
Helping consumers get better deals:

A review of pricing practices in fixed broadband

[Helping consumers get better deals](#) – Welsh summary



INITIAL CONCLUSIONS:

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Contents

Section

1. Overview	1
2. Background and introduction	12
3. Review findings – all consumers	22
4. Review findings – vulnerable consumers	34
5. Review findings – consumers in areas with less choice	48
6. Proposed actions and next steps	53

Annex

A1. Legal framework	68
A2. Fairness Framework	72
A3. Glossary	75

1. Overview

An important priority for Ofcom is to ensure fairness for customers. We want people to shop around with confidence, make informed choices and get a fair deal. We are concerned that many fixed broadband customers pay high out-of-contract prices when they could save money by signing a new contract with their provider or by switching to a new company. So, we have carried out an in-depth review of broadband pricing practices to determine the best way to help these customers get a fair deal.

This document explains our findings and proposals and sets out new commitments from companies to help address our concerns.

What we have found

We have analysed over 20 million customer records to get a detailed understanding of prices paid by broadband customers. We found that those who engage, either by signing a new contract with their provider (re-contracting) or switching to a new provider, get better deals than those who remain out-of-contract. Customers who sign a contract with a new provider typically pay £9 to £10 per month less compared to that provider's out-of-contract customers. Those who re-contract with their existing provider typically pay £8 to £9 per month less than if they were out-of-contract. But customers often face barriers to doing so and we are concerned about the higher prices paid by out-of-contract customers.

Prices paid by vulnerable customers reveal a mixed picture. While some groups of potentially vulnerable customers are more likely than average to be out-of-contract, others, including people on lower incomes, are less likely to be so. Nonetheless, a considerable proportion (around 43%) of vulnerable customers are out-of-contract and pay higher prices as a result. Broadband companies can and should do much more to identify and support their vulnerable customers.

Many customers with slower, entirely copper-based broadband pay more than superfast broadband customers. We are concerned about the fairness of charging very high prices to out-of-contract customers with copper-based broadband in areas where superfast options are not available.

New commitments

As a result of our review the UK's biggest broadband companies have made new targeted commitments to protect customers who face barriers to getting better deals. Specifically:

- BT will cap the difference between the monthly prices paid by new or re-contracted and out-of-contract customers. This will apply to all customers coming out-of-contract from February 2020. BT will also provide a one-off automatic price reduction for vulnerable customers who are already out-of-contract and paying more than its new capped out-of-contract price.
- BT will help customers who live in areas without access to superfast broadband and who do not choose a service upgrade, by providing a price reduction, so they will not pay more than new entry-level superfast customers. This addresses the specific lack of choice facing customers in areas where superfast broadband is not available and will be introduced from mid-2020.
- Sky has changed its pricing to reduce the average price differential, so that there is no more than a £5 per month difference between in- and out-of-contract prices, when customers enter or re-enter a contract.

- TalkTalk will carry out annual reviews to ensure that its out-of-contract vulnerable customers are placed on the best tariff. It will attempt to communicate with relevant vulnerable customers giving them the option of switching to a new tariff in a simple way. Any customer whom TalkTalk is unable to contact or who failed to respond over a three-month period will be automatically moved to the new tariff price.
- Virgin Media will undertake annual price reviews with its customers who are either over 65, have a disability or who are otherwise identified as vulnerable, to ensure they are on the best deal for their needs. The first review will take effect from February 2020.
- BT, Sky and TalkTalk will allow existing customers to access new customer prices when sending end-of-contract and annual best tariff notifications.
- BT, EE, Plusnet and TalkTalk are taking measures to protect out-of-contract customers from above inflation price rises.

What we are doing next

We are exploring the case for a new, targeted, special tariff to protect broadband customers on low incomes. Such a tariff would require broadband companies to offer a simple, low-cost broadband service to eligible customers. We are investigating the affordability of broadband services to inform our assessment. A requirement on all providers to offer a special tariff would require legislation.

We are also considering requiring providers to take part in a collective switch trial designed to help the least engaged customers, including vulnerable customers. Alongside this document, we have published separate proposals for a new rule requiring providers to trial new measures to help customers find the best deal for them.

Broadband companies must do better at identifying customers who may be vulnerable and to provide appropriate support and services to them. Ofcom already requires companies to have policies for identifying vulnerable customers and for ensuring they are treated fairly and appropriately. We have published a detailed guide on how companies can comply with these rules.¹ We will closely monitor companies' performance in this area and can step in with new rules if our concerns are not addressed.

We have announced new rules requiring broadband customers to be told when their contract is coming to an end and shown the best deals available – both when their contract is up, and annually. These rules come into effect in February 2020 and will make a significant difference to help address our concerns. They will help customers exercise choice in relation to which provider they use and which tariff would best suit their needs, and address customer confusion about their contract status. We are also continuing work to understand how customers might use data about their broadband usage in future, helping them to find the best deals for their needs.

¹ See Ofcom, 25 September 2019, [Treating consumers fairly: A proposed guide for phone, broadband and pay-TV providers](#).

Fairness for customers

- 1.1 We want customers to shop around with confidence, make informed choices and get a fair deal. We think this is important to ensure that customers continue to trust that communications providers will deliver for them.
- 1.2 Our ongoing work to ensure fairness for customers² includes the following:
- securing new fairness for customers commitments³ from the UK's main telecoms and pay TV providers;
 - publishing our draft Fairness Framework, which sets out our approach to fairness concerns;⁴
 - introducing new rules to make sure people get the right information, at the right time to find the best deals for them through end-of-contract and annual best tariff notifications;⁵ and
 - measures to help customers get better deals for bundled mobile contracts, including greater transparency in the pricing information given to customers and a range of price cuts by operators for out-of-contract customers.⁶
- 1.3 The proposals set out in this document tackle fairness concerns in relation to fixed broadband prices, particularly where they relate to vulnerable customers.

Background to the review

- 1.4 Many people rely on decent broadband to live and work. There is significant choice for broadband customers in the UK, allowing them to pick from a wide range of providers and packages to suit their needs.
- 1.5 That choice has been driven by competition between providers and investment in innovative new technologies and products. In recent years average broadband download speeds (from 18 Mbit/s in 2013 to 54 Mbit/s in 2018⁷) and average monthly data use over fixed connections (by 700% to 240 GB per month in 2018)⁸ have increased significantly, whereas average spend has changed little in real terms (from £37 in 2013 to £41 in 2018)⁹ meaning customers are getting more for their money. We will continue to secure good

² See also our recent progress update: Ofcom, June 2019, [Making sure customers get fair deals – Progress update on Ofcom's work to ensure Fairness for Customers](#).

³ Ofcom, 3 June 2019, [Britain's biggest broadband and phone firms to put fairness first](#)

⁴ Ofcom, 17 June 2019, [Making communications markets work well for customers: A framework for assessing fairness in broadband, mobile, home phone and pay-TV](#). A summary of our findings against that framework is set out in Annex A2.

⁵ Ofcom, 15 May 2019, [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#)

⁶ Ofcom, 22 July 2019, [Statement and consultation: Helping consumers to get better deals in communications markets – mobile handsets](#)

⁷ Ofcom, 24 October 2013, [Infrastructure Report: 2013 Update](#) and Ofcom, 8 May 2019, [UK Home Broadband Performance](#).

⁸ Ofcom, 24 October 2013, [Infrastructure Report: 2013 Update](#) and Ofcom, 18 December 2018, [Connected Nations 2018: UK report](#).

⁹ These spend figures include fixed voice and data. Ofcom, 2 August 2018, [Communications Market Report](#).

outcomes for customers through supporting competition, which we believe is the best way to ensure investment in new full-fibre networks.

- 1.6 As in many competitive markets, current pricing practices mean that different people can pay different prices for the same broadband service. Discounts offered to customers signing up to new contracts can benefit many, especially those who shop around, and can be particularly important to customers on low incomes, who might otherwise not be able to afford a service. Discounting also provides incentives to customers to upgrade to more advanced technologies and products, which enables customers to benefit from faster speeds. It is also consistent with a competitive market and one in which providers have incentives to invest in new services and networks on the basis that they will be able to attract new customers to use them.
- 1.7 But Ofcom has been concerned that not all customers are benefiting from the deals available, with people who do not re-contract with their existing provider or switch after the end of their minimum contract period tending to pay higher prices. We want customers to be able to take advantage of choice and get a fair deal, including people who are vulnerable (for example due to a mental health problem or low numeracy or literacy skills) and who may be less well equipped to engage with the market. We are also concerned about customers who have less choice, for example because they live in an area where superfast broadband or full-fibre broadband are not yet available.
- 1.8 We have already set new rules to require broadband customers to be told when their contract is coming to an end and shown the best deals available – both when their contract is up, and annually. This obligation, which takes effect from February 2020, will make a significant difference that will go some way to addressing our concerns that some customers are not benefitting from the deals on offer. But we recognise that, for some customers, including vulnerable customers, better information may not be sufficient to help them get better deals.
- 1.9 So, we announced a review of pricing practices in fixed broadband services in December 2018. We have been examining whether additional targeted action is needed to protect those who are less well equipped to engage, including vulnerable customers, as well as people living in areas where there is little choice of broadband provider or service type. Our aim in this review is to consider the appropriateness of carefully targeted interventions to address our concerns, while maintaining incentives for customers to switch and for providers to invest in next-generation networks.

What we have found

How prices vary by contract status

- 1.10 We have analysed over 20 million customer records to get a detailed understanding of outcomes for broadband customers. We identified three categories of customers:
- a) New customers. Those in their first contract with a provider who usually get an introductory discount.

- b) Re-contracted customers. Those outside their initial contract period, but who have taken a subsequent contract with the same provider.
 - c) Out-of-contract customers. Those who have completed their minimum contract period and taken no action.
- 1.11 We have found that customers who engage, either by switching to a new provider or re-contracting with their existing one, get the best deals. Those who remain out-of-contract tend to see their price increase at the end of the minimum contract period and pay considerably higher prices – typically £9 to £10 more per month compared to new customers and £8 to £9 more per month than re-contracted customers.
- 1.12 This raises fairness concerns for those who are out-of-contract and face barriers to engaging or behavioural biases that mean they are unlikely to switch or renegotiate their way to a better deal. Barriers to engagement can be exacerbated for customers with vulnerable characteristics, such as a physical disability which may make it hard to talk on the phone; or a mental health problem which causes anxiety about dealing with household finances. We are particularly concerned about these customers, for whom better information in the form of the end-of-contract and annual best tariff notifications may not be sufficient to help them get better deals.
- 1.13 Overall, we found there are around 8.8 million out-of-contract broadband customers in the UK (41% of all broadband customers), of which 1.5 million are potentially vulnerable customers.¹⁰ Of those customers who are out-of-contract, 3.3 million have been out-of-contract for more than two years, suggesting that some people may face significant barriers to getting the best deal for them.
- 1.14 There are also just over half a million customers who live in areas where superfast broadband is not available. Their out-of-contract prices, in common with other customers across the UK, include a premium to incentivise them to upgrade to a faster service. Yet this option is not open to them.

Measuring harm to customers

- 1.15 We have considered how best to quantify the consumer harm from current pricing practices that vary by contract status.
- 1.16 In our view, it is not helpful to focus on the differences in prices paid by newly contracted and out-of-contract customers or to describe this difference as a ‘loyalty penalty’.¹¹ Our analysis shows that better deals are not only available to those customers who switch: providers also typically offer their longstanding customers better deals when they re-contract.

¹⁰ This number is based on provider records of the number of vulnerable customers and, because of the paucity of this information, 1.5 million is likely to be a lower bound.

¹¹ This term was used by Citizens Advice in their super-complaint. See Citizens Advice, September 2018, [Excessive prices for disengaged consumers – A super-complaint to the Competition and Markets Authority](#) and by the CMA in their response to the super-complaint. See Competition and Markets Authority (CMA), 19 December 2018, [Tackling the loyalty penalty – Response to a super-complaint made by Citizens Advice on 28 September 2018](#).

- 1.17 Existing customers of a provider can generally make significant savings by either switching to a new provider or by sticking with their current one, so long as they re-contract. Therefore, we find that there is a large overlap between prices for new customers and customers who re-contract with their existing provider: one third of customers that re-contract pay less than the average new customer price.
- 1.18 From our analysis the greatest harm to customers arises when they cannot take advantage of the deals available by switching or re-contracting to lower prices because of barriers to engagement (such as confusion about contract status or lack of confidence) or behavioural biases (that, for example, may lead to customers putting off a decision to engage). Where such barriers or biases are exploited by providers, this can heighten concerns about whether customers are being treated fairly and whether any groups of consumers, particularly vulnerable consumers, are more likely to be harmed by unfair treatment.
- 1.19 The cost of not engaging can be large. We calculate that, as of November 2018, out-of-contract customers could in principle remain loyal but re-contract and save between £800m and £900m. While this can be seen as a starting point for estimating the “cost of not engaging”, it is only a starting point because current prices depend on the existing distribution of customers by contract status and the intensity of competition between providers. So, these prices, and the differences between them, are likely to change in the future as we expect that providers would rebalance their prices in response to market changes. This would include our requirement for providers to give customers end-of-contract notifications, which will go some way to reducing the number of customers who are out-of-contract.
- 1.20 Moreover, we would expect to see some differences between prices paid by new customers and by others, even in a competitive market with well-informed customers. Because there are always some switching costs, providers need to offer discounts to encourage customers to shop around and switch or to upgrade to more advanced technologies and services. Eliminating price differentials could dampen competition.
- 1.21 Therefore, to understand how customer harm arises in this sector, we have looked at the distribution of customers by contract status. In particular, we have looked at the proportion of customers who are out-of-contract, the proportion who have been out-of-contract for a long period of time and the proportion of vulnerable customers who are out-of-contract. We have also done in-depth consumer research to understand why people remain out-of-contract.
- 1.22 This analytical approach is consistent with our aim to consider carefully targeted interventions to protect vulnerable customers, while maintaining incentives to switch (by customers at large) and incentives to invest by competing providers in next generation full-fibre networks (which will deliver improved customer outcomes in the long term).

Protecting vulnerable customers

- 1.23 Our general statutory duties mean that we must consider the vulnerability of all those whose circumstances may mean they need special protection, people with disabilities, the elderly and those on low incomes, as well as those who live in different parts of the UK.¹²
- 1.24 Taking these duties, and the provisions of the European Framework for telecommunications, into account, we place particular importance on safeguarding the interests of vulnerable customers. This includes ensuring that they have equivalent access and choice of services to those enjoyed by everyone else and assessing whether they all have the protection they need. We have also introduced a general condition – General Condition C5¹³ – requiring providers to have procedures in place for the fair and appropriate treatment of vulnerable customers.
- 1.25 Our analysis of providers’ data on the prices that their vulnerable customers pay presents a mixed picture. Some groups of potentially vulnerable customers are more likely than average to be out-of-contract. But others, such as people on lower incomes, are slightly less likely to be so. We note that those on lower incomes are more likely to be in a new contract with a new provider (27%) compared to 21% for all customers. Like other customers, it seems that some vulnerable customers are engaging with the broadband choices available and getting good deals while others are not.
- 1.26 Overall, our analysis of providers’ data did not show vulnerable customers being disproportionately out-of-contract: 43% were out-of-contract, compared to 41% for all customers. However, vulnerable customers are more likely to have re-contracted (46% vs 39%) and less likely to be new customers (11% vs 21%), which suggests that barriers to switching provider may be higher for vulnerable customers.
- 1.27 Our consumer research findings suggest that several factors contribute to some broadband customers paying higher prices than they could do. These include confusion about their contract status, a lack of confidence speaking to or negotiating a new deal with their provider and feeling unsure about the meaning of certain technical terms related to speed or technology. Our research also indicates that vulnerable customers, such as those with a mental health problem or low numeracy skills, lack the confidence to assess and decide on the best deal for their needs.
- 1.28 Taken together, these findings indicate that at least some vulnerable customers may face additional barriers in finding the right deal for them compared to other people. We are particularly concerned about these customers, for whom better information in the form of the end-of-contract and best tariff notification, may not be sufficient to help them get better deals.

¹² Section 3(4) [Communications Act 2003](#)

¹³ See Ofcom, [General Conditions of Entitlement](#), C5.2 – 5.5.

- 1.29 Given our findings, and in light of our duties to all vulnerable customers, we remain concerned that some of them are paying higher prices, even if vulnerable customers as a whole are not disproportionately affected.
- 1.30 More generally, we found that the overall number of customers identified by providers as potentially vulnerable is significantly smaller than we might expect. There is room for providers to improve here to ensure they identify their vulnerable customers and treat them fairly and appropriately.

Protecting customers living in non-superfast broadband areas

- 1.31 We have also examined whether the more than half a million customers who live in areas without superfast broadband are particularly disadvantaged by price variation based on contract status. While it varies slightly by provider, we found that standard broadband customers in non-superfast areas were less likely to be out-of-contract than customers in areas with wider choice.
- 1.32 However, we did observe that many out-of-contract standard broadband customers are paying higher prices than new superfast customers and for those living in areas without superfast broadband, they pay on average slightly more for standard broadband.
- 1.33 As superfast broadband roll-out continues, we expect that the number of people who only have access to standard broadband will fall. However, we remain concerned about the fairness of the practice of charging high prices to out-of-contract standard broadband customers who may find it difficult to avoid such prices because they have fewer options available to them.

New voluntary commitments

- 1.34 As result of our review, the UK's biggest broadband companies have made new targeted commitments to protect customers who face barriers to getting fairer deals.
- 1.35 To support all customers, providers are making the following changes:
- BT¹⁴ will cap the difference between the monthly prices paid by new or re-contracted and out-of-contract customers. This will apply to all customers coming out-of-contract from February 2020.
 - Sky has changed its pricing to reduce the average price differential, so that there is no more than a £5 per month difference between in and out-of-contract prices, when customers enter or re-enter a contract.
 - BT, Sky and TalkTalk will allow existing customers to access new customer prices when sending end-of-contract and annual best tariff notifications.

¹⁴ Note that throughout this document, commitments made by BT relate only to the BT brand and do not include Plusnet and EE.

- BT, EE, Plusnet and TalkTalk are taking measures to protect out-of-contract customers from above inflation price rises.
- 1.36 To help vulnerable customers¹⁵ get a fairer deal, we have agreed the following changes with providers:
- BT will provide a one-off automatic price reduction for vulnerable customers who are already out-of-contract and paying more than its new capped out-of-contract price.
 - TalkTalk will carry out annual reviews to ensure that its out-of-contract vulnerable customers are placed on the best tariff. It will attempt to communicate with relevant vulnerable customers giving them the option of switching to a new tariff in a simple way. Any customer whom TalkTalk is unable to contact or who failed to respond over a three-month period will be automatically moved to the new tariff price.
 - Virgin Media will undertake annual price reviews with its customers who are either over 65, have a disability or who are otherwise identified as vulnerable, to ensure they are on the best deal for their needs. The first review will take effect from February 2020.
- 1.37 For customers in areas without access to superfast broadband:
- BT will help customers who live in areas without access to superfast broadband and who do not choose a service upgrade by providing a price reduction, so they will not pay more than new entry-level superfast customers. This addresses the lack of choice facing customers in areas where superfast broadband is not available and will be introduced from mid-2020.
- 1.38 We welcome providers taking steps to help consumers get a fairer deal that can benefit large numbers of customers across the sector. We will monitor their effects, and will provide an update on these when we conclude our review next year. If we think providers could and should do more, we will say so and seek to secure that they do so.

