Consultation Response

Ref 4018

Response to CMA call for views on the loyalty penalty super-complaint

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Age UK

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, we help more than seven million older people each year by providing advice and support. We also research and campaign on the issues that matter most to older people. Our work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

About this consultation

In September 2018, Citizens Advice submitted a super-complaint to the Competition and Markets Authority (CMA) on excessive prices for disengaged consumers, i.e. the 'loyalty penalty'.[1] It covers five essential service markets across financial services and telecoms – insurance, savings, mortgages, mobile and broadband. The CMA is seeking evidence and views on the super-complaint.[2]

Key points

1. We strongly welcome the super-complaint. Older people are particularly likely to experience the loyalty penalty for a range of essential products and services, and less likely to be aware of it.
2. Many older people face challenges and experiences that make them vulnerable, in the sense of being unable to engage in markets and so more exposed to the loyalty penalty. These include health conditions, disabilities, loneliness and isolation, cognitive impairment, digital exclusion and life experience.
3. However, it is the structure of markets (e.g. complex tariffs, large number of firms, need for consumers to switch constantly) and the conduct of firms (e.g. high renewal price increases, loss-leading prices for new customers) that create the harm caused by the loyalty penalty. The CMA should focus on addressing these.
4. We think the loyalty penalty is fundamentally problematic. The CMA should identify interventions to protect *all* consumers as well as additional protections for the poorest and most vulnerable consumers. More broadly, it should consider ways in which markets can function better by moving away from loss-leading pricing and constant switching towards longer-term value.
5. We agree there are severe limits to the effectiveness of information-based remedies, and that there is a need for a cross-sectoral approach.
6. The CMA should also look at cases where consumers have a complex package of products, and propose strong remedies to tackle cases where firms sell customers products that are not relevant or appropriate, e.g. broadband in a package for someone who doesn't have a computer.

Q1. What are your views on the **existence**, **impact** and **root causes** of a 'loyalty penalty' for consumers across markets; including the five identified by Citizens Advice (mobile, broadband, savings accounts, home insurance and mortgages) and any others?

The existence of the loyalty penalty

Age UK strongly supports the super-complaint. We see evidence through our information and advice line and other services of older people facing significant barriers to engaging in essential service markets and experiencing disadvantage as a result. We have reported on this in a number of areas, including –

- The CMA's energy market investigation[3] and Ofgem's consultation on the vulnerable customer safeguard tariff.[4]
- The CMA's market study into digital comparison tools.[5]
- The Government's consumer markets green paper.[6]
- Presenting at the CMA roundtable on older people and consumer vulnerability in September 2018.
- The Government's consultation on quicker switching.[7]

Older people are particularly likely to experience the loyalty penalty, as evidenced by Citizens Advice. For example, according to Citizens Advice, more than half of people aged 65+ pay the penalty on home insurance compared to 45 per cent of those 18-64. Further, a quarter (26%) had been on their current policy for 5+ years compared to 1 in 6 (16%) of those 18-64. The FCA has shown that a home insurance customer who has been with the same firm for 5 years can pay 70 per cent more than a new customer.[8] We also note that home insurance represents the highest estimated proportion (47%) and number (12m) of customers affected by the loyalty penalty.

People aged 65+ are also 22 per cent more likely to find that loyalty is penalised in the savings market and 20 per cent more likely for their broadband contract. They are also 11 per cent more likely to have been on their mobile contract for 5+ years.[9]

In some cases, older people are pressured or misled into paying for services they do not need or want. Citizens Advice highlights this through the case study of 'Sameera'. This echoes similar cases we have seen, including that of 'Eleanor' in Box 1. The CMA should look at this issue and consider the potential remedies we suggest under Q4.

Box 1: Eleanor, excessive telecoms package

'Eleanor' is in her 80s, on a very low income and with debt problems.
Age UK advisors discovered she was paying >£150pm on a package for TV, broadband, landline and mobile.
This was a huge sum to her and the package was completely inappropriate. She was paying for –

- Extra TV channels, despite only watching standard ones.
- Two mobiles, despite only using one.
- Unlimited broadband, despite very limited use.

