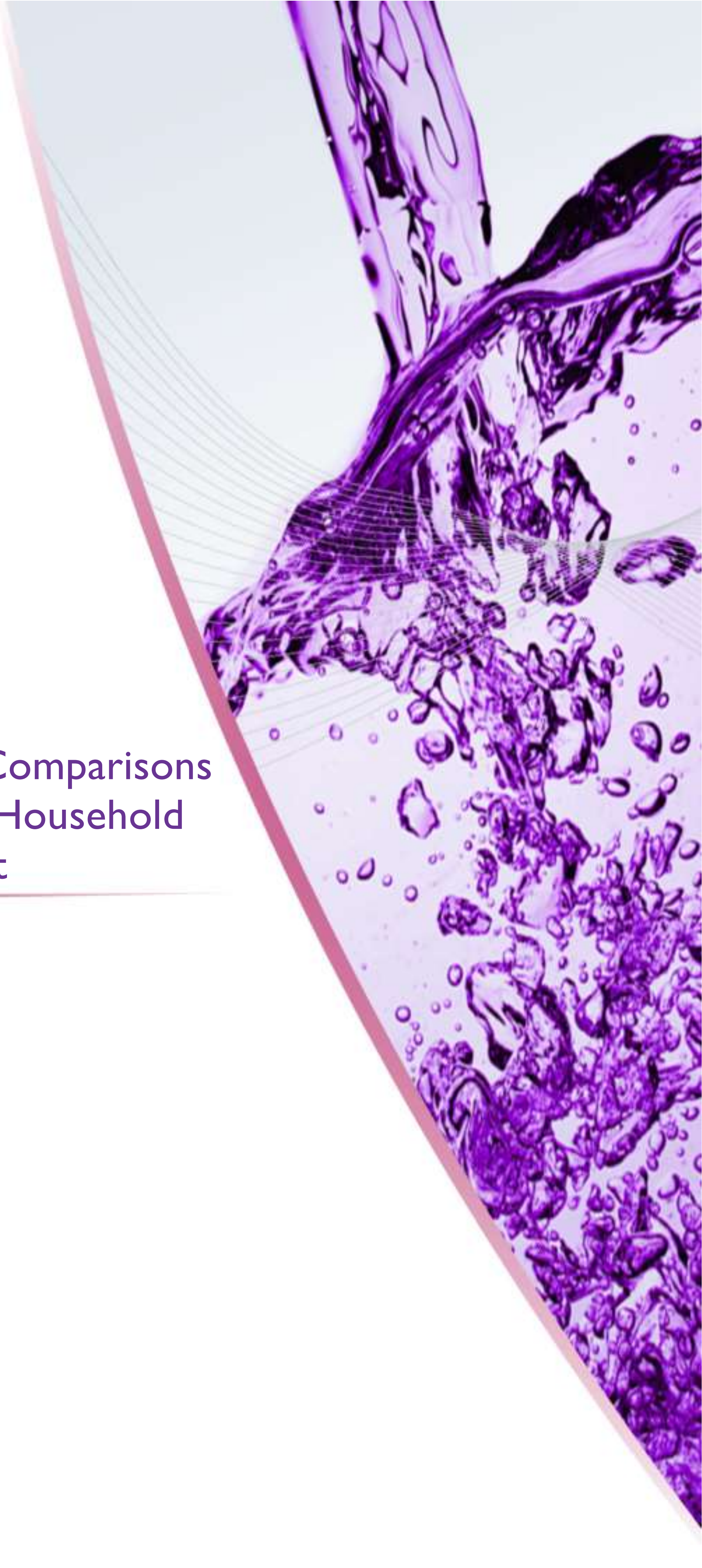
STRATEGIC PANEL
& Committees

Roadmap to a Flourishing Market

Strategic Panel

Appendix F Europe Economics Report

Europe Economics



Report on Market Comparisons for the future Non-Household Water Retail Market

December 2023

Europe Economics
330 High Holborn
London
WC1V 7QH

Tel: (0) 20 3862 9252

www.europe-economics.com

Contents

1 Introduction

This study seeks to identify lessons that might be relevant for the non-household (NHH) water retail market from other sectors where regulators and competition authorities have sought to ensure that there is a flourishing, competitive retail market. We set out the evidence they have cited when determining whether there are impediments to a flourishing market associated with customer engagement and switching and what steps they have taken to overcome these.

A water retail market in England (the business retail market) was opened to competition in April 2017. The opening of the business retail market brought significant changes to the way in which non-household customers buy their water services. Eligible non-household customers in England are now free to choose their retailer and are no longer restricted to buying these services from the regional monopoly provider. Instead, business customers can shop around and negotiate better deals if they are not satisfied with the services they get from their current provider of retail services. There is significant diversity amongst these non-household customers in terms of size, consumption and expenditure on water and wastewater services.

In the six years elapsed since the opening of the market, it has been subject to regular reviews by various parties including Ofwat. The evidence review published earlier this year found that awareness and knowledge of the NHH water retail market is strongly correlated with the size, region and sector of a business, with larger business much more likely to be aware of and benefit from the market. In addition, awareness of the market has been declining recently and in 2022 the same proportion of customers showed awareness as in 2017-18 when the market first opened (48 per cent of customers).[1]

Unlike awareness, market activity has increased post the COVID-19 pandemic, back to levels similar to those recorded in 2019. Overall 9.9 per cent of all businesses have been active (i.e. switched or renegotiated their contract with their supplier) in 2021-22. Similarly to awareness, market activity varies by region, company size, and how long a business has been a water customer.[2] In addition, 60 per cent of the switches have been arranged through a broker or consultant, motivated by businesses' expectation to save them time.[3]

The main barriers to engagement identified included:

- customers being satisfied with their current retailer;
- perceived intangible benefits/ savings from switching; and
- perceived issues around the complexity of switching, the costs of switching or lack of time and effort.[4]

In terms of the desired benefits of switching, two thirds of businesses reported that they would switch providers if they would get financial savings of 20 per cent and 45 per cent of businesses would switch if that savings was 10 per cent. However, TPIs report that actual savings from switching tend to be between 2-5 per cent.[5] In addition, other services such as water efficiency have become a lower priority for businesses in recent year.[6]

1 MOSL (2023): "Evidence Review of Retail Business Water Market" pg.8 [online]
2 MOSL (2023): "Evidence Review of Retail Business Water Market" pg.10 [online]
3 MOSL (2023): "Evidence Review of Retail Business Water Market" pg.11 [online]
4 MOSL (2023): "Evidence Review of Retail Business Water Market" pg.17 [online]
5 MOSL (2023): "Evidence Review of Retail Business Water Market" pg.18 [online]
6 MOSL (2023): "Evidence Review of Retail Business Water Market" pg.20 [online]

1.1 Case studies

Our study includes six case studies, listed in the table below.

Table 1.1: Case studies conducted

Case study	Key regulatory reviews and rationale for inclusion in our study
Energy	A B2C and B2B market in which competition has been encouraged to benefit customers e.g. through Ofgem's Retail Market Review and the CMA's energy market investigation. Vertically integrated industry where competition and better customer outcomes depend both on wholesaler support for the market, as well as retailer activity in servicing customer needs. The role of third-party intermediaries in this market has attracted regulatory interest.
Mobile	Primarily a B2C market with challenges brought by both complexity of choice and complexity of process which Ofcom has sought to address through its strategic review of switching and subsequent Auto-Switch reforms. As above, the role of third-party intermediaries in this market has attracted regulatory interest.
Mortgages	A B2C market explored by the Financial Conduct Authority's (FCA) market study and subsequent work looking at why some mortgage consumers who could switch do not.
Card acquiring market	A B2B market, the PSR market study included remedies to facilitate more competition and better outcomes for SMEs following concerns that many SMEs are not fully engaged.
Solicitors	A B2C and B2B market where the CMA's market study on legal services prompted follow-on work by the Solicitors Regulation Authority (SRA) exploring how to improve how market functions for SMEs.
Retail banking	A B2C and B2B market where the CMA's retail banking market study looked at personal current accounts and services provided to SMEs leading to the introduction of open banking t to make switching easier.

The case studies all share some characteristics with the NHH water retail market. All have attracted the interest of the Competition and Markets Authority (CMA) or an economic regulator, with reviews conducted to consider the need for intervention to improve the functioning of the market. These studies, and subsequent published work developing a policy response or the effect of measures to address concerns, have been the key inputs tour work.

1.1.1 Approach to case studies

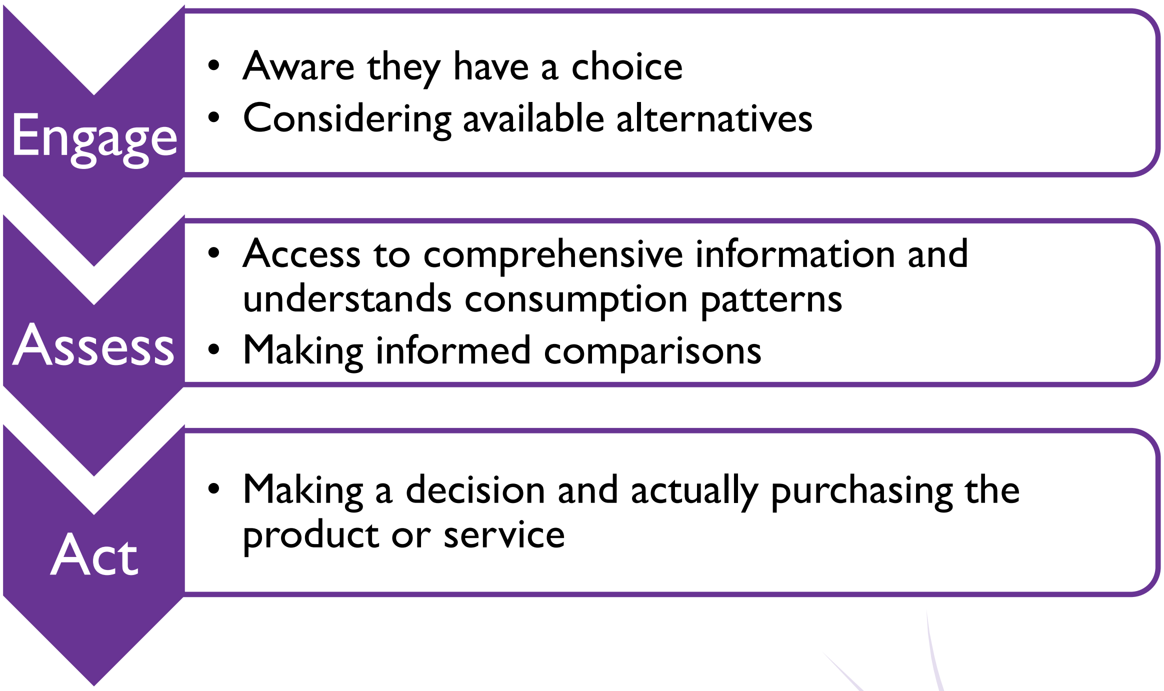
For each case study we have sought to gather information along the following dimensions:

- Overview of the relevant market setting out a timeline of key regulatory developments.
- Customer engagement summarising the relevant indicator(s) that prompted regulators to conclude that there is (or is not) a problem with customer engagement and satisfaction in the market, and any indicators used to monitor how well the market is evolving.
- Simplifying process and choice reviewing the evidence cited by the regulator(s) to conclude whether contract complexity was a concern, what steps were taken (not taken) and why to simplify customers' ability to compare retail offerings and the emerging evidence on how effective such steps were (including any unintended consequences). This might include looking at indicators that have been developed to permit customers to compare offerings more effectively and the role the regulator played in promoting such indicators.
- Reducing market frictions summarising any concerns that have been identified about how the interactions between competing firms and/or firms at different points in the supply chain may have fostered negative perceptions of the industry (reducing customers' willingness to engage), contributed to problems understanding the role and offering of suppliers (hindering customers' ability to assess rival offers) or

created problems with the switching process (inhibiting customers' ability to act) and the steps taken to address such concerns and the evidence to date on how well those reforms have worked.

- Regulatory framework considering the interaction between measures taken to promote flourishing competition and changes made to the regulatory framework, such as price controls or service quality requirements.
- Role of third-party intermediaries assessing the role that third-party intermediaries have played in promoting competition including any problems identified (e.g. misaligned incentives) and efforts taken by regulators and/ or other parties to address such concerns.
- Other considerations outlining any other features that may have been important in improving how well the market was working as well as setting out any evidence on how the problems and outcomes varied significantly for different segments of the overall market.

Given the focus of the work is on customer engagement, we have been guided by the framework that the UK Regulatory Network (UKRN) outlined for analysing and reviewing consumer decision making in selecting service providers and engaging in a market. UKRN broke the consumer journey up into three phases: engage, assess, and act. Engaged customers are those who are aware that they have a choice in product, service, or provider and are open to considering available alternatives. The assess stage requires consumers to have access to comprehensive information and an understanding of consumption patterns in order to make informed comparisons between offerings. Lastly, the act phase consists of the actual decision making and subsequent purchase of the product or service.



1.1.2 Key findings

All of the case studies offer some insights that are of potential interest when thinking about how best to promote competition in the NHH water retail market. However, each case study is distinct, with important differences for how competition might flourish in the market relative to both the NHH water retail market and to the other case studies.

One notable distinction in the NHH water retail market is the relatively small monetary value at stake for most smaller businesses. In contrast to other markets, where potential savings could be substantial, persuading customers to explore better options becomes challenging when perceived savings are modest.

The time invested in assessing alternatives becomes an opportunity cost for customers who could be engaged in other activities. While the Blue Marble report indicates a willingness among businesses to switch providers for significant savings, the available savings in the NHH water retail market are only in the range of 2-5 per cent. To persuade 45 per cent of business to switch would require savings of 10 per cent, and this rises to 20 per cent before two thirds of businesses would consider switching in the NHH market. It is uncertain whether the NHH water retail market can ever generate significant customer engagement from all businesses if it is limited to just price competition.

For some of the markets we reviewed, differences in service offerings or the perceived quality of service was also important. For example, for some legal services the quality of the legal advice is likely to be of considerably more value to an SME than saving a few pounds in legal fees. Card acquiring banks may include additional services to their customers such as fraud detection services, provision of management information, and onboarding and set-up that their rivals do not offer. Again, if these additional services are especially valued the SME would be ill advised to concentrate on price alone.

Competing views could be advanced for how a flourishing NHH water retail market might best develop. Depending on whether the emphasis is on encouraging firms to compete fiercely on price or to focus on offering better quality and innovating to offer new services may have implications for which cases studies provide the best lessons. Actions to promote competition where product or service differentiation is an important component may not always align with what works well where the firms are primarily competing on price. Price comparison websites are more useful in helping consumers assess competing offers if consumers can have confidence that they are conducting a like-for-like comparison. Some means need to be found to permit consumers comparing offerings from competing firms to understand the extent to which one firm is offering a better quality of service or additional features. This has proved to be difficult in some of the case studies. For example, in the legal services market the CMA found evidence of a lack of transparency regarding quality, posing a challenge for participants when effectively comparing various providers and their offerings.

For all bar one of the case studies (card acquiring), the regulator or competition authority assessed how well the business-to-consumer (B2C) market was working. In some cases, the same reviews also looked at how well competition in the business-to-business market (B2B) was working, often focussing on how well the market served SMEs. Generally, the findings when looking at how well competition was flourishing in the B2C and B2B markets broadly aligned. The same impediments hindering individuals from enjoying the full benefits of a competitive market generally also affected SMEs. Many SMEs face similar challenges as individuals, lacking the time or expertise to adequately engage with the market and select the most suitable product provider for them. One potentially important difference is that the wider regulatory and legal framework may offer greater protection for households than for non-households. The benefits to SMEs of a flourishing market may be greater than they would be for households because separate measures capping the price that can be charged to certain customers or rules placing a duty of care on providers to serve customers fairly may feature more prominently in B2C markets than B2B markets.

All the markets we looked at have been operating for more years than the NHH water retail market. Yet in none of the markets have the regulators or competition authorities concluded that the market is flourishing and there is no scope for further improvement. There are examples where the relevant authority concludes that the market is working better today than it had previously, perhaps because of a regulatory intervention that they were now reviewing. However, even in these cases the regulator still identified some features of the market that were not working as well it might. The experience from other markets suggests that it is unrealistic to expect that there will be a perfect, flourishing NHH retail water market. There will almost surely always be things that, if they could be changed, would improve how the market operates to the benefit of some consumers.

How bad the markets reviewed are relative to competition in the UK economy generally is unclear. All of the case studies concern markets where there is a sectoral regulator, including those (open banking, solicitors) where the initial study assessing the state of competition was conducted by the CMA. The fact that sectoral regulators have identified ongoing concerns with how well competition in a market they oversee is working does not necessarily imply that the market is working less well than the generality of markets in the economy.

Most but not all of the case studies involve products were the customer will persist with using (and paying for) the service on a continuous basis. The one exception may be legal services, where many SMEs would presumably hope to rarely have need for legal advice. But for energy supply, mobile services or the card acquiring, the customer almost surely wants to receive the service each month. This is similar to the situation in the NHH water retail market. One challenge this gives rise to is ensuring that the customer actively engages with the market from time to time and considers their options rather than just persisting with their existing retailer. In many of the case studies, the regulators have sought to find ways to get customers to re-assess from time to time whether their current contractual arrangements are optimal rather than just rolling it forward for another month without seriously considering other alternatives. However, the experience from the solicitors' case study suggests that many SMEs choose to default to their previous provider as and when the need for legal advice arises, rather than conducting a more comprehensive search of the market to make sure that they are receiving the best service. Satisficing, whereby customers settle for an option that meets a certain threshold of acceptability rather than seeking the optimal solution, may be difficult to overcome.

For those case studies which involved a B2B market, our impression is that when thinking about the problems and outcomes for different business types, the most important segmentation is the size of the business. Larger firms tend to engage with the market more and tend to be better served than SMEs. In many of the case studies, the problems getting SMEs to engage in the market were very similar to the problems reported for household customers. This is perhaps not surprising. The smallest firms may only have a few people on their payroll, none with any familiarity with the market in which they need to engage, assess options and act.

Moreover, the potential gains from engaging in the market and identifying savings will typically be smaller for SMEs typically, reducing their incentive to engage. In the NHH water retail market, there may be some firms, such as micro-breweries, for whom the incentives to choose the best retailer for their needs may be relatively large (and conversely, there may be some large firms that have an especially small exposure to the water retail market). But generally, the incentive to engage in a market will be increasing in firm size.

1.2 Customer engagement and satisfaction

None of the regulators in our case studies has concluded that customer engagement and satisfaction levels have reached the point where the market no longer needs monitoring. All of the regulators appear to view this as something that requires ongoing monitoring, consistent with our earlier comment that in none of the case studies have regulators concluded that the market is flourishing.

There are examples of regulators who observe that customer engagement or satisfaction has improved since their earlier interventions. The FCA went as far as to conclude that switching levels in the mortgage market were high, although it still found features of the market that were not working well. In contrast, the PSR reported that most SMEs appeared to be happy with their merchant acquiring bank yet the PSR was concerned that switching levels were low and intervened to attempt to encourage more customer engagement.

We are not aware of any regulator that has identified a target level of switching (or some other metric) that they want to achieve. This is perhaps not surprising, since it is unclear what switching rates would be consistent with a flourishing market. In the short run, measures to relax impediments to switching (such as customers being unaware that they can, or finding it is too difficult to assess and act on competing offers) might be expected to prompt a temporary increase in the number of customers switching as many customers take advantage of the easier switching environment to compare options and select a provider that better serves their needs than their existing supplier. However, the mere possibility that customers can easily switch may mean that in the longer term there is less to be gained from switching since all suppliers, responding to the more competitive environment, are all compelled to become competitive and offer competitive prices and good service if they want to win or retain customers. The UKRN previously identified that various factors which may distort the lessons that should be gleamed from reported switching measures. For example, aside from not capturing the possibility that some customers engaged in the market and actively chose to stay with their existing customer, it is possible that some customers switch provider without adequately having assessed their options.

The data that MOSL and Ofwat gather on customer engagement and satisfaction is similar to the data collected by the regulators in our case studies. Industry data on the number of customers switching in a given period, where available, will complement survey data asking customers directly about whether they have considered switching or have switched over a given reference period.

How much data on customer engagement and the frequency with which it is collected do vary across the sectors. Some of this variation may reflect the length of time a given market has attracted regulatory interest – the PSR has only recently completed its review of the card-acquiring market. By contrast in the energy and mobile markets both Ofgem and Ofcom appear to report the most data around customer engagement, publishing regular updates on retail energy market indicators and a series of switching trackers across communications markets.

Levels of switching can change significantly over time, and that need not necessarily be limited to regulatory interventions designed to make it easier for customers to switch. Macroeconomic variables may be important. For example, customers may be more inclined to consider switching energy supplier when wholesale energy prices are higher. Their financial incentives to consider switching are higher, while the costs of comparing competing offers and acting have not changed.

Complaints data are monitored by some regulators. Ofcom's Reasons to Complain tracker indicates that issues around service performance, customers service or billing and payment often lead to consumers to lodge complaints. There does not appear to be special weight given to the volume of complaints when assessing whether competition is flourishing and customers are engaging in the market. One reason for this may be that complaints volumes typically remain small relative to the overall customer base. They may not be representative of the general level of satisfaction customers have with the market. It is also possible that changes in the volume of complaints are not directly correlated with the extent to which competition in the market is working, but instead reflect other developments.

However, on some occasions, the rationale for investigating whether the market was working well was in part motivated by complaints that the relevant authority had received. For example, in the energy market while consumers often make complaints about their individual retail suppliers but many of the issues come from deeper systematic problems within the energy market as a whole. In the wake of the energy crisis Ofgem noted a number of reports related to suppliers which prompted it to investigate the underlying reasons further resulting in a series of recommendations to the government to address concerns around wider access to redress support for non-domestic customers.

1.3 Simplifying process and choice

Perhaps the over-arching finding from the case studies when thinking about how to simplify customers' ability is that the specific conditions of the market under review matter. Solutions that make sense if trying to promote a flourishing market for legal services may not make sense for the NHH water retail market and vice versa.

Looking forward, the priority for any intervention to simplify process and choice in the NHH water retail market may depend critically on whether the goal is to encourage price competition or to encourage retailers to innovate and offer value-added services to what they currently offer. If it is the former, then measures that make it easier for customers to compare price will have value. However, such tools may be of limited value if retailers are competing more on the types of service they offer.

In all of the case studies, there have been concerns that the information available to customers on pricing and product characteristics (where relevant) was inadequate. In some cases, there were concerns that basic transparency about pricing was lacking. For example, in the legal-services market interventions have included requiring solicitors to include prices for certain services on their websites.

In many cases, there have been concerns about the ability of customers to understand and properly compare price offerings of different providers. For example, the presence of multiple switching processes in the mobile sector created confusion for consumers which was further exacerbated by the fact that different processes had different financial and service implications for switching (e.g. early termination charges and notice periods) which consumers were not necessarily aware of. There has been lots of work done by some regulators to try and simplify tariff structures in a way that will help customers decide on the most appropriate product for them. Such work has proven to be challenging. In the case of energy, in particular, there has been considerable debate about whether measures to simplify tariffs did more harm than good, limiting the ability of suppliers to offer tariff structures that would best suits the needs of some customers. The danger of unintended consequences when trying to simplify the switching process is real.

For some consumers, efforts to simplify the process of comparing prices may be undermined by the fact that customers are uncertain whether certain products are available to them or would include all the features that they value. For example, in the mortgage market some customers were uncertain about whether they would be eligible for a particular mortgage because of their credit history. One reason identified for SMEs' reluctance to switch mobile provider was concerns that they would experience an unacceptable drop in service quality or downtimes.

There have also been developments that have sought to make it easier for customers to compare on factors other than price. For example, a potential remedy to address the lack of information about the quality of solicitors in the legal services market includes developing a review system, similar to that of TripAdvisor, which would promote customers to leave reviews on the quality of service that they have received allowing direct access for future customers.

As a general rule, the efforts to permit comparisons of product or service quality have proven even more challenging than efforts to simplify price comparisons. This is perhaps not surprising since there are potentially many different dimensions over which quality might be compared. Moreover, even if it was possible to agree the key criteria and how to measure them for the purposes of comparing offerings today, there is a risk that creating tools that allow customers to compare quality in this way will deter providers from innovating and developing new products that offer better quality in some other dimension not currently captured by the comparison tool.

When product differentiation is relatively more important, overcoming incumbency advantage may be greater. The difficulty comparing product offerings may deter customers from engaging with the market. They may conclude that it will be too difficult making a meaningful comparison. They may also be risk-averse, worried that after switching provider they will discover that features of the previous service that they took for granted may no longer be available.

In most of the case studies, there are examples of regulators intervening to ensure customers receive prompts to consider changing from time to time. For example, in the card acquiring market, acquiring banks are now required to provide trigger messages at the end of contract terms that encourage customers to explore alternative options or consider switching providers. The assessment of such interventions has generally been positive, with regulators concluding that customers have tended to engage in the market and consider switching more often. However, the experience from the solicitors' market arguably demonstrates that occasional prompts alone will not be enough to get SMEs to engage in market. Unlike many of the markets under review, customers may engage solicitors as and when the need arises, rather than having a contract in place that lasts indefinitely. By necessity, if they want a solicitor for a new case they will need to proactively reach out to a solicitor (in contrast to, say the NHH water retail market, where the SME can do nothing and have the same retailer next month as was in place last month). Yet the evidence suggests that many SMEs choose to engage the same solicitor as they have used in the past. This can even arise where the legal services required are very different to the services provided previously, perhaps a different area of law. This reluctance to change provider may be because of the challenges of understanding the price and service quality offering of rival solicitors and concluding that it is safer to satisfice and stick with the solicitor the SME knows (provided past experience with them was not negative).

1.4 Market frictions and the wider regulatory framework

At the time of market opening, the structure of the NHH water retail market was shaped by various forces.

- A number of companies already active in Scotland (which opened its retail business market in 2008[7]) acquired business customers from the wholesalers who exited the business retail market.
- Some wholesalers de-merged their business retail operations to financially and legally separate Retailer undertakings, which took on the business customer book of the associated wholesalers. Hence a number of retailers directly associated with certain wholesalers became the main retail provider in a region.
- Smaller, independent retailers such as Everflow entered the market. Such retailers did not purchase a business customer book from a wholesaler so their market share has depended on organic growth through customer acquisition.

In 2020 there were over 20 retailers active in the English business retail market, and 15 retailers in the Welsh business retail market, with some overlap between the retailers operating in these markets. There is also some variation what services the wholesalers provide directly to end business customers, such that the boundaries between wholesaler and retailer activities is not always clear cut to customers. This may have implications for levels of consumer engagement in the retail market if customers are unaware that it is their existing retailer providing a bad service and they are able to change provider. It can also lead to potential customer dissatisfaction with the industry, as customer encounter delays identifying and contacting the relevant party in charge to resolve a particular issue or submit complaints to CCW naming one party instead of the other as responsible for an issue. Different parties may have different views about where the boundary between the retailer and wholesaler should be. Some retailers may feel wholesalers are encroaching on retail activities and risk undermining the business case for offering a retail service, whereas other retailers may be keen to avoid the costs of providing certain services that wholesalers could also provide.

This description of NHH water retail differs to the industry structure found in the case studies we reviewed. For example, there are four mobile network operators (MNOs) providing retail services under their own brands and sub-brands but also offering wholesale services to MVNOs to provide their own retail services. None of the MNOs enjoys a regional monopoly. In the legal services market, most of the concerns about competition have related to markets where the idea of separate wholesale and/or retailers does not make sense. Instead, there are reserved and unreserved market, with suppliers in reserved market needing to be authorised, and there are regulated and unregulated legal service providers competing in some of the markets.

---

7 Business Stream (2018): "Scotland marks decade of water competition" [online].

These differences in structure limit the ability to draw out general lessons about how the interactions between different firms in the supply chain affect competition in the retail market. From the case studies, there are examples of

- retailers undermining confidence in the market, e.g. in the mobile sector Ofcom had to introduce measures to stop 'slamming' whereby some mobile customers were switched to a new provider without their consent;
- problems elsewhere in the sector being cited as the underlying reason for customer dissatisfaction with outcomes in the retail market, e.g. non-domestic customer complaints about suppliers reflecting annoyance at higher energy prices; and
- the blurring of the supply chain such that firms that previously may have been considered to offer complementary goods start to compete, e.g. open banking was initially envisaged as an opportunity for third parties to offer intermeidation services that would help customers choose between different retail banks, but today some firms use the open banking protocol to offer servics, such as payment services, which arguably compete with the services retail banks provide.

Similarly, the actions that different regulators have taken in these markets vary, and much of that variation will reflect the specifics of the industry they are regulating. There may also be some differences in their statutory objectives and duties – the PSR has a duty to promote innovation.

A number of regulators have complemented efforts to promote competition in the retail market with regulatory measures designed to protect vulnerable consumers or achieve fairer outcomes. For example, in 2020 Ofcom introduced a fairness framework to guide providers' behaviour rather than just rely on market forces to realise good outcomes. Ofcom argued that competitive markets may not always deliver fair outcomes for all customers, citing the possibility of advances in big data and algorithms possibly increasing price discrimination in markets as one risk.

Some of the specific questions that may be of concern in the NHH water retail market may not be relevant in other markets. Alternatively, they may just not have warranted comment in the documents discussing customer engagement that we have reviewed. For example, debates about what format wholesalers should present their prices and what service offerings should be included in particular bundles has not featured prominently. In some cases, regulators and the industry may have separate workstreams and teams where such issues are discussed – the rules around access to networks often attract considerable regulatory attention, including arguments around the question of what exactly the network should have to provide downstream firms. Clearly downstream firms having access to key inputs is a necessary condition for them to compete and for customers to have the opportunity to switch to them. However, regulators do not appear to have considered the contractual arrangements between retailers and wholesalers as a key factor when specifically assessing whether and how to improve customer engagement and remove impediments to switching in the market.