Further action to help customers get fair deals

What we have done so far

- 1.39 We have already pursued various initiatives to help customers engage better with broadband markets. For example, we have simplified the switching process between fixed broadband providers on the Openreach and KCOM networks.¹⁶
- 1.40 We have also announced new rules requiring broadband customers to be told when their contract is coming to an end and shown the best deals available. Customers who do not have a fixed-term contract (e.g. those who are beyond their minimum contract period) must be shown the best deals every year too.¹⁷ These changes may be most effective for

¹⁵ For these policies, vulnerable is defined as customers being logged on a provider's system as having a form of vulnerability. Each provider has its own set of characteristics and its own policy in accordance with General Condition C5. Factors recorded include physical disability, mental health problems or being on a priority fault repair register.

¹⁶ Ofcom, 19 June 2015, [Easier broadband switching from tomorrow](#).

¹⁷ Ofcom, 15 May 2019, [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#).

people who are, or who are about to become, out-of-contract, but would feel able to engage when prompted. The notifications will also increase the transparency of prices available to customers, helping people make informed decisions about which deal is best for their needs.

What we plan to do next

Exploring the case for a new, targeted, special tariff to protect broadband customers on low incomes

- 1.41 We are now exploring a new special tariff to protect broadband customers who otherwise find it difficult to afford a broadband service.¹⁸
- 1.42 The European Electronic Communications Code – the EU framework which sets our powers in this area – does not allow us to impose price regulation on a provider unless we find that it has ‘significant market power’.¹⁹ However, the Code requires us to take steps to ensure broadband is affordable. These may include requiring all broadband companies to offer a special tariff to customers who otherwise find it difficult to afford a broadband service. We are now exploring this possibility and examining the affordability of broadband services to inform our assessment. A requirement on all providers to offer a special tariff would require legislation.
- 1.43 We believe that a special tariff, together with voluntary commitments from industry (outlined in the previous section), could bring about many of the benefits that targeted price interventions may deliver. We will investigate the affordability of broadband further, monitor the effects of the proposed measures to date and consider further action if they do not deliver these benefits.

Trials to boost engagement

- 1.44 We are considering requiring providers to participate in a collective switch trial. Our consumer research indicated some support for this measure, including among vulnerable customers. We are separately consulting on proposals to introduce a general condition requiring providers to participate in trials of customer engagement remedies. In the case of a potential collective switch trial, a trusted intermediary would invite bids from providers to offer tariffs to a group of customers with similar needs. Such an intervention could be of benefit to those customers who are the least engaged and may benefit from targeted support to get on a better deal. This could include some of the 3.3 million customers who have been out-of-contract for more than two years.

¹⁸ Given our focus on vulnerable customers, and in light of a recommendation by the Competition and Markets Authority to consider targeted safeguard caps to protect vulnerable customers, we have been examining new pricing rules. We note that both BT and KCOM currently offer a broadband social tariff. See BT, [BT Basic + Broadband](#) and KCOM, [Social Access Package](#).

¹⁹ There are a small number of exceptions to this, but they only apply in very limited circumstances and would not enable us to impose price caps on providers generally to address differences between the prices customers pay when in- and out-of-contract.

Identifying and supporting vulnerable customers

1.45 Given the relatively small numbers of customers recorded by their providers as potentially vulnerable, we believe much more progress can be made by providers to identify these customers. Therefore, we have published a detailed guide setting out how providers can identify their vulnerable customers, and their additional needs, so that they receive appropriate support and services and are treated fairly.²⁰ We will continue to review companies' performance in this area and will consider new rules if our concerns are not met.

Using data to help customers get on the right deal for their needs

1.46 Finally, we will continue our work to understand how the use of data might help customers in the future, particularly as technology improves. We are considering how to ensure data on availability, speeds and usage of communications services are made available and we are engaging with and supporting the Government on its Smart Data Review.²¹

Monitoring the sector

- 1.47 We will monitor customer outcomes in retail broadband closely, as the measures set out above come into effect, in particular the relevant providers' voluntary steps and end-of-contract and annual best tariff notifications. To measure the success of these voluntary commitments and new rules we will report on:
- a) The proportion of customers who are new, re-contracted and out-of-contract (and for how long), as well as the proportion of customers within each of those categories who are vulnerable;
 - b) How aware customers are of their contract status;
 - c) The advertised new and out-of-contract prices offered by leading providers, to raise awareness among customers about where they can find the best deals for their needs;
 - d) How well providers are identifying and providing appropriate support to customers who are vulnerable.
- 1.48 We intend to report on these measures at least annually. If we have concerns that those customers who are less well equipped to engage are not on the right deal for their needs, we will take further action.

²⁰ We are currently seeking stakeholders' comments on this as part of a consultation on the proposed final draft. See Ofcom, 25 September 2019, [Treating consumers fairly: A proposed guide for phone, broadband and pay-TV providers](#).

²¹ See HM Government, June 2019, [Smart Data: Putting consumers in control of their data and enabling innovation](#)

2. Background and introduction

Delivering fair outcomes for consumers is a priority for us

- 2.1 Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.²² Goals we focus on to achieve this are:
- a) ensuring markets work effectively for consumers;
 - b) securing standards and improving quality for consumers; and
 - c) protecting consumers from harm, especially vulnerable groups.
- 2.2 This approach has delivered significant choice and value for consumers of broadband services. Over time, competition between retail providers has helped drive improvements in broadband services by encouraging innovation and take-up of new technology, improving service quality and reducing how much consumers pay for the data they use.
- 2.3 Promoting competition will continue to be a key part of Ofcom's approach to ensuring consumers get the most from their communication services. We believe this is the best way to ensure the investment in new high quality full-fibre networks which is required to deliver good outcomes for consumers into the future.
- 2.4 However, while competition helps to deliver widespread, affordable and good quality communications services, we recognise that competition alone cannot deliver this for all consumers.
- 2.5 Ofcom strongly believes that all customers should get a fair deal for their communications services. Where we observe that people face barriers to engagement or vulnerability characteristics that are unlikely to be overcome, it may be necessary to introduce targeted protections for them.
- 2.6 In the next section we look at the outcomes for broadband consumers and whether these outcomes meet our objectives.

This review is part of our work to ensure fairness for customers

- 2.7 This broadband pricing review is part of our ongoing work to ensure fairness for customers.²³ The programme is intended to ensure all customers are treated fairly, can shop around with confidence and can make informed choices so that they get the right deal for them. We summarise some of the areas of work most relevant to this review below:

²² Section 3(1), [Communications Act 2003](#).

²³ Ofcom, 25 March 2019, [Annual Plan: Our programme of work for 2019-2020](#), page 1.

- In June 2019, we secured new Fairness for Customers commitments²⁴ from the UK's main telecoms and pay TV providers, designed to embed a culture of fairness within the industry. They aim to help ensure customers are always treated fairly by their provider – whether they are signing up to a new deal, trying to fix a problem or switching to a new company.
- We published our draft Fairness Framework²⁵, which sets out our initial thinking on the types of questions we would ask in assessing whether customers are being treated fairly. The approach we have taken in this review is consistent with our draft framework (more detail on this is provided in Annex A2).
- We introduced new rules to make sure people get the right information, at the right time to find the best deals for them through end-of-contract and annual best tariff notifications.²⁶
- We introduced measures to help customers get better deals for bundled mobile contracts, including greater transparency in the pricing information given to customers and a range of price cuts by mobile providers for out-of-contract customers.²⁷

2.8 The proposals set out in this document are the next step in delivering Fairness for Customers, examining and proposing solutions for fairness concerns in retail fixed broadband pricing, particularly where they relate to vulnerable consumers.

The broadband sector has delivered significant choice, improved quality and value for consumers

2.9 The provision of fixed broadband in the UK is generally characterised by strong competition at the retail level.²⁸ Consumers have a wide choice of providers, including:

- a) the four largest providers: BT,²⁹ Sky,³⁰ TalkTalk and Virgin Media, whose combined share of customers is around 90%; and

²⁴ Ofcom, 3 June 2019, [Britain's biggest broadband and phone firms to put fairness first](#).

²⁵ Ofcom, 17 June 2019, [Discussion paper: Making communications markets work well for customers – a framework for assessing fairness in broadband, mobile, home phone and pay-TV](#).

²⁶ Ofcom, 15 May 2019, [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#).

²⁷ Ofcom, 22 July 2019, [Statement and consultation: Helping consumers to get better deals in communications markets – mobile handsets](#).

²⁸ In 2016, the CMA considered the competitiveness of retail fixed broadband markets as part of its review of the BT/EE merger. In the UK as a whole, it found that “competition is strong particularly for SFBB [superfast broadband] entry level products”. See CMA, 15 January 2016, [BT Group plc and EE Limited, a report on the anticipated acquisition by BT Group plc of EE Limited](#), paragraph 21.23. The CMA also concluded that there was “some constraint imposed by competitors on BT in the supply of broadband in Market A” (paragraph 20.63). Market A is the geographic market consisting of exchange areas where only BT and at most one other Principal Operator are present and in which BT has significant market power at the wholesale level. The Principal Operators are BT, Virgin Media, Sky and TalkTalk.

²⁹ Including BT's other brands – Plusnet and EE.

³⁰ Including Sky's other brand – NOW Broadband.

- b) a large number of other providers with a combined share of around 10% nationally, including, among others, Hyperoptic, KCOM, Post Office, SSE, Vodafone, and Zen Internet.³¹
- 2.10 Retail competition has been facilitated by the separation of the Openreach access network business from BT's retail operations and Ofcom's requirements on Openreach to provide wholesale local access services on regulated terms.³² In addition to the Openreach network, Virgin Media has its own cable and fibre networks (available to around 50% of households) and a number of alternative providers have also been deploying fibre networks, including CityFibre, Gigaclear and Hyperoptic.³³
- 2.11 The switching process on the Openreach and KCOM networks has been made easier by Ofcom's introduction of a 'one touch' process in 2015 that means the whole switching process on these networks is handled by the consumer's new supplier on their behalf.³⁴
- 2.12 For many consumers, broadband is essential to the way they live and work and, in general, competition has delivered significant benefits for consumers. Take-up of fixed broadband is high: four in five households³⁵ (80%) currently have a fixed broadband connection. There have also been major improvements in the quality of broadband services over time. Around 59% of total household broadband connections were superfast in 2018, compared to 23% at the end of 2013.³⁶ Average download speeds increased from 18 Mbit/s in 2013 to 54Mbit/s in 2018.³⁷
- 2.13 Along with speeds, the consumption of data over fixed networks is increasing rapidly in line with the rise in the use of data-hungry services such as video streaming.³⁸ This resulted in average monthly data use over fixed connections increasing by 700% between 2013 and 2018 and it now stands at 240 GB per month.³⁹ While data use and average connection speeds have been increasing rapidly, average spend has changed little in real terms in recent years, from £37 in 2013 to £41 in 2018,⁴⁰ meaning consumers are getting more for their money.

³¹ For share of fixed broadband connections by ISP see Ofcom, 4 July 2019, [Summary of UK telecoms metrics](#), published with the Communications Market Report 2019.

³² See for example, Ofcom, 28 March 2018, [Wholesale Local Access Market Review: Statement – Volume 1](#).

³³ These alternative providers currently account for a small portion of the broadband customer base, although they are expected to grow. See Ofcom, 18 December 2018, [Connected Nations 2018: UK report](#).

³⁴ That is, for suppliers that use Openreach wholesale local access services, see Ofcom, 19 June 2015, [Easier broadband switching from tomorrow](#).

³⁵ Ofcom, November 2018, [UK fixed line broadband performance, November 2018: Research Report](#), page 2

³⁶ Ofcom, 4 July 2019, [Communications Market Report 2019 - Interactive data](#)

³⁷ Ofcom, 8 May 2019, [UK Home Broadband Performance](#).

³⁸ Ofcom, 8 May 2019, [UK Home Broadband Performance](#)

³⁹ Ofcom, 24 October 2013, [Infrastructure Report: 2013 Update](#) and Ofcom, 18 December 2018, [Connected Nations 2018: UK report](#).

⁴⁰ These spend figures include fixed voice and data. See Ofcom, 2 August 2018, [Communications Market Report](#).

Price variation is common in competitive markets and often benefit consumers

- 2.14 While on average consumers are getting better value for money for their fixed broadband service, there can be differences in the extent to which individual consumers benefit. This is because, in line with many other competitive markets, current broadband pricing practices see providers charging different prices for the same broadband service according to customers' contract status.
- 2.15 Sometimes, price differentials can reflect cost differences, such as where there are low- and high-quality versions of the same product or where customer groups are more or less costly to serve, for example due to geography. However, price differentials may also reflect differences between consumers of an equivalent service, rather than in supply costs, a situation often described as price discrimination.
- 2.16 Price discrimination is a widespread practice that can benefit consumers, especially when opening up more opportunities for consumers to take up a service. For example, such pricing is adopted for many services ranging from public transport (e.g. rail and air fares) to cinema tickets (with lower prices for children, students and pensioners). Similarly, in broadband, we see some offers for dual play tariffs at around £20 per month, which is well below the average price paid.⁴¹ If this increases broadband take up compared to a situation in which all customers paid the same price, customers (and society) as a whole are likely to benefit.
- 2.17 Nevertheless, not all price differentials or price discrimination will be desirable, particularly if they arise from the existence or exploitation of barriers to engagement or if the practice falls disproportionately on vulnerable consumers.⁴² In this document, we focus on the practice of charging customers different prices according to their contract status. Prices tend to differ between new customers who usually get an introductory discount; re-contracted customers who take up a subsequent contract with their provider; and out-of-contract customers who take no action when their contract comes to an end and tend to see the price increase at the end of the minimum contract period.

Current pricing practices have led to concerns about whether all consumers get a fair deal

- 2.18 We are concerned that not all consumers are benefiting from the deals available, with those who do not re-contract with their existing provider or switch after the end of their minimum contract period tending to pay higher prices than they need to, potentially over a

⁴¹ As we show in Ofcom, 6 June 2019, [Delivering the Broadband Universal Service Statement: Designating Universal Service Providers and setting conditions](#), (Annex 2), the vast majority of UK households pay between £21 to £54 per month for broadband, with an average (mean) price of £36 in November 2018.

⁴² See, for example, Ofcom, 17 June 2019, [Making communications markets work well for customers: A framework for assessing fairness in broadband, mobile, home phone and pay-TV](#), section 3.

prolonged period. This might be the case where consumers are less well-informed, face barriers to making the right choice for their needs or have less choice than others.

- 2.19 We have observed an increased divergence between the discounted prices paid by new customers and the higher prices paid by out-of-contract customers. Data provided to us by Simplify Digital⁴³ shows that the differential between average advertised list prices⁴⁴ and average advertised discounted prices⁴⁵ for dual play packages has increased in real terms over the five years to Q1 of 2019. This is the case for all dual play packages, including standard and superfast broadband.⁴⁶
- 2.20 As shown in Figure 1, the average list price for standard broadband increased by 10.2% in real terms over this five-year period while the average discounted price increased by only 2.1%. For superfast broadband, the average list price increased in real terms by 3.0%, while the discounted price decreased by 9.5%.
- 2.21 These changes also mean that in Q3 of 2018, the average discounted price for a superfast dual play package across the major providers was lower than the average out-of-contract price for a standard dual play package for the first time (£39.57 vs £40.93). Currently, these average prices are roughly equal. With this pricing structure, many out-of-contract standard broadband customers could switch to a superfast service, pay less and receive a better user-experience.

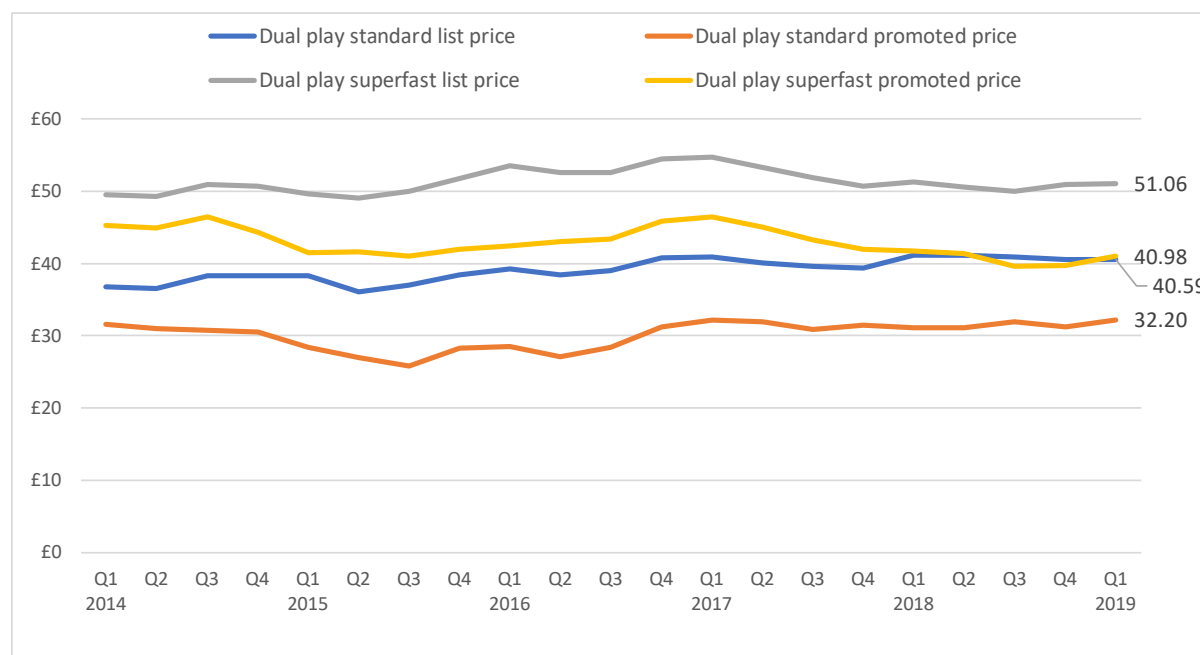
⁴³ Simplify Digital is a third-party which provides pricing data.

⁴⁴ A proxy for out-of-contract prices.

⁴⁵ Equivalent to new customer prices.

⁴⁶ We focus specifically on dual play price differentials due to the fact that broadband is now considered by many people to be an essential service, and that differentials for other bundles (e.g. triple and quad play) are likely to include non-broadband elements.

Figure 1: Average advertised list and discounted/promoted monthly prices for standard and superfast dual play packages, Q1 2014 to Q1 2019



Source: Simplify Digital

Notes: Dual play standard and superfast broadband tariffs for major providers – BT, EE, Plusnet, TalkTalk, Sky, Virgin Media and Vodafone; adjusted for CPI; the pricing data sourced from Simplify Digital’s pricing dashboard is based on the average price of the provider in question’s base tariffs and those tariffs plus one ‘add-on’ service. Therefore, the average prices shown will be higher than if they were calculated using only the base tariffs.

These kinds of pricing practices are being scrutinised in several regulated markets

2.22 We are aware that pricing practices in several regulated markets, including broadband, have attracted widespread interest. In April 2018, the Department for Business, Energy and Industrial Strategy (BEIS) published a Green Paper entitled ‘Modernising Consumer Markets’.⁴⁷ The paper noted that providers in these markets can take advantage of inert consumers and charge them higher prices than others. It also recommended that there should be a ‘new approach’ from government and regulators to protecting longstanding customers in regulated markets from being materially disadvantaged.

2.23 Citizens Advice made a super-complaint⁴⁸ on what it terms the ‘loyalty penalty’ across a number of markets, including broadband, in September 2018. It argued that the total spent

⁴⁷ Department for Business, Energy and Industrial Strategy (BEIS), April 2018, [Modernising Consumer Markets: Consumer Green Paper](#).

