefore the risk of paying marginal fees. For example, mobile contracts often include a set amount of data usage above which additional usage charges are payable (or in the case of unlimited data tariffs, a 'fair usage policy'). Assuming that the impact of optimism bias outweighs risk aversion, consumers will underestimate the likelihood that they will exceed their data allowance resulting in unexpected out of plan charges. This is often referred to as 'bill shock'. Alternatively, even when mobile plans include 'unlimited' data, it is common for providers to reduce speeds once a certain threshold is met, resulting in lower quality services for consumers. Consumers can also overestimate future usage, as is often in the case of gym contracts, leading them to overvalue contracts.
- **Over-optimism about navigating contract terms:** In order to receive the full benefit of a contract, consumers may be required to proactively take action at certain times. For example, contracts can offer benefits that require consumers to opt-in such as cashback offers on credit cards, create both a 'memory hurdle' and 'self-control trap'. If consumers overestimate their likelihood of remembering to complete a task, or their self-discipline to do so, they will overvalue these deferred benefits when making their purchasing decisions. Products can also be structured in a way that involves an 'attention hurdle', the requirement for consumers to regularly pay attention in order to use the product as intended. For example, a consumer may inadvertently go into an unarranged overdraft if they do not regularly monitor their balance.

When firms are able to anticipate these behaviours, they will adjust their own pricing structures to capitalise on behavioural biases. If consumers underestimate future usage, firms can increase marginal prices, which may include

[215] Gans, Joshua. (2005). Protecting consumers by protecting competition: does behavioural economics support this contention? MBS Working Papers.

[216] CMA (2016). Evaluation of the OFT's enforcement action on health and fitness contracts.

[217] Grubb, Michael (2015). Overconfident Consumers in the Marketplace, Journal of Economic Perspectives, Volume 29, No.4

add-on charges. For example, credit card providers can adjust their pricing structures towards low or zero upfront fees and increase interest rates for revolved balances or late fees, anticipating that consumers will underestimate the likelihood of incurring those fees. This pricing structure characterised the payday loans market prior to FCA intervention where 28% of loans were rolled over or refinanced at least once, making up 50% of lender revenues.[218] If on the other hand consumers have a tendency to overestimate future usage, firms will increase upfront fixed costs. When consumers are over-confident in their ability to navigate contract terms, it is profitable for firms to add these hurdles and traps into their pricing structures.

The welfare implications of exploitative tariffs are three-fold:

- **Participation distortion.** If firms reduce upfront costs while increasing secondary costs such as marginal prices or additional fees, the total price paid by consumers will remain the same (or may even increase). However, due to optimism bias, consumers will perceive this as a price decrease and increase the amount they purchase, underestimating the total cost of doing so. This includes consumers who will now purchase products that, if they were aware of the actual price, would otherwise choose not to buy. This is referred to as 'participation distortion' and is largest when consumers are price sensitive.
- **Exploitation distortion.** Exploitation of optimism bias can result in 'exploitation distortion'. By increasing the price of complementary products above the cost of delivering them, some consumers may reduce the amount they purchase of these products below the efficient level. For example, a mobile provider may choose to reduce the monthly upfront cost of a contract while increasing the cost of out-of-plan data consumption. Consequently, some consumers may choose to reduce their total consumption of out-of-plan data. Both the participation distortion and exploitation distortion demonstrate how exploitative tariffs can result in loss of consumer surplus and inefficient allocations even in 'competitive' markets.[219]
- **Higher aggregate prices.** Exploitative tariffs not only distort prices, leading to allocative inefficiency, they can also generate market power and allow firms to raise aggregate prices. Where firms can make positive profits from the sale of complementary products, they will compete for consumers by offering lower upfront prices. If firms are able to freely reduce upfront prices, and there exists a competitive supply-side, firms will end up competing away these profits in an attempt to increase their market share. In this case, exploitation of optimism bias does not generate market power (although the inefficiency impacts described above persist).[220] However, in many cases firms face a lower bound on upfront prices (which may be zero) which prevents them from passing all profits back to consumers. In this case, exploitative tariffs can result in higher aggregate prices, generating consumer harm.[221]

In summary, 'overconfidence with contract overvaluation typically benefits firms, harms consumers, and in competitive markets, harms society'.[222] It can create inefficiencies and raise aggregate prices even in the absence of monopoly or oligopoly. These impacts extend beyond pure distributional issues which have characterised much of the discussion to date.

The presence of engaged and rational consumers may not be enough to protect all customers.

Until recently, there has been an expectation that if a sufficient proportion of consumers are rational and engaged, this would exert sufficient competitive pressure on firms to deliver good outcomes for all consumers. In this case, interventions designed to protect the vulnerable or disengaged are only required when there are insufficient numbers of rational and engaged consumers.[223]

However, both the theoretical literature and real world evidence suggest that this may not be the case. Instead, the presence of engaged and rational consumers can lead to worse outcomes for disengaged consumers or those with bounded rationality. This results in a redistribution of welfare from the latter to the former.

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[218] OFT (2013). Payday Lending. Compliance Review Final report.

[219] Grubb (2015) formalises the degree of welfare loss due to participation distortion and exploitation distortion through a theoretical framework.

[220] Grubb (2015). Behavioural consumers in Industrial Organization: An Overview.

[221] Heidhues, Paul & Kőszegi, Botond & Murooka, Takeshi. (2016). Exploitative Innovation. American Economic Journal: Microeconomics. 8. 1-23. 10.1257/mic.20140138.

[222] Grubb, Michael (2015). Overconfident Consumers in the Marketplace, Journal of Economic Perspectives, Volume 29, No.4

[223] Armstrong, Mark (2015). Search and ripoff externalities. Review of Industrial Organisation, Volume 47, Issue 3

Armstrong (2015)[224] examines this phenomenon across a number of different market structures in the context of add-on prices. It finds that when consumers have difficulty in understanding the full terms of purchase, for example reading the 'small print' in contracts, but are still rational in their behaviour, the presence of engaged consumers exerts competitive pressure across the whole market, constraining prices for both consumer groups. However, when consumers exhibit behavioural biases that mean they mis-forecast future usage or over-value products, the opposite may be true. In this case, firms choose to structure tariffs so that the 'core' product is subsidised by the price of add-on or complementary products.

This includes practices such as 'teaser rates' and roll-over contracts common in financial services (high introductory interest rates) or telecommunications (discounted rate for the first 12 months of broadband). In these scenarios, individual consumers are actually better off when the proportion of engaged and rational consumers is lower. Or put another way, engaged and rational consumers benefit from the ability of firms to 'rip-off the naïve' rather than helping to constrain prices for all.

This has been demonstrated in several consumer markets. In its energy market review, the CMA concluded that while there were a large number of potential suppliers, the six largest energy suppliers 'enjoy a position of unilateral market power over their inactive customer base and have the ability to exploit such a position through pricing their SVTs materially above a level that can be justified by cost differences from their non-standard tariffs'.[225] Further evidence from the recent loyalty penalty super-complaint has demonstrated the significant difference in price that inactive consumers pay compared to regular switchers across other essential consumer markets.

The ability of firms to exploit behavioural biases and exercise market power over specific consumer groups is another example of harm that can emerge even in the absence of traditional market failures and therefore merit consideration from policymakers.

Firms have an incentive to develop new ways to exploit consumers.

So far, the discussion has focused on the ways in which firms can exploit behavioural biases and generate consumer harm or wider inefficiencies. However, there is a growing body of research that seeks to understand the incentives for firms to do so rather than investing in quality improving innovations. Heidhues et al (2016)[226] examines the question of why firms seem willing to invest in developing new ways to exploit consumers, termed 'exploitative innovation', when many of these practices are easily copied by other firms e.g. unfair contract terms or exploitative pricing tariffs. It finds that when firms face a binding price floor on products, they can make positive profits by developing new ways to exploit consumer behavioural biases even when these 'exploitative innovations' are non-appropriable. In comparison, investing in non-appropriable innovations that increase product quality generate no additional profits. Consequently, faced with a choice between the two, firms will always choose to invest in exploitative innovation. Furthermore, under these conditions, no other company has the incentive to educate customers of the existence of hidden fees, even when this is costless. Instead, they prefer to adopt the same deceptive models.

