

Utility Warehouse response to Ofcom's consultation 'Prohibiting inflation-linked price rises'

Introduction

Utility Warehouse ('UW') welcomes the opportunity to respond to Ofcom's consultation 'Prohibiting inflation-linked price rises'. We agree that customers should be provided with the information which is relevant to their transaction decision in a transparent, prominent and easily understandable way. There should be no 'surprise' in the amount a customer gets charged throughout their minimum contract term.

There are times where we, and other providers, experience changes in cost levels which may require us to increase the charges customers pay for their services. If this is necessary, we consider that consumers should be notified and given the right to leave their contract, and if within their minimum term, without paying any early termination fees.

We consider that any 'built-in' price increase information, whether based on CPI, percentages or pounds and pence, has the potential to get 'lost' in the amount of information provided at point of sale and could take consumers by surprise. We therefore propose an option which is different from the ones identified by Ofcom. Under this option, consumers would have the right to leave their contract without paying an early termination fee whenever a provider carries out an in-contract price increase (whether built-in, discretionary, based on unknown quantities like CPI, percentage, or pounds and pence). We believe this is fair and transparent. It removes the onus on consumers to engage with a substantial amount of information at point of sale and identify and absorb the most important and relevant parts.

Whilst we consider that any in-contract price increase should give the customer the right to leave without penalty, inflation-based price increases, by their very nature, will always result in a 'surprise' price increase and are therefore less transparent than percentage-based or 'pounds and pence' price changes.

Ofcom's proposals should be seen in a wider industry context where inflation-based increases are used widely and inconsistently. Any provider who has a direct or indirect relationship with Openreach will be subject to their standard wholesale contract, which includes an annual CPI increase, resulting in an unknown annual increase in costs for its downstream suppliers. Other wholesale network providers may use similar increases. Retail providers may have to mitigate the risk of this unknown increase by passing on the same type of increase to their retail customers. If Ofcom were to prohibit the use of CPI based price increases for retail providers, it should do the same for wholesale providers. As an independent reseller, we have little chance of changing this behaviour through contract negotiations so we believe it is best addressed through an Ofcom intervention.

Another example of this inconsistency is in relation to Automatic Compensation. Well-intentioned signatories to Ofcom's voluntary Automatic Compensation scheme have to increase the amounts of compensation they pay out to consumers by CPI in April each year under the rules of the scheme. Where signatories use Openreach for provisioning and repairing, there is no corresponding increase in the rates Openreach pays out to its downstream suppliers, resulting in an increasingly large gap between the amounts downstream suppliers receive from Openreach and the amounts they pay out. In fact, there has only been one increase in compensation paid by Openreach since the Code was introduced whereas signatories have increased the pay-out amounts to consumers in four consecutive years. To make this Code sustainable, there has to be some reciprocity to the scheme or signatories might start considering their position.

Annex 2 includes the responses to Ofcom's consultation questions. These responses need to be read in conjunction with our written response below, which addresses the following issues in turn:

1. Background and history to inflation-based in-contract price increases;
2. In-contract price increases;
3. Information provided at point of sale;
4. The wider use of inflation based increases in industry; and
5. Unintended consequences.

1. Background and history to contractual changes relating to inflation- based in-contract price increases

Ofcom's current consultation is not the first one addressing in-contract price increases. In 2013, Ofcom carried out a consultation¹ and published a statement² and guidance³ on the subject. Whilst the regulatory framework was different in 2013, questions around fairness and the 'surprise' element of price increases were as relevant then as they are now.

In the 2013 consultation document and statement, Ofcom set out the following key principles it considered relevant in meeting the basic aims of fairness, which it used to assess whether the rules were providing adequate consumer protection:

- Principle 1: consumers should have information that enables them to know what bargain they are striking, so they can make informed transactional decisions;

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0031/29299/condoc.pdf

² https://www.ofcom.org.uk/__data/assets/pdf_file/0017/38042/gc9_statement.pdf

³ https://www.ofcom.org.uk/__data/assets/pdf_file/0027/29682/guidance.pdf

- Principle 2: **consumers should be protected against terms and practices that take them by surprise and which impose on them burdens and risks they should not fairly bear** [emphasis added];
- Principle 3: where potentially unfair terms and/or practices operate, consumers should be able to take steps to avoid their effects; and
- Principle 4: the rules that give effect to these principles should be clear, certain and effective in practice, and consistent with the general law.