The case study that is arguably the closest to the NHH water retail market is the energy supply market. In the energy market, there are over 60 suppliers to non-domestic customers undertaking activities such as securing network access, metering, billing and customer service. Suppliers vary as to whether they supply gas, electricity or both. The wholesale and retail markets are underpinned by industry codes.

Both the CMA and Ofgem have looked at how the incentives of suppliers that are vertically integrated with generators might affect outcomes in the wholesale market and, consequently, the retail market. While the CMA found no evidence that vertical integration was having a negative effect on competition Ofgem nevertheless introduced a licence condition requiring the largest eight electricity generating companies trade with small independent suppliers and set out market making obligations on the six largest vertically integrated companies.

Ofgem has not always been willing to allow competition in the retail market to determine final prices without regulatory intervention. For example, in response to the recent energy crisis Ofgem introduced a Market Stabilisation Charge (MSC) and Ban on Acquisition-only Tariffs. It has extended these measures until March 2024 and committed to re-evaluating them annually thereafter. It has acknowledged that the MSC will affect market competition but concluded that this intervention was warranted due to the exceptional circumstances. There is also an energy price cap introduced in 2019 to set an absolute top-level price per unit of electricity and gas. The level was intended to protect customers from high energy prices yet high enough to allow suppliers to compete on tariffs and encourage customers to consider switching. However, following the energy crisis, the price-cap tariff went from being one of the most expensive tariffs available to one of the cheapest ones, with 24 million households on tariffs protected by the cap in August 2022. The wisdom of these caps is debated, with opponents arguing that it reduces the incentive for customers to switch supplier (as well as claiming it may lead to underinvestment). Even supporters of the cap acknowledge that it weakens the incentive for customers to shop around, although claim that it is a necessary safeguard for consumers unaware of the option to switch supplier.

1.5 Role of third-party intermediaries

In all of the case studies, third parties are active and perceived as playing an important role in increasing customer awareness and engagement as well as promoting competition. The range of services offered by third-party intermediaries (TPIs) also varies between markets. For example, while price comparison websites in the mobile market focus on comparing retail offerings of mobile (and where relevant other communications) services, intermediaries in the retail banking market offer a range of add-on services such as personal finance tools or debt management. This is similar to the NHH water retail market where TPIs typically offer brokerage and procurement services to customers but can also extend to 'water consultancy services' such as bill auditing, account handling, water efficiency, smart metering, leak detection and repair.

In some cases, distinctions between different parts of the supply chain can be less clear-cut. In retail banking, open banking was initially envisaged as a solution that would allow third party intermediaries to help customers compare different retail banking services and potentially switch bank. Yet open banking is now seen as an opportunity for parties to compete directly with the retail banks, offering rival services. For example, FinTechs can offer payment initiation services, using open banking to initiate payments directly from a user's bank account, facilitating faster and more convenient transactions which may be particularly advantageous in the realm of peer-to-peer payments and e-commerce. Whether and how FinTechs will be able to monetise such services successfully remains to be seen. However, this example provides a useful reminder that supply chain distinctions sometimes blur. Third-party intermediaries can start competing with the firms that they were previously comparing. Retailers can start offering services that were previously viewed as a wholesaler activity.

Similarly, the presence of TPIs in the markets examined can be seen as an implicit way of shifting issues around choice and supplier selection along the supply chain – what would have been a problem of selecting a retailer in a market without TPIs effectively becomes a decision around selecting an intermediary among competing TPIs when these are present in the market.

TPIs play an important role in helping customers compare offerings, especially when it comes to prices. Nonetheless, there is a risk that tools such as price comparison sites mostly serve the mainstream market without the ability to cater to the needs of consumers with more bespoke characteristics. For example, price comparison websites comparing mortgage deals tend to be more accurate and applicable for low risk, financially capable consumers but were found to be much less useful for customers with an adverse credit history or on low incomes.

In markets where the perceived quality of service also matters to consumers, relying solely on intermediaries focusing on price comparisons may be limiting. Consumers in these markets would typically seek additional information from various sources, including product reviews, expert opinions, and even family and friends. For instance, in the legal services market, Digital Comparison Tools (DCTs) allowing the comparison of reviews, prices, and ratings, could help overcome the issue of bespoke information being both hard to access and assess by bringing together comparable information in one place.

While TPIs bring certain benefits in terms of promoting and increasing consumer engagement, in a number of the case studies, regulators identified some concerns about misaligned incentives. For example, the Payment Systems Regulator (PSR) intervened in the card acquiring market to require greater transparency on the charging arrangements for services provided by TPIs, requiring intermediaries to publish information regarding prices and contract duration. In the mortgage market, there were concerns that some intermediaries were only offering an overview of a subset of the market, leading to some customers being recommend higher prices on average compared to intermediary firms who offered services from the wider market.

In other cases, such as energy and card acquiring, the alignment of incentives between retailers and TPIs, prioritising their interests over consumers, has been identified as a significant factor limiting competition. For example, in card-acquiring markets, TPIs collaborate with retailers in determining prices and contract terms, contributing to the misalignment of incentives. This is in contrast with the NHH water retail market where feedback from customers suggest an overall positive experience with TPIs with cold calling highlighted as a source of frustration for some customers.

To address issues around misaligned incentives, poor selling practices, low quality of service and the lack of transparency about commissions, in the absence of formal powers to regulate TPIs, some regulators took an active role in promoting and improving consumer confidence around intermediaries. These include voluntary codes of conduct developed and/ or administered by regulators in the energy and mobile markets. For example, Ofcom has been operating a voluntary accreditation scheme for price comparison websites (comparing offers of mobile and bundled services) since 2006 which allows comparison tools to become accredited once they meet the scheme criteria, pass an independent technical audit of the price calculator as well as a ‘soft’ operational audit by Ofcom against its assessment criteria. In addition, accredited members must also pass regular audits assessing their transparency, accuracy and accessibility, to ensure they adhere to a high standard of conduct and present reliable and trustworthy comparisons.

In some cases, due to the nature of the services provided, TPIs are also required to obtain the relevant permissions and authorisations to carry out certain activities. For example, Account Information Service Providers and Payment Initiation Service Providers active in the open banking market must be authorised by the FCA as, with consent from users, they are able to read and access personal financial data.

2 Energy

Following the privatisation of the electricity and gas markets, both domestic and non-domestic customers have been able to choose their energy supplier for many years, many customers remain unaware of that they can choose their supplier or simply never considered doing so. Despite this, low customer engagement remains one of the key issues in the retail energy market.

In the domestic segment, the two main reasons for low engagement and understanding of the market are the homogenous nature of gas and electricity and consumers' lack of awareness around the amount of energy consumed. Consumer characteristics can also have a significant impact on consumers' willingness and ability to engage with the market with vulnerable consumers being less likely to engage and switch, despite the sizeable benefits available in terms of savings when shopping around and switching away from the default tariff. The non-domestic market suggests similar patterns around the lack of engagement with the market where smaller, more vulnerable businesses are less educated about their ability to switch providers and end up paying more than they need for energy, whilst larger industrial customers typically have greater knowledge of the market leading to higher levels of engagement.

Although Ofgem aimed to remove some of these barriers around lack of understanding and awareness about choices through a series of interventions (including the remedies put in place following both the domestic and non-domestic Retail Market Reviews in the early 2010s), some of the interventions led to unintended negative consequences for customers (e.g. limiting the number of core tariffs per supplier to four in the domestic market made it harder for them to attract different types of customers especially low-consumption and vulnerable customers).

TPIs (including both price comparison websites and energy brokers) are important tools for consumers to compare different suppliers. While TPIs bring certain benefits in terms of promoting and increasing consumer engagement, issues around poor selling practices, low quality of service and lack of transparency about commissions have also been reported. While TPIs are not formally regulated, they can become members of voluntary codes that promote good practice minimum standards including the Confidence Code for domestic energy price comparison websites overseen by Ofgem.

Both the domestic and non-domestic markets have seen a decrease in customer satisfaction over recent years, in part stemming from the challenges faced by consumers as a result of the energy crisis. Following extensive engagement with stakeholders in the non-domestic segment earlier this year, Ofgem proposed targeted reforms to address the issues identified and made a series of recommendations to the government to consider amending regulation to address concerns currently outside its regulatory remit including wider access to redress support for non-domestic customers.

2.1 Overview of the energy market

Energy markets were privatised in the UK in the Gas Act of 1986 and the Electricity Act of 1989. When the gas sector was privatised British Gas gained a monopoly on the retail sale of gas. Over a period of time competition was slowly introduced to the gas retail market starting with allowing large industrial customers to choose their supplier. In 1992 competition was introduced in the industrial and business market, followed by the domestic segment in 2000.[8] For the supply of electricity, initially there were regional monopolies in

8 CMA (2016): "Energy market investigation – Final report." pg. 98-99 [online]

each of the 14 area boards. In 1994 consumers with demand of more than 100 kW of electricity were allowed to choose their supplier and then in 1999 the rest of the market was completely opened to competition.[9]

Both the electricity sector and the gas sector have similar market structures. In wholesale markets, gas and electricity both can be traded bilaterally or on exchanges and contracts can take place over several different time periods from years long to day of trading. In the retail market, gas and electricity are commonly sold together in dual fuel tariffs. Regulations in the retail market also typically apply to both gas and electricity.[10]

2.1.1 Energy suppliers in the retail market

In the retail energy market there are six main suppliers[11] often referred to as the six large energy firms or the "big six". These six suppliers provide energy to about 90 per cent of domestic customers and 70 per cent of the total energy in Great Britain. Overall there are 34 suppliers selling gas and electricity to domestic customers[12] and over 60 suppliers for non-domestic customers, some supplying just gas or electricity and some supplying both.[13]

In the retail energy market, suppliers do not actually own or operate the physical assets that are required for delivering gas and electricity, instead they focus on the financial and commercial activities that relate to the sale of energy to both domestic (households) and non-domestic (businesses) customers.[14] Some of these activities include securing network access, metering, billing and customer service.

Before liberalisation customers did not have a choice between energy suppliers and even though the energy market has been liberalised for several decades now, some consumers are still unaware that they can choose their supplier or simply never considered doing so.[15]

Competition in a well-functioning retail market is expected to be on price with competitive pressures ensuring customer service (especially accurate billing) will meet certain standards. Finally, a degree of innovation is also expected around tariff design and services such as advice on improving energy efficiency.[16]

2.1.2 Key developments in the market

In 2010 Ofgem initiated the Retail Market Review (RMR) following concerns that the market was not working effectively for energy consumers. The goal of the review was to increase consumer engagement within the energy market and promote competition between suppliers.[17] These reforms were put into place in 2014.

While remedies were put in place to help alleviate some of the concerns identified during the RMR, following increased concerns about competition in 2014 Ofgem asked the CMA to conduct an energy market investigation. During the investigation the CMA looked at both the retail and wholesale energy markets, focusing on households and microbusinesses in the retail market. The final report subsequently published in 2016 highlighted some specific areas where competition was adversely affected.[18]

In 2019 Ofgem put in place an energy price cap that was set out in the Domestic Gas and Electricity (Tariff Cap) Act of 2018. The purpose of this price cap was to protect domestic customers that were on the

---

9 CMA (2016): "Energy market investigation – Final report." pg. 99-100 [online]
10 CMA (2016): "Energy market investigation – Final report." pg. 2 [online]
11 These are: Centrica, EDF Energy, E. ON UK, PWE npower, Scottish and Southern Energy and Scottish Power.
12 CMA (2016): "Energy market investigation – Final report." pg. 3 [online]
13 Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 12 [online]
14 CMA (2016): "Energy market investigation – Final report." pg. 21 [online]
15 CMA (2016): "Energy market investigation – Final report." pg. 370 [online]
16 CMA (2016): "Energy market investigation – Final report." pg. 21 [online]
17 CMA (2016): "Energy market investigation – Final report." pg. 41 [online]
18 CMA (2016): "Energy market investigation – Final report." pg. 1 [online]

Standard Variable Tariffs (SVTs) by making prices fair for customers while also covering the supply costs and keeping customer service high.[19]

The significant increase in electricity and gas prices since 2021 has put pressure on domestic and non-domestic customers, along with suppliers of energy. In response to the energy crisis, following concerns that the market was not serving customers well, Ofgem conducted a market review of the non-domestic energy market in mid-2023. The goal of the review was to see how the market could be improved for energy consumers and also to assess whether the issues identified are temporary due to the energy crisis or whether deeper systematic issues exist in the market.[20]

Ofgem also conducted a Consumer Standards Statutory Consultation in 2023 due to the decline in customer satisfaction seen in the domestic energy market since 2018. This aimed to support struggling customers and help give domestic customers easier connection with their suppliers.[21]

The remainder of the case study focuses on these key developments in the market and their implications for domestic and non-domestic customers as well as firms at different points in the supply chain.

2.2 Customer engagement

One of the key issues that is seen in the retail energy market is low customer engagement. Low engagement has been reported in both the domestic and non-domestic segments and mainly stems from consumers not being fully informed about their ability to choose energy supplier or tariff. Although the domestic and non-domestic energy markets share many similarities, there are also some important differences between them. Typically, non-domestic markets are more competitive because there are more non-domestic suppliers and businesses switch energy suppliers more frequently than households.[22] These differences are starker with larger businesses while smaller businesses share more similarities with the domestic market. Due to the variety of business types, the needs of businesses in terms of energy can vary widely, often to much higher degrees than needs in the domestic market.

2.2.1 Domestic customers

Customer engagement in the domestic energy market can be measured with regards to three main factors:

- Choice of tariff;
- Choice of payment method; and
- Choice of electricity supplier, gas supplier or both.

During its retail market investigation the CMA conducted a survey of 7,000 domestic retail energy customers and found that 36 per cent of respondents did not think that it was possible or did know that it was possible to change either their tariff, payment method, or supplier.[23] The survey also found that 34 per cent of respondents had never considered switching suppliers, 56 percent said they had never switched suppliers, did not know it was possible, or did not know if they had done so, and 72 per cent said they had never switched their tariff with an existing supplier, did not know it was possible, or did not know if they had done so.[24]

Choice of tariff

[19] Ofgem: "Energy price cap (default tariff) policy." [online]
[20] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 4 [online]
[21] Ofgem: "Consumer standards statutory consultation." pg. 1 [online]
[22] Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 8 [online]
[23] CMA (2016): "Energy market investigation – Final report." pg. 22 [online]
[24] CMA (2016): "Energy market investigation – Final report." pg. 22 [online]

In the energy sector the Standard Variable Tariff (SVT) is the default tariff paid by customers. Unlike other non-standard tariffs, the SVT does not have an end date so customers will stay on SVT indefinitely unless they make the decision to change.[25] This means that customers who are unaware that they can change tariffs will simply stay on the SVT forever.

Price comparisons between tariffs found that the "big six" energy suppliers earned higher revenues per kWh from the SVT compared with other non-standard tariffs. Despite this, the majority of customers (about 71 per cent for electricity and 69 per cent for gas in 2015[26]) remain on the SVT, mainly due to the distrust of energy suppliers and fears about switching suppliers.

As recently as 2020, Ofgem's customer survey found that energy companies were less trusted by customers than banks and internet suppliers.[27] This distrust is even higher for disengaged customers. In particular, customers who are the most vulnerable (those living in rented accommodation, with an annual income below £18,000 or recipients of a Warm House Discount rebate) would gain the most from switching suppliers.[28]

Choice of payment method

Another way that engagement in the domestic retail energy market can be gauged is through the choice of payment methods which include standard credit, direct debit and prepayment. In the mid-1990s the majority of customers paid by standard credit whereas more recently most customers pay by direct debit instead.[29] Over the past few decades the "big six" energy firms have offered discounts for payment by direct debit. In 2016 the CMA found that customers on the SVT using standard credit paid £75-80 more per year compared with customers paying by direct debit.[30] Those paying by standard credit are less likely to engage and may possibly be uninformed about the other payment option or have fears about changing. Customers paying by prepayment meters typically do not have a choice and instead are made pay through these meters if they have poor payment history or are living in certain types of rented accommodation.[31] Almost all prepayment energy customers are on the SVT showing that they have little choice when it comes to non-standard tariffs.

Choice of supplier

Finally, customer engagement can also be measured through consumers' choice of supplier and switching patterns (i.e. whether they have switched suppliers recently or in the past). In 2016 the CMA reported that there had been an upward trend in switching suppliers until 2008 when levels began to decline partly due to the prohibition of regional price discrimination[32] and suppliers ending doorstep selling in 2011 and 2012.[33] Switching increased again at the end of 2013 possibly due to political debates around energy prices during that time. In 2015 there were around 3.4 million electricity transfers and 2.7 million gas transfers which was about 12 per cent of all energy meters for that year.[34] Although switching occurs, rates still remain quite low and about 20 to 30 per cent of electricity domestic customers of the "big six" firms have been with their supplier for over 10 years. For gas domestic customers about 10 to 40 per cent report the same.[35]

Drivers of customer engagement

During its retail market investigation, the CMA found that there were two main reasons for low engagement and understanding of the market:

25 CMA (2016): "Energy market investigation – Final report." pg. 23 [online]
26 CMA (2016): "Energy market investigation – Final report." pg. 375 [online]
27 Ofgem (2021): "Ofgem Consumer Survey 2021." pg. 4 [online]
28 CMA (2016): "Energy market investigation – Final report." pg. 33 [online]
29 CMA (2016): "Energy market investigation – Final report." pg. 23 [online]
30 CMA (2016): "Energy market investigation – Final report." pg. 23 [online]
31 CMA (2016): "Energy market investigation – Final report." pg. 23 [online]
32 Through the Standard Licence Condition 25A in 2009.
33 CMA (2016): "Energy market investigation – Final report." pg. 24 [online]
34 CMA (2016): "Energy market investigation – Final report." pg. 24[online]
35 CMA (2016): "Energy market investigation – Final report." pg. 24 [online]

- the homogenous nature of gas and electricity; and
- a lack of awareness around the amount of energy consumed.

In terms of the homogenous nature of gas and electricity, because the quality of gas and electricity is the same no matter what supplier it comes from, price is the most important consideration when considering energy suppliers. The CMA reported that 81 per cent of customers identified factors related to 'cost/tariff/price/rate' as important to them.[36] Even though price is important to consumers, because quality would not change with different suppliers, consumers are less likely to take interest or be enthusiastic about engaging in the market.

The second reason customers are unengaged or uninformed is the fact that many are not aware of the amount of gas and electricity used. This is partly because conventional meters are not very visible, making consumers less aware about their energy consumption.[37] Conventional meters are read less frequently (either by the consumer or the supplier), making the consumers' understanding of usage patterns even more complex and lacking in transparency. Ofgem has been installing smart meters which are expected to help improve customer engagement and solve these issues by allowing customers to see how their consumption of energy is related to the price they pay for their energy.[38]

In addition, certain consumer characteristics were also found to have a significant impact on consumers' willingness and ability to engage with the market. In particular, in 2016 the CMA found that vulnerable consumers, including those with household incomes under £18,000 a year, those living in rented social housing, those without qualifications, and those registered on the Priority Services Register, were less likely to engage with the market.[39] Similarly, the lack of access to the internet or lack of confidence using the internet was also found to make consumers less likely to engage and become informed. Perceptions about the difficulty of the switching process or other forms of engaging stopped many consumers from participating in the market, even though in practice the process is often simpler than envisaged by consumers.[40]

A survey conducted by Ofgem in 2021 again highlighted how certain characteristics influence customer engagement, noting that despite similar overall levels of engagement with the market (with about 63 per cent of consumers engaging within the past year) vulnerable consumers remained significantly less likely to engage with growing levels of disengagement amongst carers, prepayment meter customers and those in arrears on their bills.[41]

Most recently, the energy crisis has made consumers warier of engaging with the market and in particular switching energy suppliers. In August 2023 the total number of switches was up 122 per cent from August 2022 suggesting that switching is slowly growing back to pre-energy crisis levels, although it remains 50 per cent lower compared with two years ago.[42]

There have been attempts to increase consumer engagement in the energy market over the years, but many have been unsuccessful, particularly, as seen above, in vulnerable customers. A report by Abtrain and Cornwall Insight in 2017 revealed that despite several initiatives and discussion on increasing engagement, there was still a significant portion of consumers who did not actively engage in the energy market, concluding that this may have implications for a fully competitive market. The report further highlighted the need for suppliers to be able to communicate clearly the differences between their and their rivals' offerings, as

36 CMA (2016): "Energy market investigation – Final report." pg. 485 [online]
37 CMA (2016): "Energy market investigation – Final report." pg. 486 [online]
38 CMA (2016): "Energy market investigation – Final report." pg. 49 [online]
39 CMA (2016): "Energy market investigation – Final report." pg. 455 [online]
40 CMA (2016): "Energy market investigation – Final report." pg. 35 [online]
41 Ofgem (2021): "Ofgem Consumer Survey 2021." pg. 3 [online]
42 Ofgem: "Retail market indicators" [online]

coordinated behaviour by suppliers could discourage consumers from taking an active interest in the market and lead to them (mistakenly) concluding that "each supplier is as bad as the other"[43.44]

Online price comparison sites, discussed in further detail in section 2.6 below, are highlighted as the main route used by those engaging in the energy market. 45 Nonetheless, vulnerable customers (including those on low incomes or with low levels of education) often tend to show lower levels of trust with price comparison sites or lack information on how to use these comparison sites and how these sites could help them engage or switch.[46]

Expected benefits from switching

One of the key benefits associated with switching tariffs, and in particular switching away from the SVT to fixed tariff deals, is cheaper energy bills as before the energy crisis fixed tariff deals were usually cheaper than the SVT. For example, in September 2018 Ofgem estimated that a typical consumer could save between £160 and £225[47] when switching from the SVT to the cheapest fixed tariff offered by large supplier or to the cheapest tariff available on the market, respectively.[48]

2.2.2 Non-domestic customers

The non-domestic (or non-household) energy market is characterised by a wide range of suppliers and consumer needs. Unlike domestic customers, businesses have more diverse needs depending on their type. Small businesses typically use low amounts of energy and have low levels of knowledge about the market. By contrast, larger industrial customers usually have very high energy use, are more engaged with and have greater knowledge of the energy market with some firms employing specialist staff to manage wholesale energy trading.[49] Therefore, the non-domestic market suggests similar patterns around the lack of engagement with the market where smaller, more vulnerable businesses are less educated about their ability to switch providers and end up paying more than they need for energy.

Drivers of customer engagement

Ofgem's non-domestic Retail Market Review (RMR) published in 2013 found that smaller businesses are less likely to have direct relationships with their energy supplier and therefore are less informed about their choices making the small business market less competitive.[50] Overall the RMR found that smaller businesses still engaged more than domestic consumers but less than their larger counterparts.

The reasons for disengagement from smaller businesses include:

- Unclear billing information making it difficult for businesses to assess alternative options;
- Lack of understanding of termination and renewal processes deterring them from switching suppliers; and
- Misleading information given by TPIs deterring consumers from future engagement.[51]

[43] The report notes that this is especially the case for market when the product sold is relatively homogenous.
[44] Abtrain and Cornwall Insight (2017): "Attracting and retaining customers in a disrupting energy market".
[45] Ofgem (2021): "Ofgem Consumer Survey 2021." pg. 3 [online]
[46] CMA (2016): "Energy market investigation – Final report." pg. 494 [online]
[47] £ annualised dual fuel bill at typical domestic consumption values (TDCV) in nominal prices.
[48] Ofgem (2018): "Decision – Default tariff cap – Overview document", pg. 10 [online]
[49] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 11-12 [online]
[50] Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 9 [online]
[51] Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 10 [online]

The CMA's energy market review also reported differences between small or microbusinesses regarding engagement. CMA found that like lower income domestic customers on the SVT, 45 per cent of microbusinesses were on default tariffs, indicating a lack of engagement on their part.[52]

In addition, according to a survey conducted by Ofgem in 2015, only around 25 per cent of businesses with zero to nine employees had switched supplier in the past year.[53] Consistent with the findings of the RMR, microbusinesses had higher levels of engagement than domestic customers but still much lower than larger businesses.

More recently, a study conducted by IFF Research in 2022 found that overall around 23 per cent of all businesses on mains gas and 26 per cent of businesses on mains electricity were unaware of who their supplier was.[54] This trend shows a general lack of engagement with the energy market but specifically demonstrates many smaller businesses' disengagement as this was the most common response for sole traders and microbusinesses.

When looking at businesses who have switched energy suppliers, the trend of disengagement from small businesses continues. Again, sole traders and microbusinesses had much lower rates of switching with 23 per cent reporting that they had never switched energy suppliers while only 2 per cent of large businesses reported the same.[55]

Based on a much broader view of engagement, that includes activities such as attempted switches or changing tariffs with the current supplier, a report prepared for Ofgem in 2016 found that levels of this broader kind of engagement point towards more active and engaged consumers than would be the case when examining switching rates on their own. In particular, the report found that while 79 per cent of the businesses in its sample did not switch supplier in the previous 12 months, more than half of these non-switching businesses did participate in the market in some way.[56]

Issues around securing energy contracts during the energy crisis

The energy crisis also led to issues around obtaining energy contracts for customers, especially in the non-domestic market. Customers reported that when trying to secure a contract they found that the offers available were unnecessarily expensive, included unreasonable requests for security deposits, upfront payments, or other obligations in order to secure a contract. As a result, customers were often unable to secure an energy contract, which was further exacerbated by the fact that suppliers were not required to offer a contract to non-domestic customers. At certain times in 2022, particularly when the market was very unstable, a large number of suppliers were not offering fixed term contracts with some suppliers ceasing to offer contracts altogether for a short time when prices peaked.[57] The reasons reported by suppliers for not offering contracts included them not being able to obtain fixed price offers from wholesalers or them being unable to afford to offer fixed price contracts due to the need for a large sum of collateral to purchase the energy.[58]

Since November 2022 customers are increasingly able to receive energy contracts once again, however the numbers of contracts offered is not yet back to pre-energy crisis levels . Ofgem is increasing its monitoring of developments in the market[59] but noted that addressing sector specific challenges remains a matter for

---

52 CMA (2016): "Energy market investigation – Final report." pg. 1103 [online]
53 CMA (2016): "Energy market investigation – Final report." pg. 1103 [online]
54 IFF Research (2022): "Non-Domestic Consumer Research." pg. 31 [online]
55 IFF Research (2022): "Non-Domestic Consumer Research." pg. 33 [online]
56 Quadrangle (2017) "*Micro and small business customer engagement in the energy market. A report for Ofgem*",
57 Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 20-21 [online]
58 Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 21 [online]
59 Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 22 [online]

the government. It also noted that its actions would be limited and could lead to unintended negative consequences for energy consumers.[60]

2.3 Simplifying process and choice

In both the domestic and non-domestic retail energy markets there are a few barriers that have caused consumers to not fully engage in the past. For both domestic and non-domestic markets many of these barriers included consumers not fully understanding the market or not being aware of their choices. Although Ofgem aimed to remove some of these barriers, some of the interventions led to unintended negative consequences for customers.

2.3.1 Domestic customers

The Retail Market Review conducted by Ofgem identified three main barriers that were preventing consumers from switching suppliers or tariffs in the retail energy market. These barriers were:

- The large number of tariffs available;
- The lack of clarity given by suppliers; and
- The lack of trust consumers had with their suppliers.[61]

Large number of tariffs available

The large number of tariffs, many being complex and difficult to understand, made consumers less likely to engage as searching through them felt unnecessarily time consuming and difficult. The large number of tariffs makes many consumers decide not to search for better tariffs, makes the frequency of poor switching decisions increase, and contributes to the lack of trust in energy suppliers and the industry in general.[62]

Lack of clarity by suppliers

Ofgem also noted that consumers felt a lack of clarity in the information they received from suppliers meaning that they were less likely to switch because they were unable to access market information and assess different plans for energy suppliers. To help fix this Ofgem said that information should be made easier to understand and communication from suppliers to consumers should be improved.

Lack of consumer trust with suppliers

Finally, many consumers reported not trusting energy suppliers due to little information about differentiating suppliers and the belief that all suppliers were making excess profits.[63] All of these factors make it so consumers are less likely to switch suppliers or tariffs, reducing the competitive pressure on energy suppliers to offer low prices and good services to existing customers.

