# Review of inflation-linked in-contract price rises

## Terms of reference

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## Introduction

1.1. Ofcom is the UK's communications regulator. Our principal duty is to further the interests of citizens and consumers, where appropriate by promoting competition. One of our priority outcomes for the year ahead is to deliver 'internet we can rely on'.[1]

1.2. To support this, we want to ensure that consumers are confident and able to engage in the market to get the right services for their needs. Engaged and informed consumers are also important in driving competition, which in turn incentivises investment in networks to meet customers' future needs.

1.3. Consumers have a wide choice of telecoms providers and tariffs and, as set out in our most recent Pricing Trends report, there are good-value deals available for those who shop around.[2] However, recent volatility in the economy and fast-rising rates of inflation mean that many consumers may now find it harder than before to manage their household budgets.

1.4. Many communications providers include annual inflation-linked in-contract price rise terms in their consumer contracts, typically in the formula of Consumer Prices Index (CPI) or Retail Prices Index (RPI) plus X% (where X is almost universally 3.9%). This, in combination with fast-rising rates of inflation, has led to large and likely unexpected price rises in 2022 and 2023 for many fixed broadband and mobile customers and for some pay TV customers.[3]

1.5. Price rises usually take effect in March or April each year and apply to all customers on contracts with relevant price rise terms, regardless of when they signed up to the contract.[4] Providers can offer contracts with a commitment period of up to 24 months, which means that customers on contracts with price rise terms could face up to two annual price rises while they are in-contract.[5]

1.6. We want to assess the impact of these price rise terms on consumers, including on their ability to understand and choose the right deals for them, as well as on how this in turn may impact the effective functioning of markets more generally.

[1] Ofcom, Plan of Work 2023-24, March 2023.
[2] Ofcom, Pricing trends for communications services in the UK, December 2022.
[3] Not all pay TV providers have implemented inflation-linked price rise terms.
[4] There are some exceptions to this. For example, in 2023 some providers are not applying price rises to customers who signed up to their contracts in a short period preceding the rise.
[5] Customers who have reached the end of their minimum contract period (i.e. out-of-contract customers) may also be subject to price rise terms.

## Existing protections for consumers

1.7. Providers that choose to include price rise terms in their contracts must comply with Ofcom's sector-specific rules, known as the General Conditions, as well as general consumer law.[6]

1.8. Ofcom has recently updated its guidance under the General Conditions on the use of price rise terms. The guidance sets out that, if a provider includes terms in a contract which allow for future price rises, it should set these out sufficiently prominently and transparently at the point of sale.[7] The provider should also give an example to the customer of how any planned price increase will affect the price they pay. If the provider uses an inflation index such as CPI or RPI to calculate price increases, it should use the most recent figure of inflation for the worked example.

1.9. Ofcom has concurrent powers to enforce consumer protection law and we have sector-specific powers to impose requirements on providers to protect the interests of consumers. Ofcom does not regulate directly either the retail prices that broadband and mobile providers charge their customers, or the level of price increases they can apply.[8]

# Why we are carrying out this review

1.10. We have launched this review for a number of reasons. First, our previous review of in-contract price rises was in 2012-13 and the types of price rise terms included in consumer contracts have changed since then.[9] Now, most major fixed broadband and mobile providers use inflation-linked in-contract price rise terms in consumer contracts, of the form CPI/RPI plus 3.9%.

1.11. This practice first started towards the end of 2020, when BT/EE, followed by Vodafone, announced the introduction of terms in contracts for new customers that allowed for annual price rises of CPI plus 3.9%. Since then, most major fixed broadband and mobile providers have adopted the same or similar terms, although some providers have taken a different approach to date.[10]

1.12. Second, we are concerned that the use of inflation-linked in-contract price rise terms may not give customers sufficient clarity or certainty about what they will pay, particularly during the minimum contract period. The recent fast-rising rates of inflation may have

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[6] The Consumer Rights Act 2015 imposes a requirement that terms in consumer contracts should be fair. The CMA has issued guidance on the relevant provisions in the Consumer Rights Act.

[7] We set out in our Guidance under General Condition C1 – Contract Requirements, June 2022, that where, at the time the customer signed the contract, price rise terms were sufficiently prominent and transparent and the customer was fully informed about the different amounts they would have to pay at different times and can be said to have agreed to those terms, the customer's provider is not required to offer the customer a right to exit the contract penalty-free (which would apply in relation to other non-beneficial contract changes).

[8] The only circumstances in which Ofcom can impose retail price caps on specific providers is where we judge them to have significant market power. Currently, no provider occupies such a position in the retail fixed broadband or mobile markets.

[9] Ofcom, Review of price rises in fixed term contracts, March 2013.

[10] Not all providers have inflation-linked price rise terms in their contracts. Some providers give their customers the right to terminate their contract without penalty if there is any price rise during the minimum contract period and some providers do not increase prices for customers during the minimum contract period.

made it even harder for consumers to understand and predict what they are likely to have to pay under such contract terms and to make informed choices. Some consumers may struggle with higher, unexpected price rises. We are also concerned that these price rises are usually unavoidable for customers who are within their minimum contract period, as providers may impose early termination charges on these customers if they leave their contract.

1.13. Our preliminary research suggests that consumer awareness and understanding of in-contract price rises, and inflation generally, is low.[11] It found that around a third of mobile and broadband customers do not know whether their provider can increase their price. Among those who do know their provider can increase their price, around half do not know how this would be calculated. Nearly half of all customers do not know what CPI and RPI measure.