⁴⁸ Citizens Advice, September 2018, [Excessive prices for disengaged consumers – A super-complaint to the Competition and Markets Authority](#).

by consumers on the broadband ‘loyalty penalty’ is over £1bn, and that ‘loyal’ customers are charged “unjustifiably high prices”.⁴⁹ It has also argued that vulnerable consumers are disproportionately affected, for example, that older consumers (65+) are “20% more likely to pay the loyalty penalty on their broadband contract”.⁵⁰

- 2.24 In its response to the super-complaint, the CMA recommended that Ofcom consider a number of possible pricing interventions including “tackling broadband legacy pricing and targeted safeguard caps to protect vulnerable consumers”.⁵¹ It also recommended that Ofcom consider measures to increase consumer engagement, such as the use of smart data and exploring the feasibility of collective switching in broadband.
- 2.25 The Department for Digital, Culture, Media and Sport (DCMS) published its Statement of Strategic Priorities in July 2019, to which we must have regard when carrying out our regulatory functions. It stated that “Ofcom should continue to examine the large gap between the best broadband deals enjoyed by the most engaged consumers and the worst deals”.⁵² It also said that this practice is “difficult to justify, particularly where those consumers getting the worst deals are vulnerable or in areas poorly served by competition”.⁵³
- 2.26 More recently, the Secretary of State for the Department for BEIS said in a letter to the CMA that “consumer loyalty should not be exploited and nor should consumers have to work so hard to get a fair deal”.⁵⁴

We are taking action to help consumers get a better deal

- 2.27 As noted above, in May 2019, we introduced new requirements for broadband, phone and TV customers to be told when their contract is coming to an end, and shown their provider’s best deals, via end-of-contract and annual best tariff notifications.
- 2.28 Under these rules, which take effect from February 2020, providers will have to notify their customers when their contract comes to an end, any changes to the service and price paid at the end of this period, and the best tariffs available to them. And customers who are not subject to a minimum contract period will be sent best tariff information by their provider at least annually. In both notifications, providers must also give their customers information about the prices offered to other customers, such as new customers.

⁴⁹Citizens Advice, September 2018, [*Excessive prices for disengaged consumers – A super-complaint to the Competition and Markets Authority*](#), page 2.

⁵⁰Citizens Advice, September 2018, [*Excessive prices for disengaged consumers – A super-complaint to the Competition and Markets Authority*](#), page 19.

⁵¹ Competition and Markets Authority, 19 December 2018, [*Tackling the loyalty penalty – Response to a super-complaint made by Citizens Advice on 28 September 2018*](#).

⁵² Department for Digital, Culture, Media and Sport (DCMS), July 2019, [*Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services*](#), pp. 16 - 17.

⁵³ DCMS, July 2019, [*Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services*](#), page 25.

⁵⁴ [*Open letter from The Rt Hon Greg Clark MP to Dr Andrea Coscelli*](#), 17 June 2019.

- 2.29 We believe this intervention will have a substantial impact that will go some way to addressing confusion about contract status and lack of awareness of the deals that are available, leading to more engagement by consumers.

Vulnerable consumers may need additional protection to get fair deals

- 2.30 In December 2018, we published terms of reference for our review.⁵⁵ This set out our concern that some consumers may be particularly disadvantaged by high out-of-contract prices where they find it harder to engage.
- 2.31 We place particular emphasis on the position of vulnerable consumers because broadband services are now seen as essential, and exclusion from them can prevent full social and economic participation in society. This is reflected in the UK and EU regulatory frameworks which give us duties to protect all these consumers and ensure they have access to, and choice of, services equivalent to those enjoyed by everyone else.
- 2.32 Our general statutory duties, for instance, require us to have regard to the vulnerability of those whose circumstances appear to us to put them in need of special protection, the needs of people with disabilities, the elderly and those on low incomes, and the different interests of people in different parts of the UK and living in rural and urban areas.⁵⁶ We have also made a general condition – General Condition C5 – requiring providers to take measures to meet the needs of vulnerable customers and end users with disabilities.
- 2.33 We take account of all these provisions when considering which consumers might be vulnerable and require protection. They reflect the breadth of the population whose interests we are concerned about. The general condition we have made includes a dynamic description of consumer vulnerability.
- 2.34 This is because any person can face circumstances in their lives that lead to them becoming vulnerable, either temporarily or permanently. This includes lifelong conditions like learning disabilities, physical or mental health problems; life events like bereavement; and specific personal characteristics such as age. It is therefore important for any approach to vulnerability to take account of its changing nature.
- 2.35 As set out in our draft Fairness Framework,⁵⁷ our concern is likely to be greatest where vulnerable consumers are disproportionately affected by higher prices or are least likely to be getting fair deals. We recognise that certain characteristics or circumstances can make engagement more difficult, leaving vulnerable consumers more susceptible to harm from practices which take advantage of disengagement. Given our duties to all vulnerable consumers, this also means that, even where they are not disproportionately affected as a

⁵⁵ Ofcom, 14 December 2018, [Helping consumers get better deals - Consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband](#).

⁵⁶ Section 3(4) [Communications Act 2003](#).

⁵⁷ Ofcom, 17 June 2019, [Discussion paper: Making communications markets work well for customers – a framework for assessing fairness in broadband, mobile, home phone and pay-TV](#).

group, we are concerned wherever some vulnerable consumers are paying higher prices and may need additional protection, even if others do not.

- 2.36 In a similar vein, we recognise that the requirement for end-of-contract and annual best tariff notifications may not be sufficient to help all consumers get better deals, including some vulnerable consumers.⁵⁸
- 2.37 Accordingly, in relation to vulnerable consumers, our review of broadband pricing considers:
- a) whether they are disproportionately likely to pay higher prices than they need to through remaining out-of-contract or by re-contracting on unfavourable terms; and
 - b) even if not, whether additional targeted measures may be necessary.

Consumers in areas without superfast broadband may also need protection because their choices are limited

- 2.38 Consumers may also be disadvantaged by wide price variation if they live in areas where superfast broadband is not available, meaning they cannot benefit from all the choices made available by competition in other areas of the UK (noting that price reductions have been most notable for new superfast tariffs in recent years – see Figure 1 above).
- 2.39 As one of the reasons cited by providers for raising out-of-contract prices in standard broadband is to incentivise consumers to upgrade to superfast, we are concerned about the fairness of this practice in cases where consumers do not have this choice available.
- 2.40 As part of this review, we have therefore considered whether people who live in areas with reduced choice are harmed by high out-of-contract prices and whether it is appropriate to take targeted action to protect them.

Our approach

- 2.41 As part of our review, we have:
- a) obtained customer-level broadband pricing and vulnerability data from the largest providers in the UK,⁵⁹
 - b) reviewed recent consumer research and conducted further quantitative and qualitative research among consumers on barriers to engagement in broadband; and
 - c) further investigated the pricing practices of broadband providers (including reviewing internal management information).

⁵⁸ Information remedies can have substantial benefits for consumers, including vulnerable consumers. Condition C5 requires providers to have in place policies and procedures to ensure fair and appropriate treatment of vulnerable consumers, including when sending end-of-contract and annual best tariff notifications. Even so, there may be customers who, because of their vulnerabilities, are not helped by the provision of extra information.

⁵⁹ We will be engaging with other providers before the conclusion of our review.

- 2.42 This document sets out the initial conclusions from our analysis, the steps that providers have taken to address our concerns and what more might need to be done to ensure all customers get a fair deal, especially vulnerable consumers and those in non-superfast areas with limited choice.

3. Review findings – all consumers

- 3.1 In this section we set out the key findings from our review. We start by setting out the main observations from our analysis of more than 20 million customer records provided to us by the UK's major broadband providers.⁶⁰ This allows us to identify the extent to which prices paid by different customers vary based on their contract status, and the proportion of customers overall who are new customers, re-contracted or out-of-contract.
- 3.2 We then consider the factors which might lead to some customers remaining out-of-contract for long periods of time, and paying more than others as a result, including the effects of behavioural biases and barriers to engagement.
- 3.3 Finally, we discuss the relationship between wide price variation by contract status and consumer harm.

New customers tend to get the best deals, while out-of-contract customers generally pay the most

- 3.4 New customers (who are in their first contract with a provider) generally pay the lowest prices for their broadband. Those who have re-contracted with their existing provider tend to pay more than new customers, but much less than those who are out-of-contract.
- 3.5 Therefore, most out-of-contract customers can save money by either switching to a new provider or by re-contracting with their existing provider. This is demonstrated by our findings that out-of-contract customers pay around £9 - £10 per month more than new customers for equivalent or substantially similar services, and around £8 - £9 per month more than re-contracted customers. This is shown in Table 1.

⁶⁰ All data presented here is taken from the categories of customers presented in Table 1, Annex A4. For some providers, some types of tariffs, speeds and data allowances were dropped if there were very few customers which made a like for like comparison difficult. Overall only 1.6% of customers were excluded from our analysis due to data issues. [BT Basic](#) customers were excluded from the dataset as these customers pay a fixed price irrespective of contract status and their price is significantly lower than other customers, but eligibility is restricted (i.e. requires the customer to be in receipt of state income benefits). Price differentials we report for BT are therefore very slightly higher than if BT Basic tariffs were included in the tariff set analysed. For more details, please see Annex A4, page 3.

Table 1: Average monthly price differentials paid by broadband customers

	Average price differential paid per month, across providers ⁶¹	Average percentage differential
Out-of-contract price – new customer price	£9 - £10	30-35% (expressed as % of the new customer price)
Out-of-contract price – re-contracted customer price	£8 - £9	20-22% (expressed as % of the re-contract price)
Re-contracted customer price – new customer price	£3 - £4	11-12% (expressed as % of the new customer price)

Source: Ofcom analysis of provider data

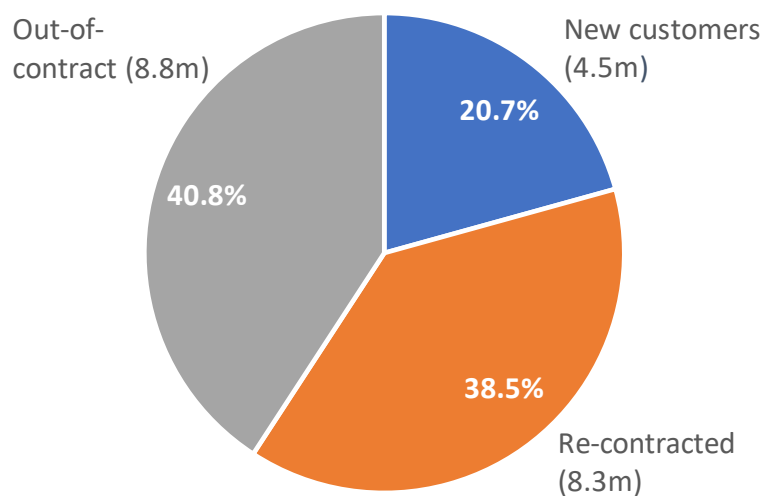
- 3.6 We have also examined the proportion of customers who are new, re-contracted or out-of-contract in order to understand how many people benefit from low introductory prices and how many pay higher prices (see Figure 2). Our analysis shows that a fifth of broadband customers (around 4.5 million people) are in their first contract with their provider. A further two fifths (around 8.3 million people) have re-contracted, meaning that the majority of broadband customers are in-contract with their provider.
- 3.7 The remaining two fifths of customers are out-of-contract. The great majority of these 8.8 million customers pay more for their broadband than they could do, either by re-contracting or switching provider.⁶² The proportion of customers who are out-of-contract is broadly similar to that identified as part of the analysis which informed our initial proposals for end-of-contract notifications in July 2018,⁶³ suggesting that the proportion of customers who are out-of-contract has remained largely static over the course of 2018.

⁶¹ Note that these figures are calculated by averaging individual consumers' price differentials (which compare their individual price with an average price for a similar service but a different contract status), rather than as the difference between average prices by contract status. The first two rows cannot therefore be used to calculate the third row. For more details, please see Annex A4.

⁶² 88% of out-of-contract customers pay more than the average new customer price.

⁶³ See Ofcom, 31 July 2018, [Helping consumers to engage in communications markets: Consultation on end-of-contract and out-of-contract notifications](#), Figure 8. This shows that around 37% of dual play and 41% of triple play customers were out-of-contract based on data provided by major providers in May 2018.

Figure 2: Contract status of broadband customers, across providers



Source: Ofcom analysis of provider data

There is considerable variation in the proportion of new, re-contracted and out-of-contract customers, and the prices they pay, by provider

3.8 While we found that all providers maintain price differentials, the way these differentials are applied in practice, and therefore their impact on customers, varies significantly by provider. For example, some providers may charge a very high differential between new- and out-of-contract customers but have a low proportion of out-of-contract customers. While for another provider, the opposite may be true. Further detail on the proportion of customers by contract status and the average price differentials by provider is set out in Table 2.

Table 2: Contract status of all customers, average OOC-NC price differential, average OOC-RC price differential, average RC-NC differential, by provider⁶⁴

	% of customers who are <u>out-of-contract</u>	% of customers who are <u>re-contracted</u>	% of customers who are <u>new customers</u>	Average OOC-NC price differential, per month	Average OOC-RC price differential, per month	Average RC-NC price differential, per month
BT	31%	57%	12%	£12.70	£7.50	✂
EE	28%	41%	32%	£7.10	£7.50	✂
Plusnet	41%	30%	29%	£9.40	£6.50	✂
Sky	47%	28%	25%	£6.90	£5.50	✂
TalkTalk ⁶⁵	26%	44%	30%	£13.70	£12.70	✂
Virgin Media ⁶⁶	56%	26%	18%	£8.10-£12.00	£9.30-£11.70	✂
Total	41%	39%	21%	£9.20-£10.40	£7.90-£8.60	£3.20-£3.70

Source: Ofcom analysis of provider data.

Many customers who re-contract with their provider get deals that are similar to deals for new customers

3.9 Figure 3 shows the average prices paid by dual play customers of the major broadband providers broken down by contract status and service speed (Mbit/s).⁶⁷ We observe that across all major providers and service types, out-of-contract customers routinely pay the highest prices while new customers pay the lowest. However, the prices paid by re-contracted customers vary significantly by provider (although re-contracted prices are not shown in the chart for confidentiality reasons).

⁶⁴ Note that these figures are calculated by averaging individual consumers' price differentials (which compare their individual price with an average price for a similar service but a different contract status), rather than as the difference between average prices by contract status, therefore the average OOC-NC and OOC-RC differential cannot be used to calculate the average RC-NC differential.

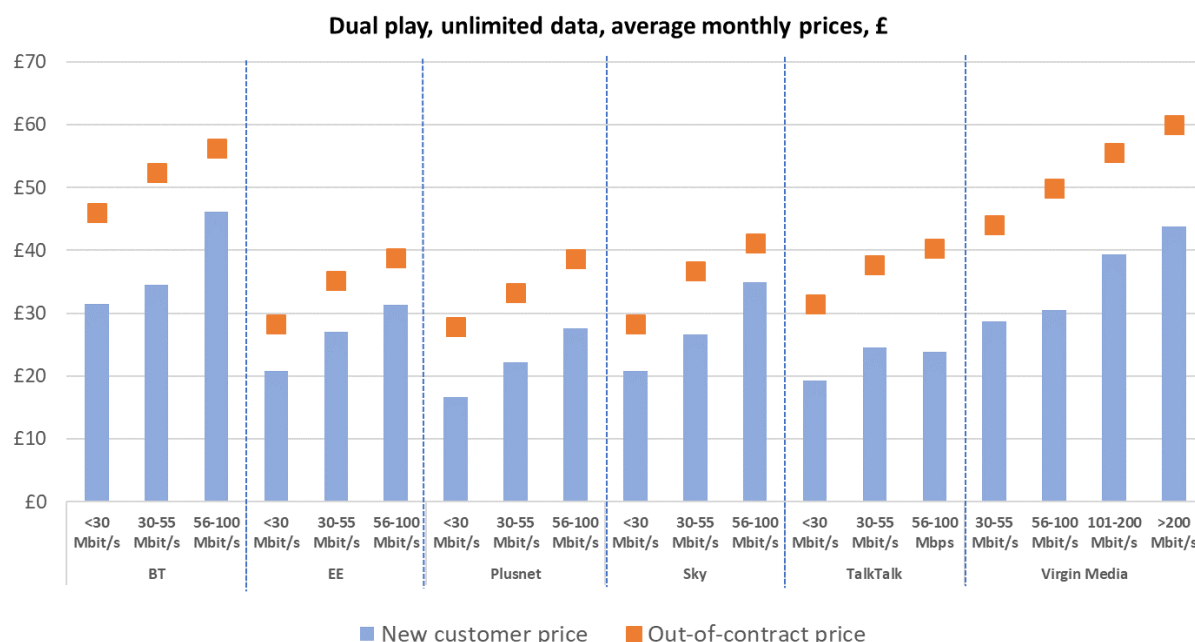
⁶⁵ Note that TalkTalk prices for some legacy services included call packages and for out-of-contract customers on those services the comparison is not like-for-like. For details please see Annex A4, paragraph 1.12.

⁶⁶ Virgin Media prices include billable calls for dual and triple play customers and TV packages for triple play customers. Average price differentials for Virgin Media (and therefore the average differential across all providers) are shown as a range and depends on treatment of triple play customers. For details please see Annex A4, pp 4 - 5.

⁶⁷ For an equivalent analysis showing triple play services, see Annex A4, page 9.

3.10 Many customers who re-contract with their provider get deals that are similar to deals for new customers. And one in three pay less than new customers do.⁶⁸ Nevertheless, some re-contracted customers appear to pay significantly more than new customers.

Figure 3: Average prices by provider and contract status, dual play, unlimited data⁶⁹



Source: Ofcom analysis of provider data

3.11 On this basis, the evidence we have gathered does not support a conclusion that “loyal”, or longstanding, customers always get a poor deal. The data reveals a more complex picture, with some existing customers getting good value deals. Prices for customers who stay with their provider beyond their original contract period appear to be linked to two main factors: the customer’s willingness or ability to engage with their provider and negotiate a new deal, and their provider’s approach to re-contracting.

Providers’ approaches to re-contracting vary, and some consumers may not be aware of the benefits of re-contracting

3.12 Evidence gathered from providers’ internal documents suggests that some providers offer different re-contract prices to customers based on their perceived ‘risk factor’ (i.e. the likelihood of the customer switching to another provider). For example, if a customer has previously contacted their provider’s retention team, they might be flagged as ‘high-risk’ and proactively offered a price that is the same or very similar to the price offered to new

⁶⁸ At an aggregated level, and not accounting for waterbed effects, if all out-of-contract customers engaged with their existing provider, they would save £800-£900m a year. If all re-contracted customers moved to a contract with a new provider, they would save an estimated at £300m - £400m per annum.

⁶⁹ Please note that Virgin Media prices include billable calls and that some TalkTalk OOC prices include spend on calls.

customers. However, if a customer has not engaged with their existing provider during their minimum contract period, the provider may offer to re-contract at a higher price.

- 3.13 Our consumer research shows that while many consumers do negotiate with their provider when re-contracting to get a better deal, a considerable proportion do not, or do so unsuccessfully. In these cases, consumers are less likely to access the best price for their service.⁷⁰
- 3.14 We are also concerned that there is some consumer confusion about the options available to them, including the potential benefits of re-contracting. Consumers may not be aware of the potential savings they may be able to make by re-contracting. In addition, when a consumer is offered a price to re-contract, they may not be able to compare it quickly and easily with other available prices (for example, what is offered to new customers) to decide if it is a good deal.
- 3.15 Providers' internal documents also reveal that their overall approaches to re-contracting affect the prices paid by re-contracted customers. Some offer re-contracting customers a price very close to the average price paid by new customers, while others maintain a wider differential between the two groups. The data we have collected from providers demonstrates this.⁷¹

Of the 8.8 million customers who are out-of-contract, 3.3 million have been so for at least two years

- 3.16 We have analysed the prices paid by those out-of-contract for a long period to understand whether there is additional detriment from being out-of-contract for a prolonged period.⁷²
- 3.17 Our analysis of provider data shows that over a third of out-of-contract customers – equating to around 3.3 million customers – have been out-of-contract for at least two years. Consumers who are out-of-contract for long periods can face two negative consequences.
- 3.18 First, those who pay a higher monthly charge because they are out-of-contract will pay more, in total, the greater the length of time they are out-of-contract. Length of time spent out-of-contract and the prices paid as a result may be compounded if a customer's price has periodically increased due to annual price rises above inflation.
- 3.19 Second, while the pace of technological improvements in broadband brings enormous benefits to consumers and the wider economy, it also creates the side effect that consumers who don't engage for long periods can see the value of their deal deteriorate over time relative to the latest offers and technology developments. For example, and as

⁷⁰ Our research showed that just over half of respondents who said they were in their minimum contract period (53%) had successfully negotiated with their current provider to get a better deal than the one offered or that was advertised. Around one in ten consumers tried to negotiate with their provider but stated they were unsuccessful (11%), three in ten did not try to negotiate with their provider at all (31%) and 5% couldn't recall whether they negotiated when they signed up to their current deal. For more details, please see Figure 9, Annex A6.

