Locked in

Consumer issues with subscription traps

citizens advice

citizens advice scotland

Contents

Executive summary

Online shopping in the UK is on the rise and with this comes a different set of consumer problems. One such problem is subscription traps. These are situations where a consumer is tricked into agreeing to a subscription through the advertising of a "free trial" or reduced price offer. If the consumer doesn't cancel the trial within a set amount of time they automatically get transferred onto a costly subscription payment plan. Unscrupulous companies who use subscription traps can also abuse the payment method used, continuous payment authorities (CPAs), to take as much money as they want from consumers' accounts whenever they like without prior notice.

In this research we set out to understand the problems consumers face with subscription traps, including how they could get out of them. Specifically we wanted to find out if banks and card issuers were doing enough to help their customers and whether they were adhering to EU legislation and Financial Conduct Authority (FCA) guidance. To do so we undertook a Great Britain (GB) representative omnibus survey of 2,023 adults, an online survey with 496 responses[1] and 31 face to face interviews with affected consumers throughout Great Britain.

Key Findings

- Over 16.8 million adult consumers in GB have signed up to a subscription service using a CPA between June 2014 and June 2015.
- Over 2 million adult consumers in GB have had a request to cancel a CPA for a subscription declined by either the company or their bank/card provider.
- Consumers' awareness of what a CPA is and how they can cancel one is low. Only 21 per cent of GB adults know the difference between a CPA and a direct debit.
- Subscription traps are used for a wide variety of goods and services but most of the problems are encountered with health and beauty related products.
- Women aged 50 to 64 are most at risk from subscription traps offering health and beauty related products, specifically slimming pills/products or face/skin creams.
- Consumer financial detriment is on average between £50 and £100 but non-financial detriment such as time, energy and how consumers were left feeling can be significant.

[1] This survey was targeted at consumers who had encountered problems with subscription traps and was advertised on Citizens Advice's and Citizens Advice Scotland's websites and advice pages, in-house social media, and the Money Saving Expert weekly email.

- Subscription traps are usually advertised online via social media and pop-up advertising and many of the adverts are misleading.
- Terms and conditions are frequently not clearly and prominently displayed and key information is often hidden. This means that many subscription trap agreements may be in breach of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection from Unfair Trading Practices Regulations 2008.
- Eighty four per cent of consumers who answered our online survey did not realise they had agreed to a subscription.
- In many cases, the full cost of the recurring payments is not provided to the consumer at the point of authorisation. This means they may be eligible for a full refund from their bank or credit card company under the Payment Services Regulations 2009.
- In our online survey of 496 consumers, 36 per cent of people who approached their bank to cancel their CPA had the request refused, their bank took the wrong action, or they had further payments taken despite having their request acknowledged.

To help alleviate the detriment caused by subscription traps we have made seven recommendations:

1. Companies or websites that receive complaints from their customers in relation to associated subscription trap pop-ups should consider placing notifications or banners on their websites warning of malicious adverts and distancing their brand from the subscription traps.

2. EU and UK law should require any terms and conditions to have the most important information clearly summarised on the first page. This should include any obligation on the consumer to pay something to the trader, describe the length of any subscription that is being agreed to and explain clearly how to cancel such arrangements.

3. Companies offering trial periods for subscription products or services should remind consumers that they will enter into a binding contract at the end of the trial period. This should be done several days before the end of the trial and should make the cost of the subscription clear.

4. Banks and card issuers should provide training for their front line staff on cancelling CPAs and then mystery shop them and ensure correct procedure is being followed. Organisations such as the FCA, the British Bankers' Association (BBA) and the UK Cards Association should reinforce this message.

5. All banks, card issuers and the Financial Ombudsman Service should consider whether the terms and conditions offered by companies comply with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection from Unfair Trading Practices 2008 when handling consumer complaints relating to disputed subscription payments.

6. The FCA should produce specific guidance for banks and card issuers on how to deal with disputed recurring payments. This should outline the circumstances in which consumers are entitled to a full refund and could be included in the FCA Banking Conduct of Business Sourcebook (BCOBS).

7. Payment service providers should consider notifying consumers when they first become aware that a CPA has been set up. This would be for information only and would allow the consumer to take action if they disputed the payment/authorisation.

In conclusion we have established that the problem of subscription traps is significant and is likely to continue to grow in line with the general increase in online shopping. Consumers continue to face a range of interlinked problems from the point of first seeing the advert to the point of trying to cancel their payments and get their money back. Many of these issues have previously been identified by other studies but are still a problem for UK consumers today.

There is relevant legislation in place to protect people from unfair contracts and additional recurring payments, but it is clear that those in a position to protect consumers do not always take this into account in the case of subscription traps. Consequently consumers do not get consistent access to redress from banks and card issuers. This could be effectively remedied by appropriate changes to the way in which all banks, card issuers and the Financial Ombudsman Service handle complaints arising from subscription traps.

There is also an onus on all parties involved to increase consumer awareness of subscription traps and their rights when signing up to, or trying to cancel, a CPA. This will ultimately help consumers protect themselves.

1: Introduction

Online shopping has been increasing rapidly in the UK over the past few years despite the growth of other forms of consumer spending slowing. It is now very well established as a convenient way for consumers to shop and often offers much more competitive prices than face to face sales. The popularity of e-commerce has led to vast amounts of money being spent online by UK consumers, mainly by debit or credit card. In September 2015 alone £11.6 billion was spent online using UK issued debit and credit cards, an increase of nine per cent compared to September 2014.[2]

Although shopping online provides many benefits for consumers, it does also come with its own set of fraud risks. Most online frauds focus on obtaining personal information, particularly credit and debit card details. In the first half of 2015 online card fraud in the UK totalled £109.9 million.[3] Despite the large amount of money being lost by consumers, bank and card provider security measures are proving more effective at preventing fraud. Between January and June 2015 card fraud as a proportion of all card purchases fell to 6.9p for every £100 spent, the lowest level since 2011.[4]

While these measures have had a positive impact on combatting fraud where card details are stolen, there are less widely publicised practices that cause significant consumer detriment. One issue that has been particularly problematic to deal with for both consumers and banks is subscription traps.

What is a subscription trap?

A subscription trap is where a consumer is misled into signing up for a subscription to goods or services. This is commonly done by the retailer promising a free trial, a reduced rate trial or sample goods where the consumer only has to pay for postage and packaging using a credit or debit card. The card details provided are then used to take recurring payments for a subscription using a continuous payment authority (CPA). The terms and conditions often don't make this clear to the consumer, usually burying the key information in lengthy or unclear terms and conditions. Whilst this may not always be regarded as fraud, the practice is certainly misleading and unfair, and often leaves victims feeling like they have been scammed.

[2] 'Card Expenditure Statistics September 2015', The UK Cards Association
[3] 'New fraud figures show fraudsters directly targeting bank customers', Financial Fraud Action UK press release, 2nd October 2015
[4] 'New fraud figures show fraudsters directly targeting bank customers', Financial Fraud Action UK press release, 2nd October 2015

Continuous Payment Authorities (CPAs)

A CPA gives a company permission to take recurring payments from consumers. To set up a CPA consumers provide their credit or debit card details (the long number on the front, expiry date and security code). This allows companies to take payments whenever they want for as much as they want without prior notification to the consumer or their card issuer. The authorisation continues until the end of the contract, or until the consumer cancels the CPA. The latter can be done by contacting either the company or their bank or card provider. The obligation on payment service providers to cancel CPAs is clearly defined in the Payment Services Regulations 2009:

> "...the payer may withdraw its consent to the execution of a series of payment transactions at any time with the effect that any future payment transactions are not regarded as authorised..."
>
> **The Payment Services Regulations 2009 Part 55(4)**

The past few years has seen a significant increase in the range of goods and services that can be paid for using a CPA, however, the exact extent to which they are currently being used is unknown. In 2013 the FCA estimated that £7.5 billion worth of payments were made using a CPA every year in the UK.[5]

CPAs are a very flexible method of payment. With most reputable companies this payment mechanism is not a problem, but it does have the potential to inflict considerable consumer detriment when used by less reputable firms. For example, in the past they were routinely used as a repayment method for payday loans. This led to significant detriment, particularly for consumers on lower incomes, as a result of a lack of informed consent, the frequency of payments, and difficulties cancelling.[6]

A CPA appears to be similar to a direct debit which can also be used to pay for subscriptions. However, there are some key differences between the two which are highlighted in table 1 overleaf:

[5] http://www.fca.org.uk/news/continuous-payment-authorities, 28th June 2013

[6] Ellison, A., Williams, S., Whyley, C., 'The electronic payment needs of people on low incomes', The Payments Council , Toynbee Hall, 2013

Feature	Direct debit	CPA
Setup method	Direct debit mandate to bank	Give card details to company
Setup time	Couple of working days	Immediate
Funds payable immediately?	No	Yes
Company can vary payment date?	Not without notice	Yes
Company can vary payment amount?	Not without notice	Yes
Cancellation process	Contact bank	Contact company or bank/card provider
Refunds for company error?	Full and immediate (Direct debit guarantee)	Not without complaint
Payment failure fee?	Yes	No

▲Table 1: 'Differences between direct debits and CPAs' Sources: Moneyfacts.co.uk, GoCardless and Gregory Pennington websites.

Whilst there are clearly benefits for both the company and the consumer to using CPAs (such as immediate set up and payment times, flexible cancellation methods, and the lack of payment failure fees) there is less protection for consumers compared to direct debits. Additionally their flexibility in payment dates and amounts allows unscrupulous companies to abuse them, most evidently in the case of subscription traps.