Ofcom decided to put in place guidance clarifying, among other things, its expectations regarding the material detriment threshold for different types of subscription prices. The guidance includes one example of so-called discretionary price increases (which would give customers the right to leave without penalty) and two examples of so-called agreed prices (which, subject to the prices being prominent and transparent at point of sale, would not give the customer the right to leave without penalty). Example 3 in the guidance (agreed price) is defined as follows:

‘The subscriber agrees and enters into a 24-month contract on terms that the agreed core subscription price will be £X per month for the first 12-months (or some other period) and £X + RPI for the second 12-months (or some other period). On the basis that the relevant price terms are sufficiently prominent and transparent that the subscriber can properly be said to have agreed on an informed basis, at the point of sale, to the relevant tiered price(s), Ofcom would not regard the application of the agreed price in the second period as a modification of the contract capable of meeting GC9.6’s material detriment requirement.’

In a footnote it sets out that instead of RPI, some other price index well known to customers, like the Consumer Price Index, can be used as well.

A number of providers updated their contracts after the publication of the guidance in 2013, and included an ‘agreed’ price clause in their contracts. Some of these providers changed their terms from an ‘up to inflation’ price increase, to a ‘by inflation’ price increase. ‘Up to’ increases were deemed ‘discretionary’ by Ofcom and would give customers the right to leave without penalty, whereas ‘by inflation’ would be an ‘agreed price’ which would not give customers the right to leave without penalty. This meant that providers using the ‘by inflation’ term were obliged to implement an inflation-based price increase every year, otherwise they would be in breach of their own contract. An ‘up to’ increase would allow providers to increase prices from anything between 0% and the level of inflation, depending on the fluctuation in costs they experienced and would therefore be more beneficial to consumers.

In its current consultation document, Ofcom included a timeline starting in 2020 which demonstrates providers increasingly use inflation-plus price increases, with the ‘plus’ being a percentage, typically between 3% and 3.9%. Whilst this is true, the practice of inflation based

price increases has been around much longer, for at least ten years, since Ofcom published its guidance in 2013.

It is hard to see how inflation-based ‘agreed’ prices could ever satisfy the principles set out by Ofcom, even when made transparent and prominent at point of sale. It is impossible for customers to know what bargain they are striking if that bargain is based on future inflation, which will, by definition, be an unknown quantity. Irrespective of inflation being high or low, the increase will always be a surprise to customers and will therefore never satisfy Ofcom’s second principle, “Consumers should be protected against terms and practices that take them by surprise and which impose on them burdens and risks they should not fairly bear”.

In terms of fairness, Ofcom launched its Fairness Commitments⁴ programme in 2019. The objective of the commitments was to ‘ensure people get a fair deal and are treated well by their providers’. The first commitment sets out that customers should ‘Get a fair deal, which is right for their needs’. As set out above, one can question the fairness of a deal where during a customer’s contract the price can be increased by an unknown amount without giving the customer the right to leave. Similar questions can be asked about inflation-plus based price increases in relation to the third commitment ‘Customers are supported to make well-informed decisions with clear information about their options before, during, and at the end of their contract.’ It is impossible to make a well-informed decision about a price which will increase by an unknown amount.

Twelve providers signed up to Ofcom’s Commitments, only three of which do not use an inflation plus based price increase, and of the three, two are relatively small. Yet, in Ofcom’s assessment⁵ of the Fairness Commitments, in May 2021, the widespread use of inflation plus based price increases was not mentioned as a concern, or even a development. It simply did not feature in its assessment.

We question whether consumer inflation is a relevant price increase indicator for telecom providers; whereas some elements of consumer inflation may be appropriate to telecom providers (energy and housing costs), others appear to have limited relevance (food and alcohol, recreation and culture, restaurants and hotels). In addition, telecom providers may be impacted significantly more or less by certain elements of the basket of inputs making up a consumer price index than consumers. Indeed, Ofcom’s consultation set out that evidence collected from providers using inflation based price increases did not show a direct link between their costs and the inflation-based price variation terms they have adopted. This further puts into question the fairness of this practice.

