Consultation on inflation-linked price variation terms (ILPVTs)

Question 1: Do you agree with the conclusion in our Equality Act impact assessment?

We strongly agree with Ofcom's conclusion that the proposed intervention will have a positive effect on many groups of more vulnerable consumers, including those not covered by the Equality Act. We believe that the financially vulnerable should be given specific consideration, since consumer protection issues relating to price will always be of particular importance to this group. In our response to B/CAP's consultation on the advertising of mid-contract price rises, we commissioned our own research in October 2022, which came to the same conclusion regarding financially vulnerable customers.

Increases in the cost of living mean many people are facing uncertainty over their ability to meet their financial commitments. Unexpected and unknown price rises increase the risk of significant financial harm. For some, a mid-contract price rise may mean they suddenly cannot afford their service; this creates a catch-22 where they cannot afford the monthly cost but also cannot afford to pay an early termination fee. Our October 2022 Survey shows that, as would be expected, consumers' expectations that price rises would affect their ability to afford their broadband services are directly correlated with their household income. To prevent this group being caught in a contract that could cause financial harm, it is vital that they are aware what their monthly subscription tariff is, or may be in future months, subject to a price increase and how much they should expect this to be.

The Joseph Rowntree Foundation has established that, because of the impacts on all aspects of day-to-day life, those in significant financial difficulty are likely to have far lower levels of educational attainment[1] across generations. Our October 2022 Survey found statistically significant interactions between educational attainment[2], respondents' confidence in their ability to apply a percentage increase to a price, and their actual ability to choose the correct answer (or even attempt an answer): education and confidence are linked[3], confidence and ability are linked[4], education and ability are linked.[5] Those in significant financial difficulty are likely to have lower educational attainment, which leads to a lower likelihood of correctly calculating the percentage price increase and to lower confidence and willingness to even guess an answer. The UK Government's threshold for poverty is 60% of median household income. This figure varies by household composition, with the highest (two parents with two children) set at just under £24200.[6] Respondents in our October 2022 Survey whose household income was below £25k (the nearest data threshold we have) were almost 24% less likely to correctly calculate or guess the post-rise monthly cost of a broadband service than those with a salary at or above £25k.[7]

The consumers most affected by these rises are also those who are least likely to be able to calculate the costs and, therefore, have complete information about the extent of their financial commitment. This contributes to Hyperoptic's view that the inclusion of a £/p statement of the increased monthly cost is vital to ensure that consumers do not make a transactional decision that they would not have, had they had this information. This is a point we made in the B/CAP consultation and we welcome the recognition of its importance in Ofcom's proposed interventions.

As the lack of transparency around mid-contract price rises disproportionately affects the most financially vulnerable and risks their ability to afford a vital broadband connection, continuing the current approach to this pricing structure has a genuine risk of causing significant harm to a vulnerable group of consumers. As such, regulatory intervention to address the issue will have a clear, positive benefit.

Question 3: Do you agree with our assessment of the consumer harm arising from inflation-linked price variation terms? We invite evidence from respondents on the matters addressed in section three.

We strongly agree with Ofcom that ILPVTs cause consumer harm.

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[1] https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/poorer-children-education-full.pdf

[2] 5 passes at GCSE is a common benchmark for educational attainment. Our sample size for those below GCSE was insufficiently large to use for comparison, so we compared those *with* GCSEs or below and those with qualifications above GCSE-level. Including those with GCSE-level attainment gives a more conservative result.

[3] 39% of GCSE-or-below respondents and 57% of above-GCSE respondents were 'very' or 'quite' confident that they could apply a percentage increase to a price

[4] 13% of those who were 'very' or 'quite' *un*confident and 31% of those who were 'very' or 'quite' confident chose the correct answer. 42% and 14% respectively chose "don't know" or "too complicated" instead of choosing an answer.

[5] 19% of GCSE-or-below respondents and 25% of above-GCSE respondents chose the correct answer. The indicative result when using the smaller 'below GCSE' sample was that 7% (2 of 28) chose the correct answer.