How much of a problem are subscription traps?

Although subscription traps are not exclusively an online problem, a questionnaire conducted in March 2014 by the European Consumer Centres (ECCs) in Sweden, Denmark, Finland and Ireland found that free trials and subscription traps were an emerging e-commerce problem that was likely to increase in the future.[7]

The growing body of European evidence identifying problems with subscription traps has prompted the European Commision to conduct a further piece of research into misleading free trials and subscription traps experienced by EU consumers, which is currently ongoing.[8] But no significant single piece of research

[7] http://www.konsumenteuropa.se/contentassets/e8b85acdcc14436b861977bafc80e750/results-from-questionnaire-2014.pdf

[8] Examining Misleading Online Free Trials and Subscription Traps Experienced by European Consumers, available at: http://www.rand.org/randeurope/research/projects/misleading-free-trials.html

has been conducted to understand how these issues specifically affect UK consumers.

The general increase in subscription traps and problems with CPAs is something that has become evident to both Citizens Advice and Citizens Advice Scotland. The Citizens Advice consumer service has seen an increase in the proportion of calls where online purchases of goods and services commonly associated with subscription traps (such as cosmetics and slimming products) were made using a debit or credit card. This has grown from 82 per cent in 2012/13 to 92 per cent in 2014/15. Our analysis of these cases found that the majority referred to problems with subscription traps.

The growth of issues with subscription traps over the past few years prompted Citizens Advice to produce a briefing in December 2014 looking at the problems with free trials relating to slimming pills.[9] However, there remains a lack of understanding of the core issues faced by consumers in the UK, as well as the extent of the use and knowledge of CPAs. This is something that has been recognised by the Consumer Protection Partnership (CPP)[10] who adopted the issue as a priority area of work in 2015/16 through their working group on online markets.

This report explores the detriment caused by subscription traps from seeing an advert for a subscription trap through to attempts to obtain redress. It argues that many consumers are being misled to the extent that many of the payment aspects of the contracts may be non-binding. The lack of clear information at the point of authorising a series of payments means that many consumers should be entitled to more redress than they are currently receiving.

For this report we used the following evidence:

- A GB representative omnibus survey of 2,023 adults (18+) conducted in June 2015 and commissioned through YouGov.
- A quantitative online survey of UK consumers affected by subscription traps which ran from July to October 2015 and generated 496 responses. It was publicised via the Citizens Advice and Citizens Advice Scotland websites, in-house social media, and the Money Saving Expert weekly email to it's subscribers.
- Face to face interviews with 31 UK consumers affected by subscription traps that were conducted between August and October 2015.

[9] 'Alarm Bells Briefing: Slimming Pill 'Free Trial' Scams available atr www.citizensadvice.org.uk/global/migrated_documents/corporate/slimmingpillfreetrialscams-dec2014.pdf

[10] The CPP consists of 9 UK consumer protection agencies including consumer champions, advice giving organisations, trading standards services representatives and enforcers. The CPP works together on big consumer issues that require coordinated working to resolve.

Chapter 2 explores the scale of the problem, the most common types of subscription traps, and the demographic of the consumers affected.

Chapter 3 investigates four problem areas in relation to subscription traps:

- how consumers are targeted and misled by subscription trap adverts.
- how terms and conditions are presented to consumers, and whether this breaks the law.
- how easy it is for consumers to cancel recurring payments, and whether banks and card issuers are following FCA guidance.
- the different experiences consumers have when seeking redress, and whether this is fair.

Chapter 4 explores what could be done to alleviate consumer detriment and sets out seven practical recommendations.

Chapter 5 draws together our findings.

2: Scale of the issue

Despite a number of previous studies that have looked at the problems consumers face when unwittingly signing up to a subscription trap, the scale of the issue, particularly in the UK, is unknown. In this chapter we explore key statistics about the use of subscriptions and CPAs by UK consumers and detriment caused. We also look in detail at the most prevalent goods and services associated with subscription traps, as well as what types of consumers are generally affected.

To probe the national scale of the number of subscriptions paid for by CPAs, we asked consumers in the omnibus panel to tell us when, if ever, they had used the long number on the front of their debit or credit card to sign up for a repeat service or subscription. Thirty-four per cent had done so in the past 12 months alone with an additional 14 per cent using one a year or more ago. When this is scaled up in comparison to the entire adult population of Great Britain, over 16.8 million people may have signed up to a subscription using a CPA between June 2014 and June 2015.[11]

It is difficult to estimate exactly how many people are affected by subscription traps in the UK. However from the omnibus data we were able to calculate that eight per cent of GB adults who had, at some point, asked their bank or the company involved to cancel a CPA had their request declined. This equates to over 2 million people who have had problems cancelling subscription payments.[12] Although this doesn't tell us how many had been deliberately misled or trapped into agreeing to continuous payments, it is an indicator of the problems that exist within the market, particularly in relation to consumers being able to exercise their payment cancellation rights.

This in turn makes it difficult to calculate the scale of detriment caused by subscription traps. Figure 1 overleaf shows that the most common amount of money lost by those who answered our online survey was £50 to £100[13]:

[11] Calculation by Citizens Advice, using 2014 ONS adult population estimates. 34% of 49,501,761 = 16,830,599

[12] Calculation by Citizens Advice, using 2014 ONS adult population estimates. 74% of GB adults said they have used their card to sign up for a repeat service/ subscription = 36,631,303
71% of these people said that they have tried to cancel the repeat service/ subscription = 26,008,225
8% of these people have had it declined = 2,080,658 people

[13] This figure is from our online survey of consumers affected by subscription traps and may not be representative of the entire UK population.

Figure 1: Amounts of money consumers lost to subscription trap problems Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (chart based on response of 467 consumers who told us how much money they had lost)

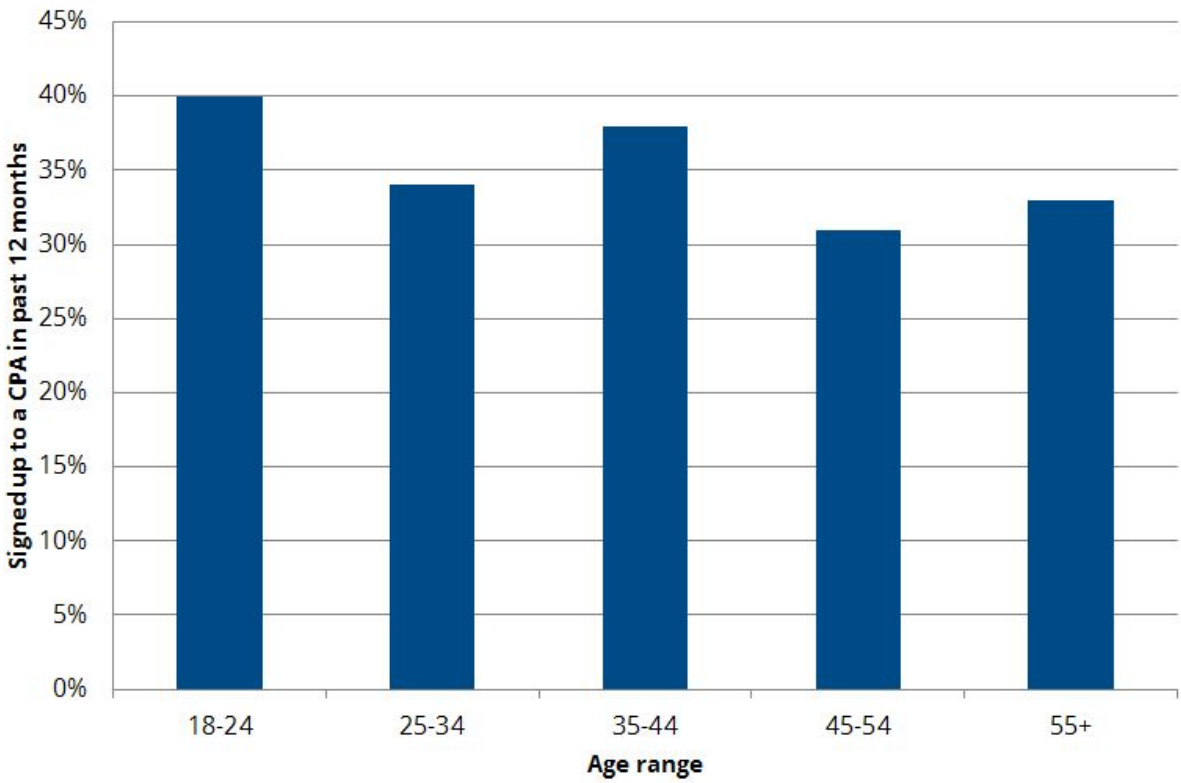
Whilst to some the loss of this amount of money can cause severe detriment, on the whole many people are prepared to suffer these losses, providing they stop any future payments being made. However, when it is considered that over 2 million people may have had problems cancelling a subscription service payment, the total amount of money lost to this problem is likely to run into the tens, if not hundreds, of millions of pounds.

