# Calling the shots?

## Exploring opportunities for more assertive consumer protection in the mobile phone market

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## Citizens Advice: Standing up for consumers

Citizens Advice is the official advocate of consumers in England and Wales. In this role we advise 1.4 million people a year on consumer issues through our local advice centres, take 1.2 million calls to our consumer helpline and help 9.1 million unique users with consumer issues through our website.

When we spot patterns in the issues we're seeing, or identify new scams or sharp injustices, we work with government, regulators and firms to fix the broken policies or practices that underlie these problems. To help us do this we have unique statutory powers to request information from companies, for example to expose misleading billing processes or hidden charges.

In this report we turn our eye to the mobile phone market, analysing the consumer problems we see and exploring opportunities for stronger consumer protections. This is the first in a series of outputs on the mobile market, alongside our wider work in markets from the private rental sector to energy and consumer credit.


## Acknowledgements

The authors are grateful to Adam Scorer and Marzena Lipman for detailed comments on the draft and to staff at Ofcom and the Office for National Statistics for help accessing data used in this report.

# Contents


| | |
|---|---|
| Executive summary | 1 |
| Chapter one: Recent trends in the mobile market | 4 |
| Chapter two: Findings from our case data | 15 |
| Chapter three: Opportunities for a stronger approach | 28 |
| Conclusion | 36 |

## Executive summary

The mobile phone market has transformed in the past 30 years as mobiles have evolved from a niche product into an essential part of everyday life. Ninety five per cent of households now have a mobile phone and take-up is 99 per cent among young adults.[1] In basic respects the UK's mobile phone market is functioning well: prices have fallen and innovation is booming as mobile technologies become more advanced. These trends are welcome but too many consumers still come to us with problems related to mobile phones; 21,500 did so last year alone. In this report we therefore explore opportunities for stronger protections in the mobile market.

In the first chapter we step back to consider what recent trends in the market mean for consumers. We find several good reasons to reassess how consumer protection is working.

- First, **mobile phones now look far more like an essential utility** than they did 15 years ago, with more people relying solely on their mobile for communication. These 'mobile-only' households are five times more common in socioeconomic group DE than AB, also raising questions of equity.[2]

- Second, while the price of mobile communication has fallen, **the total cost of contracts appears to be rising as contracts get longer**. The average mobile contract is 19 per cent longer than it was in 2009 and 24 month contracts are now the norm.[3] This ups the stakes for consumers and raises issues of flexibility.

- Third, **the consumer experience is complex**; on one estimate, there are 7 million different mobile phone product options.[4] Complexity does not always mean confusion. But now the competitive landscape is changing too, bringing more product bundling and consolidation of network providers. These are fertile conditions for consumer detriment.

While these trends carry upsides for consumers, they also carry risks. In the second chapter we therefore look at what our evidence tells us about consumer detriment. Last year 21,500 people called us about a problem with their mobile service. Meanwhile telecoms as a whole now ranks fourth in the consumer issues we see,outranked only by second hand cars, building repairs and energy. In order to understand more fully what might be causing these problems we have conducted an in-depth analysis of a sample of 500 cases. This has identified four key issues:

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[1] Ofcom (2015) The Consumer Experience of 2014
[2] ibid.
[3] Citizens Advice analysis of data from Ofcom (2015) The Consumer Experience of 2014
[4] Bill Monitor (2012) The Billmonitor.com National Mobile Report 2012.

- 39 per cent of our cases relate to **faulty mobile phones** and in particular to confusion over who is responsible when a mobile breaks. We see widespread uncertainty over how responsibilities divide between independent mobile retailers and mobile networks.

- 17 per cent of the cases relate to **standards of service and contract exit terms.** Typically these clients receive no or poor signal despite checking coverage maps and then struggle to escape their contract without large exit fees. These cases often come down to ill-defined or unreasonable minimum standards of service.[5]

- 16 per cent of the sample related to **misleading sales practices.** These are people who have received inaccurate information about the nature, cost or quality of the service at point of sale.

- 12 per cent of the issues related to **billing disputes**. These callers have often been hit without warning by a sky high bill, some as high as £3,000. This includes cases of mobile phone theft in which our clients have been hit by bills up to £23,000 to cover costs incurred by a mobile phone thief.

Aside from a residual 5 per cent of miscellaneous issues, the remaining 10 per cent of our callers had run into problems re-selling their handset through phone recycling websites. These cases dried up after Cash4Phones, a key player in this market, ceased trading in January 2014.

In the third chapter we use this evidence to explore opportunities for sharper consumer protections. This discussion is relevant to Ofcom's forthcoming strategic review of digital communications, reminding us that this work could strengthen consumer protections, and indeed *should* make this a priority, particularly in the context of any further deregulation.

We identify three avenues that are worth exploring. First, there is potential to do more to **address fragmentation**. As things stand, mobile networks are regulated by Ofcom, independent mobile retailers fall under Trading Standards, and mobile networks themselves are asked to monitor the independent retailers that sell their products. This fragmented approach has long caused confusion and our new analysis suggests that this remains the case.[6] There is more that government, Ofcom and others could do on this.

[5] Ofcom limits contract exit fees to the remaining monthly fees and suggests networks deduct the cost of providing the service, although in practice many do not. In many cases, terms of contract exit are ill-defined or unreasonably demanding. For example, the standard terms and conditions of one network note that customers can exit their contract without penalty if the entire UK network fails for seven consecutive days.

[6] For earlier work on the consumer experience see: Communications Consumer Panel (2013) *Going Round in Circles: The consumer experience of dealing with problems with communications services*

Second, in many cases there is a need for more **assertive interventions** from both government and the regulator when detriment is clear cut or stubborn. Our new analysis suggests that today's approach is still too reliant on self-regulation, and consumers continue to pay the price for the delay this causes. For example, victims of phone theft are still being hit by unjust bills despite promises from government that a voluntary agreement would cap consumer liability 15 months ago. More assertive steps should also be taken on the wider issue of unexpectedly high bills.

Third, the regulator could do more through **consumer-facing mechanisms** such as clear minimum standards of service and contract exit rights**.** This would complement today's focus on technical solutions. For example, Ofcom has sought to improve coverage with a universal service obligation linked to the 4G spectrum auction. Yet technical agreements, however tightly written, rarely translate into a universal consumer experience on the ground. The approach would be stronger if backed up by pressure from clear and biting rights for mobile phone users.

Progress in these areas could yield real benefits to consumers. We also know that progress is possible when government and regulators work together. The Financial Conduct Authority (FCA) is a case in point: an expanded remit is being used to improve consumer protection in markets from high cost credit to credit brokers. The FCA's example, albeit operating in a different context, is a useful reminder of how broader remits and tougher rules can come together to powerful effect.

In the coming months we will be exploring these avenues more fully, describing specific steps that government and the regulator could take in each area.

## Chapter one: Recent trends in the mobile market

In recent decades the mobile phone market has transformed as mobile phones have evolved from a niche product into an essential part of everyday life. Part of this transformation has been a simple story of rising uptake. But the mobile market is still maturing in other ways, from changing consumer behaviour to an evolving competitive landscape. In this chapter we explore these trends in richer detail, highlighting the key benefits and risks for consumers that these trends raise.

The most obvious change the mobile phone market has undergone in the last two decades is in the level of uptake. After a period of sustained growth up to 2007, household mobile phone ownership has neared saturation point at 95 per cent.[7] Although take up is high across all demographics, younger people are leading the way; take up amongst  people aged 25-44 is 15 percentage points higher than those aged 64-74 (99 per cent and 84 per cent respectively).[8] Those in socio-economic groups AB (96 per cent) are also more likely to own a mobile phone than those in groups DE (88 per cent).[9]

Strong growth in the take-up of mobile phones could suggest a simple story of a market that is working well. But there is also a more nuanced story here; some recent developments in the mobile market have elevated risks to consumers. We point to four particularly pertinent developments.

### Mobiles are fast becoming an essential utility

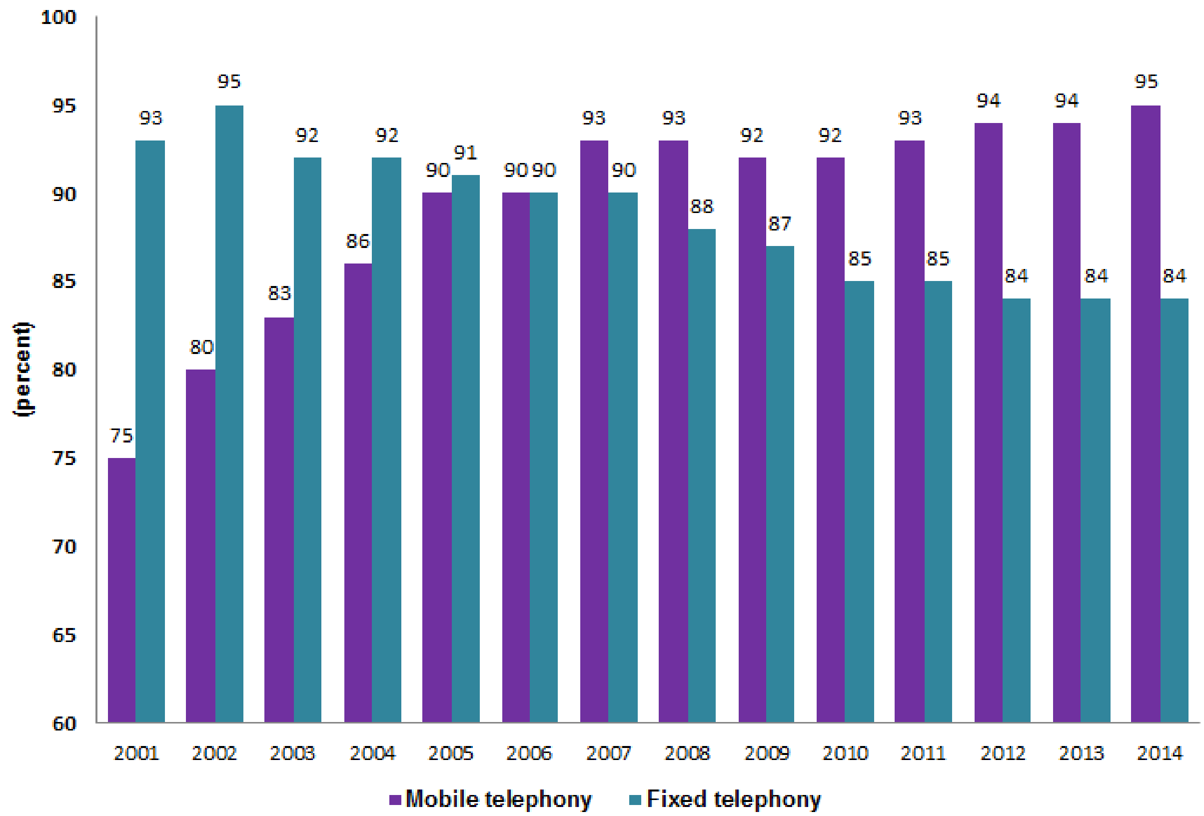
First, mobile phones now look far more like an essential utility than they did even 15 years ago. This is reflected not only in levels of usage but in the fact that a growing number of households are turning their back on fixed line telephones. Only 84 per cent of households now have a fixed line telephone, 11 percentage points fewer than those with a mobile phone. Importantly, this trend is most pronounced among low income households, which are *five times* more likely to rely solely on their mobile phone (26 per cent) than the highest earners (5 per cent).[10]

