

Communications Consumer Panel and ACOD response to the Competition and Markets Authority's investigation into the Loyalty Penalty

The Communications Consumer Panel, established by the Communications Act 2003, is a group of independent experts with direct sectoral experience. We ensure the citizen and consumer voice is represented in communications policy development. The Panel's job is to ensure that the sector works for consumers, citizens and micro businesses - and in particular people who may be in a more vulnerable position in society. We carry out research, provide advice and encourage Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers. Four members of the Panel specifically represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively and attend the meetings of Ofcom's Advisory Committees for each Nation. They also liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD (the Advisory Committee for Older and Disabled people) with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens across the UK.

Response

Communications services are integral to the everyday lives of consumers, citizens and micro businesses. The rapid rate of change in this sector and the significance of its role to people's lives and the UK economy mean that it is vital that the perspectives of consumers and micro businesses are at the heart of the debate. Treating all consumers fairly continues to be at the forefront of our agenda - and the "loyalty penalty" is unfair.

There is no question that there are times where competition alone will not serve consumers. While assisting those who want to make the most of a competitive market we believe it is vital to recognise that, even in 2018, for some consumers adequate competition still does not exist; or where it does, it fails to benefit all consumers equally. The loyalty penalty is a good example of this - consumers who, for whatever reason, do not switch providers can be unduly penalised simply for staying with one provider long term. Where the market fails to provide high quality outcomes for consumers and citizens, there is a strong case for targeted interventions.

Earlier this year we reported on our work in respect of the related unfair practice of pricing for fixed telephone lines only. This disproportionately affects older people, as well as people on lower incomes. In recent years, consumers on landline only contracts have paid disproportionately increasing prices that are counter to the reduction in underlying wholesale costs, as highlighted in Ofcom's standalone landline market review.

The Panel recommended a significant price adjustment for the affected consumers. We welcomed Ofcom's proposals to define this as a specific market requiring protection and the outcome was that BT, with over 70% of that market, reduced its charge by £7 per month for customers with a line only. We have been pleased to see some of BT's competitors following suit and we are continuing to push for all to do so; and for the price adjustment not to be diminished via general price increases.

Against this background we welcome the CMA's investigation into the loyalty penalty and offer the following comments.

The Loyalty Penalty

In the Panel's response to BEIS' Modernising Consumer Markets Green Paper in July 2018, we re-stated our long-standing argument that consumers who are loyal to their provider should not be penalised. In that response we welcomed the Government's intention to safeguard consumers who, for whatever reason, choose not to switch and we underlined that some consumers are not able to switch - for example, those mobile consumers in rural areas with coverage only available through one provider.

The loyalty penalty in mobile and broadband markets has a particular impact on consumers who:

- are habitually less likely to consider switching provider, for example, people aged 65+ years;
- are less digitally confident;
- are disabled or have a long-term health condition (in circumstances where this means that the consumer has additional access needs, for example, sensory or cognitive impairments, learning disabilities, or requiring hospital treatment);
- are on lower incomes;
- have a poor credit rating;
- are not in control of their own finances;
- those consumers who may have given Power of Attorney in respect of the accounts;
- live in areas of low competition, e.g. rural areas; or
- run a micro business.

A further aspect of the loyalty penalty is the fact that those disempowered consumers most likely to be affected are also those least likely to be online. This can have a disproportionate impact on vulnerable customers - in effect causing them a double-detriment. This affects the ability of customers to shop around and access competitive deals when considering whether to switch providers and is therefore directly connected to customer loyalty and the reasons for it. In other words, it can be a de facto loyalty not borne out of choice - but of circumstances and market failures.

The mobile market

In early 2017 we raised concerns with Ofcom about some consumers in the mobile market (Ofcom estimate up to 1.5 million people) being overcharged after their contracts ended. We argued that this unfair practice by some mobile providers took the form of people continuing to pay for a handset even though they had paid off the cost of that handset during the life of the contract. This unfair practice is a clear example of a 'loyalty penalty' paid by consumers who do not switch providers at the end of their mobile contract.

The Panel’s view is that it is in consumers’ best interests to require CPs to place consumers on a different, and fairer, default deal when their minimum contract period expires if the purchase of a handset, which had previously been included in the monthly price, has been completed.

We have engaged with CPs bilaterally to urge them to change their practices and have noticed some willingness to change, although we understand that the legal framework poses challenges to some providers (i.e. those not registered with the FCA to provide financial services).

Latest evidence from Ofcom (30 October 2018)

Ofcom’s latest Mobile Switching Tracker, published 30 October 2018, provides strong evidence that the loyalty penalty continues. Of those people who were still paying for a monthly contract (which initially included a handset) and were now outside of their minimum contract period, almost half were paying a similar monthly tariff to when they signed up:

	Total	MOBILE - SIMPLE		MOBILE - REGARD		SIMPLE BUNDLE TYPE		
		STAND-ALONE	SIMPLE BUNDLE	STAND-ALONE	REGARD BUNDLE	QUAD	OTHER	NONE
Significance Level: 95%		a	-b	a	-b	-a	-b	c
Unweighted total	147	128	19	129	18	6	13	128
Effective Weighted Sample	134	116	17	117	16	6	12	116
Total	88	77	10	78	10	4	7	77
I am paying a similar monthly tariff compared to when I signed up	41 47%	36 47%	**	36 46%	**	**	**	36 47%
I am now on a cheaper monthly tariff compared to when I signed up	26 29%	24 31%	**	24 30%	**	**	**	24 31%
I am now on a more expensive monthly tariff compared to when I signed up	16 19%	14 18%	**	15 19%	**	**	**	14 18%
Don't know	4 5%	3 4%	**	3 4%	**	**	**	3 4%

Columns Tested: a,b - a,b - a,b,c - a,b,c - a,b,c,d - a,b

And 80% of those outside of their minimum contract period had no current plans to switch:

	Total	MOBILE TARIFF		MOBILE CONTRACT STATUS	
		PAYG	CNTRCT /SIMO	IN MCP	OUT OF MCP
Significance Level: 95%		a	b	a	b
Unweighted total	2392	622	1770	1297	412
Effective Weighted Sample	2141	541	1600	1173	371
Total	1400	353	1047	770	242
Currently looking for a new deal	50 4%	7 2%	43 4%	22 3%	19 8%
			a		a
Planning to look for a new deal	141 10%	24 7%	116 11%	86 11%	28 12%
			a		
Not currently looking or planning to look for a new deal	1193 85%	317 90%	875 84%	652 85%	193 80%
		b		b	
Don't know	17 1%	5 1%	12 1%	10 1%	1 1%

Columns Tested: a,b - a,b - a,b,c,d,e,f,g,h

The research asked mobile users if in the past 12 months they’d discussed deals or offers with any other provider; looked at deals or offers from any other provider or talked with friends or family for recommendations about providers. The findings were that 91% of people aged 65 years+ had done none of these; nor had 78% of people from C2DE households.

The Panel agreed with Ofcom's recent proposals relating to end of contract and out of contract notifications as a means of ensuring that customers do not incur a loyalty penalty through inaction (borne out of a lack of awareness) at the end of an initial contract period. We are strongly in favour of consumers receiving clear, timely, communication from CPs regarding their current contract status and at the end of their current contract term in order to avoid customers incurring a financial penalty as a result of not switching (or taking other action) at the end of an initial contract term with a CP.

More could perhaps be done if insufficient progress is made - for example, exploring the possibility of mandatory contractual separation of mobile services and handsets.

Broadband

Improving industry performance is a key concern of the Panel. We have worked closely with Ofcom to ensure that people are compensated for unacceptable performance through the forthcoming auto-compensation scheme. Similarly, our work on the revised Broadband Speeds Codes of Practice should ensure that consumers are not trapped into poorly performing services. The same principles of respecting consumers' best interests also apply in this market. However, there are situations where people do not have the option to switch i.e. there is no other provider in their area. We believe that in these circumstances, if consumers are getting a sub-optimal service they should be billed proportionally by their providers.

Targeted information

Providing consumers with information that helps them to understand the way they are being charged is only a way of treating the symptoms of this unfair practice (the loyalty penalty) and is not a cure in and of itself.

We are also mindful of the need to guard against overloading consumers with information that may not be directly helpful in terms of making informed choices. A balance needs to be struck between the current absence of relevant information and so much information that a consumer is unable to engage with it - which could potentially lead to the entrenchment of a loyalty penalty due to a customer's disengagement.

There are no circumstances in which we consider a 'loyalty penalty' is anything other than a cause of consumer detriment. Loyal customers should not be penalised for being unable or unwilling to switch, especially where the market does not offer them a valid alternative provider.

Communications Providers may argue that the discomfort of paying more for the same service as a more active and engaged customer may cause a disengaged customer to become more engaged. We do not consider this a valid, fair or ethical argument; providers should be looking to proactively motivate consumers to switch where appropriate and not passively penalising those who can't - or won't.

Measures suggested by the Panel to tackle the harm caused by the loyalty penalty:

- We recommend that once a consumer reaches the end of their minimum contract period they are automatically switched to the best tariff for their needs, so that they are billed proportionately to those needs; the provider will have built up some intelligence about a consumer's service usage during their contract term, so we see no reason why this would not be possible.

- Consumers who have been penalised should be compensated by providers whose finances have been unjustly enriched by employing unfair practices.
- Additionally, information on usage and any additional element (such as a handset or router) should be made clearer to consumers throughout their contract term, at least in the form of a visually engaging and easy to understand annual report (particularly for those who do not access their providers' apps). This would give the consumer more control at the end of their minimum contract term and would help set expectations in terms of what deals suit their needs.
- The Panel has also highlighted to Ofcom and CPs the harm incurred by consumers who are tied into non-coterminous contracts - where the end dates of contracts in bundled services are not aligned. This can cause both confusion and difficulty in terms of switching without incurring charges. These types of contract can lead consumers, who might otherwise be more engaged and would shop around, into the path of inertia and loyalty penalties. We have urged Ofcom to use its powers to seek to minimise the occurrence of such bundled contracts.
- Where alternative providers are not available, consumers who cannot switch should not be a source of unjustified enrichment for providers - and if the service provided is sub-optimal, proportional billing should be applied so that at least consumers are not overpaying in the context of the quality of service they are receiving.