It is unlikely we will ever be able to quantify the true amount of money lost to subscription traps, however, the evidence of non-financial detriment suffered by consumers was abundant in our depth interviews. Having a problem with a subscription trap generally left the people we spoke to feeling embarrassed, stupid and angry. This also affected their confidence when shopping online with several people changing their behaviour as a result of their problem. Effectively solving a subscription trap problem can take a significant amount of time and energy. This is something that many consumers may not be able to do:

"I would say [to other people affected by the same problem] don't back down, but I'm kind of stubborn like that. I think I was lucky and it's difficult because on the one hand, yes, I was going for it. But I was on holiday at the time so I had the time to look things up. I think if this had happened while I was working, I would not have had the time to invest into actually doing this. And that's the upsetting thing. You need the time and the inclination to go through things and, equally the literacy skills to be able to word things and phrase things, and the IT skills to look things up. So I could imagine there's a lot of people that wouldn't have the means to fight in

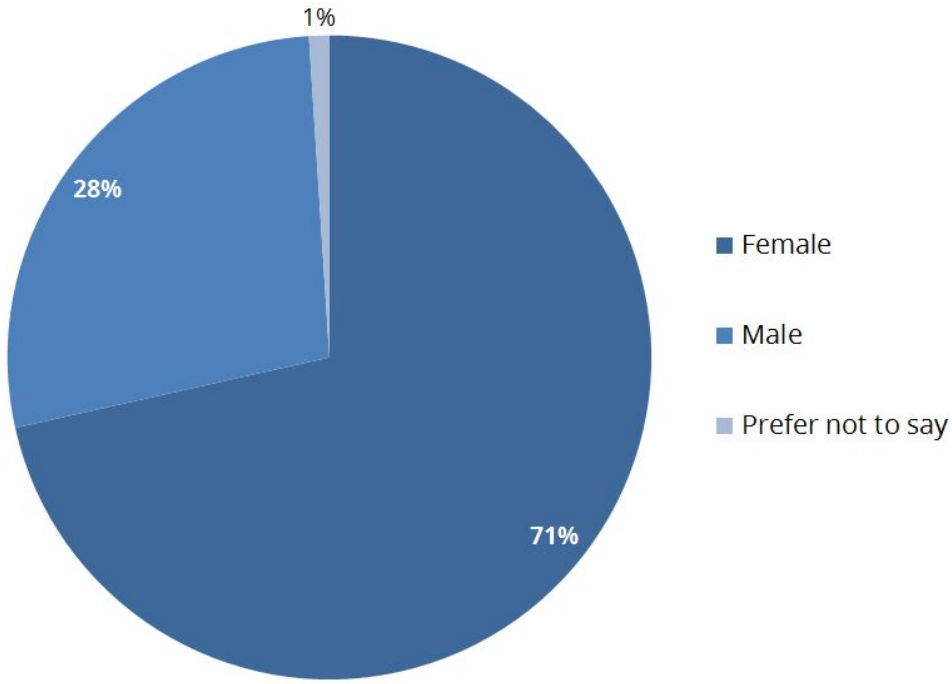
this way, which is why it's kind of upsetting really."

There is very little demographic variation in terms of the types of GB consumers who pay for subscriptions using CPAs. The omnibus panel results recorded demographic information such as age, gender, employment status and region of residence and we found little difference in most of these. When we looked at the age range of people who had signed up to a subscription using a CPA in the last 12 months (see figure 2 below), we found that younger people (under 25) were slightly more likely to have done so. However, this may only be due to the rise of online services such as video streaming and online gaming which are typically targeted at a younger more digitally engaged demographic.



▲ Figure 2 : Proportion of age ranges of GB consumers who have signed up to a subscription using a CPA in the past 12 months Source: GB representative omnibus survey of 2,023 GB adults conducted in June 2015

However, when we looked at the demographics of consumers who had specifically had a problem with a subscription trap (rather than just those whose had entered into any subscription paid for using a CPA) we found that there are significant trends in the types of people affected. This was evident from our online survey where we asked those who filled it in four non-compulsory demographic questions; country of residence, ethnicity, gender and age. As with the omnibus data, there was very little variation in country or region of residence, and types of ethnicity. However, women are disproportionately affected by subscription traps as figure 3 overleaf illustrates:



▲ Figure 3 : Gender proportion of consumers affected by subscription traps Source: online survey of 496 people affected by subscription traps conducted between July and October 2015

This gender skew is likely to be a result of the types of products and services that are most commonly associated with subscription traps. The table below shows the top ten goods or services that were reported to us through our online survey:

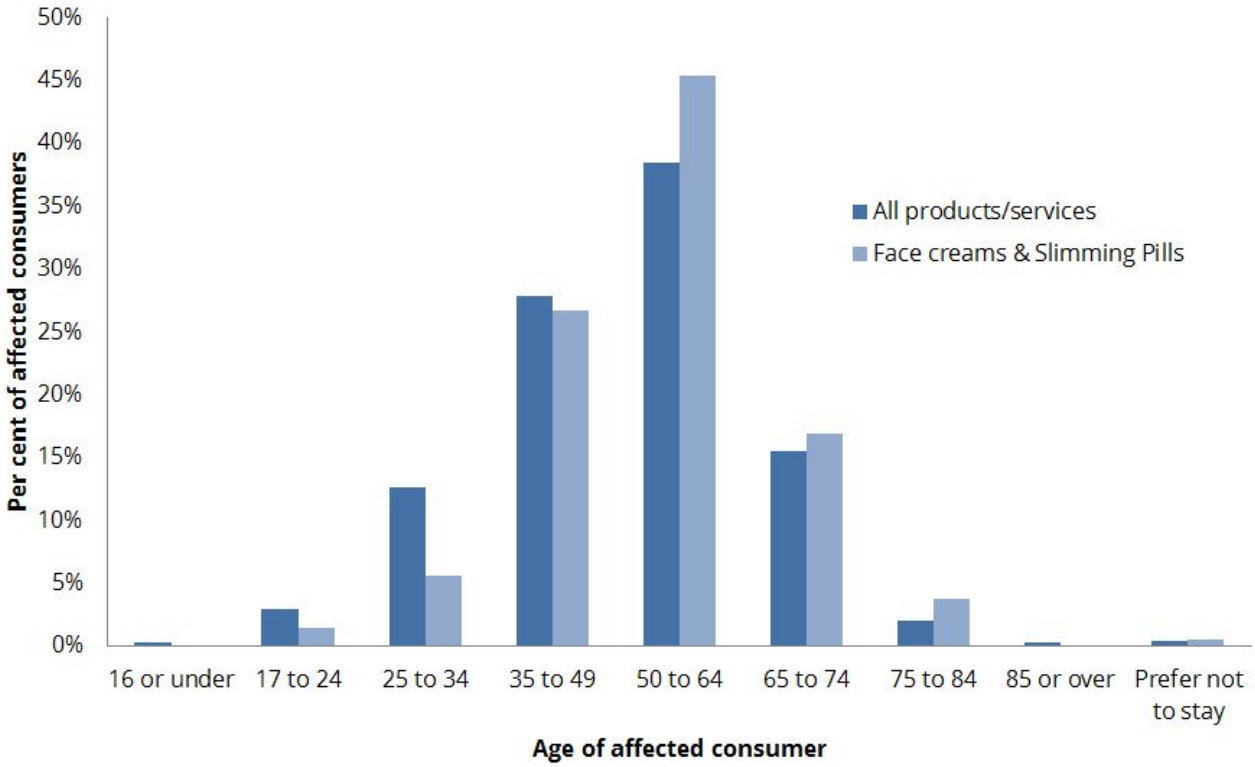
Type of goods or services	% of all survey responses
Slimming products	23%
Face/skin creams	20%
Unknown	9%
Discount card/website memberships	5%
Music/video streaming services	4%
Magazine/newspaper/eBook subscriptions	4%
Insurance	4%
Telecoms/TV packages	3%
Clothing and shoes	3%
Dating websites	3%

▲ Table 2: Top ten types of subscription trap goods and services Source: online survey of 496 people affected by subscription traps conducted between July and October 2015

Whilst the range of products and services recorded was very diverse, there was a particular problem with health and beauty related products. Just under half (43 per cent) of people who answered the survey had inadvertently signed up to

subscriptions for slimming products or skin creams. These types of products are typically marketed at, and are more popular with, women. In fact 88 per cent of victims of beauty product subscription traps who answered our survey were female.

There is a similar trend when looking at the ages of people affected by subscription traps. As figure 4 below shows, the highest proportion of people who answered our survey were aged 50 to 64. This proportion then increased when looking at just those who had purchased samples of slimming products or skin creams:



▲ Figure 4: proportion of ages of consumers for all subscription trap product types compared to skin creams and slimming pills Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (face creams and slimming pills category accounts for 214 of the 496 respondents)

