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Inflation-linked in-contract price rise team
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Dear Inflation-linked in-contract price rise team,

Uswitch response to Ofcom's prohibiting inflation-linked price rises consultation

Uswitch is strongly supportive of Ofcom's proposals to prohibit inflation-linked price rises in telecoms contracts.

We are disappointed that proposals have not been made earlier. The potential for consumer harm in the current rules was predictable. As a result of not acting sooner, consumers have been exposed to above inflation price increases — with little options to escape such rises — over a period of time in which inflation has risen quickly. We suggest Ofcom assesses responses to this consultation and moves towards issuing a statement as soon as possible, to stem the tide of this method of price increases.

Consumer harm has been exacerbated by provider convergence to similar price increase terms, often *inflation + ~3.9%* with no right to exit without penalty, a mechanism that is by definition inflationary and does not allow customers to know the price across the contractual term. This convergence suggests regulatory and market failure. Some providers have sought to argue that use of the inflation-linked device is because of the WFTMR charge controls using CPI+0%. Yet, providers have converged on a level always ~3.9% above these charge controls across the full price of the contract - not just the wholesale input level.

Even if the retail price increase terms were a mirrored CPI+0%, Ofcom would still have to consider whether it is more appropriate that the risk of inflation should sit entirely with the consumer, or be weighted to the provider over the course of a fixed term contract. Uswitch believes that providers are far more able to make risk-based judgments on the likely direction of future inflation than consumers are, and therefore they should make those judgments in the pricing approaches at the point of sale of a fixed term contract.

We believe it has always been an unreasonable expectation on consumers to be able to predict future inflation rates, and therefore it is inappropriate as a binding price increase when there is no right to terminate without penalty. Uswitch's research, highlighted in Annex 1 of our response, aligns with Ofcom's own research and analysis that the vast majority of consumers will not have a detailed enough understanding of current inflation (let alone predicting future inflation) to be able to properly assess inflation-linked pricing terms.

We have also been concerned that the obscurity of these pricing terms may also have a negative behavioural effect on consumers. In fear of these unknown future contractual increases, some consumers may remain out of contract in order to retain the flexibility to leave in the face of future price increases, even when the out of contract costs are higher.

Notwithstanding our disappointment that Ofcom did not propose these changes far earlier, given where we are today, we consider it would be very hard to argue that Ofcom's proposals are not proportionate to address the identified harm. We note that the proposals are not retrospective to existing contracts, and therefore will carry a very low implementation or financial cost for providers. We also note that under Ofcom's proposals, fixed price contracts for the fixed term duration will not be required, as providers will be able to offer 'stepped' price contracts, as long as this is spelled out in pounds and pence.

We think there is some inherent risk to consumer understanding in allowing anything other than an entirely fixed subscription price for the duration of a fixed term contract. Fixed price and term contracts are the norm in other comparable services, such as energy and many financial services, including mortgages and insurances. Under Ofcom's proposed rules, it would be possible for a provider to devise a fairly complicated stepped pricing structure. Under the assumption that Ofcom's proposals will allow consumers to better assess and compare different options, it is reasonable to expect that competition in the market will be sufficient to reduce the risk of widespread difficult-to-understand pricing mechanisms under the stepped pricing provision.

As with any interventions in this space, Ofcom should continue to monitor pricing trends following implementation to observe providers pricing strategies in case of any unintended consequences or further consumer harm.

We respond to Ofcom's specific consultation questions in Annex 1 of our response below.

Yours sincerely

Richard Neudegg

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Director of Regulatory Affairs

Annex 1 – Responses to Ofcom's consultation questions

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

Yes.

Question 2: Do you agree with our assessment of the potential impact of our proposal on the Welsh language? Do you think our proposal could be formulated or revised to ensure, or increase, positive effects, or reduce / eliminate any negative effects, on opportunities to use the Welsh language and treating the Welsh language no less favourably than English?

Yes.

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.

Yes.

In Figure 1 of the consultation document, Ofcom sets out the convergence towards inflation-linked price variation terms over time. We consider that this convergence by providers has compounded the consumer harm in recent years. Consumers today have fewer ways to avoid these terms when choosing a provider. This has allowed providers to benefit from consumers having to make choices based on imperfect information , whether that be taking fixed term contracts that they cannot, by definition, know in advance what it will cost, or by losing confidence in making a decision and instead sticking with an out-of-contract option that is of higher cost.

Uswitch has shared research it has conducted in this area with Ofcom, some of which is referenced in the consultation document.

Our research, conducted in April 2023, highlights that a large majority of consumers, some 85%, do consider the inflation-linked price variation terms unfair.[1] In the same research, 75% of consumers said they would be put off taking a contract that has these terms present. Coupled with wide application of such terms in the market, we think this may have a behavioural impact on consumers' willingness to take out new contracts. It is potentially exposing them to higher than necessary subscription charges in order to retain the right to terminate a contract in response to the next round of price increases.

We also strongly support the analysis Ofcom sets out in the consultation document, unpinned by its own research that shows awareness and understanding of inflation based terms and its potential impact, is low among consumers. Uswitch research conducted in January 2022 found

1
https://www.uswitch.com/media-centre/2023/11/broadband-mobiles-85-percent-users-call-mid-contract-price-hikes-unfair/

that only 9% of consumers were correctly able to cite the current rate of CPI, and with both RPI and CPI, consumers were far more likely to underestimate its level than overestimate.[2]

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

Yes.

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?

Yes.

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?

Yes.

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?

Yes.

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

Yes.

We note that the legal mechanism used in the proposed text for GC C1 is built on transparency of contractual information, creating an indirect restriction on the pricing structure of the contract itself, rather than an outright explicit restriction on the specific pricing structure of the contract. We expect this is likely sufficient to meet the policy objective and legally proportionate.

[2] https://www.uswitch.com/media-centre/2022/01/inflation-frustration-mid-contract-price-rises/

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)?

Yes.

Considering the approach noted in answer to Question 8 below, we consider the proposed guidance text at 1.27 especially important to leave no doubt in the intended restriction.

With respect to C1.3(a)(ii) and guidance text 1.26, in situations where a provider chooses to offer a contract with a fixed Core Subscription Price for the duration of the Commitment Period, it may be worth a clarification that C1.3(a)(ii) does not apply at all – i.e. that while provides may choose to promote that the price is fixed for the duration, the requirement should not be misread to imply there is a requirement for providers to confirm that there is no price increase due in the fixed term.

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 accept it is appropriate in terms of a good regulatory change process for the proposals not to apply retrospectively to existing consumer contracts and only apply to new contracts taken out.

While Uswitch is disappointed that Ofcom has not been able to move faster to propose these changes – and therefore has lost the opportunity to mitigate the impact on consumers of the particularly high period of inflation impacting the 2023 and 2024 round of prices rises – given this change would not be retrospective, we consider that four months is an entirely reasonable time for implementation once a decision is reached.