This can explain why firms are willing to invest in developing unfair contract clauses or hidden fee structures that can be easily copied by other companies, for example in the credit market. A separate paper by the same authors apply a similar model to socially wasteful products, finding that where hidden prices exist, firms have an incentive to push inferior products, generating inefficiencies.[227]

Competition may not always improve consumer outcomes. In some cases greater competition can increase the incentive for firms to exploit consumers with behavioural biases.

Competition and consumer policy have traditionally focused on delivering improved consumer outcomes through promoting supply-side competition, increasing the number of suppliers and choices available to consumers. However,

[224] Ibid.

[225] CMA (2016). Energy market investigation. Final report.

[226] Heidhues, Paul & Kőszegi, Botond & Murooka, Takeshi. (2016). Exploitative Innovation. American Economic Journal: Microeconomics. 8. 1-23. 10.1257/mic.20140138.

[227] Heidhues, Paul & Kőszegi, Botond & Murooka, Takeshi. (2016). Inferior Products and Profitable Deception. The Review of Economic Studies. 84. rdw037. 10.1093/restud/rdw037.

the academic literature has shown that when firms exploit behavioural biases, increased competition can exacerbate rather than reduce consumer harm.

As the number of firms in the market increases, this decrease in profits mean that firms compete more vigorously through exploitation of behavioural biases. In the case of add-on or hidden prices, optimism bias or other behavioural biases mean that some consumers do not take these prices into consideration when making their purchasing decision. Under greater competition, firms will choose to compete on more visible upfront prices, subsidising this with higher add-on prices. Consequently, 'greater competition is not unambiguously beneficial for consumers'[228] and 'we cannot rely on competition to protect naïve consumers'.[229]

This divergence between consumer protection and competition policy is not new. A review by the OFT in 2011 concludes that 'increasing competition may not always benefit consumers and, under certain conditions, may even harm consumers'.[230] More recently, the CMA has reiterated the limitations of competition as a tool to address consumer harm, stating that 'interventions based on competition alone are not always sufficient to protect the interests of consumers, or to do so in a timely manner'.[231] Going forward, ensuring that this forms part of the culture of policymaking and market intervention will be critical to improving outcomes for consumers.

A.2 New methods of price discrimination

Technological innovation has changed the way firms and consumers engage with the market. New digital tools such as PCWs and greater availability of information online have helped to overcome information asymmetries, particularly for experience or credence goods,[232] as well as reducing search and switching costs. Other technological innovations such as smart meters are anticipated to bring greater visibility to consumers of their energy consumption and its relationship to the prices they pay.

However, technological innovation has also created new challenges for consumers. The recent explosion of data and advances in data analytics mean that businesses now have access to significantly more information on their customers. This can be used to estimate the prices that different customers are willing to pay, as well as predict their future purchasing behaviours such as their propensity to switch after the expiry of introductory offer. This in turn can allow companies to set different prices for consumers based on price sensitivity, typically referred to as 'price discrimination' or 'personalised pricing'. Under price discrimination, two consumers purchasing the same product and incurring the same costs to a firm may be charged different prices.

There are four broad welfare impacts that can arise from price discrimination:

- **Appropriation effect.** Firms are able to charge higher prices to consumers with lower price sensitivity.
- **Output expansion effect.** Firms are able to reduce prices below the uniform price for consumers with higher price sensitivity. This means that consumers that would not have purchased at the uniform price now choose to do so, increasing total sales for companies. Student discounts are an example of the output expansion effect.
- **Intensified competition effect.** Price discrimination can result in increased competition between firms for certain consumer groups as they can cut prices for these consumers without affecting the prices charged to other consumers.
- **Commitment effect.** In some cases firms may price discriminate based on past purchasing behaviour, and consumers can take advantage of this to access lower prices. For example, a company may offer new consumers lower prices, assuming that their choice not to purchase in the past shows that they have a lower willingness to pay than existing customers, to whom they offer a higher price. If consumers are aware of this fact, they can

[228] Spiegler, Ran. (2016). Choice Complexity and Market Competition. Annual Review of Economics. 8. 1-25. 10.1146/annurev-economics-070615-115216.

[229] Gans, Joshua. (2005). Protecting consumers by protecting competition: does behavioural economics support this contention? MBS Working Papers.

[230] OFT (2011). Consumer behavioural biases in competition. A survey.

[231] CMA (2019). Letter from Andrew Tyrie to the Secretary of State BEIS. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781151/Letter_from_Andrew_Tyrie_to_the_Secretary_of_State_BEIS.pdf.

[232] Experience goods refer to products and services whose quality is hard to judge before consumption. Credence goods are products and services whose quality remains hard to judge even after consumption. Online mechanisms such as user reviews can help consumers to make a more informed purchasing decision for these products.

choose not to purchase in earlier periods to 'disguise' themselves as consumers with higher price sensitivity and access lower prices in later stages.

Table 7: The impacts of price discrimination on consumer and producer surplus

Effect	Consumer surplus	Producer surplus
Appropriation effect	Negative	Positive
Output expansion effect	Positive	Positive
Intensified competition effect	TBC*	TBC*
Commitment effect	Positive	Negative

* The OFT paper suggests that intensified competition brings positive impacts on consumer surplus, and negative impacts for producer surplus. However, as we discuss earlier, the impact of intensified competition when consumers have behavioural biases is less clear.

Source: OFT, the economics of online personalised pricing

The overall impact of price discrimination on consumer welfare will differ depending on the relative strength of these four effects and will vary across individual consumer groups. However, recent market reviews have begun to examine the interaction between price discrimination and factors outside of income that influence price sensitivity. For example, consumers who find it difficult to use PCWs may be less likely to switch suppliers and therefore are less price sensitive despite the fact that they may also fall within lower income groups.

The FCA's recent insurance review examined models of insurance pricing and found that the majority of firms use a process of 'margin optimisation' to set the target margin on individual consumers, resulting in different prices for consumers of equivalent risk and cost to serve.[233] Using data collected either directly from consumers or available externally, firms estimate consumer willingness to pay, likelihood of renewal, and likelihood to purchase add-ons to calculate the optimal price. Some companies also use a 'lifetime value modelling' (LVM) approach which estimates the value of a consumer both today and in the future to inform their pricing decisions.

This approach to pricing demonstrates that even engaged consumers can be individually worse off as a result of price discrimination. For example, 'a firm's pricing model often determines the number of renewals required before the price reaches target margins (as well as the level of any initial discount for new customers)'.[234] If firms are able to predict consumers who are more likely to switch rather than renew, they may choose to offer lower introductory discounts to account for this fact.

Looking forward, it will be important for policymakers to recognise both the additional scope for price discrimination in markets and the impacts this will have on consumer welfare, particularly in the context of behavioural biases. As we have discussed, lower price sensitivity can be due to a number of factors including difficulty in engaging with the markets, optimism bias or myopia. Where firms can exploit these biases through price discrimination, this can have wider welfare and distributional impacts.

A.3 Use of unfair competition methods

Firms are not restricted to competing through lower prices or improved product quality. Under more intense competition with lower profit margins, firms have an incentive to engage in a wider range of methods that are considered to be socially undesirable in order to decrease their costs or increase market share. [235]

Preventing the use of unfair competition methods underpins many of the UK's existing consumer protection policies which cover intellectual property rights infringement, trade defamation, and false advertising including 'bait-and-switch' approaches. However, there is still ambiguity around the exact conduct that falls under the definition of 'unfair

[233] FCA (2019). General insurance pricing practices. Interim Report.

[234] Ibid.

[235] Stucke, Maurice. (2012). Is Competition Always Good? Journal of Antitrust Enforcement. 1. 10.1093/jaenfo/jns008.

competition'[236] and therefore there remains opportunity for companies to develop new mechanisms that have not yet been ruled illegal by the courts or through legislation. Furthermore, where regulators find it difficult to monitor and enforce these regulations, or consumers lack easy methods for reporting and redress, these practices may still be widespread.