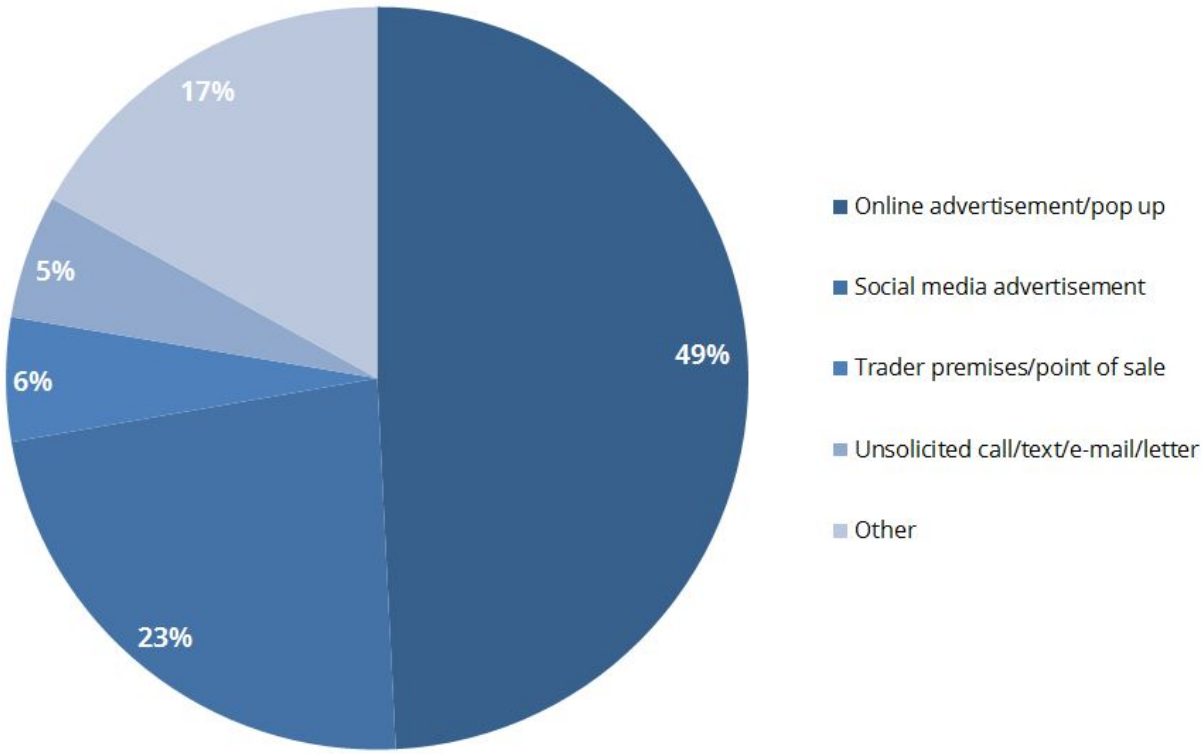
Although consumers of all ages and genders are potentially susceptible to subscription traps, it is evident from the findings above that those most at risk are older women seeking to take advantage of free samples of health and beauty products.

3: Problem areas

Consumers face a wide variety of problems throughout their experience of falling into, and dealing with, subscription traps. Previous ECC studies have highlighted a number of issues that consistently affect European consumers. In this chapter we discuss in detail four problem areas: advertising, terms and conditions, cancelling payments and redress.

Advertising

In our online survey we asked consumers how they first came across the product or service they had signed up to:



▲ Figure 5: Proportion of subscription trap advert types Source: online survey of 496 people affected by subscription traps conducted between July and October 2015

Seventy-two per cent said that they responded to some form of online or social media advert. The majority of these types of adverts lead directly to an affiliate marketing site that in turn leads to an option to claim a free sample or trial.

Many people associate the advert they respond to with the website they are using at the time, when the two are not necessarily linked. This gives many subscription offers an unwarranted sense of legitimacy, particularly when people are on a trusted site. In some cases we looked at, the pop-up was actually designed to appear as though it was linked to the site directly. One person we interviewed told

us about their experience when they were on the website of a major high street retailer (x) :

"So I hung on for a few moments and a pop-up came up. Well I wasn't aware it was a pop-up, a questionnaire for (x) came up on the screen. I thought: 'Well I've got a credit card with (x), I shop there regularly. Obviously they have chosen me because I thought, you know, I was the chosen one.' .... It was a very, very lengthy survey. At the end, it must have taken a good half an hour to do. They said they would reward me with a gift for taking the time out. One was a £25 voucher for (x). When I clicked on it it was unavailable at the time: 'This has been oversubscribed.' Or whatever. There were various other ones and there was some anti-ageing cream. So I thought: 'Okay. I'll try some.' "

Companies advertising subscription traps may be using very complex methods to reach consumers such as targeted advertising based on browser histories and social media usage. It is also possible that some are using more illicit methods such as malware or continued targeting of specific IP addresses. This may explain how some pop-ups appear to be from trusted companies when in fact they are not.

Many consumers feel misled by the content of the adverts, particularly in relation to the cost of the products or services. It is common practice for companies to advertise a 'free trial'. Only later do consumers realise they have had large amounts of money debited as a result of failing to cancel a subscription they were not aware of. Whilst these costs may be acknowledged in the terms and conditions of the subscription agreement itself, the adverts often don't mention an obligation to make payment beyond postage and packaging. This practice clearly contravenes both the principles and the rules which govern the use of the word 'free' in the UK Advertising Code:

"Marketing communications must not describe a product as "free", "gratis", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for delivery of the item."

The CAP Code: The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing , Principle, p.19

"Marketing communications must make clear the extent of the commitment the consumer must make to take advantage of a "free" offer."

The CAP Code: The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing , 3.23 , p.19

Some consumers are also being misled in other ways. In particular adverts sometimes use celebrity endorsements to make their products seem more legitimate and to gain the trust of consumers. We also spoke to some people who felt pressured into purchases or agreements by marketing claims relating to limited

availability:

"Then they put pressure on you like: 'Only so many left.' So you think: 'Oh well, if they've only got 100 left. I better do it now rather than stop and have a think about it.' "

Whilst we don't know if companies who advertise in this way are truthful in their claims, if they are not, they would be in breach of the UK Advertising Code which states adverts must not falsely state that a product is only available for a limited time to deprive consumers of the time needed to make an informed choice.[14]

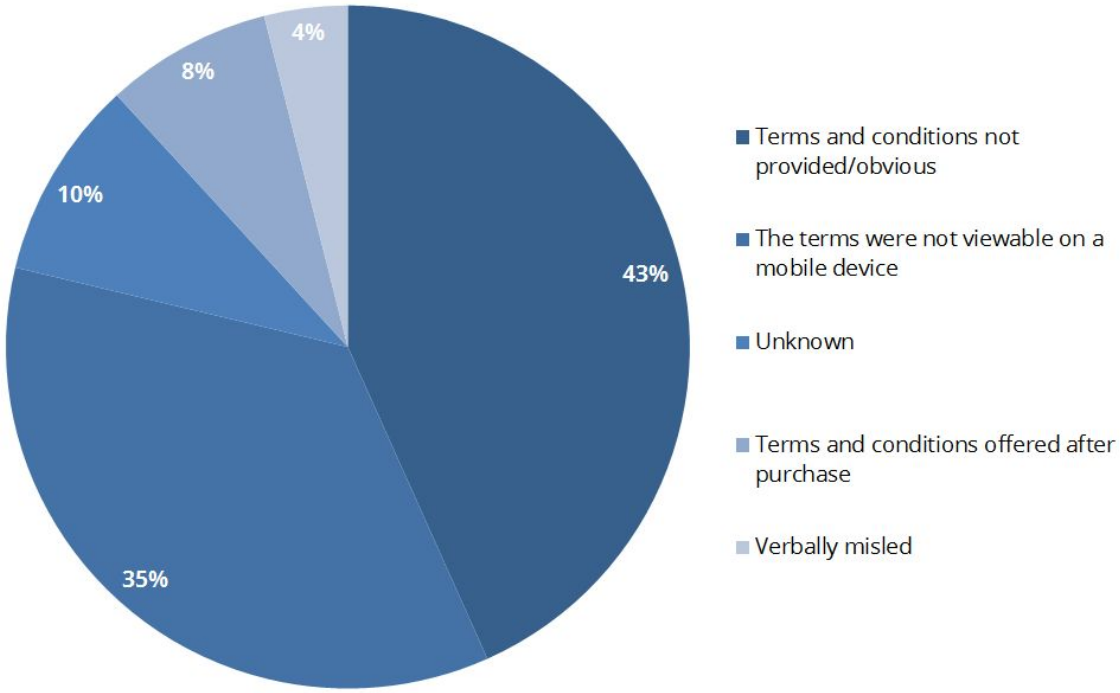
However, there are difficulties in enforcing these regulations. Many of the websites that contain these types of adverts are hosted outside the UK and are consequently not subject to UK Advertising Codes and regulatory action by the Advertising Standards Authority (ASA).

Terms and conditions

Once consumers have clicked through an advert to sign up to a subscription trap, many have problems with the terms and conditions of the agreement. This ranges from problems reading and understanding the terms and conditions to them not being presented to the consumer at all.

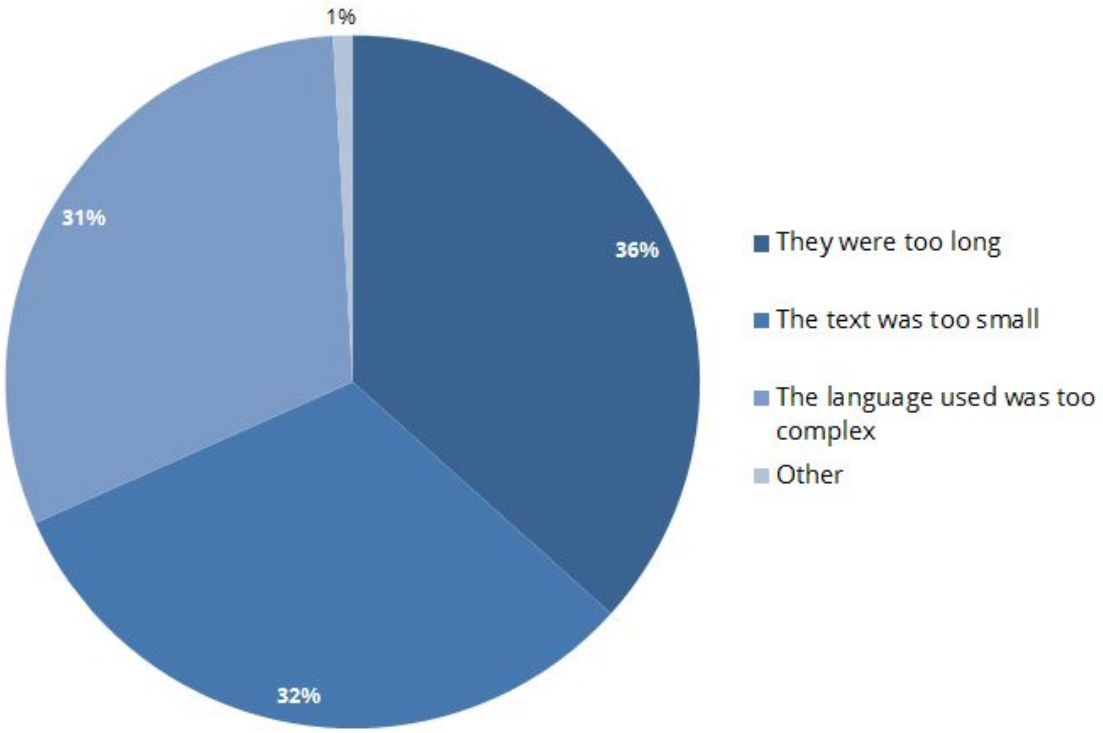
In our online survey we asked consumers if they read the terms and conditions associated with their subscription trap. Thirty-two per cent said that they hadn't read them. When asked why, they gave the responses shown in figure 6 overleaf:

[14] The CAP Code: The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing , 3.31 , p.20



▲ Figure 6: The reasons why consumers didn't read the T&Cs. Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (chart based on responses of 127 consumers who told us why they hadn't read the T&Cs)

Of the 68 per cent who had read the terms and conditions almost three quarters (73 per cent) said that they did not understand them. When we asked them why, there were three main reasons which are shown in figure 7 below:



▲ Figure 7: The three main reasons why consumers didn't understand the T&Cs. Source: online survey of 496 affected consumers conducted between July and October 2015 (chart based on responses of 229 consumers who told us why they read the T&Cs but didn't understand them)

We explore each problem briefly below:

Length of the T&Cs: If terms and conditions are too long then it is difficult for consumers to find the important information which they need to consider when deciding whether or not to agree to a contract. The longer the terms and conditions for a contract are the less likely a consumer is to understand them or even read them at all. The quote from one of our interviews below shows how an average consumer might view a long and complicated terms and conditions document:

"How often, if you buy something on email, do you read two pages of terms and conditions? I very much doubt whether you do...You look at it and say: 'Yes, okay, this is fine'...You don't expect somebody that's going to sell a free sample at an extraordinary cost to go and put somewhere on the Facebook page: 'and if we don't hear from you, we're going to charge you £100 in two weeks' time or at the end of the month'...You don't expect to have to find it in some little bit of script an hour and a half reading away."

Use of small text: If text is too small, then it is difficult for some people to read at all. In our online survey, we found that this was particularly an issue for people using mobile devices where the smaller screen made reading small text very difficult. What makes this even more of an issue is that consumers in the UK are using mobile devices more and more to make purchases. Figures from the International E-commerce Study 2015 found that between 2014 and 2015 the usage of smartphones and tablets rose by 53 per cent to account for 28.6 per cent of UK online spending.[15] The use of small text wherever it is encountered is also an issue for those who may have age related vision loss or any other sort of visual impairment.

Complex language: Few consumers are legal experts, but some terms and conditions make frequent use of phrases that the average person may not understand. During this research we came across examples of language such as "default autofill replenishment frequency" and "The decision rendered shall be final and binding upon the parties hereto..". Language like this makes it difficult for the consumer to understand the key terms of the agreement, particularly their obligation to make payments and their rights to cancel.

The presentation and contents of terms and conditions are currently governed by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. They are quite clear about the requirements on terms and conditions for online transactions:

[15] Available at http://www.retailmenot.de/studien/e-commerce-studie-2015 and http://www.retailresearch.org/onlineretailing.php

The Consumer Contracts (Information, Cancellation and Additional Charges)Regulations 2013[16] require the following information to be given in a **clear and prominent manner** before an online purchase if the order carries an obligation to pay:

- the main characteristics of the goods and services
- the total price or how the price will be calculated
- all additional charges including delivery charges
- for subscriptions, the total costs per billing period or the total monthly costs
- the duration of the contract or for contracts of no fixed length, the termination conditions of the contract
- and the minimum duration of the contract, if applicable

Before a consumer is bound by elements of a distance contract (one formed online or over the phone), they must first be provided with the pre-contractual information shown above. When comparing what we have seen in this research to what is required by the law, we have found that the terms and conditions for many subscription trap products do not appear to comply with the law. In particular the subscription element and associated costs of entering into the contract are not being provided to consumers clearly and prominently. In some cases, the terms and conditions are not provided at all, they are too long to find the important terms, or they are too small or complex to read and understand:

"I was so angry by then, that I just had to see that it was in the terms and conditions. I thought: 'You b******s.' I didn't need to read it all, but the fact that I saw the terms and conditions on a separate web page, I thought: 'You b******s, this is how you are getting away with it.' "

In January 2013 the Office of Fair Trading (OFT) issued guidance to businesses on the use of CPAs. In this they went as far as to say "All relevant terms of the CPA agreement should be set out clearly in plain intelligible language and brought prominently to the consumer's attention. They should not just be contained in terms and conditions."[17]

[16] The Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 regulation 14.
[17] Principles for use of Continuous Payment Authority - The Office of Fair Trading, January 2013 (available at webarchive.nationalarchives.gov.uk)

In the case of subscription traps it is clear that this guidance is not being followed. A high proportion of those who answered our online survey (84 per cent) did not realise from the information presented to them that they were agreeing to a subscription to be paid by a CPA. As such, it is highly likely that many of them may not be bound by their contracts to make any payments other than the postage and packaging fee that is usually clearly displayed. It should be stressed, however, that non-compliance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 needs to be assessed on a case by case basis, as the way terms and conditions are presented by subscription trap companies vary greatly. This is even something that may need to be determined in court.

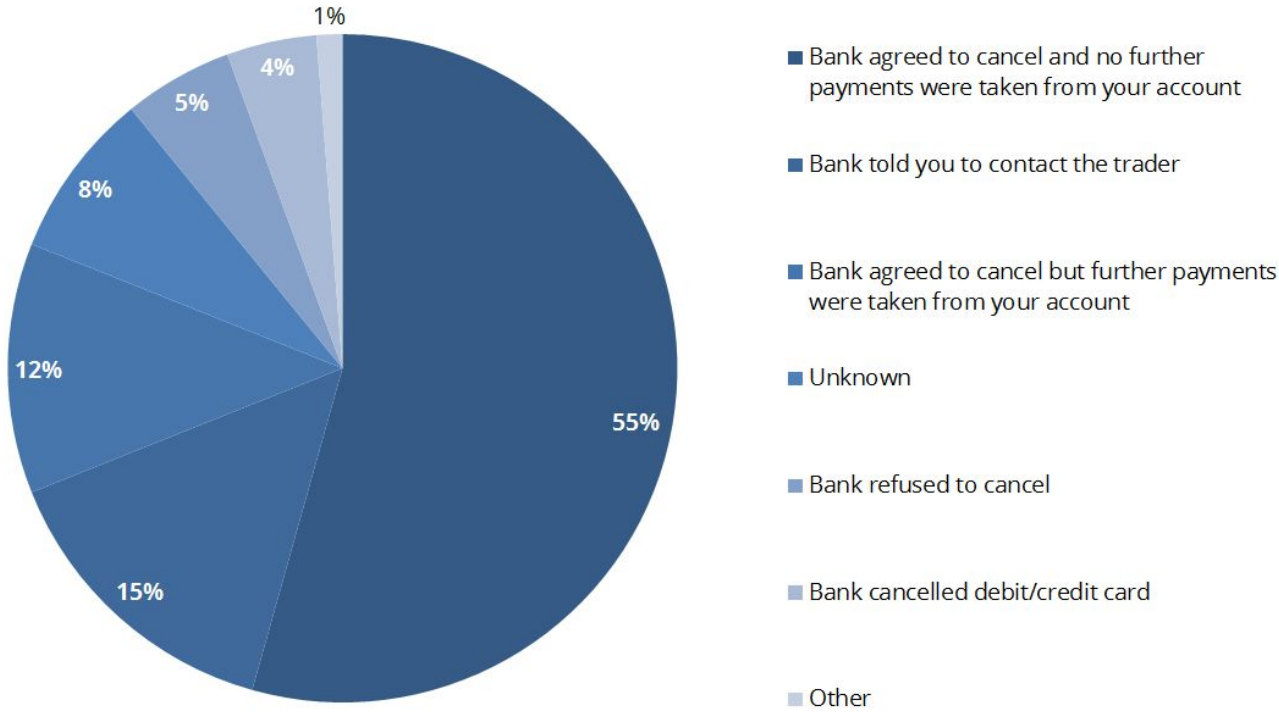
Cancelling payments

Despite the significant number of UK consumers who pay for subscriptions using CPAs, the majority have a very limited understanding of what CPAs are and how they work. There is also a tendency for consumers to confuse CPAs with direct debits. The omnibus panel told us that only 21 per cent of GB adults could tell us the difference between a CPA and a direct debit. Some people only become aware of the differences between the two after they have encountered problems with an unwanted subscription. This was something that was apparent in our face to face interviews:

"Yes I have heard of them [CPAs], well I hadn't beforehand, but after researching it on your website, yes I read about what they were. A CPA is how they get money out your account isn't it? Until this happened to me I didn't know anything about them."

