

# Consultation Response

Ref 2518

## Response to the Consumer Green Paper

July 2018

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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, the Charity helps 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 April 2018, the Department for Business, Energy and Industrial Strategy published a consumer green paper 'Modernising consumer markets'.<sup>1</sup> We have responded only to the questions we feel relevant to older people, grouped under broader themes.

## **Key points and recommendations**

1. Many older and vulnerable consumers experience poor outcomes in consumer markets, including exploitation of their loyalty. We agree there are limits to competition, and that there is a need to ensure reasonable outcomes for all consumers.
2. We agree that a multi-sector lens is important, for example, so that learning can be shared across industries, and so consumers can receive additional support across multiple essential services.
3. We are concerned about the risk of age discrimination arising through personalised pricing (now or in future), in breach of the Equality Act. Regulators should monitor this risk and be prepared to take action.
4. We are concerned about the risk that opaque algorithms result in unfair outcomes. There should be a 'presumption of transparency' principle, under which consumers can challenge firms' pricing decisions if they feel they have been treated unfairly.
5. We are concerned about data security; firms are better-placed than consumers to ensure data security in the context of increasing data portability.
6. Emerging technologies, including comparison and switching tools, risk excluding people who do not use the internet, including many older people.
7. We welcome the focus on consumer vulnerability. While important to look at dementia and cognitive impairment, we highlight the impact of frailty among older people, and the need for a broader definition and cross-sector approach. Regulators should continue to develop customer vulnerability data-sharing across sectors with informed consent.
8. Firms' practice around customer vulnerability needs to improve. However, they should also design products, services and support inclusively, so that, as far as possible, they don't need to know whether a customer is vulnerable, because their standard offer is accessible to the maximum range of consumers.
9. We share concerns about whether firms take advantage of consumers' behavioural biases when presenting information. Regulators should take stronger concerted action to address this risk.
10. Older people are at risk of a number of scams and poor practice, including in the home aids and adaptations market. We are deeply concerned that the public enforcement system lacks adequate resources. The Government should ensure it has enough funding to fulfil its duties, if necessary through fines or levies.

11. We support the proposal regarding civil court penalties.
12. The redress system should be improved, including through a shorter waiting period and a single ombudsman per sector. There is a structural problem about enforcing individuals' consumer rights, so we agree there should be an automatic right for consumers to access alternative dispute resolution in high harm sectors.
13. Older people experience a range of harm in the telecoms market, so we agree with proposals for a new consumer advocate, which should listen to the voice of older and vulnerable consumers.
14. We welcome the CMA's recent approach, including its focus on care homes and vulnerable consumers. We recommend it prioritise industries that are especially important to vulnerable consumers, such as home aids and adaptations.
15. There is a risk that older and vulnerable people experience lock-in or exclusion regarding 'internet of things' products and services.
16. User testing of terms and conditions for clarity, whether by regulators or firms, should include older and vulnerable consumers, but is no substitute for ensuring that terms and conditions are fair.

## **1. Support for the overall approach to competition outlined**

### ***The loyalty penalty***

Age UK welcomes many of the ideas outlined in the green paper, including the limits to relying purely on competition to achieve acceptable outcomes for all consumers. We know that many older and vulnerable people are disadvantaged in essential service markets – i.e. energy, insurance, banking, telecoms – and other markets, including being penalised for their loyalty. Recent work by Citizens Advice on the 'loyalty penalty' shows that people aged 65+ are especially likely to pay a significantly higher price than others for the same service in these markets.<sup>2</sup> Citizens Advice estimates the combined cost of loyalty in six key markets to be £987 per year.<sup>3</sup>

We have set out elsewhere the barriers that make it difficult for some older people to engage in markets,<sup>4</sup> including digital exclusion, lack of knowledge or trust in switching, cognitive impairment and other vulnerabilities. We strongly agree that 'no one should be exploited if they lack the time or capacity to engage and the vulnerable should be protected' [8]. However, it should also be unacceptable for firms to exploit consumer loyalty even for those consumers who don't face these barriers.

While we welcome innovative and effective information remedies and prompts, we also agree that 'simply relying on "engaging" consumers by providing them with more and more information has been shown not to be a wholly effective approach' [8]. Citizens Advice show that 'more than half (57%) of consumers in the energy market and three quarters (75%) of broadband customers, for example, are not aware of ever being notified by their current provider [that they could save money by moving to a cheaper deal].'<sup>5</sup> In addition, many consumers have limited ability to process often complex information, in some cases due to cognitive impairment. Further, firms don't always comply with information rules; the FCA recently found that some insurance providers are failing to meet new rules on price transparency at renewal.<sup>6</sup>

Therefore, we agree that there is a need, as set out in the green paper, to ensure that ‘all consumers should expect to get reasonable outcomes, even if they do not actively search for the best deal’ [38].