Armstrong (2008)[237] identifies the presence of deceptive marketing as one situation in which competition alone may not be sufficient to ensure good consumer outcomes. If firms are able to make false claims around its products, advertise one price while offering another, or make false claims about a rival's products, this can erode the ability of consumers to differentiate between products. For example, misleading adverts or 'bait and switch' techniques can reduce consumer trust in the reliability of advertising to support comparison across products. Similarly, where firms are able to make credible false claims about its high-quality competitors, or even attempt to pass themselves off as the same firm through its brand name or marketing, consumers may no longer be able to rely on reputational measures to compare quality across firms. Both these examples help fraudulent traders enter the market, particularly where there are low barriers to entry, while penalising honest traders. Others have examined how competition can encourage companies to reduce investment in legal compliance, agree to kickbacks to secure work, underreport profits to avoid taxes, and manipulate ordering protocols, all of which lead to worse consumer outcomes.[238]

Another example of socially undesirable behaviour occurs when firms do not take into account negative externalities arising from their individual behaviour, and the impact this can have on the market as a whole. One commonly discussed example is the impact of competition on the risk-appetite of firms, particularly in the financial sector. Under intense competition, firms are incentivised to take greater risks in the hopes of gaining a competitive advantage, ignoring the fact that in conjunction with the risky behaviour of all other firms, this can result in breakdown of the market and significant impact on the wider economy.[239] The negative impact of this is exacerbated when firms face a moral hazard issue, and the cost of risky behaviour is not borne fully by the firm.

These examples illustrate how competitive forces can lead companies to engage in behaviour that result in worse outcomes for consumers.

A.4 Distributional issues

Even when competition works as intended, and firms do not have market power, the benefits of competition are not distributed equally across consumers. As Howell and Wilson (2009)[240] identifies, 'markets are not interested in social justice or equity, even though these matters might be important for consumers. And clearly, the benefits of competitive markets are not evenly spread amongst consumers – competition creates both winners and losers.'

These distributional impacts can emerge in a several ways. Recent focus on the 'loyalty penalty', including the super complaint to the CMA, has found that consumers face different prices for the same services depending on whether or not they regularly switch providers. This raises the question of whether the prices that engaged customers paid are effectively cross-subsidised by the disengaged. Armstrong (2015)[241] examines the circumstances where this can occur, and the learnings for regulators.

In the case of 'bill shock', the situation where customers make extra payments that a more rational consumer could defend against, firms were able to anticipate this and adjust their price structures accordingly. Prices for the 'core' product were subsidised through the additional revenues generated through extra charges. While this may not lead to market power in aggregate, it does result in price mark-up and discounts at the individual customer group level.

When the pool of consumers with bounded rationality coincides with vulnerable groups in society, this has wider equity and distributional implications and may be grounds for regulatory intervention even where this may lead to higher prices for rational consumers.

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236 Ong, Burton (2011). Competition law and the common law of unfair competition.

237 Armstrong, Mark. (2008). Interactions between Competition and Consumer Policy. Discussion Papers in Economics (08-01). Department of Economics, University College London, London, UK. 4.

238 Stucke, Maurice. (2012). Is Competition Always Good? Journal of Antitrust Enforcement. 1. 10.1093/jaenfo/jns008.

239 ibid.

240 Howell, Nicola & Wilson, Therese. (2009). The Limits of Competition: Reasserting a Role for Consumer Protection and Fair Trading Regulation in Competitive Markets. The Yearbook of Consumer Law 2009

241 Armstrong, Mark. (2015). Search and Ripoff Externalities. Review of Industrial Organization. 47. 10.1007/s11151-015-9480-1.

Annex B A summary of selected behavioural biases

The table below sets out a summary of behavioural biases and a brief description of each. It relies on the FCA Occasional Papers 1 and 13 which respectively consider applying behavioural economics and the Economics for Effective Regulation.

Table 8: Summary of common behavioural biases

Behavioural bias	Explanation
Present bias	Some consumers prefer immediate gratification, weighting the present over the future.
Loss aversion and reference dependence	Consumers assess an outcome as gains and losses compared to a reference point, rather than in isolation. The literature shows that consumers weigh losses twice as much as gains of the same amount. This means consumers overweigh losses and place less emphasis on gains.
Regret	People make choices to avoid uncertainty and stress. These choices can be influenced by strong temporary emotions (e.g. fear).
Overconfidence	Some consumers are over-confident about their ability, the accuracy of their judgements and the expected likelihood of an event taking place.
Over-extrapolation	People make predictions based on a small sample of information which may not be representative.
Projection bias	People underestimate the likelihood of change, so they expect that current preferences will prevail into the future.
Framing, salience and limited attention	Even when expected outcomes are identical in two situations, consumers may make different choices depending on how the decision is framed. Attention is also drawn to particularly salient aspects of a situation, which can then have a marked influence on choice.
Persuasion and social norms	Consumers may be persuaded by salesperson because they trust them and their perception of the salesperson’s knowledge. Emphasis on positive and negative personality traits can have a disproportionately significant impact on decision-making.
Rules of thumb	Consumers simplify complex decisions by adopting rules of thumb (heuristics). These tend to be unconscious. For example, when faced with multiple choices on a price comparison website, a consumer may only look at the top three (and, usually, only the top one).

Source: Financial Conduct Authority

Annex C Evaluation of select remedies in the energy market

The energy market has recently undergone several reviews, including by the CMA and Ofgem, and this has led to a number of changes in supply-side remedies implemented in the market. This includes remedies that have been removed following post-implementation market review and can therefore offer valuable lessons for policymakers. This section reviews the following remedies:

- The RMR four-tariff rule (2013);
- The pre-payment price cap (2017); and
- The default tariff price cap (2019).

The four tariff rule

The RMR was launched in 2010 by Ofgem to investigate whether the energy market was working effectively for consumers. This review followed Ofgem's earlier investigation into the energy market in 2008 (the Energy Supply Probe), and was prompted by the increase in retail margins observed by in 2010 along with examples of poor supplier behaviour.[242]

As a result of this review, Ofgem introduced a number of supply-side remedies with the objective of simplifying the market and making it easier for consumers to shop around for the best deals. One of these remedies was the 'four tariff rule', which placed a maximum limit of four on the number of core tariffs that suppliers could offer at any one time. This remedy was subsequently removed from the market on recommendation by the CMA as part of its subsequent energy market investigation.

Table 9: Review of the policymaking process for the four tariff rule

Stage	Overview	Conclusions
Identify	The RMR was prompted by the increase in retail energy prices and associated margins. In their analysis,[243] Ofgem used economic modelling to understand the scale of price increases that would be required to compensate for rising wholesale energy costs. This was then compared against actual price rises to understand whether retailers were making excessive margins. Ofgem also looked for other examples of poor consumer outcomes and evaluation of consumer mistrust of the markets.[244] Finally, Ofgem referenced research on behavioural economics to understand how behavioural biases could be exploited by firms to create poor consumer outcomes.	Ofgem found evidence of consumer harm in the form of: • High prices that do not reflect the change in underlying costs, with prices rising in response to wholesale costs faster than they had fallen with decreases; • General consumer mistrust in the energy markets which had weakened switching. • Several examples of widespread poor business practices.

[242] Ofgem (2011). The Retail Market Review – Findings and initial proposals.

[243] Ofgem (2010). Electricity and Gas Supply Market Report.

[244] Ofgem (2011). The Retail Market Review – Findings and initial proposals.

<table>
<tr><th>Stage</th><th>Overview</th><th>Conclusions</th></tr>
<tr><td>Diagnose</td><td>In order to understand the drivers of consumer harm, Ofgem looked for a number of potential drivers including market failures, competition failures (primarily due to behavioural biases), and structural factors inherent to the energy markets. Those most relevant to the four tariff rule are set out below.[245]

Complex tariffs

Ofgem’s research on behavioural biases suggested that complexity of individual tariffs can limit engagement and firms may play to these biases. To better understand what consumers consider to be complex, Ofgem undertook a number of research activities:
• Engagement with consumer panels.
• Consumer engagement surveys.
• Evaluation of the number of tariffs available on the market.