However, even consumers who have problems with subscription traps are still largely unaware of some characteristics of a CPA, most notably their cancellation rights. Fifty-three per cent of people who answered our online survey said they were unaware that it was their right to cancel a CPA with either the company or their bank. This makes it particularly difficult for many consumers to take appropriate action once they are locked into an unwanted subscription.

Despite this apparent lack of awareness, 69 per cent of consumers who answered our online survey approached their bank to cancel payments resulting from subscription traps. The outcomes for these people are shown in figure 8 overleaf:



▲Figure 8: Bank's responses to cancellation requests from consumers Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (chart based on responses of 338 consumers who told us the outcome of their request to cancel with their bank)

In 36 per cent of the cases shown above, the consumer's request to cancel the CPA was refused, their bank took the wrong action, or further payments were taken anyway. The reasons given by banks for refusing to cancel CPAs would suggest that many front line staff are not fully aware of the obligations of banks and card providers under the Payment Services Regulations to remove authorisation for a series of payments upon request.[18] We found that consumers were instead being told that:

- the bank was unable to cancel the CPA
- only the company could cancel the CPA
- the client had agreed a contract with the trader

The fact that the majority of consumers are unaware of their rights to cancel a CPA means that most do not challenge these reasons.

In 15 per cent of our survey cases banks or card providers told consumers to contact the company to cancel their CPA. This was a particular practice that the OFT warned against in 2013: "Customers should not be misled regarding their rights to cancel [CPAs]. In particular they should not be told they are required to contact the business before (or instead of) the payment service provider."[19]

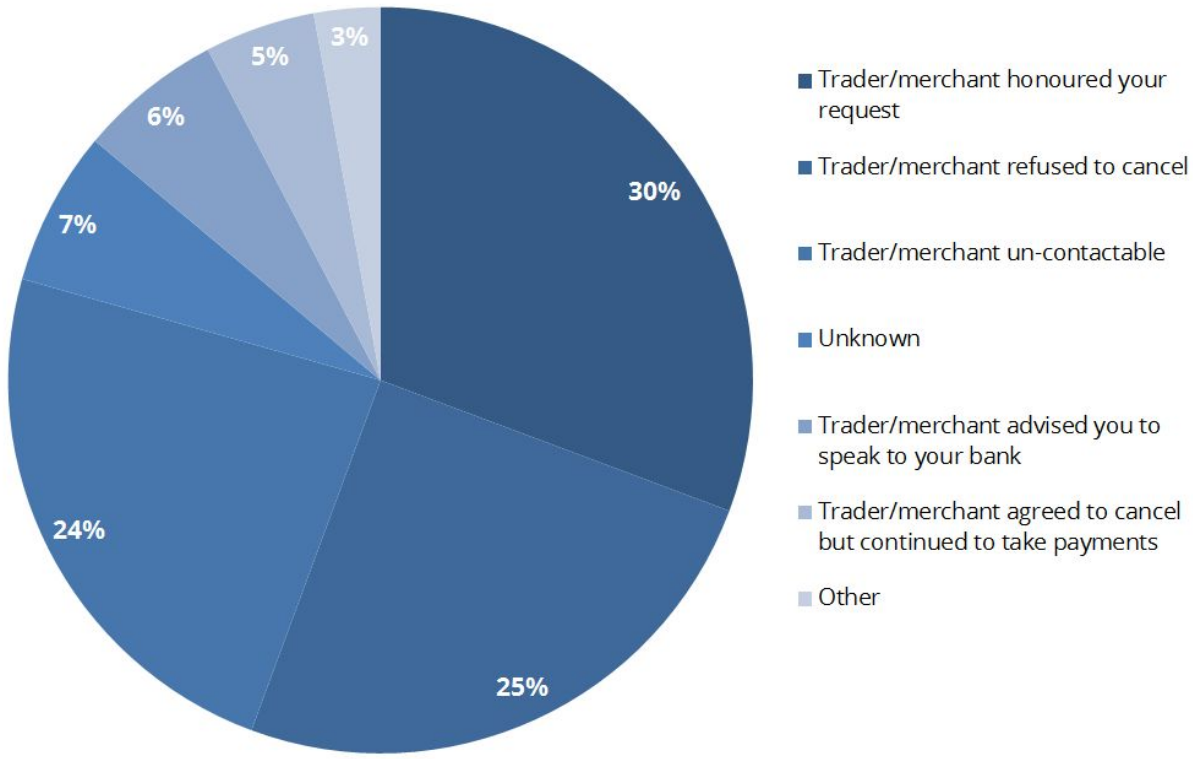
[18] The Payment Services Regulations 2009 Part 55(4) (*see p.5 in chapter 1 above for quotation*)
[19] Principles for use of Continuous Payment Authority - The Office of Fair Trading, January 2013 (available at webarchive.nationalarchives.gov.uk)

In 12 per cent of our survey cases the bank agreed to cancel the CPA but further payments were taken anyway. There is no evidence to suggest that banks failed to administer these requests properly. However, in our face to face interviews we found that some subscription trap companies are making payment requests through different company names, or using old authorisation codes. This makes it difficult for banks to identify and block unauthorised payments:

"Yes. Well, they [the bank] were trying to [stop the payments] but obviously, like I say, they authorised the second payment because they [the trader] changed their name. On the third occasion, now, this is where possibly for the first time my bank did do something wrong because on the third occasion it came back as the same name as the second occasion. They should have actually picked it up that time"

Even though many consumers did not get the outcome they hoped for, overall those we spoke to were pleased with the way their banks handled their queries. However, we feel that banks could do more to ensure that their frontline staff comply with FCA guidance, and are generally more supportive. Some consumers felt that it was their own lengthy efforts rather than their bank's that eventually got their payments cancelled and in some instances their money back.

It is particularly important for banks and card issuers to comply with the appropriate legislation as consumers face varying problems when trying to cancel their CPA through the trader. Figure 9 overleaf shows the responses people who filled out our online survey got when asking the company to cancel their payments. Less than a third had their request honoured:



▲Figure 9: Companies' responses to cancellation requests from consumers Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (chart based on responses of 439 consumers who told us the outcome of their request to cancel with the trader)

Redress

As we have established in the sections on advertising and terms and conditions, the way subscription traps are presented to consumers are often very misleading and cause a great deal of people to unwittingly agree to purchases that they otherwise wouldn't have done. This was something that was also evident in our face to face to interviews:

"There was nothing...I am absolutely sure that no terms and conditions popped up which would have notified me of their 14 day trial after which you start paying because I would never have gone for it."

This is a practice that consumers should be protected from under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs):

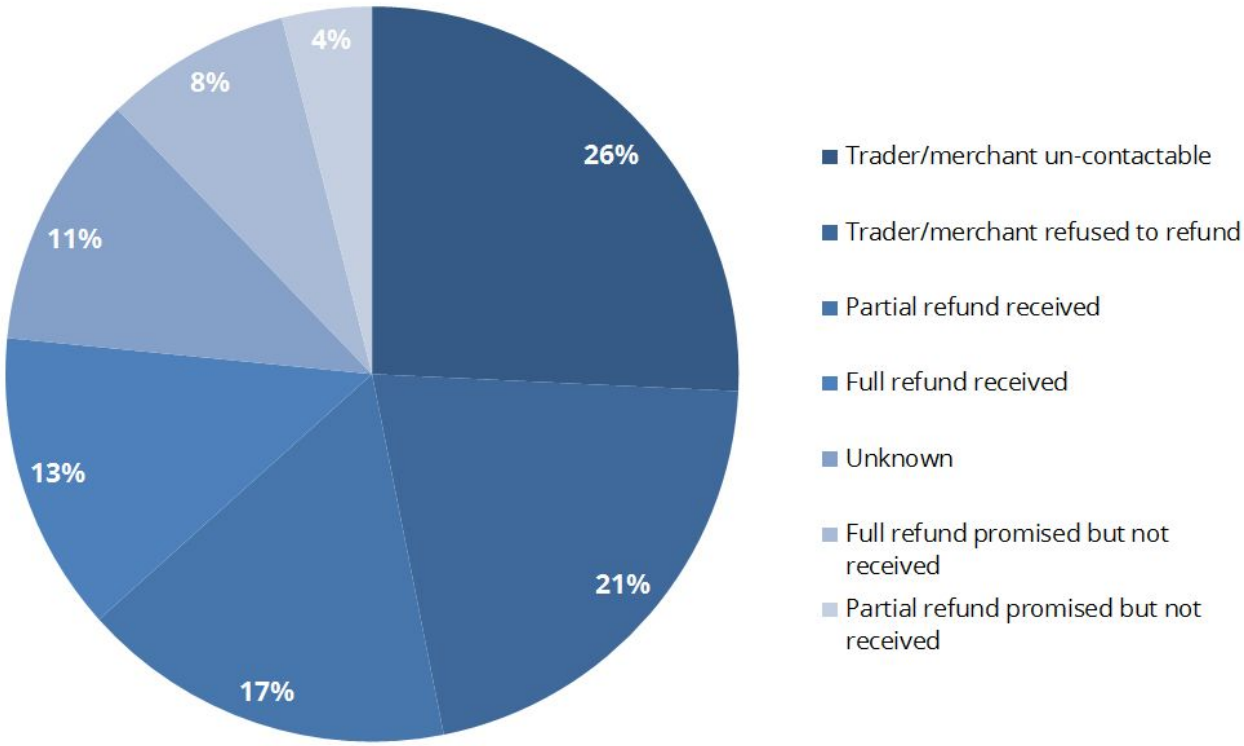
The Consumer Protection from Unfair Trading Regulations 2008[20] deems a commercial practice to be misleading if:

- Its overall presentation in any way deceives or is likely to deceive the average consumer in relation to a set of defined terms (including the nature of the sales process, the price or the manner in which the price is calculated, and the consumer's rights or the risks he may face).
- It causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

Whether or not a subscription trap case is a breach of the CPRs is something that needs to be determined on a case by case basis. However, if a company is found to have misled a consumer in this way, under the legislation this amounts to a criminal offence.[21] What's more, amendments made to the legislation in 2014 allow consumers to unwind their contracts (or in other words claim back all the money they have lost and terminate the agreement) if the company involved has engaged in a prohibited action, which includes misleading a consumer as defined in the box above.[22] Both these pieces of legislation are derived from the EU Unfair Commercial Practices Directive 2008, so these laws apply to all companies in EU member states.

