

Response to Ofcom consultation: Prohibiting inflation-linked price rises in telecoms contracts

Closing date: Tuesday 13 February 2023

About Us

1. Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020,ⁱ we are accountable to the Scottish Parliament. The Act provides a definition of consumers which includes individual consumers and small businesses that purchase, use or receive products or services.
2. Our purpose is to improve outcomes for current and future consumers and our strategic objectives are:
 - to enhance understanding and awareness of consumer issues by strengthening the evidence base;
 - to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors; and
 - to enable the active participation of consumers in a fairer economy by improving access to information and support.
3. Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, sustainability and redress.
4. We work across the private, public and third sectors and have a particular focus on three consumer challenges: affordability, climate change mitigation and adaptation, and consumers in vulnerable circumstances.
5. Consumer Scotland welcomes the opportunity to respond to this consultation on Ofcom's proposals around new rules and guidance, with a view to prohibiting inflation-linked price rises during the duration of phone, broadband and pay TV contracts. We have previously responded to the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) consultation on its review around advertising mid-contract price rises in November 2022.ⁱⁱ We value the strong relationship

Ofcom has built with Consumer Scotland since our establishment and have appreciated the continued engagement with us on this issue.

Summary

6. Consumer Scotland welcomes Ofcom's proposals to amend its General Conditions to introduce measures ensuring that when a telecommunications or pay TV provider applies a change to the monthly price of their service during the contract period, they must set this out at the point-of-sale, in pounds and pence (the £/p requirement). Providers should also set out when any changes in monthly price will occur, and draw these factors prominently to the consumer's attention before they are bound by the contract.
7. Consumer Scotland recognises that the proposal's objectives are: to enable consumers to understand the price of a service readily, with sufficient clarity and certainty to make informed comparisons and choices and to find the right deal for their needs; drive providers to compete based on pricing structures that are clear and transparent; and protect consumers from unfair burdens and risks.
8. We broadly welcome the proposed changes, which will remove the uncertainty associated with current arrangements which in many cases will see monthly prices increasing by the rate of the Consumer Price Index (CPI) + 3.9%. This should remove the risks associated with inflation rates away consumers and help consumers better understand how their Core Subscription Price will change during the duration of their contract.
9. Consumer Scotland notes with concern that providers might respond to an effective ban on inflation-linked price increases by imposing in-contract price increases that implicitly exceed the current levels of CPI + 3.9% and we recommend that Ofcom carefully and consistently monitors this.
10. While we welcome the proposals, we highlight that the purpose of this consultation in itself is not to regulate the affordability or the level of price rises. We therefore recommend that Ofcom reinforces its efforts to promote social tariffs, and that it continues to review pricing trends, with a view to taking further action if consistent real terms increases persist.
11. We recommend that a review is carried out specifically into the practice of out-of-contract price rises and to consider how to prevent an increasing number of consumers being exposed to this.

12. We recommend that Ofcom set out the steps expected of providers to inform consumers of the upcoming changes and of their options, ensuring maximum compliance by publishing best practice guidance.
13. We also recommend that Ofcom monitors whether the implementation of a ban on inflation-linked price increases will lead to a higher prevalence of contracts with discretionary price increases. If evidence indicates that this is a risk, then we recommend that a review of the impact of this practice on consumers is carried out timeously.

Background

14. We agree with Ofcom's findings as set out in the consultation document, these being that inflation-linked price increases cause consumer harm by:
 - increasing the cognitive burden and search costs which can lead to consumers not finding the best deal for their needs;
 - limiting consumer engagement, which can in turn reduce the effectiveness of competition; and
 - imposing unfair financial risks on consumers, which has a particular impact on people with certain vulnerabilities (e.g. lower income households).
15. Ofcom's own consumer research illustrates that 6 out of 10 consumers do not know that the Consumer Price Index (CPI) and the Retail Price Index (RPI) measure inflation,ⁱⁱⁱ and simply raising awareness of these terms will not increase the ability of consumers to make complex calculations based on these concepts. In this regard, we welcome the quantitative research Ofcom has undertaken examining linkages between vulnerabilities (e.g. financial, mental health, disability) and reduced levels of consumer awareness and confidence regarding inflationary terms and concepts.^{iv v}
16. In line with the consumer principles of choice, information, and fairness, we recognise the importance of ensuring all consumers are well informed about the full price of any contract and how it is determined, before they enter into it. We welcome the proposals to remove the current uncertainty that comes with inflation-linked price rises and recognise that this transparency and improved financial certainty will have a positive impact on consumer detriment levels.