Inactive customers

Ofgem were concerned that inactive customers could confer an advantage to incumbent suppliers that was not available to new entrants if high margins were being made on these customers. Evidence was primarily collected through customer engagement surveys.</td><td>Ofgem concluded that the number of tariffs was contributing to complexity and inhibiting engagement on the basis of three key pieces of evidence:
• Research by the OFT suggested that firms may choose to increase the number of tariffs as one way to increase complexity.
• The number of tariffs observed in the market had been increasing over time.
• Feedback from customer engagement supported the view that consumers found the number of tariffs ‘confusing’. Of particular relevance was the result of the 2008 customer engagement survey which reported that 70% of respondents found the number of tariffs on offer confusing.

On this basis, Ofgem began to consider ways to reduce complexity arising from the number of tariffs.</td></tr>
<tr><td>Design and mitigate</td><td>Ofgem tested potential options for tariff reform through a number of methods:

Qualitative consumer testing

Consumer preference testing through face to face interviews with ‘groups of one, two or three respondents’.[246]

Quantitative consumer testing

Quantitative testing of proposals. However, this focused on the impact of including a price comparison guide and a simplified tariff structure rather than the four tariff rule.

Impact assessment
• The IA mentions that PCWs can help consumers to choose between tariffs although there does not seem to be further analysis on the impact on PCWs.
• The IA recognises that restricting the number of tariffs would reduce the range of offers in the market but concluded that ‘we would expect a wider range of tariffs to be available in the non-standard segment of the market’.</td><td>Following an extensive design and consultation process, Ofgem set out a suite of remedies designed to simplify tariffs and support consumers to engage in the market. This included:
• Limiting the number of tariffs;
• Standardising tariff structures;
• Creating rules designed to simplify bundles, discounts, and reward points; and
• Proposals to facilitate collective switching.</td></tr>
</table>

[245] Ofgem (2011). The Retail Market Review – Findings and initial proposals.

[246] Ofgem (2011). The Retail Market Review: Draft Impact Assessments for Domestic proposals.

Stage	Overview	Conclusions
	• Ofgem recognised that suppliers may offer fewer green tariffs and considered making an exception for these tariffs. However they chose not to, noting that suppliers can choose to allocate one or more of their four tariffs to green tariffs and stating that they expect 'green standard tariffs would be available even if we were not to make an explicit exception'.[247] It is unclear whether or not Ofgem undertook further analysis to support this conclusion. **Consultation responses** • Ofgem consulted a number of times on their proposals to restrict the number of tariffs, providing opportunities for stakeholders to respond. It noted that suppliers offered few additional comments in the final consultation and there was broad support for the policy. • Some suppliers requested that the tariff cap be increased to six core tariffs on the grounds that this would allow greater flexibility for innovative tariffs and online discounts.[248] • Suppliers were specifically concerned about the impact of the four tariff rule on their ability to offer green tariffs and the wider sector objectives of sustainable energy.	
Evaluate	At the point of implementation, Ofgem committed to continue monitoring the performance of the market along with undertaking an ex-post review of remedies no later than 2017. Ofgem carried out a review of the market in 2014 and found that there continued to be deterioration in some consumer outcomes since the RMR. It chose to refer the market to the CMA who launched its own market review. This included a review of the remedies introduced in 2013 on competition and customer engagement.	The CMA concluded that 'the evidence we have on the impact of the RMR rules is not particularly encouraging' with few signs of increased consumer engagement.[249] It found that: • The remedy did not help to increase engagement. Consumers who were previously disengaged faced greater barriers than the number of tariffs. Those who wished to shop around were likely to use PCWs and therefore the total number of tariffs was unlikely to impact their choice. • The introduction of the four tariff rule resulted in many suppliers withdrawing innovative tariffs, leaving some consumers worse off. Ofgem's expectation that suppliers would choose to use one or more of their four slots for innovative tariffs did not come to pass. Instead suppliers reported that they were unwilling to use up their slots on tariffs that were riskier or could have low take-up.

[247] Ofgem (2011). The Retail Market Review: Draft Impact Assessments for Domestic proposals. Accessed at the following address: https://www.ofgem.gov.uk/ofgem-publications/39649/rmr-domestic-ia-december-2011.pdf

[248] Ofgem (2013). The Retail Market Review – Final domestic proposals.

[249] CMA (2016). Energy Market Investigation. Final report.

Stage	Overview	Conclusions
		• The four tariff rule also prevented PCWs from negotiating exclusive tariffs with suppliers, softening competition between PCWs. On this basis, the four tariff rule was removed in 2016 and a number of additional remedies were introduced that were designed to protect inactive customers including temporary price caps.

Source: PA Consulting

The pre-payment tariff cap

Following the implementation of the RMR remedies, Ofgem undertook a post implementation market review of the retail energy market in 2013. Its review found that despite the remedies implemented, consumer outcomes had continued to deteriorate and therefore it referred the market to the CMA who undertook its own review.

The outcomes of this review set out a number of recommendations including a temporary pre-payment tariff cap.

Table 10: Review of the policymaking process for the pre-payment tariff cap

Stage	Overview	Conclusions
Identify	The scope of the CMA investigation focused on identifying distortions of competition. This was motivated by its statutory duty to promote competition. Identification of the poor outcomes was guided by Ofgem's own review. The CMA focused on investigating the affordability of energy and the fact that price increases have 'far outstripped inflation over the past ten years'.[250] A number of methods were used to estimate consumer detriment from excessive prices. The investigation also considered quality of service and innovation in the market, evaluating several metrics across large energy providers compared to smaller competitors. Finally, the review examined the impact of the RMR remedies on consumer outcomes.	The CMA concluded that there was material consumer detriment arising from: • Excessive prices; • Poor quality of service; • Restrictions on innovation.
Diagnose	The CMA investigated four broad areas of concern: **Weak consumer response and lack of engagement** The CMA triangulated across a number of data sources and analysis to identify the reasons for weak consumer response and lack of engagement. This included: • Analysis of the potential gains to switching across key dimensions of choice to understand differences across different tariffs and payment methods, and their evolution over time.	**Weak Consumer response and lack of engagement** • Prepayment meter customers face both high barriers to engagement and switching, and the savings available to them from switching are lower reflecting the more restricted range of tariffs available. • Vulnerable consumers are disproportionately affected by disengagement, including those on lower incomes. **Price discrimination and tacit collusion**

[250] CMA (2016). Energy Market Investigation. Final report.

