First response

I am not a Legal expert and have a layman’s understanding of Contract Law. I suggest that if a Telephone company offers a fixed rate contract and includes a term to increase charges, then there can be no fixed rate contract. Consequently, that term would be unfair and Legally unenforceable.

Consumers sign up for a fixed rate contract to guarantee their costs during the term of the contract. It is likely to be the main reason they sign up for the contract. A company cannot rely on a term that negates the effect of a fixed contract. I suggest it would not be recognized in Law. I would not hesitate to take a telephone company to the Small Claims Court on this point.

I gather you may require telephone companies to emphasize the ‘cost variation term’ in future fixed contracts. I suggest that does not solve the problem, makes no difference to the Unfair Contract term principle and that you are usurping Contact Law by ‘allowing’ changes to an agreed fixed contract. All phone companies have the variation term and it is virtually impossible, for the majority, to conduct our lives without a telephone. We are all, therefore, forced to sign fixed contracts with this ‘unfair’ contract term.

If telephone companies argue they may need to increase charges on market cost grounds, then they should offer shorter fixed contracts of say six, three or one month rolling duration.

It’s up to them to budget for expected costs over a period of time, with a profit margin. They should not be offering fixed contracts beyond a period they can reasonably budget for.

I suggest a fixed contract should be just that and the ‘cost variation’ term be removed from all these contracts, as that usurps the principle of a fixed contract under Contract Law.

If, as it appears, you disagree then when a telephone company increase charges on a fixed contract, then the consumer should be free to end the contract immediately without any financial penalty. Indeed that is the principle the Law would take with a successful Legal challenge to an unfair contract term by setting aside or ending, the contract.

Second response

Additional comments:

I have already commented along the lines of 'Fixed means fixed'. In light of recent developments with EE I wish to comment further. EE are increasing fixed contract charges from April 2013. Their argument for this is due to business costs. However, they are offering a new 'Fix your monthly plan option' where rates will not increase but you have to pay extra for it. My point is Mobile companies can provide a fixed contract with no increases when it suits them which makes a mockery of the 'We have to raise prices on Business grounds' argument!

Question 1: 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?:

Question 2: 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?:

Question 3: 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?:

Question 4: Should Communications Providers be allowed (in the first instance) to unilaterally determine what constitutes material detriment or should Ofcom provide guidance?:

Question 5: 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?:

Question 6: Do you agree with the consumer harm identified from the lack of transparency of price variation terms?:

Question 7: Do you agree that transparency alone would not provide adequate protection for consumers against the harm caused by price rises in fixed term contracts?:

Question 8: 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?:

Question 9: 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?:

Question 10: 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?:

Question 11: 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?:

Question 12: 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?:

Question 13: 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?:

Question 14: 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?:

Question 15: Do you agree that Communications Providers are best placed to decide how they can communicate contract variations effectively with its consumers?:

Question 16: 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?:

Question 17: 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?:

Question 18: 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? :

Question 19: 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?:

Question 20: 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?:

Question 21: Do you agree with Ofcom?s analysis of option 2? If not, please explain your reasons.:

Question 22: Do you agree with Ofcom?s analysis of option 3? If not, please explain your reasons.:

Question 23: 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?:

Question 24: 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?:

Question 25: Do you agree that Ofcom?s proposed modifications of GC9.6 would give the intended effect to option 4?:

Question 26: What are your views on the material detriment test in GC9.6 still applying to any non-price variations in the contract?:

Question 27: 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?:

Question 28: What are your views on any new regulatory requirement only applying to new contracts?: