

Citizens Advice response to Ofcom consultation on end-of-contract and out-of-contract notifications

Summary

Citizens Advice supports Ofcom's proposals to require providers to notify mobile consumers when their contract is nearing an end, and to send a one-off notification to all out-of-contract consumers.

In the mobile and broadband market, consumers can pay an annual loyalty penalty of hundreds of millions of pounds. This arises because consumers remain in their contract once the minimum term has ended. Timely, well-designed notifications will help to address the loyalty penalty in both markets, by informing customers of their options once their contract ends and encouraging some to take action. Too few consumers currently know their options, for instance that they could save by switching to a SIM-only deal.

Consumers should be informed of their options, particularly if they can save money. However, for notifications to be effective at encouraging consumers to switch they need to be well designed. Ofcom should:

- **Conduct randomised control trials (RCTs) to determine the most effective notification content and timing**
- Require providers to send **more than one end-of-contract notification to mobile consumers**
- Considering whether **broadband and mobile consumers should receive different notifications** to reflect the difference in the way that consumers are penalised in these markets

In addition, whilst Citizens Advice supports notifications, they will not be enough to end the loyalty penalty. **Ofcom should conduct further analysis of consumer detriment in the broadband market, and gather data on consumers who are already out of contract and how much they are overpaying by.** This information can form the basis of future remedies.

We were pleased to see Ofcom announce a consultation on a proposed solution to the problem of overpayment in the bundled mobile phone market.¹ We will be responding in due course. **Consumers who enter into these contracts *must* see their bills reduce at the end of the contract** to reflect the fact that they've paid off the handset component.

¹ Ofcom, [Helping consumers to get better deals in communications markets: mobile handsets](#), 26 September 2018

The loyalty penalty

In the mobile and broadband market, millions of consumers remain in their contracts once the minimum term has ended. As a result they pay a loyalty penalty, costing them hundreds of millions of pounds each year.²

In the mobile market, 1 in 3 consumers on a bundled mobile phone contract continue to pay for the handset once the minimum term has ended, in effect paying for a handset they already own. This arises because these contracts do not distinguish between the phone and the mobile service. The consumer signs a single agreement and pays a single price for both elements of the service. The phone is supplied as part of the package, but there is no information on how much of the monthly bill goes towards the phone. When the contract ends, the price remains the same. At this point consumers have in effect paid for the handset, but they continue to be charged for it. Our analysis found that the average monthly handset loyalty penalty is £22 per month, with 4 million consumers overpaying by £490m after the end of their last contract.³

For broadband consumers, monthly prices rise by an average of 43% (£113) when the minimum terms ends. This price rise is rarely included in advertising and it is often hard to locate on providers' websites. Consumers are often unaware of these rises: 2 in 5 (39%) broadband customers surveyed believe that long-standing customers pay the same or less than newer customers.⁴ Price rises at the end of minimum contract terms are not unique to the broadband market, but extent of this rise is particularly sharp.

This is, in effect, a systematic scam. Nobody would choose to pay these extortionate sums—companies charge these prices solely in the hope that people won't notice. And many don't. In response, we have recently used our statutory powers to issue a super-complaint to the Competition and Markets Authority (CMA), estimating that loyal consumers pay a £4.1bn premium across essential services markets, with vulnerable consumers hit hardest. For instance, customers aged 65 and over are more than twice as likely than younger customers to have been in the same contract for over 10 years.⁵

² Citizens Advice, [Excessive prices for disengaged consumers: A super-complaint to the Competition and Markets Authority](#), September 2018

³ Citizens Advice, [Reviewing Bundled Handsets](#), September 2018

⁴ Citizens Advice, [Excessive prices for disengaged consumers: A super-complaint to the Competition and Markets Authority](#), September 2018

⁵ *ibid.*

Citizens Advice supports end-of-contract and out-of-contract notifications in the mobile and broadband markets

We agree with Ofcom's proposals to require providers to notify mobile consumers when their contract is nearing an end, and to send a one-off notification to all out-of-contract consumers.

Notifications will help to ensure consumers are informed of the services they pay for, and their options when their contract ends. Notifications are used in other essential services markets. For example, Ofgem requires energy suppliers to notify consumers that their fixed-term is coming to an end between 42 and 49 days before the contract ends.⁶ Evidence from other markets suggest they will also encourage some consumers to switch.

Research by Ofcom has found that consumers are often not aware of the options available to them when their contract ends. 1 in 4 don't know that they can save money by switching to a SIM-only deal.⁷ In addition, 1 in 7 (14%) are unaware of whether they are within or outside of their contract, whilst 12% are unsure of when their contract ends.⁸

Many struggle to navigate the available options - 1 in 3 (33%) consumers paying the broadband loyalty penalty believe they are already on the best deal.⁹ Vulnerable people are particularly likely to find this process difficult and as a result, many disengage. For example, 25% of people aged 65 or over did not shop around before entering their current broadband contract. People are even less likely to explore the market once they have entered into a contract - over 70% of both broadband and mobile customers have undertaken very little or no shopping around to examine various options in the market.¹⁰

Citizens Advice research has found that as many as 3 in 4 (75%) of broadband customers are not aware of ever being notified by their current provider that they could save money by moving to a cheaper deal.¹¹ This doesn't necessarily suggest that they are failing to inform consumers altogether, but it suggests that, even when firms are notifying consumers, their communications are often ineffective.

⁶ Ofgem, [Tougher rules on fixed term energy deals come into force as Ofgem's retail market reforms begin to bite](#), October 2013

⁷ Ofcom, [Consultation on end-of-contract and out-of-contract notifications](#), July 2018

⁸ Ofcom, [Helping consumers to engage in communications market - next steps](#), April 2018

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ Citizens Advice, [The cost of loyalty: exploring how long-standing customers pay more for essential services](#), February 2018

Ofcom propose that providers should send notifications that include:

- The date the minimum contract period ends, making it clear that early termination fees will not apply after that period
- The options available to the customer after the minimum contract period has ended, including a message that the customer may be able to make savings by exploring the available options and that they could switch to a SIM-only contract
- The monthly subscription price currently paid by the customer

Any promotional material will also have to appear at the end of the message. These proposals are a welcome improvement on current practice, whereby most messages sent to consumers at the end of the contract are marketing communications intended to get consumers to sign up to a new contract and upgrade to a new handset.¹² **However, Ofcom's proposals should be strengthened by:**

- Conducting randomised control trials (RCTs) to determine the most effective content and timing of notifications
- Requiring providers to send more than one end-of-contract notification to mobile consumers
- Considering whether broadband and mobile consumers should receive different notifications

Ofcom should conduct randomised control trials (RCTs) to determine the most effective content and timing of notifications

Ofcom has conducted 'remedy testing' to determine which messaging content consumers think would be most useful to include in a notification. This is valuable, but the experience of other regulators suggests that the best way of determining the most effective disclosure remedy is to conduct randomised control trials.

The Behavioural Insights Team also recommends using randomised control trials to improve outcomes in consumer markets:

"We strongly suggest conducting randomised control trials in the field to test the impact of information provision in particular, instead of relying on focus groups or internal testing...For example, bills, annual statements, and product

¹² End-of-contract notifications shared by providers with Citizens Advice; Ofcom, [Consultation on end-of-contract and out-of-contract notifications](#), July 2018

end notifications, as well as the ways terms and conditions are communicated, can benefit greatly from the use of randomised controlled trials to test the most effective messages to promote consumer engagement”¹³

RCTs are becoming the norm in consumer markets, exemplified by the work of the FCA and Ofgem. Ofcom should consider the work of these other regulators when designing disclosure remedies.

In 2015 the FCA conducted large scale trials designed to measure the impact of different types of renewal notices for customers switching or negotiating their home or motor insurance policy at renewal.¹⁴ It found that some changes to notifications - such as simplifying them, sending information leaflets and reminders - had little or no impact on consumer behaviour. However, putting the previous year’s premium on renewal notices caused a 3.2% increase in consumers switching or negotiating their home insurance policy.

Similarly, in 2017 Ofgem trialled sending two different types of letters to consumers who had been on a default tariff for more than a year - one from their supplier, and one from Ofgem. Both letters showed personalised cheaper deals from rival suppliers. Results were compared to a control group that did not receive a letter. The Ofgem branded letter led to a switching rate of 2.4% compared to the control groups’ 1%, however the supplier-branded letter led to a 3.4% switching rate.¹⁵ Both these examples demonstrate how small changes can have a significant impact on the effectiveness of remedies designed to influence consumer behaviour.

Ofcom should require providers to send more than one end-of-contract notification to mobile consumers

Under Ofcom’s proposals, providers would be required to send a single notification between 40 and 70 days before consumers reach the end of the minimum contract period. All out-of-contract consumers would also receive a single notification.

Behavioural insights hold that for demand-side remedies to be effective, they should be timely.¹⁶ Consumers should be prompted a time they are most likely

¹³ The Behavioural Insights Team, [Applying behavioural insights to regulated markets](#), May 2016

¹⁴ Financial Conduct Authority, [Occasional Paper No.12 Encouraging consumers to act at renewal: Evidence from field trials in the home and motor insurance markets](#), December 2015. Data from three home insurance companies, not market wide

¹⁵ The Behavioural Insights Team, [One letter that triples switching](#), February 2018.

¹⁶ The Behavioural Insights Team, [EAST: Four simple ways to apply behavioural insights](#), April 2014 report

to be receptive, and crucially are also able to take action; the same message at a different time can have drastically different effects.

One problem with implementing a timely reminder in the mobile market is that providers begin contacting consumers when their contracts are nearing an end, encouraging them to upgrade and enter a new contract. There is a risk that if notifications are sent too late that some consumers will already have upgraded without knowing that they could have saved money or explored all of their options fully. On the other hand, too early and consumers won't be able to switch because they will still be in their minimum contract period.

One solution is to require providers to send two notifications. Many already send more than this, so it would not amount to overloading consumers with information. The exact content of the two messages should be determined by RCTs, but there are important practical reasons for mandating two notifications instead of just one.

Notifications should reflect the different ways consumers are penalised for loyalty in the broadband and mobile markets

Consumers overpay in very different ways in the mobile and broadband market. In the broadband market the monthly price increases when the minimum contract period ends. However, in the mobile market the price remains the same, the penalty arises from the fact that the price should *reduce* to reflect the fact that the consumer has already paid off their handset.

It follows from this that the most effective notifications are likely to be different in each of these markets. Ofcom does propose that notifications sent to mobile consumers include an additional piece of information: they they could switch to a SIM-only deal. But it seems plausible that notifications could be varied in other ways.

For instance, notifying consumers that their price will rise when the contract ends could encourage more to take action, but this would not work in the mobile market where the price remains the same. Ofcom should consider whether consumption data might be a more effective lever to encourage consumers to take action. This should be tested as part of Ofcom's programme of RCTs.

Notifications alone will not be enough to prevent loyal consumers overpaying

Notifications fulfil an vital role: they help to inform consumers of important information about their contract, when its ending, and what their options are. They will also help *some* consumers to switch and avoid paying the loyalty penalty. But notifications - no matter how well designed - will not be enough to prevent consumers unfairly overpaying when their contract ends.

Behavioural insights can help to explain why consumers remain in their contracts and suffer the loyalty penalty. One of the strongest forces in consumer behaviour is inertia, also known as as the status quo bias.¹⁷ This describes people's tendency to stick with a previous decision. As a result, the way choices are designed can have a big impact on consumer behaviour, even when the economic incentives are clear.