[6] https://www.jrf.org.uk/report/uk-poverty-2022 UK Poverty 2022 full report, p100-101

[7] 19% and 25% respectively chose the right answer

Our October 2022 Survey found that 78% of respondents were 'unsure' whether their provider raised prices mid-contract and, when asked "do you know what CPI affects?", 63% answered "I don't know;" only 15% correctly answered "price." As noted in the consultation document, our March 2023 research found that 24% of respondents did not know an increase was coming that April, while 50% knew there was an increase but didn't know how much more money it would be.

<u>Two-thirds of respondents said they would have chosen a different provider if they had known about the price rises</u>.

In our October 2022 survey we asked respondents how confident they were about adding a percentage to a price, then asked them to select the correct monthly price for a £25 tariff that would rise by CPI + 3.9% if CPI were forecast to be 12% (7 choices, plus 'I don't know' and 'This is too complicated').

- 52% of respondents said they were 'very' or 'quite' confident
- 23% of respondents chose the correct answer
- 27% of respondents chose 'I don't know' or 'this is too complicated'

This is consistent with Ofcom's own research on the issue, as noted in the consultation document. It is clear that consumers are unlikely to be able to calculate the future price of the contract, even when explicitly given the information to do so in the most straightforward tiered scenario. Concerningly, 69% of the October 2022 survey respondents who were confident in their ability to do this calculation did not choose the correct answer. This means there is a significant risk that consumers would incorrectly believe they knew the future price and make a transactional decision on the basis of inaccurate information.

All of this research supports the position taken in the consultation that consumers have low awareness of ILPVTs, have limited understanding of measures of inflation, and find the terms complex and difficult to engage with. Our answer to question 1 also serves to demonstrate our agreement that consumers with certain vulnerabilities may face increased difficulties with engaging with these price rises.

This research also supports Ofcom's view that ILPVTs affect consumer engagement because they do not give sufficient clarity and certainty to prices. Consumers cannot engage effectively with the market when they cannot correctly calculate the price, which is compounded when the most significant factor of the increase (CPI) cannot be known until 3 months before the increase is imposed. Both the complexity and the uncertainty of this mandatory increase affect customers' ability to determine the price they will pay; without this material information they will not be able to engage fully in the market and may not make the right choice for their needs.

While we note the description in the consultation of the measures some ISPs take to inform customers of the CPI increase, these are vastly lacking in prominence and may therefore be missed or otherwise overlooked by customers. This is especially the case for those measures that come late in the sales journey, since by that time customers may be subject to inertia and feel 'committed' to the purchase. Shortly after the consultation was opened, CAP's new guidance on the advertising of mid-contract price rises came into force. As a result, the approach taken on website sales journeys should have changed to ensure that the price statement itself makes clear that price will increase and, where relevant, should immediate be followed by a statement that this will be by CPI + x% in the specified month. While we do not believe that this addresses some of the fundamental problems with ILPVTs outlined above, we acknowledge that the acceptability of the practice itself is not within CAP's remit and we welcome this significant forward step. However, we also note that compliance with these new rules has been poor; as of 24 January we have seen that several of the largest ISPs do not appear to have followed all of the requirements and are therefore still at risk of misleading customers.

A higher cognitive burden

We completely agree that ILPVTs increase the cognitive burden required to navigate the broadband market and to find the best deal. As discussed above, quite apart from a lack of awareness and clarity around ILPVTs, the ability of consumers to confidently and correctly calculate a price rise, even from a known CPI, is very low. If fewer than a quarter of survey respondents can correctly select the right answer in a multiple-choice question, it is highly unlikely that consumers are able to make a factual and meaningful comparison because this information isn't available to them cognitively *even when the numbers are given to them*. This means that customers may well end up choosing a service that is more expensive than another, as it superficially appears cheaper. If a 24m contract is £30 per month, fixed, a customer may not know that this is likely to be cheaper than a £25 per month service with a CPI + 3.9% ILPVT. Of course, the whole-term cost of the latter tariff is dependent on the rate of CPI across two different years, so the specific difference in price cannot be known; should it be higher than expected, customers cannot leave the contract to secure a better price elsewhere. It is impossible to know for certain which tariff is the best value and, should a price rise be high enough to change the relative value beyond a point that is acceptable for the customer, there is no recourse for them.