People's reliance on mobile communications is only likely to strengthen over time; 27 per cent of 16 to 24 year olds are now mobile-only compared to 10 per cent of 45-64 year olds. These figures are reflected in the fact that mobiles are now seen to be vital to many

[7] Ofcom (2015) The Consumer Experience of 2014
[8] Ibid.
[9] Ibid.
[10] Ofcom communications tracking survey (2008-2014)

aspects of modern life.[11] The market is, in effect, evolving into an essential service not entirely dissimilar from energy or water. In the context of consumer protections, this is an important development.

**Figure 1: Mobile phone ownership is approaching saturation point**
Proportion of UK households which own a mobile phone or fixed line phone




*Source: Citizens Advice analysis of Ofcom (August 2014) The Communications Market Report data*

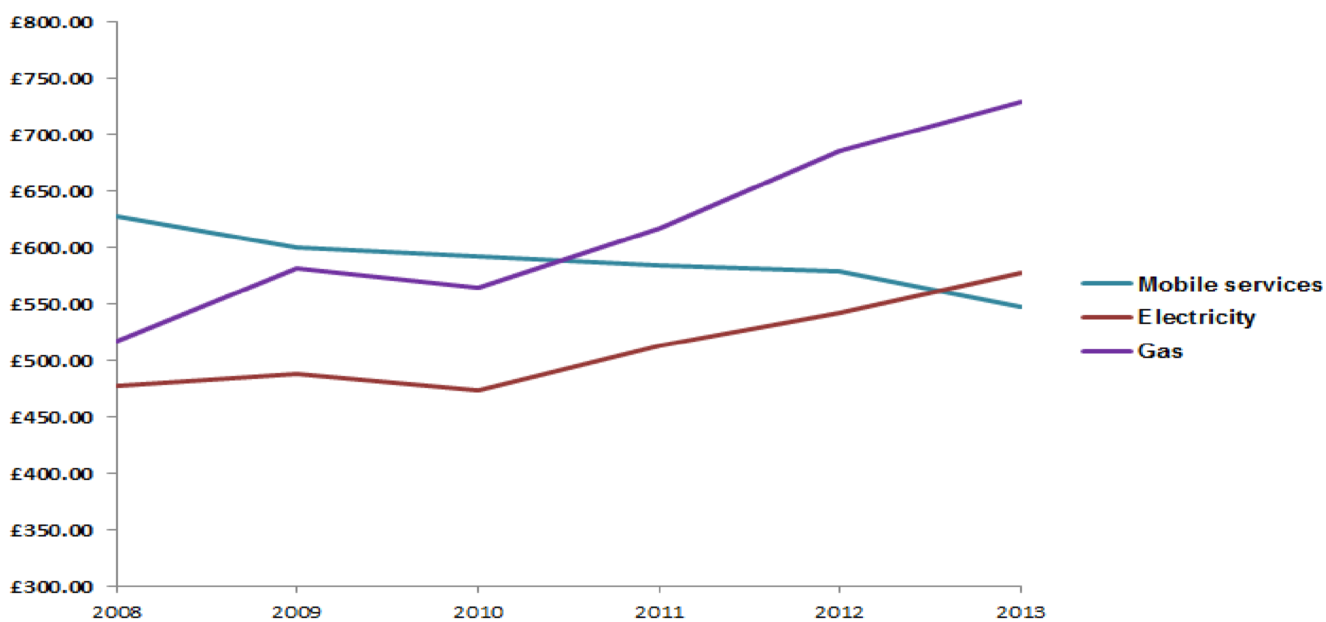
[11] Ofcom (2014) Results of research into consumer views on the importance of communications services and their affordability.

### Contracts are getting longer as people spread out the price of their handset

Second, while the headline price of mobile communications has fallen, mobiles are becoming a more substantial purchasing decision as contract length rises. This fact only emerges when we dig into data on prices and consumer behaviour to understand how contract length and structures are changing.

At a basic level, price data tells a positive story. Consumer Price Index (CPI) data shows that the price of mobile communications has been falling in real terms—even while the price of other essentials has been soaring. This CPI data is 'technology- adjusted' through a formula that tries to compare similar goods over time. As such, this data tells us that a phone today costs less than a roughly equivalent model ten years ago. We see these inflation trends reflected in the bills people pay. The average monthly mobile bill in 2013 was just under £46, down from £52 in 2008, meaning annual bills have fallen from £628 to £548.[12] This stands mobile phones in stark contrast with many other household essentials. In the same period, for example, combined gas and electricity bills rose by nearly a third (31 per cent).[13]

**Figure 2: Mobile bills have fallen in real terms while the cost of other essentials has risen**
Average annual cost of bill, £




*Source: Citizens Advice analysis of Ofcom (August 2014) The Communications Market Report data (Fig. 1.12), DECC (December 2014) Average annual domestic electricity bills by home and non-home supplier and Decc (December 2014) Average annual domestic gas bills by home and non-home supplier.*

[12] Ofcom (2014) The Consumer Experience of 2014
[13] Citizens Advice analysis of Ofcom (August 2014) The Communications Market Report data, DECC (December 2014) Average annual domestic electricity bills by home and non-home supplier and DECC (December 2014) Average annual domestic gas bills by home and non-home supplier.

However, while unit costs and monthly bills are falling, the overall amount people spend on a mobile contract is rising as the industry shifts to longer term contracts. In 2009, below 1 per cent of mobile phone contracts were two years long. By the start of 2010 this had risen to 50 per cent and, in latest data, 60 per cent of mobile contracts were two years long (the longest permitted by Ofcom under EU rules).[14] Meanwhile, 18 month contracts made up 60 per cent of the market in 2009 and have now all but disappeared. This is not a simple story of lost flexibility; specialist operators like Giffgaff have also emerged to meet demand for more flexible contracts and one month rolling contracts now account for 17 per cent of the market. These deals are mostly 'SIM only', not including the cost of a handset.

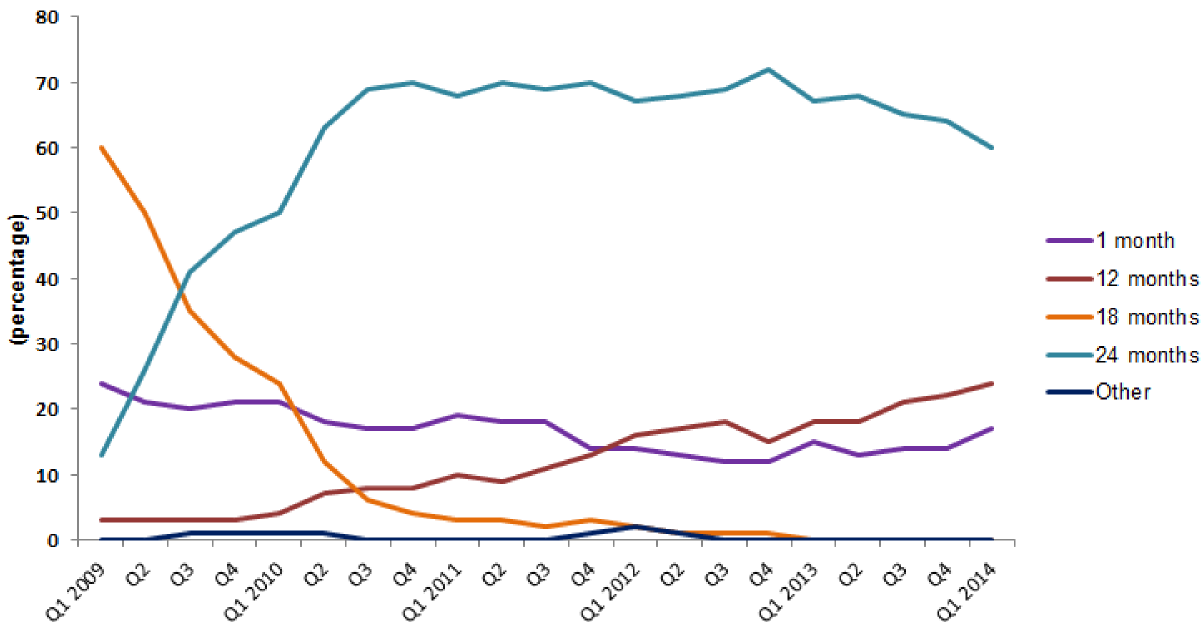
We can see the overall effect of these trends by bringing together data on average monthly bills with average contract lengths. On the basis of a simple weighted average, the average mobile contract length rose from around 14.5 months in Q1 2009 to 17.3 months in Q1 2014 (the latest quarter for which data is available).[15] This is a 19 per cent increase over five years. We can give an indicative sense of the overall costs this implies by combining this data with average monthly spend.[16] Even with monthly bills falling in this period, this would imply a 14 per cent rise in the average total spend over the course of a contract from £725 to £828.[17] If the distribution of costs between different contract lengths has changed significantly in this period, this figure could be an over- or under-estimate, and further research in this area would be helpful. However, the central point stands: that mobile phones appear to be becoming a more substantial purchasing decision, raising the stakes for consumers, and raising questions of flexibility and contract exit.