Ofgem's proposals following the RMR to reduce barriers for domestic customers

In response to these barriers, Ofgem set out a range of proposals with a view to make the energy market easier to navigate and participate in for customers. Ofgem's final proposals included:

- Limiting the number of core tariffs that a supplier can offer per meter type or mode at any time to four;
- Having tariffs with simple two-part structures;
- Making rules so that discounts, bundles, and reward points are easier to understand;
- Reinforcing consumer protection on all types of tariffs;
- Moving customers on expensive tariffs that are no longer available to the cheapest open tariff; and

[60] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 22 [online]
[61] Ofgem (2013): "The Retail Market Review – Final domestic proposals." pg. 15-16 [online]
[62] Ofgem (2013): "The Retail Market Review – Final domestic proposals." pg. 16 [online]
[63] Ofgem (2013): "The Retail Market Review – Final domestic proposals." pg. 17 [online]

- Facilitating collective switching schemes that meet consumer interests.[64]

Limiting the number of core tariffs

In order to make choice of tariffs simpler, Ofgem proposed limiting the number of core tariffs that a supplier can have per meter type or mode to four. Suppliers are allowed to offer choice in payment method, online discount, dual fuel discount, and bundles or reward points through their tariffs. Tariffs were also allowed to vary by region.[65]

Having tariffs with simple two-part structures

In order to make tariffs less complex, Ofgem proposed having tariffs that have a simple two-part structure with just a standing charge and a unit rate. This would involve getting rid of tariffs that vary standing charge or unit rate for different levels of consumption. To ensure this happens, suppliers had to reflect in the standing charge or unit rate, any energy supply related charges. Ofgem also proposed to have a list of surcharges with a simple structure that do not need to be incorporated in a unit rate or standing charge.[66]

Proposing rules to make discounts, bundles, and reward points easier to understand

To make discounts, bundles, and reward systems easier to understand Ofgem proposed rules that suppliers must follow. The rules include making dual fuel and online discounts be displayed in £/year and having consistent terms and conditions across the tariffs and regions where they apply. For discounts and reward points, Ofgem proposed that they must accumulate at a constant rate per unit of time or level of consumption.[67]

Reinforcing consumer protection on all types of tariffs

Ofgem proposed making it easier for customers to switch tariffs for both evergreen and fixed term tariffs. Any changes made to tariffs which may affect customers negatively will have to be explained to the customers before they happen. Also fixed term offers must mean fixed prices unless the prices are fully transparent and have a widely available index and customers can no longer be rolled over to another fixed term offer. Ofgem also proposed making it easier for customers to receive protections in licence conditions when they switch tariff or supplier.[68]

Moving customers on expensive tariffs that are no longer available to the cheapest open tariff

New “dead tariffs” (tariffs that are no longer available to prospective customers) are no longer allowed to be created by suppliers and existing dead tariffs will have to become compliant with new rules and compared with the cheapest open evergreen tariff. If dead tariffs become more expensive, customers must be moved to another tariff.[69]

Facilitating collective switching schemes that meet consumer interests

Ofgem hopes to facilitate collective switching processes that protect consumer interests and achieve the RMR objectives. Collective switching occurs when consumers come together to negotiate a better energy deal with their gas and electricity suppliers.[70] Typically, a third-party intermediary helps with this process in order to get the best tariff for a group of customers. For collective switching, suppliers can use any fixed term tariffs or four core tariffs.[71]

---

64 Ofgem (2013): “The Retail Market Review – Final domestic proposals.” pg. 31 [online]
65 Ofgem (2013): “The Retail Market Review – Final domestic proposals.” pg. 32 [online]
66 Ofgem (2013): “The Retail Market Review – Final domestic proposals.” pg. 32 [online]
67 Ofgem (2013): “The Retail Market Review – Final domestic proposals.” pg. 32 [online]
68 Ofgem (2013): “The Retail Market Review – Final domestic proposals.” pg. 32 [online]
69 Ofgem (2013): “The Retail Market Review – Final domestic proposals.” pg. 32-33 [online]
70 GOV.UK (2013): “Collective switching and purchasing.” [online]
71 Ofgem (2013): “The Retail Market Review – Final domestic proposals.” pg. 32 [online]

Tariff Comparison Rate (TCR)

In addition, Ofgem introduced the Tariff Comparison Rate (TCR) as a tool to assist consumers to compare alternative tariffs and also proposed a personal projection which would allow customers to obtain estimates of their annual costs reflecting their circumstances (based on consumer's individual energy consumption). [72]

The requirement for suppliers and comparison sites to provide a TCR was rolled back by Ofgem in 2017.[73] Citing an "evolving market", Ofgem decided to remove "prescriptive" rules such as the TCR, allowing the regulator to shift its focus to ensure that suppliers were delivering positive consumer outcomes while promoting competition and innovation within the energy market.[74]

Adverse effects of RMR proposals for domestic customers

Although the intentions of the RMR were to help simplify customer choice and increase customer engagement in the retail energy market, in practice this did not always happen. In the CMA's market review published in 2016, it reported that many of the proposals made customers worse off. In particular, the four-tariff cap caused the six large energy firms to withdraw some of their most innovative tariffs and discounts.[75] While the four-tariff rule has its theoretical attractions, in practice it does not actually limit the number of tariffs a customer must look at materially. In its market review in 2016, the CMA reported that for a customer on a standard meter, suppliers can offer a maximum of 16 dual fuel permutations even with the four-tariff cap.[76] This means that with over 30 suppliers, customers still have a choice of 500 different tariffs and most likely would need to use a TPI to compare suppliers. As for the two-part structure of tariffs for simplicity, it did make tariffs simpler to understand, but the CMA reported that customers would still have to understand and calculate their consumption levels in order to find the cheapest tariff.[77] The six large energy firms also reported that the RMR made it harder for them to attract different types of customers especially low-consumption and vulnerable customers. The four-tariff rule was also reported to decrease innovation from suppliers since they did not have extra tariff slots to try out new innovative tariffs.[78]

Guaranteed Standards of Performance

In 2019 Ofgem introduced new Guaranteed Standards of Performance for Switching (GSOP) to address some of the issues identified in relation to the switching process. The first tranche of Guaranteed Standards was introduced in February 2019 (taking effect from May 2019), which require suppliers to pay compensation to customers if they fail to meet minimum standards for the identification, notification to customers, and rectification of erroneous switches, and the refund of credit balances to customers. Ofgem's policy decision regarding the second tranche of Guaranteed Standards was published in December 2019 focusing on providing compensation where the gaining supplier fails to ensure that a switch is completed within the relevant timeline, following erroneous transfers (even if the supplier restores the customer's supply as required by the first tranche of Guaranteed Standards) and if the losing supplier fails to issue a final bill within six weeks of a switch.[79]

Compliance with GSOP for switching is taken seriously by Ofgem. According to a decision published in May 2023, following Ofgem's compliance engagement with three suppliers in relation to GSOP, they were

[72] Ofgem (2013): "The Retail Market Review – Final domestic proposals." pg. 78 [online]
[73] Uswitch: "Tariff Comparison Rates - what do you need to know?" [online]
[74] Uswitch: "Tariff Comparison Rates - what do you need to know?" [online]
[75] CMA (2016): "Energy market investigation – Final report." pg.
[76] CMA (2016): "Energy market investigation – Final report." pg. 570 [online]
[77] CMA (2016): "Energy market investigation – Final report." pg. 571 [online]
[78] CMA (2016): "Energy market investigation – Final report." pg. 572 [online]
[79] Ofgem (2019): "Supplier Guaranteed Standards of Performance for Switching: Decision on introduction of further Guaranteed Standards and Automatic Compensation" pg. 4-5 [online]

required to pay total of £8 million for not issuing a final bill to affected customers within six weeks and not compensating affected customers in a timely manner.[80]

Central Switching Service

In July 2022, Ofgem proposed the Central Switching Service in order to speed up the process of switching energy suppliers, which previously took up to three weeks to accomplish. Ofgem intended that this proposal would make switching faster and more reliable for all customers and in turn lead to more switching which would increase competition in the energy market. For domestic customers this new service was proposed to bring the process of switching suppliers down from three weeks to only about 36 hours. [81]

2.3.2 Non-domestic customers

In Ofgem's non-domestic Retail Market Review it identified some concerns that businesses had in the retail energy market. It was found that there were recurring problems especially in the lack of information regarding billing, contracts, and transfers.[82] Many of the problems that businesses had with energy contracts were material including issues about the time it took to resolve complaints and the negative impact on cash flow or overheads of business.[83] The issues that non-domestic customers had also differed between sizes of businesses as smaller businesses are less likely to have a direct or regular relationship with their supplier representative making it so there is less competitive pressures put on suppliers to improve customer service to small business customers.

Ofgem's proposals to reduce barriers for non-domestic customers

In order to improve the switching process, provide more information about engagement and improve transparency in the non-domestic retail energy market, Ofgem proposed a set of new rules in its RMR. These included:

- Contract and notice period end dates on bills;
- Allowing termination notice to be given at any time;
- Increased monitoring of objections to transfer;
- Continual encouragement of modifications to improve the transfer process; and
- Implementing a Standards of Conduct.

Contract and notice period end dates on bills

To help increase engagement in the retail energy market Ofgem felt there needed to be more information and transparency for energy consumers. To do this Ofgem put in place new rules for suppliers to print the date that a contract will end on every bill or statement. Notices of termination and the last day of termination were required to be printed as well. This regulation would help business customers as many (around 83 per cent[84]) are aware that they have a contract but around 10 per cent[85] were unsure of its duration. Specifically, this rule would help inform small and micro businesses as many of them were not even aware that they had a contract with an energy supplier.

Allowing termination notice to be given at any time

Ofgem also proposed allowing customers to give a termination notice at any time. This would be helpful for customers who were unsure of the termination process and make the process much simpler. Suppliers would

[80] Ofgem: "Three suppliers pay total of £8 million in relation to 'Guaranteed Standards of Performance' Final Billing Compensation failures" [online]
[81] Ofgem (2023): "Annual Reports and Accounts 2022-23." pg. 17 [online]
[82] Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 9 [online]
[83] Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 9 [online]
[84] Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 28 [online]
[85] Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 28 [online]

be required to allow customers in fixed term contracts to give termination notice at any time until the last day of the notice period (30 days before the end of the contract) and allow customers not on a fixed term contract to end the contract at any time.[86]

Increased monitoring of objections to transfer

In order to increase confidence for all businesses in terms of switching suppliers, Ofgem proposed increased monitoring of suppliers' objection to transfer. Ofgem will do this by accessing data from industry sources and directly from suppliers.[87] After 6 months of collecting data Ofgem proposed to assess whether they would need to continue to collect data.

Continual encouragement of modifications to improve the transfer process

Ofgem identified issues being raised about the objections process and they encouraged industries to resolve these problems. This has led to a requirement of more evidence for suppliers using the change of tenancy indicator to push through a customer switch.[88] Ofgem predicted that this would increase confidence in the change of tenancy process. Another amended process seen was that of limiting the number of times a supplier could reapply for a customer ensuring that suppliers do not constantly reapply for the same customers after rejection.[89]

Implementing a Standards of Conduct

Ofgem proposed a Standards of Conduct (SOC) that would require suppliers to treat their micro business customers fairly. The SOC would require that suppliers carried out actions in a fair and transparent way, provide their consumers with accurate information, and make it easy for consumers to contact them.[90]

Central Switching Service

As mentioned in section 2.3.1 above, in 2022 Ofgem proposed the Central Switching Service to help improve the switching process for energy consumers including non-domestic customers. For non-domestic customers the switching time will be slightly longer than for domestic customers, with a switching time of two working days for businesses (and four working days in the case of large gas businesses).[91]

2.4 Reducing market frictions

Flourishing competition in the retail energy market relies on wholesale markets that work effectively. Suppliers in the retail market need access to a range of wholesale market products which allow them to minimise energy costs and offer competitive prices to consumers. The RMR identified concerns around poor liquidity[92] in the wholesale market, leading to barriers in the retail market in terms of entry and growth. [93]

The RMR noted that one of the reasons associated with the lower levels of liquidity observed in the wholesale market is vertical integration which means that suppliers are able to meet some of their energy needs from their own generation businesses which could reduce incentives to trade in the wholesale market.[94]

86 Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 29 [online]
87 Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 42 [online]
88 Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 43 [online]
89 Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 43 [online]
90 Ofgem (2013): "The Retail Market Review – Final non-domestic proposals." pg. 34 [online]
91 British Gas (2022): "Ofgem's faster, more reliable switching power supply." [online]
92 Liquidity measures the availability of products that market participants wish to trade. A product can be considered to be liquid if it is possible to buy or sell it without causing a significant change in its price. Source: CMA: "Energy market investigation – Final report." pg. 180 [online]
93 Ofgem (2013): "The Retail Market Review – Final domestic proposals." pg. 19 [online]
94 Ofgem (2013): "The Retail Market Review – Final domestic proposals." pg. 19 [online]

The potential impact of vertical integration on competition in both wholesale and retail markets was also examined by the CMA as part of its retail market investigation. In particular, the CMA considered three main ways in which vertical integration could have an impact on competition in electricity markets:

- First, independent generators would be harmed if vertically integrated suppliers refuse to buy from them or will only buy on worse terms.
- Second, if vertically integrated generators refuse to supply independent suppliers, or supply them on worse terms, this could result in independent suppliers paying higher costs for wholesale electricity when compared with vertically integrated suppliers. In turn, this could lead to reduced competition and harm to consumers.
- Finally, vertical integration could also raise barriers to entry and growth by new suppliers if they were unable to secure sufficient wholesale electricity.

Overall the CMA did not find evidence of vertical integration having a detrimental impact on competition.[95]

Nonetheless, following the concerns identified regarding poor liquidity in wholesale markets and the risks posed to effective competition, Ofgem introduced a new "Secure and Promote" licence condition into the generation licences of the eight largest electricity generating companies[96] requiring them to follow a set of 'Supplier Market Access' rules when trading with small independent suppliers as well as setting out a market making obligation for the six largest vertically integrated companies.[97] The licence condition was aimed at improving access to the wholesale electricity market which in turn ensures effective competition leading to better deals for electricity consumers.[98] Following the insertion of the new licence condition into licences in March 2014, Ofgem's first annual report on liquidity in 2015 reported a notable improvement in liquidity in the wholesale market over the first year. Ofgem's findings were supported by indicators of liquidity indicating a higher churn (the number of times a unit of electricity is traded before delivery) and falling bid-offer spreads (the difference between the buy and sell price for a product), further supported by qualitative feedback from stakeholders.[99]

2.5 Regulatory framework

The functioning of the electricity and gas wholesale and retail markets are underpinned by industry codes. The key rules for operating in the retail energy market are set out in the Retail Energy Code (REC), covering both the electricity and gas sectors. Firms operating in the market are required to comply with the industry codes as set out in the conditions of their licence.[100]

In addition, licensees are required to comply with a series of technical codes and standards. These typically relative to transmission and/ or distribution operations and include guaranteed standards of service levels (Quality of Service Guaranteed Standards) that must be met by firms.[101]

2.5.1 Protecting customers from volatile wholesale prices

In the current energy market, Ofgem is working hard to protect both domestic and non-domestic consumers of energy. It aims to ensure that suppliers make energy prices fair, provide quality services, and are resilient

95 CMA (2016): "Energy market investigation – Final report." pg. 180 [online]
96 These are: Centrica, Drax, EDF Energy, E.On, GDF Suez, RWE npower, SSE and ScottishPower.
97 These are: Centrica, EDF Energy, E.On, RWE npower, SSE and ScottishPower.
98 Ofgem (2013): "Wholesale power market liquidity: statutory consultation on the 'Secure and Promote' licence condition", pg. 5 [online]
99 Ofgem (2015): "Wholesale Power Market Liquidity: Annual Report 2015", pg. 5-6 [online]
100 Ofgem: "Industry codes and standards" [online]
101 Ofgem: "Industry codes and standards" [online]

to the volatile market.[102] Through Ofgem's monitoring and stakeholder engagement, it identified issues in the energy market caused by the energy crisis, including energy prices that are well above historic norms and a volatile wholesale market. In order to mitigate these problems Ofgem has made a series of changes to their regulation recently. In May 2022 Ofgem passed the Market Stabilisation Charge and Banned Acquisition-only Tariffs (BAT) to be in place until March 2023 in order to help protect consumers against the high energy costs.[103] In February 2023 these measures were evaluated and both were extended until March 2024. Ofgem also made changes to its price cap (see box below for further details) due to the cost of new policies to suppliers and worked with the government to pass the Energy Price Guarantee which is used to protect customers from very high wholesale prices. After March 2024, Ofgem will revaluate and has made a licence mechanism to allow for measures like these to be extended on a yearly basis after consulting with stakeholders.[104]

2.5.2 Impact of the energy price cap on competition in the retail market

While price caps may reduce competition through removing the incentive to switch, the energy price cap was designed with the aim of increasing competition in the retail energy market. At the time of its introduction in 2019 (see box below), the price cap set an absolute top-level price per unit of electricity and gas. The level of the price cap was intended to be low enough to protect customers from high energy prices yet high enough to allow suppliers to offer tariffs lower than the level of the price cap in order to maintain competition and incentivise switching.[105] Nonetheless, following the recent sharp increases prices in the energy market during the energy crisis, the price cap tariff went from being one of the most expensive tariffs available to customers to one of the cheapest ones. In August 2022 about 24 million households were on tariffs protected by the cap.[106]

Opponents of the price cap argued that it decreases competition in the market by reducing the incentive to switch suppliers and also may also lead to underinvestment in infrastructure.[107] Those in favour of the cap highlighted that it helps support those on default tariffs who may not be aware of the switching process. At the same time, even proponents acknowledged that the energy price cap may not be the best option available for consumers and as they would generally benefit from shopping around for cheaper tariffs.[108]

Despite this ongoing debate, both those arguing in favour of and against the cap noted that "the price cap was not designed to cope with price volatility and contributed to recent market instability".[109] Following the increases in the price cap announced over the course of 2022, there have been calls for the cap to be reviewed. Despite these calls, there have been no plans to conduct such reviews neither by Ofgem nor by the Government.[110]

Box 1: The energy price cap

In 2019 Ofgem introduced an energy price cap that was set out in the Domestic Gas and Electricity (Tariff Cap) Act of 2018. The objective of the energy price cap is to ensure that energy prices are fair and that the prices given to customers align with the costs of supplying energy including things like improvements

[102] Ofgem (2023): "Annual Reports and Accounts 2022-23." pg. 14 [online]
[103] Ofgem (2023): "Annual Reports and Accounts 2022-23." pg. 16 [online]
[104] Ofgem (2023): "Annual Reports and Accounts 2022-23." pg. 16 [online]
[105] House of Commons Library (2022): "Energy bills and the price cap." pg. 19 [online]
[106] House of Commons Library (2022): "Energy bills and the price cap." pg. 19 [online]
[107] House of Commons Library (2022): "Energy bills and the price cap." pg. 31 [online]
[108] House of Commons Library (2022): "Energy bills and the price cap." pg. 31 [online]
[109] House of Commons Library (2022): "Energy bills and the price cap." pg. 32 [online]
[110] House of Commons Library (2022): "Energy bills and the price cap." pg. 32-34 [online]

to customer service. It was estimated that the price cap would save 11 million default tariff customers a total of £1 billion a year.[111]

The price cap is designed to fluctuate with the costs of energy. When costs included in the price cap go up, the price cap will also go up and when costs go down the price cap will go down. This is the case in order to allow energy suppliers to recover the costs of supplying energy.[112] The price cap is also updated every three months in January, April, July, and October and Ofgem announces the price cap levels about a month before the price cap period begins. The price cap does not cap bills just the price of energy so different customers can have different costs depending on their energy use. The amount paid by customers under the price cap can also differ depending what payment type customers pay with. Direct debit is less expensive than standard credit due to the higher costs to serve standard credit customers. That being said, no matter what energy supplier a customer has, they will be protected under the price cap.[113]

Some customers are exempt from the default tariff cap such as customers who are already covered by a different price cap. For example, prepayment meter customers who are already protected by the prepayment meter cap are exempt. Ofgem reported that customers receiving the Warm Home Discount would not be exempt but rather be within the scope of the default tariff cap.[114] Some suppliers can also request an exemption from the price cap if the SVT they supply supports the production of gas, or the generation of electricity from renewable sources.[115] To do this the supplier must prove that their SVT supports renewable energy beyond existing subsidies and also that their customers are actively choosing the SVT instead of that being their default.

2.5.3 Protecting vulnerable customers

In order to protect the most vulnerable customers, Ofgem has also worked with domestic energy suppliers to update their Code of Practice so that customers are not involuntarily installing Pre-Payment Meters (PPM). This update sets out more specific high-risk categories where involuntary installations should be banned.[116]

2.6 Role of third-party intermediaries

Third-party intermediaries or TPIs are important tools that both domestic and non-domestic consumers can use to compare different suppliers. TPIs allow for effective competition between suppliers as customers are able to see the costs and benefits of a wide range of suppliers far more easily.

Since Ofgem does not regulate TPIs, customers have limited ways in which they can complain if they are unhappy with the service received from a TPI. As a result, Ofgem asked the government to consider more formal regulatory arrangements for TPIs.[117] There are estimated to be around 2,000 TPIs in the energy market in 2023. Although regulation TPIs falls outside its remit, Ofgem introduced a licence condition that requires TPIs to be signed up to a Qualifying Dispute Settlement Scheme (QDSS) before they can work with suppliers. This licence condition was put in place to help microbusinesses with unresolved issues with TPIs or brokers.[118]

The two main types of TPIs in the energy market are:

---

[111] Ofgem (2018): "Decision – Default tariff cap." pg. 6 [online]
[112] Ofgem: "Energy price cap (default tariff) policy." [online]
[113] Ofgem (2018): "Decision – Default tariff cap." pg. 5 [online]
[114] Ofgem (2018): "Decision – Default tariff cap." pg. 9 [online]
[115] Ofgem (2018): "Decision – Default tariff cap." pg. 9 [online]
[116] Ofgem (2023): "Annual Reports and Accounts 2022-23." pg. 7 [online]
[117] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 52 [online]
[118] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 52 [online]

- price comparison websites); and
- energy brokers.

The use of TPIs varies between small and large consumers. Businesses' motives for using TPIs can vary significantly, and are sometimes dependent upon the range of services offered by the TPIs themselves: some TPIs only cater for businesses with large energy spending, while others may serve the needs of all consumers in the market.

Price comparison websites

Price comparison websites can help customers reduce their search and switching costs by supplying consumers with personal quotes and allowing consumers to easily compare different suppliers.[119] They help inform customers about their ability and potential benefits of switching suppliers, they reduce search costs, and they facilitate competition between energy suppliers through price transparency and increasingly informed customers.

A similar demographic of people and businesses that are disengaged with the market are the same as those who are less likely to use TPIs. Low income customers and customers with low levels of education are less confident or trusting of TPIs like price comparison websites and therefore use them at far lower frequencies.[120] Similarly, smaller businesses are often less informed on TPIs and therefore less likely to use them than larger businesses with 45 per cent of large businesses (250+ employees) reporting that they had compared energy deals while only 27 per cent of sole traders and microbusinesses (0-9 employees) saying that they had compared deals.[121]

Energy brokers

Along with price comparison websites, energy brokers are another TPI who work with many business customers to help secure energy contracts. Again, larger businesses are more likely to work and gain the benefits of energy brokers with Ofgem reporting about 60 per cent of larger customers working with brokers and only 25-30 per cent of smaller customers using brokers in 2023.[122] Among those that used energy brokers, most reported it being very beneficial, showing the disadvantage that uninformed small businesses are losing from not utilising TPIs. This lack of use of brokers does not come down to cost as 84 per cent of businesses who had worked with an energy broker said that they were not charged for the services.[123] In practice, energy brokers earn a commission on the contracts they arrange. However, usually the rate consumers get from an energy broker (including the broker fees) is still cheaper than the rate consumers receive directly from suppliers.[124] This suggests that smaller businesses likely would be able to afford brokers and other TPIs but are unaware of their value or availability.

2.6.1 Ways in which TPIs could help increase consumer engagement with the retail market

Through their activities TPIs bring certain benefits to the energy market such as promoting and increasing consumer engagement. TPIs encourage consumers to engage in the energy market, including by switching to better deals. According to the Ofgem barometer for SME energy customers, TPIs are the key source of the existing contract for over half of customers.[125] At the same time, various surveys report that between 28 and 39 per cent of micro and small businesses use TPIs as their main source of information about energy supplier

[119] CMA (2016): "Energy market investigation – Final report." pg. 35 [online]
[120] CMA (2016): "Energy market investigation – Final report." pg. 35 [online]
[121] IFF Research (2022): "Non-Domestic Consumer Research." pg. 35 [online]
[122] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 12 [online]
[123] IFF Research (2022): "Non-Domestic Consumer Research." pg. 39 [online]
[124] AquaSwitch: "Business energy brokers." [online]
[125] Quadrangle (2017) "*Micro and small business customer engagement in the energy market. A report for Ofgem*",

contracts but then proceed to contract the supplier directly for a contract. Large customers work more closely with the TPI, seeking advice not only on prices but also on energy management.[126]

The use of TPIs varies between small and large consumers. Businesses' motives for using TPIs can vary significantly, and are sometimes dependent upon the range of services offered by the TPIs themselves: some TPIs only cater for businesses with large energy spending, while others may serve the needs of all consumers in the market.

2.6.2 How TPIs may hinder consumer engagement with the retail market

While TPIs bring certain benefits in terms of promoting and increasing consumer engagement, there have been a number of problems in the course of the development of the TPI market. A survey in 2016 of micro and small business customers revealed that nearly half of customers were dissatisfied with the services provided by energy brokers.[127] However, the 2016 survey is less clear on the reason for dissatisfaction or the nature of problems. Two earlier surveys of non-domestic TPIs in 2011 and 2013 revealed that customers experienced a range of problems when dealing with TPIs.[128,129] The CMA 2016 Energy Market Investigation provided a separate review of problems that microbusinesses experienced with TPIs.

The key issues with energy TPIs identified across these different studies were:

- Poor selling practices:
    - Misrepresentation of TPIs' own identity.
    - Misrepresentation of tariffs, and sales terms and conditions.
    - Pressure on customers to force sales.
- Risk of low quality of TPI service:
    - Incomplete survey of the market to obtain best price quotes.
    - No obligation to negotiate better terms on behalf of customer.
    - Suppliers providing confusing information about tariffs to TPIs.
    - Preferential relationship between some TPIs and suppliers.
- Lack of transparency about the TPI's commission.

Poor selling practices

TPIs sometimes do not introduce themselves clearly as TPIs or energy brokers. For example, a TPI might use official language to present itself as a non-commercial entity, such as an ombudsman or someone working on behalf of Ofgem, with the purpose of extracting metering and billing information and enforcing a contract.[130]

Risk of low quality TPI services

The TPI is not bound to search the whole market and may only contact a few suppliers for a price quote, and hence may miss a better deal for the customer.[131] It is therefore important that the customer is provided with clear information about how much of the market is covered by the TPI. Alternatively, the contract(s)

[126] Competition and Market Authority (2016) "*Energy Market Investigation. Appendix 16.1: Microbusinesses*".

[127] Quadrangle (2017) "*Micro and small business customer engagement in the energy market. A report for Ofgem*", Section 3.1

[128] Ofgem (2014) "*Non-domestic TPI Project. Summary of industry feedback to date.*" For more details, see Research Perspective and Element Energy (2013) "*Quantitative Research into Non-Domestic Consumer Engagement in, and Experience of, the Energy Market. A report for Ofgem.*"

[129] Cornwall, Nigel and Buckley, Robert (2011) "*Watching the middlemen. Brokerage services for micro-business energy consumers*", section 3.

[130] Cornwall, Nigel and Buckley, Robert (2011) "*Watching the middlemen. Brokerage services for micro-business energy consumers*", section 3.2.

[131] Ofgem and Citizens Advice (2015) "*Third Party Intermediaries: what your small business needs to know.*"

found by the TPI might still not represent the best deal for the customer and could be improved e.g. by changing the contract duration or the payment method, yet the TPI is not bound to offer such improvements.[132]

While TPIs might seek best price deals for their customer, some suppliers do not provide full tariff information on their website or provide multiple names for similar (core) tariffs when dealing with TPIs, which is likely to affect the quality of service that TPIs can provide.[133]

Non-transparent commission

TPI commissions often lack transparency.[134] The TPI's commission might be hidden in the price quote that the customer receives from the supplier via the TPI.[135] In some cases, the commission might represent a signification proportion of the energy price (e.g. a commission of 2 to 3 p/kWh representing 20 to 30 per cent of the initial price of 10 p/kWh).[136]

2.6.3 Voluntary codes of conduct

While TPIs are not formally regulated, they can chose to become a member of voluntary codes that aid to promote good practice minimum standards.[137] These codes typically set requirements to help safeguard the interests of consumers using services provided TPIs beyond the provisions set out by consumer protection law. The codes are typically monitored by an independent code administrator who ensures compliance, investigates complaints, and has the powers to sanction/ expel members in case of serious misconduct.[138]

Although Ofgem does not regulate TPIs operating in the energy retail market, since late 2013 Ofgem has had powers to enforce the Business Protection from Misleading Marketing Regulations (BPMMRs).[139] The BPMMRs cover business-to-business advertising and marketing and prevent the seller from providing misleading information about its products and services or derogatory/ defamatory information about its competitors. Ofgem can directly accept and investigate complaints about TPI sales behaviour and refer a non-compliant TPI to the courts.

In the case of domestic TPIs, Ofgem took over the responsibility for the Confidence Code from Consumer Focus. The Confidence Code is a voluntary code of practice for domestic energy price comparison sites that aims to ensure that consumers get an independent, transparent, accurate and reliable service when using an accredited site.[140] In 2014 Ofgem proposed a series of changes to the Code (including increasing consumers' awareness of whole of market' comparisons and improving transparency around commission arrangements of comparison sites). At the same time, Ofgem also proposed to expand the scope of the Code, which would cover different types of comparison sites and collective switching schemes, allowing more services to become accredited and further increasing consumers' choice.[141] At present Ofgem's website lists nine Ofgem-accredited price comparison websites.[142]

---

132 Ofgem and Citizens Advice (2015) "*Third Party Intermediaries: what your small business needs to know*."
133 Ofgem (2015) "*Information flows between suppliers and TPIs*", Appendix 1.
134 Competition and Markets Authority (2016) "*Energy Market Investigation. Appendix 16.1: Microbusinesses*", para 121.
135 Competition and Markets Authority (2016) "*Energy Market Investigation. Appendix 16.1: Microbusinesses*", para 123.
136 Competition and Markets Authority (2016) "*Energy Market Investigation. Appendix 16.1: Microbusinesses*", para 126.
137 Penningtons Manches Cooper (2019) "Regulation of Third Party Intermediaries in the Energy Sector." pg. 3 [online]
138 Penningtons Manches Cooper (2019) "Regulation of Third Party Intermediaries in the Energy Sector." pg. 33 [online]
139 Ofgem (2013) "Ofgem gains new powers to protect businesses from misleading marketing" [online]
140 Ofgem "Confidence Code review - January 2015 policy decision" [online]
141 Ofgem (2014) "Domestic third party intermediaries: Confidence Code and wider issues" [online]
142 As of December 2023. For the list of accredited price comparison sites, please see online.

