

# Response to Digital Regulation Cooperation Forum Workplan 2023-2024 Call for Input

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- DRCF should prioritise Online Choice Architecture and Discriminatory Pricing in its 2023/24 work plan
- The design of online customer journeys and algorithmic bias in pricing cause significant consumer harm across digital markets
- These policy problems would be most effectively tackled with a collaborative and coherent approach, providing an opportunity for DRCF to have meaningful impact

Understanding and addressing the impact which changes in digital technology are having on consumer markets is a priority for Citizens Advice. These are often thought of as problems of the future, which it is prudent to get ahead of but we're seeing their impact right now.

This response sets out two areas which we think are central to ensuring regulation keeps pace with technology and consumers are protected: Online Choice Architecture and Discriminatory Pricing. These issues are not only essential to address in their own right, but impacts such as higher bills for certain customers with protected characteristics, reduced control over spending and, ultimately, overspending interact in important ways with the cost of living crisis. These are timely issues which we hope the DRCF can play an important role in addressing.

We're grateful to the DRCF for giving us the opportunity to respond to this consultation and would be happy to discuss these issues and proposals in more detail.

## Online Choice Architecture (OCA)

### The problem and its importance

The detriment caused to consumers through the design of online customer journeys is a fast growing issue. Practices like drip pricing, scarcity claims and the use of timers can manipulate consumers into making choices they regret. Consumers can be trapped in

long-term ongoing financial commitments (e.g., subscriptions) by accident which are then hard to leave. The lack of friction in other customer journeys (e.g. BNPL) makes it too easy for consumers to make purchases by accident or without awareness of key information, which they later regret. Addressing these problems and stopping bad practice should be a priority for the DRCF.

Our most recent research shows that the design of online customer journeys creates consumer harm. This reinforces work by the Competition and Market Authority which highlighted ways that online choice architecture can drive poor consumer outcomes and undermine competition. Our research looked at this problem in the round and found:

- 27% of consumers have regretted something they bought online
- 24% have ended up spending more than they expected to
- 26% of consumers felt they spent an excessive amount of time trying to find information
- More than two in five people (41%) **think websites often make it too easy to make the wrong choice**

We also looked at three high-risk business models– Buy Now, Pay Later (BNPL), online gambling, and subscriptions – to see how design in online shopping impacts on consumers. The negative impact of these design features on consumers is clear:

- 1 in 5 BNPL users have regretted using BNPL to purchase an item and 28% have used a BNPL service without realising it
- more than a third of online gamblers have gambled without realising they were betting; and
- consumers spend half a billion pounds each year on subscriptions which have automatically renewed without them realising.<sup>1</sup>

We also found consumers in vulnerable circumstances and from marginalised communities are at the sharp end of these practices and suffer particularly bad outcomes. We found that 26% of people have signed up to a subscription accidentally, but this rises to 46% of people with a mental disability or mental health problem, and 45% of people on Universal Credit.

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<sup>1</sup>Tricks of the trade, p. 41

## Importance as a focus area for DRCF

Working to ensure better design of online customer journeys to minimise consumer harm strongly aligns with the aims of the DRCF and meets the criteria to be included in the work plan.

### Social, Political, and Legislative Landscape

- The Consumer Bill, forthcoming Gambling White Paper and BNPL regulation provide key influencing opportunities. Our report recommendations are targeted towards these; the DRCF could affect meaningful change by building on them.
- The cost of living crisis has brought the importance of better design in online customer journeys into sharp focus. In the current social and economic context, when household finances are stretched, regulators should work to ensure consumers can make informed decisions about their shopping, without the influence of online structures crafted to increase spending.
- Poor digital design has an increased impact on consumers who are vulnerable or from marginalised communities so should be prioritised in DRCF's work plan.

### Coherence, Collaboration and Capability

- This policy area requires joined up thinking, strongly aligning it with DRFC's aim to 'drive best practice' across different regulators.
- Our [report](#) sets out a series of market specific recommendations but also wider proposals for the Department for Business, Energy, and Industrial Strategy (BEIS) and the Competition and Markets Authority (CMA) in thinking about regulating digital markets. This is due to the fact that this policy area does not sit neatly with a single sector or a single regulator, but instead needs to draw on (and develop) both general principles of consumer law and the specific nuances of different regulated markets. Prioritising online design in DRCF's work plan would ensure coherence in the implementation measures to address consumer harm from poor digital design, prevent duplication or contradiction, and ensure changes have impact.
- BNPL, subscriptions, and online gambling are specific, high risk markets which need immediate attention. However, we need to think about the regulation of design across all digital markets. Therefore, this is a key area for DRCF to collaborate with members on, and build capability to establish coherent and effective regulation in all digital markets.

### Existing Work

- OCA and the three high risk markets identified span the work of key stakeholders. By improving the regulation of design in these markets the DRCF would add value to work already undertaken by organisations; namely, the FCA (BNPL) and CMA (subscriptions). It could also draw on the experience of Ofcom in

its new role within the regime of the Online Safety Bill. This would provide an opportunity for regulators to address these complex problems of common interest and most effectively reduce consumer harm in online markets.