⁴ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/fairness-for-customers>

⁵ https://www.ofcom.org.uk/__data/assets/pdf_file/0030/218676/fairness-commitments-monitoring-report.pdf

We also consider it unlikely that providers who use the inflation-plus increase in their contracts experience cost increases over multiple years which are based on CPI plus the same percentage.

Ofcom expressly allowed for inflation based increases in 2013. Until late 2022, with inflation being relatively low and stable, Ofcom had no concerns whatsoever about this practice, despite it clearly going against its own principles. It only started to get concerned when inflation went up significantly. In our view, it should never have allowed it in the first place and the current proposals feel like ‘too little, too late’ and more driven by public and political pressure than by a consistent application of consumer fairness and protection principles.

2. *In-contract price-increases*

In section 1 we set out our views on the inflation based part of in-contract price increases. In this section we discuss the principle of in-contract price increases. As set out above, Ofcom differentiates between two main types of price increases:

1. *Discretionary price increases*, whereby a price increase is not ‘built into’ the contract but carried out at a provider’s discretion. Where providers want to use discretionary price increases, their terms and conditions should allow for it. They should notify customers of the increase at least 30 days before the change, tell them about the impact and advise them of the right to leave without penalty if the increase is not acceptable to them.
2. *Agreed price increases*, whereby the provider incorporates the price increase into the contract, so a customer agrees to the price at the outset, including the future price increases. This practice is allowed if the increase is made sufficiently prominent and transparent at point of sale and if the detailed workings of the increase are clearly explained.

We are against the principle of agreed price increases, irrespective of the increase being based on fixed amounts, percentages, inflation or inflation-plus. It is not something UW have ever done, because we believe it is misleading and unfair to let our customers sign up to a certain price, and to subsequently increase that price months or sometimes even weeks later without giving customers the right to leave their contract. Whilst the practice is currently allowed by Ofcom, as long as the price increase is made transparent and prominent and point of sale, many customers will not be aware of all the details provided to them. This means that many customers will be caught out by this practice and surprised about an increase they will suddenly get. Indeed, Ofcom’s research⁶ shows that 42% of mobile customers who were in-contract with providers using inflation-linked price variation terms, were unaware that

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https://www.ofcom.org.uk/__data/assets/pdf_file/0029/272765/Inflation-linked-price-rises-Summary-of-quantitative-research-findings-Mobile.pdf

their provider could increase their monthly payment. This percentage is even higher for broadband customers, where almost half of the respondents are unaware of their prices going up.⁷ So irrespective of the type of price increase, these customers did not know their price could be increased.

UW, like other providers, face cost increases from time to time and therefore have to increase prices for customers. When we do this, we assess the level of our costs, decide if and how much of it we can absorb under our current pricing, and then, if necessary, notify our customers of an increase and give them the right to leave their contract. Rather than relying on a generic inflation based number (for instance CPI or RPI) with a percentage added to it, we identify how much our costs have gone up by, and use this as an input to our calculation. This way, we ensure that any price changes for our customers are based on the underlying cost increases we face. We believe it is only fair to notify customers and give them the right to leave if we decide to change customers' prices.

We therefore consider Ofcom should go further and consult on an option that allows providers to increase their prices for in-contract customers, but that customers should be notified and given the right to leave without penalty in this situation.

3. Information provided at point of sale

As set out above, Ofcom have allowed inflation based price increases subject to these increases being sufficiently transparent and prominent at point of sale. Providers have to present a substantial amount of information to consumers at point of sale. Transparency is one thing, but making specific information in a long list of information prominent, is hard. Ofcom should try to rationalise the amount of information providers have to present to consumers at point of sale, focus on the main information, and include everything else in the welcome information customers receive when they enter into a contract. The current contract summaries providers have to give to customers before they enter into a contract include a lot of information, but are at least one page long for a single service, and up to three for several telecoms services. In addition, providers need to send customers a long list of contractual information.