⁷¹ Further details can be found in Annex A4, Figures 2 and 3, and Table 4.

⁷² Further details can be found in Annex A4, Table 6.

previously noted, across the sector, if a standard broadband customer has not engaged for several years, it is likely that they could upgrade to superfast and still pay less than they currently do for a faster connection.

- 3.20 In light of the fact that a significant proportion of customers are out-of-contract, and that a large number of those people have been out-of-contract for at least two years, we now consider the factors that might lead to someone remaining out-of-contract for sustained periods of time.

Barriers to engagement and behavioural biases may explain why some customers remain out-of-contract for long periods

- 3.21 In principle, it is possible that some consumers choose to remain out-of-contract and pay more to retain the flexibility that the status quo offers – i.e. being able to switch provider or cancel the service at short notice, without paying an early termination charge. Our quantitative research suggests a minority (3%) did not make any changes at the end of their contract in order to retain flexibility.⁷³
- 3.22 Research into consumer engagement (conducted for our programme of work on helping consumers get better deals, as well as for this review) has identified various reasons why people remain out-of-contract. These can be summarised as barriers to engagement and behavioural biases. While we found that vulnerable consumers can experience greater barriers to engaging, or more pronounced behavioural biases, non-vulnerable consumers can also struggle to engage.
- 3.23 Barriers to engagement can make it difficult to access information about getting a better deal, or to act on this information. A lack of price transparency, complex pricing, or a need to buy new hardware when changing provider fall into this category.
- 3.24 We have also found that consumers are often confused or uncertain about their contract status and the effect that being in- or out-of-contract has on the price they pay, as well as the options available to them.
- 3.25 Other barriers include lack of confidence assessing the market and/or engaging with providers, as well as the cost or hassle of switching (actual or perceived). Our research has also shown that uncertainty about the quality and reliability of alternatives can be a specific barrier to switching.
- 3.26 Behavioural biases affect the way consumers make decisions and can limit their ability to choose a deal that is right for their needs, or to engage at all. Everyone has biases, and most are unaware of their own biases when making decisions. This means that consumers are unlikely to have strategies or effective coping mechanisms to help overcome them.

⁷³ 3% of broadband decision makers spontaneously gave “I value the flexibility of being out-of-contract” as a reason for not making changes when their contract ended, and a further 3% selected this from a prompted list. See Annex A7, Tables 18 and 19 (Q13a/Q13b).

- 3.27 Our qualitative research commissioned for this review found that consumers tend to over-value what they have currently and under-value the benefits of an alternative (known as status quo bias). This can lead to consumers avoiding or delaying decisions due to their reluctance to change what they have.⁷⁴
- 3.28 There was also evidence that consumers avoid engaging through fear of making the ‘wrong’ decisions and ending up worse off than they are now (known as regret/loss aversion). In the context of broadband decision making, this fear was driven by uncertainty about the quality and reliability of other providers, as well as losing their current service, which may have been tailored for their needs.⁷⁵
- 3.29 Emotional drivers (such as a lack of confidence engaging in the market or speaking to providers) may exacerbate the fear of making the wrong decision, potentially increasing the appeal of ‘doing nothing’ (i.e. remaining out-of-contract with an existing provider) despite (for many) this meaning that they pay more. There are also other behavioural biases that may also affect the way that customers make decisions.⁷⁶
- 3.30 These barriers and biases mean that there is an opportunity for providers to charge disengaged consumers more. For example, evidence we have gathered from providers indicates that a common strategy has been to maintain high out-of-contract prices (and in some cases periodically increasing these) and discounting, where necessary, to retain customers at risk of switching to a rival and to acquire new customers.
- 3.31 We are concerned about the higher prices paid by customers who remain out-of-contract for a long period when this is the result of significant barriers to engagement or behavioural biases that providers can take advantage of. By staying out-of-contract for longer, these customers will pay more in aggregate and may also face repeated price rises. And our concern is even greater where vulnerable consumers are paying these higher prices. We consider the impact on vulnerable consumers in section 4.

The relationship between price differentials and consumer harm is complex

- 3.32 We have considered how far it is possible to quantify the extent of any harm to consumers. A natural starting point is the size of the price differential in aggregate but, as we explain below, it would be misleading to regard the whole of this differential as representing consumer harm or to describe it as a ‘loyalty penalty’. When considering the scale of harm from price differentials and potential remedies to address the harm, we have been mindful of:

⁷⁴ See Annex A5, page 10.

⁷⁵ See Annex A5, page 9.

⁷⁶ A number of sources list these or similar effects among the main behavioural biases, including Fletcher, Amelia [*The Role of Demand-Side Remedies in Driving Effective Competition A Review for Which?*](#), University of East Anglia Centre for Competition Policy, November 2016, paragraph 1.25; Office of Fair Trading (OFT), [*What does behavioural economics mean for competition policy?*](#), pp 5 – 6, and The Behavioural Insights Team for Citizens Advice, 26 May 2016, [*Applying behavioural insights to regulated markets*](#), page 7.

- a) the likely impact of end-of-contract and annual best tariff notifications;
- b) the likelihood that reductions in out-of-contract prices or savings from increased engagement will be partially offset by waterbed effects– i.e. the tendency for providers to respond to reductions in the prices (hence profits) from out-of-contract customers by increasing prices to new customers and possibly re-contracted customers (see further below);
- c) the fact that some price differentials are beneficial for consumers as lower prices may encourage switching and thereby promote competition.

There are several different price differentials we can measure

- 3.33 As set out in the preceding paragraphs in this section, the evidence we have gathered from the UK’s largest broadband providers allows us to examine prices paid by new, re-contracted and out-of-contract customers. This data suggests that while out-of-contract prices are usually the highest, many consumers keep paying them (an estimated 8.8m across dual play and triple play).
- 3.34 On the basis of the detailed provider data collected, we consider that the term “loyalty penalty” is misleading as a description of the additional amount paid by out-of-contract customers compared to new customers and that this amount is better characterised as a cost of disengagement. This is because our analysis shows that better deals are not only available to those customers who switch: providers also typically offer existing customers better deals when they re-contract. Consumers can therefore make significant savings not only by switching to a new provider, but also if they remain loyal (so long as they engage with their existing provider).
- 3.35 We have calculated the difference between the price for each out-of-contract customer and customers who have re-contracted with the same provider for a broadband service of similar characteristics. We then calculated the total differential across all out-of-contract customers for each provider. This differential between out-of-contract and re-contracted prices is estimated at around £800m - £900m per annum.⁷⁷ This suggests that customers could make significant savings by engaging with their provider, without the need to switch. The differential can therefore be seen as a cost of not engaging.
- 3.36 We also compared the price paid by each out-of-contract customer with the price they could expect to pay if they were a new customer of that provider for a service with similar characteristics. We then calculated the total differential across all out-of-contract customers for each provider. This is more comparable with the calculation made by Citizens Advice. This is estimated at around £1bn - £1.1bn per annum.
- 3.37 As we calculated earlier that the aggregate out-of-contract/re-contract differential is around £800m - £900m, this suggests that customers could make most of the potential

⁷⁷ Further detail can be found in Annex A4, Table 3.

savings through re-contracting with the same provider.⁷⁸ On a static basis, around 80% of the differential between out-of-contract and new customer prices is not attributable to loyalty and therefore cannot be labelled a “a “loyalty penalty”, as we explain below.⁷⁹

- 3.38 Finally, we have compared the price paid by each re-contracted customer to a new customer price for a broadband service of similar characteristics with the same provider, and then calculated the total differential across all re-contracted customers for each provider).
- 3.39 This shows that the average price differential between re-contract and new customer prices when each major provider’s pricing data is combined is around £300m - £400m per annum. On the face of it, this suggests that many customers could make significant savings if they switched provider. However, the range of re-contracted prices is particularly wide and there is a large overlap between re-contracted prices and new customer prices, with one third of re-contracted customers paying less than the average new customer price.
- 3.40 Translating price differentials into consumer harm requires several steps. As such, the differentials between out-of-contract and new customer prices or between out-of-contract and re-contract prices are likely to overstate any consumer harm on a forward-looking basis.

We take into account the impact of End-of-Contract and Annual Best Tariff Notifications

- 3.41 The requirements for providers to send their customers end-of-contract and annual best tariff notifications should go some way to reducing the number of consumers who are out-of-contract and paying higher prices and may lead to reductions in price differentials. Indeed, they may go some way to addressing barriers to engagement and even potentially to reducing the impact of behavioural biases. For the purposes of assessing the need for any additional measures, it is the harm remaining once end-of-contract and annual best tariff notifications have taken effect, and the incremental effect of any additional measures, that are most relevant.
- 3.42 While it is not possible to predict the impact of end-of-contract and annual best tariff notifications with precision, we believe that it could be substantial.⁸⁰ This is because the notifications will bring several benefits to consumers, including improving the level of information which they have access to when making decisions, reducing the time and

⁷⁸ As explained previously, these figures are calculated by aggregating individual consumer’s price differentials (which compare their individual price with an average price for a similar service but a different contract status), rather than as the difference between average prices by contract status.

⁷⁹ The reference to a “static basis” here is that the differential is calculated based on 2018 prices and so doesn’t take account of the impact of measures such as ECNs and ABTNs as we explain later, or any voluntary measures taken by providers in response to this review. Further, as we explain below waterbed effects can be expected to affect price differentials on a forward-looking basis.

⁸⁰ Ofcom, 15 May 2019, [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#), paragraphs 10.2 (a) and 10.16.

effort required to remember or search for information, and assisting the competitive process by facilitating and encouraging re-contracting or switching.

- 3.43 Whatever the impact of end-of-contract and annual best tariff notifications ultimately is, it is important to recognise that not accounting for their impact in interpreting price differentials based on 2018 pricing data will overstate the harm suffered by consumers in future.

Waterbed effects mean that if prices fall for some customers, they could rise for others

- 3.44 Simply reducing all out-of-contract prices to the same level as new-customer prices would reduce providers' profitability and, if it also reduced the expected return on future investment, incentives for such investment could be weakened – at a time when investment in new full-fibre networks is particularly important.
- 3.45 In practice, we would expect providers to compensate, at least partially, for reductions in profits from out-of-contract customers by raising other prices. Such “waterbed effects” also mean that the aggregate differentials based on 2018 prices will overstate consumer harm.
- 3.46 An important determinant of the size of the waterbed effect is the competitiveness of the market. Other things equal, the waterbed effect is larger the more competitive the market, but it will only be complete in a perfectly competitive market. Retail broadband provision, although competitive in most of the UK (in the sense of there not being a significant market power finding), is not perfectly so. When we consider the likely impact of a reduction in out-of-contract broadband prices, this leads us to expect a waterbed effect which may be significant but is not complete.
- 3.47 If there are waterbed effects, then that would mean again that the aggregate price differential is larger than the consumer harm, and potentially significantly larger. As the Office of Fair Trading (OFT) states:
- 3.48 “In many markets, the gains that firms make from exploiting consumer biases will be to some extent passed back, through the competitive process, to customers who do not exhibit those biases...This does not imply that such interventions should not be made, but it is important to be aware that there can be losers as well as winners in such situations.”⁸¹
- 3.49 Importantly, vulnerable consumers may be among the losers as well as the winners from reductions in broadband price differentials. That is, those consumers, including vulnerable consumers, who do engage and re-contract or change provider could pay higher prices. The possibility of significant waterbed effects therefore makes it particularly important for distributive fairness reasons to identify not only whether vulnerable customers are disproportionately affected by current pricing practices but also whether they could be

⁸¹ OFT, Spring 2010, [What does behavioural economics mean for competition policy?](#), page 38.

adversely affected if there were a significant waterbed effect. We look at the impact on vulnerable consumers in the next section.

Summary

- 3.50 In common with many competitive markets, we observe providers charging different prices to different consumers for the same service in the broadband sector. In this case, we often find significant differences based on the customer's contract status.
- 3.51 Some elements of this practice can benefit consumers. For example, offering discounts for signing up to new contracts can encourage people to shop around. Discounting also provides incentives to consumers to upgrade to more advanced technologies and products, which enables them to benefit from faster speeds. It is also consistent with a competitive market where providers have incentives to invest in new services and networks on the basis that they will be able to attract new consumers to those services.
- 3.52 Our analysis of provider data suggests that better deals are available both to those who switch providers and those who re-contract. Therefore, a more accurate diagnosis of the effect on consumers is not of a 'loyalty penalty' but of a cost of not engaging.
- 3.53 Furthermore, there are reasons to expect that any quantification of consumer harm based on historic price differentials is likely to over-state the harm on a forward-looking basis. For example, end-of-contract and annual best tariff notifications which will shortly take effect and waterbed effects both reduce the size any harm. We are particularly mindful of the fact that vulnerable consumers may be among those whose prices rise if waterbed effects occur.
- 3.54 Nevertheless, we have concerns about practices that harm consumers who experience barriers to engagement or behavioural biases which providers can take advantage of, particularly where such consumers are vulnerable. These practices include the large price increases customers experience when they go out-of-contract (sometimes followed by above inflationary price increases in subsequent years), and we are also concerned that some consumers may be unaware of the benefits of re-contracting, or lack the confidence to negotiate when re-contracting.

4. Review findings – vulnerable consumers

- 4.1 In this section, we set out the findings from our analysis of provider data relating to customers whose characteristics or circumstances may make them vulnerable.
- 4.2 We also present the results of our research which explored barriers to engagement and behavioural biases experienced by vulnerable consumers.

The proportion of customers identified as vulnerable by most providers is low, and significantly smaller than we might expect

- 4.3 We have drawn on data collected by providers about their customers' vulnerability characteristics, and matched this with pricing data, in order to ascertain the prices that vulnerable customers pay and the extent to which these prices differ from the average. The data varies significantly by provider, both in terms of the categories recorded and the number of customers who are identified as vulnerable. The provider data is mainly drawn from customer self-reporting, although some is obtained from external sources.
- 4.4 General Condition C5 requires providers to have policies and procedures in place for the fair and appropriate treatment of vulnerable consumers, including recording their needs. This General Condition came into force on 1 October 2018, while the data used for the analysis in our review was collected at the end of November 2018. We expect that providers will have increased the proportion of their customers who are identified as vulnerable since our data was captured.
- 4.5 Recognising the short period of time that providers have had to comply with the new General Condition, we also asked them to provide us with any data they capture on the vulnerability or potential vulnerability of their customers. This means that our analysis uses the fullest dataset we were able to obtain at the point of our information request.
- 4.6 Most providers collect data on a number of different categories of potential vulnerability.⁸² Some commonly recorded categories of vulnerable customers include those receiving bills in an alternative format, those who have a registered power of attorney on their account, those with a disability (physical, mental and learning), and those who are on priority fault repair schemes.
- 4.7 As shown in Table 3, excluding older age as a vulnerability indicator, the proportion of all customers flagged as vulnerable by most providers is very low and significantly smaller than we might expect. One provider has recorded considerably more of its customers as vulnerable than any other provider, mainly due to its use of third-party data.

⁸² The full list of categories used by each provider can be found in Annex A4, Table 12.

Table 3: Proportion of broadband customers identified as vulnerable, by provider

	% excluding age as a vulnerability indicator	% including age as a vulnerability indicator
BT	✂	✂
EE	✂	✂
Plusnet	✂	✂
Sky	✂	✂
TalkTalk	✂	✂
Virgin Media	✂	✂
Total	5.5%	17.0%

Source: Ofcom analysis of provider data

- 4.8 Three providers (✂, ✂ and ✂) were also able to provide us with data on the age of their customers. When indicators of older age (65+) are included in the total, this significantly increases the proportion of customers recorded as vulnerable by these providers.
- 4.9 We recognise that age is not necessarily a reliable indicator of vulnerability.⁸³ Age UK, for example states that “age...should [not] automatically be equated with vulnerability”,⁸⁴ citing the fact that many older people are capable and self-reliant and would not want to be considered vulnerable. We agree, but also note that ageing is often accompanied by other aspects which can impact on someone’s ability to engage with their provider, such as disability or illness. The 2017/18 Family Resources Survey found that older people⁸⁵ are considerably more likely than average to report having a disability (44% vs 21% of all adults).⁸⁶
- 4.10 Age is also more easily measured and recorded than many categories of vulnerability. For these reasons, we use age (65+) as a potential indicator of vulnerability, while noting that not all those aged 65+ are necessarily vulnerable.
- 4.11 The data we have used in our analysis is unlikely to capture all the vulnerable customers of each provider. The 2017/18 Family Resources Survey,⁸⁷ for example, shows that the proportion of adults who report having a disability (21%) is significantly higher than the proportion identified as such in providers’ records (around 1%).
- 4.12 One of the reasons for this is likely to be that some customers do not want to disclose this information to their provider or are unaware that they can do this. And, as noted above,

⁸³ See, for example, Ofcom, 1 September 2017, [Review of the General Conditions of Entitlement: Statement and Consultation](#), page 187.

⁸⁴ Age UK, November 2018, [Consumer vulnerability \(UK\)](#), page 2.

⁸⁵ Defined by the Family Resources Survey as those of State Pension age and older.

⁸⁶ Department of Work and Pensions (DWP), 28 March 2019, [Family Resources Survey 2017/18](#).

⁸⁷ DWP, 28 March 2019, [Family Resources Survey 2017/18](#).

the data we have used was collected less than two months after our General Condition on vulnerability (C5) came into force.

- 4.13 To supplement the vulnerability analysis based on providers’ data, we have also analysed the contract status of, and prices paid, by customers who live in areas with high levels of deprivation, as an indicator of financial vulnerability. To do so we have supplemented the data collected from providers with the Index of Multiple Deprivation (IMD) data from the Office for National Statistics (ONS), linking the two datasets by postcode.

Vulnerable customers are more likely to re-contract and less likely to be new customers

- 4.14 As shown in Table 4 below, taking into account every indicator of vulnerability (including older age) captured by providers, vulnerable customers are about as likely as customers in general to be out-of-contract (43% vs 41%). This equates to around 1.5 million out-of-contract vulnerable customers.
- 4.15 Vulnerable customers are more likely to have re-contracted, and less likely to be new customers. This may indicate a lower propensity to switch provider, or higher barriers to switching. As noted in section 3, new customers tend to get the best broadband deals, although many re-contracted customers do pay a price which is comparable to new customers.

Table 4: Contract status of all customers and all vulnerable customers

	% of all customers	% of all vulnerable customers
New customers	21%	11%
Re-contracted	39%	46%
Out-of-contract	41%	43%

Source: Ofcom analysis of provider data

Vulnerable customers (if we exclude age as an indicator of vulnerability) are considerably less likely to be out-of-contract

- 4.16 We note that ~~BT~~, ~~BT~~ and ~~BT~~ do not collect information on the age of their customers. Therefore, in order to compare results across providers, we present the findings by contract status for all vulnerable customers if we do not take age into account (see Table 5).⁸⁸

⁸⁸ Those aged 65+ are therefore included in the vulnerable category only if they have other indicators of vulnerability.

