



Price rises in fixed term contracts - options to address consumer harm

Universal Utilities Ltd (and Titan Telecom Ltd¹) response

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¹ Note that, for the purpose of this response, "Universal Utilities Ltd" refers to both Universal Utilities Ltd and Titan Telecom Ltd

Introduction

- 1.1 Universal Utilities Ltd provides fixed line telecom, broadband and mobile services, specifically to small businesses. We strive to provide a low-cost service to our customer base, and have maintained the same price points for the vast majority of the last decade.
- 1.2 We do have some concerns regarding Ofcom's reasoning for implementing changes to GC9.6, as Ofcom's complaints data does not necessarily suggest that there is any deficiency with the current GC9.6; but rather that CPs are failing to adhere to the existing regulations. We believe that there are already sufficient regulatory safeguards in place to prevent the harm caused by the transparency of price rise clauses, and by the amount of any price rise, and it appears possible that the remaining categories set out in Ofcom's complaints data may not truly reflect the underlying reasons for the complaints themselves.
- 1.3 Hence, we feel that Ofcom's complaints data does not support the proposed regulatory intervention as being a proportionate response to the volume of complaints that Ofcom is unable to address using its existing tools.
- 1.4 We believe the complaint data evidences that Ofcom should be taking investigative and subsequent enforcement action against the CPs that are generating the majority of complaints. Ofcom's *Update 2* to this consultation demonstrates that over 80% of complaints made refer to one CP only, and as such we would suggest that this CP be investigated and the appropriate remedial action enforced. We believe that this approach would further reduce complaints by setting a regulatory precedent, while also providing some guidance to CPs on the correct interpretation of the existing regulations.
- 1.5 Ultimately, our concern is that Ofcom is seeking to instigate wholesale change to GC9.6, to remedy a harm that could be addressed by much more proportionate means; Ofcom could use its existing tools to prevent breaches of the current regulations. Considering that a much more proportionate response is available, we would question the reasoning for the proposed changes and argue that the current regulations are satisfactory, if Ofcom could demonstrate that they will be enforced.
- 1.6 Should Ofcom decide to proceed with its proposed changes, we are also concerned about its justification for extending the new GC9.6 to small business customers for a number of reasons. Specifically, we do not feel that the harm identified in respect of consumers also applies to business customers, and we feel that the length of business-to-business (B2B) contracts makes a requirement to effectively maintain prices somewhat unreasonable. Furthermore, considering the framing of Ofcom's proposals in light of the *Unfair Terms in Consumer Contracts Regulations 1999* (which refers to consumers only), we are concerned about the actual reasoning for extending the amended GC9.6 to small business customers.
- 1.7 Universal Utilities Ltd's full response can be found overleaf.

Section 4

Do you agree with the consumer harm identified from Communications Providers' ability to raise prices in fixed term contracts without the automatic right to terminate without penalty on the part of consumers?

- 2.1 Universal Utilities Ltd agrees that some consumer harm may arise through communications providers raising prices without giving consumers the automatic right to terminate without penalty; however we cannot agree with Ofcom's assessment of this harm, as we do not feel that harm is caused by any deficiency in the existing regulations. We believe that the reason for the harm identified may be Ofcom's reluctance to enforce the existing regulations. In its *Update 1*, Ofcom has categorised the complaints received into distinct groups: *Amount*, *Transparency*, *Unfair*, *ETC*, *All* and *Other*. In relation to this consultation, we would address each group as follows:

Amount

- 2.2 While we agree that harm is caused by uncertainty surrounding the meaning of "*material detriment*", it should be borne in mind that these complaints would generally represent situations where price rises *have* been materially detrimental to consumers, and GC9.6 has not therefore been correctly adhered to. We do not feel that the incidence of these complaints evidences a deficiency in GC9.6, only that some CPs are acting in breach of it. In fact, the current GC9.6 should adequately protect consumers from becoming subject to price rises which cause material detriment or financial hardship (which by definition would be considered detrimental in any case), as it specifically states that notification of such price rises should come with the ability to cancel a contract.
- 2.3 As such, the current GC9.6 already provides specific protection against the harm caused by the "*Amount*" of a price rise. We therefore believe (particularly in relation to Provider A, as per Ofcom's *Update 2*) that a high number of complaints over the "*Amount*" of a price rise should indicate no more than that Ofcom ought to consider investigating the subject for breach of the existing GC9.6.
- 2.4 It should also be noted that the proposed new GC9.6 would only extend the existing GC9.6 to price rises where the amount was *not* actually materially detrimental. We consider that any such change would be disproportionate in relation to complaints over the amount of price rises in relation to GC9.6.