To ensure this Age UK wants to see the following –

- More concerted action across market sectors, for example, developing joint approaches to disengaged consumers following Ofgem’s work in this area. Although the UK Regulators Network (UKRN) is a valuable way of sharing information and approaches, we think regulators could be more efficient and consistent in doing so. There is also a risk that industries without sector-specific regulators fall through the net, leaving too great of a burden on the CMA.
- Consistent and tough penalties against firms who do not comply with duties around price transparency, renewal, better deals available elsewhere, etc.
- Regulators should continue to investigate markets to ensure that pricing is fair. We welcome recent price cap interventions in the landline and energy sectors, and encourage regulators to use this method of intervention where there is evidence of consumer harm and no effective alternative.

More broadly, we welcome the Government’s recognition of our ageing society in its ‘Grand Challenge missions’, and the important aim to ‘build markets for consumer products and services that better meet the needs of older people’.<sup>7</sup> Central to this should be a focus on *inclusive design*, where firms design products and services in such a way as to meet the needs of a wide range of consumers, not just ‘average’ ones facing no vulnerabilities or barriers.

### ***A multi-sector lens***

We welcome the recognition in the green paper that individual consumers deal with *multiple essential services* simultaneously – either separately or through bundled products – and would benefit from a more joined-up approach across sectors. For example, regulators should work together to develop accessible ways for older and vulnerable people to register any need for additional support (e.g. larger print, trusted third party helpers), across *multiple* essential services simultaneously. ‘Tell us once’ services are being developed, e.g. across the large banks, but progress is slow and regulators should require firms to accelerate it, subject to security and privacy requirements.

Another multi-sector function could be to ensure customers in vulnerable circumstances are on appropriate and fair backstop tariffs. An important multi-sector consideration should be to consider the implications of the Equality Act in relation to personalised pricing.

## **2. Digital markets, data and new technology**

Q7. As technology continues to develop, how do we maintain the right balance between supporting innovation in data use in consumer markets while also preserving strong privacy rights?

Q8. What challenges do digital markets pose for effective competition enforcement and what can be done to address them?

Q10. In what circumstances are personalised prices and search results being used? In which circumstances should it not be permitted? What evidence is there on harm to consumers?

### ***Personalised pricing and discrimination***

While we appreciate the benefits associated with some forms of personalised pricing, we share the key concern in the green paper that suppliers ‘have an increasingly greater ability to identify and segment consumers into different groups based on their individual characteristics or behaviour and charge some customers significantly more for the same goods or services’ [49]. More specifically, we are concerned about the risk of unfair age discrimination through personalised pricing, in breach of the Equality Act.

We are also concerned about exclusion of older or vulnerable consumers from certain product types altogether, as a result of price discrimination. For example, as medical technology develops, it is increasingly possible to identify people with some health conditions very early on, making them uninsurable and potentially resulting in socially undesirable behaviour such as not seeking testing. There is currently a moratorium until 2019 on the use of genetic testing in insurance underwriting to counter this, but we are concerned that personalised pricing could have similar effects in other markets (e.g. credit accounts that are used for payments).

Exclusion and unfair age discrimination are particularly unacceptable in essential service markets. Regulators should monitor over time whether firms personalise prices (or search results) on the basis of age, vulnerabilities, or proxies for these, and whether this results in unfair or harmful outcomes, or is in contravention of the Equality Act. Where there is evidence of problems, they should develop robust regulatory responses.

Regulators should also remain vigilant about more direct forms of age discrimination; a recent ruling in the USA found that a dating agency illegally discriminated against older people in its pricing.<sup>8</sup> Although there is an exemption for risk-based pricing under the Equality Act, there are requirements to meet, and there is evidence that some firms have failed to do so.<sup>9</sup>

We agree that ‘the use of algorithms by firms is a new challenge for competition law enforcement’ [111]. We are concerned about the risk that opaque algorithms might facilitate discrimination and unfair outcomes for older or vulnerable consumers. The FCA recently looked at the experiences of people with cancer trying to get travel insurance, finding that ‘there is a lack of transparency around how premiums are calculated and the risk factors that drive quotes. This makes it difficult for consumers to understand whether the quote is a true reflection of their condition.’<sup>10</sup>

In terms of enforcement, we appreciate the challenge of demonstrating non-compliance where pricing decisions are made through the application of complex algorithms, particularly where ‘machine learning’ means that algorithms and pricing decisions are constantly evolving. Therefore, the CMA should consider a ‘presumption of transparency’ principle, whereby the onus should be on firms to demonstrate the fairness or legality of their algorithms if challenged. Consumers should have a right to challenge firms’ pricing decisions if they feel they have been treated unfairly.

