



## The loyalty penalty in essential markets: one year since the super-complaint

People are being stung simply by staying loyal to their provider. Last September, Citizens Advice submitted a super-complaint to the Competition and Markets Authority (CMA) about the £4bn loyalty penalty people pay across 5 essential markets - mobile, broadband, cash savings, home insurance and mortgages.

This paper sets out what progress we think has been made 1 year after submission, what regulators have planned, and what measures we expect to be taken by both regulators and government by December 2019 to ensure the loyalty penalty is tackled. In summary we believe more progress is needed on the following priorities by the end of the year:

- **In mobile**, Ofcom should ensure that mobile phone providers follow through on their promises to voluntarily reduce loyal customers' bills by February 2020. If three continue to refuse to follow the other providers, Ofcom should take further action to make them treat loyal customers fairly.
- **In broadband**, Ofcom should ensure that the vast majority of vulnerable and low-income customers are not paying a loyalty penalty and that firms have clear and fair pricing policies that ensure all customers are paying a fair price.
- **In mortgages**, the Financial Conduct Authority (FCA) should work with firms to identify low-income households who are on Standard Variable Rates and take action to ensure that these customers are not paying a loyalty penalty.
- **In cash savings**, the FCA should confirm and implement its Basic Savings Rate proposal.
- **In insurance**, the FCA should ensure that the vast majority of vulnerable and low-income customers are not paying a loyalty penalty and that firms have clear and fair pricing policies that ensure all customers are paying a fair price. It should set out how it intends to limit or ban price walking.
- **Across markets**, regulators should follow up on the CMA's feasibility study and use their data request powers to measure the loyalty penalty accurately, so that they can track whether solutions are having any effect.

**We originally asked the CMA to undertake a market study as a route to help tackle the loyalty penalty. While we recognise that these changes may not all be possible in the next 3 months, we'll revisit this position if we don't feel enough progress has been made by December.**

## Context

In December 2018, in its response to our super-complaint, the CMA argued that the most efficient way to tackle the loyalty penalty was for individual regulators to take action in the 5 markets, rather than undertake its own market study. It promised to consider whether a market study would be needed once 12 months had passed.<sup>1</sup>

The loyalty penalty undermines public trust in markets to deliver essential services. Given the government's aim to end the loyalty penalty<sup>2</sup> and commitments to tackle it from regulators, people will expect significant progress from both regulators and government. As we reach the 1 year anniversary after submitting the super-complaint, we are concerned that not enough progress is being made.

In all 5 markets, loyal customers continue to be overcharged. In the mobile market, voluntary agreements mean this will change for most loyal customers from February. But in most other markets, potential fixes are still at the consultation stage - in some cases, they haven't even reached that.

There are discrete examples of providers taking the initiative, but regulators should recognise that isolated cases are not sufficient to solve the systematic market problems.

There is still time for regulators to act before the December deadline. If concrete, effective remedies are forthcoming, then - even with the delay - it will be quicker for regulators to implement them directly than wait for the CMA to carry out a market study.

## Regulators' progress since the super-complaint

We recognise that solutions are complex and can take time to develop and implement. But this has to be balanced with taking quick, effective action to remedy these market failures - especially for vulnerable customers. Regulators are failing in their duties to protect consumers' interests each day they allow the loyalty penalty to continue.

So far only minimal progress has been made:

- **Mortgages:** Loyal consumers lose £530 million a year<sup>3</sup>. In March the FCA published its 'Mortgages Market Study Final Report'<sup>4</sup>. We were disappointed that the study found that 'harm is significant' for long-standing mortgage customers but the FCA didn't put forward a concrete plan on how it will tackle this harm.

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<sup>1</sup> Competition and Markets Authority, [Tackling the loyalty penalty](#), 2018

<sup>2</sup> Competition and Markets Authority loyalty penalty investigation report: [government response](#), 2019

<sup>3</sup> Citizens Advice, [Excessive prices for disengaged Consumers](#), 2018

<sup>4</sup> Financial Conduct Authority, 'Mortgages Market Study: MS16/2', 2019

Instead, the FCA will be undertaking research into the characteristics of consumers who don't switch, what banks are already doing to help, and what the barriers and remedies might be. We are in ongoing discussions with the FCA.

- **Broadband:** Loyal customers lose over £1bn a year.<sup>5</sup> Ofcom has now published a review of pricing practices in fixed broadband, confirming our findings.<sup>6</sup> While it's encouraging that some broadband providers have voluntarily committed to protect customers who face barriers to getting better deals, this doesn't go far enough to tackle the scale of the problem. A final decision is expected by March 2020.

Ofcom has also published a consultation proposing a new general condition to protect consumer interests by requiring all providers to participate in trials, such as collective switching, to boost customer engagement.<sup>7</sup> It will publish a statement early 2020.

Earlier this year, Ofcom decided to require firms to send broadband consumers a reminder at the end of their contract.<sup>8</sup> The record of these interventions in other markets suggests that this will lead to a modest, but welcome, increase in switching and reduction in the loyalty penalty.<sup>9</sup> However, it will not be sufficient to meaningfully tackle the problem.