Not only is there an increased cognitive burden in terms of executing complicated calculations and comparisons, there is any impact on time and effort. Even for customers who are willing and able to calculate price rises, this adds a considerable amount of time to the process of searching (because they need to look for specific, elusive information), to understanding the total price (because they need to make calculations and look for CPI forecasts), and to comparing (because they need to do these tasks for several ISPs). Each of these steps is also an increase in effort and makes organisation more difficult. For some customers, this is an overwhelming barrier to finding the best deal, and they may therefore either ignore the price rises completely or rely on rough estimates that may not reflect the real costs.

As discussed in our response to question 1, we have concerns that this risk of financial harm is more likely and more acute for several groups of vulnerable customers – those who are financially vulnerable (because they have less slack in their budget), those who have lower educational attainment (because they are less likely to be able to calculate the likely price rise), and those with conditions or circumstances that affect their ability to manage administrative tasks (because they are less likely to have the time and energy to make a complicated choice). These types of vulnerability often overlap, making the situation worse for many of these customers.

Lower consumer engagement and less effective competition

We strongly agree that ILPVTs raise barriers to engagement, thereby affecting the effectiveness of competition. As noted above, ILPVTs make it difficult for customers to understand the full cost of a contract over time, which means they cannot be confident that they have chosen the right service to meet their needs. In some instances, customers may end up paying more than they need because they cannot compare between two services with different pricing models, where a truly fixed-price contract appears more expensive but would be cheaper in the long term than another that starts at a lower monthly price but incorporates ILPVTs. By obscuring these comparisons, ILPVTs becoming self-perpetuating – more ISPs need to use ILPVTs to avoid looking more expensive than those already using them, making the problem worse. Not only does this lead to customers paying more, it also impacts their ability to choose *not* to use a provider with ILPVTs. For ISPs like Hyperoptic, who do not use ILPVTs, there is a significant detriment to their ability to compete in the market on equal terms. Because our prices are fixed, they look more expensive upfront than our competitors. As such, customers may be less likely to take our services because it is not obvious that we are as cheap, or cheaper, than an ISP using ILPVTs. In effect, we are being penalised for using a straightforward, consumer friendly pricing approach. Moreover, the complexity of calculating price rises (as explored above) puts up barriers to engagement that decreasing consumer appetite to consider switching providers – if the effort needed to make proper comparisons is too high, customers will stay with their provider even if they could do better by looking elsewhere. This particularly disadvantages smaller networks and ISPs, while benefitting the largest providers.

Unfair financial risks to consumers

It is inarguable that companies have far more resources and expertise than consumers to forecast likely financial trends, particularly in relation to CPI, and make plans to lessen its impact. It is an ISP's choice to offer a contract over a particular time period and weigh the likelihood of the cost of supply rising, but customers taking up a contract have a limited number of options (a maximum of 12 months as a mandatory offering, with additional choices of 18 and/or 24 months) and do not have the data or knowledge to make an assessment of how much the price might rise. Moreover, even a 24-month contract is a relatively short period of time for a large ISP, where multi-year financial planning is regularly undertaken and costs can be absorbed by newer contracts over time. In comparison, 24 months is a long time in a consumer's life, and any number of changes in circumstance can affect their financial status; they have no ability to exit the contract or to absorb the cost of the rises. There is a huge disparity in the ability of ISPs and customers to forecast and account for changes in price, but by using ILPVTs, ISPs place this burden onto consumers, despite the imbalance. In relation to the degree of financial risk that ISPs would be subject to if they ceased using ILPVTs, we note Ofcom's point that they "have not seen clear evidence of a direct link between providers' costs and the ILPVTs they have adopted" as well as their statement that "most providers put more emphasis on raising revenues rather than on covering costs as aa rationale [for using ILPVTs]".