4.17 Across all providers, vulnerable customers (when we exclude age as an indicator of vulnerability) are less likely than average to be out-of-contract.

Table 5: Proportion of customers who are out-of-contract, and proportion of vulnerable customers (excluding age as an indicator of vulnerability) who are out-of-contract, by provider

	% of all customers who are out-of-contract	% of all vulnerable customers who are out-of-contract
BT	✂	✂
EE	✂	✂
Plusnet	✂	✂
Sky	✂	✂
TalkTalk	✂	✂
Virgin Media	✂	✂
Overall	41%	32%

Source: Ofcom analysis of provider data

Vulnerable customers are out of contract for longer periods than average

4.18 We have sought to understand whether out-of-contract vulnerable customers spend longer out-of-contract than average.⁸⁹ This is because, as discussed in section 3, customers who are out-of-contract for long periods of time are particularly exposed to the effects of higher prices.

4.19 Our analysis shows that, while the proportion of vulnerable customers who have spent at least two years out-of-contract differs significantly by provider, vulnerable customers who are out-of-contract are more likely than average to have been in this situation for two or more years than all out-of-contract customers (45% vs 37%).

4.20 Table 6 shows that this is the case for most providers from whom we gathered data, which indicates that some vulnerable customers may be disproportionately affected as a result of remaining out-of-contract.

⁸⁹ Information on customers' historical contract status differs by provider. Some have, for example, a 'cut-off' point in their databases, before which they were unable to confirm when someone took out a first contract with them. For this reason, we use the metric of 'two or more years out-of-contract' as this allows us to compare length of time out-of-contract across providers.

Table 6: Proportion of all out-of-contract customers and all vulnerable (excluding age as an indicator of vulnerability) out-of-contract customers who have been out-of-contract for more than two years, by provider

	% of all out-of-contract customers who have been OOC for 2+ years	% of all vulnerable out-of-contract customers who have been OOC for 2+ years
BT	✂	✂
EE	✂	✂
Plusnet	✂	✂
Sky	✂	✂
TalkTalk	✂	✂
Virgin Media	✂	✂
Overall	37%	45%

Source: Ofcom analysis of provider data

Vulnerable customers do not systematically pay more for their broadband, with some exceptions

- 4.21 In addition to looking at the contract status of vulnerable customers, we examine how the prices these customers pay compare to the average. In particular, we look at the prices that they pay when they are out-of-contract, and when they re-contract.
- 4.22 We look at out-of-contract prices because these tend to be the highest prices with the greatest potential for harm. We look at re-contract prices because consumers are less aware of these prices than new customer or out-of-contract prices, as they are not publicly advertised by providers. They can also reflect the extent to which customers are able to negotiate a better deal than the default when re-contracting.
- 4.23 Table 7 shows that we have not identified a clear pattern that overall vulnerable customers pay higher prices than other customers for an equivalent broadband service. Vulnerable customers of some providers pay more, while those of other providers pay less.

Table 7: Additional impact of vulnerability (excluding age as an indicator of vulnerability) on out-of-contract and re-contract prices paid per month, by provider⁹⁰

	Additional impact of vulnerability on prices paid per month	
	Out-of-contract	Re-contract
BT	✂	✂
EE	✂	✂
Plusnet	✂	✂
Sky	✂	✂
TalkTalk	✂	✂
Virgin Media (standalone broadband)	✂	✂
Virgin Media (dual play)	✂	✂
Virgin Media (triple play)	✂	✂
Overall	-£0.27 to £5.99	-£0.75 to £5.61

Source: Ofcom analysis of provider data

4.24 [✂].

Vulnerable customers are not over-represented among those paying the most for their broadband

4.25 We also examine whether vulnerable customers are over-represented among those paying the highest prices for their broadband. Specifically, we review whether they are in the top decile or the top quartile of prices paid (for a given combination of tariff, speed band, and data allowance).

4.26 As shown in Table 8, for most providers, vulnerable customers are not over-represented in the top decile or quartile of prices paid. Instead, the proportion in these groups broadly reflects the proportion of each provider’s customers who are vulnerable.

Table 8: Representation of vulnerable customers (excluding age as an indicator of vulnerability) among those paying prices in the top decile, by provider

	% among all customers	% among those paying prices in top decile	% among those paying prices in top quartile
BT	✂	✂	✂
EE	✂	✂	✂

⁹⁰ Results for Virgin Media are presented by tariff because prices for Virgin Media include billable calls for dual and triple play customers and TV packages for triple play customers. For more details, see Annex A4, pp 4 - 5.

Plusnet	✂	✂	✂
Sky	✂	✂	✂
TalkTalk	✂	✂	✂
Virgin Media	✂	✂	✂
Overall	5.3%	3.8%	3.9%

Source: Ofcom analysis of provider data

4.27 However, vulnerable customers of ✂ and ✂ are over-represented among those paying the highest prices, and those paying the highest differentials between new customer and out-of-contract prices. ✂’s vulnerable customers comprise ✂ of its whole customer base, but ✂ of those paying prices in the top decile.

There is some evidence that older customers are more likely to be out-of-contract or paying higher prices

4.28 While we only have data on age from three providers, the total number of customers recorded as being aged 65+ is significantly higher than those flagged as having other vulnerabilities.

4.29 This data shows that older customers (those aged 65+) are more likely to be out-of-contract than average (46% vs 41%). In addition, overall only 9% of customers aged 65+ are new customers, compared to the average of 21%. This finding may indicate a lower propensity to switch among this group of potentially vulnerable customers. ✂’s older customers are particularly unlikely to be new customers—just ✂ are in this position, compared to the average of ✂.

4.30 As shown in Table 9, older customers of ✂ and ✂ are particularly likely to be out-of-contract. ✂’s customers aged 65+ are also more likely than all out-of-contract customers to be out-of-contract for two years or more (✂ vs ✂). Older customers with ✂ are also more likely to be re-contracted (✂ vs ✂). This is significant because [✂].

Table 9: Contract status of all customers and customers aged 65+, by provider

	Out-of-contract		Out-of-contract for 2+ years (as % of all OOC)		Re-contracted		New customers	
	All	Age 65+	All	Age 65+	All	Age 65+	All	Age 65+
✂	✂	✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂	✂	✂
Overall	41%	46%	37%	42%	39%	45%	21%	9%

Source: Ofcom analysis of provider data. “Overall” number includes all customers in the dataset, for all providers combined together.

4.31 As well as being more likely to be out-of-contract, older customers with some providers also pay higher prices for some contract status types. For example, when older customers (aged 65+) re-contract with \mathcal{X} , they pay on average \mathcal{X} more per month for an equivalent service.⁹¹ \mathcal{X} 's older customers [\mathcal{X}] also pay around \mathcal{X} more per month than average for an equivalent service when they are out-of-contract, and \mathcal{X} more per month when they are re-contracted.

Our evidence suggests that financially vulnerable customers are slightly less likely to be out-of-contract

4.32 Spend on broadband represents a greater proportion of lower-income households' expenditure than of higher-income households.⁹² For those on a low income or otherwise financially vulnerable, being out-of-contract in broadband is likely to exacerbate any affordability issues.⁹³

4.33 Because only two providers (\mathcal{X} and \mathcal{X}) were able to provide data to us on some measures of their customers' financial vulnerability of their customers, we have drawn on ONS Indices of Multiple Deprivation (IMD) data in our investigation of the prices paid by financially vulnerable customers among each of the providers.

4.34 Overall, and across all providers in our dataset, customers whose postcodes fall within the 10% most deprived areas of the UK⁹⁴ are slightly less likely to be out-of-contract than those living in the rest of the UK. Those living in the most deprived areas are more likely to be in a new contract (27%), compared to 21% for all customers. This suggests that price differentiation in the broadband sector is benefiting some financially vulnerable consumers who are taking advantage of the lower prices offered to consumers who engage.

Table 10: Proportion of customers who are out-of-contract in top 10% most deprived areas of the UK, and difference compared to proportion who are out-of-contract in the rest of the UK.

	% out-of-contract (difference from average in brackets)	% re-contracted (difference from average in brackets)	% new customers (difference from average in brackets)
BT	\mathcal{X} (\mathcal{X})	\mathcal{X} (\mathcal{X})	\mathcal{X} (\mathcal{X})
EE	\mathcal{X} (\mathcal{X})	\mathcal{X} (\mathcal{X})	\mathcal{X} (\mathcal{X})

⁹¹ Figures are estimated by regression analysis to find out how age affects prices when the effects of different speed bands, tariff types and data allowance are allowed for. See Annex A4, Table 8.

⁹² Office for National Statistics, 24 January 2019, [Detailed household expenditure as a percentage of total expenditure by disposable income decile group: Table 3.2.](#)

⁹³ Ofcom's 2018 Affordability Tracker shows that 14% of those in DE households say that they have experienced difficulties paying for any communications services in the past year. When asked specifically about broadband, 6% of DE households stated they had experienced difficulties paying for this service in the last 12 months. It found that difficulties paying for communications services can lead consumers to spend less on, or go without other items, to seek financial support from family or friends, or to take out additional loans or credit cards. See Ofcom's [Access and inclusion in 2018](#), pp 30 – 33 and [Affordability Tracker 2018](#), Tables 5, 6, 18 and 19 (Q5, Q6, Q10a/Q10b) for more details.

⁹⁴ We ranked local areas according to the index of multiple deprivation calculated by nations' statistical offices and identified areas in the top 10% according to the index. For more detail please see Annex A4, page 32.

Plusnet	✂ (✂)	✂ (✂)	✂ (✂)
Sky	✂ (✂)	✂ (✂)	✂ (✂)
TalkTalk	✂ (✂)	✂ (✂)	✂ (✂)
Virgin Media	✂ (✂)	✂ (✂)	✂ (✂)
Overall	39% (-2%)	34% (-5%)	27% (7%)

Source: Ofcom analysis of provider and IMD data.

4.35 We observe a similar trend when looking at the prices paid by customers whose postcodes are in the top 10%⁹⁵ of deprived areas in the UK. With the exception of one provider (✂), customers in these areas pay slightly less per month when they are out-of-contract than those in the rest of the UK. And when these customers have re-contracted, there is a similar pattern. With the exception of ✂, customers in these areas pay slightly less per month when they are re-contracted.

Table 11: Difference in prices paid by customers in top 10% most deprived areas compared to customers in the rest of the UK, by contract status and provider⁹⁶

	Difference in <u>out-of-</u> <u>contract price paid</u>	Difference in <u>re-</u> <u>contract price paid</u>	Difference in <u>new</u> <u>customer price paid</u>
BT	✂	✂	✂
EE	✂	✂	✂
Plusnet	✂	✂	✂
Sky	✂	✂	✂
TalkTalk	✂	✂	✂
Virgin Media (standalone broadband)	✂	✂	✂
Virgin Media (dual play)	✂	✂	✂
Virgin Media (triple play)	✂	-✂	✂
Overall	-£2.60 to £0.80	-£2.40 to £1.70	-£0.50 to £1.20

Source: Ofcom analysis of provider data. The figures in this table were estimated using regression analysis.

⁹⁵ We identify the same pattern for customers in the top 25% most deprived areas in the UK.

⁹⁶ Results for Virgin Media are presented by tariff because dual and triple play prices for Virgin Media contain billable calls and TV packages. For more details, see Annex A4, pp 4 - 5.

Barriers to engagement and behavioural biases can be more prominent among some vulnerable consumers

- 4.36 We conducted quantitative and qualitative research⁹⁷ with consumers to gain a detailed understanding of the barriers to engagement with broadband as well as the behavioural biases that can affect how or whether consumers engage.⁹⁸
- 4.37 The findings indicate that barriers to engagement and behavioural biases can be more pronounced among some vulnerable consumers, which could make them more likely to be on a poor deal.

Some vulnerable consumers lack awareness of their contract status, which can be a barrier to engagement

- 4.38 Our quantitative research indicates that older consumers are more likely than average to report not knowing their contract status (16% of those aged 65+ vs. 9% of all consumers), which is a vital piece of information when looking for a new deal. We also found that older broadband consumers are less likely to be aware that most providers move customers onto their standard price at the end of their minimum contract period (63% of consumers aged 65+ vs. 72% of all broadband consumers).⁹⁹
- 4.39 This lack of awareness of contract status and of the practice of end-of-contract price increases is likely to be a contributing factor in older consumers being more likely to remain out-of-contract.
- 4.40 Our research also shows that consumers aged 65+ are more likely than average to report staying with their provider for longer¹⁰⁰ which may indicate a lower propensity to switch provider. In addition, older participants in our qualitative research were more likely to display a 'resistance to change', reflected in our finding that they are more likely than average to have re-contracted with their existing provider, and less likely to switch provider.
- 4.41 By contrast, consumers in the DE socio-economic group are as likely as all consumers to report not knowing their contract status, and are no more likely to remain with the same provider for longer.¹⁰¹ Similarly, qualitative research conducted for the CMA in 2018 found that some consumers on a low income can feel 'compelled to engage' by the relative cost

⁹⁷ More detail on the methodology and findings from the consumer research can be found in Annexes A5 and A6.

⁹⁸ The vulnerable groups in our qualitative research comprised older consumers aged 65+, those with hearing or visual impairments, learning difficulties, English as a second language, low levels of confidence in relation to engagement with the broadband market, mental health problems, and DE households with 3 or more children under 18 years old. For more detail please see Annex A6.

⁹⁹ See Annex A6. Figure 7 (Q9)

¹⁰⁰ 50% of those aged 65+ say they have been with their provider for six years or more, compared to 31% of all broadband consumers. See Annex A6. Figure 3 (Q4).

¹⁰¹ See Annex A6, Figure 5 (Q5).

of telecoms services.¹⁰² These findings suggest that some financially vulnerable consumers engage in the market and are able to find good broadband deals as a result.

- 4.42 However, we found evidence that some financially vulnerable consumers face barriers to engaging and consequently may be on poor deals. For example, in our qualitative research, we found that concern about service loss or disruption and/or uncertainty about the quality of alternatives could act as a disincentive to switch for some financially vulnerable participants particularly those with households more reliant on their broadband service.

Some vulnerable consumers are more likely to lack confidence in different aspects of engagement

- 4.43 Lack of confidence can cause consumers not to look for a better deal or to take a deal which is not suited to their needs.
- 4.44 Our quantitative research indicated that older consumers (primarily those aged 75+), are more likely than other age groups to lack confidence engaging (in particular in relation to understanding broadband terminology). This is also the case for those in DE socio-economic groups, those with a physical disability, or those mental health problems.¹⁰³
- 4.45 Our qualitative research suggests that the different vulnerable consumer groups sometimes lacked the confidence to understand the options available to them and consequently found it difficult to make the right choices for them and their household.
- 4.46 This tended to come from a lack of technical knowledge or understanding of broadband. For example, many vulnerable consumers were unsure of what broadband speed they currently have and/or don't know what speed they need. Furthermore, the different terminology used by providers, such as 'faster', 'superfast' and 'ultrafast' may have also contributed to this misunderstanding and confusion.
- 4.47 Some participants in larger DE households did not feel that they had the mental 'headspace' to engage in the broadband sector,¹⁰⁴ perceiving it as complicated and daunting (for example because they felt that it involved lots of 'jargon', as well as time and energy on their part).
- 4.48 We also found that some vulnerable groups (including those over 65) tended to defer to other (younger) family members where possible for support with broadband issues. This suggests that some vulnerable consumers without a support network may find it particularly difficult to get a better broadband deal.

¹⁰² Britain Thinks, December 2018, [*Getting a good deal on a low income: Qualitative research conducted with vulnerable consumers on behalf of the CMA*](#), page 79.

¹⁰³ These include confidence in speaking to providers, understanding broadband-related terminology and comparing prices. See Annex A6, Figures 1 and 2.

¹⁰⁴ See Annex A5, page 6.

Some behavioural biases affect vulnerable consumers more than non-vulnerable consumers

- 4.49 Our qualitative research suggested that some behaviours and biases appear to impact more on vulnerable than non-vulnerable consumers. These were a tendency not to engage through fear of the unknown or of making the ‘wrong’ decision (i.e. loss and regret aversion) and limited mental “headspace”. These led to a reluctance to change what they had (i.e. status quo bias) particularly when combined with perceptions of insufficient benefits relative to the effort required.
- 4.50 We also found that some vulnerable participants (i.e. those with low confidence, mental health problems or learning difficulties) were more risk-averse than the non-vulnerable sample.¹⁰⁵ This was not limited to the area of broadband services and, in many cases, there appeared to be greater risk aversion to decision making generally among vulnerable participants compared to those who were classified as non-vulnerable. In relation to engaging with broadband, vulnerable participants appeared more likely to disengage altogether, particularly if their aversion to risk was combined with a perception that their efforts would not be rewarded sufficiently.
- 4.51 Limited mental ‘headspace’ to engage in the broadband sector was most evident among participants with learning difficulties, mental health problems and larger DE households. These participants said they would be unlikely to seek a better deal for their broadband due to their lack of ‘headspace’, exacerbated by a sense that it would be difficult and overwhelming to do so.
- 4.52 Our research found these behaviours and biases were strongly interlinked and overlapping, indicating a significant barrier to engagement among certain vulnerable consumers. When tasked, as part of the research study, with “finding the best broadband deal for their household”, many vulnerable participants were reluctant to make a change (and indeed none did). This outcome was driven by combinations of a range of factors including
- *low incentive* – perceptions of insufficient savings;¹⁰⁶
 - *a fear of the unknown* – risk of switching to a lesser quality service or losing their broadband service completely;

¹⁰⁵ Risk aversion is not a bias in itself, but biases such as loss aversion can affect the degree of risk aversion people display. These can mean that a consumer can appear highly risk averse in some situations, while appearing much less so in others. Several examples are given in Stefano DellaVigna, “Psychology and Economics: Evidence from the Field”, Journal of Economic Literature June 2009 pp 315 – 372.

¹⁰⁶ Consumers’ perceptions of the savings available may be lower than reality given our finding from analysis of provider data which suggests that the average price differential between out-of-contract customers and new customers is around £9-10/month. This analysis was not available at the time of the fieldwork. The mock annual best tariff notification which participants received, stated savings of £2/month by re-contracting, and that the new customer price for the same service was £6/month cheaper than their current out-of-contract price. Respondents noted greater propensity to engage when faced with a larger saving i.e. £8/month via the collective switching letter. This saving was presented as both a monthly and annual figure in this mock letter.

- *perceptions of a high level of effort* required to assess the sector and make any change – the process was considered daunting and complicated by many.

Best tariff notifications may not be as effective at prompting engagement among some vulnerable consumers

- 4.53 There are some indications from the qualitative research that some vulnerable consumers may be less likely to respond to annual best tariff notifications by engaging in the market, or they may need more help doing so.¹⁰⁷ For example, participants with learning difficulties and mental health problems, in particular, found the language used and the perceived formal nature of the communication difficult to understand, confusing and to have the potential to cause anxiety.
- 4.54 Others (for example larger DE households and some proxy decision makers) may simply dismiss it through lack of mental ‘headspace’ to engage. Additional information about broadband, when provided alongside the annual best tariff information, had a positive impact on confidence for some vulnerable respondents but may still not be sufficient to prompt engagement.