Stage	Overview	Conclusions
	• Consumer surveys to understand the characteristics of disengaged consumers and the extent to which the gains of switching are related to individual characteristics or payment type (pre-payment meter customers). • Evaluation of barriers to engagement including the impact of PCWs and the likelihood of certain consumers groups to use PCWs. **Price discrimination and tacit collusion** • Evaluation of disparities in tariffs charged by the largest six energy suppliers and the relationship with cost, including seeking evidence from energy firms on the relative cost of standard and non-standard tariffs. • Review of evidence on the use of price announcements as a mechanism to signal pricing intentions to other companies. **Supply-side barriers to entry and expansion in the prepayment segments** • Review of constraints affecting supply to non-smart prepayment meters. • Analysis of firm incentives with regard to the prepayment segment compared to other customer groups, including evaluation of tariffs and searches on PCW to look at the most recent pricing data. **The regulatory framework** • Engagement with energy suppliers to understand which (if any) tariffs they had withdrawn from the market as a result of the four tariff rule. • Consumer surveys to understand whether the proportion of customers switching had changed. • Engagement with academics to understand the potential impact of the RMR on competition and success in achieving its objectives of increased consumer engagement.	• The difference in prices charged by the largest energy firms cannot be fully explained by differences in cost. The six largest energy suppliers hold a position of unilateral market power over their inactive customer base and have the ability to exploit this by pricing SVTs above efficient costs. • No evidence of tacit co-ordination between energy firms. **Supply side barriers to entry and expansion in the prepayment segments** • Lower incentive for suppliers to acquire prepayment customers due to actual and perceived higher costs of engagement and acquisition, as well as lower prospect of completing the switch of indebted customers who represent 10% of prepayment customers. • The cheapest tariffs offered to prepayment customers are significantly higher (even after accounting for cost differentials) than cheapest tariffs in the direct debit segments. • Gains from switching for dual fuel prepayment customers have been static in comparison to sharp increases in gains from switching to credit meters. **Regulatory barriers** • Certain aspects of the RMR 'simpler choices' remedies have reduced the ability of suppliers to compete and innovate on tariffs to meet consumer demand. • The simpler choices rules have also reduced competition in the energy market by softening competition between PCWs who can no longer negotiate exclusive discounts with suppliers.
Design and mitigate	To support its assessment of appropriate remedies, the CMA assessed the scale of detriment arising from the issues they identified. This process ensured that remedies would remain proportionate. Remedy design focused on three strategic components: • Creating a framework for effective competition; • Helping customers to engage with the market; and • Protecting customers who are less able to benefit from competition. The CMA also considered wider technological trends including the roll-out of smart meters.	• The rollout of smart meters is expected to address a several of the current issues in retail energy markets, including technical constraints for prepayment meters, and improved consumer engagement. Based on the current scale of detriment for prepayment customers, the CMA recommended a temporary price cap for these tariffs while its other remedies take full effect. • The design of the cap has been chosen to minimise the cost of administration. It uses readily available exogenous indices to calculate the price cap and compliance is assessed by suppliers. It has also been designed to minimise potential distortions by building in headroom to allow competition

Stage	Overview	Conclusions
	Furthermore, as part of the remedy design process the CMA assessed both the administrative costs for Ofgem and suppliers in implementing a price cap, and potential distortions to competition that could arise from the cap.	below the level of the cap, exclusion of interoperable SMETS 2 smart meters from coverage of the cap, and time limiting the price cap. • The review of the RMR showed that some existing remedies were not delivering their expected benefits. The CMA recommended the removal of several of the RMR remedies including the four tariff rule. • To promote customer engagement, the CMA recommended a series of alternative remedies. This included: ○ A programme to provide customers with information prompts; ○ Creation of an Ofgem controlled database of disengaged customers on default tariffs to allow competitors to prompt these customers to switch; ○ Enhancing ability of PCWs to promote engagement; ○ Greater use of principles rather than prescriptive rules by Ofgem; and ○ Requiring all firms to make their single-rate tariffs available to domestic customers on any type of restricted meter without making this conditional to meter replacement.
Evaluate	The CMA committed to a mid-2019 review of the prepayment tariff cap. This resulted in an extension in the temporary cap to reflect the delay in smart meter rollout as well as adjustments to the methodology to align with the more recent cap on default tariffs. These methodological changes are designed to ensure the cap better reflects the costs incurred by suppliers to serve prepayment customers and ensure the cap does not underestimate efficient costs. Ofgem continues to review market conditions, with its most recently State of the Energy market published in 2019. Separately, Ofgem has postponed its plans to act on the CMA's database of disengaged customers following a review of the remedy.[251]	

The default tariff cap

The default tariff cap came into effect on the 1 January 2019 and limits the price of default/standard variable tariffs. This was intended to protect inactive customers, a large proportion of which are vulnerable consumers.

Table 11: Review of the policymaking process for the default tariff cap

Stage	Overview	Conclusions
Identify and diagnose	The default tariff cap was prompted by the CMA's energy market review which found that many consumers were overpaying for energy including those who were disengaged, and the largest energy companies held market power over their disengaged consumers.	

[251] Ofgem (2019). Disengaged customer database update open letter. Accessed at the following address: https://www.ofgem.gov.uk/publications-and-updates/energy-customer-database-update-open-letter

Stage	Overview	Conclusions
Design and mitigate	While a cap on SVTs was not one of the CMA's recommendations, it became a 'key political issue' and appeared in both Labour and Conservative manifestos in 2017. [252] This led to the introduction of the Tariff Cap Act 2018 which placed a requirement on Ofgem to cap default energy tariffs.	This led to introduction of a cap on default tariffs limiting the price that suppliers can charge per kWh of energy. The level of the cap is set to reflect the underlying cost of delivering energy and is reviewed every 6 months to reflect any changes in these costs. In this way, the cap is designed to be low enough to reflect the efficient costs of delivering energy and protect vulnerable consumers, but high enough to offer headroom and encourage competition below the cap, as well as maintain switching incentives. As is the case with the pre-payment cap, the default tariff cap is temporary while other remedies take full effect on the underlying energy market.
Evaluation	The default tariff cap is time limited and is intended to last until 2023 (extended from 2020 in line with the pre-payment tariff cap). Ofgem will review and update the cap every 6 months to reflect the underlying costs of delivering energy. Ofgem will continue to assess the state of the market and based on these reports; it will be Government's responsibility to determine whether the market is sufficiently well functioning for the cap to be removed on the basis of this analysis.	

Source: PA Consulting

[252] House of Commons Library (2019). Briefing paper. Energy bills and tariff caps.

Annex D Summary of evidence

This annex sets out the full list of remedies that were reviewed for this report. This includes a number of remedies that were not included in the main report following the literature shortlisting process. Further details on the evidence review protocol can be found in Annex E.

D.1 Price caps

Table 12: Price cap remedies reviewed

Sector	Policy	Description
Energy	Energy default tariff price cap, UK[253 254]	Temporary price cap on default energy tariffs. Updated twice a year to reflect supplier costs.
	Energy prepayment price cap, UK[255]	Temporary price cap for energy prepayments customers. Updated twice a year to reflect supplier costs.
Telecommunications	Voluntary broadband pricing commitments, UK[256]	Various voluntary pricing commitments across broadband providers including capping the difference between in and out of contract prices and capping the price of broadband for customers who can't access superfast broadband.
	Standalone landline price cap, UK[257]	Voluntary price reduction of £7/month for BT for landline only customers representing a total reduction of 37%.
	Roaming price restrictions, EEA[258]	European Commission introduced 'Roam Like at Home', a programme that sets international roaming charges equal to domestic prices across all EEA countries.
Utilities	Removal of price caps, UK[259]	Removal of price controls in the energy, telecommunications and special delivery sectors upon regulators deciding that they had fulfilled their purpose.
Postal services	Price caps on postage, UK[260]	Safeguard price caps on second class stamps for standard letters and a basket cap on second class large letters and small/medium parcels weighing up to 2kg.
Financial services	Price caps on High Cost Short Term Credit, UK[261]	Price caps and affordability checks to protect consumers from excessive charges when taking out payday loans.
	Price cap on Rent-to-Own items, UK[262]	Price cap of 100% on the fees that consumers can be charged for rent-to-own items.
	Pension management fee cap, UK[263]	Cap on management fees set to 0.75% per year.