Transparency

- 2.5 Ofcom has pointed out that the UTCCRs require terms which may disadvantage consumers to be given due prominence at point of sale, and the UTCCRs already implement suitable safeguards against complex, difficult to

understand, terms². We also note that Ofcom has stated that it considers the reference to “*payment terms*” in GCs 23 and 24 (which apply to small businesses as well as consumers) to include price variation terms. As such, we believe that the UTCCRs and the GCs already impose suitable transparency obligations on CPs. We do not therefore feel that additional safeguards are required.

- 2.6 Throughout the consultation document, Ofcom has referred to the contractual bargain which consumers believe they are agreeing to at point of sale, and has frequently stated that consumers are being “*surprised*” by price rises. In light of the aforementioned safeguards, we do not consider that this is an example of unavoidable harm, as it would not be apparent where the existing regulations are followed.
- 2.7 Similarly, while we understand that consumers are regularly subject to standard contract terms, these terms are available at point of sale, or immediately thereafter at which time consumers generally remain able to cancel contracts. The existing regulations should ensure that consumers are aware of the terms of their contracts.
- 2.8 Any harm caused by transparency issues must therefore be caused by CPs breaching the existing regulations, rather than flaws in the regulations themselves. If Ofcom believes that some CPs are not adhering to the regulations in relation to their contracts, we would suggest that this again would be grounds for Ofcom to investigate those CPs using its existing powers rather than instigate wholesale change to the GCs.

Unfair

- 2.9 Initially in relation to this category, we would query whether it should exist at all (i.e. would this best be addressed by one of the other categories?). For example, are consumers actually complaining that it is unfair for prices to rise even if they were aware it could happen when they agreed their contracts? We believe that these complaints would be best categorised under the reason *why* the complainant feels the price rise is unfair.
- 2.10 Furthermore, we cannot agree that price rises are unfair in principle. We acknowledge the difficulty in locating longer communications contracts which do not allow for price rises; however this is not a question of fairness, but of commercial reality. Consumers unhappy with the principle of price rises can do something about it by simply taking their business elsewhere. There are numerous options open to mobile customers who do not want to be tied into contracts – rolling 30 days contracts and pre-pay tariffs being the most common. If consumers were genuinely dissatisfied with the status-quo, and preferred options such as these, the incidence of longer term contracts would

² *Unfair Terms in Consumer Contracts Regulations 1999, s.7(1)*

drop; however the most common mobile contract length has *risen* from 18 to 24 months – indicating consumer satisfaction with longer-term contracts, in return for a better offering from the supplier (for example, a more expensive handset).

2.11 For these reasons we believe that “*Unfairness*” must be a false category, prompted by some other type of dissatisfaction.

2.12 Regardless of this, the UTCCRs already protect consumers against unfair contract terms. For this reason, we consider that further amendments to the regulations are unwarranted. If a contract term is truly unfair, consumers will already be protected by the UTCCRs – there is no need for Ofcom to intervene. However, it should be borne in mind that the UTCCRs do not extend to small businesses, yet Ofcom is seeking to expand the scope of GC9.6 to do so. Considering Ofcom’s reliance on the UTCCRs in relation to the proposed changes, we do not feel that any extension of a new GC9.6 to small business customers is warranted.

ETC

2.13 We cannot agree that this is a category of complaint in and of itself, as it would be a consequence of attempting to cancel a contract due to a price rise. As such, the reason for the consumer choosing to cancel the contract in the first place would be the true reason for the complaint (i.e. *why* is the consumer unhappy with the price rise?).

2.14 As such, we are unable to present any opinion on “*ETC*” as a complaint category.

All

2.15 As this covers more than one previously mentioned category, we believe this has been addressed above.

Other

2.16 This category is somewhat of a catch-all, and due to its vagueness we cannot comment on it. That said, we would assume that these complaints could perhaps fall into one of the above categories; however if these genuinely do fall into a category that cannot be assigned some more specific title than “*Other*”, we would suggest that further analysis of these complaints may be required.

2.17 In summary of the above complaint categories, we generally feel that suitable safeguards already exist to protect consumers from the types of harm identified by Ofcom. Where complaints have arisen, these are likely a result of CPs actually breaching the existing regulations. On the basis, we cannot consider that changes to

the regulations are necessary, or proportionate to the harm identified. If CPs appear to be acting in breach of the current GC9.6, we believe that Ofcom should initially consider using its existing powers to investigate the CPs causing a significant number of complaints.

Should consumers share the risk of Communications Providers' costs increasing or should Communications Providers bear that risk because they are better placed to assess the risks and take steps to mitigate them?