As well as rising contract length, there has been a switch away from pay-as-you-go services toward contracts. This trend is likely to continue in coming years, with the switch having been most pronounced amongst younger people. Three quarters of mobile phone users aged 16-44 now have a contract, compared to just 16 per cent of those aged 75 and above.[18] This shift is likely to have been driven partly by efforts from mobile providers to switch customers to higher spending monthly contracts; the average monthly retail revenue per customer for post pay contracts is £25.21 compared to just £5.19 for pre-pay users.[19] And indeed some firms have increased the cost of prepay

[14] In 2009, the EU revised telecoms legislation to reduce the maximum contract length to 24 months and obliged mobile operators to make shorter length contracts available. These provisions were implemented in 2011.
[15] Citizens Advice analysis of data from Ofcom (August 2014) The Communications Market Report
[16] This analysis assumes that monthly contract spend is evenly distributed across contracts of different lengths, and so could under- or over-state the implied total cost over the course of a contract.
[17] Average monthly cost data is only available through to the end of 2013. For consistency in this calculation we therefore use data for contract length from Q4 2013. This suggested an average contract length of 18.4 months in late 2013, slightly higher than in Q1 2014.
[18] Ofcom (2014) The Communications Market Report
[19] Ibid.

tariffs and now only provide subsidised smartphones for customers who take out long contracts.[20]

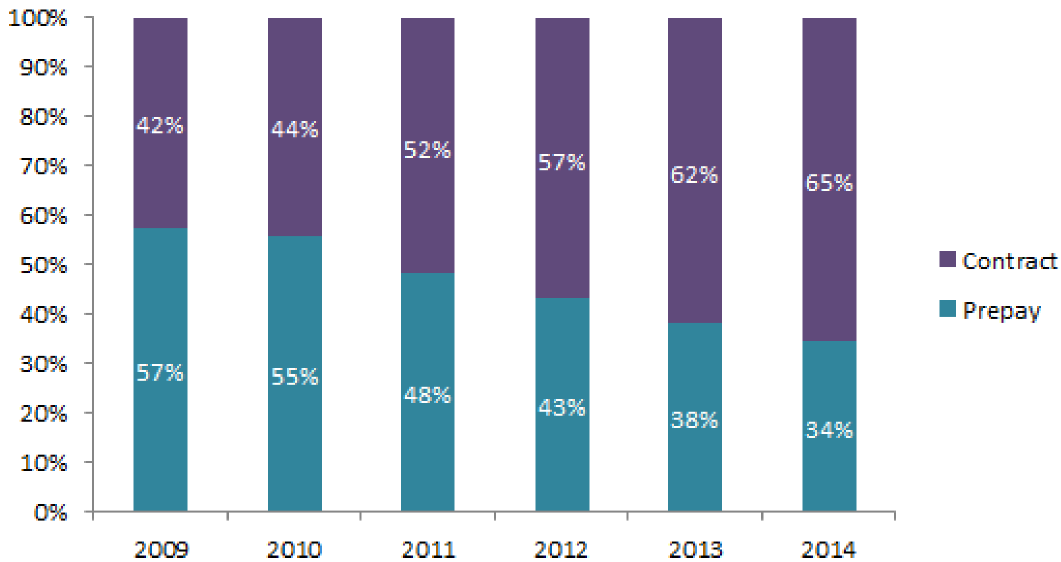
**Figure 3: Contract length has risen and two year contracts are now the norm**
Proportion of mobile phone contract customers by contract length




*Source: Citizens Advice Analysis of Ofcom (August 2014) The Communications Market Report data*

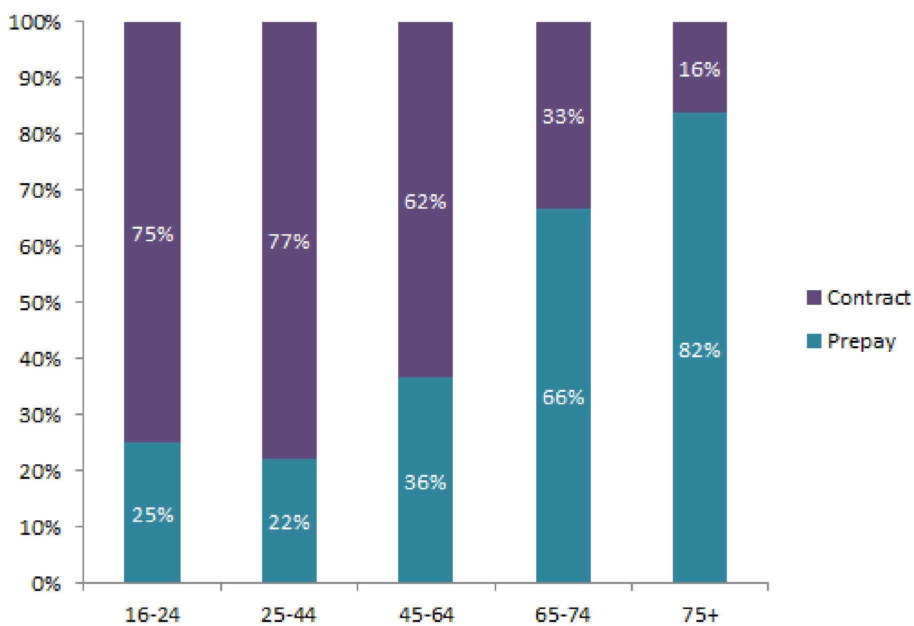
[20] See p.94, Ofcom (2013) The Consumer Experience of 2012

**Figure 4: There has been a marked shift from pre-pay to contracts**
Proportion of mobile phone customers by payment arrangement




*Source: Citizens Advice Analysis of Ofcom (August 2014) The Communications Market Report data*

**Figure 5: Young people in particular now principally use contracts**
Proportion of mobile phone customers by payment arrangement by age group



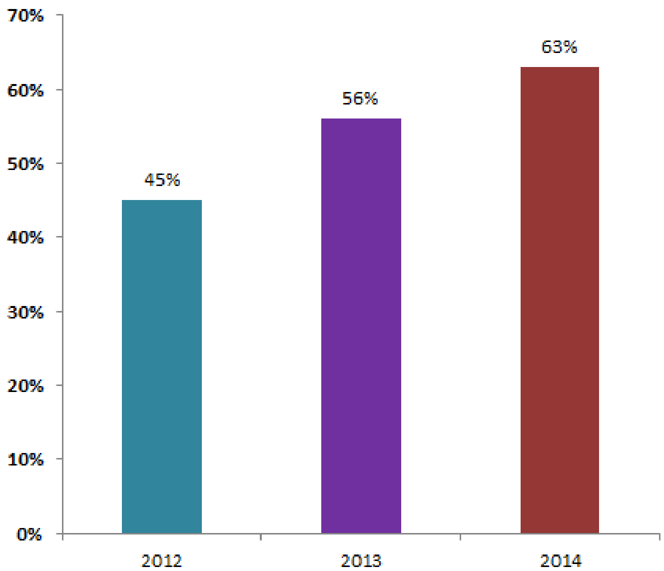

*Source: Citizens Advice Analysis of Ofcom (August 2014) The Communications Market Report data*

The price trends outlined above make sense when we consider how mobile handsets have changed. CPI data tells us that a roughly equivalent handset now costs less than it used to as technology has advanced. But market share data tells us that most people do not buy the same handset they used to—they have upgraded to a smartphone, the cost of which is spread over a longer contract.

More than half (63 per cent) of the adult population now own smartphones, which perform many of the functions of a computer.[21] While overall growth in smartphone ownership is beginning to slow, take up amongst those aged 45-64 rose 14 percentage points to 58 per cent in 2014.[22] Smartphones are also beginning to challenge desktops and laptops when it comes to internet access; 23 per cent consider their smartphone their primary means of accessing the internet while 5 per cent rely solely on their mobile phone for internet access.[23] More than a third of visitors to our own Adviceguide website now access the site using a mobile phone, up from less than 10 per cent in 2011.

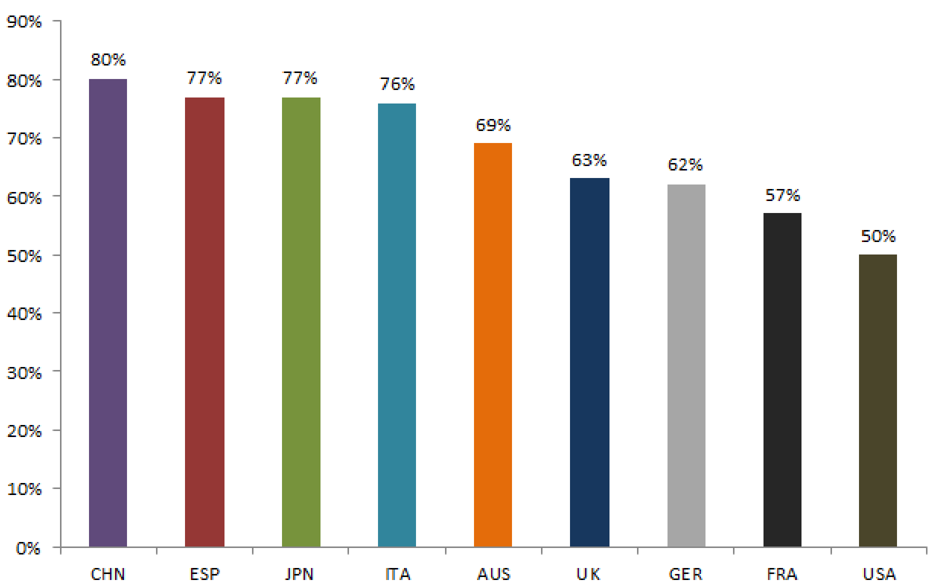
[21] Ofcom (2015) The Consumer Experience of 2014
[22] Ibid.
[23] Ibid.