Despite the provision in law for consumers to claim private redress from companies who have misled them into making a purchase, this is a costly, time consuming and complex procedure for the average consumer. As such, their first port of call when trying to get redress is to contact the company directly. This is an action that 66 per cent of people who filled out our online survey took. However, as Figure 10 overleaf illustrates, less than a third of those who told us the outcome of their request received any money back at all:

[20] Consumer Protection from Unfair Trading Regulations 2008 Part 3 Regulation 5
[21] Consumer Protection from Unfair Trading Regulations 2008 Part 3 Regulation 9
[22] Consumer Protection (Amendment) Regulations 2014 Part 4A regulations 27 A, B & E

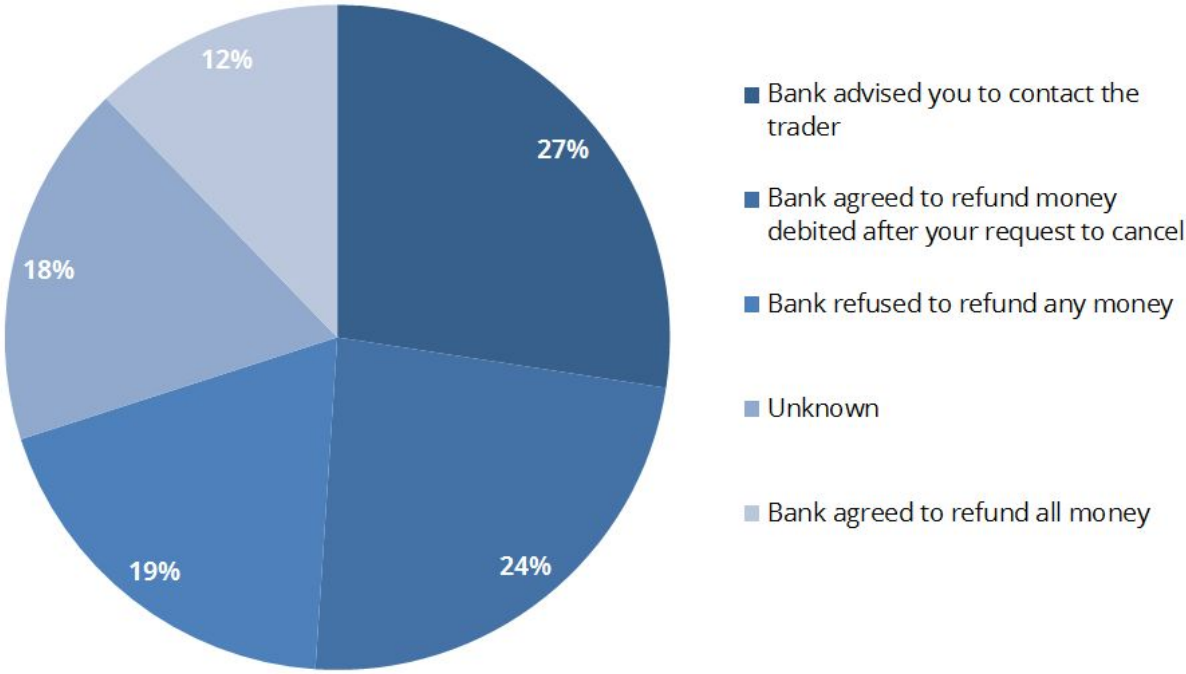


▲Figure 10: Company's responses to refund requests from consumers Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (chart based on responses of 326 consumers who told us the outcome of their request for a refund from the trader)

A particular problem for consumers trying to get redress for unwanted subscriptions is that they are unable to establish contact with the company. In many cases this is a result of them not having been provided with any contact details at all. Not only does this reduce their options for redress, but it also makes it harder for them to cancel their contracts or payments:

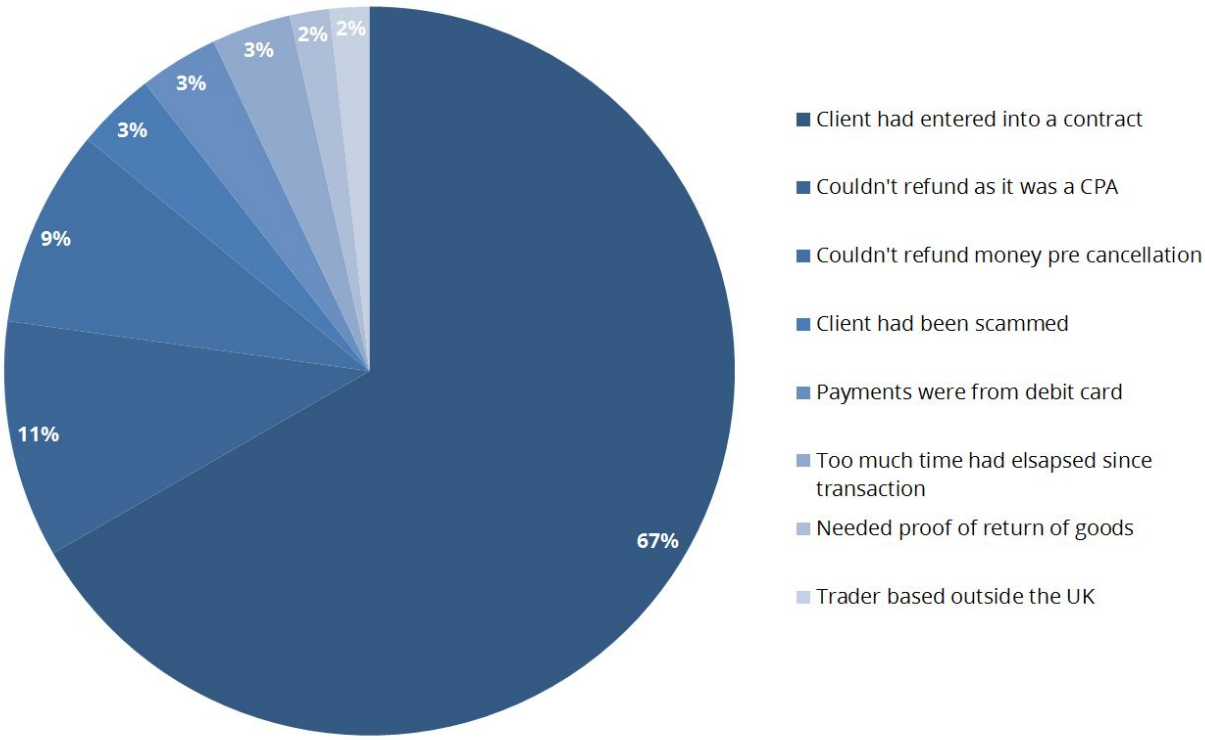
"I did receive the goods. They arrived about a week later. They just arrived in an envelope. There was no contact details, no phone number or any details of how to cancel and no return address. There was no information at all about how to stop the payments, and of course I didn't realise there would be monthly payments."

In light of these problems getting refunds from companies who use subscription traps, the only means of redress left open to many consumers is to contact their bank for help. However, as figure 11 overleaf illustrates, they tend to get very varied responses:



▲Figure 11: Bank's responses to refund requests from consumers Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (chart based on responses of 249 consumers who told us the outcome of their request for a refund from their bank)

The response a consumer gets largely depends on the stance their bank, and possibly even their call handler, takes on the issue. This means that people with similar problems often get different outcomes depending on who their bank or card issuer is. When consumers are refused any redress at all, the reasons given by their bank or card issuer also vary greatly, however, as figure 12 overleaf shows, the majority are advised that they have formed a contract with the subscription trap company and are not liable for a refund:



▲Figure 12: Reasons why banks didn't refund money to consumers Source: online survey of 496 people affected by subscription traps conducted between July and October 2015 (chart based on responses of 61 consumers who told us the reason their bank gave for not refunding them)

In many instances where consumers contact their bank for redress, a chargeback claim is initiated through their debit card issuer. This allows the issuer to arbitrate between the consumer's and the company's banks to decide whether the claimant is liable for a payment. Whilst some consumers initially have money refunded, this decision can be overturned if the company disputes it within the given time frame. We found evidence of this in our online survey and face to face interviews. The main reason for siding with the company is that they provided evidence that the consumer had agreed to the terms and conditions.