- 3.1 Universal Utilities Ltd agrees that CPs are better placed than consumers to anticipate increasing costs, however we feel that Ofcom has somewhat overestimated CPs' ability to forecast wholesale price increases. This is significantly more important when considering the proposed extension of the amended GC9.6 to small business customers, given the frequency of longer term contracts that small businesses enter into.
- 3.2 As per GC9.4, consumer contracts are subject to maximum terms of 24 months. The same principle does not apply to business-to-business contracts. We are aware that B2B contracts offered by some CPs may be of up to 7 years in length, and contracts of 3 years are common. We feel it would be somewhat unfair and unreasonable that CPs would be expected to predict price rises over such a period, and that to effectively prevent longer term contracts from being offered will have the effect of stifling competition and, therefore, innovation in the industry.
- 3.3 While Ofcom has acknowledged that the proposed amendment to GC9.6 may result in headline prices increasing, such a conclusion appears to have been drawn only on consideration of the fact that increasing wholesale costs would be built into the initially agreed prices. Although we consider this to be a correct assumption, we believe the matter is more complex than this.
- 3.4 First, in reality CPs could not be confident that they would forecast costs accurately and with certainty over the term of a contract. The result would be CPs building greater risk into their cost stack analysis, which would likely result in higher prices for customers than Ofcom may have anticipated.
- 3.5 As explained at para. 3.2, B2B contracts are generally of longer duration than consumer contracts. Requiring CPs to foresee increasing costs over the period of a B2B contract (as highlighted above, we are familiar with CPs employing contracts of up to 7 years in length) would make longer contracts unfeasible. The shortening of contract periods would have the knock on effect of depleting CPs' ability to spread their customer acquisition costs across a longer contract period; resulting in further increases to headline prices.
- 3.6 Ofcom should also be concerned that where new entrants to the communications market are unable to offer attractive headline prices to consumers, those new providers will find it very difficult to gain any foothold in the industry. Also concerning new CPs, Ofcom's consideration that CPs are well placed to anticipate

wholesale price increases is flawed as it would cause disparity between established CPs and newer CPs, whose market experience may not allow as accurate a forecast of increasing costs. Newer CPs are also likely to have fewer available options for mitigating increasing costs. This may in turn lead to reductions in profits for newer CPs, which would increase their failure rate and ultimately reduce competition and consumer choice across the industry – therefore actually *harming* consumers. In summary, we feel that the proposed new GC9.6 will create a barrier to entry for new CPs, which would ultimately harm the industry.

- 3.7 In relation to forecasting costs, we do not feel it is reasonable for Ofcom to expect CPs to absorb these costs entirely, particularly considering the short notice afforded when some wholesale prices are changed. For example, when Ofcom issued its wholesale charge control statement on 7th March 2012, this gave effect to changes commencing on 1st April 2012³. Although in this instance wholesale prices decreased, we feel that this underlines a key issue: that with such short notice of price changes being given (in this instance the notice was *less* than the 30 days required of CPs in accordance with GC9.6), CPs could end up in situations where wholesale price rises come into effect mere weeks into a contract (in the case of B2B suppliers, this contract may be for a substantial duration), and the CP has no options other than to absorb this increase for the entire contract length or allow immediate cancellation.

Do you agree with the consumer harm identified from Communications Providers' inconsistent application of the "material detriment" test in GC9.6 and the uncertainties associated with the UTCCRs?

- 4.1 Universal Utilities Ltd agrees that harm is caused by inconsistencies in CPs' approaches to the "material detriment" test when implementing price rises.
- 4.2 We feel that as reference to the UTCCRs is required in attempting to interpret "material detriment" (and that "material detriment" is not defined in any sense within the GCs, and as the GCs do not actually explain where a definition may be found), this adds an unnecessary layer of complexity to the interpretation of GC9.6. We agree with Ofcom's assessment that the exact meaning of "material detriment" remains unclear even where the UTCCRs are referred to, and that the UTCCRs' mention of price indexation clauses further confuses the matter.
- 4.3 As such, we believe it may be somewhat difficult to maintain a consistent approach across all CPs without additional guidance being provided.

Should Communications Providers be allowed (in the first instance) to unilaterally determine what constitutes material detriment or should Ofcom provide guidance?

³ <http://stakeholders.ofcom.org.uk/consultations/wlr-cc-2011/statement-march2012/>

- 5.1 As discussed above, at paras. 4.1 – 4.3, Universal Utilities Ltd’s general position is that guidance on the meaning of “*material detriment*” would be beneficial. However, based on the complaints data provided in Ofcom’s recent *Update 2* to this consultation, it is apparent that over 80% of the complaints made refer to one CP only.
- 5.2 As such, while we recognise the need for some form of guidance, we believe that rather than instigating any changes to the current GCs, Ofcom should look to its existing tools in tackling breaches of the GCs before seeking to review the GCs themselves. Ofcom currently has the ability to investigate CPs it believes may be acting in breach of the GCs, although in relation to abuse of the current GC9.6 we are not familiar with any type of enforcement action ever being taken.
- 5.3 With a significant number of the complaints about Provider A including consumers advising that they have been materially disadvantaged by *how much* the price has changed, we feel it would be reasonable (given that Ofcom considers it reasonable to propose changing the GCs based on this complaint volume) for Ofcom to open an enquiry or investigation into Provider A’s compliance with the existing GC9.6.
- 5.4 The logical conclusion to draw upon review of the *Update 2* data would surely be that Ofcom should look to investigate Provider A’s potential breaches of GC9.6 and take any necessary action in respect of this. We consider this to be the most sensible action at this point for two reasons: first, where Ofcom already possesses the power to remedy the vast majority of the reported harm (caused by a single CP) using its existing powers, it is disproportionate to instigate wholesale change to the GCs – therefore affecting all other providers – without first attempting to utilise these powers. Secondly, and in reference to the question of guidance, where an investigation is undertaken into a CP considered to be breaching GC9.6, this in itself would function as guidance on its application (and also have the benefit of setting a precedent for enforcement). On this point, Ofcom should consider – for example – this dual purpose effected by its own *Notification of Contravention of General Condition 1.2 under Section 94 of the Communications Act 2003: Notice served on British Telecommunications plc by the Director General of Telecommunications*, which included the statement “*S.5 The Director notes that General Condition 1.2 applies to all Communications Providers, not just BT. Therefore, the Director expects all Communications Providers to adhere to the principles outlined in this Notification in relation to the application of General Condition 1.2. If they do not do so, they risk enforcement action being taken against them by the Director.*”⁴

What are your views on whether guidance would provide an adequate remedy for the consumer harm identified? Do you have a view as to how guidance could remedy the harm?

- 6.1 As discussed above, at paras. 4.1 – 5.4, Universal Utilities Ltd would welcome guidance on the matter; however we believe that the major problem in relation to

⁴ Ofcom’s *Notification of Contravention of General Condition 1.2 under Section 94 of the Communications Act 2003: Notice served on British Telecommunications plc by the Director General of Telecommunications*, p5

the price changes is that Ofcom has thus far been unwilling to take action in respect of breaches of the existing GCs. Guidance may well provide further clarification on GC9.6, however Ofcom must show that the existing GC9.6 is not toothless, and enforcement against breaches (which Ofcom's complaints data evidences may well be apparent) will do so while also providing guidance through precedent.

- 6.2 This approach surely must be tested before wholesale changes to GC9.6 may be considered.

Do you agree with the consumer harm identified from the lack of transparency of price variation terms?

- 7.1 Please refer to Universal Utilities Ltd's previous answer to "*Do you agree with the consumer harm identified from Communications Providers' ability to raise prices in fixed term contracts without the automatic right to terminate without penalty on the part of consumers?*" (at paras. 2.1 – 2.18) which addresses this point.

Do you agree that transparency alone would not provide adequate protection for consumers against the harm caused by price rises in fixed term contracts?

- 8.1 As discussed previously, Universal Utilities Ltd does not necessarily agree with the principal harm identified by Ofcom; however in relation to transparency over by how much a price may change, we would again point out that CPs are already subject to existing transparency obligations through both the UTCCRs and the GCs.
- 8.2 Based on Ofcom's complaints data, there clearly are some issues surrounding the implementation transparency obligations, which we believe Ofcom should look to remedy using its existing powers – taking enforcement action against offending CPs – before instigating changes to the GCs. As with questions surrounding "*material detriment*", we believe that taking proportionate enforcement action would inspire additional compliance with the existing GC9.6.

Section 5

Do you agree that any regulatory intervention should protect consumers in respect of any increase in the price for services provided under a contract applicable at the time that contract is entered into by the consumer?

- 9.1 As discussed above (specifically at para. 5.4), Universal Utilities Ltd feels that the most appropriate intervention at this stage would not be to regulate against any price rise being possible without the consumer being able to cancel their contract. We feel that investigating CPs' apparent breaches of GC9.6 would demonstrate that CPs cannot be non-compliant with the *existing* regulations without fear of remedial action, and therefore increase industry-wide compliance with those regulations. The current problem is not that the regulations are not sufficient, it is that they are not enforced.

Do you agree that any regulatory intervention should apply to price increases in relation to all services or do you think that there are particular services which should be treated differently, for example, increases to the service charge for calls to non-geographical numbers?