Summary

- 4.55 The data we have drawn on from providers is limited in relation to vulnerable customers and the evidence available to us presented a mixed picture.
- 4.56 We observe that the proportion of out-of-contract customers recorded by providers as vulnerable is similar to the proportion of all customers who are out-of-contract. For some vulnerable groups, such as those who live in the most deprived areas, we find they are more likely to be in a new contract than customers overall.
- 4.57 In addition, vulnerable customers do not appear to be over-represented among those who pay the highest prices when looking at all out-of-contract customers. Similarly, the prices paid by customers whose postcodes are in the top 10% of deprived areas in the UK are not higher than the prices paid by the average customer. In fact, apart from those with ⓧ, customers in these areas pay slightly less per month on average when they are out-of-contract than those in the rest of the UK who are in an equivalent position.
- 4.58 On the other hand, we observe that some potentially vulnerable customers, such as those who are older, appear to be more likely to be out-of-contract than the average customer. Our data also shows that vulnerable customers who are out-of-contract, including those who are older, are slightly more likely than average to have been in that situation for two or more years. We also find that vulnerable customers overall are less likely to be new customers, potentially indicating that this group experiences higher barriers to switching provider.

¹⁰⁷ See Annex A5, page 12.

- 4.59 Our consumer research findings suggest that several factors contribute to some vulnerable customers paying higher prices than they could do. These include confusion about their contract status, a lack of confidence speaking to or negotiating a new deal with their provider and feeling unsure about the meaning of certain technical terms related to speed or technology. Our research also indicates that some vulnerable consumers, such as those with a mental health problem or low numeracy skills, lack the confidence to assess and decide on the best deal for their needs.
- 4.60 As proposed in our draft Fairness Framework, we are likely to be concerned about practices which result in vulnerable consumers being particularly harmed. Our general duties, and the legal framework they are part of, also mean that wherever consumers are vulnerable in ways that could make it more difficult for them to protect themselves, that is a matter of concern to us. That is so even if not all those with the same vulnerability are affected in the same way or to the same extent.
- 4.61 Given our findings, we remain concerned that some vulnerable consumers are paying higher prices, even if vulnerable consumers as a whole are not disproportionately affected.

5. Review findings – consumers in areas with less choice

5.1 In this section, we look at whether consumers who live in areas of the UK where there is less choice are particularly harmed by broadband price differentials.

Providers say that price differentials incentivise consumers to upgrade to superfast or to switch, but consumers in areas with less choice do not have these options

5.2 Competition means that most consumers, if they shop around or engage with their provider, can access a good deal for broadband. While this is the case for most consumers, those in certain geographic areas can experience additional barriers to getting a good broadband deal.

5.3 These barriers are the result of two factors – firstly, around 5%¹⁰⁸ of consumers live in areas where superfast broadband is not available, and secondly, some parts of the country have little or no retail competition.¹⁰⁹ We note that there is overlap between areas with little or no retail competition and the areas in which superfast broadband is not available.¹¹⁰

5.4 Our draft Fairness Framework lists “exploiting characteristics such as a lack of competition in some geographic locations which put some customers at a disadvantage relative to other customers” among practices that are “more likely to be regarded as unfair under our framework”.¹¹¹ This is because these customers are unable to take advantage of the competitive deals that are available to customers in other areas.

5.5 While one reason cited by some providers for maintaining a differential between new customer and out-of-contract prices is to incentivise customers to upgrade to superfast, providers still maintain a differential for those in areas without access to superfast

¹⁰⁸Ofcom, 17 September 2019, [Connected Nations Update: Summer 2019](#), page 1, states that ‘the proportion of the UK with access to superfast connections remains broadly stable at 95% of UK premises’.

¹⁰⁹ For the purposes of our analysis, we define the area of limited competition as that identified as Market A in our Wholesale Broadband Access (WBA) market review. The currently applicable definition of Markets A and B is set out in Ofcom, 31 July 2018, [Wholesale Broadband Access Market Review 2018: Final Statement: Annexes 2-8](#). Figure A6.8 shows Markets A and B on a map of the UK. We have not included the Hull area, in which competition (to KCOM) is also limited. See Ofcom, 31 July 2018, [Wholesale Local Access and Wholesale Broadband Access Market Reviews: Review of competition in the Hull Area, Statement](#), Section 3.

¹¹⁰ This is because the boundary between Markets A and B was in practice largely determined by the extent of BT’s current and confirmed future roll-out of superfast services – see Ofcom, 31 July 2018, [Wholesale Broadband Access Market Review 2018](#), paragraph 4.77. Note also that in our analysis of competition a provider does not have to have complete coverage of an exchange area in order to be considered as present in that area – see Ofcom, 31 July 2018, [Wholesale Broadband Access Market Review 2018: Final Statement: Annexes 2-8](#), paragraphs A6.45 – A6.49.

¹¹¹ Ofcom, 17 June 2019, [Discussion paper: Making communications markets work well for customers – a framework for assessing fairness in broadband, mobile, home phone and pay-TV](#), paragraph 3.27.

broadband. Our concern lies in the fact, therefore, that these consumers experience the downside of price differentials (higher out-of-contract prices for standard broadband), without the opportunity to experience the upside (low new customer prices for superfast broadband).

- 5.6 We have analysed the prices paid by customers in non-superfast and less competitive areas, using data from our Connected Nations report as well as information on the boundaries of different markets identified in our Wholesale Broadband Access review, in conjunction with data collected from providers. To keep the analysis tractable, we used regression analysis to find out how geographic location affects prices when the effects of different speed bands, tariff types and data allowance are allowed for.¹¹²

Standard broadband customers in areas without superfast are less likely to be out-of-contract, but we are concerned about the fairness of high out-of-contract prices for this group

- 5.7 Some providers have told us that one of the reasons they maintain differentials between new customer and out-of-contract prices is to incentivise their customers on standard broadband to upgrade to superfast. We noted in section 2 that the average advertised out-of-contract price for standard broadband is now higher than the new customer price for superfast. This highlights the extent of this practice, and that some consumers could upgrade and pay less.
- 5.8 Our 2018 Connected Nations report (using data from February 2018)¹¹³ also demonstrates that the proportion of consumers signing up to a superfast service has increased over time. The proportion of broadband customers taking a superfast service rose from 38% to 45% between 2017 and 2018.¹¹⁴ And our data shows that customers with superfast are considerably less likely than standard broadband customers to be out-of-contract (36% vs 51%).¹¹⁵
- 5.9 While we support the objective of consumers moving from legacy services to faster and more reliable broadband where this meets their needs,¹¹⁶ we are concerned where the means by which this is done (i.e. high out-of-contract pricing for standard broadband) leads to consumers who live in areas without access to superfast broadband losing out.
- 5.10 As superfast broadband roll-out continues, we expect that the number of households who only have access to standard broadband will fall. Even so, some consumers still live in areas where superfast broadband is not yet available.

¹¹² See Annex A4, page 32 for more information.

¹¹³ We recognise that some of these areas may have been reached by superfast broadband rollout between February and November 2018.

¹¹⁴ Ofcom, 18 December 2018, [Connected Nations 2018: UK report](#), page 18.

¹¹⁵ This may change over time if customers who have relatively recently upgraded to superfast go out-of-contract in future. We will monitor this and take it into account when we evaluate market outcomes in future.

¹¹⁶ See, for example, Ofcom's ['Boost Your Broadband'](#) campaign.

- 5.11 In our dataset, 615,000 standard broadband customers lived in such areas. The majority of these customers are [X] with a BT Group provider (i.e. BT, Plusnet or EE) (X). Overall, X out-of-contract customers on standard broadband on average pay X per month than new customers on X entry-level superfast service.
- 5.12 Around X of customers in non-superfast areas are with X. While the gap is [X] than for X, we note that X's out-of-contract standard broadband customers also pay X than its new superfast customers (X for X compared to X for X).
- 5.13 Overall, standard broadband customers in non-superfast areas are less likely to be out-of-contract than standard broadband customers in superfast areas (44% vs 52%). Customers in areas without superfast broadband are more likely to be re-contracted than standard broadband customers in areas with superfast (38% vs 29%). Overall, our data shows that around 270,000 standard broadband customers in non-superfast areas were out-of-contract.¹¹⁷

Table 12: Difference in contract status of standard broadband customers in areas with no superfast availability and the rest of the UK, by provider¹¹⁸

	% out-of-contract (difference from average in brackets)	% re-contracted (difference from average in brackets)	% new customers (difference from average in brackets)
BT	X(X)	X(X)	X(X)
EE	X(X)	X(X)	X(X)
Plusnet	X(X)	X(X)	X(X)
Sky	X(X)	X(X)	X(X)
TalkTalk	X(X)	X(X)	X(X)
Overall¹¹⁹	44% (-7%)	38% (9%)	18% (-1%)

Source: Ofcom analysis of provider data and Connected Nations data.

- 5.14 Turning to pricing outcomes in non-superfast areas (shown in Table 13), we find that while the effects on prices vary by provider, standard broadband customers in these areas do pay slightly more than others for an equivalent service although most price differences are below £1 in absolute terms.

¹¹⁷ We recognise that some of these areas may have been reached by superfast broadband rollout between February and November 2018.

¹¹⁸ Virgin Media is not shown in the table and is not included in the "Overall" numbers because it has no standard broadband customers in non-superfast areas.

¹¹⁹ The "Overall" differences are calculated from the shares by contract status for all customers across all providers in areas with and without superfast availability, and do not correspond to a weighted average of the differences for individual providers.

Table 13: Average differences in prices paid by standard broadband customers in areas with no superfast availability and the rest of the UK, by contract status and provider

	Out-of-contract price	Re-contract price	New customer price
BT	✂	✂	✂
EE	✂	✂	✂
Plusnet	✂	✂	✂
Sky	✂	✂	✂
TalkTalk	-✂	✂	-✂
Overall	-£0.50 to £1.30	£0.10 to £1.20	-£0.10 to £1.50

Source: Ofcom analysis of provider data and Connected Nations data

Customers in areas with limited competition are not significantly more likely than others to be out-of-contract

- 5.15 Around 170,000 broadband customers in our dataset live in areas with little or no retail competition. An even greater majority of these customers are with [✂] a BT Group provider (✂). It is likely that they also do not have access to superfast services. They are therefore less able to benefit from the low prices available from different providers when their minimum contract period ends – again, experiencing the disadvantages of price differentials in broadband with much less opportunity to benefit from the upsides.
- 5.16 Customers in areas with less competition are not significantly more likely than others to be out of contract overall, although for a number of providers the share out-of-contract is slightly higher. In relation to pricing, we find that most customers in areas with limited competition pay about the same for their broadband as customers with the same provider (✂).¹²⁰
- 5.17 BT has a national pricing policy for its main brand.¹²¹ [✂]
- 5.18 [✂]. In the last WBA market review, we noted that EE had only recently started to charge the same price nationally for its new customers (following its acquisition by BT) while Plusnet continues to charge different prices in different geographic areas.¹²² We consider that this is likely to reflect BT’s use of Plusnet to target price-sensitive customers in the areas with greater retail competition, although we also recognise that the costs of provision in the areas of limited competition are likely to be higher.¹²³

¹²⁰ The majority of customers in these areas are [✂]. The small number of other customers in some cases pay more than customers in other areas for an equivalent service, but the number of affected customers is small. See Annex A4, Table 24.

¹²¹ Ofcom, 31 July 2018, [Wholesale Broadband Access Market Review 2018](#), paragraph 4.33.

¹²² Ofcom, 31 July 2018, [Wholesale Broadband Access Market Review 2018](#), paragraph 4.127.

¹²³ On its [website](#), Plusnet states: “You can get Plusnet broadband almost everywhere in the UK. But in some places our prices are a bit higher. That’s because it costs us more to provide broadband there.”

Summary

- 5.19 Customers of most providers who live in areas with little or no retail competition are only slightly more likely (and in the case of one provider less likely) to be out-of-contract compared to customers in similar circumstances with the same provider in other areas.
- 5.20 Even if most customers in areas with limited competition pay about the same for their broadband as customers with the same provider [3<] in other areas, customers in areas with little or no retail competition nevertheless pay more for their broadband overall.¹²⁴ This is primarily because a higher proportion than average of customers in these areas are with the BT main brand. BT's main brand typically charges higher prices than other providers for similar speed tariffs, but it largely prices the same nationally [3<].
- 5.21 Standard broadband customers in non-superfast areas are less likely to be out-of-contract than customers in similar circumstances with the same provider in other areas. Customers in areas without superfast broadband on average pay slightly more for standard broadband than those in other areas, but the price differences are small.
- 5.22 However, we remain concerned about the fairness of the practice of charging high prices to out-of-contract standard broadband customers in order to incentivise upgrades to superfast broadband, where customers are unable to access superfast broadband. These customers may therefore find it difficult to avoid such prices because they have fewer options (whether type of connection or choice of provider) available to them.

¹²⁴ There is a separate issue of these areas being higher cost to serve, which is outside the scope of this review.

6. Proposed actions and next steps

- 6.1 Due to the variety of pricing outcomes, the variety of choice available to consumers and our strategic ambition to encourage competing investment in future networks, we believe it essential to proceed in a targeted manner.
- 6.2 The introduction of end-of-contract and annual best tariff notifications will have a substantial impact to help address consumer confusion about contract status and lack of awareness of the deals that are available. However, we recognise that it may not be sufficient to help all consumers get better deals, including some who are vulnerable.
- 6.3 We set out in this section further targeted measures that are designed to help all consumers, and then actions targeted at those with vulnerable characteristics and those in areas without access to superfast broadband. We then discuss our proposals for additional changes that will require further design and consultation.
- 6.4 We have agreed a number of changes with providers which go some way to addressing our concerns about all consumers, those with vulnerable characteristics and those without access to superfast broadband. For ease of reference we have summarised these commitments below as well as including them in the relevant sections of this chapter:
- 6.5 **To help all consumers get a better deal**, providers have made the following commitments:
- BT¹²⁵ will cap the difference between the monthly prices paid by new or re-contracted and out-of-contract customers. This will apply to all customers coming out-of-contract from February 2020.
 - Sky has changed its pricing to reduce the average price differential, so that there is no more than a £5 per month difference between in and out-of-contract prices, when customers enter or re-enter a contract.
 - BT, Sky and TalkTalk will allow existing customers to access new customer prices when sending end-of-contract and best tariff notifications.
 - BT, EE, Plusnet and TalkTalk are taking measures to protect out-of-contract customers from above inflation price rises.
- 6.6 Specifically **to help vulnerable customers**¹²⁶ **get a better deal**, we have agreed the following changes with providers:
- BT will provide a one-off automatic price reduction for vulnerable customers who are already out-of-contract and paying more than its new capped out-of-contract price.
 - TalkTalk will carry out annual reviews to ensure that its out-of-contract vulnerable customers are placed on the best tariff. It will attempt to communicate with relevant vulnerable customers giving them the option of switching to a new tariff in a simple way.

¹²⁵ Note that throughout this document, commitments made by BT relate only to the BT brand and do not include Plusnet and EE.

¹²⁶ For these policies, vulnerable is defined as customers being logged on a provider's system as having a form of vulnerability. Each provider has its own set of characteristics and its own policy in accordance with GC C5. Factors recorded include physical disability, mental health problems or being on a priority fault repair register.

Any customer whom TalkTalk is unable to contact or who failed to respond over a three-month period will be automatically moved to the new tariff price.

- Virgin Media will undertake annual price reviews with its customers who are either over 65, have a disability or who are otherwise identified as vulnerable, to ensure they are on the best deal for their needs. The first review will take effect from February 2020.

6.7 And to help **customers in areas without access to superfast broadband**:

- BT will help customers who live in areas without access to superfast broadband and who do not choose a service upgrade by providing a price reduction, so they will not pay more than new entry-level superfast customers. This addresses the specific lack of choice facing customers in areas where superfast broadband is not available and will be introduced from mid-2020.

6.8 We welcome the steps providers are taking. Taken in the round, the changes can benefit large numbers of customers across the sector, including those who may be vulnerable.

6.9 We will continue investigating broadband pricing and raising awareness of pricing practices through campaigns, pricing reports and other activity. As we monitor market outcomes and the fairness of these, we will take further action if we are not satisfied with progress. For example, where we think providers could and should do more, we will say so and seek to secure that they do so. If we think other forms of intervention may be appropriate, we would then consider how we might implement them.

We are taking actions that are designed to support all consumers

6.10 The following interventions are designed to support all broadband consumers. We set out actions to increase consumer awareness about the options available to them to get a better deal, the relevant voluntary commitments that we have agreed with the industry, and our proposals to pursue a collective switch trial and consider use of smart data.

New notifications will help consumers make more informed choices about the right deal for their needs

6.11 The introduction of end-of-contract notifications and annual best tariff notifications from February 2020 will help boost engagement to address poor value. End-of-contract notifications will, for the first time, ensure that all consumers approaching the end of their contract will receive clear pricing information, including the current price and upcoming out-of-contract price.¹²⁷ Annual best tariff notifications will support consumers who are not subject to minimum contract periods (including, for example, those who have been out-of-contract for some time).

6.12 Importantly, these notifications will also have to tell consumers the best price the provider offers, even if it is not available to the particular person to whom the notification is sent.

¹²⁷ See Ofcom, 15 May 2019, [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#).

For example, if a better price is offered to new customers only, the provider will have to reveal that price. As discussed in section 3, our research has shown that a lack of consumer awareness around the savings to be made by re-contracting or switching, and lack of confidence to negotiate, can lead to customers getting less good value. The information included in these notifications is likely to encourage customers to seek a better re-contracted deal or to look at offers from other providers. Notifications will also have to include a message that some providers may offer new customers better deals and the consumer may be better off switching.

- 6.13 However, as set out in section 4, some consumers lack confidence in engaging with their provider and our qualitative research found that annual best tariff notifications may be less likely to prompt some vulnerable consumers to engage. As outlined in section 4, the qualitative research found that the most vulnerable in the sample (those with learning difficulties, mental health problems and larger DE households) said they were unlikely to find this helpful in engaging more effectively with broadband choices and offers.
- 6.14 Our qualitative research for this review also showed that consumers – both those with and without vulnerabilities – valued information explaining speeds, terminology, language and factors relating to their choices. In particular, we observed that consumers valued a short guide, based on existing material from the Ofcom website, explaining how to decide on an appropriate broadband speed.¹²⁸ As providers introduce end-of contract and annual best tariff notifications, we encourage them to take account of these findings in order to help consumers make informed choices.
- 6.15 We have set out our proposals to monitor the impact of end-of-contract and annual best tariff notifications.¹²⁹ To achieve this, we have required providers to keep a record of the notifications sent to each customer for a period of at least 12 months. We will use our statutory information gathering powers and consumer research to understand how these notifications affect different types of consumers.¹³⁰ As part of this monitoring work, we will also seek to understand how vulnerable consumers react to notifications and will consider other ways to gather more detailed information if necessary.
- 6.16 We will also continue to promote information from the guide referred to in paragraph 6.14 above and seek further opportunities to target it at consumers at the most appropriate times. In addition, our Boost Your Broadband campaign includes a dedicated website that allows people to check what broadband services are available in their area and offers advice on what to consider when looking for a broadband package. It also illustrates new customer and out-of-contract prices for each of the major providers to raise awareness of price differentials.¹³¹

¹²⁸ See Annex A5, Appendix B, pp 17 – 19.

¹²⁹ Ofcom, 15 May 2019, [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#), section 3.

¹³⁰ Ofcom, 15 May 2019, [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information](#), section 9.

¹³¹ [Boost Your Broadband price advice](#)

We have agreed voluntary commitments with industry to help consumers get better deals for their broadband

6.17 To provide protection for consumers who go out-of-contract, some providers have offered to cap the difference in prices paid by customers according to their contract status. This sets a maximum limit on how much more out-of-contract or re-contracted prices will be than the new customer price:

- BT has introduced a cap on the in- and out-of-contract price differential, which will be applied to all customers coming out-of-contract from February 2020. It will also remove differentials entirely for BT Plus customers, meaning that existing customers with this service always pay the same or less than new customers.¹³²
- Sky has changed its pricing to reduce the average price differential, so that there is no more than a £5 per month difference between in and out-of-contract prices, when customers enter or re-enter a contract.