[253] Ofgem (2019). Default tariff cap. https://www.ofgem.gov.uk/publications-and-updates/default-tariff-cap-decision-overview

[254] UK Parliament (2018). Domestic Gas and Electricity (Tariff Cap) Act 2018. http://www.legislation.gov.uk/ukpga/2018/21/contents/enacted"http://www.legislation.gov.uk/ukpga/2018/21/contents/enacted

[255] BEIS (2018), Vulnerable safeguard tariff. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/787428/RPC-4258_1_-BEIS-OFGEM-Vulnerable_Safeguard_Tariff_final.pdf

[256] Ofcom (2019). Helping consumers get better deals: A review of pricing practices in fixed broadband. https://www.ofcom.org.uk/__data/assets/pdf_file/0018/168003/broadband-price-differentials.pdf

[257] Ofcom media release (2018). Bills cut for BT landline-only customers from Sunday. https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/bt-landline-price-cut

[258] European Commission. Roaming charges: What has the European Commission done so far? https://ec.europa.eu/digital-single-market/en/roaming-charges-what-has-european-commission-done-so-far

[259] NAO (2008). Protecting consumers? Removing retail price controls. https://www.nao.org.uk/wp-content/uploads/2008/03/0708342.pdf

[260] Ofcom (2019). Review of the Second Class Safeguard Caps 2019. Price caps for Second Class standard letters, large letters and parcels up to 2kg. https://www.ofcom.org.uk/__data/assets/pdf_file/0019/133660/Statement-Review-of-the-Second-Class-safeguard-caps-2019.pdf

[261] CFA (2017). Impact of regulation on High Cost Short Term Credit: How the functioning of the HCSTC market has evolved. http://cfa-uk.co.uk/wp-content/uploads/2017/03/030317-HCSTC-and-market-functioning-Oxera.pdf

[262] FCA (2019). FCA confirms introduction of rent-to-own price cap', https://www.fca.org.uk/news/press-releases/fca-confirms-introduction-rent-own-price-cap

[263] FCA (2015). PS15/5: Final rules for charges in workplace personal pension schemes and feedback on CP14/2. https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-05

Sector	Policy	Description
	Cap on early exit fees for pensions, UK[264]	Cap on early exit charges to 1% of total value.
	Overdraft charges restrictions, UK[265]	Restrictions on higher interest rates for unarranged overdrafts than arranged overdrafts.
	EU interchange fee caps, EEA[266]	Interchange fee capped at 0.2% of the value of a transaction for debit cards and 0.3% for credit cards.
Transport	Rail fare regulation on UK commuter lines, UK[267]	Fare basket for commuter fares around London, Cardiff and Edinburgh.
Alcohol	Alcohol (Minimum Pricing) (Scotland) Act 2012, Scotland[268]	All alcohol sold through licenced premises in Scotland cannot be sold below a set minimum unit price, based upon the level of alcohol contained in the product.
Gambling	Fixed Odds Betting Terminals Maximum stake cap, UK[269]	Limits the maximum stake on category B2 fixed odds betting terminals to £2 (from £100).

Source: PA Consulting

D.2 Social tariffs and financial support

Table 13: Social tariffs and financial support remedies reviewed

Sector	Policy	Description
Energy	Warm House Discount, UK[270]	Rebates offered to vulnerable energy consumers by energy companies with the aim of reducing fuel poverty and improving wellbeing for assisted households.
	Community Energy Savings Programme, UK,[271]	Obligation on large UK energy companies to deliver energy saving measures to low income households. Around 150,000 households were covered by the programme.
	Winter Fuel Payment, UK[272]	Government funded tax-free annual payments to individuals over 60 paid into the customer's bank account.
	Warm Front, UK[273]	Support for vulnerable households in fuel poverty to benefit from energy efficiency improvements such as home heating and loft insulation measures. The program covered a total of 2.3m households for a total expenditure of 1.8bn.
	Energy Company Obligation (also known as Affordable Warmth), UK[274]	Successor to the Warm Front programme, the ECO sets out a legal obligation for energy companies to improve the energy efficiency of low income households.

[264] FCA (2016). Capping early exit pension charges: Feedback on CP16/15. https://www.fca.org.uk/publication/policy/ps16-24.pdf

[265] FCA (2018). PS19/16: High-Cost Credit Review: Overdraft policy statement. https://www.fca.org.uk/publication/consultation/cp18-42.pdf

[266] European Commission (2015). Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0751&from=EN

[267] Strategic Rail Authority (2003). Fares Review Conclusions 2003. https://orr.gov.uk/__data/assets/pdf_file/0005/4289/sra-fares-conclusions-2003.pdf

[268] BMJ (2019). Immediate impact of minimum unit pricing on alcohol purchases in Scotland: controlled interrupted time series analysis for 2015-18', https://www.bmj.com/content/366/bmj.l5274

[269] UK Parliament (2019). Fixed Odds Betting Terminals. http://researchbriefings.files.parliament.uk/documents/SN06946/SN06946.pdf

[270] BEIS (2018). Warm Home Discount evaluation, 2010 to 2015. https://www.gov.uk/government/publications/warm-home-discount-evaluation-2010-to-2015

[271] DECC (2011), 'Evaluation of the Community Energy Saving Programme', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48210/3342-evaluation-of-the-community-energy-saving-programm.pdf

[272] House of Commons Library (2019). Winter Fuel Payments update. https://researchbriefings.files.parliament.uk/documents/SN06019/SN06019.pdf

[273] JRF (2011), 'Tackling fuel poverty during the transition to a low-carbon economy', https://www.jrf.org.uk/report/tackling-fuel-poverty-during-transition-low-carbon-economy

[274] House of Commons Library (2017). ECO, the energy company obligation. http://researchbriefings.files.parliament.uk/documents/SN06814/SN06814.pdf

Sector	Policy	Description
	Low Income Usage Reduction Program, US[275]	Helps low income residential customers in Pennsylvania to lower their bills through weatherproofing and energy consumption education
	The Low -Income Home Energy Assistance Program, US[276]	Provides funds to help low income households in danger of losing their energy supply to pay for heating costs.
	Customer Assistance Programs, US[277]	Set of schemes aimed at supporting low income consumers to maintain electricity services through offering reduced payments, arrears forgiveness, and energy efficiency and energy education services.
	Warm Up New Zealand, New Zealand[278]	Provides funding for residential insulation retrofitting for low income households or those with special medical needs.
	Energy social tariff, Bulgaria[279]	Social tariff for electricity for vulnerable customers.
Water	WaterSure, UK[280]	Social tariff for metered customers who have higher essential demand for water (medical need or number of dependents).
	Water company commitments to dealing with problem debt, UK[281]	Water companies have a number of schemes for supporting consumers in debt including 'payment matching' and 'payment holiday' schemes.
Telecommunications	Social tariffs for telephony, UK[282]	Universal service providers (BT and KCOM) must offer a social tariff for telephony. Both have voluntarily extended this to basic broadband services. Eligibility based on means-tested benefits.
	Voluntary broadband pricing commitments, UK[283]	Various voluntary pricing commitments across broadband providers including annual price reviews with vulnerable customers and automatic price reductions for those who don't respond.
Media	Over 75s TV licence, UK[284]	Free TV licences to elderly individuals. This will become means-tested in 2020 (following the transfer of funding from Government to the BBC)
Transport	English National Travel Concessionary Scheme, UK[285]	The English National Travel Concessionary Scheme provides free off-peak bus travel for residents of England of pensionable age and for disabled people.
	Free bus/tram travel for young people in London, UK[286]	Free bus and tram travel for young people in London, including under-18s in education, work or training.

[275] PSU (2009), 'Long Term Study of Pennsylvania's Low Income Usage Reduction Program: Results of Analyses and Discussion', https://aese.psu.edu/research/centers/csis/publications/long-term-study-of-pas-low-income-usage-reduction-program

[276] Congressional Research Service (2018), 'LIHEAP: Program and funding', https://fas.org/sgp/crs/misc/RL31865.pdf

[277] APPRISE (2014), 'FirstEnergy Universal Service Programs Final Evaluation Report', https://www.puc.state.pa.us/general/pdf/USP_Evaluation-FirstEnergy.pdf

[278] MBIE (2017), 'Programme Review - Warm up New Zealand - MBIE', https://www.mbie.govt.nz/dmsdocument/3044-eeca-programme-review-warm-up-new-zealand-pdf

[279] EU EnergyPoverty. (2016). Mechanism for Protection of Vulnerable Consumers in Bulgaria. https://www.energypoverty.eu/news/mechanism-protection-vulnerable-consumers-bulgaria

[280] Ofwat. WaterSure. https://www.ofwat.gov.uk/households/customer-assistance/watersure/

[281] Ofwat (2019). PR19 Final determinations. UK Government priorities and our 2019 price review final determinations. https://www.ofwat.gov.uk/wp-content/uploads/2019/12/UK-Government-priorities-and-our-2019-price-review-final-determinations.pdf