- 10.1 Universal Utilities Ltd feels that where prices are almost totally removed from CPs' control (i.e. where the price is set by the operator of the receiving number – for example, directory enquiries calls), it is not appropriate for regulatory intervention to affect CPs' ability to adequately respond to changes in those prices. CPs' wholesale costs in relation to these services may increase significantly over a short period of time, to the extent that it would be quite unrealistic to expect CPs to maintain prices. As an example, the increases in the price charged by BT Wholesale for the directory enquiry service 118118 between March 2009 and February 2013 are documented at Annex 1. We do not consider that it would be appropriate to expect CPs to absorb these increases – particularly as we would expect consumers to be aware that calls to such services attract a significant cost in any case.
- 10.2 More generally, we would also query why the proposed new GC9.6 should affect landline telecoms and broadband contracts. Extending the change to these contracts appears to be an example of attempting to remedy a harm that is barely apparent, by Ofcom's own admission – the consultation document explains that the majority of complaints are in relation to mobile contracts. While we acknowledge Ofcom's reasoning that different principles should perhaps not apply to different services, we feel that this represents an inconsistent approach on Ofcom's behalf. In its previous consultation on the removal of automatically renewable contracts from the communications market, Ofcom specifically stated that the amendment to GC9.3 would not be extended to mobile agreements on the basis that rolling agreements were not necessarily apparent in the mobile marketplace. In relation to price increases, Ofcom has acknowledged that the complaints made are generally regarding mobile contracts, however in this instance is seeking to extend the relevant amendments to fixed line telecoms and broadband contracts.
- 10.3 Considering that the reasoning for doing so represents an approach inconsistent with previous changes to the GCs, we would question the proportionality of implementing a change to GC9.6 to remedy harm that Ofcom's (and Which?'s) complaint data suggests is not necessarily a problem. We would therefore propose that any amendment to GC9.6 which does take effect (although we maintain that none is required) is in relation to mobile contracts only, as it would not be an appropriate or proportionate use of Ofcom's resources to amend the regulations on fixed line telecoms or broadband without evidence of material customer harm.

Do you agree that the harm identified from price rises in fixed term contracts applies to small business customers (as well as residential customers) but not larger businesses?

- 11.1 As previously alluded to at paras. 2.1 – 3.8, Universal Utilities Ltd does not believe that small businesses are subject to the harm identified by Ofcom in the same manner as consumers.
- 11.2 We do not feel that harm necessarily arises from consumers being “surprised” by price changes, as these “surprises” should only be apparent due to the consumer’s own failure to familiarise themselves with the contract they are agreeing to (notwithstanding CPs acting in breach of the existing transparency regulations). It is reasonable to expect a small business customer to pay particular attention to the key terms of a contract they are considering agreeing to.
- 11.3 In relation to harm arising from consumers not being aware of by how much a price may change, we also feel that this does not necessarily arise in relation to business customers. Ofcom has stated in its consultation that CPs should be able to anticipate price changes; however, we believe that an important part of managing any business is to anticipate changing costs. As such, we feel it would be contradictory for that principle to be applied to CPs, and not to small business customers, who should also be able to anticipate the possibility of their costs increasing.
- 11.4 This is particularly true considering the existing transparency obligations (as per GCs 23 and 24), and the protection from “materially detrimental” contractual amendments (as per the current GC9.6) provide adequate protection for small businesses, given their increased responsibility and capability to review an offering compared to a more vulnerable consumer.

Do you agree that any regulatory intervention that we may take to protect customers from price rises in fixed term contracts should apply to residential and small business customers alike?

- 12.1 For the reasons outlined above, at paras. 11.1 – 11.4, Universal Utilities Ltd does not feel that it is justifiable to extend the proposed amendments to GC9.6 to small business customers, as business customers are not subject to the harm identified by Ofcom.
- 12.2 In addition to this, we would also query the basis for extending the amendments to include small business customers. Throughout the consultation, Ofcom has framed its proposals in the UTCCRs, and the UTCCRs have been used as significant justification for making changes to GC9.6. However, the UTCCRs refer to consumers only, and small businesses are not within their scope. As such, even where the UTCCRs justify a change to consumer affecting regulations, the UTCCRs cannot be used to validate changes to regulations regarding small businesses. Considering Ofcom’s reliance on the UTCCRs throughout the consultation document, we do not feel that extending an amendment to GC9.6 to small business customers is justified in light of the consultation.
- 12.3 Furthermore, we consider that the proposed extension of the amended GC9.6 to small businesses is a reaction to a problem which does not exist. As the *total*

number of complaints about price rises received by Ofcom represents complaints about less than 1 out of every 80,000 of the UK's landline, broadband and mobile subscriptions, the proportionality of *any* amendment to GC9.6 is drawn into question. However, Ofcom's consultation goes on to explain that only 20 of the complaints regarding GC9.6 have been made by small business customers (i.e. a little over 1 out of every 7 million of the UK's communication subscriptions). We feel that instigating a change to the GCs based on this volume of complaints cannot be justified as a proportionate response.⁵

- 12.4 Also, we have referred at paras. 3.1 – 3.8 to the length of some B2B contracts, and that to require CPs to foresee wholesale price changes up to 7 years in advance (or a maximum of three years in Universal Utilities Ltd's case) is not reasonable.

Do you agree that our definition of small business customers in the context of this consultation and any subsequent regulatory intervention should be consistent with the definition in section 52(6) of the Communications Act and in other parts of the General Conditions?

- 13.1 Universal Utilities Ltd agrees with Ofcom's position regarding this question.

Do you agree that price rises due to the reasons referred to in paragraph 5.29 are outside a Communications Provider's control or ability to manage and therefore they should not be required to let consumers withdraw from the contract without penalty where price rises are as a result of one of these factors?