17. Ofcom has been clear that the objective of these proposals is to increase transparency and security for consumers, and that the affordability of pricing levels is outwith the scope of the review.
18. One of the reasons for this review is that in recent years, providers have consistently increased their mid-contract Core Subscription prices by the going CPI or RPI rate +3.9%, and this has resulted in an increased number of consumers struggling to afford their telecoms services. While in October 2021 two out of ten (18%) of households had difficulty affording a communications service, by October 2023 this had consistently moved to three out of ten (30%).^{vi}
19. Citizens Advice has warned that in April 2024, prices for mobile and broadband contracts will increase by nearly 9% on average, meaning consumers in the UK will be charged an additional £1.4 billion more over the year, for the same service.^{vii}
20. Ofcom's proposals, whilst welcome, don't explicitly address the issue of the level of price increases. However, in light of the ongoing impact of the cost of living on consumers, it is important to recognise the relationship between affordability and the market's ability to function and deliver positive consumer outcomes through competition. Research by Citizens Advice highlights that the impact of CPI + 3.9% price rises in April 2022, 2023, and 2024 could result in consumers facing an average 38% increase in mobile and broadband prices (nearly £220 per year) since they entered into their contract in summer 2021.^{viii} We welcome the proposed measures to significantly reduce the chance of such price increases that are substantially in excess of inflation and which will have a significant impact for consumers' financial wellbeing. Several providers including BT, EE, Three, and Vodafone have already announced a 7.9% (CPI rate^{ix} + 3.9%) price increase on their internet and telephony services in April 2024.
21. Consumer Scotland notes that the COVID-19 pandemic caused homeworking in the UK to increase from 4.7 million to 9.9 million people between December 2019 and March 2022.^x The largest percentage increase in homeworking was in Scotland (up 203.5% to 544,000). In many cases, employers do not pay for broadband contracts at home, nor for telephone contracts of those who use their own mobiles to take or make business phone calls. As such, the importance of affordable broadband and mobile phone contracts may have increased significantly for some consumers.
22. In addition, a literature review of consumer vulnerability recently published by Consumer Scotland notes that, while the availability of e-commerce and other digital transactions now offers consumers a wider range of choices in potentially global

markets, conversely a lack of access can result in sub-optimal outcomes for consumers.^{xi} This re-enforces the need for consumers to be able to enter into telecommunications contracts that are sustainable and affordable for them throughout the contract period, and to be able to plan their finances accordingly.

Anticipated impact of the proposals on consumers

23. In response to questions 1 to 4 of the consultation, Consumer Scotland has no concerns about the impact assessments undertaken by Ofcom in its formulation of the proposed policies.

24. Consumer Scotland's definition of consumers includes small businesses (>50 employees) that purchase, use or receive products or services^{xii} and we are aware of a range of pressures being experienced by small businesses. We note that the proposed GC C1 Guidance continues to define "Relevant Customers" as Consumers (i.e. residential customers), Microenterprises (1-9 employees) or Small Enterprises (10-49 employees); Customers and Not-For-Profit Customers.^{xiii} We welcome the protection that the ban on inflation-linked price rises will offer to small businesses.

25. In this regard it is worth highlighting a 2022 Ofcom study which showed that rural Small and Medium Sized Enterprises (SMEs) are particularly likely to be dissatisfied with the geographic availability, reliability and service of broadband connections.^{xiv} This amplifies the importance of their ability to make an informed choice and find both mobile and broadband internet products that are right for them, with clarity and predictability that allows them to budget for the Core Subscription Price at any given time during the contract period.

Proposed changes to information requirements

26. In response to questions 5 to 7 of the consultation, Consumer Scotland welcomes the proposed changes requiring providers to inform consumers of i) the Core Subscription Price; ii) if the Core Subscription Price is to change during the Commitment Period, that changed Core Subscription Price, in pounds and pence; and iii) the date from which any changed Core Subscription Price shall have effect. We support the associated changes to the GC C1 guidance.

27. We note Ofcom's proposal to require providers to ensure that the information is drawn prominently to the customer's attention in a clear and comprehensible manner before a customer is bound by a contract.

28. According to Ofcom’s recent research on relevant behavioural economic concepts in terms of inflation-linked price variations, consumers tend to focus on initial pricings rather than future pricing (*present bias*), and this may be the case for telecommunications contracts.^{xv} If providers play on this by introducing high increases, which consumers may only give limited weight to at the time of purchase, there may be more transparency, but there could be a risk of these measures not being very meaningful in practice.
29. Consumers may take out contracts online, by telephone, or in-store. In particular during a verbal sales pitch, it may be difficult to assess whether a consumer truly understands the pricing structure and terms of the contracts. In addition, by the time the consumer is exposed to contract documentation, they tend to have mentally committed to the purchase.^{xvi} We would welcome a requirement that a sales agent should talk the consumer through a worked example during verbal engagement.
30. We support the proposed requirement to provide all necessary elements in the contract information. We welcome the inclusion of clear worked examples containing all the required elements, e.g. *“Your monthly price is £30 until 31 March 2024, increasing to £31.50 on 1 April 2024 and to £33.00 on 1 April 2025.”* and *“Your monthly price is half price at £15 a month for the first six months and then £30 a month until 31 March 2024, increasing to £31.50 a month on 1 April 2024.”*
31. In response to question 8 of the consultation, we support the clear guidance provided in the GC C1 guidance with regard to the Contract Information and the Contract Summary.