- **Mobile:** Loyal customers lose £182 million a year<sup>10</sup>. Ofcom has now consulted on its proposed remedies in the mobiles market. As part of this, it has come to voluntary arrangements with providers - except for Three - to implement auto-switching and handset discounting by February 2020.<sup>11</sup>

Ofcom has also published a statement on requiring providers to send end of contract and annual out of contract notifications to all mobile and broadband customers.<sup>12</sup>

- **Insurance:** Loyal customers lose £709 million a year<sup>13</sup>. Last October, the FCA published "General Insurance Pricing Practices, terms of reference, market study

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<sup>5</sup> Citizens Advice, [Excessive prices for disengaged Consumers](#), 2018

<sup>6</sup> Ofcom, [Helping consumers get better deals: A review of pricing practices in fixed broadband](#), 2019

<sup>7</sup> Ofcom, [Trialling consumer remedies](#), 2019

<sup>8</sup> [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#), Ofcom, 2019

<sup>9</sup> Citizens Advice, [Excessive prices for disengaged Consumers](#), 2018

<sup>10</sup> Ofcom, [Statement and consultation: Helping consumers to get better deals in communications markets – mobile handsets](#), 2019

<sup>11</sup> Ofcom, [Statement and consultation: Helping consumers to get better deals in communications markets – mobile handsets](#), 2019

<sup>12</sup> Ofcom, [Statement: Helping consumers get better deals - end-of-contract notifications and annual best tariff information](#), 2019

<sup>13</sup> Citizens Advice, [Excessive prices for disengaged Consumers](#), 2018

of home and motor insurance."<sup>14</sup> We responded to this, and an interim report is scheduled for publication this October.<sup>15</sup>

More recently, we published analysis that showed insurance companies make 100% of their profits from the loyalty penalty.<sup>16</sup>

- **Savings:** Loyal customers lose £1.1 billion a year<sup>17</sup>. The FCA published a discussion paper<sup>18</sup> on price discrimination in the cash savings market in July 2018. We responded to the paper and supported the idea of introducing a Basic Savings Rate (BSR).

The FCA is due to publish an update on their price discrimination paper in the cash savings market in the second half of 2019. It is not clear yet what position it will take on a BSR.

## How the government can act to end the loyalty penalty

The forthcoming Consumer White Paper provides a timely opportunity for the government to take swift action.

### Restrict ongoing stealth price hikes

Government should take action to restrict ongoing stealth price hikes (called 'price-walking' by the CMA). The CMA found that price changes that are not driven by underlying costs are concerning<sup>19</sup>. Government should take cross-market action to crack down on this practice, banning or restricting price increases that people do not sign up to in their initial contract and that are not related to underlying changes in cost.

### Give regulators more power where needed

Often vulnerable consumers pay the highest price for loyalty. The government should, as it has in energy<sup>20</sup>, give other regulators the mandate and duty to implement price protections for vulnerable consumers where needed and appropriate.

It should enhance regulators' enforcement powers and ensure that adequate data sharing arrangements are in place to enable firms to identify vulnerable consumers, allowing them to put them on to good value deals.

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<sup>14</sup> Financial Conduct Authority, 'MS18/1: General insurance pricing practices market study', 2018

<sup>15</sup> Financial Conduct Authority, [MS18/1: General insurance pricing practices market study](#), last updated 2019

<sup>16</sup> Citizens Advice, 'Home insurance companies make 100% of their profits from the loyalty penalty', 2019

<sup>17</sup> Citizens Advice, [Excessive prices for disengaged Consumers](#), 2018

<sup>18</sup> Financial Conduct Authority, 'DP18/6: Price discrimination in the cash savings market', 2018

<sup>19</sup> Competition and Markets Authority, [Tackling the loyalty penalty](#), 2018

<sup>20</sup> Clause 3(2) & Clause 9(2) Domestic Gas and Electricity (Tariff Cap) Act 2018

Lord Tyrie's proposals to give the CMA a statutory consumer duty, rather than just a duty to advance competition in consumers' interests, are a critical part of this.<sup>21</sup> In some of the markets where the loyalty penalty is prevalent, the problem is not due to ineffective competition alone. Rather, markets that are highly competitive for new customers but in some cases are leading to unacceptable outcomes for loyal consumers. Giving the CMA a wider consumer remit would give them the power to tackle this and other unacceptable consumer outcomes more effectively. Giving the CMA the direct power to decide infringements of consumer law and impose penalties would also help to reduce the loyalty penalty, insofar as certain practices are in breach of existing law.

### **Government should tackle unfair business practices**

The CMA rightly notes unfair business practices make people even more liable to the loyalty penalty. It has been over 2 years since the government committed to tackling subscription traps<sup>22</sup> - it should now take action to make contracts as easy to exit as to enter into, to ensure consumers default to opting out of subscriptions rather than in, and to reform Continuous Payment Authorities<sup>23</sup>. The CMA also found widespread unfair exit fees in markets where a loyalty penalty is present, which we also recommend the government take action on<sup>24</sup>.

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<sup>21</sup> [Letter from Andrew Tyrie](#) to the Secretary of State for Business, Energy and Industrial Strategy, 2019

<sup>22</sup> Government, [Spring Budget - policy documents](#), 2017

<sup>23</sup> Citizens Advice (on behalf of the Consumer Protection Partnership), Proposal to tackle subscription traps, 2018

<sup>24</sup> Competition and Markets Authority, [Tackling the loyalty penalty](#), 2018