- 14.1 Universal Utilities Ltd agrees with Ofcom's position regarding this question.

Except for the reasons referred to in paragraph 5.29, are there any other reasons for price increases that you would consider to be fully outside the control of Communications Providers or their ability to manage and therefore should not trigger the obligation on providers to allow consumers to exit the contract without penalty?

- 15.1 Please refer to Universal Utilities Ltd's answer to the question, "*Do you agree that any regulatory intervention should apply to price increases in relation to all services or do you think that there are particular services which should be treated differently, for example, increases to the service charge for calls to non-geographical numbers?*" (at paras. 10.1 – 10.3), which outlines our concerns in this area.

Do you agree that Communications Providers are best placed to decide how they can communicate contract variations effectively with its consumers?

⁵ All subscriber numbers are taken from <http://media.ofcom.org.uk/facts/> (specifically, "Number of fixed landlines in the UK (including ISDN channels)", "Number of fixed residential broadband connections in the UK" and "Number of mobile subscriptions in the UK")

- 16.1 While Universal Utilities Ltd agrees with Ofcom’s position that CPs are well placed to determine how to notify consumers of contractual changes, we do have a specific concern in this area.
- 16.2 Currently, one of the major issues identified by Ofcom is the confusion over “*material detriment*” meaning that each individual CP’s interpretation may vary. One of the key aims of this consultation is to eliminate any ambiguity over “*material detriment*” in relation to price rises. However, if this ambiguity is removed, it may be replaced by uncertainty over how consumers should be *notified* of price changes.
- 16.3 If the required manner of notifications is not explained in any detail, it is likely that CPs could intentionally notify customers of changes using a method designed to ensure the fewest possible number of consumers would take notice of the change. This would likely result in complaints being made about price increases not due to consumers being unaware that the price rise was possible, or due to their dissatisfaction with the amount of the price rise, but rather because consumers would feel they were insufficiently notified.
- 16.4 In summary, we believe that making changes to clarify or remove “*material detriment*” in relation to GC9.3 may simply change the issue from this, to a question of sufficient notification. This may mean that there is no real change in practice, unless Ofcom would then begin to investigate CPs for possible insufficient notification of price rises (we note that Ofcom intends to liaise with CPs on their notification procedures, however there would be no clear incentive to adhere to this advice) – effectively rendering a change to the regulations ineffectual. In addition to this, whether notifications are sufficient may be even more difficult to determine than whether a price rise is “*materially detrimental*” (material detriment can by nature be demonstrated by consumers, and interpreted in light of contracts, whereas the idea of insufficient notification is vague at best), meaning that changing the regulations without explaining the notification procedures could actually be a step backwards.

Do you agree with Ofcom’s approach to liaise with providers informally at this stage, where appropriate, with suggestions for better practice where we identify that notifications could be improved?

- 17.1 Other than providing specific guidance on the interpretation of sufficient notification, Universal Utilities Ltd does feel that it would be in CPs’ interests for Ofcom to provide suggestions on notification best practice. However, as discussed at paras. 16.1 – 16.4, we are not convinced that this alone will have the desired effect of ensuring full compliance with Ofcom’s intentions.
- 17.2 As such, in light of our analysis at paras. 16.1 – 16.4, which draws similarities between uncertainties over “*material detriment*” and sufficient notification, we would query why Ofcom would seek to remove the uncertainty over material detriment, although not over sufficient notification. We believe that a consistent approach should be taken across both issues.

- 17.3 While we cannot agree that any wholesale change to GC9.6 is necessary, we would point out that our recommended solution of investigating CPs appearing to act in breach of the existing regulations could allow Ofcom to simultaneously use any enforcement notification as a guidance document (meaning that this could be extended to cover notifications of price changes). Alternatively, we would suggest that if Ofcom believes that liaising with CPs will be sufficient to address any uncertainty over notifications, this may well also be the case in respect of interpreting “material detriment”.

What are your views on Ofcom’s additional suggestions for best practice in relation to the notification of contractual variations as set out above? Do you have any further suggestions for best practice in relation to contract variation notifications to consumers?

- 18.1 Please refer to Universal Utilities Ltd’s response to “Do you agree that Communications Providers are best placed to decide how they can communicate contract variations effectively with its consumers?” at para 16.1 – 16.4, which we feel applies to this question also.

What are your views on the length of time that consumers should be given to cancel a contract without penalty in order to avoid a price rise? For consistency, should there be a set timescale to apply to all Communications Providers?

- 19.1 Universal Utilities Ltd agrees that one month is a reasonable time period for notification of any price change, as this gives customers suitable opportunity to assess the situation and make a decision regarding cancellation of a contract.
- 19.2 We also agree that there should be no absolutely defined time period for notifications. If CPs choose to notify customers of changes earlier than one month in advance, we cannot foresee any instance in which this may be detrimental to the customer. That said, neither can we envisage a situation in which one month’s advance notification would not be sufficient.