**Figure 6: Smartphone ownership continues to rise**
Proportion of UK adult population owning a smartphone



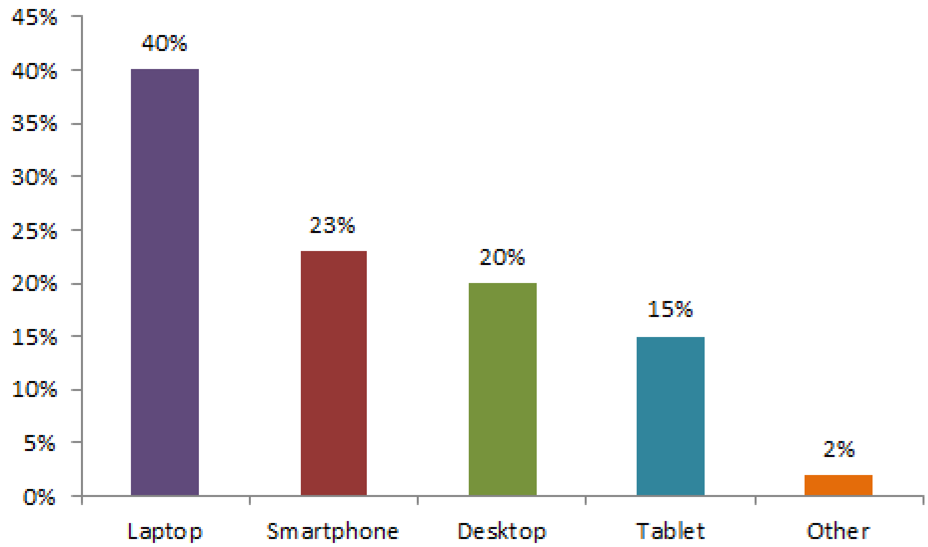

*Source: Citizens Advice analysis of data from Ofcom (August 2015) The Consumer Experience 2014*

**Figure 7: The UK is a middling performer when it comes to smartphone take-up:**
International smartphone take-up rates



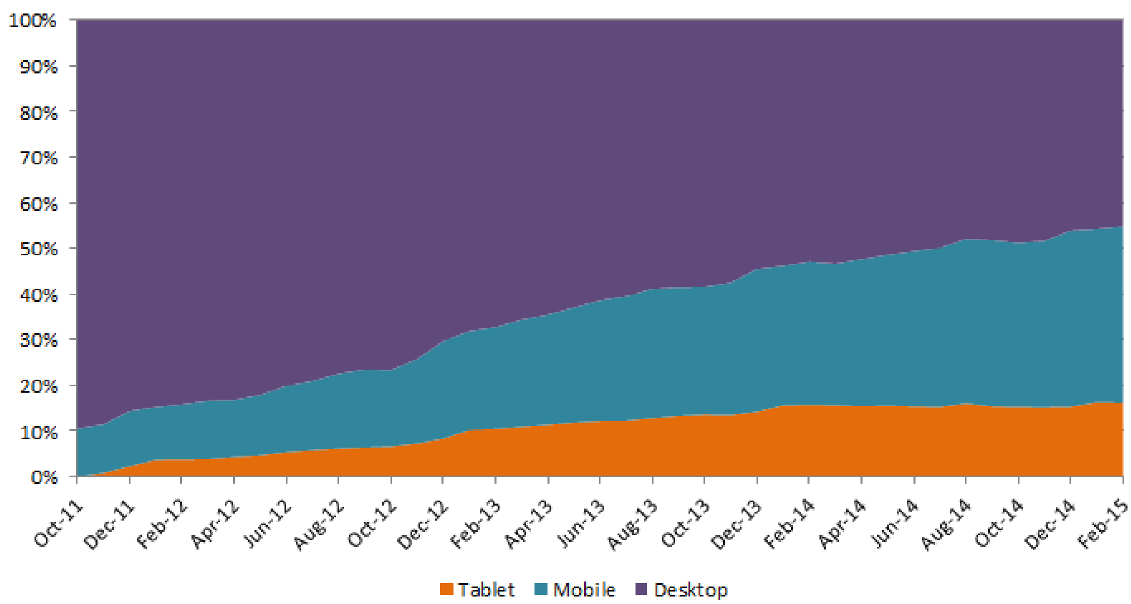

*Source: Citizens Advice analysis of data from Ofcom (August 2014) International Communications Market Report*

**Figure 8: Smartphones are now the second most used device for using the internet**
Proportion of adults using each device as main way of connecting to the internet




*Source: Citizens Advice analysis of data from Ofcom (August 2015) The Consumer Experience of 2014*

**Figure 9: More than a third of visitors to Adviceguide now access the site using a mobile phone**
Proportion of people visiting Adviceguide using a desktop, mobile phone or tablet




*Source: Citizens Advice analysis of adviceguide web analytics*

### The market is complex and can be hard to navigate

Third, while innovation and technological advances have brought huge benefits to consumers, they also run the risk that the mobile market becomes confusing and hard to navigate. As well as selecting a handset and supplier, consumers must choose from a wide range of tariffs varying in price, contract length and the extent of inclusive minutes, text messages and data. There is little reliable data on the total number of tariffs available but a recent analysis of the bills of more than 28,000 people found that there were more than 7 million different options to choose from.[24] This can make it hard to compare offers across the market, with evidence suggesting that many mobile phone users are paying more than they need to.[25]

With innovation also feeding through into more advanced handsets, and from there into longer contracts, it is also becoming increasingly important that consumers understand the different elements of their bill. Most, though not all, networks combine the cost of the handset, in many cases lent on credit, with the cost of the ongoing service charge. This makes it hard to establish how much is being paid for different elements of the bill. In a world of long, high value contracts, this can become important; for example, our clients often find themselves negotiating to exit a contract and struggling to understand which elements of the bill relate to repayments for a handset and which relate to ongoing service provision.

### The competitive landscape is changing, creating fertile conditions for detriment

Finally, market commentators now anticipate several prominent changes in the competitive landscape of the mobile phone market that could reduce competition or the benefits to which it leads.

On the one hand, there are expectations of new entrants, heralding the greater use of product bundling. In December last year British Telecom announced that they were re-entering the mobile market through their acquisition of EE. This was followed by Sky's decision to offer mobile phone services in partnership with O2 in January. These developments would allow these key players to offer fixed line, pay TV, broadband and mobile phone services in bundles known as 'quadplay'.

Bundled products are not new to telecoms but attempts to bundle mobile services have had limited success to date; only 3 per cent of consumers who bundle two or more of their communications services pay for their mobile phone in this way.[26]While bundled

[24] Analysis released by Carphone Warehouse quoted in Bill Monitor (2012) The Billmonitor.com National Mobile Report 2012
[25] Bill Monitor (2012) The Billmonitor.com National Mobile Report 2012
[26] Ofcom (2015) The Consumer Experience 2014

services offer benefits to consumers from cost savings to convenience, they can also make it harder to compare deals: nearly one in five people (19 per cent) believe that it is very or fairly difficult to compare the costs of bundled products, compared to 16 per cent for mobile phone deals.[27]

On the other hand, changes are expected that would consolidate the number of network operators. For example, Three Mobile announced in January 2015 that they are in talks to buy O2. If this deal goes ahead, the number of network operators in the UK mobile phone market will have reduced from five in 2009 to three. This would represent a reduction in consumer choice in a market previously characterised by relatively robust competition. As with bundled products, this change would not automatically result in detriment for consumers, but these changes justify vigilance from consumer groups and stress again that consumer protection should be a prominent concern in Ofcom's upcoming strategic review.[28]

## Conclusion

The trends outlined in this chapter confirm that, in fundamental respects, the UK mobile phone market is working well. But recent developments also elevate the risks facing consumers in several respects.

Mobile phones are now more like a utility than they were even 15 years ago, used by almost everyone, essential to everyday life and the sole means of phone communication for a growing proportion of people, particularly in socio-economic groups DE. Meanwhile, the unit cost of mobile is falling but long contracts are becoming the norm, raising the stakes for consumers. At the same time, the market is unprecedentedly complex, with as many as 7 million options on offer. With changes in the competitive landscape now widely expected, there is a risk that this creates fertile conditions for consumer detriment.

In the next chapter we consider what our own data can bring to a consideration of consumer detriment in the mobile market, present new analysis of the issues reported to our consumer service and reflect on what useful lessons, if any, this could hold for the regulatory regime.

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[27] Ibid.
[28] On 12 March Ofcom announced a strategic review of digital communications "to make sure digital communications markets continue to work for consumers and businesses." The review's Terms of Reference can be found at http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/DCR_Terms_of_reference_12_March_2015.pdf

## Chapter two: Findings from our case data

The Citizens Advice Consumer Helpline took 33,500 calls about telecoms products or services in the past year. 21,500 of these calls related to mobile phones. In addition to our helpline support, our physical network of advice centres helped people with 7,500 telecoms problems in the same period. The data we gather from our advice work can make a unique contribution to considerations of consumer detriment in the mobile market, acting as a useful complement to data from the regulator and industry. In this chapter we present new analysis of our data and case notes, describing the issues we see and drawing out common threads that could carry lessons for the consumer protection regime.