6.18 For both providers, these changes mean differentials that are lower than their current average new customer vs out-of-contract differentials and will reduce the differential that many out-of-contract customers pay.

6.19 Additionally, the following providers have each committed to take steps to further help re-contracting customers.

- BT will, when sending end-of-contract and annual best tariff notifications, offer re-contracting customers the best introductory prices which would be available to new customers at that time.
- Sky will, when sending end-of-contract and annual best tariff notifications, offer re-contracting customers the best introductory prices which would be generally available to new customers at that time.
- TalkTalk will ensure that existing out-of-contract customers who want to re-contract will have access to the same broadband package prices available to new customers on TalkTalk's website from January 2020. From February 2020, TalkTalk's end-of-contract notifications will always offer the best prices available on its website. The website will not restrict any offers exclusively to new customers.

6.20 As discussed in section 3, we have observed that customers who have been out-of-contract for longer are likely to pay higher prices, although this pattern is not uniform. Accordingly, we welcome voluntary commitments providers have also made that mean they will not increase prices for out-of-contract customers by more than those in-contract. These are:

- BT has committed to limit price increases for all customers to CPI only. This policy will take effect in full from April 2020. This removes the potential for prices to increase over time in real terms.
- EE will introduce CPI-indexed pricing to protect customers from above inflationary price rises from 2020.

¹³² BT Plus is an enhanced service including a 'Keep connected promise' and other features.

- Plusnet will introduce CPI-indexed pricing to protect customers from above inflationary price rises from 2020.
- TalkTalk will ensure that price increases for broadband packages for out-of-contract customers will be no larger than the annual rate of inflation with effect from October 2019. TalkTalk also guarantees that its Fixed Price Plans will have no price increases on the monthly broadband charges during the minimum contract period.

6.21 These changes will protect customers who are out-of-contract. We welcome these voluntary measures which will address the risk of above inflation price rises for these customers in future.

We are considering a collective switch trial in residential broadband

6.22 We described in section 3 the barriers to engagement and the behavioural biases which consumers can experience. Likewise, we discussed the harm to consumers that can arise from being out-of-contract for long periods of time, such as paying higher prices for longer and deals deteriorating in value over time. Taking those things into account, in addition to our planned end-of-contract and annual best tariff notifications, we are interested in what more could and should be done to promote switching for consumers who do not engage for long periods.

6.23 At its simplest, a collective switch is when a group of consumers (often those who are the least engaged) negotiate a deal or a deal is negotiated on their behalf with a service provider. Any recommended deals may be market leading, if they can draw on the collective buyer power of a large number of consumers. When consumers choose to switch, this is handled by a third-party intermediary.

6.24 A collective switch has the potential to help the least engaged consumers who may need additional support to get a fair deal. This group is likely to include some vulnerable consumers who are significantly less likely to switch providers. This is because a collective switch can remove some of the steps that consumers would ordinarily need to take to access and assess information before switching provider. A collective switch may therefore be particularly beneficial to less confident consumers for whom the process of comparing services may be more difficult.

6.25 We note the experiences of other regulators in this area. In the energy sector, Ofgem has trialled a series of consumer engagement remedies in recent years. A collective switching trial, involving a sample of those who had been on a standard variable tariff (effectively equivalent to being out-of-contract) for over three years, supported 22.4% of consumers to switch compared to 2.6% of the control group.¹³³ According to Ofgem:

¹³³ This was the average rate of switching among trial participants. In the most effective “arm” of the trial, an even higher rate (26.9%) was achieved.

“This is the highest switching rate achieved in our consumer engagement trials to date. This outcome is particularly impressive given that this group were among the most disengaged of energy consumers.”¹³⁴

- 6.26 In Ofgem’s trials, vulnerable consumers, defined as those on the priority service register, were similarly likely to switch as the overall population (21.1% compared to 22.4%). Ofgem reported that “the indications are that vulnerable customers also responded strongly.”¹³⁵
- 6.27 Our initial findings on collective switching from our qualitative research indicates some interest from consumers in this proposal. Aspects of a collective switch appear to address some of the observed barriers and biases, making it more appealing for some of the participants who rejected the idea of engaging on receipt of the annual best tariff notification.
- 6.28 Taking all these points into account, we have been considering trialling a collective switch for broadband services. In doing so, we recognise that broadband services are differentiated along several dimensions, such as maximum speeds, usage limits, service quality, and bundling options.¹³⁶ In addition, some providers do not operate in all parts of the UK and switching broadband services also requires the consumer to do more than in the energy sector (for example, installing equipment like a new router).
- 6.29 Nonetheless, our provisional view is that a collective switching process is likely to be feasible in broadband services. Such a process could focus on simpler products, such as dual-play services, and address the diversity of options by adopting specified bands for speed, usage and quality of service. It may also be possible to account for the availability of different broadband services in specific locations, to ensure that consumers were only presented with relevant offers (for example, by using a postcode checker).
- 6.30 We intend to conduct further analysis and research to assess the merits of such a switch. We have, alongside this report, published a consultation on proposals to introduce a new general condition that would enable us to direct providers to take part in trials of customer engagement remedies.¹³⁷ If, subject to that consultation process, we decide to make this general condition, we would consult on any proposal to undertake a trial of a collective switching process.

We are exploring how Open Communications could help consumers get better deals

- 6.31 The Government’s Smart Data Review¹³⁸ has set out potential benefits of requiring providers to make information about their customers’ current deal and use of telecoms

¹³⁴ We expect Ofgem to publish results from subsequent trials in due course. Please see Ofgem, 20 August 2018, [Open letter, Active Choice Collective Switch Trial: Early Findings](#).

¹³⁵ Ofgem, 20 August 2018, [Open letter, Active Choice Collective Switch Trial: Early Findings](#).

¹³⁶ Network quality can include reliability and peak-time speed, while bundling options can include standalone, dual, triple or quad play.

¹³⁷ Which is subject to a consultation which opened on the same date as publication of this document.

¹³⁸ HM Government, June 2019, [Smart Data: Putting consumers in control of their data and enabling innovation](#).

services available to third party intermediaries, at consumers' request. This is referred to as the Open Communications initiative.

- 6.32 The Smart Data Review proposes that Open Communications could help increase switching rates by permitting intermediaries to reduce the hassle and complexity of navigating the market with easier access to more data. For example, it could enable intermediaries to offer personalised market searches and product recommendations, based on price and non-price factors, helping consumers find the services that best meet their needs. The CMA has also recommended that Ofcom consider how smart data can help consumers get better deals.¹³⁹
- 6.33 We recognise that, to get a fair deal, consumers need to have the right information to make informed decisions about what products and services best meet their needs and offer them the best value. We are considering the potential benefits of Open Communications as a means to helping consumers get a fair deal as well as the potential risks and challenges.
- 6.34 We are considering whether Open Communications could enable services that benefit consumers and SMEs who do not engage to get a fair deal. These could include services that support consumers who face specific barriers to engaging or have been out-of-contract for long periods. As such, we are assessing whether Open Communications could be a means to address some of the market features for which broadband price differentials have emerged as a symptom.
- 6.35 Government has also set out the potential benefits of Open Communications for vulnerable consumers who need extra support in engaging. For example, by making it easier for them to give consent to a third party to find better deals or manage their services for them.

We are also promoting targeted support for vulnerable consumers

We have agreed voluntary commitments with providers

- 6.36 We have sought voluntary commitments from major providers specifically to protect vulnerable customers. This approach can allow us to move swiftly in collaboration with providers and to build on the fairness for customers commitments, which seek to support the industry in promoting fairness.¹⁴⁰
- 6.37 We have agreed voluntary commitments with BT, TalkTalk and Virgin Media to specifically help their vulnerable customers who struggle to engage and get a better deal. We note

¹³⁹ The CMA recommended that Ofcom consider "measures to increase engagement such as the use of smart data". CMA, 19 December 2018, [Tackling the loyalty penalty – Response to a super-complaint made by Citizens Advice on 28 September 2018](#), page 12.

¹⁴⁰ Relevant commitments include Commitment 1 - that customers get a fair deal, which is right for their needs, and Commitment 2 - that customers get the support they need when their circumstances make them vulnerable. See Ofcom, 3 June 2019, [Britain's biggest broadband and phone firms to put fairness first](#).

that Sky has not made any proposals in this regard. The voluntary commitments put forward by the providers are:

- BT will provide a one-off automatic price reduction for vulnerable customers who are already out-of-contract and paying prices higher than its new cap. The reduction will ensure that customers whom BT have recorded as having a vulnerability are not paying more than the new capped out-of-contract price.
- TalkTalk will in future carry out an annual review to ensure that its vulnerable customers who are out-of-contract are placed on the best tariff for their broadband package and individual usage. It will attempt to communicate with relevant vulnerable customers giving them the option of switching to a new tariff in a simple way. Any customer who TalkTalk is unable to contact or who failed to respond over a three-month period, would be automatically moved to the new tariff price. TalkTalk envisages that any vulnerable customer currently on its system will therefore benefit from the best tariff from January 2020.
- Virgin Media recently announced ‘annual package reviews’ to help vulnerable customers who struggle to shop around.¹⁴¹ The key feature is that Virgin Media will call eligible customers to get them onto the best contract and, if they do not answer, will automatically move them onto the best available price. This means that customers who are logged as vulnerable and have demonstrably not engaged will get a good deal even if they are unable to take action themselves. The policy is targeted at customers whom Virgin Media knows are aged 65+, are disabled or otherwise vulnerable, and have not engaged with Virgin Media for 3 years.

We have considered targeted safeguard caps and believe we can take action to protect the most vulnerable consumers while limiting unintended consequences

6.38 We have considered the case for targeted pricing interventions, given our focus on vulnerable consumers. We note that the legal framework for telecoms, under which we operate, does not give us the power to impose price caps other than on specific individual providers who we judge have significant market power (SMP).¹⁴² Where that framework – which is derived from EU law – applies, we are unable to impose caps on providers generally in order to address differences in the prices different customers pay.

6.39 Our assessment is that we do not need to pursue such interventions for now anyway. We think voluntary measures from industry, including those we have secured so far, could provide the most rapid, as well as targeted, support for vulnerable consumers who face barriers to engaging. For those on the lowest incomes, a social tariff can provide further targeted protection (see below). Our assessment could change if the steps providers take to treat their customers fairly do not go far enough, but we think that, together, measures

¹⁴¹ Virgin Media, 7 August 2019, [Virgin Media unveils new measures for vulnerable customers](#).

¹⁴² There are a small number of limited exceptions to this, but they do not give us the power to impose price caps on providers generally.

like these could give consumers the right level of protection, with fewer risks of the kinds of unintended consequences price interventions can have.¹⁴³

- 6.40 In considering the case for targeted pricing interventions, we recognise that carefully targeted price interventions could be effective in some cases. For example, where a market failure leads to inefficient or unfair prices, a price cap may address these.¹⁴⁴ A safeguard cap, for instance, could help particular customers who face the largest barriers to engagement and who may not be protected by measures which require them to take action themselves. That could be of particular benefit to some vulnerable consumers.
- 6.41 This sort of targeting approach has been used in other sectors. To take one example, the CMA has observed of the pre-payment meter energy price cap that it was “carefully designed...to appropriately target those customers who are clearly identifiable, are significantly harmed...and for whom competition has been least effective.”¹⁴⁵
- 6.42 We are mindful, though, that there are also important reasons to be cautious about retail price interventions. They can, for example, reduce incentives for consumers to search for the best deals, dampening competition and innovation, and – depending on the circumstances – providers may try to recoup lost profits through increasing other prices. We note, too, that, as well as endorsing price interventions in some circumstances, the CMA has also observed that mandatory price caps for certain vulnerable consumers can be hard to target and implement in practice.¹⁴⁶
- 6.43 While effectively targeted price interventions could mitigate some of the risks, we think the measures we are taking, and the measures providers have committed to take, could achieve beneficial effects for consumers more quickly and with less scope for such risks to arise. We will monitor the effects of those measures, as well as collecting evidence on the affordability of broadband services, and will provide an update on these in our final report next year. Where we think providers could and should do more, we will say so and seek to secure that they do so. If we think other forms of intervention may be appropriate, we would then consider how we might implement them.

¹⁴³ CMA, 19 December 2018, [Tackling the loyalty penalty – Response to a super-complaint made by Citizens Advice on 28 September 2018](#), page 12.

¹⁴⁴ As an illustration, “In 2016 the Competition and Markets Authority (CMA) concluded that there was an adverse effect on competition in the retail energy market stemming from a lack of consumer engagement. This has given suppliers a position of unilateral market power, in which they have been able to charge customers more than they would in a better functioning competitive market.” See Ofgem, 20 August 2018, [Open letter, Active Choice Collective Switch Trial: Early Findings](#).

¹⁴⁵ CMA, 24 June 2016, [Energy market investigation](#), paragraph 14.464.

¹⁴⁶ The CMA rejected the idea of extending the PPM price cap to customers with vulnerable characteristics “partly because, unlike the prepayment and SVT options considered above, which have easily identifiable criteria for qualification, the process of identifying customers covered by the cap would be a time-consuming and inefficient one”. See CMA, 24 June 2016, [Energy market investigation](#), paragraphs 11.95 – 11.97.

We are gathering the evidence that would be necessary before deciding to introduce a social tariff

- 6.44 The actions set out so far in this section will help address concerns linked to engagement and consumers getting a poor deal. A special tariff – such as a social tariff or other similar policy intervention¹⁴⁷ - can address a separate but linked question of affordability by providing a restricted safety net to help consumers with the most acute affordability problems.
- 6.45 We see the affordability of broadband in general and the fairness of certain pricing practices (such as price differentials linked to contract status) as largely separate issues. For example, affordability concerns would be likely to persist even if there were no price differentials, and consumers who shop around to save money could even be made worse off if reductions in price differentials mean that prices for new customers rise due to waterbed effects. Nonetheless, we recognise that, for consumers who are struggling to pay their bills, being out-of-contract is almost certain to exacerbate problems of affordability. This is particularly relevant for consumers who struggle to engage.
- 6.46 In this context, we see benefits to addressing questions of a safety net for broadband affordability as well as the wider questions of engagement and fairness discussed in this report. Broadband has become an essential service to the way that the majority of us live and work, but we find that 3% of households with the service report struggling to pay for it, while 3% report not having it due to cost. Among DE households, this rises to 5% who do not have broadband due to cost and a further 6% who report struggling to pay for it.¹⁴⁸
- 6.47 These affordability challenges could be addressed in different ways. A basic broadband social tariff is currently provided on a voluntary basis by BT and KCOM as an add-on to the telephony social tariff they are required to offer as designated Universal Service Providers. These products do not have a price differential or any early termination charges.¹⁴⁹
- 6.48 We see merit in considering an industry-wide approach, going beyond the existing social tariffs offered by the designated universal service providers (BT and KCOM) today. Our evidence from this review suggests that the four main providers have customers from the DE social group, and that such potentially vulnerable customers can face particular barriers to switching between providers. This makes it harder to access a social tariff for customers who are not already with BT or KCOM.

¹⁴⁸ See Ofcom's [Affordability Tracker 2018](#), Tables 5, 6, 18 and 19 (Q5, Q6, Q10a/Q10b). The figures cited in this paragraph are based on those with some responsibility for paying for their communications services.

¹⁴⁹ These products have relatively low take up, which could be due to low levels of promotion, the size of the package, or the fact that customers with other providers would need to switch to be eligible. BT's package has a speed of 10Mbit/s and a monthly allowance of 15GB for £9.95 a month, while KCOM's has a range of packages available, including a fibre package with a speed of 30Mbit/s and monthly allowance of 20GB for £20 per month. See BT, [What do you get with BT Basic + BT Broadband](#) and KCOM, [Social Access Package](#).

- 6.49 Developments in the provision of services under a social tariff would require additional legislation – either based on EU law or wholly domestic legislative provisions. In part, that may depend on the UK’s future relationship with the EU. In July the Government consulted¹⁵⁰ on its proposed approach to transposing the new European Electronic Communications Code which includes requirements in relation to social tariffs. In the event that the UK is required to continue to align with EU rules, the UK must adhere to the transposition deadline of 21 December 2020.
- 6.50 We will continue to review the affordability of broadband and explore the possibility of social tariffs. We will work with Government to consider how such a tariff might be implemented, including any appropriate legislative changes, in any event.

Improving the evidence on vulnerable consumers’ experience of broadband

- 6.51 Data on vulnerability, both directly from providers and from consumer research, is important to understand whether consumer outcomes are improving, including the distributional impact of price differentials.

We are consulting on a guide to meeting the needs of vulnerable customers

- 6.52 We welcome the steps that providers have taken since our data request in November 2018 to improve their identification and recording of customer vulnerability. As part of this, providers have continued engaging with Ofcom following the introduction of the vulnerability requirements in General Condition C5 in October 2018.
- 6.53 However, given the relatively small numbers of customers providers identified as potentially vulnerable – under 2% (when excluding age and financial vulnerability) compared to 21% of adults who report having a disability in the Family Resources Survey¹⁵¹ - we believe there is much more progress providers can make in identifying vulnerable customers.
- 6.54 This is important to ensure that vulnerable consumers receive the general support they need with their services and that providers can help them overcome barriers to getting a good deal. In addition, better recording will help us and providers assess whether they are taking the right steps to protect vulnerable consumers.
- 6.55 Alongside this document, we have published a consultation on a guide for treating vulnerable consumers fairly.¹⁵² Subject to that consultation, we plan to publish the final version of the guide early next year.
- 6.56 The guide is designed to help providers ensure that vulnerable customers receive the help, support and services they need. It also includes two areas that are particularly relevant to improving identification of consumers experiencing vulnerability.

¹⁵⁰DCMS, 16 July 2019, [Implementing the European Electronic Communications Code](#).

¹⁵¹ DWP, 28 March 2019, [Family Resources Survey 2017/18](#), page 7.

¹⁵² See Ofcom, September 2019, [Treating consumers fairly: A proposed guide for phone, broadband and pay-TV providers](#).

- 6.57 First, we propose to encourage providers to better publicise the extra help and support that is available for vulnerable consumers. The draft guide calls on providers to give all customers a statement about the help they offer customers who are vulnerable or have any specific accessibility or customer service needs, and explain how they can sign up for that help. We encourage providers to make this statement available in hard copy, as well as being published on providers' website, so that its contents are widely accessible.¹⁵³
- 6.58 Second, we want providers to continue improving how they identify vulnerable consumers. The guide recommends that they ask all new customers at the outset (and existing customers at the earliest opportunity that arises) whether they have any specific accessibility or customer services needs that the provider could help with. It also suggests they offer a range of ways that customers can inform or update their provider about any vulnerability, such as online account forms, telephone and webchat.
- 6.59 Taken together, these changes can increase customers' incentives to share their specific needs with their provider and improve providers' ability to recognise and support vulnerable customers. Our consultation closes on 20 November 2019.

We are taking further steps to improve evidence on outcomes of consumers experiencing vulnerability

- 6.60 Our current evidence on vulnerable consumers' outcomes in broadband, while substantial, is limited by two main factors.
- 6.61 The first is that evidence from providers relies on customers giving them information on their vulnerability and consenting to it being recorded on the provider's customer service system. This evidence will always be limited by the extent to which customers are willing to disclose this information to their provider.¹⁵⁴ The steps set out in the guide will help to tackle this problem, but even with improvements, provider-based information is likely to remain incomplete.
- 6.62 The second is that evidence from consumer research surveys is limited. While it is effective at achieving an understanding of personal circumstances and vulnerabilities, participants are less reliably able to recall the details of the package they are on, whether they are in or out-of-contract, or the price they are paying.¹⁵⁵

¹⁵³ Our research suggests that a customer's willingness to share information with their provider is often linked to trust. We also found that customers with a physical vulnerability or a proxy decision maker may be more likely to disclose information than those with other vulnerability characteristics such as mental health problems or those with new or developing vulnerabilities.