Of particular concern is that this is an especially acute problem for more vulnerable households. As explored above, several vulnerable groups struggle with ILPVTs for a variety of reasons, many of which are overlapping. The consultation notes that financially vulnerable customers are more likely to struggle with ILPVTs; as they are already financially vulnerable, these rises will then have a greater impact on them than on customers who are *not* financially vulnerable. Our own research bears this out, as discussed in our answer to question 1 – low incomes relate to lower educational attainment, which affects confidence and ability to engage with ILPVTs.

Scale of harm

We agree that the scale of consumer harm is substantial and that this justifies intervention. In September 2022 we warned that the sector price rise could be as high as £1.4 billion[8] if inflation rose to the level being forecast. Thankfully for customers, CPI did not rise as high as feared, but the bill was still several hundred million. For individual customers, this might represent £60 or £70 pounds a year that they weren't expecting to spend and therefore haven't budgeted for – the cost of school shoes for three children, or a week's groceries, or a suit for an interview – and that they cannot even exit the contract to avoid. That the impact is particularly pronounced for groups of vulnerable customers, some of whom may be dependent in some way on their broadband service, is especially concerning.

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8 https://www.hyperoptic.com/press/posts/major-broadband-providers-set-for-1-4-billion-windfall-from-customer-price-rises-during-cost-of-living-crisis/

We would also like to add that even for non-vulnerable customers (including those who can afford the increases), the research demonstrates that the proposed changes would facilitate express consent, given that without clear pricing certainty it is hard to state that the customer has been able to make 'an informed choice'.

Question 4: Do you agree with the conclusion in our impact assessment?

We agree that the proposed intervention will address the identified harms.

It is clear from the consultation document and our own research and experience that the harm to consumers from ILPVTs comes directly from not knowing that they will be subject to a mandatory price rise or how much this will be. This lack of knowledge is not merely a case of not having the information to hand, it is about how clear the information is and how closely linked it is to the price. It is also about the time, effort, and ability required to find, calculate, and compare the various terms on the market, and to understand the inherent uncertainty of CPI and RPI. The answer to the problem cannot, therefore, be to increase the complexity of the information by giving worked examples and forecasts, or by adding more varieties of contract. It must aim to simplify the information given to customers and, as far as possible, leave them in no doubt about what they will pay and when. We strongly agree that, of all the remedy options listed in the consultation, the '£/p requirement' is most likely to meet this goal.

If an ISP imposes a price rise that a customer has no choice but to accept, it is only right that the customer knows how much this will be. To do otherwise is to place an unfair burden of financial risk on the customer, who is not in a position to assess that risk and can do nothing to mitigate or avoid the increase. The volatility of inflation and the outside factors that influence it means that there can never be certainty about an inflation-linked price rise. We therefore welcome Ofcom's proposal that CPI-linked increases should be banned on the basis that customers could never be certain about the price they will be forced to pay. Requiring price increases to be fixed is an important foundation for improving customer outcomes.

However, this issue is about more than uncertainty caused by the nature of the price rise – it is also about uncertainty through lack of awareness and understanding, which can both be remedied through the proposed intervention. As noted throughout the consultation document, several behavioural factors affect consumers' awareness of price rise information in the first instance and, once made aware at a later stage, decrease the likelihood that they will take it into account when making decisions. It is therefore important that information about price rises is presented clearly and at a stage of the journey when customers will be likely to include it in their decision making. We agree with the proposal that this be presented with equal prominence to the core price in online sales journeys and immediately after the core price is stated in verbal sales.

Finally, and most importantly, awareness isn't just about being given the information: it is also about understanding it in a material and practical way. As Ofcom's research and our own has demonstrated, many consumers are not able to calculate a percentage increase in price, let alone a compounding series of rises over time. No matter how prominently they are displayed or stated, if these mandatory price rises continue to be expressed as percentages a huge number of customers will still be disadvantaged because they are unaware of what the percentage means in practice. It is indefensible to express as a percentage a price rise that can be expressed in pounds and pence. If the percentage is known by the ISP, the price itself is known by the ISP, and they can put it in their sales journey just as easily. By extension, the price rise must be expressed as the *total monthly price* after the rise, not just the amount that the price will increase by. This is because the need to do the calculation places an unnecessary cognitive burden on the customer; as discussed above, this places behavioural barriers to customers' ability to understand the full price.