### **Data security**

We are also concerned about the risks to people’s data, in terms of data being breached or passed on to third parties who will exploit it. We do not think consumers are best-placed to protect their own data, particularly important in the context of increased data portability. Whereas young people are more likely to experience ID theft as a result of data being gleaned from social media, older people are more likely to experience it as a result of a data breach to one of their accounts.<sup>11</sup> Therefore, the onus should be on firms to protect consumers’ data in these circumstances.

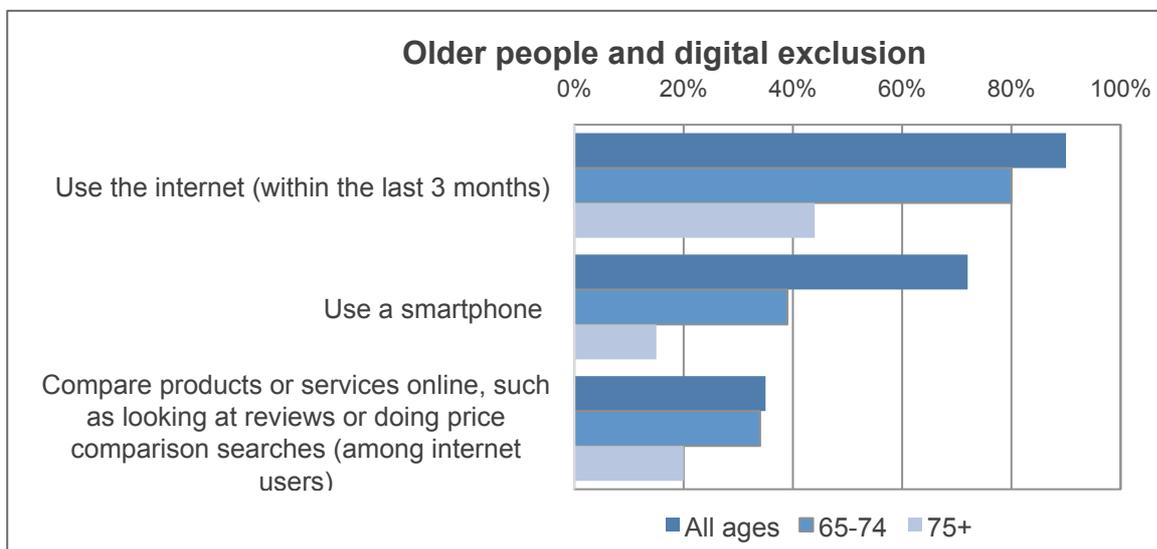
For example, older people are less likely to feel confident in knowing how to manage access to their personal data online; less than half (47%) of people aged 75+ feel very or fairly confident, compared to 85 per cent of those 16-24.<sup>12</sup> People aged 75+ are also less likely to be aware of the ways online companies collect information about what they do online (e.g. ‘cookies’, registering with a website, social media accounts).<sup>13</sup>

Even with high standards for protecting consumer data, breaches are likely to occur, so there must be strong expectations of firms in the event of loss, including making consumers aware that their data has been lost. Although we welcome GDPR as an important protection, it is new and consumers in vulnerable circumstances are those least able to seek redress under the new system, or to protect themselves.

### **Digital exclusion and emerging technologies**

We appreciate that new technologies such as price comparison websites and automatic switching apps can ‘save time and effort for consumers’ [55]. However, it is important to point out that many consumers are excluded from these because they do not use the internet.

Whereas virtually all (99%) 16-44 year olds use the internet, this falls to four in five (80%) of those aged 65-74 and four in ten (44%) of those aged 75+ (see the chart below).<sup>14</sup> While use of smartphones among older people is growing, there is still a minority of people aged 65-74 (39%) and 75+ (15%) using them.<sup>15</sup> Older people who do use the internet are also less likely to conduct various activities online, including banking, transactions and price comparison searches.<sup>16</sup> It is notable that levels of online banking have not increased markedly over the last couple of years – the proportion of internet users banking online actually fell slightly between 2016 and 2017 – suggesting that consumer demand (or ability) may be slowing.<sup>17</sup>



We expanded the points above in our response to the CMA market study into digital comparison tools (DCTs),<sup>18</sup> highlighting the need for DCTs to be fully accessible, including for vulnerable consumers, and for an ongoing assessment of the risk that those excluded from these services are significantly overcharged for essential services.

Finally, in focusing on emerging technologies and digital markets, the Government and regulators should not overlook consumer detriment in more *traditional* technologies and markets. We strongly welcomed the work Ofcom has done to highlight and address unfair pricing in the landline market, for example. An example of an ongoing issue is access to cash; there have been more than 2,800 branch closures in the past four years,<sup>19</sup> many in rural areas, plus 300 cashpoint closures per month.<sup>20</sup>

### 3. Consumer vulnerability

#### Q2. How can we ensure that the vulnerable and disengaged benefit from data portability?

We welcome the focus on fairness for consumers in vulnerable circumstances, particularly in essential service markets. Our perspective on older people and vulnerability is set out elsewhere,<sup>21</sup> and summarised in Box 1.