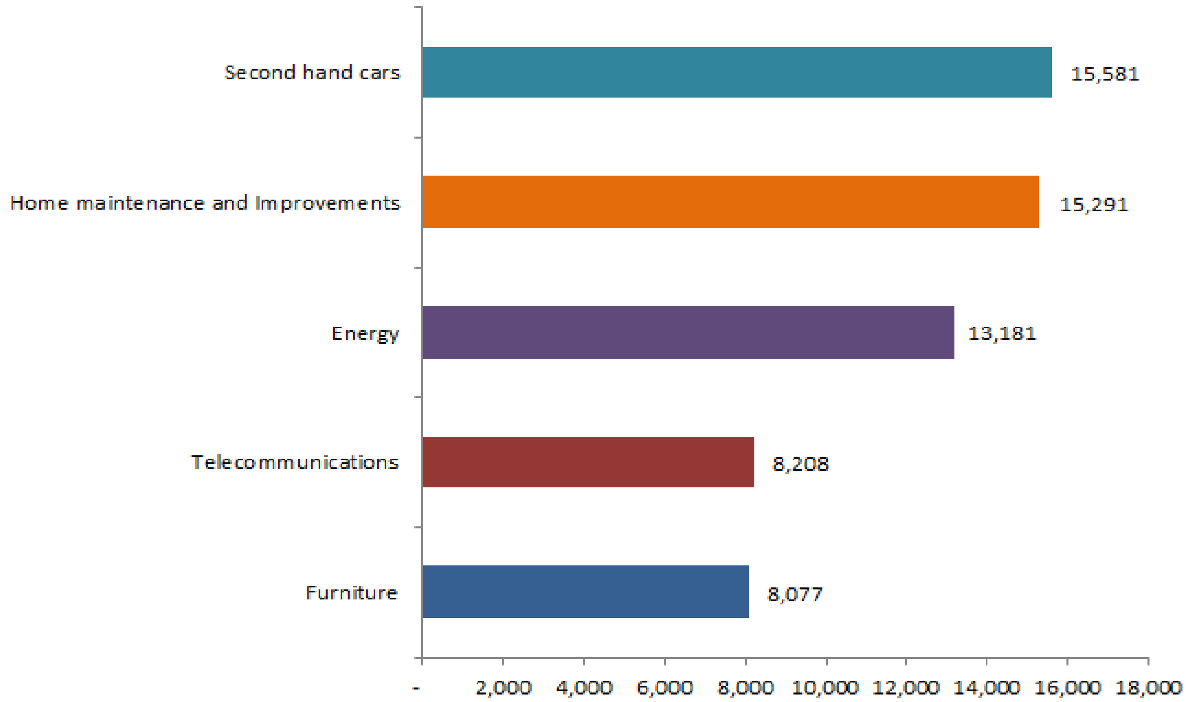
### Telecoms is a top five issue for our consumer service helpline

The category of telecoms, which includes mobile phones, is now the fourth biggest category of consumer problem we see, having overtaken furniture in the second quarter of this year. The other markets that rank this high in our data are second hand cars, building repairs, and energy. These markets have well-established failures and this is not comfortable company for telecoms, a market in which prices have been falling and in which there is an established regulatory regime. An analysis of this data can broaden our understanding of how consumer outcomes in telecoms compare to other markets, complementing complaints data from the regulator and industry and wider consumer attitudinal surveys.[29]

[29] For example, the Consumer Futures *Consumer Conditions* report analysed European consumer attitude survey data, suggesting that the mobile phone market scores comparatively well on consumer choice and poorly on trust. p.42, Consumer Futures (2012) *Consumer Conditions in the UK 2012*

**Figure 10: Telecoms is now the fourth largest category of consumer issues reported to Citizens Advice Consumer Service**

Number of calls to the Citizens Advice consumer service helpline in Q3 2014/15, categorised by tier two issues

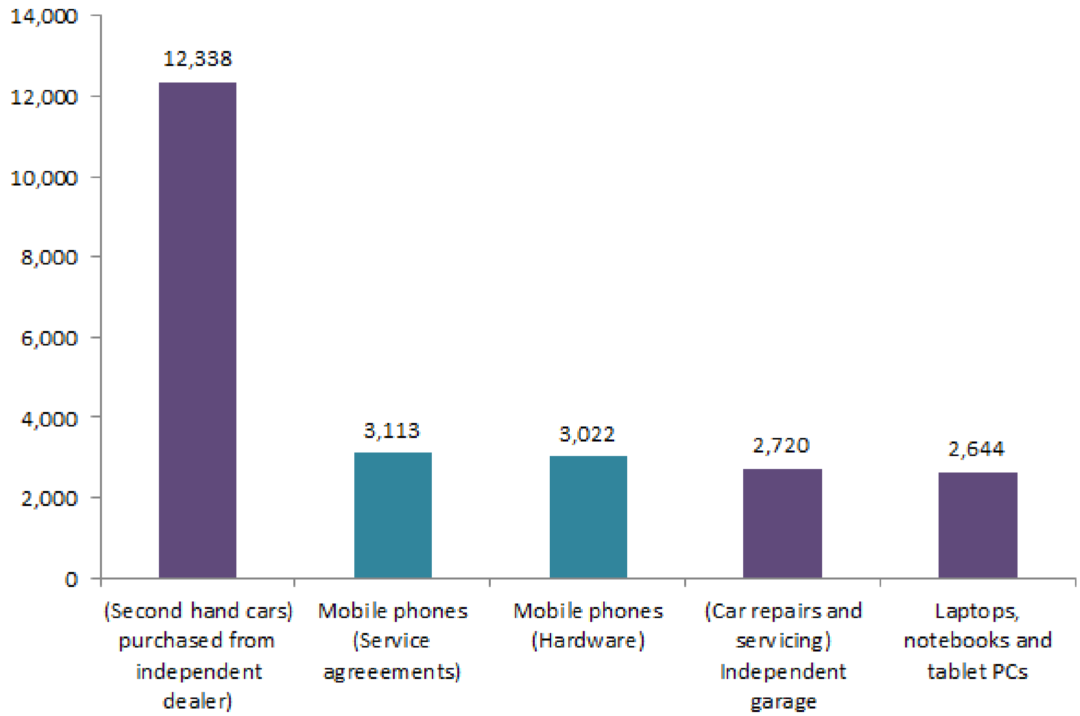



***Source: Citizens Advice Consumer Helpline data Q3 2014/15***

Drilling down a stage further, in the last quarter the categories of 'mobile phone service agreements' and 'mobile phone handsets' have leapfrogged 'car repairs and servicing' to become the second and third most common category of specific consumer detriment reported to our consumer helpline.[30] The only issue reported to us more frequently than these two categories was 'second hand cars bought from independent dealers'. Clearly the volume of issues we see partly reflects the size of different markets and the volume of purchasing decisions made. Even so, this is not an envious comparator given the well known consumer problems in the second hand car market.

[30] These categories were the second and third most commonly reported issue among our Tier 3 categories, the most detailed level of our consumer detriment coding system.

**Figure 11: Mobile phones feature prominently on our consumer helpline**
Number of calls to the Citizens Advice consumer service helpline in Q3 2014/15, categorised by tier two issues




*Source: Citizens Advice Consumer Helpline data Q3 2014/15*

What is driving the volume of mobile phone issues reported to our consumer helpline? The Citizens Advice consumer service routinely codes the issues raised in each case we are called about. These codes describe in broad terms the problem the person is calling or emailing about. The codes are designed to be applicable to the purchase of all types of goods and services. Although this makes the data extremely useful for exploring consumer detriment across the economy as a whole, it means that more detailed analysis and 'recoding' is often required to diagnose problems in a specific market.

In order to see what lay behind the problems we see in the mobile market we looked at a randomly selected sample of 500 cases from the 21,500 we see per year.[31] By reading the detailed case notes for each case we then sorted the cases into five broad categories of detriment:

[31] Cases were taken from what were the last four reported quarters when we conducted the analysis in December 2014, Q3 2013/14 to Q2 2014/15. In line with our remit we only considered cases where the caller was resident in England or Wales, however in some cases the trader concerned was based in either Scotland, Northern Ireland or outside of the United Kingdom. In total we looked at 525 cases, 4.8% of which were either repeats, incorrectly coded or blank.

- Faulty handsets and confused lines of responsibility
- Poor standards of service and ill-defined contract exit terms
- Misleading sales practices
- Billing disputes
- Reselling used Handsets

These categories are of course not unique to the mobile market; we see problems with defective goods or inflexible contracts across all markets. They do, however, give us a broad framework through which we can explore the mobile market in particular. Any recoding of this kind inevitably contains an element of subjectivity, particularly when coding cases at the border of two categories. When carrying out this analysis we were guided by a number of questions. What aspects of this case are most relevant to a consideration of consumer detriment in the mobile market? And is this case associated with any particular aspect of consumer protection?

This analysis requires three important caveats. First, case records only give a snapshot of a problem; they do not tell us whether the issue was eventually resolved. Second, we make no attempt to judge the merits of each case; we are reporting consumer complaints and confusion as they arise, not assessing the merits of these complaints or this confusion. Third, our cases only record the consumer's side of the story, not the traders. Nevertheless, if interpreted carefully, our records can give a rich insight into the type of issues which drive consumers to seek help. Below we explore in detail how these problems manifest themselves.

**Table1: Calls to Citizens Advice Consumer Helpline about mobile phones, broken down by category of detriment between Q3 2013-14 and Q2 2014-15**

| | Proportion of cases | Implied number of calls to the consumer helpline |
|---|---|---|
| Faulty handsets | 39% | 8,800 |
| Standards of service and contract exit | 17% | 3,500 |
| Misleading sales practices | 16% | 3,300 |
| Bill disputes | 12% | 2,500 |
| Selling used handsets[32] | 10% | 2,100 |
| Other | 5% | 1,000 |

Source: Citizens Advice analysis of data from Citizens Advice Consumer Service

**Faulty handsets and confused lines of responsibility**

Problems with faulty handsets made up 39 per cent of the calls we looked at. The distinguishing feature of these cases is not the fault itself, but confusion over who is responsible for fixing the phone. Our case notes reveal widespread confusion among both retailers and consumers about the nature and level of redress to which a consumer is entitled when a handset develops a fault.

Sometimes callers were enquiring about a phone that had been suffered accidental damage which, in consumer law, it is usually the consumer's responsibility to fix. Other consumers had bought a product with an inherent fault and were entitled to assistance from the retailer that had sold them the product. In both cases, many callers were unclear who they should approach to resolve their problem: the third party retailer that sold them the mobile phone, the network that sends them their bill each month or the manufacturer of the phone. Our clients were frequently passed between the three, with each claiming that one of the others is responsible. Two recent cases indicate the nature of these problems:

> Toby called the Consumer Helpline when his new mobile phone would not charge. He had complained to the retailer, who had agreed to send a new charger which

[32] Cases in this category were concentrated towards the first quarter of the sample (Q3 2013/14), before the closure of cash4phones (the trader named in the majority of these cases (see below))

did not arrive. When Toby followed up with the firm he was told they were not responsible for faults and was told to speak to the manufacturer. The manufacturer agreed to send the phone to a third party for repair but then returned the phone saying they were unable to conduct repairs on this model. Toby was left with no other route to resolution.

Jen's mobile phone stopped working after a software update.  She took the phone to the manufacturer's store but they refused to help because she had had the phone for more than a year. Jen was told to contact the retailer who had sold her the phone. When Jen did this she was told that the retailer could only repair the phone if she supplied a letter from the manufacturer explaining the nature of the fault.  The manufacturer refused to do this 'for legal reasons', leaving Jen with no working phone and no way to resolve her problem.

Consumer law states that traders are responsible for ensuring the goods they sell are fit for purpose. Retailers must provide either a repair, replacement or a refund (depending on the precise circumstances) when this is not the case. These rights are widely misunderstood but the confusion we see is particularly notable in the mobile market, with consumers often caught in a three-way relationship with a mobile provider, retailer and manufacturer. Our clients have often found themselves passed between these three parties with none willing to take responsibility for the faulty goods.

Consumer law is also clear about when a retailer's responsibilities expire. If a good is not fit for purpose a consumer can pursue a claim against a retailer up to six years after the good has been purchased. In such cases, the consumer must show that the good has failed to meet reasonable expectations, showing, for example, that a mobile handset has failed before the end of a contract. Despite this, we see clients misled on these rights. Some were told that the retailer's responsibilities no longer applied because a one year manufacturer's warranty had ended. Some were told their rights had expired past the 14 day cancellation period. There is little excuse for retailers or providers to give inaccurate information on these fronts.

## Standards of service and contract exit

A further 17 per cent of the problems in the  sample related to issues of poor standards of service and inflexible contract exit terms. These issues are deeply connected; a consumer might find, for example, that the service they are receiving is persistently and severely below the standard they expect, and then find that an inflexible contract makes it hard to leave the provider concerned. In these cases, consumers can be left paying for a service they are not receiving for months and sometimes even years.

Although the cause of consumer discontent varies in these cases, one of the most common complaints is of poor voice or data coverage, with people receiving no signal or intermittent and unreliable signal at home or at work. Often our clients report having checked coverage maps or asked the salesperson who sold them the contract, and having been assured by retailers their chosen network would cover their area. While the cases we see are at the sharp end, we also know that poor service is not uncommon; research by Ofcom found that 14 per cent of mobile phone customers are fairly or very disatissfied with the reliability of their mobile phone service.[33]

The crux of cases in this category, however, is often not the service itself but ill-defined or unreasonably weak minimum standards. This makes it hard to obtain compensation or negotiate a contract exit. Most networks do not define a reasonable minimum level of service or conditions for penalty-free contract exit in their standard pay monthly terms and conditions. Indeed, most take the opposite approach, setting out a range of factors, from network improvement works to adverse weather conditions, that can legitimately affect service. For example, one network's standard terms and conditions, which are broadly representative of the industry's wider approach, state:

> *3.1.1 The quality and availability of Services may sometimes be affected by factors outside our control - such as local physical obstructions, atmospheric conditions, other causes of radio interference, features or functionality of your Device, the number of people trying to use the network at the same time, and faults in other telecommunication networks to which the Network is connected;*[34]

One practical consequence of ill-defined standards of service is that we see clients hit with large contract exit fees even when their service has failed. Ofcom caps the maximum fee that can be charged for early contract exit at the customer's total

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[33] Ofcom (2015) *The Consumer Experience of 2014*
[34] This extract is taken from Orange's standard terms and conditions but these are broadly representative of the industry as a whole. The full terms and conditions can be found here: http://ee.co.uk/content/dam/ee-help/e-gain.s3.amazonaws.com/external/content/Ts%20and%20Cs/New%20terms%20and%20conditions%202015/Orange%20PAYM%20TandCs%20v16.pdf

remaining monthly payments and as contract length has increased in recent years these fees have risen accordingly. As set out in chapter one, the median contract length is now 24 months and market data suggests the most common monthly tariff is around £17.50 a month.[35] A consumer wanting to exit a 24 month contract after 3 months of poor service could be required to pay up to £367. For the 8 per cent of people paying £40 or more for their monthly tariff, contract exit fees in this situation could be up to £840. There is of course a clear basis for fees when a customer is choosing freely to terminate a contract early. But we see many clients facing high contract exit fees after suffering poor service. For example:

> Barry called our consumer service in September 2014 after experiencing persistent problems with his mobile phone for nearly nine months. He had been persuaded by his network to upgrade to a 4G-enabled handset in January but the new phone did not work properly. At first the network suggested his handset was broken and later admitted there was a problem with the local transmitter. Barry asked to exit the contract and was told he would have to pay an £800 exit fee in order to do so.

These situations are not only costly for our clients but also time consuming and stressful, with networks often suggesting trial and error technical solutions with no guarantee of success. One man reported having his sim-card replaced, his phone replaced, and being disconnected from the network for a day and still being no closer to a resolution. Mobile networks face no general obligation to compensate for poor service or to offer free contract exit and this feeds through into our cases. For example:

> When Sinjita took out a twenty four month mobile phone contract she was told she would be able to access 3G service where she lived. Two months into the contract she complained to her network because she was unable to access 3G service in her home. Her network refused to allow her to cancel her contract because she was able to use voice and text services.

In addition to the costs of early contract exit, our cases reveal confusion about the process of negotiating a contract exit at the points when this can be done without penalty. Under Consumer Contract Regulations (CRR) a consumer buying a good over the phone or internet has the right, with limited caveats, to cancel the contract up to 14 days after receiving the product. Our cases suggest mobile networks and retailers do not always honour these rights;[36] some refused to cancel contracts outright while others claimed the cancellation period lasted only seven days. We also see a range of other

[35] The most common tariff is the range £15 to £19.99 and £17.50 represents the middle of this range.
[36] A customer's use of the phone could invalidate this right. However, our clients have reported cases in which contract cancellation rights were denied despite the fact that they had yet to receive the phone.

confusions: some clients thought cancelling their direct debit meant they had cancelled the contract when in fact they were still liable for payments; some were not aware that requesting a Porting Authorisation Code (PAC) did not end the contract until the PAC had been used to move provider; and some had assumed their contract would end automatically after the minimum contract term.

**Box 1: When mobile phone contracts become problem debt**

In addition to the cases we see through our consumer helpline, many mobile phone customers come to our physical advice centres with problems related to debt. We saw 62,000 cases of phone- and broadband-related debts last year. Over two thirds (67%) of these cases related to difficulties dealing with debt repayments. When our debt cases are complex or intractable, we ask our advisers to fill out detailed case notes so that we can take up the issue with firms, policy makers or regulators. These case notes have several common themes.

Perhaps the most worrying story that emerges from our cases is of vulnerable clients who have been signed up for contracts they were incapable paying. One of our local bureaux, for example, helped a client with learning difficulties who had been encouraged to take out two mobile phone contracts apparently without affordability checks. The client was now being pursued for over £600 of debt. This case reflects the relatively weak governance of mobile contracts compared with other forms of consumer credit.

A second theme that emerges from our case notes is of consumers presented with an outstanding bill many months or even years after a contract had been cancelled or ended. In some cases this message comes not from the network provider but directly from a debt collector. The length of time that has elapsed in these cases means consumers often have difficulty finding relevant paperwork.

Jemima took out a mobile contract in 2009. She cancelled the contract by phone 18 months later but the network continued to bill her. Jemima only realised the mistake 11 months later and the network agreed to refund the full amount they had billed. In early 2014, however, Jemima was surprised to receive a letter from a debt collection company pursuing her for £31.66. Jemima received no explanation of how this amount had been calculated and Jemima's former network refused to assist her, saying the debt had been passed on to the debt collection agency.

Finally, our advisers have reported numerous examples of mobile networks being unhelpful when clients are struggling with problem debts. For example, advisers report that firms sometimes refuse to recognise that the client has given the adviser permission to act on their behalf, an approach that is recognised as standard practice in other industries such as financial services. Our recent report on Debt Relief Orders—a debt remedy solution for people with problem debt[37]—highlighted mobile phone providers as particularly difficult to deal with when advisers are using legal debt remedies to help people renegotiate and restructure their debts.

### Misleading sales practices

Misleading sales practices are the third most common source of detriment in calls to our helpline. This accounted for 16 per cent of cases in our sample. We have seen cases of mis-selling in the mobile market change over time. In the mid to late 2000s we saw a spike in complaints about misleading practices centred around cash-back promotions, in which people were promised a cash bonus for taking out a contract and later found themselves ineligible because they had not followed a set of onerous terms and conditions.[38] After effective action by both the regulator and industry we now see very few complaints about cash-back schemes.

Today the main misleading sales practices we see relate to inaccurate information about the nature or cost of the service people are buying. These cases often concern clients who find they have entered into a contract that does not meet their needs. Other clients complained that deals they had seen advertised were not available in stores. Others were not aware they were signing a new contract, with a minimum term, when they upgraded their phone or tariff. Two recent cases are typical of the issues in this category:

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[37] Citizens Advice, (2015), Cutting our losses: the need for good debt collection practice for people with debt relief orders, http://www.citizensadvice.org.uk/cutting_our_losses_web.pdf

[38] Complaints to Ofcom about cashback schemes peaked in 2007 at approximately 665 a month. Ofcom, (2009), Protecting Consumers from Mis-selling of Mobile Services

Medhi called Citizens Advice when he received an unexpectedly high bill. He had recently signed a new mobile phone contract and asked during the sales process whether calls to Jersey, where members of his family lived, would be included in his tariff. Medhi was told such calls would be included but when he received his first bill he found he had been charged for them.

Kathleen came to us for advice when her monthly bill increased by £30 after renewing her mobile phone contract. She had been told by the mobile phone company that the price would stay the same. Jemima felt misled into making the switch, but she was now bound by the new contract terms.

While the details of the cases in this category vary, the common strand that emerges is that claims made at point of sale do not reflect the service that is later received.

**Billing disputes**

Around one in eight (12 per cent) of the cases we see involve a dispute between the consumer and mobile phone provider about a bill. Many of these cases relate to unexpectedly high bills, with our clients often shocked to find themselves liable for extremely high mobile phone bills that have built up quickly and without warning. Some of these cases represent substantial detriment, for example:

Miranda called the Consumer Helpline after she had unknowingly built up a £3,000 mobile phone bill. She had called her network and asked them to add a package of 'unlimited calls to landlines' to her tariff, in addition to an extra 500 minutes of calls to mobiles, at a cost of £6 per month. The network assured her that this change would be made immediately. Five days later Miranda's mobile stopped working and when she contacted her network she was told she had built up a bill of more than £3,000. The changes to her account had been delayed, meaning Miranda was paying for calls she thought were free.

