# NATIONAL CONSUMER FEDERATION

Response to Ofcom consultation on:

# Price rises in fixed term contracts

Options to address consumer harm

# Summary

In principle the general consumer law ought to be sufficient to prevent the scope for price increase terms being obscured in ostensibly fixed price contracts. Ofcom has considered the issue by reference to licensing conditions, UTCCRs and the CPRs. Ofcom's view is that while the existing regs should be sufficient, in practice consumers would have difficulty in seeking to have a particular price escalation term declared unenforceable under UTCCRs. In addition there is uncertainty of how the law might be interpreted by the courts - as illustrated by the banks test case. We therefore support the proposal for an amended licence condition as providing greater regulatory certainty for consumers.

**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?

We agree with the assessment of harm to consumers, following the four key principles as set out in para 4.4. It would be open to Communications Providers to market contracts with indexed prices by giving due prominence to the relevant terms. However Ofcom's analysis of the terms across the contacts in place indicates that consumers would have difficulty in assessing their possible impact or in comparing them across contacts. In practice consumers will continue to base their decisions on headline prices alone.

key principles ... vital to providing adequate consumer protection in a competitive market:

- principle 1: consumers should have information that enables them to know what bargain they are striking, so they can make informed transactional decisions;
- 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;
- 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 (including the relevant provisions of the Universal Services Directive).

**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?

Communications Providers are best placed to assess their costs when setting prices and to put in place appropriate management of the risks they can identify. These risks should not be passed on to consumers as part of a fixed period contract.

**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?

We agree that consumers will be confused by the variety of definitions of the 'material detriment' that could trigger the ability of consumers to cancel without penalty, even supposing that the terms individually passed the UTCCR fairness test. We consider that a uniform trigger would be desirable. In relation to the UTCCRs, we agree that the existing precedents relating to price increase terms do not create sufficient certainty. We note the experience regarding interpretation by the courts as illustrated by the banks test case.

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

We agree that Ofcom should 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?

We doubt if guidance alone would be adequate to address the issues for consumers.

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

The present price increase terms lack transparency. Until they were used, most consumers would not have been aware of them. Even if the terms were drawn to consumers' attention we agree that they would have difficulty in assessing their impact.

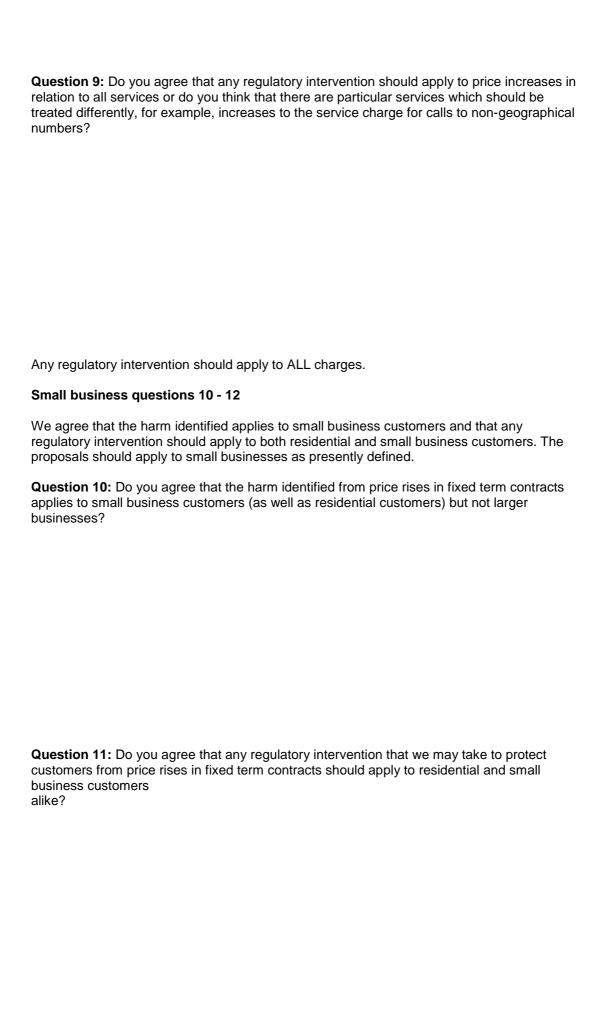
**Question 7:** Do you agree that transparency alone would not provide adequate protection for consumers against the harm caused by price rises in fixed term contracts?