(Source: local Age UK advisor, name and other details changed)

The impact of the loyalty penalty

As Citizens Advice shows, the loyalty premium makes up a higher proportion of spending for people on low incomes. Despite progress made in recent years, many older people still face financial hardship. One in six (16%) pensioners live in poverty, including 9 per cent living in severe poverty. A further one in ten (9%) have incomes just above the poverty line and therefore could find that high expenditure pushes them into effective poverty. Older pensioners (aged 80+), women, single people living alone, private and social tenants, and people from black and ethnic minorities are at particular risk of poverty.[10]

Given this, those older people in or at risk of poverty and experiencing the loyalty penalty are missing out on hundreds of pounds that would make a substantial difference to their quality of life. Independent evaluation of an Age UK service that helps people to maximise their income through claiming benefits shows that people spent their increased income on a range of important basics, including buying food, home repairs, paying bills and keeping their home adequately warm.[11]

Q2. Are there circumstances in which you think a 'loyalty penalty' is not problematic at all or where it is **particularly problematic**, and if so why?
Q3. What specific additional challenges do **vulnerable consumers** experience and should there be **additional protections**?

In principle, we think the loyalty penalty is problematic for *all* consumers. We are very concerned by the common practice of firms attracting new customers with loss-leading prices, with the losses effectively clawed back through the much higher prices paid by existing ('loyal') customers. This is not only unfair and in some cases harmful to consumers – particularly low income and vulnerable people – but it also subverts competition by posing a big barrier to new entrants. It also means we have essential service markets where consumers have to constantly switch to secure good value. Indeed, some advocate an end to automatic renewal of e.g. general insurance. We think this is unrealistic, because older and vulnerable people face significant barriers to switching – outlined below – and the implications of inadvertently being left without an essential product can be very serious.

Given this, the CMA should look at the loyalty penalty as it affects all consumers, and consider the following broader questions –

- How can we develop markets that offer *longer-term* value to consumers, rather than requiring continual switching? Long-term deals (e.g. fixed-price energy deals) are sometimes proposed as a solution but they bring their own problems, e.g. being locked in or having to pay an exit penalty.
- How can we address the challenges facing firms that try to offer longer-term value to consumers?
- What is the role of initial discounting? We think it is important that discounts are paid for out of firms' profit margins rather than clawed back from loyal customers.

However, the CMA should particularly consider areas where the loyalty penalty is particularly problematic, including where

- it affects vulnerable and low income consumers,
- the scale of annual price increases is exploitative, and
- there is an intersection with protected characteristics under the Equality Act, e.g. where loyalty penalties indirectly discriminate against older people.

Older people and consumer vulnerability

Here we briefly outline some of the experiences and challenges many older people face that, often when combined with market structure and firms' behaviour, make it difficult or impossible for them to fully engage in markets and so more likely to experience the loyalty penalty.

Managing **health conditions** and taking medication can affect someone's ability to be an active consumer. Half (47%) of people 75+ have a limiting longstanding illness[12] and by our mid-80s, approximately 20% have 5 or more.[13] There are also particular implications for travel insurance where firms charge extra for health conditions and it is difficult to tell what is a justifiable extra premium and what is a loyalty penalty.

Disabilities, including **sensory impairments**, can make it difficult for people to engage in markets, for example by using price comparison websites or speaking to firms on the phone. Half (50%) of people aged 90+ have sight loss affecting their day-to-day living.[14] Four in ten (40%) people 50+ have some form of hearing loss.[15]

People experiencing **cognitive impairment** are often less able to assess and remember complex information and make accurate decisions. Around 850,000 people live with dementia in the UK.[16] Normal cognitive ageing means that many people not experiencing a cognitive impairment disease may nonetheless find it more difficult (or need more time) to deal with complex decisions. However, people's cognitive skills change at different rates with age and it is important not to generalise or stereotype all older people as having diminished ability to make these decisions.

People experiencing **social isolation** or chronic or acute **loneliness**, for example following a **bereavement**, are often unable to engage in markets. The death of a partner can also mean that the surviving person has no experience dealing with budgeting or household finances. Bereavement is a more common experience among older people, and half (49%) of people aged 75+ live alone.[17]

These challenges can make it extremely difficult for consumers to call their existing firm and haggle (particularly as firms increasingly try to shift consumers towards websites rather than the telephone). This is problematic as haggling is a key way for consumers to avoid the loyalty penalty. According to Which? –

> '77% of people who haggled on insurance or telecoms were offered some sort of incentive – with 74% receiving a fixed discount on their payments.'[18]

Older people are more likely to be **digitally excluded** and so unable to use comparison and switching websites or access online tariffs. Half (47%) of people aged 75+ and one in five (18%) people aged 55-64 do not use the internet. Further, older people who are online conduct a more **limited range of activities**. Only 1 in 5 (20%) people aged 75+ do online banking, compared to half (52%) of all users.[19]

Finally, older people's **life experience** over a number of decades informs their ability to engage in markets. For example, the fact that they dealt with non-competitive utilities for a number of decades before the privatisations of the 1980s onwards means some people are unaware of the opportunities through switching provider or lack confidence to move.