We have recently submitted a super-complaint to the CMA, asking them to investigate the loyalty penalty and conduct a market study, considering what more can be done to encourage consumers to engage and to protect them from exploitation.¹⁸

In the mobile handset market, we were pleased to see Ofcom announce a consultation on a proposed solution to this problem for mobile consumers.¹⁹ Consumers who enter into these contracts *must* see their bills reduce at the end of the contract to reflect the fact that they've paid off the handset component. Moreover, it should not be up to consumers to opt-in to this reduction: no one would choose to pay for a handset they already own.

However, this proposal will clearly not benefit either broadband consumers, or mobile consumers who are already out of contract. Demand-side remedies can only go so far in resolving the loyalty penalty; previous research from Citizens Advice suggests that the following factors have limited the effectiveness of demand-side remedies:

1. People don't have the time to shop around anymore
2. Finding a good deal is a struggle
3. Vulnerable consumers are often unable to access the best deals

¹⁷ 4 Samuelson, W. and Zeckhauser, S., 'Status quo in decision making', 1988.

¹⁸ Citizens Advice, [Excessive prices for disengaged consumers: A super-complaint to the Competition and Markets Authority](#), September 2018

¹⁹ Ofcom, [Helping consumers to get better deals in communications markets: mobile handsets](#), 26 September 2018

4. The financial cost of switching is often prohibitively high
5. Fear of things going wrong puts people off taking action.²⁰

Further action will be needed to protect broadband consumers and people who are already out of contract.

Broadband loyalty penalty

In the broadband market, prices rise by an average of 43% when the minimum contract period ends. Remaining out of contract would therefore cost consumers an additional £113 over the course of a year.²¹ As set out above, notifications will only benefit a relatively small number of consumers. Many more will continue to overpay.

Ofcom should therefore investigate ways to address the loyalty penalty in the broadband market. Solutions should reflect the evolving nature of the market but one option could be the possibility of introducing requirements on providers to offer vulnerable customers their most competitive deal.²²

Ofcom should also require broadband companies to report how many of their customers are out of contract, how long they've been out of contract, and how much extra on average they are paying compared to in contract customers.²³ This data should be broken down by different demographic groups, including age and income. Gathering this information would ensure that policymakers are able to monitor the extent of the loyalty penalty in the the broadband market, and supply a substantial evidence base if further regulatory intervention becomes necessary.

Consumers who are already out of contract

Ofcom propose sending a one-off notification to all consumers who are out of contract. RCTs should determine whether more than one notification will be more effective for these consumers. However, as set out above notifications alone will not prevent consumers overpaying.

²⁰ Citizens Advice, [Excessive prices for disengaged consumers: A super-complaint to the Competition and Markets Authority](#), September 2018

²¹ Citizens Advice, [Exploring the loyalty penalty in the broadband market](#), April 2017

²² Citizens Advice, [The cost of loyalty: exploring how long-standing customers pay more for essential services](#), February 2018

²³ Citizens Advice, [The cost of loyalty: exploring how long-standing customers pay more for essential services](#), February 2018

The Government's Green Paper, *Modernising Consumer Markets*, set out an ambition for reducing the loyalty penalty in regulated markets. One of the Green Paper proposals was to direct regulators to produce scorecards to provide 'a set of comparable data on consumer outcomes such as price differentials, consumer engagement, service quality, and complaints across these sectors.' If the Government is going to meet its ambition to end unfair price differentials in other markets, it will need to be able to measure them accurately - both in terms of how many people are overpaying and for how long.²⁴

Ofcom should consider using its new information gathering powers to develop these metrics. This information could then form the basis of future remedies for these consumers.

²⁴ Citizens Advice, [Modernising consumer markets: Citizens Advice formal consultation response](#), July 2018