#### **Box 1: Summary of Age UK's view on consumer vulnerability**

Someone's resilience and well-being in later life depend on a number of factors: their financial resources, physical health, cognitive and mental health, family support and social engagement.

Vulnerability – in the sense of being at particular risk of financial or personal harm – can arise from a shortfall or decline in one or more of these domains, for example from poor mental health, cognitive decline, the onset of physical disability or illness, or loneliness.

Some sources of risk may be long-term (e.g. physical decline) while others may be temporary (e.g. illness, bereavement).

Age should not automatically be equated with vulnerability. Many older people are capable and self-reliant and do not wish to be seen as 'vulnerable'. However, many people develop health conditions or face challenges such as bereavement as they grow older.

*Importantly, consumer vulnerability is not simply a reflection of people's circumstances; it is often caused or exacerbated by the behaviour of firms.*

*Attempts by regulators to address vulnerability therefore must consider this, rather than just how to identify a group of customers deemed 'vulnerable'.*

In terms of the green paper's focus on dementia and cognitive impairment, we see cases where people living with these need better support from firms, for example, around third party account management (Boxes 2 and 3). Firms must improve their systems so they work more smoothly for consumers in vulnerable circumstances and their family.

#### **Box 2: Power of attorney and switching bank account**

A caller to Age UK held a lasting power of attorney (LPA) for his mother, who was in her 80s and living with dementia. He wanted to switch his mother's current account and thought it would be straightforward to do online.

However, at the end of the process he was required to visit a branch with proof of his mother's identity. This was difficult because his mother had no driving licence or passport, and was housebound. He was unable to leave his mother on her own to visit the bank, plus the bus service was minimal. He said: 'I am at my wits end with all this. Caring for someone with dementia is hard enough without these further complications.'

**Box 3: Deputyship and moving into a care home**

A caller's parent was sectioned under the Mental Capacity Act and placed in a care home. The caller had applied for deputyship powers and was waiting for them to be finalised.

During this time, their parent's utility bills were outstanding and the supplier was pursuing payment through court.

They tried explaining the situation and reason for the delay to the supplier, but the supplier pressed ahead with court action.

One specific point to highlight is the limitation to systems that equate vulnerability to certain conditions such as specific disabilities or circumstances. These systems do not sit well with the needs of older people who are living with *frailty*, which NHS England defines as 'a loss of resilience that means people... do not bounce back quickly after a physical or mental illness, an accident or other stressful event.'<sup>22</sup> One in seven (14%) people aged 60+ live with frailty: these are people who may not have a single identifiable condition but who could be tipped into a seriously life-limiting stage or even a loss of independence following a consumer issue that might be easily overcome by someone who is fitter. Box 4 gives an example. Although the company may argue that it is not in a position to judge consumer needs in circumstances like this, all firms should build into their systems the flexibility to respond appropriately when people's vulnerabilities do become apparent: in an increasingly diverse world, business practices will need to alter.

**Box 4: A downward spiral**

A caller told us his mother, in her 80s, ordered a new sofa. However, when it arrived it was the wrong one.

The company re-ordered it but then delivered the wrong one again.

His mother has had a stroke and has a heart condition, and these errors with the sofa sent her into a downward spiral. The family tried hard to keep her calm.

The caller feels this is completely unacceptable practice.

Having discussed the importance of addressing dementia, cognitive impairment and frailty, we are also conscious of the need for a *broader and coherent* approach to vulnerability. It should be *broader* in the sense that it is not just a list of personal circumstances or conditions. While it is important to account for common circumstances – elsewhere<sup>23</sup> we have outlined things like bereavement, health conditions and physical impairments – a checklist can never be complete.

It should be *coherent* in that multiple regulators should take a similar (not necessarily identical) view of vulnerability to enable effective cross-sector interventions, including robust minimum standards for firms.

In practice, we expect firms to:

1. Create an environment in which customers are, and feel, safe to inform them of any additional needs they have.
2. Have systems and procedures in place to identify signs of customers who might need additional support or an adapted service. This should include customer-facing staff but also the use of customer data.
3. Design products, services and support *inclusively*, so that, as far as possible, they don't need to know whether a customer is vulnerable, because their standard offer is accessible to the maximum range of customers. This reflects the Government's Ageing Society Grand Challenge, where 'Ageing populations will create new demands for technologies, products and services.'<sup>24</sup>

We welcome early moves to increase sharing of data on vulnerable customers between firms and sectors, to enable more joined-up, consistent support. Regulators should explore the case for expanding this to other essential service sectors, such as telecoms. However, it would be essential that customers give informed consent and that there is extra protection to reduce the risk of data breach.

We would also like regulators to consider how data identifying vulnerable customers (such as a vulnerability 'flag') can be securely and reliably shared between firms when they switch providers.

### ***Behavioural biases***

We share concerns about whether firms take advantage of consumers' behavioural biases when presenting information, and welcome the CMA investigation into the online hotel booking market. The Government should consider how the learnings of this study can be applied in other sectors.

As well as assessing how firms' behaviour affects the 'average' consumer, the Government should look at how it affects older consumers, especially those experiencing decline in some cognitive skills. While ageing should not be simplistically associated with a decline in cognitive skills, some skills, such as reasoning and episodic memory, *on average* decline with age. This presents challenges in terms of assessing information and making good choices.

While we are encouraged by the number of firms who contact us asking about how they can improve their services for older people, there is a risk of stereotyping, looking at the average rather than the huge individual variation across the group. For example, firms may feel it's all too difficult to provide services for a 'high risk' group and put barriers in place (for example requiring a relative to vouch for someone's mental health), possibly breaching the Equality Act provisions on unfair discrimination. We appreciate the difficulty for firms of, on the one hand, meeting older consumers' needs, and, on the other, of avoiding stereotyping: this is why we strongly advocate inclusive design, as discussed

above. The Government's industrial strategy, with its 'Grand Challenge on Ageing', is an excellent opportunity to promote debate on inclusive design.

A very simple way to develop a less stereotypical approach would be to work with the market research industry (and their clients in the marketing industry) to improve segmentation of the older consumer market. Older people are too often categorised as being everyone over a certain age, which may sometimes mean that two generations could both be treated the same! We are aware that the Market Research Society has developed recommendations on age bands; this is a promising start but it would be helpful to know what impact this is having on the industry overall.

#### **4. Enforcing consumer protection**

Q16. What changes are needed to ensure local and national enforcers work together within an effective framework for protecting consumers?

##### ***Older people at risk***

Older people are at particular risk of a number of scams and poor practice, and need enhanced protection from these. Below we highlight three examples.

Firstly, the average age of *mass marketing scam* victims is 74, and they often live alone. These include lottery and prize draw scams, and bogus product scams. Victims aged 75-79 lose an average of £4,500, with many losing even more. The Alzheimer's Society estimates that 15 per cent of people living with dementia have been victims of nuisance phone calls, scam mail or mis-selling.<sup>25</sup>

Secondly, older people are especially likely to be victims of *doorstep rogue traders*, such as those extorting money for poor quality or non-existent home or garden improvements. We have seen cases where people who are vulnerable through living alone, being isolated or living with dementia, have lost over £25,000.

The impacts of being scammed through mass marketing scams or rogue traders can be devastating. People can lose huge amounts of money, in some cases even their life savings. But the impacts extend to people's physical and mental health and independence (Box 5).<sup>26</sup> On top of the personal harm caused, this increases demand on under-pressure public services like the NHS and social care. People defrauded in their own homes are 2.5 times more likely either to die or go into residential care within a year.<sup>27</sup>

##### **Box 5: Impacts on health and independence**

An Age UK service user raised concerns about his neighbour, an older woman who lived alone and was the victim of a doorstep scammer. She had vascular dementia and needed help with washing, dressing, preparing food, etc. But after being scammed she wouldn't open the door to anyone, leaving her to struggle to look after herself. She deteriorated to such a degree that another neighbour became concerned, and called an ambulance. She spent over a month in hospital and then moved into a care home.

Thirdly, we see evidence of companies selling *home aids and adaptations* in unfair and harmful ways, including cold calling and high-pressure sales tactics, grossly inflated prices, undelivered products and faulty installation. The consumers are often older people in their 80s or older and living with health conditions or disabilities. They rely on these products for daily living, leaving them highly vulnerable when things go wrong. See Boxes 6 and 7.

**Box 6: Broken stairlift, stuck upstairs**

A caller bought a new stairlift from a company who then said they were unable to fit it, despite previous promises to the contrary. The caller had already paid for it, and was left without a functioning stairlift, which they relied on. The company said it would try again to install it, but in the meantime the caller was stranded in their upstairs rooms.

**Box 7: Reclining chair not delivered**

A caller bought and paid for a sofa and a reclining chair in store. However, only the sofa was delivered. When she made enquiries, the shop said the chair order had been cancelled. She needed the chair for daily living – she had suffered a stroke and had arthritis and found it difficult to get out of her existing chair.

**Public enforcement**

We have significant concerns about whether local authorities have sufficient resources to enforce consumer protection law. Trading Standards services have a hugely important role, including in protecting older consumers from the harms discussed above. However, there have been severe cuts to local authority resources; recent analysis highlights a 50 per cent fall in Trading Standards spending in the last seven years.<sup>28</sup> In some areas, this fall has been higher than 60 per cent.<sup>29</sup> There has also been a 56 per cent reduction in Trading Standards officers between 2009 and 2016 – some services are down to just one qualified officer.<sup>30</sup> Two thirds of services (64%) feel they cannot recruit or retain skills. All this means that approaching half (43%) of services report that they cannot deal with the consumer detriment in their area.

Given the harm caused to consumers – particularly older and vulnerable ones – this is unacceptable. It is vitally important that Trading Standards services have adequate resources to meet their statutory duties. If the Government cannot increase public funding, it should find alternative sources of funds, such as fines or industry levies.

There is also a question as to how feasible it is long-term for a localised enforcement system to carry out enforcement in an increasingly globalised and digital world. The Government should consider whether there is a need for a more sustainable system that will more effectively protect consumers from harm and enforce the law. This may involve boosting the resources of agencies conducting enforcement activity at regional or national levels.

### **Civil court financial penalties**

Given the evidence we see of contract breaches and poor practice, including in the home aids and adaptations market as set out above and the care homes market, we support the proposal to give civil courts the power to impose financial penalties on companies for breaches of consumer law.

## **5. Consumer redress**

Q12. How can we improve consumer awareness and take-up of alternative dispute resolution?

Q13. What model of alternative dispute resolution provision would deliver the best experience for consumers?

We share many of the concerns about the alternative dispute resolution landscape raised by MoneySavingExpert,<sup>31</sup> including that –

- the landscape of different bodies is too complex and confusing, and getting more so in some industries where a number of competing schemes have been set up,
- the process is too slow (see the example in Box 8),
- customer experience needs to be better, and
- decisions need to be more consistently enforced (see the example in Box 9).

We also echo a number of MoneySavingExpert's recommendations –

- The 8-week waiting period before a consumer can use an ombudsman is too long and should be replaced with a shorter period. This can be an especially long time to wait for action for older and vulnerable consumers experiencing some kind of harm in the meantime. There should be exceptions so people in a crisis can escalate to an ombudsman sooner.
- Oversight of ombudsmen should be boosted, ensuring improved ease and speed of complaining.
- In principle, it is better to have a single ombudsman per sector. This would simplify the landscape for consumers, and give that ombudsman a stronger role in setting standards and improving business practice. However, there would need to be processes in place to monitor performance and tackle underperformance.
- There also needs to be stronger processes to ensure compliance with decisions.

Q14. How could we incentivise more businesses to participate in alternative dispute resolution?

Q15. Should there be an automatic right for consumers to access alternative dispute resolution in sectors with the highest levels of consumer harm?

There is a structural problem about enforcing individuals' consumer rights, so we agree there should be an automatic right for consumers to access alternative dispute resolution in high harm sectors. Further, the CMA and local authorities should prioritise sectors where people are less able to enforce their own rights. We look to the CMA to assess detriment and strengthen consumer protection in these areas, which could mean encouraging better redress arrangements. The funerals and home aids and adaptations sectors are two relevant markets.

**Box 8: Concern re 8-week deadlock period**

An older person described difficulties when switching energy supplier. Their new supplier said the switch had been blocked due to an outstanding balance, and their existing supplier more than tripled their direct debit payments without giving any notice.

The person took the case to an ombudsman but were frustrated at having wait eight weeks before they would look at it. They were on a low income and concerned about their financial situation during this period.

**Box 9: Ombudsman decision not enforced**

A local Age UK supported an older person to complain to an ombudsman about a telephone and broadband provider. The ombudsman instructed the company to do various things, but over a period of months they did not comply.

The Age UK wanted to know what powers the ombudsman had to enforce the decision, and if there was there anything they could do if it failed to enforce the decision?

The Government should also ensure that the system of redress in place for issues around data breaches is accessible and user-friendly.

**6. Consumer advocate for telecommunications**

Q5. Is there a need to change the current consumer advocacy arrangements in the telecommunications sector? If so, what arrangements would be most effective in delivering consumer benefits, including for those who are most vulnerable?

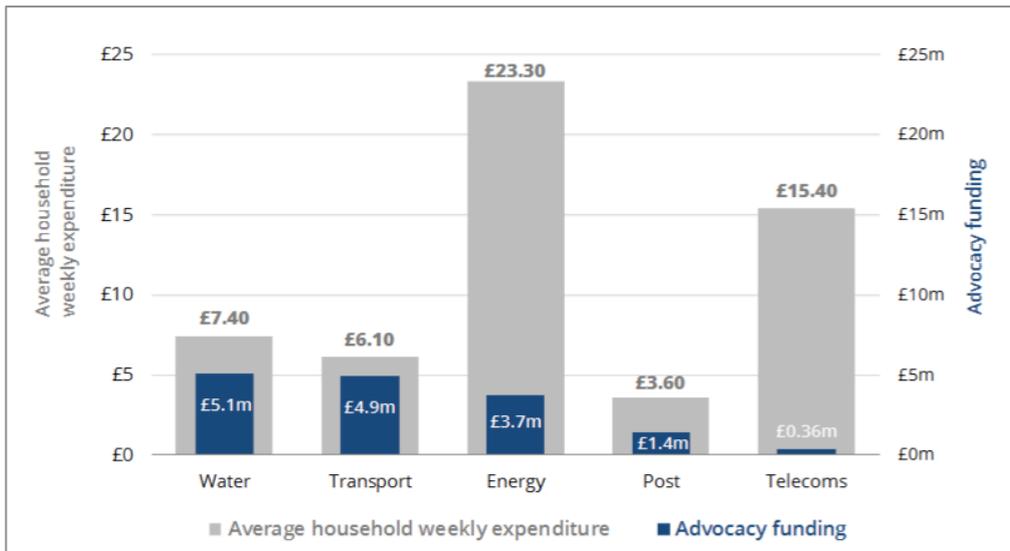
***The case for improved advocacy***

We agree that there is a need for stronger consumer advocacy in the telecoms sector; this could be in the form of a new consumer advocate for telecoms. Mobile and broadband are now essential services; many older people living alone and with health conditions or disabilities need these services to access support and contact family. Citizens Advice show there is a particularly high level of consumer detriment in this sector compared to others –

‘Consumer detriment most often occurs with TV, phone and internet services, which was by some distance the most frequently cited problem area – with at least 27.6 million problems experienced in this problem category, affecting 14.7 million individuals in the last 12 months and costing £4.2 billion.’<sup>32</sup>

Further, one in five telecoms consumers complained to their provider in the past two years – the highest figure for any market.<sup>33</sup>

We share Citizens Advice’s concern that independent consumer advocacy is under-resourced compared both to other essential services and to household spending on telecoms services, as illustrated in the chart below.<sup>34</sup>



### ***Harm experienced by older people***

At Age UK, we see evidence that older people face significant problems in the telecoms market, including nuisance calls, pressure selling, unfair pricing/‘loyalty penalty’, difficulties switching, being cut off and inadequate emergency repairs, and lack of access to broadband or mobile networks. In some cases, firms cause harm to people living with dementia or other vulnerabilities. See the examples in Boxes 10, 11 and 12.

One issue we want to highlight is that of *people being cut off by landline*, either due to a fault or payment issues, the risk this causes to vulnerable people, and the need for faster repairs and for visible and accessible priority service registers. It is not clear to us, from the cases we see, that the system for *priority fault repair* is fully effective.

There is also evidence that older people are particularly disadvantaged by firms exploiting their loyalty. For example, people aged 65+ are twice as likely to be on the same broadband contract for 10 years and paying much higher prices as a result.<sup>35</sup>

#### **Box 10: Cold call re landline contract**

A caller to Age UK told us how her step father, living with dementia, was persuaded by a telephone cold caller to switch his landline phone contract to them. After a number of months, she noticed he was paying hugely more than he could be. She felt he was being overcharged. She had authority to act on his behalf and was planning to speak to the company but was worried about being able to get him released from the contract.

#### **Box 11: Persistent nuisance calls**

A caller to Age UK said he was receiving ongoing nuisance calls from a company selling carbon monoxide alarms. He told them that he has an alarm already but they persistently call him. He doesn’t know what else he can do.

**Box 12: Delayed landline repair**

A caller to Age UK was worried about her father. He recently had an operation and needs to be in regular contact with family for support. However, there was a fault with his landline.

She asked their father's provider to organise a repair. It said it would be repaired within three days but a month passed and it was still not fixed. This put her father at risk.

She also wanted to know if phone providers have a priority service register.

A new consumer advocate should collect evidence on these and other issues, highlight this harm, propose remedies and penalise offending firms. It should also provide accessible support and advice to consumers. In all its functions, it should listen to the voices and experiences of older and vulnerable people. If the Government decides not to establish a new consumer advocate, it must improve advocacy in another way, such as through increasing the scope and funding for existing bodies.

**7. Role of the CMA**

Q20. Is the competition regime sufficiently equipped to manage emerging challenges, including the growth of fast-moving digital markets?

Q21. Do you agree with the approach set out in the draft Strategic Steer to the CMA? Are there any other areas you think should be included?

We welcome the CMA's recent approach of combining market studies with consumer protection work, as in its recent care homes market study, and its recent focus on consumer vulnerability.

We recommend the CMA identify and prioritise industries that are especially important to vulnerable consumers, where the harm caused to individuals by poor practice is significant. One example may be the *home aids and adaptations* industry; we see cases where poor practice causes significant hardship and stress for older and vulnerable people. Other key sectors could include home care and park homes.

**8. Other points*****Internet of things***

The green paper raises the risk that the 'Internet of Things could aggravate consumer lock-in if buying a smart product from one platform ties the consumer to that platform's system and it is incompatible with other platforms and products'. There is a risk that older and vulnerable consumers who are less able to shop around and switch experience this lock-in and exclusion from other platforms and products. They may also be locked into products and services that they do not want or need, or cannot access, as has been the case in the past with products such as packaged bank accounts (these charged a fee for bundled services such as travel insurance, without making it clear that people over a certain age could not benefit from the insurance).

We strongly believe that consumers who don't want to share their data should still be able to access products and services. The Government should monitor consumer marketplaces to ensure that firms do not find ways to make access conditional on sharing of data.

### **Terms and conditions**

Q11. Should terms and conditions in some sectors be required to reach a given level of comprehension, such as measured by online testing?

We welcome work to ensure terms and conditions and online privacy notices are comprehensible. We agree that firms 'should also regularly test whether their terms and conditions are intelligible to consumers as it should be in their interests for customers to understand the key facts about the products they are buying' [131]. All of this testing should include work with older and vulnerable consumers, including those experiencing cognitive impairment.

However, a more fundamental issue is that terms and conditions shouldn't just be comprehensible; they should be *fair*. Stronger enforcement action is needed to tackle the use of unfair terms. Age UK sees cases of this in the care homes and home aids and adaptations markets, to give just two examples (see Box 13). We welcome the new CMA guidance for care home providers, currently being consulted on, but this will need to be effectively monitored and enforced.

#### **Box 13: Care home unfair contract terms**

A caller to Age UK was concerned about his mother, who was in her 90s and had been living in a care home for more than five years.

The care home increased its fees by nearly £1,000 per month, without giving any written reasons.

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  - <sup>2</sup> <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Citizens%20Advice%20-%20The%20cost%20of%20loyalty.pdf>
  - <sup>3</sup> Ibid.
  - <sup>4</sup> [https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/crs\\_june16\\_bis\\_consumer\\_landscape\\_and\\_quicker\\_switching.pdf](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/crs_june16_bis_consumer_landscape_and_quicker_switching.pdf)
  - <sup>5</sup> <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Citizens%20Advice%20-%20The%20cost%20of%20loyalty.pdf>
  - <sup>6</sup> Ibid.
  - <sup>7</sup> <https://www.gov.uk/government/publications/industrial-strategy-the-grand-challenges/missions#healthy-lives>
  - <sup>8</sup> <https://www.bloomberg.com/news/articles/2018-05-09/tinder-gets-rejected-seven-judges-won-t-hear-its-ageism-defense>
  - <sup>9</sup> <http://www.ombudsman-decisions.org.uk/viewPDF.aspx?FileID=60137>
  - <sup>10</sup> <https://www.fca.org.uk/publication/feedback/fs18-01.pdf>
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  - <sup>12</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/00111/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/00111/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf)
  - <sup>13</sup> Ibid.
  - <sup>14</sup> <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2018>
  - <sup>15</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/102755/adults-media-use-attitudes-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/102755/adults-media-use-attitudes-2017.pdf)
  - <sup>16</sup> Ibid.
  - <sup>17</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/00111/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/00111/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf)
  - <sup>18</sup> [https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/money-matters/crs\\_may17\\_submission\\_to\\_cma\\_on\\_dct\\_market\\_study.pdf](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/money-matters/crs_may17_submission_to_cma_on_dct_market_study.pdf)
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  - <sup>21</sup> [https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/CR\\_May18\\_submission\\_to\\_the\\_commission\\_for\\_customers\\_in\\_vulnerable\\_circumstances.pdf](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/CR_May18_submission_to_the_commission_for_customers_in_vulnerable_circumstances.pdf)
  - <sup>22</sup> <https://www.england.nhs.uk/ourwork/itc-op-eolc/older-people/frailty/>
  - <sup>23</sup> [https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/crs\\_march17\\_ofgem\\_consultation\\_on\\_supplier\\_standards\\_of\\_conduct.pdf](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/crs_march17_ofgem_consultation_on_supplier_standards_of_conduct.pdf)
  - <sup>24</sup> <https://www.gov.uk/government/publications/industrial-strategy-the-grand-challenges/industrial-strategy-the-grand-challenges#ageing-society>
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  - <sup>27</sup> National Trading Standards Scams Team
  - <sup>28</sup> <https://www.tradingstandards.uk/media/documents/news--policy/surveys/ctsi-workforce-survey-2017.pdf>
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  - <sup>30</sup> Ibid.
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  - <sup>32</sup> [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Final\\_ConsumerDetriment\\_OE.pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Final_ConsumerDetriment_OE.pdf)
  - <sup>33</sup> Citizens Advice, presentation to the Consumer Forum for Communications, June 2018
  - <sup>34</sup> Ibid.
  - <sup>35</sup> Ibid.