What are your views on whether there should be guidance which sets out the length of time that Communications Providers should allow consumers to exit the contract without penalty to avoid a price rise?

- 20.1 Universal Utilities Ltd has no comments on this question. We do not feel that guidance would be necessary where a time period is already mandated by the GC.

Section 6

Option 1 – Do you agree that this option to make no changes to the current regulatory framework is not a suitable option in light of the consumer harm identified in section 4 above?

- 21.1 Universal Utilities Ltd believes that our position regarding Ofcom's proposals has been suitably outlined in our previous answers (particularly at para. 5.4). However, for clarification, we favour an approach that sees Ofcom using its existing tools to instigate enforcement action against CPs that consumer complaints would indicate are currently breaching the existing GC9.6. An example of such enforcement action would act as both a deterrent to CPs "*pushing their luck*" in relation to price changes under GC9.6, and simultaneously set a precedent – and therefore provide guidance on – the correct interpretation of "*material detriment*" for the purpose of GC9.6.
- 21.2 As such, we believe that Option 1 is the most suitable option under the current circumstances. However, this does not mean we feel Ofcom should take no action, as investigative and subsequent enforcement action may be required against CPs thought to be acting in breach of the existing regulations (which are currently suitable to safeguard against the harm identified by Ofcom, and as such we believe this harm only exists because of these breaches of the existing regulations), in order to prevent further breaches in future.

Option 2 – Do you agree with Ofcom's analysis of option 2? If not, please explain your reasons.

- 22.1 Universal Utilities Ltd believes that our position regarding Ofcom's proposals has been suitably outlined in our previous answers (particularly at para. 5.4). However, for clarification, we favour an approach that sees Ofcom using its existing tools to instigate enforcement action against CPs that consumer complaints would indicate are currently breaching the existing GC9.6. An example of such enforcement action would act as both a deterrent to CPs "*pushing their luck*" in relation to price changes under GC9.6, and simultaneously set a precedent – and therefore provide guidance on – the correct interpretation of "*material detriment*" for the purpose of GC9.6.
- 22.2 Our reasoning is mainly based on the existing regulations already providing suitable protection to consumers. In relation to transparency, as discussed at paras. 2.5 – 2.8, the UTCCRs and the GCs already impose transparency obligations on CPs. Hence, no further transparency requirements are necessary, as the harm caused by a lack of transparency evidences only that the existing regulations may be being breached, and that Ofcom may wish to consider investigating the relevant CPs involved.

Option 3 – Do you agree with Ofcom's analysis of option 3? If not, please explain your reasons

- 23.1 Universal Utilities Ltd believes that our position regarding Ofcom's proposals has been suitably outlined in our previous answers (particularly at para. 5.4). However, for clarification, we favour an approach that sees Ofcom using its existing tools to instigate enforcement action against CPs that consumer complaints would indicate are currently breaching the existing GC9.6. An example of such enforcement action would act as both a deterrent to CPs "*pushing their luck*" in relation to price changes

under GC9.6, and simultaneously set a precedent – and therefore provide guidance on – the correct interpretation of “*material detriment*” for the purpose of GC9.6.

- 23.2 Option 3 presents another discussion over the transparency of price change clauses in contracts, and we would therefore refer to our discussion at paras. 2.5 – 2.8 and at paras. 22.1 – 22.2.

Option 4 – What are your views on option 4 to modify the General Condition to require Communications Providers to notify consumers of their ability to withdraw from the contract without penalty for any price increases?

- 24.1 Universal Utilities Ltd believes that our position regarding Ofcom’s proposals has been suitably outlined in our previous answers (particularly at para. 5.4). However, for clarification, we favour an approach that sees Ofcom using its existing tools to instigate enforcement action against CPs that consumer complaints would indicate are currently breaching the existing GC9.6. An example of such enforcement action would act as both a deterrent to CPs “*pushing their luck*” in relation to price changes under GC9.6, and simultaneously set a precedent – and therefore provide guidance on – the correct interpretation of “*material detriment*” for the purpose of GC9.6.
- 24.2 We would again point out that the current safeguards in respect of the two main harms arising (transparency, discussed at paras. 2.5 – 2.8, and the amount of price rises, discussed at paras. 2.2 – 2.4) are already sufficient, and that the harm arising appears to be caused by breaches of these existing regulations.

Do you agree with Ofcom’s assessment that option 4 is the most suitable option to address the consumer harm from price rises in fixed term contracts?

- 25.1 Please refer to Universal Utilities Ltd’s response to “*Option 4 – What are your views on option 4 to modify the General Condition to require Communications Providers to notify consumers of their ability to withdraw from the contract without penalty for any price increases?*” at paras. 24.1 – 24.2, which we feel applies to this question also.