As we have established in the terms and conditions section above, however, many consumers affected by subscription traps are tricked into signing up as result of the terms of their agreements being unclear, misleading and not always readily available. This means that a great deal were not made aware of important pre-contractual information, such as their cancellation rights, their obligation to make recurring payments, or the total amounts of any future payments. The fact that sufficient information relating to costs and payments is often lacking is crucial, as at the time of authorisation most consumers believe they are only agreeing to a small, one-off payment for postage and packaging. Consumers in this situation should be entitled to a full refund from their bank or card issuer due to the provisions of the Payment Services Regulations 2009:

Refunds for payment transactions initiated by or through a payee

63.—(1) Where the conditions in paragraph (2) and the requirement in regulation 64(1) are satisfied, the payer is entitled to a refund from its payment service provider of the full amount of any authorised payment transaction initiated by or through the payee.

(2) The conditions are that—

(a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was given in accordance with regulation 55; and

(b) the amount of the payment transaction exceeded the amount that the payer could reasonably have expected taking into account the payer's previous spending pattern, the conditions of the framework contract and the circumstances of the case.

The Payment Services Regulations 2009 Part 63 (1 & 2)

This claim is supported by the guidance the OFT gave in 2013; "...where a consumer is offered a free trial, after which payments will be taken, the consumer should be asked to agree to the actual liability before any payments are taken. Failure to do so may result in the contract being considered unenforceable, with the consumer being entitled to a refund of all payments made."[23]

In our face to face interviews we found evidence that some banks are already siding with consumers who have not been made fully aware of their payment obligations:

"The disputes department at the bank looked into it and said: 'No problems, the charge is against me because I signed saying I'd read the conditions.' Then somebody else in the bank came along and said: 'Well I know the bank have looked at this and said what they've said, however, I don't think they dealt with you fairly. I don't think they [the trader] put the information where it should be and we will give you your money back.' "

However, only 12 per cent of consumers who asked their bank for redress were refunded all the money they lost (see figure 11 on page 27). This percentage would be much higher if all banks and card issuers took these points into account when assessing disputed transactions on a case-by-case basis. There is currently no FCA guidance for banks on how to deal with subscription trap cases, so it is not surprising that the outcomes consumers get vary depending on who they bank with.

[23] Principles for use of Continuous Payment Authority - The Office of Fair Trading, January 2013 (available at webarchive.nationalarchives.gov.uk)

4: Recommendations

As we have discussed above, there are a range of issues with subscription traps that are consistently causing detriment to consumers. In this chapter we explore what could be done to help alleviate consumer detriment and set out six practical steps to help protect consumers.

Advertising

The increased use of targeted advertising of online consumers, particularly via search engines and social media sites, makes many vulnerable to detriment. These organisations should do more to combat malicious adverts by improving their vetting process for advertising space, responding promptly to consumer complaints and taking down damaging adverts. We would welcome the opportunity to work with large companies such as Facebook and Google to combat this problem.

As previous studies have shown, this is an EU wide problem. Many affiliate marketing websites targeting UK consumers are hosted outside the UK. Therefore, there needs to be increased cooperation between UK regulators and enforcers and equivalent organisations in other EU member states to tackle these problems, and better information on what consumers can do to protect themselves against malicious targeted advertising.

Our research has identified the specific problem of many consumers being duped into signing up for subscription products that they felt were associated with trusted websites or brands. Whilst not necessarily the fault of the trusted brand, they could do more to warn consumers about the dangers of responding to pop-ups on their websites:

Recommendation 1: Companies or websites that receive complaints from their customers in relation to associated subscription trap pop-ups should consider placing notifications or banners on their websites warning of malicious adverts and distancing their brand from the subscription traps.

Terms and conditions

Our research also found that currently many terms and conditions provided for subscription trap/"free trial" related contracts do not make it clear enough to consumers that there is a subscription element to their agreement. Most consumers we spoke to were not aware of this even having read them, and many

felt that the key terms of any contract, particularly any costs involved, should be prominently displayed at the start of the terms and conditions:

Recommendation 2: EU and UK law should require any terms and conditions to have the most important information clearly summarised on the first page. This should include any obligation on the consumer to pay something to the trader, describe the length of any subscription that is being agreed to and explain clearly how to cancel such arrangements.

This is particularly important considering the increase in online shopping. It is unrealistic to expect the average consumer to read and understand the implications of every set of terms and conditions they encounter on a daily basis. The consumer organisation Which? should take these points into consideration when carrying out work reviewing the presentation of terms and conditions online which was requested by HM Treasury and the Department for Business, Innovation and Skills.[24]

Those consumers who do not understand their terms and conditions, as well as those who are not given or able to view them, are unaware of their cancellation rights. Current EU and UK legislation puts the responsibility to cancel a contract entirely on the consumer. This is misplaced in the case of trial periods for subscription products or services. Consumers should have to opt in to continuing the service at the end of a free trial period, rather than having to remember to opt out. However, a more realistic proposal is to place more onus on companies to remind consumers when their trial period is coming to an end:

Recommendation 3: Companies offering trial periods for subscription products or services should remind consumers that they will enter into a binding contract at the end of the trial period. This should be done several days before the end of the trial and should make the cost of the subscription clear.

Cancelling payments

Companies should respond promptly to requests to cancel CPAs from consumers, should also ensure that they have adequate procedures in place to accept such requests, and should provide correct contact details. However, this would be difficult to enforce, particularly if problems arise with unscrupulous traders based outside the UK. Therefore, banks and card providers should do more to ensure that their front-line staff are responding correctly to consumer requests to cancel CPAs:

[24] A better deal for families: boosting competition for families and firms, HM Treasury and BIS, November 2015

Recommendation 4: Banks and card issuers should provide training for their front line staff on cancelling CPAs and then mystery shop them to ensure correct procedure is being followed. Organisations such as the FCA, the British Bankers' Association and the UK Cards Association should reinforce this message.

This is something that has proved effective in the past for similar problems.

Redress

It is important that consumers are treated equally by different banks when transactions are disputed. This would ensure that the redress given as the result of subscription traps is fair and consistent. All banks, card providers and other dispute handlers should consider whether the pre-contractual information given to consumers who have signed up to a subscription trap is compliant with the law:

Recommendation 5: All banks, card issuers and the Financial Ombudsman Service should consider whether the terms and conditions offered by companies comply with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection from Unfair Trading Practices 2008 when handling consumer complaints relating to disputed subscription payments.

To assist banks and card providers in dealing with subscription trap cases appropriately and fairly, specific guidance on the issue should be provided:

Recommendation 6: The FCA should produce specific guidance for banks and card issuers on how to deal with disputed recurring payments. This should outline the circumstances in which consumers are entitled to a full refund and could be included in the FCA Banking Conduct of Business Sourcebook (BCOBS).

Both these recommendations in combination would help to ensure that consumers in identical situations end up with same outcomes, regardless of who they bank with. It would also mean that consumers would be able to challenge decisions relating to refunds where the appropriate legislation or guidance has not been considered.

To reduce the financial and logistical demands on banks providing refunds to consumers who have been misled into agreeing to a subscription, more should be done to stop the recurring payments being taken out in the first place. For example, banks or card issuers could use verification methods that already exist for

suspicious transactions, such as texts, automated phone calls, in-app notifications and emails, to give consumers the option to dispute their authorisation:

Recommendation 7: Payment service providers should consider notifying consumers when they first become aware that a CPA has been set up. This would be for information only and would allow the consumer to take action if they disputed the payment/authorisation.

These notifications could be triggered by payment requests from companies known to generate consumer complaints about subscription traps. Banks could also share intelligence amongst themselves about 'problem' companies (as they do already for other types of disputed transactions) which would help to ensure the same treatment and outcomes for all consumers. Some of the people we spoke to in our face to face interviews insisted that their bank were well aware of the volume of complaints in relation to particular companies or products involved with subscription traps.

5: Conclusions

This report has found that subscription traps are a significant problem for UK consumers. This has mainly been driven by the growth of online shopping. Since Citizens Advice's previous report on slimming pill free trials we have seen subscription traps become evident in other types of products and services, although the majority still seem to be health and beauty related. Although certain demographics are currently more at risk as a result of this, it is likely that the types of consumers affected by subscription traps will grow as the range of products and services increases.

The growth of online subscription based products has lead to an increase in the numbers of CPAs that UK consumers are signed up to. Whilst this payment method is convenient and flexible, we think that this is potentially a problem because:

- People are generally unaware of CPAs, including their right to cancel them
- People unwittingly consent once to a whole series of payments
- CPAs offer less protection to consumers than direct debits
- Companies can, in theory, take as much money as they want, when they want without prior notification to the consumer

This report has reinforced the findings of previous studies in the EU and has established that subscription traps are a significant problem in the UK. Consumers face a series of interlinked problems once they have signed up to a subscription trap. This ranges from the unfair and misleading adverts that entice people into what they believe is a one off free trial, to important information being hidden in the terms and conditions. As a result of these misleading practices, consumers are being tricked into making a purchase that they otherwise wouldn't have agreed to. This means that UK consumers should be getting better redress than we have found they currently are.

Consumers can get different outcomes when seeking help with subscription traps from their bank, depending on who they bank with. There is also variation within banks. These differences cover customer service, redress and the stance the bank takes on cancelling payments. Although the FCA have previously reminded banks of their responsibilities to cancel CPAs, we found that consumers still face problems in doing so. However, this is something that could be easily remedied by frontline staff training.

A consumer's ability to successfully resolve their issue depends in part on their inclination and how much time and energy they devote. Those who lack confidence

and time (for example those in full-time work or with large family demands) can find it harder to resolve their problems.

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Nick MacAndrews and Daniel VandenBurg with input from Charlotte Boulton (Citizens Advice) and Fraser Sutherland (Citizens Advice Scotland)

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