As noted in the CAP guidance on the presentation of mid-contract price increases in advertising for telecoms contracts, this is also consistent with consumer protection law under the Consumer Protection From Unfair Trading Regulations 2008 (CPRs), where "the price, including any taxes" is material information. Under the CPRs, only "where the nature of the product is such that the price cannot reasonably be calculated in advance" is it acceptable to present the price in any way other than the whole figure.

As outlined in our answer to question 3, we believe that ILPVTs pose material harm to the majority of customers. For specific groups of vulnerable customers, these impacts are both more likely and more severe. Ofcom have a statutory duty to "further the interests of citizens," and in discharging that duty to have regard to "the need to protect potentially vulnerable members of society such as children, the elderly, those with disabilities and those on low incomes" and "the interests of consumers in respect of choice, price, quality of service and value for money when performing their duty of furthering the interests of consumers." We firmly believe that the proposed intervention is justified in order to further the interests of citizens by preventing this form of financial harm.

Moreover, we believe that ILPVTs have a negative effect on competition within the market. As explored throughout the consultation document and our response, ILPVTs obscure the actual price of a service because ISPs who use them are able to state an artificially low monthly price that will only apply to the first few months of a much longer contract. As previously stated, we note Ofcom's point that they "have not seen clear evidence of a direct link between providers' costs and the ILPVTs they have adopted" as well as their statement that "most providers put more emphasis on raising revenues rather than on covering costs as a rationale [for using ILPVTs]".

In contrast, ISPs who don't use ILPVTs will use a monthly price that, even if it would lead to the same total cost over the life of the contract, initially appears to be more expensive. Moreover, because the size and timing of the increase may vary between providers that use ILPVTs, there is a lack of transparency even in this section of the market. Since ILPVTs make pricing transparency impossible, it is more difficult for all ISPs to compete on price. As well as the impact on ISPs themselves, this compounds the harm to customers because it distorts the ability of the market to differentiate services by price.

This is hugely damaging to competition because it penalises ISPs who offer transparency and certainty. This is compounded by the fact that the majority of the largest ISPs have (historically, although we note that some are changing their policies as a result of the consultation being published) imposed ILPVTs, meaning that it is the smaller challenger brands who are suffering. As these are more likely to be alt-nets, who Ofcom regard to be vital for infrastructure competition to hold Openreach to account[9], it further weakens the market. Ofcom's second statutory duty is "to further consumer interests in relevant markets, where appropriate by promoting competition." We firmly believe that the proposed intervention is justified in order to further consumer interests in the telecoms market, and that the promotion of competition appropriate and relevant here because of the direct impact of ILPVTs on the balance of the market.

We note the argument that banning ILPVTs risks leading to higher prices across the market. We strongly disagree. It is likely to be the case that prices *appear* to rise because the advertised monthly cost of a tariff may indeed be higher. However, these prices will then remain fixed, rather than rising uncontrollably later in the contract. If prices do rise, this is simply a demonstration of how much ISPs expected to raise their prices by over the course of the contract – it does not represent an actual increase in the cost to customers, it just makes it clear what the cost always was. Competition in the market will limit any disproportionate rises, particularly as ISPs who are currently using ILPVTs will need to make an effort to compete on equal footing with those who are not. This is more likely to force contract prices downward, as it becomes clear to consumers what they will save by using an ISP that previously appear to be more expensive; the transparency of pricing that will be brought to the market will increase the effectiveness of competition, potentially resulting in a *lowering* of prices.

We also believe that the costs to ISPs of implementing changes will be minimal and that prices will not need to rise to cover such costs. Implementing Ofcom's proposals would be an extension of work already done to comply with the new CAP guidance, meaning that ISPs will not be working from a standing start.