The landline-only market is a good example of this. In developing a voluntary price cap for BT, Ofcom found –

> 'Standalone landline customers generally do not engage with the market: 70% of standalone landline customers have never switched provider or considered doing so. They tend to be older and less likely to shop around for a better deal.'[20]

This last point is particularly important in terms of the *loyalty* penalty. As Citizens Advice shows –

> 'Older people are significantly more likely to think that long-standing customers pay the same price as newer customers for their savings account (34% of those aged 65+ compared to 25% of those aged 18-24). This trend can be observed across other markets in a less pronounced fashion.'[21]

The case study in Box 2 illustrates some of these points.

Box 2: Mr A, home insurance

Mr A was in his 80s, living with dementia. He didn't use a computer and his wife, who managed household expenses, had died.
His nephew noticed he was paying £1,400 on home insurance, when he could be paying as little as £150.
He had been with his insurer for 15 years, originally paying £200. He had automatically renewed every year and never made a claim.
In response, his insurer said the quotes on its own website were much lower due to 'online discounts'.

(Source: Financial Ombudsman Service, 2018[22])

While the challenges and experiences outlined above make it difficult for some consumers to engage in markets, **it is the way markets are structured (e.g. complex tariffs, large number of firms, need for consumers to switch constantly) and the conduct of firms (e.g. high renewal price increases, loss-leading prices for new customers) that create the harm caused by the loyalty penalty.** The CMA should develop recommendations to reflect this.

Q4. What **measures** to tackle any 'loyalty penalty' should be considered, including those suggested by Citizens Advice and any others? Please explain how these measures would effectively address the problem.

We agree with Citizens Advice that there are limits to the effectiveness of information remedies. We welcome those remedies that do have some impact, including the recent Ofgem trial that simplified the process and allowed consumers to confirm the switch by phone. This had a higher switching rate than other interventions, including among older people. Nonetheless, the switching rate of 22 per cent shows that further action is needed.[23]

We also agree that there is a need for a cross-sectoral approach. Without this, there is a chance that multiple regulators will develop similar but slightly different or differently named consumer-facing interventions, that risk confusing consumers and causing them to disengage further. A cross-sectoral approach could identify bad practice as well as good practice across markets. Given the well-known barriers to engaging in markets, cross-sectoral remedies could simplify consumers' experiences and indeed have the potential to make it easier for (some) consumers to engage across multiple markets.

As discussed above, we recommend that CMA particularly look at –

- the role of initial 'loss leader' pricing in key markets.
- multi-product packages, which are particularly common in the telecoms market and present an even higher level of complexity to consumers.

Lastly, the cases of 'Eleanor' in Box 1 and Sameera in the Citizens Advice super-complaint show that some firms pressure sell products that are not relevant or appropriate to a customer, for example because they don't own a mobile or computer. This is unacceptable and is particularly troubling when the customer is experiencing vulnerabilities such as cognitive impairment. The CMA should consider using its powers to make it clear to firms that upselling products in this way is unacceptable, and take enforcement action under its existing powers (e.g. unfair contract terms, misleading and aggressive sales practices) if necessary. At the very least, there should be a duty on firms to check that the customer actually has a computer or mobile. It should also review whether firms are in breach of the Mental Capacity Act through practices like this, or whether amendments need to be made to the Act.

[1] https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/excessive-prices-for-disengaged-consumers-a-super-complaint-to-the-competition-and-markets-authority/
[2] https://www.gov.uk/cma-cases/loyalty-penalty-super-complaint
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[9] https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Super-complaint%20-%20Excessive%20prices%20for%20disengaged%20consumers%20(1).pdf
[10] https://www.gov.uk/government/statistics/hbai-199495-to-201617-pensioners-data-tables Pensioner income data tables produced as part of the Households Below Average Income (HBAI) report, 1994/95 to 2016/17. Published 22.03.18 by DWP
[11] Warm and Well Programme Evaluation, August 2018, by Consilium
[12] The estimate is for the UK, based on Great Britain data from the General Lifestyle Survey 2011, Office for National Statistics, 2013
[13] Age UK and University of Exeter Medical School: *The Age UK almanac of disease patterns in later life* (2015)
[14] Living with sight loss: Updating the national picture. RNIB and NatCen, 2015
[15] Action on Hearing Loss: https://www.actiononhearingloss.org.uk/your-hearing/about-deafness-and-hearingloss/statistics.aspx, accessed 4th April 2016
[16] The Alzheimer's Society fact sheet 400, https://www.alzheimers.org.uk/download/downloads/id/3416/what_is_dementia.pdf accessed 28/03/17
[17] https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/health--wellbeing/rb_june15_lonelines_in_later_life_evidence_review.pdf
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