- There is a clear connection between the CMA's work to promote competition and the DRCF's aim to promote greater coherence where regulatory regimes interact. Promoting competition and the effective regulation of design go hand in hand. By prioritising this area, the DRCF would complement and add value to the work of the CMA and have a meaningful impact by ensuring competition is neither undermined, nor harmful to consumers.

## Discriminatory Pricing in Consumer Markets

### The problem and its importance

Algorithmic biases are causing discriminatory prices amongst consumers and urgently needs addressing.

- Our research found evidence of unequal outcomes for people of colour in the car insurance market.<sup>2</sup> People of colour spend on average £250 more than white people on car insurance.<sup>3</sup>
- These unequal outcomes reflect a geographic penalty. In the areas we tested with a high proportion of Black and South Asian people in the population, customers were quoted at least £280 more for car insurance, compared to areas where the population is largely white.<sup>4</sup>
- We believe that these pricing differences are being driven by a combination of factors including:
  - increasingly individualised pricing in insurance
  - the use of opaque and complex algorithms
  - and data that can reflect (and amplify) structural racism and inequality

Taken together, the last two factors represent a form of algorithmic bias that may well be at play across a range of consumer markets.

- This is a complex issue for insurers and industry more broadly to address and will require grappling with challenging questions around data collection and protection, algorithmic decision making, and fair value for consumers.

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<sup>2</sup> This research is discussed in our [March 2022 report](#) and our most recent [report](#)

<sup>3</sup> [Discriminatory Pricing: exploring the 'ethnicity penalty' in the insurance market](#), p.4

<sup>4</sup>[Discriminatory Pricing: exploring the 'ethnicity penalty' in the insurance market](#), p.17

## Importance as a focus area for DRCF

The DRCF is well placed to coordinate the monitoring needed to address the impacts of algorithmic bias in consumer markets.

### Existing Work

- In its previous work plan the DRCF committed to ‘supporting improvements in algorithmic transparency’. The DRCF should build on this commitment to develop capability and frameworks for proactive monitoring for algorithmic bias.
- There is an emerging consensus amongst industry and regulators that they need to work together to solve the problem of algorithmic bias. Therefore, incorporating this into the DRCF’s work plan responds to this recognition of the need for cooperation and will facilitate the collaboration needed to affect change.
- The FCA, ICO, and CMA have taken part in our roundtables on discriminatory pricing and made useful contributions from their areas of expertise. This strongly supports our view that there is a lot of value to be gained from DRCF focusing on algorithmic bias and helping these bodies cooperate and collaborate on this key issue.

### Coherence, Collaboration and Capability

- The consequent risk of bias in algorithms is prevalent across markets. Regulators should grasp the opportunity to take early action on this and get ahead of the problem.
- Discriminatory pricing is relevant to each DRCF member (FCA, ICO, CMA, and Ofcom). Therefore, working together to develop a framework which addresses algorithmic bias will ensure it’s coherent and consistent across different regulatory regimes and is most impactful in delivering effective digital regulation.
- While each DRCF member has done individual work on AI and the risk of algorithms, a more joined up approach focused on the particular issue of how to mitigate the risk of discriminatory outcomes would be beneficial. There are complex issues to consider around how regulators build capability for monitoring and establish the guidance or frameworks needed around discriminatory outcomes, and what can be reasonably justified. Sharing intelligence between regulators about drivers of discriminatory pricing in different markets (e.g. use of specific data points that may need to be weighted differently, types of programmes used and how to test for bias within them) would enable this to be investigated elsewhere.
- The DRCF is well positioned to provide clarity on issues and questions surrounding algorithmic monitoring to ensure consistency across digital services and markets. For example, there are debates about whether the current data

protection landscape acts as a barrier for firms to collect sensitive information, like ethnicity data, to monitor for discriminatory outcomes. The DRCF, drawing on the expertise of the ICO, could have a great impact in addressing this.

### **Legal, social and economic importance**

- Given algorithmic bias results in discrimination against racially minoritised groups, understanding and monitoring it should be a priority for the DRCF. Furthermore, there is a high chance that firms and regulators are failing in their obligations under the Equality Act (2010). The Act requires them to demonstrate that data isn't being used to discriminate, but this currently isn't being done.
- During the cost of living crisis, regulators should be looking at ways people are being overcharged and remove disproportionate impacts on specific groups. Addressing algorithmic bias would help achieve this.
- If regulators work together on this topic they will ensure equitable outcomes for all consumers, and have meaningful impact by future proofing regulatory approaches for risks presented by algorithmic bias.

### **New Partners**

- DRCF may look to partner with the Centre for Data Ethics and Innovation, who are undertaking work on how to lower the barrier of complexity for accessing the data needed for monitoring algorithmic processes.
- It would be beneficial for the DRCF to work with the Equality and Human Rights Commission and other organisations who have expertise on discrimination and algorithms. This collaboration would complement the sector specific knowledge of regulators, and the overall regulatory expertise of the DRCF.

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