¹⁵⁴ Our qualitative research suggests that a customer's willingness to share information with their provider is often linked to trust in their provider and an understanding of what it will be used for. We also found that customers with a physical vulnerability or a proxy decision maker may be more likely to disclose information than those with other vulnerability characteristics such as mental health problems or those with new or developing vulnerabilities, who stated they were much less likely to do so.

¹⁵⁵ For example, our provider data shows that 40.8% of customers are out-of-contract. In our quantitative research for this review (see Annex A6, Figure 5), we found that only 31% reported being out-of-contract.

- 6.63 We are therefore considering linking survey evidence to customer records held by providers to produce the best possible information on prices and packages that customers are on. Specifically, we are considering the following:
- a) Commissioning our own survey of consumers and linking data from consenting respondents to providers' records, with appropriate safeguards for data privacy and anonymity.
 - b) Linking providers' customer records to data from consenting respondents through another survey run externally, also with appropriate safeguards for data privacy and anonymity. For example, we could link data from a large survey of consumers run by the Office for National Statistics (ONS) or a research body (such as a university), to the records that providers hold.

Support for consumers without access to superfast broadband

- 6.64 As discussed in section 5, we note that customers without access to superfast broadband do pay slightly more than the same provider's standard broadband customers in other areas, although most price differences are below £1 in absolute terms. However, we are concerned about the fairness of a practice that results in a group of consumers experiencing the downside of a pricing strategy that provides incentives to upgrade to superfast services by raising standard broadband prices, when these customers cannot benefit from its upside because superfast services are not available where they live.
- 6.65 We noted above that most consumers in these areas are with BT or a BT Group provider. We are therefore pleased that BT has committed to offer eligible customers service enhancements such as a 4G hub boost and, for those who do not take this option, they will provide a price reduction on standard broadband so that customers do not pay more than the new customer price for a superfast product. This means that hundreds of thousands of customers on standard broadband are likely to receive a significant automatic monthly discount of ₤ from mid-2020.

We will continue to actively monitor consumer outcomes and will take further action if we don't see improvements

- 6.66 This report is part of a wider programme to improve fairness and outcomes for broadband consumers. We recognise that some measures have only been introduced very recently and others are yet to take effect. It will therefore be important to monitor and report against progress in securing better consumer outcomes over a longer period of time.
- 6.67 As set out in this report, to understand consumer outcomes we consider it essential to move beyond simple comparisons between prices paid by newly contracted and out-of-contract customers. Loyal customers can generally make significant savings by either switching to a new provider or by re-contracting with their current one.
- 6.68 From our analysis, the greatest harm to customers arises when they cannot take advantage of the deals available by switching or re-contracting because of barriers to engagement.

Barriers to engagement may include lack of confidence, customer confusion about contract status, or behavioural biases (that, for example, may lead to consumers putting off a decision to engage). Where providers take advantage of such barriers, and in particular where this negatively affects vulnerable consumers, this can heighten concerns about the fairness of the consumer experience and/or the distribution of benefits between providers and consumers (or between consumer groups).

- 6.69 Therefore, in order to measure changes in consumer outcomes we propose to report on:
- The proportion of consumers who are new customers, re-contracted and out-of-contract, and the proportion of consumers within those categories who are vulnerable;
 - The extent to which consumers are aware of their contract status;
 - The advertised new customer and out-of-contract prices offered by leading providers, in order to raise awareness among consumers about where they can find the best deals for their needs;
 - The extent to which providers identify and provide appropriate support to their customers who are vulnerable, and who may need extra help in understanding which deal is right for them.
- 6.70 We will repeat detailed customer-level data collection and analysis to provide an update on broadband price differentials and consumer outcomes in March 2020. We intend to report on broadband pricing at least annually.

Summary

- 6.71 Promoting competition will continue to be a key part of Ofcom's approach to ensuring consumers get the most from their communication services. We believe this is the best way to ensure the investment in new high quality full-fibre networks which is required to deliver good outcomes for consumers into the future.
- 6.72 However, we recognise that competition alone cannot deliver this for all consumers. Ofcom strongly believes that all customers should get a fair deal for their communications services.
- 6.73 The introduction of end-of-contract and annual best tariff notifications will help more consumers avoid out-of-contract prices and support re-contracting consumers to get better deals. We recognise too, though, that an information remedy may not be sufficient for many vulnerable consumers who face specific barriers to engaging.
- 6.74 The legal framework under which we operate tightly restricts the circumstances in which we can impose price caps. However, we do not think that we need to impose them at the current time. Instead, voluntary commitments made by industry, including those to protect vulnerable consumers and those living in areas with less choice, will take effect more rapidly and can provide targeted support to help ensure consumers get a fair deal. They can give consumers the right level of protection, with fewer risks of the unintended consequences price interventions can have.

- 6.75 The legal framework under which we operate tightly restricts the circumstances in which we can impose price caps. However, we do not think that we need to impose them at the current time anyway. Instead, voluntary commitments made by industry, including those to protect vulnerable consumers and those living in areas with less choice, will take effect more rapidly and can provide targeted support to help ensure consumers get a fair deal.
- 6.76 Such commitments could give consumers the right level of protection, with fewer risks of the unintended consequences price interventions can have. However, we will keep that under investigation and, where we think providers should do more, we will say so and seek to secure that they do it. If we think other forms of intervention may be appropriate, we would consider how we might implement them.
- 6.77 We will also review affordability in the broadband sector and explore the introduction of a social tariff to protect those consumers most in need. We will also explore a collective switch to further reduce barriers to engagement and unlock the benefits of switching.
- 6.78 We intend to report on the extent to which consumers are getting a fair deal through publications such as our annual pricing report. If we have concerns that those customers who are less well equipped to engage are not on the right deal for their needs, we will take further action.

The overview section in this document is a simplified high-level summary only. The decisions we have taken and our reasoning are set out in the full document.

A1. Legal framework

- A1.1 The legal framework for our review is set out in the Communications Act 2003 (the 'Act') and is derived from EU law.
- A1.2 The Act gives us a number of regulatory functions and places on us a number of duties we must fulfil when exercising them. Section 3(1) says our principal duty is:
- a) to further the interests of citizens in relation to communication matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- A1.3 In performing that principal duty, section 3(3) of the Act requires us to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as any other principles appearing to us to represent best regulatory practice.
- A1.4 Section 3(4), meanwhile, says that, in performing our duties, we must have regard to certain matters (as they appear to us to be relevant). These include: the desirability of promoting competition in relevant markets; the desirability of encouraging investment and innovation in relevant markets; the needs of persons with disabilities, of the elderly and of those on low incomes; the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection; and the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- A1.5 In addition, section 3(5) requires that, when performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- A1.6 The Act also requires that, when we are exercising some of our functions (such as under sections 26 and 51 – see below), we must act in accordance with the six European Community requirements described. These include requirements:
- a) to promote competition in the provision of electronic communications services;
 - b) to secure that our activities contribute to the development of the European internal market; and
 - c) to promote the interests of all persons who are citizens of the European Union.
- A1.7 The functions and powers the Act gives us include that, under section 26 of the Act, we must publish information and advice for the benefit of consumers where we consider it appropriate to do so in order to carry out our functions. Other provisions give us the power to set regulatory conditions: provisions with which providers must comply in order to provide services in the UK.
- A1.8 In particular, section 45 of the Act says we may set (and modify) general conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64.

Under section 51(1)(a), we have a wide power to set general conditions making such provisions as we consider appropriate for the purpose of protecting the interests of electronic communications services consumers. Section 51(2) sets out a non-exhaustive list of the conditions that fall within this category.

- A1.9 The circumstances in which we can set or modify general conditions are set out in section 47(2). They say that such conditions must be objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which they relate,¹⁵⁶ not unduly discriminatory, proportionate to what they are intended to achieve, and transparent.
- A1.10 Using these powers, we have set a number of general conditions (the 'General Conditions'). These include conditions concerning the treatment of vulnerable consumers and those with disabilities, as well conditions requiring providers to give consumers end-of-contract and annual best tariff notifications and setting out processes for switching providers.
- A1.11 For instance, General Condition C5.2 requires CPs to implement policies and procedures "for the fair and appropriate treatment of Consumers whose circumstances may make them vulnerable". Under Condition C5.3, such policies must include, as a minimum:
- a) practices for ensuring the fair and appropriate treatment of consumers who the provider has been informed or should otherwise reasonably be aware may be vulnerable due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement;
 - b) how information about the needs of consumers who the provider has been informed or should otherwise reasonably be aware may be vulnerable will be recorded and the different channels by which these consumers will be able to make contact with, and receive information from, the provider; and
 - c) how the impact and effectiveness of the policies and procedures are monitored and evaluated.
- A1.12 The EU framework from which our powers are derived is changing. It was made up of four Directives imposing requirements that Member States and their National Regulatory Authorities ('NRAs') must meet (by implementing them into national regulation). These have been updated and replaced by the European Electronic Communications Code (the 'Code'). This is a new EU Directive imposing requirements on Member States and NRAs.
- A1.13 The Code passed into EU law on 20 December 2018 and the deadline for implementing it into national law is 21 December 2020. As the law currently stands, we have a duty to secure its objectives by that date and, until then, not to do anything that would undermine their achievement.

¹⁵⁶ Section 47(3) of the Act says the requirement for objective justification does not apply to the setting of a general condition. However, we apply it as part of the requirement for the condition to be proportionate.

- A1.14 The Code's implementation deadline falls after the date of 31 October 2019 by which the UK plans to leave the EU. The UK Government has previously said it was minded to implement substantive provisions of the Code into domestic law and has consulted on related matters. Our approach in this document takes account that there are different possibilities depending on the UK's future relationship with the EU. The following sets out the position where the Code applies (and notes relevant positions under the existing framework directives).
- A1.15 The Code contains a number of provisions about the protection of end-users of communications services (including consumers). These are based on the principle of 'full harmonization.'¹⁵⁷ That means that, in the areas covered by those provisions, Member States and NRAs must ensure that the national regulatory system gives end-users the protection specified. In those areas, more or less stringent provisions are not allowed, unless a specific provision of the Code says so. One objective of this approach is to ensure a high, common level of consumer protection across Member States.¹⁵⁸
- A1.16 Relevant consumer protection provisions of the Code include those concerning switching provider (Article 106) and equivalent access and choice for end-users with disabilities (Article 111). The provisions concerning affordable 'social' tariffs for broadband services and dealing with price controls and caps are also relevant.
- A1.17 Under Article 106, NRAs may set processes for switching. This power reflects the importance of switching for effective competition between providers.¹⁵⁹
- A1.18 Article 111 requires that end-users with disabilities must be given access to, and choice of, communications services equivalent to that enjoyed by the majority of end-users. The Code also maintains our ability to take measures to protect other vulnerable consumers.¹⁶⁰ These provisions recognize the important, fundamental rights to which these groups of consumers are entitled.¹⁶¹
- A1.19 Articles 84 and 85, meanwhile, require Member States and NRAs to ensure that all consumers have access to an affordable broadband service and give them powers to set a 'social tariff' for such a service in certain circumstances. The objective of these provisions is to provide a safety net that ensures all end-users, including vulnerable consumers, have access to services which are increasingly seen as essential and exclusion from which can prevent full social and economic participation in society.¹⁶²
- A1.20 Each of the provisions described should also be considered in the context of the whole Code. It is a wide and coherent framework for the communications sector and it covers a

¹⁵⁷ Code Article 101

¹⁵⁸ Code Recital 257

¹⁵⁹ Code Recitals 277 - 282

¹⁶⁰ Since these measures would be in areas outside the scope of the Code's full harmonisation requirements. See recital 257 and 296, and Article 101.

¹⁶¹ Code Recitals 296 and 297.

¹⁶² Code Recitals 212 – 225.

range of matters designed to harmonise (to varying degrees) the regulation of communications networks and services across the EU.

- A1.21 In particular, and like the existing framework directives it replaces, the Code seeks to promote effective competition between providers on the basis that this will lead to lower prices and other benefits for citizens and consumers. To do that, and again like the existing framework, the Code includes provisions dealing specifically with such competition and the circumstances in which regulatory authorities may control wholesale and retail prices. It provides for specific consumer (and other end-user) protection measures, and protection for vulnerable people, alongside the provisions designed to promote competition.
- A1.22 Because promoting competition between providers is one of the key objectives of the Code, it strictly limits the circumstances in which regulatory authorities may impose price controls or caps.¹⁶³ For instance, it says that such controls may be imposed on dominant providers who, because of their significant market power (SMP), would be able to charge excessive prices.¹⁶⁴ It also says that regulators can only impose price controls on providers who are not dominant in very limited, specific cases.¹⁶⁵ Such cases do not include where the prices non-dominant providers charge are higher than they might be if customers engaged more with the market and shopped around.
- A1.23 The effect of the relevant provisions is that, as long as it applies to the UK, the Code falls short of giving us the power to impose controls on the retail prices of broadband services generally. The existing framework is to the same effect.

¹⁶³ Code, Articles 68 – 74.

¹⁶⁴ Code, Articles 68 and 74. In those cases, wholesale price controls must be considered first and regulators may only impose retail price controls on dominant providers as a last resort, if wholesale controls would not work – see Article 83.

¹⁶⁵ Code, Articles 68 - 74

A2. Fairness Framework

- A2.1 As part of our Fairness for Customers programme, we published a draft Fairness Framework on 17 June 2019. The Fairness Framework is intended to help providers by providing further insight into how Ofcom is likely to assess whether customers are being treated fairly, including the kinds of fairness concerns that are more likely to lead Ofcom to intervene in a market or markets.
- A2.2 The draft Framework sets out five high-level questions that could be considered in the round in thinking about whether provider behaviour or market outcomes look concerning from a fairness perspective.
- A2.3 The consultation period for the draft Framework closed on 12 August 2019 and we received around 20 responses from stakeholders. We are currently reviewing these responses and plan to publish a follow-up document that takes account of them by the end of the financial year.
- A2.4 In the table below, we have applied the questions set out in our draft Framework to illustrate how we might apply that framework to the pricing practices in fixed broadband examined in this review. Below, we set out a short summary of these issues based on the findings presented in Sections 3 to 5 of our report (drawing on the more detailed analysis and research in Annexes 4 -7).

Questions	We are more likely to be concerned where...	Findings
How do providers treat customers throughout the customer journey?	<p><i>Information is not clear, easy to understand and timely</i></p> <p><i>Behavioural biases are exploited</i></p>	<ul style="list-style-type: none"> Information is usually provided by providers (for example, on broadband speeds, usage limits, bundled services and new and out-of-contract prices) but our research indicates that some consumers find the broadband market confusing or difficult to engage with. Ofcom’s guide on choosing a broadband service was well-received by consumers in our research. End-of-contract and annual best tariff notifications will also provide clearer information. The impact of this intervention will be evaluated after it comes into effect in February 2020. Our consumer research indicates that behavioural biases are present for some consumers and can be more pronounced among vulnerable consumers, potentially contributing to them remaining on high out-of-contract prices or being less inclined to switch provider.

Who is being harmed?

Customers are not supported in making well-informed decisions

Problems are not fixed promptly

Vulnerable customers are being harmed

The practice has relatively small offsetting benefits, such as market expansion through low price offers

What is the extent of the harm?

Many customers are affected

The harm to each customer is significant

- Identified behavioural biases include loss/regret aversion, status quo bias and reduced headspace.
- A number of customers appear to remain out-of-contract for a long time, despite the high-cost to them from doing so (i.e. taking account of the significant savings available from re-contracting with their existing provider or from switching provider).
- End-of-contract and annual best tariff notifications will help many consumers in making well-informed decisions, but have yet to take effect. More may need to be done for vulnerable consumers. We found that providers could do more to identify their vulnerable consumers, some of whom may need additional support.
- This is outside the scope of this review.
- According to the data from providers, out of the 8.8m out-of-contract customers, 1.5m are vulnerable consumers (43% of all vulnerable consumers, compared to 41% for all consumers); and in some cases, pay more than non-vulnerable customers.
- Certain vulnerable consumers may be less likely to respond to end-of-contract and annual best tariff notifications.
- The practice of providing introductory discounts can benefit consumers, for example incentivising them to switch or take-up services (especially faster connections only available on new technology). Waterbed effects may be significant but incomplete, meaning high prices for some may not be fully offset by lower prices for others.
- Around 8.8m are out-of-contract, of which more than 3m have been so for more than 2 years.
- End-of-contract and annual best tariff notifications are expected to go some way to reducing the number of customers who are out-of-contract in future.
- Average out-of-contract vs new customer differential is £9-10/month and the average out-of-contract vs re-contracted customer differential is £8-9 per month.

How important is the service?

The service is seen by customers as highly important or essential, rather than 'nice-to-have';

Does the service depend on risky new investment?

The service is a legacy service with predictable demand and costs and little need for new investment, rather than being a new service with uncertain costs and demand and requiring significant investment.

- However, the averages mask significant variation for certain customers and among providers.
- There is likely to be some price rebalancing following the introduction of end-of-contract and annual best tariff notifications.
- Broadband is increasingly seen as essential by consumers to the way they live and work.
- 80% of UK households have a fixed broadband connection and usage grows year-on-year (700% over the last five years to 2018).
- While standard broadband is increasingly a legacy service, superfast and ultrafast broadband – especially delivered over full-fibre – require (or recently required) risky investment.
- Therefore, any interventions would need to be targeted so to avoid unintended consequences for take-up of (or incentives to invest in) fibre networks.

A3. Glossary

Act: The Communications Act 2003.

Bundle: A combination of more than one service provided by a single communications provider. This can include different types of service (e.g. broadband and landline, or pay TV and broadband) and be provided under one or multiple contracts.

Discounted price: The introductory price paid by new customers of a provider which is discounted below the list price.

Differential: The monthly difference in price charged by a provider to customers on equivalent services, based on average prices paid by whether they are a new customer, re-contracted, or out-of-contract.

Dual play: Landline and broadband services provided by a single communications provider.

General Condition ('GC'): A general condition imposed by Ofcom under section 45(2)(a) of the Act.

In contract: A customer who is within their minimum contract period, either in their first contract or having re-contracted.

Fixed commitment period (or minimum contract period): The fixed period of time over which the communications provider and a customer have entered into an agreement for communications services and for which an early termination charge may be payable by the customer if they cancel their contract during this period.

List price: The standard undiscounted price, also known as the out-of-contract price, which consumers pay if they finish their minimum contract period and do not re-contract, switch provider or cancel their service.

Mbit/s: Megabits per second (1 Megabit = 1 million bits). A measure of bandwidth in a digital system.

New customer: refers to customers who are within their first fixed commitment period for the service provided by the communications provider.

Out-of-contract: refers to customers who are outside of the fixed commitment period but are still paying for a service provided by the provider (e.g. via a rolling monthly contract).

Quad play: Landline, broadband, pay TV and mobile provided by a single communications provider.

Qualitative research: Semi-structured primary research (often held in focus groups) involving small numbers of selected individuals. The results are collected through insights and behaviours observed or noted from the sessions.

Quantitative research: Structured primary research (often a survey) to collect quantifiable data from a sample of participants which represent a sample of the population of interest.

Re-contract: refers to customers who are within their second or subsequent fixed commitment period for the service provided by the communications provider.

Standard broadband: Broadband services that deliver download speeds of less than 30Mbit/s, typically over a copper telephone line

Superfast broadband: Broadband services that deliver download speeds of 30Mbit/s or higher, typically over fibre-to-the cabinet connection or coaxial cable (on Virgin Media's network).

Triple play: landline, broadband and pay TV services provided by a single communications provider.

'Waterbed effect': An effect that can occur when constraining a firm's prices or revenues in one part of its operations will lead it to an increase in prices elsewhere.