[282] Ofcom (2017). Pricing trends for communications services in the UK. https://www.ofcom.org.uk/__data/assets/pdf_file/0028/98605/Pricing-report-2017.pdf

[283] Ofcom (2019). Helping consumers get better deals: A review of pricing practices in fixed broadband. https://www.ofcom.org.uk/__data/assets/pdf_file/0018/168003/broadband-price-differentials.pdf

[284] Parliament UK (2019). Free TV licences for the over-75s. https://researchbriefings.files.parliament.uk/documents/SN04955/SN04955.pdf

[285] Department for Transport (2016). Evaluation of Concessionary Bus Travel. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669076/evaluation-of-concessionary-bus-travel.pdf

[286] J. Green, R. Steinbach, A. Jones, P. Edwards, C. Kelly, J. Nellthorp, A. Goodman, H. Roberts, M. Petticrew, P. Wilkinson (2014). On the buses: a mixed-method evaluation

Sector	Policy	Description
	Statutory railcards, UK[287]	Series of railcards that offer discounts for specific consumer groups (young people and students, seniors, and disabled people).
	Freedom Pass to over 65s or disabled consumers, UK[288]	Card issued to London residents aged over 65 or with specified disabilities that allows free travel on the majority of public transport in London.

Source: PA Consulting

D.3 Identification and protection of vulnerable customers

Table 14: Identification and protection of vulnerable customers remedies reviewed

Sector	Policy	Description
Energy	Priority Services Register, UK[289]	Suppliers are required, as part of their license conditions, to maintain a register of customers in need.
	Proactive identification and assistance of financially vulnerable customers, UK,[290]	Ofgem requires energy companies to identify customers that may be struggling to pay their bills. They should then engage these customers, offer a range of payment options, agree a repayment plan if appropriate, and direct them to available support services.
Water	Priority Services Register, UK[291]	Suppliers are required to maintain a register of customers who would benefit from special assistance.
	Proactive assistance for vulnerable consumers, UK[292]	Schemes for proactive identification and support of vulnerable consumers varies across water companies. For example, Severn Trent has previously provided specialist advisors to support customers fill out application forms.
General utilities	Cross-sector data sharing pilots, UK[293]	Pilot data sharing schemes primarily between energy and water, as well as third parties such as local authorities and healthcare providers to support identification of vulnerable consumers.
Telecommunications	Voluntary broadband commitments, UK[294]	Series of voluntary commitments that vary across broadband supplier and include proactively identifying vulnerable consumers to discuss pricing and switching.
Financial services	Consumer Credit Sourcebook, UK[295]	Obligations for credit-regulated activities including requirements to identify and protect vulnerable consumers and support payment plans for those in arrears.
	Persistent debt and earlier intervention, UK[296]	Requirements for firms to intervene when customers are falling into persistent debt.

[287] House of Commons Library (2017). Rail fares and ticketing. https://www.legco.gov.hk/general/english/library/stay_informed_overseas_policy_updates/rail_fares_and_ticketing.pdf

[288] London Council (2015). Review of 2015 Freedom Pass Renewal. https://www.londoncouncils.gov.uk/download/file/fid/15952

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[290] Ofgem (2019), .Vulnerable consumers in the energy market: 2019. https://www.ofgem.gov.uk/publications-and-updates/vulnerable-consumers-energy-market-2019

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[292] Ofwat (2016). Vulnerability focus report. https://www.ofwat.gov.uk/wp-content/uploads/2016/02/prs_web20160218vulnerabilityfocus.pdf

[293] UKRN (2018). Making better use of data to identify customers in vulnerable situations. https://www.ukrn.org.uk/wp-content/uploads/2018/11/UKRN-Making-better-use-of-data-to-identify-customers-in-vulnerable-situations-follow-up-report.pdf

[294] Ofcom (2019). Press release. Fairer prices for broadband customers. https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/fairer-prices-for-broadband-customers

[295] FCA CONC. CONC 7 and CONC 8. https://www.handbook.fca.org.uk/handbook/CONC.pdf

[296] FCA (2018). S18/4: Credit card market study: persistent debt and earlier intervention - feedback to CP17/43 and final rules. https://www.fca.org.uk/publications/policy-statements/ps18-04-credit-card-market-study

Sector	Policy	Description
	Unclaimed Life Insurance Benefits Model Act and Lost Life Policy Locator, US[297]	Requires companies to proactively identify deceased individuals and give unclaimed benefits to their families. Some states have also created public services allowing people to track lost life insurance policies.

Source: PA Consulting

D.4 Protection against unfair contracts

Table 15: Protection against unfair contracts remedies reviewed

Sector	Policy	Description
Energy	Energy Act 2013, UK[298]	Energy Act 2013 gives Ofgem new powers to impose consumer redress orders for the breach of licence obligations.
Telecommunications	Voluntary codes of practice on Broadband Speed, UK[299]	Voluntary code of practice for broadband suppliers including customer right to exit without penalty if speeds are slower than they should be.
	Automatic compensation Scheme, UK[300]	Broadband and landline customers will automatically receive compensation from their provider in the event of delayed repairs, service disruption, missed appointments, or delays to the start of new services.
	Ofcom investigations into unfair contract cases, UK[301]	Ofcom investigation of individual complains on unfair contract terms.
Financial services	Review of consumer redress measures in the financial sector, UK[302]	An in-depth review of the actions that regulatory bodies can take in order to detect and prevent mis-selling in retail financial services.
	FCA investigations, UK[303]	FCA investigations into unfair behaviour in relation to financial products.
	PPI Reimbursement after mis-selling of policy, UK[304]	PPI compensation scheme for those who had been mis-sold PPI, including those who had been sold PPI but not informed of high commission charges.
Gyms and fitness clubs	Extension of contractual rights for gym members given change of personal circumstance, UK[305]	Extended rights for gym members to cancel their contracts if their personal circumstances change, such as suffering an injury or becoming unemployed.
General consumer markets	Consumer Rights Act, UK[306]	Consolidation of existing consumer rights, along with introducing new rights on digital content and consumer redress when services are not provided with reasonable care or skill.

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[304] The Guardian (2019). UK banks could face new multibillion-pound claims after PPI ruling. https://www.theguardian.com/money/2018/jul/02/uk-banks-could-face-new-multibillion-pound-claims-after-ppi-ruling

[305] CMA (2016). Unfair contract terms: evaluation of OFT consumer enforcement case. https://www.gov.uk/government/publications/unfair-contract-terms-evaluation-of-oft-consumer-enforcement-case

[306] Consumer Rights Act 2015. http://www.legislation.gov.uk/ukpga/2015/15/pdfs/ukpga_20150015_en.pdf

Sector	Policy	Description
	Alternative Disputes Resolution Regulations, UK[307]	Regulations that provide for bodies to provide alternative dispute resolution (ADR) as well as requirements for businesses to provide information on the relevant ADR to its customers and indicate whether or not they intend to use it. It does not require traders to participate in ADRs.
	Consumer protection (Amendment) regulations, UK[308]	Regulation increasing the rights of consumers who have been misled or bullied into entering a contract.
	Consumer contract (Information, Cancellation, and additional Charges) Regulations, UK[309]	Regulation designed to increase transparency for people buying goods and services.
	Unfair Terms in Consumer Contracts Regulations, UK[310]	Consumer rights regulation including restrictions on standard contract terms. Now superseded by the Consumer Rights Act 2015.

Source: PA Consulting

D.5 Banning and regulation of practices

Table 16: Banning and regulation of practices remedies reviewed

Sector	Policy	Description
Energy	Simpler choices rules, UK,[311]	A series of reforms designed to make it simpler for consumers to understand and compare energy tariffs offered by suppliers. Included ban on tiered tariffs, a new tariff structure, limits on the number of tariffs that firms could offer, and limits on the methods of cash discounts a firm could offer.
	Restrictions on geographic price discrimination, UK[312]	Prohibition of 'undue discrimination in supply' including offering different terms to customers in different geographical areas where this did not reflect differences in costs.
Financial services	Deferred opt-in period for Guaranteed asset protection insurance, UK[313]	A deferred opt-in period for customers when add-on Guaranteed asset protection (GAP) insurance is sold as part of buying a vehicle. This means that GAP insurance cannot be introduced and sold on the same day.
	Ban on opt-out selling, UK[314]	Ban on opt-out selling of add-ons for financial services along with greater information requirements.
	Gender neutral insurance pricing, EU[315]	Insurers are required to charge the same prices for men and women without distinction on the grounds of sex.