Concerns around potential impact on pricing structures

32. Both Ofcom and the CMA have concluded that there is no relationship between CPI or RPI and the costs associated with contracts for providers.^{xvii} Nevertheless, it is possible that providers may look for mechanisms to offset the inability to impose CPI rate + 3.9% price rises. They could choose to implement steeper and more frequent in-contract price hikes that go beyond a predicted CPI rate + 3.9%, albeit in a seemingly more transparent manner. We are not aware of any evidence allowing us to predict how the market will react, but we recommend monitoring what impact this has on pricing and price progression.

33. We note that the implementation of these proposals could result in an unintended shift towards the use of discretionary price rises which are not specified in the contract ('prices may vary' terms), which will not be banned by the proposals (section 2.26 of the consultation). These are not linked to inflation, but can be detrimental to consumers. As stated in section 2.26, Sky is the only major provider to currently use 'prices may vary' terms. Such terms can be implemented at only one month's notice. When implementing discretionary price rises, the provider must allow the consumer to terminate and switch without applying an Early Termination Charge; however, this places a responsibility upon the consumer to quickly shop around and find a similar or better deal. Consumer Scotland has some concerns about the increased Core Subscription Prices that can be applied using this measure and the lack of any limit on how often such contract prices can be increased. Research by Citizens Advice has shown that the majority of consumers will not shop around for a better deal as they experience it as too time consuming (31%), stressful (26%) or difficult (17%).^{xviii} Consumers with disabilities, mental health conditions, and those who do not regularly use the internet find it even more difficult to find a new contract or provider to switch to.

34. We recommend that Ofcom monitors whether implementation of this proposal results in increased use of discretionary price increase contracts, and if so, that a review is carried out to establish what impact this has on consumers.

Implementation and Enforcement

35. We note that new CAP/BCAP guidance on advertising mid-contract price rises came into force in December 2023. This guidance relates to advertising claims made about the existence, nature and extent of any price increases during the course of a telecommunications/broadband contract^{xix}. Ofcom's proposals come into play when a consumer is about to enter into a contract and seek to ban inflation-linked price increases in and of themselves. We acknowledge that the new CAP/BCAP guidance will remain relevant and are complementary to the Ofcom proposals, given the wider scope of price increases that they cover.

36. In relation to questions 9 and 10 of the consultation, Consumer Scotland welcomes the prohibition on providers including inflation-linked price variation terms that applies to the Core Subscription Price during the Commitment Period in any new contract offered. However, this means there will be a period of time when some consumers remain bound to inflation-related contracts, while others are able to enjoy the protection offered by contracts entered into under the new pricing regulations. In line with the consumer

principle of fairness, we would welcome close monitoring of how this impacts on consumers.

37. In terms of affordability, we note that Ofcom does not hold the power to implement mandatory social tariffs. However, we recommend that Ofcom takes the opportunity to again strongly encourage providers to increase awareness of social tariffs as they communicate their new pricing structures upon implementation.
38. While many providers have made social tariffs available to consumers and the number of consumers on these tariffs is increasing, knowledge and uptake remain low. As of October 2023, 55% of benefits claimants across the UK were unaware of social tariffs. Research by Which? has found that 60% of eligible consumers had not heard of social tariffs, of this 60%, half said that they would be likely to sign up having now heard about them.^{xx} At a UK level the estimated take up of broadband social tariffs as of September 2023 is around 8.3%, an increase from around 5% in April 2023.^{xxi}
39. Ofcom's own most recent report on Pricing Trends for communication services in the UK highlights the phenomenon of in-contract savings.^{xxii} This describes the financial benefit enjoyed by consumers who are within the duration of their contract as they are paying a 'promotional' Core Subscription Charge for the duration of the contract term. When the contract term ends, they are automatically moved on to a monthly subscription, resulting in a price increase. Examining broadband services, the Pricing Trends report shows that whether bundled with telephony or pay TV services or standalone, consumers who are in-contract on average spend between 17-25% less per month than those whose contracts had ended, and who had automatically been moved to a monthly subscription (e.g. £30 instead of £40 for standalone broadband).
40. Consumer Scotland recognises the work that Ofcom has already undertaken to make it easier for consumers to switch contracts. We note the increased importance of this during the implementation period. Many consumers will have contracts with Commitment Periods expiring before the implementation of the proposed ban, giving them the option to stay on their (often higher) out-of-contract rate and potentially wait until implementation to switch, or to take out a new contract beforehand. Similarly, a potential shift towards shorter contract terms would likely increase the number of consumers being out-of-contract and paying higher prices.
41. We recommend that a review is conducted into how the practice of out-of-contract price rises can be effectively addressed, with a view to taking further action if consistent real terms increases persist.