We note that Ofcom have excluded 'prices may vary' clauses from the consultation, on the grounds that they allow customers to exit the contract, since the goal of the intervention is to protect consumers from uncertainty over price increases that they have no option but to pay. We also recognise that the 'prices may vary' approach is unlikely to be taken up in a widespread manner, since the ability of customers to leave their contract is a risk to ISPs, particularly as the upcoming One Touch Switch programme will make switching much easier. We believe that this is reflected in the currently low use of 'prices may vary' within the market, and the decision by a major provider to move away from this model in favour of an RPI-based ILPVTs. However, although we recognise that 'prices may vary' is unlikely to dominate the market, we do believe that it remains a significant factor in the price of the contract and that the presence of this clause in the contract should therefore be included in the sales journey and contractual information in the same manner as ILPVTs. This would be consistent with the approach taken in CAP's guidance.

Finally, we note that the proposals relate only to the sales journey, the Contract Summary, and the Contract Information, but we believe that Core Subscription Price change information should also be included in End Contract Notices and Annual Best Tariff Notifications. Both of these documents are required to set out options available to the customer and the best tariff and it is therefore vital to have parity of information with all the other formats in which tariff features are communicated to customers. This is particularly important here because ABTNs and ECNs may not be within the ASA/CAP's remit as marketing, thus may not be subject to the existing rules. We strongly urge Ofcom to ensure that there are no loopholes and that every time a Core Subscription Price is communicated to customers they are also informed about potential changes.

Question 5: Do you agree with our proposal to require providers to ensure that the following information is drawn prominently to the customer's attention in a clear and comprehensible manner before a customer is bound by a contract: 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?

For the reasons given in our responses to questions 3 and 4, we strongly agree with the proposed intervention. In relation to online sales, we particularly note the consistency with CAP's guidance on the same topic. Given this overlap in approach and remit, we propose that Ofcom should consider asking the ASA/CAP to refer or report to Ofcom any potential or suspected breaches of this requirement that is relevant to the ASA/CAP's remit. As compliance with the requirements speaks to the regard in which ISPs hold the GCs, this referral should be done

[9] https://www.ofcom.org.uk/news-centre/2023/full-fibre-to-reach-half-of-homes,-as-competition-drives-better-broadband

regardless of whether a provider amends their advertising as a result of ASA intervention. We make this suggestion for two reasons. First, we believe it is important for Ofcom to have a clear view of compliance with the new requirements, both 'live' and over time. Reports or referrals from the ASA/CAP will be a significant contribution to this view and will present a minimal burden to either regulator. Second, we are concerned about the high level of apparent non-compliance with CAP's guidance and the subsequent breadth of the ASA's investigations into these breaches. If providers will not take seriously their responsibilities under the self-regulatory system, this matter should be closely monitored by the statutory regulator, who should be ready to take action.

As noted at the end of our response to question 4, we also believe that 'prices may vary' clauses should be stated in the same manner as ILPVTs.

Question 6: Do you agree with our proposal to require providers to include in the Contract Summary: 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 during the Commitment Period shall have effect?

For the reasons given above, we agree with the proposed intervention.

Question 7: Do you agree with our proposal to require providers to include in the Contract Information: i) if the Core Subscription Price is to change during the Commitment Period, that changed Core Subscription Price in pounds and pence, and ii) the date from which any changed Core Subscription Price during the Commitment Period shall have effect?

For the reasons given above, we agree with the proposed intervention.

Question 8: Do you agree with our proposed additions and amendments to GC C1 (see detailed amendments in annex 5)?

We agree with the proposed additions and amendments. As per the last point on our answer to question 4, we believe that these should also be extended to cover ECNs and ABTNs.

Question 9: Do you agree with our proposed additions and amendments to existing GC C1 guidance to clarify our expectations on how providers could comply with the new requirements (see detailed amendments in annex 6)?

We agree with the proposed additions and amendments.

Question 10: Do you agree with the proposed implementation period of four months from publication of the statement and the changes to GC C1 and guidance?

We agree that this is a reasonable implementation period but ask that Ofcom do not extend this further. The scale of consumer harm represented by ILPVTs means that the intervention should be in place with as much time as possible before the round of price increases in April 2025. The more customers who take up contracts with ILPVTs, the greater the potential harm. We believe that four months is sufficient time for ISPs to make any necessary changes to their systems and finalising their pricing decisions.