[307] The Alternative Dispute Resolution for Consumer Disputes Regulations 2015. http://www.legislation.gov.uk/uksi/2015/542/pdfs/uksi_20150542_en.pdf

[308] The Consumer Protection (Amendment) Regulations 2014. http://www.legislation.gov.uk/uksi/2014/870/pdfs/uksi_20140870_en.pdf

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[314] FCA (2015). General Insurance Add-Ons Market Study – Remedies: banning opt-out selling across financial services and supporting informed decision-making for add-on buyers. https://www.fca.org.uk/publication/policy/policy-statement-15-22-general-insurance-add-ons.pdf

[315] Factsheet: EU rules on gender-neutral pricing in Insurance. https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_12_1012/MEMO_12_1012_EN.pdf

Sector	Policy	Description
	Ban of fixed fee on unarranged overdraft charges, UK[316]	Ban on use of fixed fees on unarranged overdrafts.
Gambling	Age and identification verification, UK[317]	Requirements for gambling operators to verify age before a consumer can deposit funds into an account or gamble either with their own money or a free bet/bonus.

Source: PA Consulting

[316] FCA (2019). FCA confirms biggest shake-up to the overdraft market for a generation. https://www.fca.org.uk/news/press-releases/fca-confirms-biggest-shake-up-overdraft-market

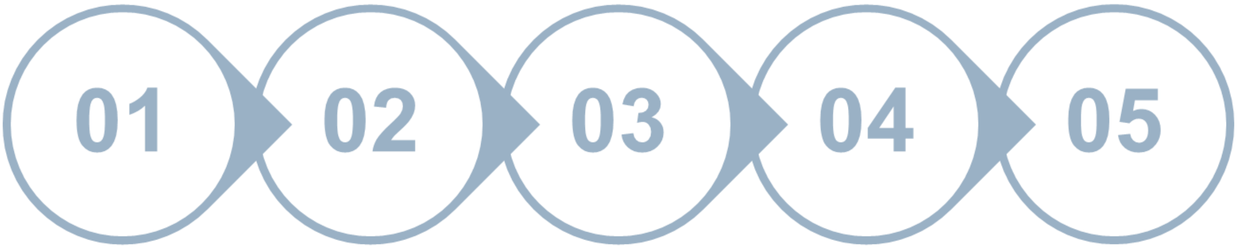
[317] Gambling Commission (2019). Licence conditions and codes of practice February 2019. https://www.gamblingcommission.gov.uk/PDF/Summary-of-key-changes-to-LCCP-verification-2019.pdf

Annex E Methodology

E.1 Methodology for this review

A systematic approach was taken to identify, research and synthesise evidence on supply-side remedies. This is set out in the figure below.

Figure 8: Literature review approach



Scope literature review

Define scope of the literature review based on the objectives of this report.

Identify supply side remedies

Undertake an initial review to identify and define supply-side remedies.

Engage experts

Structured interviews with industry experts to review evidence and test findings.

Finalise remedies

Finalise list of remedies for review based on key search terms and interviewing experts.

Synthesis of evidence

Synthesis of evidence collated to draw out key conclusions.

Source: PA Consulting

Scope of literature review

The scope of this review is broad. It draws on examples of remedies from a variety of sectors with a view to gather a comprehensive view of learnings across supply-side remedies. This review does not attempt to be exhaustive in its approach and instead hopes to remain relevant to UK policy making. As such, the majority of evidence reviewed relates to remedies in the UK although relevant examples from other countries have been considered where there are cross-cutting lessons that can be learned.

To support the desktop review process, this stage focused on developing the evidence review protocol which is set out in section E.2 below.

Identification of supply-side remedies

A desktop review of supply-side remedies was carried out to identify different types of interventions available to policymakers. This included reviewing the theoretical literature to understand the underlying drivers of poor consumer outcomes. This exercise enabled the identification of groupings or 'types' of supply-side remedies, which provided logical framework to both the research and the structure of this report.

Engagement with experts

This review includes structured interviews with industry experts, regulators, and Government. These discussions focussed on understanding existing supply-side remedies and their likely effectiveness; the on-going iteration of policy making and regulation in response to the perceived effectiveness of both demand and supply policies; and the key challenges in designing and implementing effective supply-side remedies.

Engagement with experts and academics

Following the desktop review, engagement with experts, and discussions with Citizens Advice, the final list of remedies used to inform this review was finalised. While a longlist of remedies was collated as part of the literature review, which can be found in Annex E, a shortlisting exercise based on the evidence review protocol was used to narrow this down to the most relevant examples.

Synthesis of evidence

Finally, evidence from the literature review and structured interviews was analysed to draw out key findings on supply-side remedies, including the underlying drivers of consumer harm they are used to address, their effectiveness in doing so, and the importance of the policymaking process.

E.2 Evidence review protocol

This section defines the protocol used to conduct the review and synthesis of evidence.

Table 17: Evidence review protocol

Area	Protocol
Objectives	• What are the underlying drivers of poor consumer outcomes that supply-side remedies have been used to address? • What is the evidence on the effectiveness of supply-side policies to address poor consumer outcomes? • What are the key market distortions that could result from implementation of poorly designed supply-side remedies, and what lessons or critical success factors are required to mitigate this risk? • How has the policy making process impacted the success of supply-side remedies?
Inclusion criteria	**Types of remedies considered** Market interventions that directly change the behaviour of companies. An initial review led to the following remedy types: • Price caps; • Targeted support for vulnerable consumers: (1) social tariffs and financial support, and (2) identification and support of vulnerable consumers; • Limits on firm behaviour: (1) Protection against unfair contracts, (2) Banning and regulation of unfair practices, and (3) Duty of care; **Population of interest** All consumers. **Outcomes of interest** • The underlying drivers of consumer harm addressed by supply side remedies; • Ability of remedies to achieve their intended objective; • Impact on consumers: financial, health, mental health and non-monetary impacts; • Distribution of impacts on different groups of consumers; and • Impacts on the wider market including investment and innovation incentives, potential for gaming, and impact on competition and market concentration. **Types of studies** • Ex-post evidence: empirical evaluation, post implementation reviews, case study analysis • Ex-ante analysis, such as impact assessments • Anecdotal evidence through interviews with experts, regulators and policy makers **Geography** Focus on UK, but to include international examples where appropriate **Language** English

Area	Protocol
Search methods	**Sources of information** • Internet search engines; • Journal databases; • Regulatory frameworks and strategic objectives of regulators and policy makers that may point to remedies of interest; • Organisations advocating on behalf of consumers and consumer advocacy groups that may have published consultation responses citing policies and consumer issues; and • Experts may recommend certain policies to review through the interviews. **Key search terms** Use the following search terms alongside a specific supply-side remedy type (as listed above) in a search engine. • 'Review' • 'Evaluation' • 'Evidence' • 'Ex-post' • 'Impact assessment'
Data extracted from publications	• Policy description • Issues that the policy aims to address • Type of remedy (categorised as per the inclusion criteria) • Evidence of overall ability of remedy to resolve issues and achieve its objectives • Impacts, as described in the inclusion criteria.
Synthesis of evidence	The evidence will be synthesised to form a narrative based on the following objectives of the review: • The issues experienced by consumers such that intervention is warranted; • Whether there are any commonalities between remedies and resulting lessons learned; • Potential for market distortions arising from the introduction of remedies, including size of impact and likely distribution; and • The critical success factors or considerations that could be important in the success of a remedy. Greater weight will be placed where there are several examples of policies with good quality ex-post evidence.

Source: PA Consulting

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