The confusion we see in these cases partly reflects surprise that mobiles do not offer the kind of automatic protections that are now widely used in industries such as banking, meaning that even obviously anomalous spending patterns are not spotted until it is too late. Some losses arise because of administrative error and in these cases the network often acknowledges their mistake quickly. However, many of the cases we see stem from consumers' confusion about their tariff and the services that are and are not included. Large additional charges are often the result.

The most striking problem we see with billing relates to stolen mobile phones. Over the past year Citizens Advice has been calling on the government to cap customer liability when large bills are incurred after a mobile phone is stolen. The number of these cases is relatively small but the harm involved can be life-changing; the largest bill our clients have received is £23,000. We first drew attention to this issue over a year ago yet there remains no limit to consumer liability in these cases. This is in spite of a pledge from the government in December 2013 to work with the mobile networks to reach a voluntary agreement by spring 2014.[39] New analysis for this report reveals that our clients alone have now lost lost an additional £140,000 because of the government's continued delays.

**Box 2: Problems selling second hand handsets**

One in ten calls to our consumer service in relation to mobile phone problems were from people who had tried to sell their used handset through mobile phone recycling websites. These cases told a common story: the website would quote a price based on the individual's description of the phone before sending a prepaid envelope in which the consumer could send the phone to the company. Once the company received the phone the customer would be told that they would not be paid the full amount they had been quoted. Others were told that they company had not received the phone. The volume of calls about this issue declined sharply following the exit of Cash4Phones from the market in January 2014.

## Conclusion

The trends we saw in chapter one gave good reason to reflect on the rules and remits that govern consumer protection in the mobile market. Our analysis in this chapter confirms that there is indeed an uncomfortable level of detriment in the market. We see confusion about lines of responsibility when things go wrong; ill-defined standards of service that mean contract exit is hard even when services fail; misleading sales practices; and people hit by unexpectedly high bills.

What characterises these problems is not their intensity; analysis of our cases does not reveal the kind of spike in detriment that was seen in mis-selling in the late 2000s, nor are we seeing widespread criminal violation of general consumer law. The frustration is

[39] The press notice for this announcement can be found here: https://www.gov.uk/government/news/putting-an-end-to-shock-mobile-bills

instead that many of these problems are longstanding, happening in uncomfortably large numbers, and appear preventable if only efforts were more assertive or proactive.

## Chapter three: Opportunities for a stronger approach

The problems identified in chapter two do not appear insurmountable. In this chapter we therefore explore opportunities for the government and regulator to work together toward a more robust approach. Certainly it would not be surprising if new approaches were needed; in an industry that is changing as fast as the mobile phone market, consumer protection has to run fast to keep up. The discussion in this chapter is pertinent to Ofcom's forthcoming strategic review of digital communications and should, in particular, inform any consideration of further deregulation in the telecoms sector.

### Successes and opportunities in the current regime

Before reflecting on opportunities for a more robust approach, it is important to note the many successes of the regulatory regime in the mobile phone market. As chapter one showed, the UK mobile market has been working well in fundamental respects: prices have been falling, take-up of new products is high and rising, and innovation, in both products and services, is strong. Recent years have also seen a number of clear wins for consumer protection:

- In 2008, Trading Standards and Ofcom took joint action against phone mis-selling by high street retailers. This action was effective in reducing the high levels of consumer detriment we and others saw at this time.
- Ofcom has been supportive of a number of positive steps taken by the EU Commission, including successful work to reduce roaming charges. Ofcom works through the Body of European Regulators of Electronic Communications (BEREC), an advisory body created as a result of the EU Telecoms Package (2009) proposed by the European Commission.
- Ofcom is taking steps to make the cost of calling non-geographic phone numbers clearer and more transparent. This will help to address one of the causes of unexpectedly high bills.
- Ofcom has worked to reduce mobile termination rates (the charges levied by operators for connecting calls to a different network) by 80 per cent over the last decade. This has helped reduce consumer bills.

Are there other opportunities for stronger action to protect consumers? Our cases and data suggest that three areas in particular have potential:

1. There is potential to do more to **address fragmentation**. As things stand, mobile networks are regulated by Ofcom, independent mobile retailers fall under Trading Standards, and mobile networks themselves are asked to monitor the

independent retailers that sell their products. This fragmented approach has long caused confusion and our new analysis suggests that this remains the case.[40] We also find too little scrutiny on sales practices. There is more that government, Ofcom and others could do on this.

2. There is a need for more **assertive interventions** when detriment is clear cut or stubborn. Our new analysis suggests that today's approach is still too reliant on self-regulation, and consumers continue to pay the price for the delay this causes. For example, victims of phone theft are *still* being hit with unjust bills despite promises from government that a voluntary agreement would cap consumer liability 15 months ago. More assertive steps could also be taken on the wider issue of unexpectedly high bills.
3. The regulator could do more through **consumer-facing mechanisms** such as clear minimum standards of service and contract exit rights**.** This would complement today's focus on top down technical solutions. For example, Ofcom has sought to improve coverage through a universal service obligation linked to the 4G spectrum auction. But technical agreements like these, however tightly written, rarely translate into a universal experience for consumers on the ground. The approach would be stronger if backed up by bottom-up pressure from clear and biting rights for mobile phone users.

In the sections below we discuss these areas in more detail and describe some examples of actions that government or the regulator could take in each case.

## Addressing fragmentation in the regulatory regime

The consumer experience of buying a mobile phone is more complicated than that for most other consumer goods. We saw in chapter two that mobile customers can face up to three ways: towards a retailer, a manufacturer and a network operator. This complexity makes clarity of responsibilities all the more important and yet the governance of the mobile phone market is fragmented. Ofcom has clear powers to regulate the four main network operators and virtual networks such as Tesco Mobile and GiffGaff and, through its General Authorisation regime, sets standards of conduct for network operators and intervenes to prevent consumer detriment. However, many mobile phone contracts are sold by independent retailers, including high street chains such as Carphone Warehouse (trading as Dixons Carphone).[41]

[40] For earlier work on the consumer experience of seeking resolution see: Communications Consumer Panel (2013) *Going Round in Circles: The consumer experience of dealing with problems with communications services*
[41] In 2009, 50 per cent of mobile phone sales took place through independent retailers. However, the market has changed markedly since this time.

Ofcom does not have direct powers over independent mobile retailers and regulation of this part of the market instead falls to Trading Standards, an organisation that has seen substantial budget cuts in recent years.[42] In the case of systemic breaches of consumer law, Ofcom can step across this gap, using the Enterprise Act to ask a court for an enforcement order requiring retailers to cease the conduct in question.[43] In 2008, for example, Ofcom joined with Trading Standards Staffordshire to act against retailer Phones4u, requiring the firm to change their return policies for faulty handsets and cease misleading sales practices.[44] In 2009 Ofcom also introduced a General Condition (GC), a legal regulatory power governing mobile phones sales. Yet because the regulator's remit does not extend to independent retailers, the GC does not directly cover this part of the market. Instead, Ofcom asks network providers themselves to conduct due diligence on third parties selling their contracts, in effect turning the firm itself into the regulator.

Our analysis in chapter two showed how this fragmentation plays out in the consumer experience. People find it hard to resolve problems that bridge the network provider and retailer. This helps to explain, for example, the widespread confusion we see when a handset goes wrong. It also helps to explain the many cases we see of consumers who have been promised a particular level of service when taking out a contract in an independent retailer, only to find these promises not honoured by their mobile provider.

As the example of Ofcom's 2008 action shows, the shortfalls of this regime can be overcome in systemic cases of detriment, when Enterprise Act powers come into play. However, the current regime makes it hard to raise standards in several respects.

First, the Enterprise Act becomes relevant only when the law has already been breached; these powers cannot be used preventatively. Second, the Enterprise Act applies to general consumer law rather than to the mobile market in particular. While Ofcom can use enforcement action to ask for changes to specific policies, an intervention of this kind can only be triggered initially by breaches to general consumer law. It would therefore be hard to use the Act's powers to tailor protections to mobile customers, for example, to oblige third party retailers to provide clearer pre-contractual information to consumers about their rights in cases of inadequate mobile phone reception. Third, enforcement action targets individual traders, making it hard to set standards across the market, except by example. Fourth, while Trading Standards has national presence, the organisation acts mainly through its local organisations. While local branches can take

[42] Ofcom, (2009), *Protecting consumers from mis-selling of mobile telecommunications services*
[43] and see Enterprise Act 2002, c.213.
[44] Ofcom (November 2008) Investigation into Phones4U Limited regarding allegations of misconduct in the retail selling and marketing of telecommunications goods and services.

the lead in prosecuting large national chains, as in the Phones4u case, this is far from easy. This limitation has been acknowledged by Ofcom:

> *"Whilst our experience to date is that TSS have been able to pursue retailers in some cases (particularly for cashback mis-selling) and this is effective for retailers who generate a large number of complaints, given the sheer number of mobile re-sellers and retailers, it is practically impossible for TSS to tackle every business that generates complaints and causes consumer harm."*[45]

Funding pressures are now making action even harder as resources are stretched more thinly. Trading Standards Institute believes the average local trading standards budget will have faced cumulative real terms cuts of 31 per cent by 2013/14, rising to 40 per cent by 2015/16.[46]

The problem of fragmentation is not easy to fix. It would not be a natural extension of Ofcom's remit to expect the direct ex-ante regulation of mobile phone retail. Instead, government, Ofcom and others would likely need to agree coordinated steps. This could include, for example, more pressure on networks to police the behaviour of third party retailers, more aggressive enforcement action in partnership with Trading Standards, and work through the Consumer Protection Partnership to join up and resource a more co-ordinated approach. There is also an onus on independent retailers themselves, particularly large national chains, to work more pro-actively with the regulator, networks and government to address consumer detriment.

### Relying less on self-regulation and acting more assertively when detriment is clear cut

The mobile regulatory regime has a longstanding reputation for leaning heavily on self-regulation. In 2009, for example, the Consumer Focus report *Rating Regulators,* noted the view among stakeholders that Ofcom 'relies too much on self-regulatory approaches when the prospects for success are slim'.[47] As noted at the start of this chapter, we have welcomed a number of successful actions since 2009. Yet we still see consumers enduring long delays while voluntary approaches are conceived, drafted, consulted on, launched and refined. In some cases these approaches then fail and are followed only later by effective action. In others, they succeed, but only after many months or even years, during which time people have come to us week after week, sometimes suffering severe detriment. This cautious approach partly reflects industry behaviour, with firms

[45] Ofcom (2009) Protecting Consumers from the mis-selling of mobile services.
[46] National Trading Standards and Trading Standards Institute (2014) Trading Standards Workforce Survey
[47] S. Brooker and A. Taylor, Rating Regulators: Ofcom (Consumer Focus, 2009)

often challenging the regulator's attempts to improve consumer protections through the courts or Competition Appeal Tribunal.

Ofcom's work on misleading sales practices is a good example of the limitations of an over-reliance on self-regulation. In 2007, after noticing a sharp rise in the number of complaints over the previous year, Ofcom worked with the (then) five network operators to a voluntary code of conduct. The voluntary code failed to substantially reduce the number complaints, partly because it did not specify the actions operators were expected to take to ensure independent retailers improved their practices. In 2009 Ofcom accepted that standards were unlikely to improve further without a mandatory approach, and, as noted above, introduced a new General Condition on selling practices. GC 23 (Sales and Marketing of Mobile Telephony Services) came into force in September 2009, over three years after the problem had first been publicly discussed.

Today we see similarly unnecessary delays from government in action to implement a cap on customers' liability for bills incurred when a mobile phone is stolen. The government asked mobile phone companies to take action on this issue in autumn 2013. Ofcom had previously suggested that primary legislation may be more appropriate but in December 2013 it was announced that network providers would soon implement this cap voluntarily.[48] As of March 2015 no industry-wide cap was in place. Delays like this carry costs for consumers; our clients alone have lost £140,000 since March when the government said the cap would be in place and we estimate the wider costs to consumers of bills from stolen mobiles could be as high as £4m a year.

We welcome Three Mobile's recent announcement of a cap of £100 on customer liability in cases of mobile phone theft.[49] But the lengthy delays that have plagued an industry-wide agreement show the costs to consumers from an over-reliance on self-regulatory approaches. The approach stands in contrast to other sectors, for example financial services, where Section 138 of the Lending Code provides for a £50 cap on customer liability when a credit or debit card is stolen—we see no good reason why the government should not legislate for a similar £50 cap in the case of stolen mobile phones. It is also worth noting the FCA's recent action on credit brokers which presents a good example of how the government and regulator can work together, putting in place a broader remit and then using this remit to take decisive, pre-emptive action.

It is also useful to compare the UK's tentative approach to that pursued by the EU in relation to unexpectedly high bills. In 2012, new European Roaming Regulations compelled network providers to send usage alerts to customers about the cost of data

[48] See Annex 1 of the Ofcom response to the 2012 communications review: http://stakeholders.ofcom.org.uk/binaries/consultations/ofcomresponses/Ofcom_response_to_DCMS.pdf
[49] For further information on this policy see: http://bit.ly/19BKr7i

used whilst travelling abroad within EU countries. These regulations also place a cap of 50 Euros on the total bill a consumer can build up for data services used while abroad unless they explicitly opt in to continuing to use these services.

This action contrasts with the self-regulatory approach pursued in relation to caps on domestic bills. The regulator's 2012 Action Plan on unexpectedly high bills sets out a series of steps that Ofcom would like network providers to take to reduce the problem of unexpectedly high bills. A few of these, such as making 080 numbers free to the caller from mobiles, have been inserted into the regulations. However in general UK network providers have resisted compulsory steps on this issue domestically, in part by arguing that there are technical obstacles to solutions such as financial caps on bills built up through calls. The ongoing consumer detriment we see from unexpectedly high bills is one consequence of this. There are clear opportunities for a more assertive approach from both government and the regulator on unexpectedly high bills and, in particular, on the more specific issue of bills from stolen mobile phones.

### Complement technical solutions with consumer-facing mechanisms

A recurring theme in our consumer work is a low level of awareness about consumer rights and routes to redress. Even in straightforward consumer transactions, confusion is common, making clear communication of rights and responsibilities a central aspect of consumer protection. A mobile phone bought on contract is a particularly complex consumer product—part high-tech good, part service and part unofficial credit agreement—making clarity all the more important. In the mobile phone market it is therefore particularly important to strike the right balance between improving consumer outcomes through technical, industry agreements and using more consumer-facing mechanisms such as defining minimum standards which both clarify rights and incentivise firms to take detriment seriously.

The current approach to mobile regulation leans toward the first of these approaches. For example, the regulator has sought to improve mobile phone coverage across the UK by attaching a Universal Service Obligation (USO) to one lot in the recent auction of the 4G Spectrum. This requires the winning bidder (O2 Telefonica) to supply indoor reception to 98 per cent of the UK population and 95 per cent of the population of each of the UK nations by the end of 2017. As a result, a greater proportion of the population should enjoy adequate 4G coverage than currently enjoy 3G coverage. In December 2014 the government also agreed with providers that the proportion of the UK covered by all four network operators would rise from 69 per cent of the country to 85 per cent by 2017.

These are positive developments but, as our cases show, top-down technical agreements, however well drafted, will always leave some consumers to fall through the gaps. For example, coverage is recorded at postcode level and areas which are technically covered can still contain 'not-spots' where signal is poor.[50]

As things stand, mobile phone contracts typically contain clauses allowing consumers to exit their contract without penalty if a network provider is completely unable to provide the service promised. Yet the thresholds for contract exit are often unreasonably high. For example, one network provider's pay monthly airtime conditions state that a customer can end their agreement "if there is a complete failure of the entire UK network for seven days in a row due to something we have done".[51] Standard terms and conditions also typically contain lengthy disclaimers stating that consistent coverage cannot be guaranteed. In practice, a lack of clear and reasonable minimum standards of service means that some consumers are left behind by technical agreements on coverage. Complementing these technical approaches with bottom-up pressure from consumer rights can be a good way of ensuring that universal agreements translate into a genuinely universal customer experience on the ground.

One practical step towards this end would be to define clear contract exit terms in cases of substandard service, and to place a more limited cap on the fees that can be charged. Ofcom currently caps the fee for exiting a mobile contract at the total of the customer's remaining monthly bills. The regulator also says it expects firms to offer a discount on this fee to reflect the cost savings they will make from the customer leaving. In practice several networks do not offer a discount in their standard terms and conditions at all and those that do offer relatively small discounts. For example, the Three network offers a discount of three to ten per cent depending on conditions and EE / T-Mobile offers a discount of four per cent.[52]

It is also notable that other markets for essential services, such as energy and water, are governed by clearly defined standards of service and rules for redress. For example, the Guaranteed Standards scheme introduced by Ofwat describes the circumstances in which a consumer is eligible for compensation as well as compensation amounts. Our cases suggest it is worth exploring whether similarly  consumer-facing approaches could be adapted for use in the telecoms industry as these services become increasingly essential.

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[50] See the Communications Consumer Panel Response to Mostly Mobile Consultation.

[51] This quote is taken from Vodafone's 'Pay monthly airtime conditions' as published at the following link and accessed on 16/03/15. However, our concern about ill-defined or unreasonable standards of service is not restricted to any one provider. http://www.vodafone.co.uk/about-this-site/terms-and-conditions/pay-monthly-airtime-conditions/

[52] Three's discount rises to 10 per cent when the contract was entered into by upgrading a previous contract early.

## Conclusion

There are clear successes in the way the regulatory regime has allowed the mobile market to develop, with prices falling and innovation proceeding unstifled by unnecessary regulations. Balancing this, we see specific types of consumer detriment that could likely be prevented with the right kind of action from government and the regulator. Our case data points down three avenues: tackling fragmentation to create clearer lines of responsibility and stop consumers falling down the gap between independent retailers and network providers; becoming more assertive in cases of clear consumer detriment, for example on unexpectedly high bills; and defining clearer standards of service backed up by rights to contract exit.

## Conclusion

In fundamental respects the mobile phone market is working well. Take-up is rising, prices are falling and innovation in both products and services is proceeding apace. However, as our analysis shows, people encounter an uncomfortable number of problems and too often struggle to resolve them.

We see confusion about lines of responsibility when things go wrong, people hit by unexpectedly high bills, misleading sales practices, and ill-defined standards of service that mean contract exit is hard even when services fail. What characterises these problems is not their intensity; we do not see today the kind of spike in detriment that we saw during the mis-selling activity of the late 2000s. The frustration is instead that many of these problems are longstanding, cause serious losses from an uncomfortably large number of people, and appear entirely preventable if only they were confronted more assertively.

The detriment we see suggests it is time to reflect on consumer protections in the mobile market, not least in the context of discussions about de-regulation in Ofcom's forthcoming strategic review. As the example of financial services shows, consumer outcomes can be improved when the government and regulator work together with intent.

Our analysis points to several avenues for a stronger approach. More could be done to address fragmentation, particularly to seal the cracks in the consumer experience that open up between mobile networks and independent mobile retailers. More assertive interventions are needed when detriment is clear cut; the government should act now to introduce a £50 cap on consumer liability in cases of stolen mobile phones and both caps and warnings should be used to protect consumers against unexpectedly high bills. And there is room for more consumer- facing mechanisms in some areas, for example to set clear minimum standards of service and better define the conditions that allow for fee-free contract exit.

This paper is the first in a series of outputs on the mobile market. In coming months we will be carrying out more detailed research into these specific issues, in particular looking at unexpectedly high bills and confusing or opaque billing systems; misleading sales practice, particularly in the space of independent mobile phone retail; and at how more clarity could be provided over minimum standards of service and contract exit.

## Our aims

- Provide the advice people need for the problems they face.
- Improve the policies and practices that affect people's lives.

## Our principles

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities.
We value diversity, promote equality and challenge discrimination.

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Citizens Advice is an operating name of
The National Association of Citizens Advice Bureaux.

Registered charity number 279057
Published February 2015