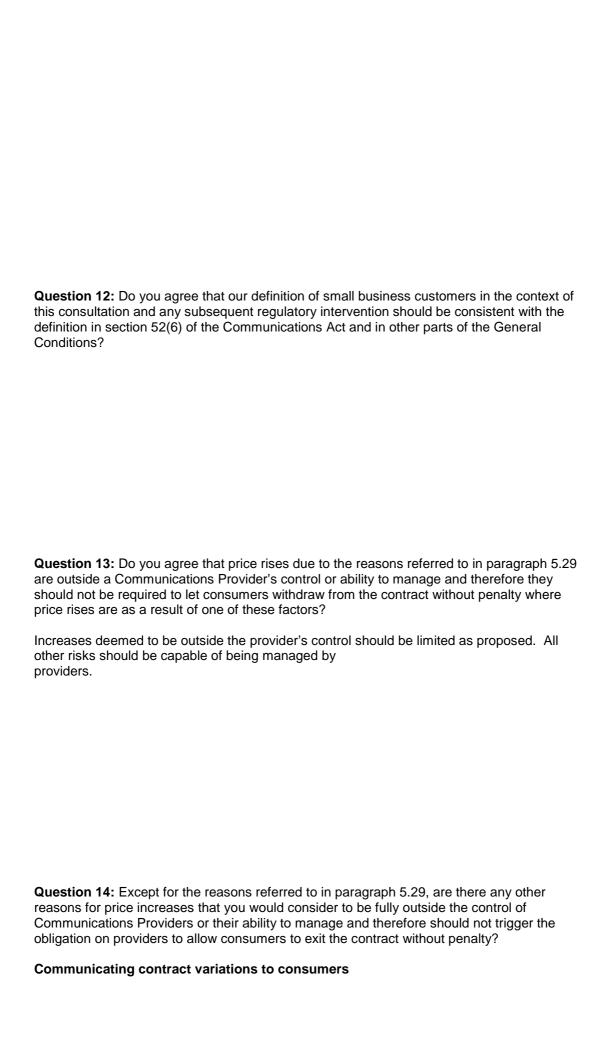
See previous question.

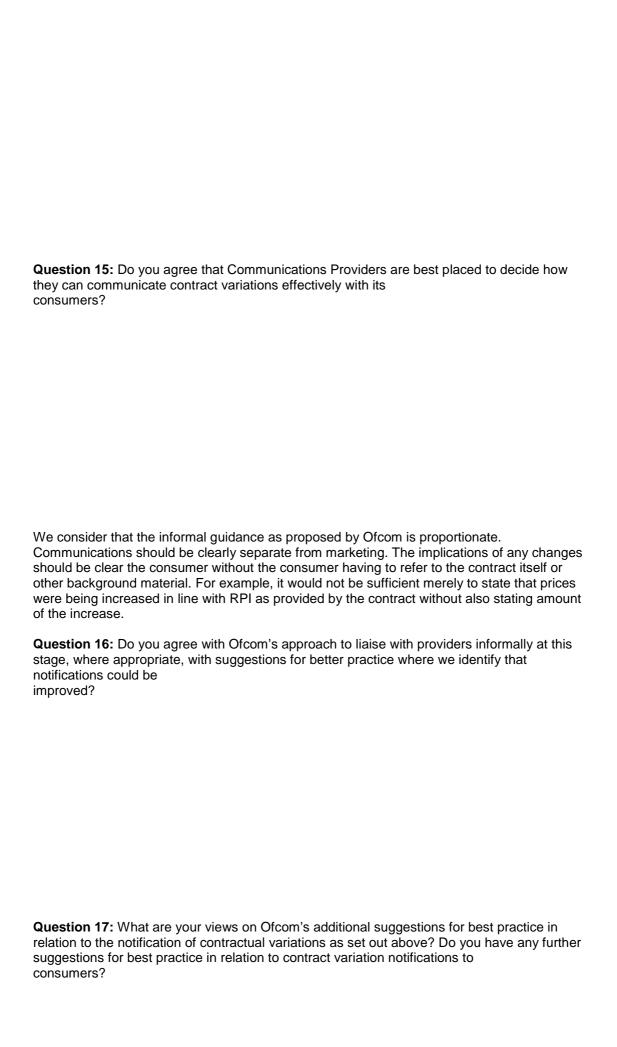
### Section 5

**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?

See 9.







<b>Question 18:</b> 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?
We agree that 14 days is too short a period for consumers to be able to cancel without penalty. We consider that one month would be adequate and that guidance to that effect should be given.
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?
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Section 6
As a general comment on this section, we approve of the way you have used the four
principles set out in para 4.4 in analysing the various options.

# Option 1 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?

We agree that taking no action is not a suitable option to address the harm identified.

# Option 2

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

We agree with your analysis of option 2

# Option 3

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