Ofgem also considered other means to regulate non-domestic TPIs, such as licencing and a code of conduct, neither of which was implemented.[143,144] Ofgem also proposed a draft Code of Conduct for TPIs which was abandoned following interim findings in the CMA's energy market investigation.[145] Instead, Ofgem proposed a set of principles that TPIs are expected to follow: honesty, respect, accuracy, transparency, customer-focused, and professionalism.[146]

2.7 Customer satisfaction with market

There have been many reports of dissatisfaction in the energy market due to a number of reasons. Energy consumers often make complaints about their individual retail suppliers but many of the issues come from deeper systematic problems within the energy market as a whole. Most recently with the energy crisis satisfaction has decreased even further mainly due to high prices and bad customer service.

2.7.1 Domestic customers

It was reported by Ofgem in its 2023 consumer standards statutory consultation that domestic consumer satisfaction has been decreasing especially in the last few years. In Q4 2018 satisfaction was at 74 per cent and by Q4 2022 it had dropped to 66 per cent.[147] Although some of the problems associated with dissatisfaction can be attributed to temporary issues such as COVID-19 or the energy crisis, Ofgem has decided that it must propose new rules to help consumers receive the services they require.

Some of the areas that Ofgem has proposed to help improve to regain customer satisfaction is to make it easier for customers to know their energy suppliers. Ofgem wants to improve supplier identification and make it easier for customers to contact their suppliers when they have issues. Ofgem also believes that to improve customer satisfaction it needs to provide more support and advice for customers that are struggling to pay their bills. Finally, Ofgem wants to introduce incentive requirements in order to get suppliers to improve their customer satisfaction. [148]

2.7.2 Non-domestic customers

Many non-domestic customers were unsatisfied with the market for a range of different reasons including the struggle to obtain a contract with an energy supplier, bad customer service, and high prices that seemed to be unreasonable. To help combat these problems, Ofgem decided to issue intensive supplier information requests, a Call for Input, and undertake extensive stakeholder engagement to gather information and inform their views.[149] Ofgem realises that many of the issues that the consumers are facing have come from poor market conditions but there are still many cases of poor conduct from some suppliers. To combat this problem Ofgem has proposed targeted reforms to make sure that suppliers provide better customer support. There are certain areas where Ofgem does not have the power to make changes but feels that the

[143] Ofgem (2014) "*Proposals for regulating non-domestic Third Party Intermediaries (TPIs).*"
[144] For responses to the Ofgem consultation on the TPI licence and code of conduct, see online.
[145] Ofgem stated that it had deferred the implementation of its proposed Code of Conduct for TPIs following the expansion of scope of the CMA's energy market investigation "until there is greater clarity, so we can determine the appropriate level of intervention". For further details, see online.
[146] Ofgem (2015) "*Next steps on our project for a code of practice for the non-domestic third party intermediary (TPI) sector.*" The principles are also reproduced in the factsheet by Ofgem and Citizens Advice (2015) "*Third Party Intermediaries: what your small business needs to know.*"
[147] Ofgem (2023): "Consumer standards statutory consultation." pg. 15 [online]
[148] Ofgem (2023): "Consumer standards statutory consultation." pg. 18 [online]
[149] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 4 [online]

government should make some changes to regulation including a wider access to redress support and issues involving energy brokers.[150]

Why customers were unsatisfied

Informed by its monitoring, Ofgem noticed concerning reports about the behaviour of suppliers and issues within the energy market in general. Although many of these issues stem from the energy crisis, Ofgem noted the importance of supporting energy consumers during this time and proceeded to assess whether there were deeper systematic issues in the market. As mentioned in section 2.2.2 above, one of the key issues identified related to securing energy contracts. A further issue relates to energy prices: even though energy prices had come down from their peak in 2022 yet they still remained high.[151] In addition to the high prices, consumers reported that when their unit rates or standing charges increased, they were informed about the reasons behind these increases.

What Ofgem did to help

To better understand the problems in the energy market, Ofgem conducted a Call for Input in 2023. It received over 70 responses from stakeholders including business customers, trade bodies and consumer groups, energy suppliers and TPIs.[152] These responses suggested three areas of concern:

- Pricing and contractual behaviours;
- Competition in the non-domestic sector; and
- Focused regulatory support for specific groups of customers.[153]

Following the Call for Input, Ofgem proposed targeted reforms to address the issues identified as well as made a series of recommendations to the government to consider amending regulation to address concerns currently outside its regulatory remit such as wider access to redress support.[154]

2.7.3 Complaints and dispute resolution

Complaints about suppliers can also be used as an indicator of customer satisfaction with the services received. While submitting complaints to suppliers is seen as a simple process, there have been concerns around the time required to resolve the issues raised by customers which could take several months.[155] Stakeholders have requested that there should be a statutory timescale that outlines how long suppliers can take when responding to customer complaints. Stakeholders also argued that the information given by suppliers be clear, transparent and not misleading.[156]

A study by IFF Research for Ofgem in 2022 found that about 13 per cent of businesses had made a complaint to their energy supplier in the last six months. It also found that 42 per cent of businesses who had got a new energy supplier for reasons outside of their own choice had made complaints.[157] This difference shows that there is low satisfaction when first starting out with a new energy supplier, providing some evidence around the concerns raised by some businesses about changing energy suppliers.

[150] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 4 [online]
[151] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 22 [online]
[152] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 13 [online]
[153] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 13 [online]
[154] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 4 [online]
[155] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 44 [online]
[156] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 44 [online]
[157] IFF Research (2022): "Non-Domestic Consumer Research." pg. 7 [online]

Dispute resolution could also involve services from the Energy Ombudsman, offering a free and impartial service to consumers. Whilst the service is currently limited to domestic consumers and microbusinesses, evidence suggests that larger non-domestic consumers would benefit from this service as well. [158]

2.8 Other considerations

In the energy market there is a group of people that are domestic consumers but are served by non-domestic contracts. These people include residents in care homes, assisted living arrangements, tenants in multiple occupancy buildings, residents in flats/apartments attached to a business, residents in caravan parks, residents in houseboats, and residential accommodation for students in higher education.[159] The main issue with this is that these domestic customers may not have their full needs met and do not have all of the protections that domestic consumers who have a direct relationship with their supplier have. For example, domestic consumers on a non-domestic contract are not covered by the price cap and the Energy Price Guarantee (EPG) and even though in the past non-domestic prices were typically lower than domestic energy, that is no longer the case anymore ever since the energy crisis.[160] Ofgem estimates that there are about 900,000 domestic consumers under a non-domestic contract living under a large range of different residences.

Since this group of customers are so diverse, it is very difficult to find a way to help all the consumers and increase their protection. Ofgem also notes that protection policies would likely end up intersecting with government and other parts of the energy industry. To help fix this issue to the best of its ability, Ofgem has been working with stakeholder groups to understand what issues these consumers are facing and thinking about how it can help solve them.[161]

TPIs which can help consumers compare suppliers easily and without high costs. TPIs in the energy market includes price comparison websites and energy brokers. These can help keep the level of competition high in the market making standards raise and prices lower helping consumers of energy greatly. Even though TPIs are extremely helpful, often vulnerable consumers are not aware of TPIs or are weary of them.

[158] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 8 [online]
[159] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 61 [online]
[160] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 60 [online]
[161] Ofgem (2023): "Non-domestic market review: Findings and policy consultation." pg. 62 [online]

3 Mobile

Engagement and satisfaction with the mobile market and the services provided are monitored through a series of trackers as well as through periodic reviews by Ofcom. The low levels of switching seen in the market in the early 2010s at least to some degree reflected the barriers faced by residential customers and small business when it came to switching.

These included barriers due to unnecessary switching costs, the presence of multiple switching processes, concerns around continuity of service following a switch and lack of awareness of the implications of switching. To address the issues identified in 2017 Ofcom introduced a series of reforms to simplify the switching process for customers which eventually increased the number of customers seeking deals from new providers.

At the same time, Ofcom also sought to tackle issues in relation to the interaction between competing providers which may also reduce customers' ability to switch for example due to attempts by (existing) providers to frustrate the switching process and delay or discourage consumers from switching.

Ofcom's effort to deliver lower prices, wider coverage and better reliability for customers have been complemented by ensuring that consumers get a fair deal for their services through the Fairness for Customers commitments introduced in 2019.

Comparison tools including price comparison websites play an important role in ensuring that consumers can compare offers. To ensure that comparison tools provide transparent, impartial and accurate information, Ofcom has been operating a voluntary accreditation scheme for price comparison websites since 2006. Members of the scheme need to meet various accreditation criteria and are subject to regular audits to ensure a high standard of conduct.

3.1 Overview of mobile market

The UK telecommunications market was the first of the nationalised industries to be subject to a series of deregulation measures in the 1980s, bringing competition into the telecommunications industry.

The current mobile market structure in the UK consists of four mobile network operators (MNOs) who rely on infrastructure-sharing joint ventures and act as hosts to mobile virtual network operators (MVNOs) that compete with each other for end-users. The MNOs are vertically integrated as the four MNOs provide retail services under their own brands and sub-brands but also offer wholesale services to MVNOs to provide their own retail services.[162]

In terms of performance, the mobile market has demonstrated good results, marked by a notable degree of innovation and competition among network operators. As of the end of Q1 2023, retail revenue in mobile telephony witnessed an increase of 3.7 per cent compared to the previous year, accompanied by a 1.9 per cent rise in the number of active mobile subscribers.[163] Innovation and competition also pass through to consumers in terms of continued reduction in price and service quality. Simultaneously, traditional mobile voice call and messaging services have faced substantial declines over the years, primarily attributed to the rollout of Voice over IP (VoIP) and increasing adoption of alternative calling and messaging applications that, to some extent, still rely on mobile network connectivity.

[162] Ofcom (2022) "Ofcom's future approach to mobile markets." Section 2.11 [online]
[163] Ofcom (2023) "Telecommunications Market Data Update Q1 2023" [online]

However, problems have also been identified in the mobile market. Consumers wishing to engage in the market often face barriers due to unnecessary switching costs, the presence of multiple switching processes, concerns around continuity of service following a switch and lack of awareness of the implications of switching. Following a package of reforms by Ofcom to simplify the switching process that came into effect in 2019, switching rates have increased in the market.[164]

An earlier report for Ofcom[165] looking at SMEs' communication needs suggested that many (smaller) SMEs perceive the market for communications services in the same way as residential customers. For example, SMEs with a non-technical background or those that had not engaged fully with the market tended almost exclusively to focus on residential consumer mobile brands. In terms of their needs, larger businesses tend to have one flexible contract with their supplier that covers all users in the business and their devices, irrespective of the different start and end points which arise e.g. as new members of staff require a handset. For SMEs, it also appears that some of these relationships evolve with their mobile providers over time, such that they move from being perceived by the supplier as merely a series of individual contracts towards being perceived as a genuine 'business customer'. As such, these SMEs may receive additional benefits, such as an account manager, but the relationship for billing and contractual purposes remains as a series of overlapping contracts, making it difficult to switch to another provider all at once.

3.2 Customer engagement

Customer engagement with the market is monitored and assessed through a series of switching trackers as well as through periodic reviews by Ofcom.

3.2.1 Switching trackers

Switching Tracker

The Switching Tracker is Ofcom's key data source on switching levels, attitudes and experiences across the communications markets (fixed, mobile, fixed broadband and multichannel/Pay TV). Since 2010 Ofcom has run this tracking study annually among UK adults to measure participation levels, switching incidence and ease of switching in each market.[166]

The key results from 2022 indicate that:

- 85 per cent of mobile users are satisfied with their current service provider while 4 per cent reported dissatisfaction with their provider, which is unchanged from 2021.
- 71 per cent of people in mobile and bundled services expressed they are not currently looking or planning to look for a new deal and 63 per of them never looked for a better deal in the last 12 months.
- Around 56 per cent of respondents trust the price comparison website to show them the best deals regarding mobile services.

Switching Experience Tracker

The Switching Experience Tracker enables Ofcom to monitor the switching experience of small sub-groups of switchers e.g. those switching mobile network and porting their number, those switching fixed services on the Openreach network, and those switching via different processes. The primary objectives are to track and understand the motivations and reasons for switching and any barriers or difficulties in doing so among sub-groups of switchers and those who decided not to switch.[167]

[164] Ofcom (2023) "Supporting phone and broadband customers through the cost-of-living crisis" [online]
[165] BDRC (2018) "SMEs' Communications Needs - A Report for Ofcom" [online]
[166] Ofcom (2022) "Technical Report – Switching Tracker 2022" – [online]
[167] Ofcom (2022) "2022 Switching Experience Tracker Technical Report" – [online]

The key results from 2022 indicate that:

- 73 per cent of all mobile users interviewed felt confident in understanding different options in the mobile market.
- 88 per cent of all mobile users interviewed were confident in comparing deals among different providers.
- 80 per cent of mobile users were satisfied with their decision (stay or switch) while 18 per cent was dissatisfied.
- 86 per cent of mobile switchers found the switching process easy while 12 per cent found it difficult.
- Nonetheless, 64 per cent of the mobile switchers reported encountering major or minor difficulties while switching.[168]
- 15 per cent of mobile users found the switching process took too long and the date they started using the new provider was later than expected.

3.2.2 Strategic reviews of markets

In addition to the information gathered through these trackers, Ofcom periodically conducts strategic reviews of the markets it regulates including mobile communications. The purpose of these assessments is to identify whether and how regulation needs to adapt to a changing market that continues to experience rapid growth and technological advances. As part of these reviews, Ofcom also wishes to better understand the likely effect of these developments on consumer choice and competition.

Ofcom considers switching a key indicator of consumer engagement and an indirect way to assess switching costs. As part of its 2010 strategic review Ofcom expressed concerns over low levels of switching (6 per cent for single services) in the mobile sector.[169] Similarly low levels of engagement were found by subsequent consultations and reports with mobile switching rates oscillating between 7 and 11 per cent of customers.[170] In its 2015 report on consumer switching, Ofcom also noted a decrease in the proportion of consumers considering switching, the proportion of customers comparing providers, and the proportions of customers actually going ahead with a switch.[171]

In 2017, Ofcom commissioned qualitative research on customer engagement to find out why some customers have a low level of engagement or do not engage at all. The research identified the key differences in attitudes and behaviour between four engagement types (inactives, passives, interested and engaged). The key findings show that a low level of customer engagement on the customer's end is primarily caused by:

- lack of interest or motivation to actively shop around for a better deal (put off by too much hassle);
- lack of knowledge and understanding of the services or unaware of the options available;
- lack of confidence in the improvement of services after switching; and
- lack of trust in the market in general (price transparency, public perceptions).[172]

For the most vulnerable customers, the barriers to engaging in the mobile market can be significantly amplified. Individuals with disabilities or limited digital, literal and numeracy skills are more likely to encounter

---

[168] Key major and minor difficulties include arranging the switch so that one is not paying for old and new services at the same time and always have access to the service, cancelling previous service, understanding relevant step to switch, and researching the market.
[169] Ofcom (2010) "Strategic review of consumer switching" pg.31 [online]
[170] Ofcom (2015) "Consumer switching – Consumer experience of switching mobile communications services and options for process reforms", pg.13-14 [online]
[171] Ofcom (2015) "Consumer switching – Consumer experience of switching mobile communications services and options for process reforms", pg.14 [online]
[172] Futuresight (2018) "Consumer engagement with communication services – A qualitative research study, final report" [online]

challenges in accessing alternative deals. By contrast, financially vulnerable customers find a compelling incentive in the form of competitive prices, making them more likely to engage. [173]

3.2.3 Business customers

The qualitative research commissioned by Ofcom also found that business customers' barriers to engagement are similar to those experienced by residential customers. Nonetheless, many SMEs put a premium on service quality and performance over price. Low engagement among business customers primarily comes from the lack of trust and guarantee when switching to alternative providers. Different from household customers, drops in service quality or downtimes are a greater risk for businesses. As a result, there is a strong tendency to stay with a network provider they trust.[174]

3.3 Simplifying process and choice

In response to the concerns around low engagement and switching, Ofcom considered and subsequently implemented a series of reform to simplify the switching process for customers. Before setting out the details of these proposals and reforms, the box below summarises different switching models relevant for mobile services.

Box 2: Summary of switching processes for mobile services

Gaining Provider Led (GPL) switching: consumer is able to rely on the new (i.e. gaining) provider to arrange for their services to be transferred from their previous provider to the new provider.

Losing Provider Led (LPL) switching: consumer needs to get a code from their existing (i.e. losing) provider before they can switch their service to the new provider.

Cease and Re-provide (C&R): consumer terminates their contract with the losing provider and requests a new service from the gaining provider (consumer may also request a new service first before terminating their contract).

Source: Ofcom (2010): "Strategic review of consumer switching" [online]

3.3.1 Strategic review of switching

As noted in section 3.2.2 above, as part of its 2010 strategic review Ofcom identified low levels of engagement and switching with the market. The review identified contractual reasons as an obstacle for consumers not looking elsewhere for a better deal or going through with a switch.[175] Besides contract arrangements, the switching process itself was often found to be complex and involved steps that required coordination between different providers in ways that do not often arise in other consumer markets. Among those who had not switched, many considered hassle factors as the key switching costs that prevented them from switching. These included costs around searching for information about alternative providers, researching the switching process and getting in contact with multiple network providers.

Ofcom's long term, strategic view was that GPL processes should be preferred to LPL processes as these perform better both in terms of competition and consumer outcomes. In particular:

173 Futuresight (2018) "Consumer engagement with communication services – A qualitative research study, final report" [online]
174 Futuresight (2018) "Consumer engagement with communication services – A qualitative research study, final report", pg.4-5 [online]
175 Ofcom (2010) "Strategic review of consumer switching" pg.46 [online]

- Ofcom noted that GPL processes result in less hassle, have lower consumer switching costs and are easier for consumers to navigate compared with LPL processes. In addition, the gaining provider has a greater incentive to make the switching process smooth.
- GPL processes would better support retail competition through lower prices, greater choice and innovation. This is because LPL processes make it possible for losing providers to offer consumer an incentive not to switch and 'save offers' this way (this is explained further in section 3.4.2 below).

In relation to concerns around consumers being switched to a new provider without their knowledge or consent, Ofcom noted that these could be addressed within a GPL process.[176]

Ofcom's analysis at the time also suggested that within the communications markets, the worst problems arose for fixed-line and broadband switching. This ultimately led Ofcom to prioritise further work first in terms of reforms to the switching process. As a result, Ofcom issued a statement in August 2013 concluding that the existing switching processes should be harmonised into a single switching process for fixed voice and broadband providers. Ofcom also confirmed that it preferred a GPL solution to an LPL system.[177]

3.3.2 Auto-switch reforms

Subsequently, Ofcom's next phase of work on consumer switching for mobile was initiated by a Call for Input paper in July 2014, followed by a consultation on a list of options for reform in July 2015. This identified the following potential issues with the switching process:

- Consumer difficulty and unnecessary switching costs: some switching processes involve greater difficulty for the consumer and can take longer than others, e.g. if a consumer needs to contact their existing as well as their new provider, taking additional time and causing hassle.
- Multiple switching processes: where multiple processes for switching the same service exist, this can cause confusion for consumers.
- Continuity of service: the switching process may require consumers to coordinate the cessation of their service with their old provider with the start of their service with their new provider, e.g. by changing the SIM card in their phone. Further difficulties may arise when consumers need to manage any notice period required for terminating their current contract. To mitigate any risk around loss of service, some consumers may choose to subscribe to two services simultaneously and therefore 'double-pay' for their mobile service to avoid possible service discontinuity.
- Lack of awareness of the implications of switching: consumers may suffer harm if they are unaware of, or do not have sufficient information about the financial and service implications of switching, e.g. around early termination charges or notice periods.
- Consumers being switched to another provider without their consent – also referred to as slamming.
- Erroneous transfers: arising when the wrong asset (e.g. mobile phone number) is inadvertently switched.[178]

In response to these issues, in its March 2016 consultation Ofcom set out the following two options for intervention, expressing a marginal preference for a GPL process (as Ofcom believed that this would be the simpler option for customers):

- GPL process – under this proposal, consumers would only need to contact the provider they want to switch their service to, without the need for customers to contact the losing provider. The gaining provider would arrange for the consumer to be sent a text message containing information relevant to

[176] Ofcom (2010) "Strategic review of consumer switching" pg.2 [online]
[177] Ofcom (2013) "Consumer Switching – A statement and consultation on the processes for switching fixed voice and broadband providers on the Openreach copper network" [online]
[178] Ofcom (2015) "Consumer switching – Consumer experience of switching mobile communications services and options for process reforms", pg.16 [online]

their switching decision e.g. any early termination charges or notice periods. The consumer would then give consent to proceed with the switch by replying to the message. The gaining provider would then coordinate the switch and provide a new SIM card.

- Automated PAC[179] process – under this proposal, consumers would be able to request and receive a PAC by text message, through an online account or over the phone without the need to speak to their losing provider. At the same time, consumers would also receive information relevant to their switching decision, e.g. any early termination charges or notice periods. The consumer would then pass the PAC to the new provider, who would arrange for the switch to be completed with the old provider.[180]

In addition, Ofcom proposed requiring 'end-to-end' management of the switch to address the issues identified around loss of service, coordination of the switch and consumer understanding. This includes the requirement that losing providers must not deactivate a SIM until the gaining provider has activated the new one. Finally, providers were also required to give clear information about the switching process to customers.[181]

In July 2016 Ofcom published a further consultation setting out its proposals to address the impact of minimum notice periods when switching mobile communications services. To address concerns around double paying,[182] Ofcom revised the proposals from March 2016 to include an additional requirement on providers not to charge notice beyond the date a consumer switches and/ or ports their mobile number.[183]

Following responses to consultations in 2016, Ofcom undertook further work to understand the likely costs to industry of implementing these potential reform options. With updated analysis, Ofcom found that both options enabled consumers to avoid having to speak with their previous (losing) provider – the key factor behind the time spent and difficulties experienced switching by consumers under the current arrangements. However, estimates of the costs of implementing these reforms had risen, significantly in the case of GPL. As a result, Auto-Switch was considered a more proportionate remedy to address the problems identified as it would meet Ofcom's policy objectives but at a lower cost than GPL.

In its December 2017 statement, Ofcom confirmed the introduction of the following package of reforms:

- Introduction of a new and simplified way to switch ('Auto-Switch'): consumers will be able to request and automatically receive a unique code by text, or through their online account, which they can give to their new provider to switch and port their number (if they wish to do so). This will remove the need for consumers to call their old provider.
- Banning notice period charges after the switching date: consumers will no longer have to pay for their old and new service at the same time.
- Providing clear information and transparency to consumers: mobile providers will be required to provide consumers with clear information, for example on their websites, about the switching and number porting process.[184]

These reforms were implemented by the 1 July 2019 deadline set by Ofcom. In terms of the process, Ofcom assumed a monitoring role whilst allowing industry to independently manage the implementation process. In response to this, some providers argued that Ofcom should have engaged more with concerns raised by the industry, particularly the issues surrounding customer verification and fraud. Furthermore, there were

179 Porting Authorisation Code (PAC): the process used if a consumer wishes to change mobile network operator but retain their existing phone number. The consumers must first speak to their existing provider and request a code which they then give to their new provider.
180 Ofcom (2016) "Consumer Switching – Proposals to reform switching of mobile communications services" pg.5-6 [online]
181 Ofcom (2016) "Consumer Switching – Proposals to reform switching of mobile communications services" pg.7-8 [online]
182 Where consumers pay notice for their old service while simultaneously paying for their new service.
183 Ofcom (2016) "Consumer Switching: Further proposals to reform switching of mobile services" pg.1 [online]
184 Ofcom (2017) "Consumer switching – Decision on reforming the switching of mobile communication services" pg.2 [online]

comments that a lack of engagement and clear guidance from Ofcom led providers to implement the customer verification aspects of Auto-Switch differently. Ofcom observed that while some mobile providers do not require customers to provide any additional information to verify their identity when requesting a PAC via text, others require additional details from customers.

In May 2023 Ofcom published an ex-post evaluation of these reforms. The evaluation found evidence of increased consumer engagement, suggesting that following these reforms customers were better able to exercise choice. It also found that the reforms and switching had a greater take-up than Ofcom had expected at the time of its 2017 decision and as a result, these generated greater direct benefits to consumers than previously estimated.[185] For example, in the 12 months prior to 1 July 2019 4.4 million PACs were required in total which increased to almost 5.8 million in the 12 months following the 1 July 2019 deadline, of which 4.1 million resulted in completed PAC switches. Moreover, the number of requested PACs not subsequently used to complete a switch also increased.[186]

Business customers

The scope of the Auto-Switch reforms captured both residential customers and businesses switching fewer than 25 mobile numbers.[187] This is because Ofcom found that the existing switching process led to unnecessary time spent and difficulties for both customers and businesses alike. Ofcom also noted that the majority of businesses will, where they switch via Auto-Switch, benefit from receiving switching information from their providers (including information about early termination and notice periods) as most businesses choose mobile tariffs or contracts that are not significantly different to those taken by residential consumers.[188]

Ofcom also considered businesses with more complex tariff arrangements and needs, and proposed the following arrangements for business customers:

- Where a business customer requests their PAC/N-PAC by phone, they will need to be given this immediately over the phone and where this is not possible, within 2 hours by text.
- Where a business customer requests a PAC/N-PAC by text, they will receive via text the PAC/N-PAC and the relevant switching information (e.g. early termination charge, outstanding credit balance for prepaid mobile services and a weblink to the account login page) within 2 working days of the request.
- Where a business customer requests a PAC/N-PAC through their online account, they will receive it and relevant switching information within 2 working days via their online account and also via text.[189]

As part of its ex-post evaluation of the Auto-Switch reforms, Ofcom noted that business consumers were making use of the reforms with around 5 per cent of all the PAC requests in July 2021 submitted by customers on business tariffs.[190]

3.3.3 End-of-contract notifications

Ofcom found evidence that providers did not notify consumers when they were approaching the end of their minimum contract period and the implications for the prices and services available to them after this point.

---

185 Ofcom (2023) "Auto-Switch – An ex-post evaluation of the impact of the introduction of the Auto-Switch reforms" pg.1-2 [online]

186 Ofcom (2023) "Auto-Switch – An ex-post evaluation of the impact of the introduction of the Auto-Switch reforms" pg.13 [online]

187 I.e. it excluded "bulk ports" which we defined to be 25 numbers or more.

188 Ofcom (2017) "Consumer switching – Decision on reforming the switching of mobile communication services" pg.52 [online]

189 Ofcom (2017) "Consumer switching – Decision on reforming the switching of mobile communication services" pg.46-47 [online]

190 Ofcom (2023) "Auto-Switch – An ex-post evaluation of the impact of the introduction of the Auto-Switch reforms" pg.15 [online]

In particular, Ofcom considered that this lack of information led not only to many consumers staying out-of-contract for longer but also consumers paying higher prices (e.g. through automatic price increases at the end of the minimum contract period) and unable to take advantage of better packages.[191] In terms of the mobile market, Ofcom found that while customers' out of contract spend was on average lower than spend by customers who were within their minimum contract period, consumers on combined airtime and handset deals typically paid the same price even after their minimum contract period ended.[192] This suggests that there is often a financial penalty for consumers who are out-of-contract.[193]

To address these issues and ensure that customers can get the best deals for their need, Ofcom introduced new rules requiring providers to send customers end-of-contract notifications (ECNs) and annual best tariff advice which came into effect in 2020. Ofcom's 2021 review of the implementation of ECN for mobile found positive results, more consumers are aware of when their contract ends and less people were 'out of contract' since the introduction of ECN.[194]

3.3.4 Longer contract duration

Earlier research by Ofcom is 2008 highlighted the use of longer-term contracts as potentially detrimental to the market noting that when customers are tied in to the same supplier for longer periods, providers may not have to compete as hard. Oftentimes, these longer-duration contracts also had early termination fees consumers were not informed about.[195] As a result, contracts to residential and small business customers are now limited to a maximum of 24 months.[196]

3.4 Reducing market frictions

Interaction between competing providers could reduce customers' ability to switch providers for example by attempts to frustrate the switching process and delaying/ discouraging consumers from switching. This includes issues around switching without consent (slamming), save activity and tying customers in with the same provider through the use of longer-term contracts.

Ofcom's work on the issues relating to customer engagement and switching did not explicitly consider the impact of the interaction between the four MNOs and other parties in the industry (including MVNOs) on customers' ability to engage and switch.

3.4.1 Switching without consent

Providers employ various sales and marketing tools to attract customers. While the majority conduct these practices responsibly, there are instances where certain companies resort to dishonest activities, such as mis-selling. One such mis-selling activity is slamming, where customers are switched to a new provider without their knowledge or consent. At the time of its 2010 strategic review, data by Ofcom suggested that around 0.5 per cent of mobile customers experienced slamming in the previous 12 months.[197] To tackle issues around

[191] Ofcom (2018) "Helping consumers to engage in communications markets – Consultation on end-of-contract and out-of-contract notifications" pg.17 [online]
[192] Ofcom (2021) "A review of the impact of end-of-contract notifications and pricing commitments by broadband and mobile providers" pg.13 [online]
[193] Ofcom (2018) "Helping consumers to engage in communications markets – Consultation on end-of-contract and out-of-contract notifications" pg.26 [online]
[194] Ofcom (2021) "A review of the impact of end-of-contract notifications and pricing commitments by broadband and mobile providers" [online]
[195] Ofcom (2008) "Mobile citizens, mobile consumers – Adapting regulation for a mobile, wireless world" pg.18-19 [online]
[196] Ofcom "Checklist for new phone or broadband contract" [online]
[197] Ofcom (2010) "Strategic review of consumer switching" pg.51 [online]

switching without consent, in March 2010 Ofcom introduced rules to protect residential and small business customers from mis-selling including slamming. Providers that break the rules set out by Ofcom face penalties of up to 10 per cent of their annual turnover.

Ofcom's rules set out the information new customers must receive before and after buying a service (e.g. information about the key terms and conditions), require providers to keep a record of customer consent to transfer their service from their existing provider to the new provider and make it clear when providers may cancel orders placed by other providers.[198]

3.4.2 Save activity

Save activity refers to instances where the losing provider offers consumers an incentive not to switch services, and therefore is a particular feature of LPL processes. Ofcom's 2010 review identified save activity as a barrier to some customers deciding not to switch. Around half of customers in contact with their existing (losing) provider about their intention to switch experienced save activity. Among them, about four out of five customers accepting the save offer, and one in five reporting that they felt pressured by their existing provider to stay. In addition, Ofcom also noted that save activity may also raise the switching costs for customers who end up switching providers, e.g. due to uncooperative customer service staff. Nevertheless, customers also reported a positive experience in relation to save activity e.g. reporting that they enjoy that their existing provider make them feel valuable. [199]

3.5 Regulatory framework

3.5.1 Fairness commitments and framework

While Ofcom notes that competition and innovation has delivered lower prices, wider coverage and better reliability, it also seeks to ensure that customers get a fair deal for their services through its Fairness for Customers commitments introduced in 2019.[200] All of the UK's biggest providers[201] have signed up to the commitments which are set out in the box below.

Box 3: Fairness for Customers commitments

1. Customers get a fair deal, which is right for their needs.
2. Customers get the support they need when their circumstances make them vulnerable.
3. Customers are supported to make well-informed decisions with clear information about their options before, during, and at the end of their contract.
4. Customers' services work as promised, reliably over time. If things go wrong providers give a prompt response to fix problems and take appropriate action to help their customers, which may include providing compensation where relevant.
5. Customers can sign up to, change and leave their services quickly and smoothly.
6. Customers can be confident that fair treatment is a central part of their provider's culture.

Source: Ofcom (2019) "Fairness for Customers commitments" [online]

[198] Ofcom "Phone or broadband switching without consent" [online]
[199] Ofcom (2010) "Strategic review of consumer switching" pg.81 [online]
[200] Ofcom (2019) "Fairness for Customers commitments" [online]
[201] These include BT; EE; Giffgaff; O2; Plusnet; Post Office; Sky; TalkTalk; Tesco Mobile; Three; Virgin Media and Vodafone.

In 2021 Ofcom conducted its first review of these commitments and found mixed evidence of progress, noting that it will continue to challenge providers to address concerns around pricing and the treatment of vulnerable customers.[202]

To assess fairness issues and the kinds of concerns that might prompt the regulator to intervene, in 2020 Ofcom introduced a fairness framework which serves as a guide to providers and other market participants. As Ofcom explained, the framework is complementary to its existing regulatory tools and guidance as even competitive markets may fail to deliver fair outcomes for all customers. One of the reasons highlighted by Ofcom included behavioural biases which could affect consumers' ability to choose the best deal available to them. For example, advances in big data and algorithms may increase price discrimination in markets.[203]

Ofcom intends to use the framework as a tool within its existing regulatory processes. This means that this tool will be applied consistently with existing regulatory principles focussed on bias against intervention, acting proportionately and targeting action only where it is needed and does not signal a more interventionist approach.[204] In addition, Ofcom also noted that its approach was consistent with other regulators (e.g. the Financial Conduct Authority's fairness framework) but also tailored to the features of the communications markets characterised by significant ongoing technological change.[205]

3.6 Role of third-party intermediaries

Comparison tools, like price comparison websites, provide a valuable service for consumers navigating the broad range of phone, broadband and pay-TV products available today.

3.6.1 Ofcom's voluntary accreditation scheme

To help customers be confident that the comparison tools provide transparent, impartial and accurate information, Ofcom has been operating a voluntary accreditation scheme for price comparison websites (comparing offers of mobile and bundled services) since 2006.[206] The scheme also helps customers build trust in these comparison tools.

A comparison tool may be accredited if it meets the scheme criteria and passes an independent technical audit of the company's price calculator. In addition, it also needs to pass a 'soft' operational audit by Ofcom against its assessment criteria.

Ofcom's assessment criteria are:

- Accessible: services must be accessible to all users, including disabled users, for example by ensuring online services are designed to work with on screen-readers.
- Accurate: the calculations used to generate price comparisons need to be updated at least every two weeks and state when data was last updated. Information about special offers and key features of the contract also need to be displayed on the results page.
- Transparent: Comparison results are sorted by price by default. The comparison tool must also clearly explain additional details of the offers presented, such as whether the cost of the offer will increase at the end of the contract and an explanation that actual broadband speeds may vary.

[202] Ofcom (2021) "Fairness for Customers commitments – Progress review" [online]

[203] Ofcom (2020) "Making communications markets work well for customers – A framework for assessing fairness in broadband, mobile, home phone and pay TV" pg.5-6 [online]

[204] Ofcom (2020) "Making communications markets work well for customers – A framework for assessing fairness in broadband, mobile, home phone and pay TV" pg.22 [online]

[205] Ofcom (2020) "Making communications markets work well for customers – A framework for assessing fairness in broadband, mobile, home phone and pay TV" pg.7 [online]

[206] Ofcom (2006) "Accreditation scheme for price comparison calculators – Launch of new scheme and invitation for applications" [online]

- Comprehensive: the price comparison information needs to be full and comprehensive, which means that offers should be shown from the key players in the relevant market and that the user's location should be considered when presenting information on what services are available.[207]

Once accredited, comparison tools can display the scheme's logo on their websites and in publicity campaigns. Members must also pass regular audits that include assessments of their transparency, accuracy and accessibility, to ensure they adhere to a high standard of conduct and present reliable and trustworthy comparisons. At present there are seven price comparison websites that are members of the scheme.[208]

Since 2006 Ofcom has reviewed and made some changes to the scheme to ensure that this reflects the latest technological and regulatory developments. In 2013 Ofcom reviewed the accreditation scheme and found that it was generally working effectively with a need for some minor revisions to ensure it kept pace with changing market and customer expectations.[209] Since then the scheme was also updated to reflect the outcomes and recommendations from the CMA's market study on digital comparison tools as well as the requirements set out in the 2018 European Electronic Communications Code (EECC). This included revisions to the assessment criteria Ofcom uses to determine membership and simplifying the existing accreditation process by removing some of the more prescriptive requirements.[210]

Box 4: Eligibility criteria for Ofcom's voluntary accreditation scheme (effective from 30 April 2021)

Ofcom's voluntary accreditation scheme specifies that a comparison tool must:

- provide users with information on the quality of services they compare;
- make clear who owns them and be independent from the providers whose services are being compared, to ensure unbiased search results;
- set out clear and objective criteria on which comparisons are based;
- deliver services to a high standard and comply with relevant legislation;
- provide information that is accurate, accessible and up to date, and present that information in plain and clear language;
- show offers covering a significant proportion of the market and be open to any provider that wishes to make their products available for comparison; and
- have effective procedures in place to handle consumer complaints and to allow users to report incorrect information.

Source: Ofcom (2020): "Digital comparison tools for telephone, broadband and pay-TV - Changes to Ofcom's voluntary accreditation scheme" [online]

3.7 Customer satisfaction with market

Ofcom monitors satisfaction with the market and the mobile services provided through a series of trackers. Through these trackers Ofcom collects data about customer satisfaction levels and satisfaction with complaints handling processes across the communications markets (fixed, mobile, fixed broadband and multichannel/Pay TV). The surveys are carried out by an independent market research company using a range of methods. In particular, the three Comparing Customer Service (CCS) trackers are:

- Customer Satisfaction Tracker;
- Reasons to Complain Tracker; and

207 Ofcom (2020) "Digital comparison tools for telephone, broadband and pay-TV – Changes to Ofcom's voluntary accreditation scheme" pg.4 [online]
208 Ofcom "Use an Ofcom-accredited price comparison site to find the best deal" [online]
209 Ofcom (2013) "Accreditation Scheme for Price Calculators – Decision on changes to the scope and operation of the Scheme" [online]
210 Ofcom (2020) "Digital comparison tools for telephone, broadband and pay-TV – Changes to Ofcom's voluntary accreditation scheme" [online]

- Complaints Handling Tracker.

In addition to these trackers, Ofcom also conducts periodic assessments and surveys of the mobile market.

3.7.1 Customer Satisfaction Tracker

The Customer Satisfaction Tracker is Ofcom's key data source on levels of satisfaction across these markets. The 2022 results showed that:[211]

- 87 per cent of mobile customers were satisfied with the overall level of service provided, a decrease since 2021 (91 per cent);
- 82 per cent of mobile customers (not having the service in a bundle) were satisfied with the value for money from their service provider, a decrease compared with 2021 (85 per cent);
- 84 per cent of customers who have their services in a bundle were satisfied with the overall level of service provided; and
- 67 per cent of customers who have their services in a bundle were satisfied with the value for money from their service provider.

3.7.2 Reason to Complain Tracker

The Reasons to Complain tracker includes data on which customers had a reason to complain about the service they received, if they went on to make a complaint, and, if not, why not. The 2022 results showed that: [212]

- 12 per cent of all mobile phone users were given a reason to complain in the last 12 months (whether or not they went on to make a complaint), an increase compared with 2021 (9 per cent);
- Of the mobile customers who had a reason to complain, 71 per cent complain about their mobile service or supplier.
- Of the mobile customers who lodged complaints, the majority were dissatisfied with service performance (47 per cent). This was followed by billing or payment issues (36 per cent), and then dissatisfaction with customer service (22 per cent).
- Among mobile customers who chose not to complain, the major reasons cited included deeming it not worth the hassle (33 per cent), lack of time (24 per cent), speculation about a lack of action from the mobile service provider (22 per cent), and not knowing where to complain (13 per cent).

3.7.3 Complaints Handling Tracker

Since 2016 Ofcom has also been monitoring customer satisfaction with complaints handling. The 2022 results showed that: [213]

- 53 per cent of mobile customers who made a complaint to their provider were satisfied with the way their complaint was handled, with 34 per cent giving neutral responses and 13 per cent dissatisfied.
- Satisfaction levels with complaints handling aligned with the industry average for all providers, remaining unchanged compared to 2021.[214]
- Just over two in five (43 per cent) complaints made by customers were resolved on first contact.

[211] Ofcom (2022) "Customer Satisfaction Tracker – 2022 data tables" [online]
[212] Ofcom (2022) "Reason to Complain Tracker – 2022 data tables" [online]
[213] Ofcom (2022) "Complaint Handling Tracker – 2022 data tables" [online]
[214] Ofcom (2023) "Comparing customer service: mobile, landline and home broadband" [online]

- Of the mobile customers who complaints got completely resolved, 87 per cent had their complaints resolved on first contact.

4 Mortgages

The mortgage market underwent significant changes as a result of the 2008 financial crisis and the subsequent Mortgage Market Review. Following the review, responsible lending rules and regulations were introduced that encouraged customers to get advice on mortgage deals to promote greater consumer protection.

Compared to other similar financial markets, customer satisfaction and engagement levels are generally high. Nonetheless, the mortgage market review by the FCA identified the limited effectiveness of comparison tools available to customers and the inability of consumers and intermediaries to access information from lenders as two of the key areas where the market could work better.

Third-party intermediaries play a crucial role in the mortgage market by helping consumers find suitable mortgages and facilitating the application process. Nevertheless, at the time of the FCA's market review consumers faced some difficulties when it came to choosing between intermediaries as the tools available to compare them were limited both in terms of scope and coverage. Given that such tools were only nascent at the time, the FCA expressed a preference for a market-led solution and noted that it would continue to monitor developments in the market.

4.1 Overview of mortgages market

Mortgage market regulation was brought within the financial regulator's[215] scope in 2004, however, the structure and practices of these regulations were significantly changed following the financial crisis of 2008.[216] Following the crisis, the FCA, launched an in-depth investigation into the mortgage market, resulting in the publication of the Mortgage Market Review (MMR) in 2014. The MMR initiated regulatory changes to the market aimed at preventing a return to the previous poor practices in the market and to improve the affordability of mortgages.[217] It did this through the introduction of stronger responsible lending rules and a new approach to mortgage advice and selling that heavily encouraged intermediary advice when selecting or switching mortgages.[218]

In order to understand the impacts of implementing MMR regulations, in 2016 the FCA launched a study into the mortgage market. The study was launched towards the end of 2016 which meant that around two years of data were available to analyse the impact of new regulations.[219] Due to the significant changes in the market, the study attracted considerable interest and feedback from stakeholders.[220] The interim report was published in May 2018 followed by the publication of the final report in March 2019.

The final report identified a number of aspects that worked well in the mortgages market. These included:[221]

- Consumers largely only take out suitable mortgages that they can afford.
  - This is partially regulated by the MMR.
- There are high levels of consumer engagement.

215 Financial Services Authority (FSA) at the time.
216 FCA: "Mortgages Market Study: Final Report" [online] (pg. 8)
217 FCA: "Mortgages Market Study: Final Report" [online] (pg. 8)
218 FCA: "Mortgages Market Study: Final Report" [online] (pg. 18)
219 FCA: "Mortgages Market Study: Terms of Reference" [online] (pg. 4)
220 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 2)
221 FCA: "Mortgages Market Study: Final Report" [online] (pg. 4)

  - When the study was initiated, over three quarters of consumers were switching to a new mortgage deal within 6 months of moving onto a reversion rate.

- There are a wide range of products offered and satisfactory levels of competition.
- Many consumers value the experience and expertise of intermediaries.

While there are clearly areas of strength in this market, the FCA found that some areas could be further improved. One key area for improvement concerned the ease with which consumers find the most suitable mortgage for them. This included developing a wider range of tools to provide support in the processes of finding either an intermediary or a mortgage lender directly.[222] These concerns and the efforts taken to remedy them, are discussed in further depth in later sections of this case study.

The FCA consulted on its proposed remedies in March 2019, followed by a policy statement in October 2019 which set out the resulting policy changes.[223]

4.2 Customer engagement

For the market to operate effectively, an environment that encourages consumers to engage and participate should be created. Overall, both the interim and final FCA report found that the mortgages market worked well with respect to customer engagement. There are various reasons which may have driven this, such as increasing the net benefit of switching and informing consumers about their options. Additionally, the 'interaction trigger' from the MMR as part of the reformed regulatory regime for mortgages in 2014 aimed to create an environment in which consumers were more informed.

4.2.1 Factors driving customer engagement

The interim FCA report did not identify significant concerns related to levels of customer engagement in the mortgages market. The report determined that over 75 per cent of consumers switch to a new mortgage deal within six months of moving onto a reversion rate.[224] This indicates that the market works well for many customers. The FCA also concluded that consumers were more engaged and generally active in the mortgage market compared to other related markets of retail financial products.[225]

The high levels of engagement that have been observed in this market are likely to be driven by multiple factors including:[226]

- The increase in the difference between introductory rates and reversion rates for new borrowing, which increases the net benefit of switching.
  - The average standard variable rate (SVR)[227] has stayed relatively stable, while the rates for two-year fixed deals have roughly halved over the same period.
- Lenders increasing their focus on retaining existing consumers.
  - Anecdotal evidence indicated that the volume of internal switches was growing. This was further confirmed in the final report when the FCA cited that switching levels were higher than they were even in 2016 due to an increase in internal switches.[228]

---

[222] FCA: "Mortgages Market Study: Final Report" [online] (pg. 4)
[223] FCA: "Changes to Mortgage Responsible Lending Rules and Guidance" [online] (pg. 3)
[224] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 4)
[225] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 47)
[226] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 47)
[227] The interest rate charged once an initial deal period on a fixed or tracker rate mortgage comes to an end.
[228] FCA: "Mortgages Market Study: Final Report" [online] (pg. 25)

- Lenders and intermediaries proactively informing consumers about their options.
  - They contact their customers prior to the end of their current deal to prompt them to switch and many help facilitate hassle free switching.

4.2.2 Interaction trigger

The interaction trigger was another feature of the MMR that was put into effect with the goal of ensuring that consumers were on suitable mortgages. Essentially this required advice to be provided to the majority of mortgage sales, including ones that were approaching the end of their term. As a result, almost all customers are channelled to advice unless they are switching internally.[229] There are very few situations that do not require receiving advice according to the interaction trigger. An example is select consumers who are able to choose their mortgage on an execution-only basis and show that they know the details of the lender and the product they want. Firms must provide advice, to virtually all other consumers, although customers can choose to reject any recommendation.[230] The implementation of this interaction trigger boosted the per cent of advised mortgages from 70 to 97 per cent.[231]

While the main purpose of the interaction trigger was to protect consumers and ensure they were getting suitable mortgages, it also increased competition in the market. The nature of the interaction trigger directly encourages shopping around for suitable mortgage deals. This leads to more informed consumers who are seeking alternative options. Knowing that borrowers will be prompted to explore alternatives when they are nearing the end of their term, lenders may be incentivized to offer competitive mortgage deals to retain existing customers. This competition can lead to improved terms, interest rates, and overall offerings in the mortgage market. In 2019, the FCA confirmed that they would not take away the interaction trigger due to its benefits to both consumers and the market as a whole.[232]

4.3 Simplifying process and choice

Consumers experienced challenges finding suitable and good value mortgages for multiple reasons. The two reasons explored by the FCA included:

- The limited effectiveness of comparison tools available to customers; and
- The inability of consumers and intermediaries to access information from lenders.

4.3.1 Comparison tools available to customers are of limited effectiveness

At the time of the mortgage market interim report in 2018, there were multiple tools available to help consumers compare mortgage products, however, the FCA analysis found that they were not highly useful. This was especially the case for customers who were unsure if they met the criteria to qualify for different offerings.[233]

Price comparison websites were one type of tool that was available to aid in the comparison process. One issue that the FCA found with price comparison websites is that they primarily served the mainstream market. This means that they are not specific to consumers which can make it challenging for an individual to analyse the findings from a price comparison website. They tended to be more accurate and applicable for low risk, financially capable consumers. However, they were less useful for consumers with adverse credit, low income,

229 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 28)
230 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 74)
231 FCA: "Mortgages Market Study: Final Report" [online] (pg. 18)
232 FCA: "Consultation on Mortgage Advice and Selling Standards" [online] (pg. 13)
233 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 25)

or who were newly self-employed.[234] Additionally, price comparison websites were not always able to present a comprehensive list of mortgage products due to them not being joined-up with lenders. This was not only an issue for consumers looking to get a mortgage directly from a lender.

Some intermediaries also experienced unnecessary barriers in the searching process because of the limited tools they had to identify and compare products. There were some tools that could assist in determining if a consumer qualified for a mortgage emerging at the time of the interim study, but they were at too early of a stage to assess how effective they could be for intermediaries. As a result, most intermediaries were reliant on their past experiences with lenders and used specific lenders' information tools, instead of more comprehensive alternatives.[235]

The FCA noted that there had been recent progress among intermediaries developing tools and lenders partnering with them.[236] With this in mind, the FCA was hesitant to implement any regulations that could potentially curtail these innovations. This aligned with the feedback from lenders and intermediaries who also opposed FCA intervention. Lenders and intermediaries argued that innovation was already happening and that regulatory intervention could lead to unintended consequences. The FCA also preferred a market-led solution and decided that it would continue monitoring the situation and intervene if real progress is not made.[237]

In a 2022 update, the FCA reported that in 2016 they had identified 800,000 mortgages held by consumers who appeared able to switch and may save money from doing so. As of 2022 they could only identify 370,000 such mortgages. This suggests that there have been improvements in consumers finding suitable mortgages.[238]

4.3.2 Inability to access information from lenders

The inability of consumers and intermediaries to access information from the lenders further compounded challenges in the process of finding a suitable mortgage. A lot of the information that these stakeholders were seeking revolved around eligibility criteria. When eligibility criteria is not transparent, a consumer, or intermediary, will be less confident they will meet it and be accepted. As a result, they act with increased caution and choose a product that they are more confident they are eligible for.[239] This is what the FCA observed in the mortgage market in 2016 when they found that, for example, around 30 per cent of consumers paid for mortgages with a higher age limit or maximum loan to value than they needed. Many applied to a less suitable, more expensive mortgage to have a buffer in the eligibility criteria.[240]

Enabling customers to understand upfront whether they qualify for particular products would allow them to shop around on a more informed basis and provide additional means of applying for a mortgage. As discussed in section 4.3.1 above, there had been some development in available tools for consumers and intermediaries to compare mortgage products. However, without all of the valuable information they will be limited in effectiveness.[241]

Lenders also expressed concerns that providing more information on the merits of advice versus execution-only services could be considered a breach of FCA advice rules around not steering consumers to execution-only.[242]

---

234 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 25)
235 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 25)
236 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 71)
237 FCA: "Mortgages Market Study: Final Report" [online] (pg. 5)
238 FCA: Switching in the Mortgage Market" [online] (pg. 21)
239 FCA: "Mortgages Market Study: Final Report" [online] (pgs. 14-15)
240 FCA: "Mortgages Market Study: Final Report" [online] (pgs. 14)
241 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 71)
242 FCA: "Mortgages Market Study: Interim Report" [online] (pg. 30)

To begin the discussion of how to remedy this concern, the FCA established a working group of lenders, intermediaries, and fintech trade bodies in 2018. The working group agreed that the mortgages market could work better if intermediaries could more easily identify the products that consumers are likely to qualify for. However, because lenders opposed FCA intervention and the FCA preferred a market-led solution, the FCA decided to continue monitoring the situation and did not implement any regulatory changes in 2018.[243]

4.3.3 Mortgage prisoners

Mortgage prisoners are a select group of mortgage consumers who would likely benefit from switching mortgages but are unable to do so, despite being up-to-date on their payments. People often end up in this situation as a result of having a mortgage with an inactive lender or a firm not authorized to lend. For the majority of mortgage prisoners, this is a result of changes in lending practices during and after the 2008 financial crisis, and the regulatory response that tightened lending standards.[244] This causes the consumer to be paying higher than necessary mortgage payments.

Consumers who fit into the category of "mortgage prisoners" tended to share some similar characteristics. The FCA found that these consumers more likely had interest-only mortgages and had relatively high loan to value mortgages. Additionally, some also had fairly poor credit history when they originally took out their mortgage.[245] Many mortgage prisoners took out their mortgage or last switched before 2009, before the impacts of the financial crisis hit.[246] This information aligned with the FCA's hypothesis that most mortgage prisoners were considered to be too high risk by lenders and could not switch because of either the changes to lending practices immediately following the financial crisis, or the regulator responses implemented to correct returning to poor lending practices.

While there is not official data on the number of mortgage prisoners, the FCA estimated that at the launch of the market study, there was at least 120,000 UK consumers who would benefit from switching but could not.[247] Despite this being a fairly small number compared to the total number of mortgages in the UK, the combined impacts are significant. Numerous changes to the Responsible Lending Rules and Guidance were enacted in 2019 with the policy statement. These changes included:

- Requiring inactive lenders and administrators of unregulated entities to develop and implement a communication strategy for contacting relevant consumers. This is to make them aware of the rule changes and notify them that they may be able to switch to a more affordable mortgage.[248]
- Allowing lenders to use a modified affordability assessment for eligible consumers who want to switch mortgage deals without borrowing more. This involves allowing lenders to disapply certain responsible lending rules like those on income and expenditure checks.[249]
- Requiring lenders to report data on use of the modified affordability assessment. This will help the FCA monitor where the new rules are enabling consumers to switch mortgage deals.[250]

4.4 Reducing market frictions

In the interim mortgage market study, the FCA identified a small number of areas that could contribute to issues with the levels of competition in the mortgage market. The FCA's analysis of these factors concluded

243 FCA: "Mortgages Market Study: Final Report" [online] (pgs. 17)
244 FCA: "Mortgages Market Study: Final Report" [online] (pg. 30)
245 FCA: "Mortgages Market Study: Final Report" [online] (pg. 31)
246 FCA: "Mortgages Market Study: Final Report" [online] (pg. 32)
247 FCA: "Mortgages Market Study: Final Report" [online] (pg. 31)
248 FCA: "Changes to Mortgage Responsible Lending Rules and Guidance" [online] (pg. 7)
249 FCA: "Changes to Mortgage Responsible Lending Rules and Guidance" [online] (pg. 5)
250 FCA: "Changes to Mortgage Responsible Lending Rules and Guidance" [online] (pg. 23)

that the cumulative effects of these concerns were not significant enough to warrant further action. The three areas of concern included:

- Exclusivity clauses;
- Procuration fees; and
- Information sharing.

4.4.1 Exclusivity clauses

A potential concern is that firms may try to restrict a counterparty's ability to contact groups of consumers, largely through the use of exclusivity clauses. Mortgage lenders operate under competition law, which includes rules of the use of exclusive distribution and noncompete and non-solicitation clauses.[251]

While only a small concern of the FCA, exclusivity clauses may create conflicts of interest between wholesalers and retailers through various anti-competitive practices such as restricting consumer choice, creating barriers to entry and increasing market concentration. Therefore, these practices could lead to providers offering less competitive rates, terms and agreements to borrowers. In turn, this may hinder consumers' ability to access information and make effective choices.

4.4.2 Procuration fees

Procuration fees are a fee that lenders pay the third-party advisors upon the completion of the mortgage. At the time of the interim report, this fee was typically around 0.01 and 0.02 per cent of the mortgage in the UK. Procuration fees are the main pathway for payment between lenders and intermediary firms. The FCA expressed some uncertainty in regard to how the process works in the interest of consumers. It explained that this practice could weaken price competition between mortgage intermediaries. If intermediaries are limited in how much of the procuration fee they retain, it might reduce their ability to offer competitive pricing to attract business. This could potentially result in consumers having fewer choices and less competitive mortgage options.[252]

4.4.3 Information sharing

Sharing information between each other allows firms to compare their products against that of their competitors, enabling them to assess their competitiveness in the market. This could enhance competition, benefit consumers and promote overall market efficiency. Nonetheless, in certain cases information sharing could be against competition law and firms' regulatory obligations as these may reduce incentives to compete vigorously. The FCA noted that the benefits of this benchmarking process can also be achieved when the exchange is anonymised and using historic, aggregate data.[253] This would decrease the risk of potential anti-competitive behaviour.

4.5 Regulatory framework

The Mortgage Market Review (MMR) implemented some of the most significant regulatory changes to the mortgage market in years. The Financial Services Authority had begun investigating the mortgage market in the early 2000s, however, the direction of the investigation changed significantly following the financial crisis. The resulting report was the MMR, which implemented regulatory changes that greatly altered the structure of the mortgage market.

---

[251] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 64)
[252] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 64)
[253] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 64)

4.5.1 Stronger responsible lending rules

The regulations surrounding lending qualifications became very relaxed leading up to the financial crisis. As a result, one of the main adjustments the FCA made to mortgage regulations was instituting rules surrounding responsible lending. This included an affordability assessment to ensure that consumers were not getting mortgages that they would not be able to afford. This assessment is now a requirement in order to take out a mortgage.[254] Another change that was a part of the responsible lending rules was the implementation of a stress test. This involved assessing whether borrowers could still afford their mortgage if interest rates were to rise, which helped to ensure that they were resilient to potential financial shocks.[255] The FCA determined that, as of 2016, the responsible lending rules did not appear to have significant impacts on lending volumes or disproportionately prevent lending across particular groups.[256]

At the same time, changes in lending practices following the financial crisis meant that prudential regulations sought to prevent lenders from taking out bad loans. However, this also meant that switching turned out to be difficult and, in some cases, impossible for consumers (e.g. in the case of mortgage prisoners who are unable to switch, despite being up-to-date on their payments). This highlight the fundamental trade-off between the regulatory framework introducing responsible lending rules and the objective of a flourishing market with increased levels of switching.

4.6 Role of third-party intermediaries

In the mortgage market, intermediaries' main role is to help customers find a suitable mortgage. Intermediaries vary significantly in terms of their size and the types of activities performed. Some intermediaries are a singular advisor, while others are large firms with thousands of employees.[257]

4.6.1 Factors affecting the choice between intermediaries

There are a number of factors that a consumer might consider when choosing between intermediaries. The FCA's interim report cited that 29 per cent of consumers who had taken out a mortgage or switched products in the previous 3 years selected their intermediary based on a recommendation from a relative or a friend. An additional 26 per cent explained that they had used their intermediary before and were pleased with the service they provided. Additionally, there are tools such as websites that can help consumers identify a local intermediary.[258] As of 2018, although there were some comparison tools available to customers to compare intermediaries these were limited in both scope and coverage:

- These tools often lacked information that would make it easy for consumers to compare options based on the nature, quality and cost of services.
- Participation was also voluntary which meant that the tools did not cover all intermediaries in the market.[259]

Consumers making an informed choice about the intermediary they use could drive up quality and improve competition between them. Intermediaries that do better in terms of meeting customers' needs would be rewarded with more business. For example, this could be by developing better tools to compare

[254] FCA: "Embedding the Mortgage Market Review: Responsible Lending Review" [online] (pg. 10)
[255] FCA: "Embedding the Mortgage Market Review: Responsible Lending Review" [online] (pg. 22)
[256] FCA: "Embedding the Mortgage Market Review: Responsible Lending Review" [online] (pg. 5)
[257] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 17)
[258] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 29)
[259] FCA: "Mortgages Market Study: Final Report" [online] (pg. 22)

intermediaries. Better tools could include information on factors related to fees, areas of expertise, distribution of lenders used and the number of complaints.[260]

4.6.2 How intermediaries facilitate finding suitable mortgages for consumers

Intermediaries largely serve as advisors to consumers and act as a link between borrowers and lenders. By exploring a consumer's preferences, needs, and circumstances, they are able to provide insight into what type of mortgage a consumer might want and be able to get. They also can help to facilitate the application process.[261]

Prior to the implementation of the Mortgage Market Review in 2014, 70 per cent of new mortgage sales were advised by third party intermediaries. This number has since increased to 97 per cent following the implementation of the MMR.[262] This increase can largely be attributed to the policies in the MMR that encouraged use of intermediaries, along with the additional benefits to consumers from getting advice from intermediaries. Intermediation reduces the average cost of a mortgage by about £600 per year on average.[263] In the absence of this information, 75 per cent of consumers believed that they got a better deal with the help of an intermediary than they would have on their own.[264] In general, intermediaries offer expertise in an area many consumers are uncomfortable in, encourage options consumers typically would not consider, and find lower cost mortgages on average.

Nonetheless, some customers choose not to use an intermediary. Customers who obtain mortgages directly from a lender cited reasons relating to (perceived) attractive rates, existing relationships with the lender, and speaking directly to someone in the branch for their choice not to involve an intermediary. In cases where customers stay with their existing provider (and thus forego the services of an intermediary), they tended to value convenience (not having to shop around or submit account information) and the benefits from reduced processing times.[265]

4.6.3 Potential disadvantages of using intermediaries

Overall, intermediaries play an important role in the process of determining the most suitable mortgage for consumers. Arguments around how intermediaries facilitate this process include the strong financial incentive on intermediaries to find their customer a mortgage and to do so quickly. This aligns with consumers' needs. However, the incentives on an intermediary to find a customer the cheapest mortgage are weaker.[266] In particular, the FCA found that the cost of a mortgage could be directly influenced by choice of intermediary. Intermediary firms that used a small number of lenders tended to recommend more expensive products on average compared to intermediary firms who used a larger number of lenders. This price difference was found to be around £400 for the first year of the incentivised period.[267]

To mitigate some of these concerns, the FCA noted that intermediaries should clearly show the range of lenders they use.[268] This will incentivise intermediaries to use more lenders and consequently drive up quality among intermediaries and improve competition. By the time of the FCA publishing the final report in 2018, steps had already been taken to address this issue. This included the Single Financial Guidance Body (SFGB)

[260] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 76)
[261] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 27)
[262] FCA: "Mortgages Market Study: Final Report" [online] (pg. 18)
[263] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 39)
[264] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 28)
[265] FCA: "Mortgages Market Study: Interim Report" [online] (pg. 28)
[266] FCA: "Mortgages Market Study: Final Report" [online] (pg. 21)
[267] FCA: "Mortgages Market Study: Final Report" [online] (pg. 21)
[268] FCA: "Mortgages Market Study: Final Report" [online] (pg. 22)

developing a tool to compare mortgage intermediaries that is accessible to consumers and intermediaries alike.[269]

4.7 Customer satisfaction with market

In general, consumers appear to be fairly satisfied with the status of the mortgage market. The Financial Lives Survey (FLS) has collected data on customer satisfaction with the various parties involved in getting a mortgage, as well as satisfaction with their mortgage as a whole. Satisfaction was measured on a 0 to 10 scale, with 10 being highly satisfied and 0 being highly dissatisfied. The FLS includes data from 2017, 2020 and 2022. It measured satisfaction with mortgage, mortgage broker, and advisor at their mortgage lender. All of these were in the moderate to highly satisfied range in 2017, but they also all have increased between the years of 2017 and 2022.[270]

As 2017 was prior to the release of both the interim and final reports on the mortgage market. This suggests that customers were satisfied with the market even though they could have received a better mortgage deal. Additionally, there were no reports of significant complaints regarding the market. Nevertheless, satisfaction levels have increased since the publication of the FCA's mortgage market study.

[269] FCA: "Mortgages Market Study: Final Report" [online] (pg. 23-24)
[270] FCA: "Financial Lives 2022" [online] (pg. 230)

5 Card Acquiring

The PSR conducted a market review of the card acquiring services market following concerns that the supply of these services may not be working well for businesses (merchants), and ultimately consumers. This includes looking at the fees merchants pay for card-acquiring services and the quality of service they receive.

The PSR proceeded with the market review despite a high level of reported customer satisfaction among merchants. The review identified that the supply of card-acquiring services is not functioning well, particularly for small and medium-sized merchants. Merchants could make savings by shopping around or negotiating with their current supplier, but many do not engage in such practices.

The PSR identified three features that restrict merchants' ability and willingness to search and switch – lack of price transparency, indefinite contract duration and contractual obligations.

The PSR enforced three remedies designed to increase merchant engagement and ensures that the market works better for them. The remedies include price summary boxes to increase price transparency, trigger messages to prompt merchant engagement, and contractual limits.

5.1 Overview of card-acquiring market

The card payment market continues has grown in importance: the number of debit card payments more than doubled between 2010 and 2020, while credit card payments experienced a substantial one-third increase. This surge can be attributed to the widespread adoption of contactless card payments, evolving shopping preferences, and a growing acceptance of cards by businesses. Concurrently, the use of cash has seen a decline, with the value of debit card payments surpassing cash expenditures for the first time in 2017.[271]

This section offers an overview of the card payment systems in the UK, including the involved stakeholders, contractual relationships, and the pricing system. Subsequently, it delves into the regulatory landscape governing card acquiring services in the UK, exploring the motivations driving the regulator's decision to conduct a comprehensive market review.

5.1.1 Card payment systems

To accept card payments, merchants need to buy card-acquiring services. Card-acquiring services are services to accept and process debit and credit card payments on behalf of a merchant resulting in a transfer of funds to the merchant. They are one of the parties involved in four-party card payment systems[272]:

- Merchants – organisations that accept payment by card, like newsagents, supermarkets and online retailers.
- Acquirers – banks or other organisations licensed by the operator of a card payment systems to recruit merchants to accept card payments. Acquirers provide card-acquiring services to merchants and play a key role in enabling card payments. Additionally, acquirers provide card-acquiring services to merchants via two other channels:

[271] UK Finance (2021) "UK Payment Markets 2021" [online]

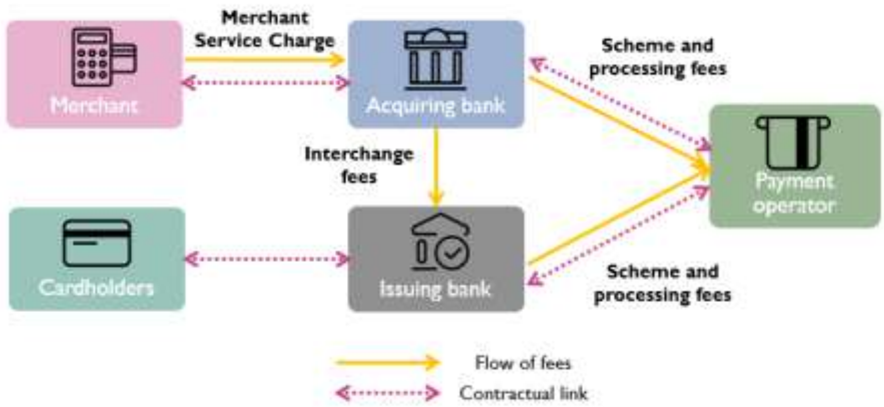
[272] There are also third-party intermediaries that are part of the card payment systems. These are discussed further in section 5.6.

    - Independent Sale Organisations (ISOs) sell card-acquiring services to merchants on behalf of one or several acquirers alongside card acceptance products and value-added services.
    - Payment Facilitators are intermediaries between acquirers and merchants. Acquirers permit payment facilitators to recruit merchants on their behalf and contract with these merchants for card-acquiring services.

- Issuers – banks or other organisations licensed by the operator of a card payment system to provide cards to cardholders. The issuer pays to the acquirer the money the merchant is owed for the transaction and debits the cardholder's account.
- Cardholders – the people making the purchase
- Operators of card payment systems (e.g. Visa and Mastercard) – organisations that license issuers and acquirers to recruit cardholders and merchants respectively. They manage the 'scheme rules' that govern how card payments are made and set the basis on which issuers, acquirers, merchants, cardholders and other parties participate in the card payment system. Operators of card payment systems may also provide processing services that manage the transactions between issuers and acquirers.

The figure below provides a simplified illustration of a so-called four-party card payment system, which corresponds to the Mastercard and VISA payment systems. In three-party card schemes, such as Amex, the payment operator also acts as the acquiring bank and card issuer.

Figure 5.1: Simplified structure of a four-party card payment system



For every card payment, the merchant payment pays the acquirer a merchant service charge (MSC) for their services. The MSC comprises interchange fees, scheme fees and acquirer net revenue. They are defined as follows:

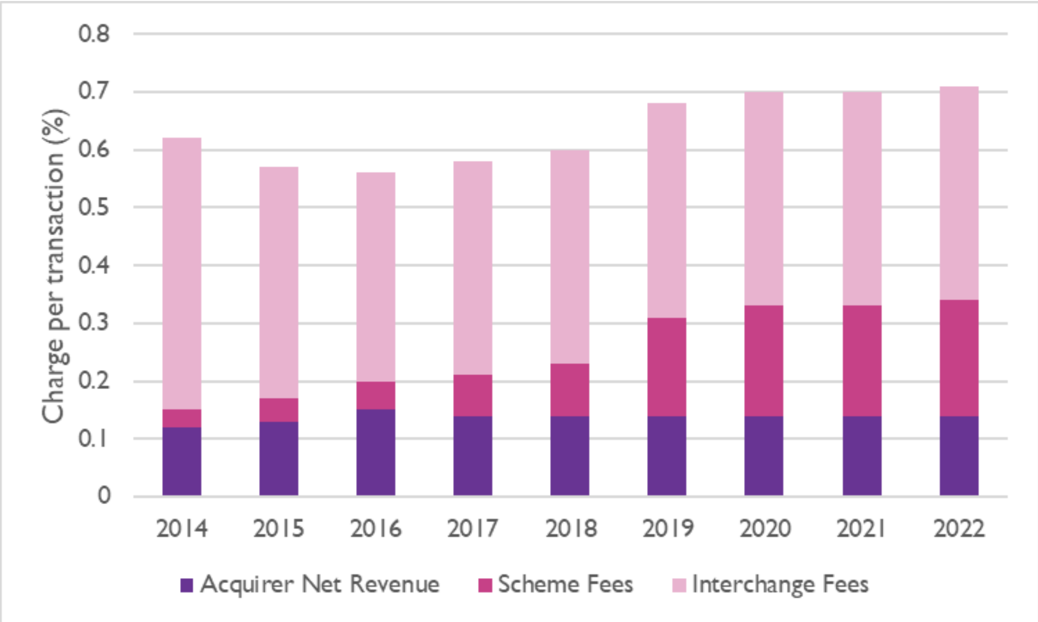
- **Interchange fees:** Acquirers pay to issuers each time a card is used to buy goods or services. UK legislation now caps the interchange charged on cards for consumers at a maximum of 0.3 per cent (credit) and 0.2per cent (debit) for transactions. There is no cap on the interchange fee on corporate cards.[273]
- **Scheme fees**: Acquirers and issuers pay the operators of card payment systems for their services. Scheme fees are unregulated, and can range from 0.7p to 9.3p + 0.01 per cent to 0.66 per cent.[274] The average scheme fees has seen an upward trend since 2014, more than doubling from 2014 to 2019. The majority of this substantial increase took place between 2016 and 2018, following the implementation of the IFR caps.[275]
- **Acquirer net revenue**: Includes the costs the acquirer incurs (other than interchange fees and scheme fees) to provide card-acquiring services, plus the acquirer's margin. Between 2014 and 2016, average

273 PSR "The IFR" [online]
274 Barclaycard "Interchange rates and scheme fee guide" [online]
275 PSR (2021) "Market review into card-acquiring services – Final Report" pg. 69-70 [online]

acquirer net revenue increased coinciding with a decline in interchange fees. However, post-2016, there was a slight decrease in net revenue coinciding with the rise in scheme fees.

The overall cost of accepting card payments (the merchant service charge) has risen in recent years. The diagram below illustrates the average merchant service charge as a percentage of card turnover, splitting it into interchange fees, scheme fees, and acquirer net revenue.[276] Notably, despite the regulation of interchange fees, merchants have indicated that scheme fees have increased to compensate for the gap.

Figure 5.2: Average merchant service charge as a percentage of card turnover



Source: HMT (2023) "Future of Payments Review" [online]

5.1.2 Regulation and market review into card-acquiring services

The PSR carried out a market review into the supply of card-acquiring services to ensure that the supply of these services is competitive and works in the interests of merchants, and ultimately consumers.

PSR had concerns that card-acquiring services may not offer value for money for merchants and ultimately consumers. In July 2018, the PSR published its draft terms of reference (ToR) where it proposed conducting a market review into the supply of card-acquiring services, and the manner in which it was to be conducted. The draft ToR highlighted various concerns including:

- acquirers have not passed on to smaller merchants the savings they made from the interchange fee caps introduced by the Interchange Fee Regulation (IFR);
- a lack of transparency around the fees merchants pay to accept card payments;
- barriers making it hard for merchants to compare and switch acquirers, and they tend not to shop around;
- barriers to offering services that would help merchants to compare and switch between acquirers;
- fees that card scheme operators charge to acquirers, and the rules they set, favour larger acquirers; and
- scheme fee portion of the fees that merchants pay to acquirers is increasing significantly.

[276] HM Treasury (2023) "Future of Payments Review" [online]

Following a number of consultations, the PSR published its final report on its market review into card acquiring services in November 2021.[277] In October 2022, the PSR published its final decision on remedies for the card-acquiring services market and, the specific directions to put them into effect by July 2023.[278]

5.1.3 Competition in the market

Card acquiring service providers have different competitive strategies when competing for merchants of different sizes (as measured by annual card turnover). Small and medium-sized merchants buy card-acquiring services from acquirers and payment facilitators. Large merchants tend to buy these services only from acquirers.

The appeal of major payment facilitators is particularly strong for merchants with lower annual card turnover, a trend evident in their dominance among businesses primarily engaged in face-to-face sales. Nearly 80 per cent of merchants with an annual card turnover below £15,000 are served by these facilitators, but their market share sharply declines beyond this turnover threshold. Acquirers vary in their pursuit of merchants with low card turnover, with some anticipating heightened competition from payment facilitators in the coming years. Notably, the largest payment facilitators differ in their strategies for competing with merchants with higher card turnover, and evidence suggests that their offerings are less enticing for this segment.

Acquirers, major payment facilitators, and ISOs engage in competitive pricing strategies to attract merchants. Approximately 35 per cent of large merchants opt for Interchange Plus (IC+) or IC++ pricing, with the rest favouring standard pricing.[279] Under IC+ and IC++ pricing, acquirers compete based on the processing fee per purchase transaction. Regardless of the pricing model, large merchants generally pay lower MSCs compared to small and medium-sized merchants, of which around 95 per cent have standard pricing. The simplicity of pricing structures serves as a key differentiator for some acquirers and major payment facilitators. ISOs also compete on price factors, and there is evidence that merchants referred to acquirers by ISOs often pay less for card-acquiring services.

Competition extends beyond pricing, with firms vying for merchants based on various non-price factors such as customer service, omnichannel services, and the quality and variety of card acceptance products. The significance of these factors varies depending on the size of the merchant. While both price and non-price factors influence merchant behaviour, the 2020 merchant survey indicates that price-related considerations prominently factor into the decisions of merchants contemplating or undergoing a switch (these are explored further in sections 5.2 and 5.7 below).

The PSR also concluded that barriers for entry and exit were not significant for providers serving merchants with less than £50 million annual card turnover.

5.2 Customer engagement

The key concern from the market review is the concern that merchants are not able to make effective and well-informed decisions in attaining card-acquiring services. As part of the market review, PSR commissioned a research agency to conduct qualitative scoping interviews and a quantitative telephone survey with small

277 PSR (2021) "Market review into the supply of card-acquiring services" [online]

278 PSR (2022) "PS22/2: Card-acquiring market remedies: Final decision" [online]

279 IC++ pricing automatically passes on interchange fees and scheme fees at cost to the merchant, so the processing fee recovers some or all the acquirer's other costs plus a margin. With IC+ pricing, only interchange fees are automatically passed on at cost. IC+ or IC++ pricing is more complex and volatile (although it is more transparent) than standard pricing because, cost per transaction for the merchant varies according to the various transaction characteristics that drive interchange fees and scheme fees.

and medium sized merchants that use card-acquiring services.[280] The merchant survey of small and medium-sized merchants found the following regarding customer engagement:

- Limited Provider Comparison: A significant number of merchants do not regularly search for providers and often fail to compare options before selecting their current one.
- Infrequent Consideration of Switching: Many merchants do not actively consider switching providers, indicating a potential lack of engagement in exploring alternatives.
- Satisfaction Levels: Despite limited engagement in searching and switching, most merchants express high levels of satisfaction with their current provider, emphasising positive perceptions of customer service and information received.
- Resource Constraints: A subset of merchants cites business resources as a factor preventing them from actively searching and contemplating a switch.

The PSR also observed that the indefinite duration of contracts with acquirers and payment facilitators might be a contributing factor to why many merchants do not regularly explore or consider other providers. The absence of clear triggers in the contracts fails to prompt merchants to actively contemplate switching. As merchants witness an increase in their card turnover, it becomes especially advantageous for them to compare different offers periodically to determine if their current contractual arrangement still suits their needs. Without engaging in such evaluations, merchants run the risk of paying more than necessary.

5.3 Simplifying process and choice

The PSR highlights several obstacles in the market which hindered a customer's ability to compare retail offerings. For instance, the merchant survey of small and medium-sized merchants highlighted the following regarding consumer choice:

- Negotiation Obstacles: Of the merchants who did not attempt to negotiate better terms, some stated that the negotiation process took "too long" and some other merchants indicated that they could not negotiate better terms as they were locked into a better contract. Notably, a significant proportion of merchants who attempted to negotiate with their provider – nearly 90 per cent – report success in securing better terms. This indicates a willingness to engage with providers for improved service arrangements.[281]
- Barriers to Switching: Among those who do search and switch, some report encountering difficulties in the process, suggesting potential barriers that hinder a seamless transition, such as switching costs, contractual obligations, and risk of downtime/disruption to business.

5.3.1 PSR findings

After examining various factors, PSR found that the supply of card-acquiring services did not work well for small and medium-sized merchants and large merchants with annual card turnover between £10 million and £50 million. The analysis showed that small and medium-sized merchants with annual card turnover up to £10 million secured better deals in the form of lower MSC by switching their provider of card-acquiring services – on average, new customers pay less (see section 5.4.1 for further details). It found that certain features impede merchants' ability and willingness to search and switch, contributing to observed pricing outcomes for small and medium-sized merchants. These factors include:

280 PSR (2020) "MR18/1.7 Annex on merchant survey results" [online]

281 Notably, a significant proportion of merchants who attempt to negotiate with their provider – nearly 90 per cent – report success in securing better terms. This indicates a willingness to engage with providers for improved service arrangements.

- Lack of Transparency: Acquirers and ISOs typically do not publish prices for card-acquiring services, and their varied pricing structures make it challenging for merchants to compare rates effectively.
- Contract Duration: The indefinite duration of acquirer and payment facilitator contracts for card-acquiring services plays a role in merchants' infrequent consideration of switching providers. The lack of a clear trigger hinders regular assessment of whether their current deal aligns with their evolving needs.
- Terminal-Related Barriers: Merchants face obstacles in switching providers due to factors related to POS terminals. Existing terminals may not be compatible with new card-acquirers, necessitating new terminals and potential cancellation of existing contracts. Early termination fees, particularly in POS terminal contracts, can be significant, discouraging merchants from switching even when it might be advantageous.

5.3.2 Remedies

In response to these problems, the PSR formulated three essential remedies to the concerns within the card-acquiring market. By implementing these remedies, the PSR aims to simplify customers' ability to compare retail offerings, enhance market transparency, and address complexities in contract structures:

- Summary Boxes with Key Information (Specific Direction 14): The first directive entails the creation of summary boxes containing bespoke key price and non-price information. These summaries are to be individually dispatched to each merchant and made accessible in their respective online accounts. Merchants are empowered to utilise these summaries in conjunction with newly mandated online quotation tools, ensuring the ability to effectively compare all available offerings in the market.
- Trigger Messages for Merchant Engagement (Specific Direction 15): The second directive focuses on the implementation of trigger messages by providers of card-acquiring services. These messages are designed to prompt merchants to actively explore alternative options or consider switching providers. Acquirers are obligated to send these messages to their merchant customers, and the messages will be prominently displayed in the merchants' online accounts. The timing of these messages is intricately linked to minimum contract term expiry dates, ensuring timely and relevant engagement. In cases where contracts are indefinite, providers must adhere to a frequency requirement of at least once every 30 calendar days.
- Contractual Duration and Notice Periods (Specific Direction 16): The third directive establishes specific parameters for contractual arrangements. It prescribes a maximum duration of 18 months for point-of-sale terminal lease and rental contracts. Additionally, providers are required to provide a maximum one-month notice after any renewal of such contracts.

The PSR monitors the specific directions by requiring a directed acquirer to provide reports on its compliance with both the specified directive and any communicated requirements or guidance. Furthermore, the PSR can require a directed acquirer to provide relevant information concerning its adherence to the directive and any details necessary for monitoring compliance or assessing its effectiveness.

5.4 Reducing market frictions

The PSR's scrutiny into the interactions among competing firms and different points in the supply chain identified concerns that could potentially foster negative perceptions, hinder customer assessments of supplier roles and offerings, and impede the switching process. The focus on the interchange fee regulation (IFR) caps and scheme fees provide a key indicator of how well the supply of card-acquiring services is functioning.

5.4.1 Interchange Fee

The card acquiring services is not subject to price cap regulation or quality of service requirements. Nonetheless, the PSR implemented the IFR in 2015 which capped the interchange fees paid by acquirers to issuers on most card transactions. There is no cap on the MSC paid by merchants, but the hope was that competition between acquirers would ensure that acquirers' cost savings from a lower IFR were passed through to merchants.

From the card acquiring services market review, the PSR found no one-to-one relation of the fall in interchange fee with the merchant service charge. The PSR's analysis provided evidence that, on average, merchants with annual card turnover between £15,000 and £50 million got little or no pass-through of the IFR savings, which it concluded indicated that the supply of card-acquiring services is not working well for small and medium-sized merchants, and large merchants with annual card turnover between £10 million and £50 million. Acquirers may not experience competitive pressures to pass through cost reductions to small- and medium-sized merchants, but the cost savings had been passed on to larger merchants, who typically wield greater bargaining power (from the volume of transactions they bring to an acquirer).

One problem appeared to be that many merchants were not engaging with the market. The PSR observed that new small and medium-sized customers pay less, on average, than existing customers, which indicated that many small and medium-sized merchants on standard pricing could get better deals by switching. Thus, the potential issue of acquirers not facing competitive pressures to pass through cost savings could be partly offset if merchants consider switching more promptly (thus potentially attaining some of the savings achieved by IFR savings). For instance, the 2020 merchant survey also showed that merchants can get a better deal if they consider switching their provider and have some bargaining power if they threaten to switch. For instance, of the merchants that did negotiate, nearly 90 per cent were successful in negotiating better price or non-price terms.

Some acquirers explained that a lack of IFR pass-through could be that they invested the savings in providing a higher quality of service to their customers, rather than lower prices. However, the quality of service metrics did not provide evidence of such improvements during the period.[282] Similarly, acquirers highlighted that the increase in interchange fee margins reflects their rising costs. But limited evidence was provided to show how specific investments led to improved/new services during the period under investigation.

Furthermore, following the implementation of the IFR caps, the average scheme fees experienced a notable surge, more than doubling from 2014 to 2018. The majority of this substantial increase took place between 2016 and 2018. The increased scheme fee could be interpreted as the other reason why the fall in interchange fee did not pass through to the merchant service charge.

5.4.2 Scheme fees

Despite data limitations on scheme fees, PSR analysis indicated that the scheme fees, charged by Visa and Mastercard, (which increased significantly over the period examined) were passed through by acquirers in full to merchants in all turnover groups. Thus, PSR believes that this constitutes further evidence that the supply of card-acquiring services is not working well, because it suggests that acquirers did not face competitive pressures to absorb cost increases or to pass through cost decreases.

To address these issues and reduce market friction, the PSR is actively encouraging merchants to explore alternative providers through various interventions. By implementing measures such as trigger messages and summary boxes, the PSR aims to prompt competition among acquirers. This competition is expected to drive better prices for merchants, as acquirers, faced with the prospect of merchants switching, are compelled to transfer cost savings to retain and attract customers.

[282] Quality and non-price factors include call centre performance, authorisation performance, ease and speed of onboarding, fraud detection and reduction, geographic reach, settlement speed, reliability and stability of service, and quality and range of value-added services sold alongside card-acquiring services, such as provision of management information and support for non-card digital payment methods.

5.5 Regulatory framework

The PSR outlines its regulatory framework with a focus on cultivating competitive markets and fostering innovation while ensuring the protection of service-user's interests. PSR prioritises actions that aims to have a widespread positive impact, and takes the approach of incentivising good outcomes rather than controlling them. It operates independently and is accountable to Parliament, the PSR's decisions are characterised by deliberation, transparency and predictability.

The framework is designed to evolve through ongoing reviews, with adjustments made as needed to meet objectives.

5.5.1 Market reviews

The card-acquiring market review forms part of a series of broader reviews conducted by the PSR (and other regulators as relevant) into card payments markets.

This includes a current review by the PSR into card scheme and processing fees, motivated by the findings of the card-acquiring services market review which found that the scheme fees paid by acquirers had increased significantly from 2014 to 2018. This prompted the PSR to further investigate whether the markets in connection with scheme and processing fees are working well, as these directly impact the prices paid by merchants. This work has not really considered any issues around engagement and switching in the card acquiring market.

Similarly, the implementation of the IFR was not motivated by a drive to improve switching rates for merchants, but rather to reduce the costs of card payments for merchants and consumers.

5.6 Role of third-party intermediaries

There are a variety of third parties that help merchants accept card payments but do not themselves provide card-acquiring services. For example:

- Independent Sale Organisations (ISOs) sell card-acquiring services to merchants on behalf of one or several acquirers alongside card acceptance products and value-added services.
- Payment Facilitators are intermediaries between acquirers and merchants. Acquirers permit payment facilitators to recruit merchants on their behalf and contract with these merchants for card-acquiring services.
- Gateway providers specialise in providing payment gateways (sometimes alongside POS terminals) and have referral arrangements in place with acquirers.
- Independent Software Vendors (ISVs) specialise in offering software (and in some cases, complimentary hardware) that helps merchants run their businesses and often have referral arrangements in place with acquirers and payment facilitators.
- Third-party POS terminal providers, which supply POS terminals to merchants. They work with acquirers and ISOs, who receive commission for referring merchants that want a POS terminal to a third-party POS terminal provider.

For the purposes of this case study, the focus will be on independent sale organisations, payment facilitators and third-party POS terminal providers as the PSR recognises that these parties have a profound effect on supply of card acquiring services.[283]

[283] PSR (2021) "Market review into the supply of card-acquiring services: Final report - Annex 1 Industry background" [online]

5.6.1 Ways in which TPIs could help increase consumer engagement

Independent Sale Organisations (ISOs)

ISOs act as intermediaries facilitating the sale of card-acquiring services to merchants on behalf of one or more acquirers, offering additional card acceptance products and value-added services. Acting as agents for acquirers, ISOs play a role in acquiring new merchant relationships and receive commission for their services. Unlike other third parties that refer merchants to acquirers, ISOs, in many cases, have the authority to negotiate the price for card-acquiring services directly with merchants. While ISOs handle the sales process independently, the level of discretion they have over pricing varies.

ISOs have served a vital channel for small and medium-sized merchants in attaining card acquiring services. For acquirers serving face-to-face merchants with annual card turnover up to £1 million, ISOs constitute a significant sales channel to procure new merchant relationships, representing 50 per cent of all new customer sign-ups with these acquirers in 2018. ISOs serve as outsourced sales functions, promoting and selling card-acquiring services on behalf of acquirers, alongside other related products and services.

Third-party POS terminal providers

Third-party POS terminal providers supply POS terminals to merchants in collaboration with acquirers and ISOs. These providers, in turn, receive commission for referrals from acquirers or ISOs. The monthly fee for hiring POS terminals is agreed upon by the acquirer or ISO and the merchant, with a rental agreement signed between the third-party POS terminal provider (owner of the terminal) and the merchant. Typically, POS terminals offered by an acquirer or ISO operate exclusively with one acquirer, even when the merchant is referred to a third-party POS terminal provider.

Payment Facilitators

Payment facilitators act as intermediaries between acquirers and merchants, authorised by acquirers to recruit and contract with merchants. These facilitators offer card-acquiring services, handling the onboarding of merchants for card transactions and disbursing owed funds. Notably, merchants contracting with payment facilitators have no direct agreement with the acquirer. There is also no direct contractual relationship between the payment facilitator and the operator of the card payment system.

Acquirers assist payment facilitators in authentication, authorisation, clearing, and settlement of card payments for their merchants. The largest payment facilitators dominate the market, serving nearly 80 per cent of face-to-face merchants with annual card turnover below £15,000. However, their market share decreases significantly as merchant card turnover surpasses this threshold. Their success lies in onboarding new-to-card-payment merchants, indicating minimal barriers to entry and expansion for providers targeting this segment.

5.6.2 How TPIs may hinder competition and consumer engagement

The evaluation of third-party intermediaries, particularly ISOs and third-party terminal supply providers, reveals a notable obstacle to competition in the card-acquiring services market. PSR notes that these intermediaries closely collaborate with acquirers in determining prices and contract terms, contributing to a lack of transparency. Specifically, ISOs and payment facilitators typically do not disclose prices for card-acquiring services, creating challenges for merchants in effectively comparing rates due to varied pricing structures. Additionally, the alignment of incentives between ISOs/payment facilitators and acquirers, prioritising their interests over consumers, has been identified as a significant factor limiting competition in the market.

5.7 Customer satisfaction with market

The PSR conducted the market in spite of customer satisfaction not identified as an issue among merchants for card acquiring services. The merchant survey in 2020 revealed the merchant satisfaction with the services being provided. For instance, amongst the merchants that contacted their main provider in the last year, four-fifths of merchants (82 per cent) were satisfied with the customer service they received. More than nine in ten merchants (92 per cent) agreed that they receive enough support from their provider to help them comply with requirements imposed on the business to accept card payments. Around nine in ten merchants (89 per cent) agreed that they receive enough information from their provider to help them understand the price they pay for card acquiring services.

Additionally, 64 per cent of merchants that had not considered switching in the last two years reported satisfaction with their provider as a reason for this (other responses accounted for less than 10 per cent of merchants).

6 Solicitors

The regulatory framework of the legal services market, governed by the Legal Services Act 2007, has undergone scrutiny, with identified issues centred around reliance on professional titles and reserved activities. The current framework is deemed inflexible, prompting the CMA to propose a wholesale review by the Ministry of Justice (MoJ) for long-term reform. Short-term recommendations included addressing the case for extending redress to consumers using unauthorised providers, building evidence on the unauthorised sector, removing regulatory restrictions on solicitors in unauthorised firms, and reducing regulatory costs.

Customer engagement emerged as a critical concern, with consumers, both individual and small businesses, facing challenges in recognising legal issues, characterising them effectively, and accessing reliable information. The CMA suggested the need for improved consumer awareness and understanding of legal services, emphasising the role of friends, family, solicitors, and Citizens Advice as primary sources of information. Additionally, small businesses lack internal legal capacity, highlighting the need for platforms providing trusted information.

Transparency in pricing and quality is identified as a significant factor affecting customer choice. The CMA found deficiencies in the accessibility of price information, particularly online, with limited standardisation. Many legal service providers argue that the bespoke nature of legal services makes it challenging to provide standard pricing. Furthermore, a lack of transparency regarding quality impedes effective comparison between providers, primarily due to information asymmetry.

The role of third-party intermediaries, including price comparison websites and DCTs, is acknowledged as pivotal in fostering competition. However, concerns about misaligned interests between consumers and intermediaries and the limited growth of DCTs in the sector are highlighted. The CMA proposes remedies to address these concerns, emphasising the need for open data, standardisation, and a consolidated digital register.

6.1 Overview of legal services market

Legal service providers in England and Wales operate under varying degrees of regulation, contingent upon the specific activities they are authorised to undertake and the sectors in which they operate. A significant period of regulatory scrutiny[284] from 2001 to 2004 resulted in the implementation of the Legal Services Act (LSA) 2007, which now serves as the current regulatory framework governing the legal services market in the UK. This framework introduced a range of reforms aimed at better meeting consumer needs. These key reforms encompassed the establishment of an independent legal services oversight regulator known as the Legal Services Board (LSB); a requirement for representative bodies to create regulatory bodies responsible for overseeing specific functionalities (e.g. the Bar Council establishing the Bar Standard Board to oversee Barristers)[285]; the definition of eight new regulatory objectives that the LSB is mandated to promote as part

[284] Following two major reviews that involved the legal services market, notably: Office of Fair Trading (2001). 'Competition in profession' – [online] & Clementi, D (2004). 'Review of the regulatory framework for legal services in England and Wales' – [online]

[285] LSB (2023). 'Approved Regulators' – [online]. There are eight additional regulatory bodies that were established: the Solicitor Regulatory authority (oversees solicitors); CILEx Regulation (oversees Chartered legal Executives); Intellectual Property Regulation Board (oversees trademark and patent attorneys); Council for Licensed Conveyers (oversees licensed conveyers); Cost Lawyers Standards Board (oversees Cost Lawyers); Master of the Faculties

of its duties[286]; the creation of the Legal Ombudsman (LeO) to address complaints by consumers concerning legal service providers; and the provision for certain regulatory bodies, acting as licensing authorities, to grant licenses for alternative business structures, enabling non-lawyers to engage in specific reserved activities (further elaborated upon below).

In January 2016, the CMA launched a market study into the provision of legal services in England and Wales.[287] At this point in time, the Legal Service Act had been in effect for nine years and the CMA considered that the market required a more comprehensive examination based on the perceptions in the sector, supported by market research, indicating 'unmet' demand for legal services and concerns about affordability. Additionally, concerns persisted about service standards offered by both regulated and unregulated legal service providers. These also extended to the complexity of the current regulatory framework. Since this study, in 2020, the CMA launched a review of the legal services market study in England and Wales assessing the implementation and impact of the CMA's market study recommendations.[288]

Other regulatory bodies have also published studies following the CMA market study and the 2020 follow-up study, where various recommendations for action were made by different bodies. For example, the SRA commissioned a 1- and 3-year evaluation on SRA transparency rules and conducted a study to better understand the unreserved legal market. Other entities such as the Bar Standards Board (BSB) also published transparency-based reports. Although the CMA has raised several competition concerns that currently exist in the market, legal regulatory bodies in the UK, like the SRA, often operate within a framework that includes promoting competition. However, their primary responsibility typically revolves around ensuring that legal services are delivered in accordance with established professional standards, ethics, and the law. While competition may indirectly benefit from their regulatory actions aimed at maintaining a fair and efficient legal marketplace, their explicit duty might not be solely focused on promoting competition as their primary objective.

Legal service providers offer a range of services that fall into two main categories: reserved and unreserved activities. LSA identifies six specific activities as reserved, including the exercise of the right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities, and the administration of oaths. Authorisation to engage in these reserved activities is granted only to entities authorised by a regulatory body. However, the extent of authorisation may be limited to specific activities determined by the regulatory body. For example, the Solicitors Regulation Authority (SRA) authorises solicitors to perform all reserved activities except notarial activities. On the other hand, the Association of Chartered Certified Accountants (ACCA) authorises probate practitioners exclusively for probate activities. some of the approved regulatory bodies are also licensing authorities which means that they can license Alternative Business Structures (ABS) that provide reserved legal activities – this allows non-lawyer entities to partake within the legal market.

The other component of the legal service market is unreserved activities. This broadly defines all legal services that do not fall under the category of reserved activities, typically encompassing work related to consumer issues, housing issues, family law, employment law, and wills and estate administration.[289] There is no restriction on who can offer unreserved legal services, and there is no requirement that providers are regulated by an LSA regulator or have any formal training or qualifications. This could encompass groups authorised by alternative regulators not under the purview of the LSB. Examples of such groups include Authorised Claims Management Companies regulated by the Claims Management Regulator and Immigration

(oversees Notaries); Association of Chartered Certified Accountants (oversees probate practitioners); and Institute of Chartered Accountants in England and Wales (also oversees probate practitioners).

286 Legal Services Act 2007. Part 2, section 1 – [online]

287 CMA (2016). 'Legal services market study Final Report' – [online]

288 CMA (2020). 'Review of the legal services market study in England and Wales An assessment of the implementation and impact of the CMA's market study recommendations. – [online]

289 Frontier Economics (2023). 'Understanding the Unreserved Legal Market'. p.7 – [online]

and Advisers regulated by the Office of the Immigration Services Commissioner. They can conduct the services they are authorised to perform, along with all other unreserved activities. Unregulated providers are those not regulated and thus not authorised to conduct certain legal activities; however, they participate in the legal market. Examples of such providers would be charities, local authorities, trade unions, insolvency auctioneers, debt managers/bailiffs, etc.

6.2 Customer engagement and satisfaction with the market

There is concern that customers (both individual consumers and small businesses) are not able to make effective and well-informed purchasing decisions in the legal services market. To improve this, the CMA has identified that having an engaged customer base is crucial to driving competition and implementing any future development that may be envisaged for the market. As part of investigating this further, the CMA specifically outlines the perspectives of individual consumers and small businesses. Overall, a very similar narrative emerges regarding engagement and the experienced issues.

As part of its market study, the CMA commissioned a qualitative study involving micro and small businesses, which investigated the CMA's understanding of the consumer side of the legal services market.[290] Furthermore, a quantitative study was also commissioned; this study aimed to examine whether competition in the legal services sector in England and Wales is working effectively for consumers and small businesses.[291] Other bodies also commissioned research in the years leading up to the market study, such as the SRA[292] and LSB[293,294] . The conclusions drawn by the CMA as to why consumer engagement may be low are driven by the findings of these studies, discussed in further detail in sections 6.2.1 to 6.2.5 below.

6.2.1 Lack of knowledge and awareness

The CMA found that several stakeholders supported the notion that consumer engagement in the legal service market has been impacted by the fact that consumers lack knowledge and awareness of the legal services that are available to them. This conclusion was also supported by a further study commissioned the CMA which concluded that a general lack of knowledge about legal services among consumers led to a lack of confidence (and thus other impacts, such as not being able to assess quality).[295] The reason for this is rooted in the inherent technicality and complexity often associated with legal services. These services involve specialised terminology and knowledge. Beyond the perceived complexity, there is a general notion that legal services are costly, raising concerns about affordability. These cost perceptions play a role in discouraging consumers from seeking formal legal advice. Part of this perception about legal services stems from the knowledge consumers have on legal service, but is also driven by the price transparency present in legal markets (discussed later).[296]

---

290 Research Works (2016). 'CMA Legal Services Qualitative Research Report' – [online]
291 IFF Research (2016). 'Market study into the supply of legal services in England & Wales - consumer findings' – [online]
292 GfK NOP Social Research (2010). 'Research on Consumers' Attitudes towards the Purchase of Legal Services', – [online], study commissioned by the SRA.
293 Optimisa Research (2013). 'Consumer use of Legal Services: Understanding consumers who don't use, don't choose or don't trust legal service providers.' – [online], commissioned by the LSB
294 Ipsos MORI (2016). 'Online survey of individual's handling of legal issues in England and Wales 2015'. – [online], commissioned by the Law Society and the LSB.
295 IFF Research (2016). 'Market study into the supply of legal services in England & Wales - consumer findings'. p.41 – [online]
296 CMA (2016). 'Legal services market study Final Report'. p.46-47 – [online]

6.2.2 Ability to recognise and characterise legal issues

Consumers' ability to engage in the market also relies on their capacity to recognise legal issues and accurately characterise them as specific problems**.** This, in turn, enables them to identify the most suitable provider to address their particular issue. The findings cited by the CMA found that this outcome was similar for both individual consumers and small businesses. For example, "just over 10% of consumers characterised their problem as 'legal'.... the most common characterisation (45%) was 'bad luck/part of life".[297] Similar evidence was found by the LSB and the Law Society. For small businesses, the CMA also noted that there was a lack of awareness about what issues were legal and the limited capability of consumers to identify which problems would be amenable to legal resolution. Further evidence cited by the CMA suggested that just about under a fifth of businesses classified their problem as legal.[298]

6.2.3 Access to advice and sources of information

Although it has been identified that individual consumers and small businesses struggle with recognising whether they have a legal issue, for those who can identify their problem effectively, the CMA has raised the question of whether consumers have access to the appropriate advice and sources of information. The CMA found that friends and family acted as a primary first contact for individual consumers, with solicitors and Citizens Advice also being identified as key sources of information and advice.[299] These outcomes also varied depending on the sector the legal issue resided, for example the CMA reported that bodies such as trade unions and the Advisory, Conciliation and Arbitration Service (Acas) were primary sources of information for employment-based issues.

For small businesses, the CMA has also cited evidence that there needs to be an avenue which allows businesses to be better informed about where they can obtain trusted information, with 87 per cent of small businesses not having any internal or external legal capacity.[300]. For small businesses, the CMA presented evidence indicating the necessity for a platform that enables businesses to access reliable information more effectively. These businesses primarily rely on solicitors for advice on commercial and employment law issues. Interestingly, some small businesses expressed reluctance to invest additional time in searching for a different legal services provider after having explained their issue to one who claimed they could address it.[301]

6.2.4 Awareness and trust of different provider types

Survey evidence gathered by the CMA also indicated that consumer engagement might be a problem in the market due to the awareness and trust of different types of providers. For both individual consumers and small businesses (in particular), the CMA found that there was an overreliance on solicitors with a limited awareness of other types of providers. Some variance in awareness was also identified when analysing different types of legal services. For example, the CMA when analysing wills and probate services found that specialist will writers considered that being unauthorised raised trust issues for consumers.[302] The CMA also cited evidence from a qualitative study suggesting that there is a high degree of loyalty in the sense that consumers tend to go back to the same provider for subsequent purchases of legal services.[303]

---

297 CMA (2016). 'Legal services market study Final Report'. p.48 – [online]
298 CMA (2016). 'Legal services market study Final Report'. p.50 – [online]
299 CMA (2016). 'Legal services market study Final Report'. p.51 – [online]
300 CMA (2016). 'Legal services market study Final Report'. p.53 – [online]
301 CMA (2016). 'Legal services market study Final Report'. p.54 – [online]
302 CMA (2016). 'Legal services market study Final Report'. p.55 – [online]
303 CMA (2016). 'Legal services market study Final Report'. p.55 – [online]

6.2.5 Indicators used to assess improvement

Up until now, the legal services market has struggled to identify tangible indicators to allow the effective monitoring of consumer engagement and satisfaction. However, several studies have been commissioned by individual regulatory bodies. For example, the SRA published a Year 1 and Year 3 evaluation of the impact of transparency rules, and the BSB conducted a review of pricing information on barristers' chambers' websites. The results of these studies (and the survey conducted to supplement them) have been used to monitor progress in areas where implemented reform is expected to improve consumer engagement and satisfaction (such as being able to identify legal providers easier, compare the price of legal offerings more clearly and conveniently, etc.).

For example, following the CMA's market study findings on price transparency, the SRA responded by implementing transparency rules. These regulations required regulatory providers to ensure that specific information was readily accessible to consumers. This included details about prices and services related to particular areas of law[304], information about the teams or individuals offering services in these specified areas, and a clear outline of their complaints' procedure. This procedure encompassed details on how and when issues could be referred to the SRA or the Legal Ombudsman, with the provision that this information should be published on the provider's website if available. [305] The SRA went on to describe the purpose of the 1-year evaluation as the following:

> " This research is intended as the first in a series of benchmarking exercises that will help to assess the impact of the Transparency Rules over the short, medium and long-term. It provides an early 'direction of travel' assessment eighteen months to two years after the launch of the Rules."[306]

This demonstrates how ongoing forms of market research have served as a crucial tool to monitor the progress of customer engagement. The Year-1 evaluation primarily focused on consumer engagement, involving inquiries about whether consumers were content with the information they found or how accessible they found it in fulfilling their information needs. Additionally, the evaluation assessed the impact of the transparency rules. This was primarily done by investigating whether individuals and businesses found it easier to locate the legal services providers they required and whether the transparency rules effectively communicated their intended function. Moreover, the evaluation investigated both the benefits and challenges associated with the transparency rules.

6.3 Simplifying process and choice

In the legal services market, contract complexity impacts the ability of consumers to process offerings in the market as individual consumers and businesses usually seek the support or advice of experts to guide them on their legal issues. This holds true even for businesses with an internal legal team, as they may still seek additional external expertise at times. Despite this inherent complexity, there have been several factors raised by the CMA around transparency of information regarding price and quality and how this simplifies customers' ability to compare legal service providers.

[304] Residential conveyancing. probate (uncontested), motoring offences (summary offences), employment tribunals (unfair / wrongful dismissal), licensing applications (business premises), debt recovery (up to £100,000) & immigration (excluding asylum).

[305] IRN Research (2020). 'SRA Transparency Rules: Year One Evaluation. p.10 – [online]

[306] IRN Research (2020). 'SRA Transparency Rules: Year One Evaluation. p.10 – [online]

A significant part of individual customers and small businesses being able to compare offerings in the legal services market depends on the extent to which accessible and assessable price information is in the legal services sector. Assessability is determined by the accuracy and comparability of information in the market.[307]

6.3.1 Transparency of information about price

With regards to price transparency, the CMA determined that price information was not being made accessible by providers. Research cited by the CMA indicated that only 17 percent of firms displayed their prices online. Three-quarters of firms did not display their prices online, and a further 4 percent did not have a website at all.[308] Additionally, small businesses reported problems accessing price information on providers, with attempts to make comparisons across providers limited due to a lack of information available online to do so. However, the CMA's desk-based research on will-writing services differed, with unauthorised providers more likely to display specific prices (authorised providers usually required you to call/email to receive more information on pricing). Concerning consumers' ability to evaluate various service providers, the CMA found that nearly half of them successfully obtained a quotation for their total service cost, and an additional 31 percent received an estimated cost. Among those who compared legal service providers, 64 percent found it easy to assess and compare costs. However, 20 percent reported it as challenging, with 11 percent describing the difficulty as very high. For respondents facing challenges, the most commonly cited reason was the lack of standardisation or like-for-like presentation of information by different providers.[309]

The CMA sought the perspectives of legal service providers, who conveyed the challenge of enhancing transparency due to the often-bespoke nature of legal services. Providers contended that establishing a standard price is problematic since the applicable cost hinges on the unique circumstances of each consumer, making it challenging to furnish upfront pricing.[310]

6.3.2 Transparency of information about quality

The CMA found evidence indicating that a lack of transparency regarding quality posed a challenge for participants in the legal service market when it comes to effectively comparing various providers and their offerings. This challenge is compounded by the inherent market characteristic of information asymmetry in the legal services sector, where providers possess expert knowledge and skills that consumers of legal services typically lack. Consequently, consumers may find it difficult to assess the quality of the service provided. Research conducted by the CMA suggested that consumer perception of quality was closely tied to their overall experience and the technical excellence of the advice they receive – essentially, how well a provider comprehends and applies the law.[311] Although the CMA acknowledges that this is somewhat difficult for consumers to observe, in its qualitative research, it found that consumers often link the quality of advice with the outcome of their case as the outcome can be observed.[312]

When assessing transparency concerning quality, the CMA scrutinised various measures to gauge their effectiveness in improving the visibility of service quality. Efforts to showcase quality (albeit limited) included advertising quick response rates to calls or emails, providing direct contact details for the lawyer handling the case, and offering Saturday appointments.[313] The ability for consumers to judge quality of advice was also assessed. The findings concluded that despite quality being hard for consumers to judge, there was a strong

---

307 CMA (2016). 'Legal services market study Final Report'. p.58 – [online]

308 CMA (2016). 'Legal services market study Final Report'. p.60 – [online]. Note that the research referred to a select number of areas in law, including conveyancing; divorce; wills, lasting power of attorney and estate administration.

309 CMA (2016). 'Legal services market study Final Report'. p.63-64 – [online]

310 CMA (2016). 'Legal services market study Final Report'. p.65 – [online]

311 CMA (2016). 'Legal services market study Final Report'. p.66 – [online]

312 CMA (2016). 'Legal services market study Final Report'. p.66, FN 213 – [online]

313 CMA (2016). 'Legal services market study Final Report'. p.67 – [online]

consensus that consumers felt they were able to judge quality through softer indicators such as gut feeling and trust. A consumer's personal experience and experiences from peers, family and friends was also a key factor.[314]

The CMA also discovered that several stakeholders proposed that offering access to customer reviews and feedback could serve as a valuable signal of quality. Evidence indicated that individual consumers frequently rely on customer reviews for assessing the quality of products and services, similar to using TripAdvisor for evaluating holiday and travel providers. Small businesses also expressed the belief that the search for a provider could be simplified by having a platform akin to TripAdvisor. However, respondents frequently acknowledged that establishing such a resource would pose a challenge, primarily due to the inherent difficulty in commoditising legal services.[315]

The role of regulators has also been emphasised as a crucial instrument. While gauging the quality of legal services poses challenges for regulators, there are several indicators available to them that, when considered together, could offer an insight into the service quality. At the time of the CMA's 2016 market study, the SRA was consulting on what information it could publish, with indicators such as claims on the SRA Compensation Fund, professional indemnity insurance claims, and complaints data, including the outcomes of disciplinary decisions suggested.[316] In 2018, the SRA commissioned a follow-up study to investigate and explore the awareness and understanding of consumers regarding different regulatory protections. The study also aimed to identify additional information that consumers would find helpful in making decisions. This investigation involved behavioural trials, which tested consumers' understanding of certain complaints decision data, assessed the effectiveness of having an SRA-regulated logo, and evaluated their comprehension of information regarding regulatory protections.

The study revealed a strong consumer interest in obtaining comprehensive information before selecting legal service providers. Participants expressed a clear desire for details on pricing, service quality, and the regulatory protections offered by providers. Interestingly, firms displaying an SRA-regulated logo experienced a substantial 14 per cent increase in selection rates, indicating a significant commercial advantage for those using this emblem. The impact of such logos was substantial, with 79 per cent of consumers expressing increased comfort in selecting logo-endorsed providers, and 86 per cent desiring the ability to access further details by clicking on the logo. Notably, access to information on both price and protections empowered consumers to make informed decisions. The research highlighted a willingness among participants to balance their choice of service provider and associated regulatory protections against the cost, with 54 per cent stating a willingness to pay more for enhanced protections. This indicates a nuanced decision-making process, where both protections and price play pivotal roles, challenging the notion that consumers simply opt for the cheapest option.

The CMA also explored additional indicators of quality that could be employed, including accreditation schemes (demonstrating that specific quality standards have been met or that the provider possesses specialist expertise), the establishment of national brands, and information on redress options (ensuring consumers are informed about available remedies when issues arise with the service provided). However, these factors were more extensively examined with the recognition that consumers might make limited use of them in practice, with mixed evidence as to whether they would improve quality.

314 CMA (2016). 'Legal services market study Final Report'. p.67-68 – [online]
315 CMA (2016). 'Legal services market study Final Report'. p.68 – [online]
316 CMA (2016). 'Legal services market study Final Report'. p.72 – [online]

6.3.3 Remedies and indicators proposed by the CMA

To influence supplier behaviour and enhance transparency of information regarding quality and price, thereby eliminating barriers and enabling consumers to compare offerings between providers more effectively, the CMA proposed the following remedies:[317]

- Act to improve the quality, utility and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status.
- Develop and consult on an enhanced regulatory minimum level of transparency for legal services providers, supported with guidance on implementation.
- Introduce guidance or regulatory requirements as necessary to improve information provided on engagement such as through the client care letter.
- Promote the use of quality signals by providers and issue guidance for providers on engaging with online reviews.

In tackling quality concerns, the CMA has taken on the responsibility of designing and proposing four methods for collecting information to generate quality indicators that regulators could consider within the legal service market. Throughout this process, it acknowledged the absence of a universally accepted definition of quality across the legal services sector. The following methods are the following:[318]

- The initial suggestion proposes leveraging provider information more effectively to generate contextualised quality indicators. This could involve identifying metrics such as the volume of cases handled in specific practice areas or the number of staff dedicated to those areas. Additionally, distinguishing services as bespoke or commoditised could contribute to meaningful contextualisation.
- Furthermore, there is a recommendation to enhance the utilisation of complaints information. The purposes of this approach are two-fold: first, it acts as an indicator of quality and second, it potentially incentivizes improved service from providers when such information is made public.
- Success rates have been suggested as a metric for assessing a provider's performance in securing favourable outcomes. This measure is applicable to particular situations, such as determining the percentage of defendant cost orders granted when a case is either withdrawn or defended at trial. However, research cited by the CMA suggests that success rates could create adverse incentives for providers, potentially influencing firms' willingness to represent clients with a just case but weaker evidential strength.
- A Net Promoter Score enables providers to gauge their performance based on consumers' likelihood to use their services again or recommend them to others.

Nevertheless, regulators like the SRA and CILEx Regulation have also made efforts to explore what 'quality' signifies to consumers.[319] For example, CILEx Regulation found that quality is extremely subjective in nature, emphasising that attributes valued by one consumer may hold little significance to another. For instance, a provider's geographic proximity might matter greatly to those favouring face-to-face meetings but could be inconsequential to those comfortable with online interactions.[320] As part of its 1-year evaluation the SRA found that consumers measured quality in two ways: first, by how well the provider will satisfy the consumers' needs and the level of personal treatment in doing so; and second, how credible, competent and trustworthy the provider is perceived to be.[321]

[317] CMA (2016). 'Legal services market study Final Report'. p.224 – [online]

[318] CMA (2020). 'Review of the legal services market study in England and Wales An assessment of the implementation and impact of the CMA's market study recommendations. p.80-82 – [online]

[319] CMA (2020). 'Review of the legal services market study in England and Wales An assessment of the implementation and impact of the CMA's market study recommendations. p.77-78 – [online]

[320] CMA (2020). 'Review of the legal services market study in England and Wales An assessment of the implementation and impact of the CMA's market study recommendations. p.78, FN 162 – [online]

[321] SRA (2020). 'SRA Transparency Rules'. – [online]

6.4 Reducing market frictions

The CMA identified a market friction related to the interaction between legal services categorized as reserved activities and unauthorised providers. This concerns the potential scenario where the scope of reserved legal activities unreasonably restricts competition from potentially more affordable unauthorised providers, unless such restrictions are justified for consumer protection or specific public interest benefits. Only entities authorised by a regulatory body can provide reserved activities. Consequently, unauthorised providers are, in principle, unable to compete in offering reserved legal activities. These current reservations could thus create barriers for these potentially more affordable providers, especially when the reserved activity is only part of a broader legal service.

6.5 Regulatory framework

During its review, the CMA identified several issues related to the regulatory structure of the legal services market. These concerns arise from the organisational structure of the regulatory framework, which has faced substantial criticism in consultations for relying on professional titles and reserved activities rather than aligning with the risk associated with the undertaken activities. The CMA concluded that the existing regulatory framework lacks the flexibility needed to implement targeted, proportionate, risk-based, and consistent regulation that accommodates variations between legal service areas and over time.

Given the above conclusions, the CMA concluded on the following amendments to the current regulatory framework to improve the legal service market:[322]

- Long term recommendation: The Ministry of Justice (MoJ) undertake a wholesale review in order to reform the Legal Services Act 2007. As discussed above, this would be done to make the current regulatory regime more flexible, proportionate and aligned to risk. At the time of the CMA follow-up study, a wholesale review of the Act has not taken place. Although no progress has been made on this matter, a complete review has been stressed to investigate the extent to which the scope of the reserved activities is aligned to the actual risks of the legal services used by consumers.
- Several short-term recommendations were also proposed to address regime concerns in the meantime:
  - Review whether there was a case for extending redress to consumers using unauthorised providers and if so, how best to achieve this (for example through extending access to LeO, alternative dispute resolution (ADR) or self-regulation). At the time of the follow-up study, there had been limited progress on the recommendations, either in reviewing the case for extending redress to consumers using unauthorised providers or in addressing the gap in evidence we identified regarding the extent of consumer harm. The reform seeks to offer consumers greater protection and avenues for resolving disputes when dealing with unauthorised providers. This action can encourage consumer confidence and trust in engaging with a broader spectrum of service providers, thus fostering a more competitive market environment. Additionally, addressing gaps in evidence related to the extent of consumer harm can aid in better understanding the risks and challenges consumers face, allowing for more informed policy decisions that support fair competition and consumer protection within the legal services sector.
  - Address the evidence gap the CMA identified by working with other bodies to build evidence on the unauthorised part of the sector. Since the study, the CMA has observed the unauthorised sector's growth, highlighting an increased need for the MoJ to conduct a comprehensive review.
  - Endorsed the SRA's proposal to remove regulatory restrictions on solicitors working in unauthorised firms. The need for change in current regulatory rules arises from the belief that restrictions on unauthorised providers employing solicitors for unreserved legal work could hinder competition.

[322] CMA (2020). 'Review of the legal services market study in England and Wales An assessment of the implementation and impact of the CMA's market study recommendations. p.103-104 – [online]

- These limitations, influenced by titles and consumer perceptions, might impede consumer decision-making and trust. Furthermore, such rules may needlessly diminish the availability of more affordable options in the legal services market.
- Recommended that regulators act to reduce regulatory costs – in particular, to continue existing work to reduce costs relating to professional indemnity insurance (PII), training and codes of conduct. This reduction in costs can directly benefit smaller firms and new entrants in the market, making it more feasible for them to compete with larger, established entities. Lower regulatory expenses can encourage innovation, facilitate easier market entry, and enable practitioners to allocate resources towards improving service quality
- Recommend that the MoJ undertake its planned review of the independence of regulators. The CMA considered that such a review would need to consider the independence of regulators both from the profession and from government.

6.6 Role of third-party intermediaries

6.6.1 Function and role in the legal services market

Third-party intermediaries play a pivotal role in promoting effective competition within the legal services market. They aim to connect customers (both individuals and businesses) directly or indirectly with offers from one or more legal services providers. This can be achieved through various services, including price comparison websites, review platforms, quote generation, simple directories, and panels operated by providers of other services, as well as lead generation.[323] Intermediaries have broadly fulfilled three critical functions within the legal service market. The first involves serving as a primary information source. Intermediaries can be the initial point of contact for consumers seeking legal advice, guiding them to understand their need for legal services and directing them to suitable legal providers. An example of this would be a trade union, which in conversations with trade unions (Unison, PCS, and RCN) and a solicitors' firm (Thompsons Solicitors), the CMA identified typically possess in-house legal expertise in addressing employment-related legal issues.[324] Additionally, another example, is the use of legal advice for employment law through the use of in-house lawyers but also HR staff. Research conducted by the LSB found that 5 per cent of micro and small businesses had in-house legal capacity or HR staff. However, it also found that when small businesses started to face higher volumes of employment issues as a result of expansion, they often outsourced the HR services.[325]

Second, intermediaries also function as purchasers. Through continuous interactions, intermediaries acquire insights into both quality and costs of legal services, empowering them to foster competition among service providers. Trade unions, to varying extents, also procure legal services from solicitors' firms and barristers to assist their members in employment disputes. [326] This is an example of how intermediaries may have access to the market, making them capable of 'shopping' around and gaining insight into the quality and cost consumers and businesses could expect for specific services.