It would be helpful for Ofcom to carry out research into the effectiveness of contract summaries and contractual information. The requirements around contract summaries and contractual information were introduced when the UK Government decided to implement the

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https://www.ofcom.org.uk/__data/assets/pdf_file/0030/272766/Inflation-linked-price-rises-Summary-of-quantitative-research-findings-Broadband.pdf

European Electronic Communications Code ('EECC'), after the UK had left the EU. They took effect in 2022. At the time of introduction Ofcom stated the following:⁸

'Our new rules will give customers key information about the contract they're signing up to, in a short and simple way. This will mean that people will be provided with a straightforward example of any price rises, which will help them make a fully informed choice about the deal that works best for them.'

Ofcom's research into consumer awareness and understanding of inflation based price increases shows that the inclusion of the price information, including calculation examples, does not help consumers make a fully informed choice. Removing the inflation-based component and percentages may make the mechanics of the increase easier to understand for those consumers who read the information, but as referenced in section 2, despite receiving contract summaries, between 40% and 50% of consumers are not aware that their contract is subject to a price increase in the first place, let alone an inflation-based one.

4. *The wider use of inflation based increases in industry*

Ofcom will be aware that CPI based price increases are not only used by retail providers in relation to monthly charges. Openreach's contract with its downstream suppliers include an annual CPI based price increase. It allows Openreach to apply any level it wants up to the October CPI figure. Ofcom's decision to allow Openreach to increase its prices by CPI was taken in March 2021, when inflation was 1.5%. Openreach's price increase for April 2023 is based on the October 2022 CPI of 11.1%, more than seven times the level in 2021. We note that Openreach also decided to apply the highest CPI over that period to its contract, where it could have taken an average increase, more reflective of inflation throughout the year.

In section 2 we discussed the use of CPI as an indicator for an increase in costs for telecom providers. We consider that the same arguments against the use of CPI for retail providers apply to wholesale providers. By allowing wholesale providers to include a CPI based price increase in its, Ofcom potentially contributed to a situation where retail providers increasingly use CPI based price increases in contracts with their customers. If the costs of retail providers are partially determined by an unknown CPI quantity, they may want to mitigate the risk of this unknown increase by passing on the same type of increase to their retail customers.

CPI is also used in the context of Ofcom's voluntary Code on Automatic Compensation. Under this Code, signatories (including UW) pay compensation to their customers for late provisioning (based on number of days' delay), late repair (based on number of days' delay) and missed appointments in relation to fixed line and broadband services. In 2021, two years

⁸ <https://www.ofcom.org.uk/news-centre/2022/new-rules-on-short-and-simple-contract-details>

after its launch, Ofcom asked signatories to the Code to commit to increasing the amount of compensation paid to customers every year in April by the CPI published in October of the previous year. Providers using the Openreach network for their fixed line services get a payment from Openreach if the late provisioning, late repair or missed appointment is caused by Openreach. These payments are called Service Level Guarantees ('SLGs'). The SLGs were negotiated between Openreach and signatories when the Code was launched. Whilst the amount paid out by the signatories to their customers has increased year on year, the SLGs were only increased once.

Annex 1 to our response includes a table with a comparison of the SLGs we receive from Openreach and the amounts we pay out to our customers under the different scenarios. From 2021, the gap between the Openreach SLG and compensation payments has more than doubled for missed appointments and late provisioning and has increased by over 75% for late repair.



As can be seen from these examples, CPI is used widely across industry, by both retail and wholesale providers. Retail pricing does not take place in a vacuum and with Ofcom allowing wholesale providers to use CPI as a price index for its services, it is unsurprising a number of retail providers use CPI based increases in their contracts with customers. A similar issue exists in relation to automatic compensation. Ofcom updated the Code on Automatic Compensation in 2021 with the requirement for signatories to increase compensation pay-outs by CPI every year in April. Openreach does not reciprocate this requirement in its automatic compensation SLGs, leading to an increasingly big gap between the outpayments and the SLGs.

When putting in place regulation, Ofcom should look at the consequences of the regulation in a wider context. If Ofcom were to prohibit the use of CPI based price increases for retail providers, it should do the same for Openreach. If Ofcom mandates Automatic Compensation Code signatories to implement an annual CPI outpayment increase, it should make sure that these increases are, where relevant, reciprocated by wholesale providers it regulates.