## Purpose and scope of the review

1.14. Our review will consider whether the current use of inflation-linked in-contract price rise terms by retail providers is sufficiently clear, comprehensible and certain for consumers to make informed choices. We will look at contracts intended for residential customers, in relation to all electronic communications services to which our sector-specific rules apply and for bundles that contain electronic communications services.[12]

1.15. The review will focus on the structure of inflation-linked in-contract price increases rather than on retail price levels.[13]

1.16. The outcome we want to see is that our rules enable consumers to make informed choices and get the right services for them. In turn this will drive competition and investment. However, preliminary evidence from our consumer research suggests that the current rules are not delivering on these objectives.

1.17. Specifically, we will consider the following issues in the round:

- Are customers aware of inflation-linked in-contract price rise terms before they sign up to their contracts? Are they aware that they will incur these in-contract price increases annually during the length of their contract and would incur an early termination charge if they were to switch providers or contracts to avoid the price increases?

[11] Yonder, In-contract broadband and mobile price rises survey, February 2023. Yonder interviewed a total of 3,499 people (1,764 pay-monthly mobile customers and 1,735 fixed broadband customers) between 6 and 11 January 2023, using an online methodology. Quotas were set on region, age, gender and working status, and data was weighted to be nationally representative of the UK population.
[12] See definitions in Ofcom's General Conditions of Entitlement, April 2023. Our sector-specific rules apply to fixed voice and broadband, mobile voice and broadband and to certain pay TV services. Our rules also apply to bundles that include these services alongside others, e.g. handsets.
[13] We examine pricing trends for residential landline, mobile, broadband and TV services in the UK in our December 2022 Pricing trends for communications services in the UK report.

- Do customers understand how these terms are applied? Can they work out with certainty how much they will need to pay while in the minimum contract period?[14]
- How do inflation-linked in-contract price rise terms affect customers' ability to make informed choices about their contract? We will consider factors such as whether customers take these terms into account when choosing a service (including whether there are behavioural biases that may limit the extent to which they do so) and how easy it is for customers to compare deals from different providers.[15]

1.18. In light of these points, we will consider the overall effects of the inflation-linked in-contract price rise terms on consumers and on the effective functioning of markets, including the following:

- What is the impact on consumer outcomes? For example, if consumers are not aware of or do not understand these price increases when they sign up to their contract, they might not choose the right service and might have to incur extra time and effort to make a more informed choice.
- Do they reduce customer engagement (e.g. by making it harder to search and compare different tariffs) and dampen or distort competition, particularly given the prevalence of these price rise terms?
- Do such terms impose unfair burdens and risks on customers compared to providers?[16]

1.19. Our analysis will inform whether we think that any further action is required, specifically whether we need to make changes to our existing rules or guidance. This is therefore a **forward-looking review** that will work alongside our ongoing enforcement programme (see below).

1.20. If we find evidence that suggests changes may be needed to improve consumer outcomes, we will consider what the impact of any changes would be on pricing, competition and how the market functions and whether there would be any unintended consequences from intervening.[17]

## Links to other work

1.21. This review will take place alongside other ongoing work at Ofcom, in particular:

- An industry-wide enforcement programme, which is examining providers' compliance with our previous rules to ensure that in-contract price rise terms were sufficiently prominent and transparent to consumers before they entered their contract. Specifically, this is looking at compliance with the rules from 1 March 2021 to 16 June 2022, before our updated rules and guidance came into effect.

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[14] We will consider the impact of the changes to our rules and guidance in June 2022, which set out requirements to provide customers with contract information and a contract summary before they enter into a contract.

[15] As well as inflation-linked price rises, we will consider set percentage price increases and other forms of in-contract price rises.

[16] This would include understanding the steps providers and customers can take to forecast and mitigate cost/price increases.

[17] See Ofcom, Better Policy Making - Ofcom's approach to Impact Assessment, July 2005. We are currently consulting on proposals to update that guidance: see Consultation on Ofcom's approach to impact assessment, March 2023.

- Our ongoing monitoring and reporting on the affordability of communications services and the availability and take-up of social tariffs.

1.22. The review also takes place in the context of Ofcom's work to promote competition and maintain well-functioning markets to, among other things, support investment in high-quality networks, including through our Wholesale Fixed Telecoms Market Review[18] and our Future approach to mobile markets.

1.23. In addition, we will continue to work with other regulators such as the Competition and Markets Authority and the Advertising Standards Authority on common areas of interest regarding in-contract price rises.

## Timescales and approach

1.24. We will engage with a range of stakeholders to gather evidence to inform our analysis. As part of this, we plan to issue information requests to providers and will also carry out new consumer research to assess consumer understanding of price rise terms and the impact this has on their ability to shop around and make informed choices.

1.25. Our evidence gathering will take place from now through to early autumn. We will analyse that evidence and set out our findings in a publication before the end of the year, including any next steps. The publication will invite views, before we take a decision about what action, if any, we should take.

[18] The Wholesale Fixed Telecoms Market Review (WFTMR) set out our decisions for the regulation of fixed telecoms markets until March 2026. It included the approach to regulating Openreach's wholesale residential broadband products, including setting flat, inflation-adjusted, regulated prices for Openreach's entry-level superfast broadband service (which has a download speed of up to 40 Mbit/s). In this review of in-contract price rises we will not be revisiting decisions made in the WFTMR, including in relation to the indexing of entry-level superfast broadband.