Finally, there has also been some evidence identified by the CMA in its market study that third-party intermediaries have been able to drive improvements in efficiency and greater use of technology in conveyancing. Mortgage providers, facing a significant volume of re-mortgaging, have formed conveyancer panels, leading to increased efficiency through technology adoption. Upgrades in IT systems, including

[323] CMA (2016). 'Legal services market study Final Report'. p.266 – [online]
[324] CMA (2016). 'Legal services market study Final Report'. p.B20 – [online]
[325] CMA (2016). 'Legal services market study Final Report'. p.B26 – [online]
[326] CMA (2016). 'Legal services market study Final Report'. p.B20 – [online]

automated flagging of searches and consistency checks, have enhanced internal management but also contributed to better quality control. This technological integration benefits consumers by enabling remote communication and progress tracking.

6.6.2 Role of digital comparison tools

The role of Digital Comparison Tools (DCTs) has also been discussed as a driving force for competition in the market, although its application has been limited thus far. Stakeholders saw DCTs playing a crucial role in the legal services market, including acting as an important intermediary service in the future. Its primary function will be to help overcoming the issues of information being both hard to access and to assess by bringing together comparable information in one place. At the time of the CMA's 2016 market study, the only DCT operating on a large comparison website was MoneySuperMarket for conveyancing. However, other smaller DCTs exist, such as Law Superstore (for consumers and businesses), Lexoo (for small businesses), Law Society's 'Find a Solicitor,' and Contact Law (which maintains a database of providers but does not allow direct comparison). Additionally, LegallyBetter and ReviewSolicitors allow the comparison of reviews and ratings, but they have a low level of usage. [327]

6.6.3 Potential adverse effects of intermediaries

While intermediaries may have positive impacts in promoting competition, concerns have been raised, particularly regarding the misalignment of interests between consumers and intermediaries. It has been claimed that improvements in efficiency achieved by intermediaries, for instance, may not necessarily result in benefits for the consumer. For example, the CMA found that conveyancing fees to consumers have remained flat over time, while the share of the fee going to conveyancers has been falling and the share to intermediaries has been increasing (although the CMA concluded that the overall presence of intermediaries to whom referral fees were paid was still seen to be positive). The CMA also acknowledged that legal services providers were hesitant to sign up for comparison sites. Moreover, intermediaries encountered difficulties in accessing data, mainly due to the extensive number of providers in the legal services sector. This resulted in increased costs for intermediaries when establishing a panel.[328]

6.6.4 Remedies proposed by the CMA

The CMA has sought to address the concerns identified regarding intermediaries through the following remedies:[329]

- Identify and publish relevant information on entities and professionals which can be made available to customers, DCTs and other third-party intermediaries under an 'open data' licence.
- Publish relevant regulatory data in a standard format across all regulators and with consistent frequency.
- Assess the feasibility a single digital register across authorised professionals combining relevant regulatory and customer focused information.

In its follow-up study in 2020, the CMA observed a substantial rise in the accessibility of price and service information for legal services online. Regulators have introduced digital registers identifying regulated entities and professionals. Furthermore, there has been some advancement in consolidating fundamental regulatory information in a single location. For example, the CMA has reported that the SRA has implemented a digital Solicitors Register. Additionally, participating legal regulators have integrated a 'Registers of Legal

[327] CMA (2016). 'Legal services market study Final Report'. p.77-78 – [online]
[328] CMA (2016). 'Legal services market study Final Report'. p.265-266 – [online]
[329] CMA (2016). 'Legal services market study Final Report'. p.264 – [online]

Professionals' feature into the Legal Choices website. This tool allows visitors to access information about regulated legal professionals and navigate to specific lawyers' digital registers through direct links to regulator websites.[330] However, the review suggests that the growth of DCTs in the legal services sector remains limited. This is largely attributed to a lack of enthusiasm from legal service providers to participate in DCTs, with solicitors expressing reservations about the potential for inaccurate and negative reviews. Additionally, the limited use of pricing information from provider websites by DCTs is attributed to a lack of standardisation in how this information is presented.[331]

[330] CMA (2020). 'Review of the legal services market study in England and Wales An assessment of the implementation and impact of the CMA's market study recommendations. p.56 – [online]

[331] CMA (2020). 'Review of the legal services market study in England and Wales An assessment of the implementation and impact of the CMA's market study recommendations. p53-55. – [online]

7 Retail Banking

There have been a number of enquiries looking at the state of competition in the banking market. In 2016 the CMA completed an investigation into the retail banking market in response to concerns lack of competition between banks and barriers for new firms to enter the market.

The CMA's investigation suggested low levels of engagement with the market for personal customers and SMEs alike, with the lack of a contract end date, customer satisfaction and PCAs seen as relatively low-cost products identified as key factors contributing to the low switching rates.

Open banking was introduced as a remedy to these issues by allowing third party providers to create services (e.g. debt management, account consolidation and direct, bank-to-bank payments) that made it easier for consumers to compare specific details of different banks and their accounts. At the same time, this also allowed these third parties to create and introduce products and services that compete directly with those of banks, leading to further competitive pressures in the retail banking market.

A key area of focus for regulatory bodies is developing consumer trust in open banking. Open banking relies on consumers sharing personal financial data, so tackling privacy and security concerns and enhancing protections against financial crime are some of the ways in which trust can be nurtured so that customers feel more at ease using open banking services.

Third party intermediaries such as Account Information Service Providers and Payment Initiation Service Providers play a key role in open banking to increase consumer awareness of products and services by offering innovative tools and services to customers. A future goal of the regulatory bodies is to improve the flow of information to third party providers and end users.

7.1 Overview of retail banking

Competition reviews of the retail banking market date as far back as 1998, with several investigations into the market as a whole or different segments of it taking place since then.[332] These include reviews led by forerunners of the CMA (the Office of Fair Trade and the Competition Commission) as well as the European Commission. The nature and characteristics of the retail banking industry that have been identified as making it prone to difficulties promoting competition and switching include:

- Many of the products sold in this sector are long term, thus the ability of consumers to assess quality is only available after many years.
- Additionally, most retail banking products are purchased only once or twice, so there are very few opportunities for learning from repeat purchases.
- Lastly, banking products are often complex and difficult for the typical consumer to assess.[333]

These features all highlight the importance of regulation in maintaining competition and achieving competitive outcomes for consumers.

In 2013, the Payments Council implemented the Current Account Switch Service (CASS) in an effort to ease the process of switching personal and business current accounts. It is a free, guaranteed service intended to take away all of the complex parts of switching banks. The only steps that the consumer, either an individual or an SME, has to do is select their new bank and chose a date to switch. All other steps in the process are

[332] FCA: "Competition and Choice in Retail Banking" [online] (pgs. 5-6)
[333] FCA: "Competition and Choice in Retail Banking" [online] (pg. 6)

taken care of by the banks.[334] The CASS is still in effect today, but in further analyses regulatory authorities were still not satisfied with the level of competition in the market.

In 2014 the CMA launched a further investigation into the retail banking market, following concerns around low levels of customers shopping around and switching banks, limited transparency, customer challenges in making comparisons between banks, barriers to entry and expansion into the retail banking market, inability of smaller or newer banks to develop their businesses, and little movement over time in the market shares of the four largest banks. The investigation focused on the supply of retail banking services to personal current account (PCA) customers and to SMEs in the UK.

7.1.1 The introduction of open banking

In its final report published in 2016, the CMA proposed a series of recommendations to increase competition in retail banking. These measures included a maximum monthly charge on unarranged overdrafts and measures requiring banks to publish standardised information on service quality.[335] In addition, the CMA also determined that the sector will assume an open banking standard. This was enacted in the Retail Banking Market Investigation Order, published in early 2017.

Open banking is a practice that allows authorized third parties to have access to customers' select financial information through application programming interfaces (APIs).[336] This works by having banks share the financial details of the customer to the API. Through the API[337] the authorized third parties can access this data to create personalized recommendations and services specific to the customer. The third-party services serve a wide variety of purposes, these can include consolidating accounts, initiating payments, and a wide variety of other financial services.

The CMA argued that open banking would boost competition between banks by having third parties create services that made it easier for consumers to compare specific details of different banks and their accounts. At the same time, this also allowed these third parties to create and introduce products and services that compete directly with those of banks, leading to further competitive pressures in the market.

The implementation of the open banking standard enabled customers to share their transaction history and additional banking information, that they consent to, with other banks and trusted third parties. As a result, it became easier for consumers and SMEs to identify products that suited their needs. In addition, this data would help to facilitate the creation of new digital services to help customers manage their money.[338] Initially, the CMA required the three largest banks in Northern Ireland and the six largest banks in Great Britain to participate in open banking and share their customers data.[339] Since then, many other banks have chosen to allow open banking.

To spearhead the process of establishing and overseeing the open banking market, the CMA called for the creation of the Open Banking Implementation Entity (OBIE). The purpose of the OBIE was to implement and oversee the planning, designing, and delivering of future phases of open banking.[340] The CMA's report provided a general overview of the key deliverables and a general timeframe for implementing the open banking standard, the specific design and overall decision making were left to the implementation trustee.

334 Current Account Switch Guarantee: "Why switch" [online]

335 FCA: "Strategic Review of Retail banking Business Models: Final Report" [online] (pg. 12)

336 APIs allow data to be shared between the banks and the authorized parties.

337 In addition to banks create their own standardized APIs that are accessible by third parties, there are also APIs that are run by third parties.

338 CMA: "Open banking lessons learned review" [online] (pg. 7)

339 These banks are referred to as the CMA9 and consists of First Trust Bank, Bank of Ireland, Barclays Bank, HSBC Group, Lloyds Banking Group, Nationwide Building Society, Danske Bank, The Royal Bank of Scotland, and Santander Bank. SWG: "The future development of open banking in the UK" [online] (pg. 189)

340 CMA: "Open banking lessons learned review" [online] (pg. 6)

While both the CMA and OBIE were acting with the intentions of developing a sound system for open banking, certain problems emerged in the implementation of it largely due to differing interpretations of the Retail Banking Market Investigation Order.[341] This eventually resulted in the CMA launching another investigation in September 2020, this time focusing on the operations and management of OBIE. In particular, it was prompted specifically by allegations of issues with corporate governance, late delivery of accounts, management of conflicts, procurement and value for money, and human resource issues.[342] The investigation was concluded in October 2021 and found that there was not proper management within OBIE, which contributed to the issues it had with implementing remedies. Currently multiple regulators are working together to develop a new governing body that will be dedicated towards continuing the growth of open banking and its related services.

A recent report argued that the UK's implementation of open banking might have been too regulator led and suggested that the outcome of open banking, which has had a difficult implementation period, could be improved by increased collaboration between regulators and the industry.[343]

7.2 Customer engagement

The CMA's retail banking investigation suggested low levels of engagement with the market for personal customers and SMEs alike.

7.2.1 Personal customers

As part of the CMA's retail banking investigation, customers were surveyed to assess their involvement in the retail banking market which suggested low levels of customer engagement in the retail banking market. In particular, the CMA found that:

- Over a third of respondents to the survey had been with their main PCA provider for more than 20 years.
- Over a half of respondents had been with their main PCA provider for more than ten years.
- Only 3 per cent of PCA customers had switched PCAs to a different bank in the last year. Over the past three years only 8 per cent had switched.
- Over three-quarters of PCA customers had neither searched nor switched in the last year.[344]

This data, suggesting a lack of customer involvement in the market, contributed to the conclusion in the 2016 report that the competition and growth within the retail banking sector was unsatisfactory. The report also analysed the characteristics of the personal customers who were searching and switching bank providers and found that customers more engaged with searching and switching were more likely to have higher incomes, higher account balances, and greater levels of education than customers who did not search or switch. Having confidence in one's ability to use the internet also was more common among the customers who had shown greater engagement with the market.[345] While digitalization has allowed for greater access to banking information, a variety of other factors could be responsible for poor engagement.

The CMA identified three key factors contributing to the low switching rates observed:

- One consideration is that PCA customers do not have a contract with their bank, and the lack of a contract end date means that there is no built-in assessment of satisfaction with a provider.

[341] CMA: "Open banking lessons learned review" [online] (pg. 12)
[342] CMA: "Open banking lessons learned review" [online] (pg. 8)
[343] "The Future of Payments Review" [online] (pg. 73)
[344] CMA: "Retail banking market investigation: summary of final report" [online] (pg. 13)
[345] CMA: "Retail banking market investigation: summary of final report" [online] (pg. 13)

- Second, if customers are reasonably satisfied with their provider, they typically see no reason to engage with the market by searching for better alternatives, even when these do exist.
- Finally, as PCAs are relatively low-cost products (especially for those who remain in credit), many customers felt that there was not much to be gained from switching.[346]

7.2.2 Small and medium-sized enterprises

Similarly to the personal accounts research in the 2016 report, the CMA also investigated searching and switching in business current accounts (BCAs) to analyse SME engagement in the retail banking market. The report specified the following figures as a concerning lack of market engagement:[347]

- Only 4 per cent of SMEs in Great Britain had switched BCA providers in the last year.
- 70 per cent of SMEs in Great Britain and 77 per cent in Northern Ireland that had been in business for over ten years have been with their main bank for at least ten years.
- Over three-quarters of SMEs between two and five years old said that they never compared the costs of their BCA with other providers.
- Two-thirds of SMEs did not consider switching at the end of the free banking period.

Like PCA customers, there is no built-in trigger that prompts SMEs to consider how good of a fit their BCA is. Potential loss of payment history and other historical data was another concern about the switching process cited by SMEs.[348] Given this information, paired with the data about personal accounts, regulators concluded that the competitive pressures on banks were weakened as a result of low customer engagement. This reduced incentives for banks to compete, which resulted in adverse effects on competition in the PCA and SME banking markets. The main remedy suggested by the CMA to address these issues was open banking.

In addition, consumers often have multiple bank accounts, which may suggest lower levels of switching compared with other sectors. Nonetheless, the historical switching rates reported in the retail banking market remain low.

7.3 Simplifying process and choice

7.3.1 Barriers to engagement and switching

When the CMA launched its investigation into the retail banking market its main goal was to assess levels of competition in the market. However, it also analysed the causes of the lack of competition it observed. One key contributor identified was the difficulties involved in comparing the quality of service across banks. There were multiple barriers in place that made it difficult for consumers to search for alternative banks or compare options. One reason for this was a general lack of available information. Banks did not publish tables of interest rates, management fees or eligibility which differed from other lending products such as residential mortgages.[349] Consumers are unable to compare the offering of alternative providers with their current bank when they do not have the data they need to make comparisons in the first place.

In addition to the lack of published information, a further issue identified was the lack of tools available to help consumers identify their best alternatives. Users had to combine complex information on charges, rewards, eligibility criteria and their own usage to identify the best account for them all on their own. Price comparison websites played a very limited role at the time and were underdeveloped for users' needs. This was especially problematic for small SMEs and personal current accounts who may have limited knowledge

[346] CMA: "Retail banking market investigation: summary of final report" [online] (pg. 14)
[347] CMA: "Open banking lessons learned review" [online] (pg. 23)
[348] CMA: "Open banking lessons learned review" [online] (pg. 24)
[349] CMA: "Retail banking market investigation: summary of final report" [online] (pg. 26)

of the sector. Without specialist financial capabilities or an in depth understanding of banking figures, it is a challenging task for consumers to draw effective conclusions from their banking data. Moreover, the CMA determined that there were risks to SME's credit ratings from searching.[350] The overall lack of transparency and lack of resources available to customers resulted in individuals and SMEs being heavily deterred from shopping around and switching banks.

7.3.2 Open banking as a solution

Open banking was introduced as the main solution to address the difficulties around comparing the services offers because it forces transparency with banking data and actively encourages third party involvement in banking and financial services.

The Financial Lives Survey (FLS) conducted by the FCA explored the number of account holders who had switched providers in the past three years. Using data from all three waves of the survey (2017, 2020 and 2022), the FCA's latest report compared the per cent of people who reported they switched providers in the past three years for different sectors, focusing on personal current accounts. For all three waves, the report found that the number of users who had switched accounts was around 6 per cent.[351] As the open banking standard was implemented in January 2018, the results suggest that open banking did not have a significant impact on switching. To further investigate this issue, the report also explored the reasons behind consumers choosing not to switch accounts. Overall 83 per cent of PCA users responded that they were happy with their provider or had not considered switching.[352] suggesting that the majority of PCA holders do not have a desire to switch. Open banking was also designed to allow third parties (FinTechs) to offer services including in competition with banks.

Looking at the use of services enabled by open banking, data from the FLS suggests that in 2022 11 per cent of UK adults with a day-to-day account were using a service provided by their bank, building society or credit union that allows them to see in one place the accounts they hold with different banks[353] compared with 7 per cent in 2020.[354]

7.3.3 Issues around customer awareness and understanding of open banking

In a consumer survey conducted in early 2023, around 60 per cent of UK customers reported that they did fully understand open banking.[355] Similarly, around 60 per cent also reported that either they were not using open banking or did not know if they were using it. In addition, 84 per cent of respondents reported not fully trusting open banking. Growing awareness and understanding of open banking has been a major focus of the OBIE following its initial issues with implementation. Despite the lack of understanding and trust reported, the use of open banking has been growing in recent years. As of April of 2023, 7 million consumers and businesses were using open banking enabled products or services.[356] Additionally, the number of open banking payments well over doubled between 2021 and 2022, increasing from 25 million to 68 million. Open banking payments have already exceeded 68 million in 2023, with around 76 million initiated payments from January to August.[357] This suggests that efforts to increase awareness are fairly successful.

There were multiple avenues that were explored to increase awareness. In March of 2021 HMRC switched to an open banking provider for collection of various taxes, including PAYE, corporation tax, capital gains tax

---

[350] CMA: "Retail banking market investigation: summary of final report" [online] (pg. 26)
[351] FCA: "Financial Lives 2022" [online] (pg. 253)
[352] FCA: "Financial Lives 2022" [online] (pg. 254)
[353] FCA: "Financial Lives 2022" [online] (pg. 218)
[354] FCA: "Financial Lives 2020 survey: the impact of coronavirus" [online] (pg. 137)
[355] Money Live: "The Future of Open Banking Payments" [online] (pg. 3)
[356] JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 10)
[357] "The Future of Payments Review" [online] (pg. 74)

and stamp duty land tax.[358] Given their tendency to be risk-averse when making decisions, this was a show of trust in open banking systems and security as well as a way to familiarize users with the concept of open banking. There have also been efforts to promote use cases of open banking to increase visibility.[359]

Recent reports do acknowledge the general lack of knowledge of consumer qualities, attitudes, and satisfaction in relation to the open banking market. The JROC, in conjunction with the FCA and PSR, have expressed interest in conducting future research.[360] This research would allow for future decisions about the open banking market to be better informed based on an improved understanding of the open banking consumer, but does not mention specific indicators or metrics to measure customer engagement in the open banking market.

7.4 Reducing market frictions

7.4.1 Putting in place appropriate safeguards against fraud

A key determinant of the success of the open banking market is the ability of regulators, third-parties, and other stakeholders to develop consumer trust in open banking services. Open banking revolves around sharing personal banking data, albeit with authorized parties only, which can be a major deterrent for consumers to engage. Consumers are especially cautious with their money, so building a trustworthy, reliable foundation is going to be vital for the continued growth of open banking services.

A key approach to develop trust is based on building appropriate safeguards against fraud. In particular, using enhanced data when payments are made is a key way that banks are working to build more sophisticated safeguards. By assessing the nature of the account, the business behind it, and whether it is deemed high risk, there is a greater ability for banks to intervene and prevent possible loss.[361] Additionally, the JROC, with the FCA and the PSR, developed a plan to aimed to mitigate the risks of financial crimes. There are various layers to their objectives and some of the proposed solutions include:

- Enforcing payment limits to prevent fraudulent, high-value transactions.[362]
- Building comprehensive databases containing financial crimes data from banks and third parties.[363]
- Implementing transaction risk indicators and other financial crime tools.[364]

More generally, to use open banking customers must choose to opt in to having their specified data shared in the open banking systems. Moreover, they have to reapprove again after 90 days to be compliant with GDPR, and users always have the right to revoke permission. To ensure security from third-parties, all third-party providers must be approved by the FCA and be actively following the relevant regulations.[365]

7.5 Regulatory framework

7.5.1 Current Account Switching Service

Initially, the Current Account Switching Service (CASS) was put in place to maintain competition within the retail banking sector. The CASS aims to make switching bank accounts easy for consumers. It is a free,

358 Money Live: "The Future of Open Banking Payments" [online] (pg. 5)
359 JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 14)
360 JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 40)
361 Money Live: "The Future of Open Banking Payments" [online] (pg. 7)
362 JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 32)
363 JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 33)
364 JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 33)
365 ODI: "Open banking report" [online] (pg. 25)

guaranteed service that helps take away all of the complex parts of switching banks. The only steps that the consumer, either an individual or an SME, has to do is select their new bank and chose a date to switch. All other steps in the process are taken care of by the banks.[366] While the CASS was meant to allow easier switching between banks, customers were still deterred from switching banks due to a lack of trust in the system.[367]

The CMA's 2016 final report found that over half of the consumers surveyed reported that they considered switching to be a hassle and over 40 per cent reported concerns that something may go wrong during the process, despite CASS. The FCA also published research in 2015 that revealed only 51 per cent of consumers had heard of CASS. Additionally, less than 50 per cent of people thought that CASS would be able to facilitate a switch without error.[368] This demonstrates the lack of consumer awareness and lack of confidence in the system. The PSR continues to monitor the CASS as an alternative switching scheme.[369]

7.5.2 Developing a future entity to oversee open banking

The current structure of oversight for the open banking market is under evaluation, meaning that the main regulatory bodies are likely to change. The Joint Regulatory Oversight Committee (JROC) is currently working with the PSR and FCA to develop a future entity that would be responsible for continuing the growth of open banking, developing and maintaining a sustainable model, and exploring the future potential of open banking.[370] Unlike the current system where the CMA oversees the entirety of the OBIE, the new entity would be broken up into two sectors overseen by different authorities. The JROC currently envisions this as the FCA regulating the provision of open banking services, including payment initiation and data sharing requirements. The PSR would then regulate other areas of the open banking services that relate to payment systems and participants in that payment system.[371]

The OBIE was initially set up for the implementation of open banking, not the long-term oversight. Thus, the creation of a new body that is intended to remain in place in the long run will be important for the sustained development of open banking. Given the issues with the OBIE creation, the JROC aims to ensure that all necessary steps are taken in the development and creation of such a body. This includes consulting with stakeholders and relevant personnel on what they envision the entity to look like and what roles it should take on. The JROC reported that the general consensus among stakeholders was that this new entity should take on the role of a central, standard-setting body.[372] This would leave the future entity as the main creator and enforcer of regulations related to open banking.

Nonetheless, OBIE did not have complete discretion in its design of open banking as it also had to fit within the EU's Second Payment Services Directive (PSD2).[373] This required banks to create dedicated interfaces for the sharing of customer data with third parties.[374]

7.5.3 Entry barriers for FinTechs

With the introduction of open banking, consumers have the option to access third party services that allow them to better compare their different banking options. These services, along with other services that

[366] Current Account Switch Guarantee: "Why switch" [online]
[367] CMA: "Retail banking market investigation: summary of final report" [online] (pg. 15)
[368] CMA: "Retail banking market investigation: summary of final report" [online] (pg. 71)
[369] PSR's annual monitoring 2023: CASS's compliance with the Payment Account Regulations 2015 [online]
[370] JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 14)
[371] JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 15)
[372] JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 18)
[373] When open banking was implemented in January 2018, the UK was still in the EU which meant that it was required to follow the framework set out in PSD2.
[374] CMA: "Open banking lessons learned review" [online] (pg. 13)

developed from open banking, are provided to consumers mainly through FinTech companies. Some of the other FinTech services are actually in direct competition to retail banking services, such as digital payment systems, creating further competition in retail banking through new firms entering the market.

However, the complexity and weight of the regulations may be deterring FinTechs from entering the market. Large firms have expressed challenges in navigating the regulations surrounding open banking and other financial services and FinTechs that are smaller in size and/ or newly established are likely to face similar issues. The degree of ambiguity within certain regulations, such as APP code rules, AML checks, and E-Money Institutions, may be deterring investments in FinTechs and, thus, FinTech entry to the market.[375] Additional clarification and simplification have been suggested as potential solutions to mitigate these issues.

7.6 Role of third-party intermediaries

Third party intermediaries play a vital role in open banking as there are very few customers who use open banking without interacting with TPIs. Open banking starts when banks upload data to open APIs and it is through these APIs that authorized third parties are able to access specified data from the banks. TPIs can then integrate that data into an app or website to personalize their financial service offering to the customer whose data it corresponds to. These third-party services can include personal finance tools, debt management, account consolidation into one location, and direct payments.[376]

Based on the types of services offered two customers, there are two main types of TPIs operating in the market:

- Account Information Service Providers; and
- Payment Initiation Service Providers.

Account Information Service Providers (AISPs) are authorized to access bank account information with the goal of providing information and advice to customers.[377] AISPs have "read-only" access to accounts. This means that they can see the financial information that customers authorize them to view, but they are unable to access the actual accounts. An example of a service that an AISP could provide is account consolidation. If a consumer has multiple accounts, there are many TPPs that provide a platform to access spending history and other information across all accounts in a singular space.

Payment Initiation Service Providers (PISPs) differ from AISPs in that while they are also able to access "read only" data, they are also authorized to initiate payments directly from a customer's bank account.[378] This enables individual customers as well as businesses to make direct, bank-to-bank payments. In addition to initiating payments, other examples of PISP serviced include financial management tools. This could include moving money between accounts automatically to avoid users incurring overdraft fees. The benefit of using PISPs for payments is that they are not linked to a single account or bank, so they can be used regardless of where an account is located.

7.6.1 Key benefits of TPIs

Open banking was introduced as a remedy for a lack of competition in the retail banking market. Allowing intermediaries to have access to customer data creates a dynamic environment that benefits consumers by providing them with more choices, improved services, and better value for their financial needs. Having

[375] "The Future of Payments Review" [online] (pg. 73)
[376] CMA: "Open banking lessons learned review" [online] (pg. 6)
[377] JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 46)
[378] JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 46)

greater knowledge of finances and increased ability to compare bank services increases competition and innovation in retail banking.

A future goal of the regulatory bodies is to improve the flow of information to third party providers and end users. A roadmap of achieving this has been laid out by the JROC, FCA, and PSR. This is a key goal because it will enable TPPs to improve the overall experience of customers and allow for growth and increased accuracy of the goods and services that third parties provide. This will only further increase the innovation that regulators hoped to see in the retail banking market, through the expansion of open banking. This process is not yet under way because some of the steps will fall under the responsibility of the future entity that is still in development.[379]

7.6.2 TPI authorization

In order to access customer information through APIs, third parties (AISPs and PISPs) must be authorized through the FCA and also register with the OBIE.[380] The authorization process starts with an application to the FCA that has to get approved. In order to get approved, it is recommended that potential third parties do the following:[381]

- Understand PSD2 and the FCA's guidance to ensure the product and/ or service is compliant;
- Determine if you need to apply to international regulators as well (FCA authorization only applies to the UK);
- Have a clear and detailed business model, as this will be discussed in the application;
- Ensure compliance with all data protection and privacy regulations;
- Have professional indemnity insurance; and
- PISPS require at least 50,000 euros of initial capital.

Only once the application is approved by the FCA can TPIs officially register in the OBIE database of regulated providers.

7.7 Customer satisfaction with market

Assessment of customer satisfaction with open banking is relatively limited for personal customers and especially for businesses.

7.7.1 Personal accounts

The Financial Lives report published by the FCA measures satisfaction broken down by type of provider. Again, it does not directly break down information related to SMEs, but it does discuss PCAs which fall under the umbrella of day-to-day service providers. The survey measures satisfaction by asking respondents to rate their level of satisfaction on a scale of 1 to 10, with ten being highly satisfied and 1 being highly unsatisfied. In 2017 day-to-day providers received a 7.9 satisfaction score. As of 2022, the satisfaction score of that group increased to 8.2.[382] While this is a minor increase, it does suggest that there was a general increase in levels of satisfaction with day-to-day account providers (including PCAs) since the use of open banking began.

[379] JROC: "Recommendations for the next phase of open banking in the UK" [online] (pg. 36)
[380] FCA: "Account information and payment initiation services" [online]
[381] "Open Banking Regulation in the UK" [online]
[382] FCA: "Financial Lives 2022" [online] (pg. 230)

While open banking use is still relatively new and working to develop a strong consumer base, initial information collected in the FCA report shows that consumers are using services that are a result of open banking. As of May 2022:[383]

- 5.5 million adults were using a service provided by their bank, building society or credit union that allows them to see the accounts they hold with different banks in one place;
- 1.5 million adults were using an app provided by a company that is not their bank, building society or credit union that allows them to see the accounts they hold with different institutions in one place; and
- 1.3 million adults were using an app that builds savings by monitoring their current accounts and/or transactions and automatically transfers funds.

Of the adults who were using a money savings app, 36 per cent cited that one of the main reasons they use the app is because they can easily view and manage their savings. An additional 33 per cent said they use the app because they save more than they would if they had a regular savings account.[384]

7.7.2 SMEs

While specific data is less readily available for SMEs, the FCA published a survey on retail banking business models in 2022 which examined satisfaction levels of business current accounts (BCAs) between 2016 to the end of 2020. From the end of 2017 to the end of 2018, satisfaction levels for BCAs increased from around 70 per cent to closer to 75 per cent for mid-tier banks. with satisfaction levels falling in 2020.[385]

[383] FCA: "Financial Lives 2022" [online] (pg. 218)
[384] FCA: "Financial Lives 2022" [online] (pg. 219)
[385] FCA: "Strategic Review of Retail Banking Business Models" [online] (pg. 21)