Do you agree that Ofcom’s proposed modifications of GC9.6 would give the intended effect to option 4?

- 26.1 With the intended effect of Option 4 being to reduce the harm caused to consumers by price rises during fixed term contracts, Universal Utilities Ltd would have to answer that the proposed modifications will be unlikely to have this intended effect.
- 26.2 First, we would again refer to our analysis of the harm identified by Ofcom, at paras. 2.1 – 2.17. As explained, the existing regulations under the UTCCRs and the GCs should already serve to eliminate the categories of harm identified, and changing the regulations would not therefore affect this. The harm that customers are complaining of is being caused by CPs failing to adhere to their current obligations, and (based on the assumption that CPs would continue to breach any new

regulations to the same extent that they appear to be acting in breach of the existing ones) this would therefore continue to exist if GC9.6 is changed. On that basis, the amended GC9.6 in accordance with Option 4 would not give the effect of reducing the harm identified.

- 26.3 We feel that the only solution to the problem of CPs breaching the regulations is to take action to stop them from breaching the regulations, which can be done only by Ofcom using its existing powers to investigate CPs believed to be breaching the existing GC9.6 and by educating CPs on the interpretation of these GCs. The precedent set by enforcement action would foremost act as a deterrent to CPs acting in breach of the existing regulations, and serve the secondary purpose of providing a form or guidance to CPs on the correct interpretation of “*material detriment*” and possibly what is considered sufficient notification of a price change – in a similar way to Ofcom’s *Notification of Contravention of General Condition 1.2 under Section 94 of the Communications Act 2003: Notice served on British Telecommunications plc by the Director General of Telecommunications* (discussed at para. 5.4).
- 26.4 Referring again to the question of notification of price changes, we feel that amending GC9.6 in accordance with Option 4 without explaining how price changes should be notified to consumers would effectively be self-defeating. As mentioned at paras. 16.1 – 16.4, the contentious point would change from whether consumers *should* be notified of price changes, to *how* they are notified. To prevent this problem, Ofcom would be required to investigate CPs believed to be providing insufficient notifications of price changes (the proposal to liaise with CPs on their notification practices would not in itself provide any incentive for compliance); and with no regulation in this area, combined with the somewhat vague notion of what constitutes sufficient notification (this is more vague, in our opinion, than “*material detriment*”, which can be demonstrated by customers and can be considered with reference to the terms and conditions of contracts), this may prove particularly difficult. In any case, it would still require enforcement action to be taken in order to ensure compliance, meaning that regardless of whether GC9.6 is amended or not, Ofcom would still need to use its powers to uphold the GCs and amending them could therefore become a waste of resources.
- 26.5 Even if the notification process was defined, it remains the case that the current harm experienced by consumers is prompted by breaches of the existing regulations. If CPs were to continue to breach the new regulations, enforcement action would still be required.
- 26.6 Ultimately, we feel that this is a question of whether Ofcom should use its existing investigatory and enforcement powers now to prevent ongoing breaches of the current regulations, or whether Ofcom should amend the regulations, and then review using enforcement action to ensure compliance with the new GC9.6 if and when it is breached. We consider that on the basis of cost alone, Ofcom should look to its existing tools to prevent breaches of the current regulations. Furthermore, from a proportionality perspective, the fact that Ofcom already has the ability to

deal with the problem identified (and that Ofcom would likely still have to use this ability after any amendment to GC9.6 in accordance with Option 4, meaning the intended effect of Option 4 will not be realised by an amendment alone), means that any change to GC9.6 surely cannot be warranted at present.

What are your views on the material detriment test in GC9.6 still applying to any non-price variations in the contract?

27.1 Universal Utilities Ltd agrees with Ofcom's position on this question.

For our preferred option 4, do you agree that a three month implementation period for Communications Providers would be appropriate to comply with any new arrangements?

28.1 Universal Utilities Ltd feels that an implementation period of at least six, rather than three, months would be suitable for any changes that do arise from this consultation. Many smaller CPs may not have the resources to carry out the required amendments within three months.

28.2 Aside from changing the terms and conditions of contracts, CPs would be required to carry out wholly new cost projections and analyses, to determine new pricing structures. While the simple changes to paperwork (and possibly marketing material) may be implemented relatively quickly, the actual consideration of pricing that would be required of CPs does not appear to have been taken into account by Ofcom in determining the timeframe for implementation.

28.3 It must also be borne in mind that CPs (particularly smaller CPs) are already likely to be very busy, and that the required resources to carry out these considerations may not be readily available.

What are your views on any new regulatory requirement only applying to new contracts?

29.1 Universal Utilities Ltd agrees with Ofcom's position regarding this question. However, we would point out that the proposed modification to GC9.6 (as per the Schedule to Annex 8 of the consultation) does not actually clarify that the amended regulation would only refer to new contracts.