42. In line with the consumer principle of choice, we would also welcome specific awareness raising of the choices that consumers will need make, along with consideration of what can be done to help consumers navigate this process to help them make the most informed decision.
43. We recommend that Ofcom requires providers to be set out clear information about the impending changes and about the options consumers have available to them. We would welcome publication of best practice guidance including worked examples and standard phrasing, setting out how, how often, and when providers should provide consumers with clear, transparent and detailed information in advance of the implementation of the proposals. As Ofcom has noted previously, while 3 out of 10 consumers used digital comparison tools in 2020, these have so far fallen short of additional metrics that take in-contract price increases into account.^{xxiii} Consumer Scotland shares Ofcom’s concerns in this regard and would support calls upon price comparison websites to develop tools that take introductory offers and total contract prices into account. This would help consumers decide whether to await implementation of a contract under the new proposal, or to stay out-of-contract.
44. We would welcome assurances that the envisaged four-month implementation period will be followed, and stress the importance of ensuring that providers comply with and implement the changes as soon as possible.
45. Consumer Scotland notes that Ofcom has regulatory, investigative and consumer law^{xxiv} powers to conduct enforcement. We note Ofcom’s position in section 4.14 that taking enforcement under consumer law, as opposed to setting out new conditions for providers, would be insufficient to achieve the objectives of this proposal. As a consequence, Ofcom propose to use new regulatory protections to help protect consumers from harm. We would welcome further clarity, e.g. in the form of case studies, on what will happen in the event that a provider or multiple providers should act in contravention with the proposed guidance and how such providers would be held to account.

ⁱ [Consumer Scotland Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

ⁱⁱ [response-to-the-committee-of-advertising-practice-and-broadcast-committee-of-advertising-practice-consultation-on-mid-contract-price-rises-in-ads-for-broadband.pdf \(consumer.scot\)](#)

ⁱⁱⁱ [Supporting phone and broadband customers through the cost-of-living crisis - Ofcom](#)

^{iv} [Consultation: Prohibiting inflation-linked price rises - Ofcom](#)

^v [Consultation: Prohibiting inflation-linked price rises - Ofcom](#)

^{vi} [Communications Affordability Tracker - Ofcom](#)

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- vii [MCPR report \(citizensadvice.org.uk\)](https://citizensadvice.org.uk)
 - viii [MCPR report \(citizensadvice.org.uk\)](https://citizensadvice.org.uk)
 - ix [Consumer price inflation, UK - Office for National Statistics](https://ons.gov.uk)
 - x [Homeworking in the UK – regional patterns - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)
 - xi <https://consumer.scot/media/tigattu5/literature-review-on-consumer-vulnerability.pdf>
 - xii [Consumer Scotland Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)
 - xiii [inflation-linked-price-rises-proposed-gc-c1-guidance.pdf \(ofcom.org.uk\)](https://ofcom.org.uk)
 - xiv [SME consumer experience in the communications market \(ofcom.org.uk\)](https://ofcom.org.uk)
 - xv [Inflation-linked price rises: relevant behavioural economics concepts \(ofcom.org.uk\)](https://ofcom.org.uk)
 - xvi [Pricing trends for communications services in the UK \(ofcom.org.uk\)](https://ofcom.org.uk)
 - xvii [CMA-ASA-telecoms-consultation-FINAL.pdf](https://ofcom.org.uk)
 - xviii [MCPR report \(citizensadvice.org.uk\)](https://citizensadvice.org.uk)
 - xix [Guidance on the presentation of mid-contract price increases in telecoms ads - ASA | CAP](https://asa.gov.uk)
 - xx [Broadband social tariffs research - Which? Policy and insight](https://ofcom.org.uk)
 - xxi [Pricing trends for communications services in the UK \(ofcom.org.uk\)](https://ofcom.org.uk)
 - xxii [Pricing trends for communications services in the UK \(ofcom.org.uk\)](https://ofcom.org.uk)
 - xxiii [Open Communications 2020 survey \(ofcom.org.uk\)](https://ofcom.org.uk)
 - xxiv [Consumer Rights Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)