5. *Unintended consequences*

In terms of unintended consequences, we consider that providers could increase their retail prices, especially if their underlying wholesale costs are subject to a CPI increase. By increasing their prices, they could try to protect themselves against any unpredictable CPI increases. This could result in lower switching levels in the market.

Providers could also put in place a relatively high pound / pence increase. With high percentages of customers not being aware their contract includes an annual price increase at all, the unintended consequence is that this group will still not be aware of an annual price increase, which could be more substantial, depending on the pound / pence increase than the average level of CPI over the past few years.

Conclusion

We agree with Ofcom that the practice of built-in inflation-plus increases is harmful and unfair to consumers and that an unknown quantity like inflation should not be used in contracts. But unlike Ofcom, we consider that the very concept of built-in price increases without giving customers the right to leave without penalty is unfair, irrespective of the mechanics of the increase. This is demonstrated by the high percentages of customers being unaware that their contract is subject to an in-contract price increase. We do not believe that adding more information to an already long list will increase consumers' awareness. We therefore encourage Ofcom to consider an option that gives customers the right to leave without penalty whenever a provider increases the price for customers who are within their minimum contract term. This would balance the right of the provider to carry out a price increase with the rights of a customer to cancel their contract if subject to such an increase.

The concept of inflation-linked increases is used widely, both by retail and wholesale providers. Ofcom should consider this issue in a wider context and ensure that any obligations imposed on retail providers are reciprocated on the wholesale side.

Annex 1: Comparison of Openreach SLGs for Automatic Compensation and industry compensation pay-outs.

	Missed appointments			Late provisioning			Late repair		
	OR	Sign	Gap	OR	Sign	Gap	OR	Sign	Gap
2019	£19.77	£25.00	£5.23	£4.29	£5.00	£0.71	£4.76*	£8.00	£3.24
2020	£19.77	£25.00	£5.23	£4.29	£5.00	£0.71	£4.76*	£8.00	£3.24
2021	£19.91	£25.00	£5.09	£4.32	£5.00	£0.68	£4.79*	£8.00	£3.21
2022	£19.91	£26.24	£6.33	£4.32	£5.25	£0.93	£4.79*	£8.40	£3.61
2023	£19.91	£29.15	£9.24	£4.32	£5.83	£1.51	£4.79*	£9.33	£4.54
2024	£19.91	£30.49	£10.58	£4.32	£6.10	£1.78	£4.79*	£9.76	£4.97

*In the case of late repair, signatories to the Code pay compensation when a customer experiences a total loss of service, whereas Openreach is unable to identify whether the issue is a total loss of service and will pay out for any issue (which is why the Openreach SLG is significantly lower than the compensation paid out).

Annex 2: Responses to Ofcom's consultation questions

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

As set in our response above, we consider there is a better option to address the issue of in-contract price increases. We do agree with Ofcom that vulnerable and financially vulnerable are disproportionately affected by CPI based in-contract price increases.

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?

No comment.

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 agree with Ofcom's analysis of consumer harm arising from in-contract inflation-linked price variation terms.

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

Ofcom's research indicates that between 40% and 50% of customers are unaware their contract includes an in-contract price increase in the first place, whether inflation-based or not. Currently, information about in-contract price increases has to be provided at point of sale and in the contractual information. This is done in a transparent way by those providers using this approach. Clearly, large groups of customers do not engage with this information. We do not believe that adding the same information that is already included in the sales journey and contractual information in the contract summary will increase customers' understanding of their contract. We therefore do not agree with Ofcom's conclusion in the impact assessment.

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?

There is already a requirement for this information to be included in the sales journey and in the contractual information. As per our response to question 4, we do not believe this will be effective in increasing customers' understanding of their contract. Our proposed solution, as set out in our response, is to give customers the right to leave without penalty for any in-contract price increase.

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?

[Please see our responses to questions 4 and 5 above.](#)

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? Question

[Please see our responses to questions 4 and 5 above.](#)

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

[Please see our responses to questions 4 and 5 above.](#)

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)? 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?

[Please see our responses to questions 4 and 5 above.](#)