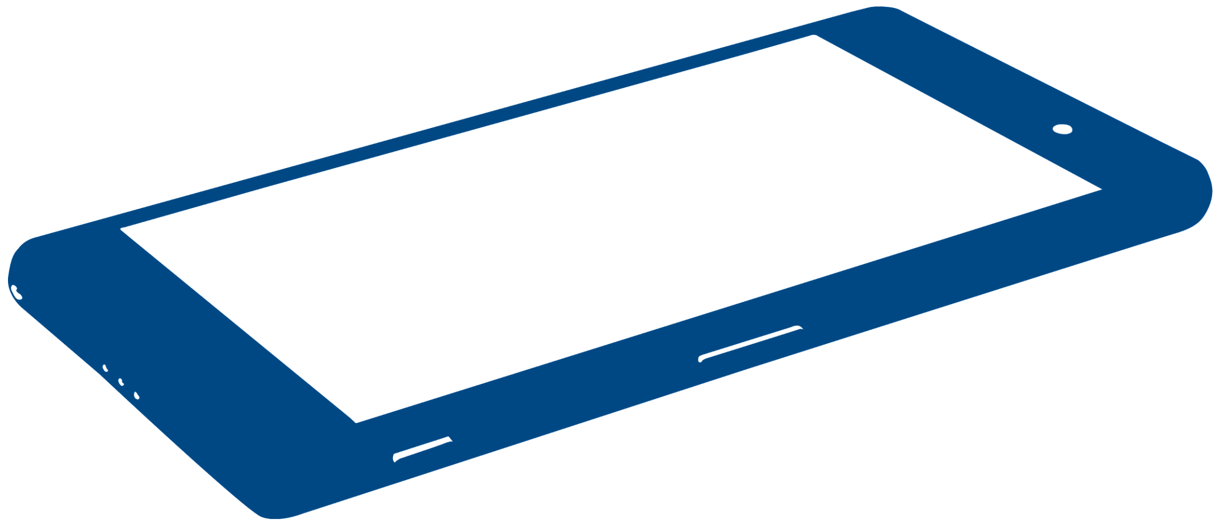
Dialling up prices

Why mobile and broadband consumers need better protections from unfair pricing practices



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Contents

Contents **1**
Executive Summary **2**
1. How do price rises currently work in telco contracts? **8**
2. Non-discretionary price rises **11**
Inflation-linked price rises - can consumers really ‘agree’ to them? 11
Would fixed rises be better? 15
Summary 21
3. Discretionary price rises **22**
Switching isn’t a silver bullet 22
The burden of switching isn’t felt equitably 24
Summary 25
4. Out-of-contract price rises **27**
What could fairer pricing out-of-contract look like? 29
Summary 31
Conclusion and recommendations **33**
Methodology **35**

Executive Summary

> **“Price rises cause clients budget issues. They feel cheated, experience mental stress, leading to debt and losing trust in providers.”**
>
> Citizens Advice local adviser

Earlier this year, consumers faced unprecedented hikes in their monthly mobile and broadband contract prices. An estimated £2.2 billion was added on to the yearly bills of telco customers in the spring, thanks to the vast majority of providers raising prices several percentage points above inflation.

Citizens Advice and, separately, other consumer groups called for these egregious hikes to be scrapped against the backdrop of a serious cost-of-living crisis.[1] But despite Ofcom calling for providers to show restraint in raising prices, almost all providers pushed ahead with the planned rises, with bills going up an average of 15% across mobile and broadband this year.[2]

A year on from when Citizens Advice first sounded the alarm over these historically high price rises, consumers are once again facing yet another hike in the spring of 2024. Although inflation is lower than it was this time last year, we

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[1]Citizens Advice, September 2022 'Mid-contract price rises: tightening the squeeze on consumers' and Which?, March 2023 'Millions of low-income broadband customers facing steep price rises'
[2]Ofcom, September 2022 'Providers must think carefully about price rises'

estimate that prices for mobile and broadband contracts are still going to **increase by an average of almost 9% next year**. This will mean another **£1.4 billion** is set to be added to mobile and broadband customer bills in the 12 months following April 2024, with over half of this total amount (£770 million) hitting consumers who are still within their minimum contract term.

Next year...

Mobile and broadband contracts are going to increase by an average of almost **9%**

An estimated **£1.4 billion** is set to be added to mobile and broadband customer bills

While much focus has been on the size of the price rises, our research over the last year has found more fundamental problems with pricing practices which are common in the market. Unlike other markets, like mortgages or energy, where 'fixed means fixed', telco contracts not only typically rise mid-contract but do so in ways which are completely unpredictable making it harder for people to budget. Terms like "prices will rise by Consumer Price Index (CPI) + 3.9%" are common in retail telco contracts held by tens of millions of people, despite low levels of understanding of economic terms like CPI or RPI and the intrinsic difficulty of knowing what inflation will be in years ahead. In some cases, providers simply reserve the right to raise prices at their discretion mid-contract.

Consumers should be able to make a clear choice about the best offer available to them - to ensure they make informed choices and to promote healthy competition. They should also have a clear understanding about the extent and nature of the financial commitments they're legally signing up to, to make sure they're not taking on burdens they can't manage in practice, particularly in the current climate where so many are in increasingly financially precarious situations. The prevailing approaches to mid-contract price rises - and, as we argue, the presence of mid-contract rises in any form - in the telco market are a significant barrier to these outcomes being met.

Ofcom last reviewed its policy on in-contract price rises in 2013, resulting in guidance being published on the circumstances under which price rises are likely to cause consumers 'material detriment'[3]. Since then the majority of providers have moved towards the kinds of inflation-linked price rises that have hit

[3] Ofcom, Guidance on "material detriment" under GC9.6 in relation to price rises and notification of contract modifications.

headlines over the past year. The recent high inflation rates have brought problems with the approach Ofcom adopted after its last review to the surface and suggested that the current framework may not be sufficient to protect customers. In this context, in February Ofcom launched a review into the potential harms which result from inflation-linked price rise clauses in mobile and broadband contracts. As part of the rationale behind this review, Ofcom said the following:

> "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 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."[4]

We welcome Ofcom's decision to review inflation-linked in-contract price rises - it's essential that action is urgently taken to protect customers from the kinds of unpredictable and unfair price hikes we saw earlier this year. However, we also think that Ofcom must look beyond this specific issue to tackle unfair pricing practices in mobile and broadband markets - the unfairness goes beyond the use of inflation-linked terms. It would be a missed opportunity not to - not least because any action taken to address the problem of in-contract price rises could have unintended knock-on effects on other aspects of the market. Any restriction on one form of mid-contract price rise could lead to increased uptake of other forms of price rise, so it's essential that these are also considered by Ofcom.

Further, while much focus has been on price rises within the minimum term, many of these rises apply identically to customers who are out-of-contract, raising questions as to their fairness in that context. This is relevant to Ofcom's present investigation since it is plausible that restrictions in mid-contract price

[4] Ofcom, Review of inflation-linked in-contract price rises - Terms of reference. 21 April 2023.

rises may lead to providers reducing the length of fixed term contracts, which would increase the number of people who are out of contract.

That's why for this report, we've not only examined the issue of inflation-linked in-contract price rises - we've also dug into the details of other kinds of price rises within mobile and broadband markets, as well as looking at price increases out-of-contract too.

The report is structured as follows:

Chapter 1 examines how different kinds of price rise terms in mobile and broadband contracts work and what kinds of protections Ofcom's current guidance on this subject offers consumers. We identify clarity and transparency as the existing protections for non-discretionary price rises, and the ability to leave contracts penalty-free as the existing protection for discretionary price rises.

Chapter 2 examines the different kinds of non-discretionary price rises in detail. We show how poor consumer comprehension of inflation terms and the inability for consumers to predict inflation rates throughout a contract term mean they cannot meaningfully be said to 'agree' to inflation-linked price rise terms in contracts. We also show that fixed percentage or amount price rises, while less of an issue in terms of predictability, nonetheless put unnecessary barriers in the way of consumer efforts to find the best value deals - and in so doing, have a detrimental impact on overall price competition. Finally we highlight findings which show a consumer preference for spreading the total cost of the contract evenly across the contract period, rather than having an initially lower price then a mid-contract price rise.

Key findings include:

- Consumers don't understand inflation-linked price rise terms:
    - One third of people on contracts which have price rises linked to CPI say they have never heard of it.
- Consumers have a clear preference for properly fixed prices over any kind of price rise:
    - Asked to choose between two contracts with the same total cost, more than two thirds (68%) of people would choose a contract with the total cost spread evenly each month, rather than a contract

which starts with a lower initial cost and then increases halfway through. The principal reason for this is that it makes budgeting easier.

Chapter 3 examines discretionary price rises. We make the case that the ability to leave a contract penalty free is not an effective protection for consumers against unfair discretionary price rises, given that a significant proportion of consumers are not reliably switching their mobile and broadband contracts. That this 'stickiness' has remained the case even following the high and well publicised price rises earlier this year indicates that firms are able to rely on consumers not switching. We also show how the ability to switch penalty-free is a less effective protection for some consumers than others, with certain groups of people in vulnerable circumstances disproportionately finding switching and shopping around difficult.

Key findings include:

- Despite historic price rises in April, many consumers still didn't switch:
  - Only 10% of mobile customers and 8% of broadband customers who faced historic price rises in April switched to avoid them - even though we estimate nearly half of mobile and one third of broadband customers could have done so penalty-free.
- Switching can be difficult for people - and the burden isn't felt equitably:
  - 1 in 5 consumers say they find it difficult to switch contracts or renegotiate with their provider - but this rises to 1 in 4 for disabled people and nearly 1 in 3 people with chronic mental health conditions.

Chapter 4 looks at out-of-contract price rises. We show that the same concerns about comprehensibility apply to inflation-linked price rise terms out-of-contract as well as within. We also make the case that consumer inertia undermines overall price competition across mobile and broadband markets as a whole, as providers are incentivised to compete for active consumers with the lowest initial prices, at the expense of hiked prices for existing or longer-term customers.

Key findings include:

- 23% of mobile customers and 30% of broadband customers haven't changed their contracts for more than 2 years.
- In fact, the majority of these customers haven't switched for much longer, often in excess of 4 years.
- Many of these customers will face the compounded effect of CPI + 3.9% rises for April 2022, 2023 and 2024 - which would be an average 38% increase in mobile and broadband prices from initial cost.
- Consumers support having mechanisms in place to shield people out of contract from unfair price rises.

On the basis of our research, we have three recommendations for Ofcom:

1. Ofcom should **ban all non-discretionary price rises within minimum-term contracts** - i.e. those including inflation-linked price rises, fixed percentage rises and fixed amount rises.

2. Ofcom should **ban discretionary price rises within minimum-term contracts.**

3. Ofcom should take the opportunity of any consultation period following the end of the current review to **explore appropriate approaches to out-of-contract price rises**.

1. How do price rises currently work in telco contracts?

There are two different approaches that providers take to price rise clauses in the terms of mobile and broadband contracts.

The first, and most common, is what we might call non-discretionary, or stipulated, price rise clauses. These are cases where a contract terms specify when during the contract term prices will increase, and the mechanism or measure by which they will go up. The kind of inflation-linked price rise clauses that have become widespread in telco contracts - e.g. 'Prices will rise by CPI plus 3.9% each April' - are currently included by Ofcom under this first bracket, along with clauses that specify a specific percentage or monetary value increase at stipulated points in the contract term (e.g., a 2% rise or £2.50 rise). According to our research, nearly all mobile, and roughly 4 in 5 broadband customers face these price hikes both in and out of contract.

The second broad approach providers can take to raising prices in-contract is discretionary price rise clauses. These are cases where providers include in their contracts a term which allows them to raise prices at any point in the contract term, without specifying in advance when these rises may be implemented or how much they will be.[5] According to our research, roughly 1 in 5 broadband customers face these price hikes.

According to current Ofcom guidance, the key difference between these two approaches to in-contract price rises is whether they constitute a modification to what they call the 'agreed core subscription price' of the original contract - in other words, the price a customer agrees to pay for a specified level of service, for a stipulated length of time.

Non-discretionary price rise clauses are currently viewed by Ofcom as constituting a part of the terms of the original contract. As long as these clauses are sufficiently prominent and clear to the consumer when signing up, they don't count as a modification to the agreed core subscription price. This is on the basis

[5] Providers may set an upper limit for discretionary price rises in contract terms (e.g. 'up to CPI') but they are not required to do this.

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)."[6]

Discretionary price rise clauses, by contrast, are deemed to modify the agreed core subscription of price of a contract. This is on the basis that these discretionary clauses undermine the customers' ability to compare the core subscription price of the contract to competitors, and to rely on that core subscription price for the whole of the contract term.[7]

Because discretionary price rises are deemed by Ofcom to modify the core subscription price of the contract in such a way that is likely to cause the customer material detriment, providers that incorporate such price rise clauses in to their contracts have to allow customers to leave their contracts penalty-free when discretionary price rises are implemented. By contrast, providers that have non-discretionary price rise clauses in their contracts are allowed to charge consumers exit fees if they leave their contract before the end of their minimum term, even when prices rise.

At the time of issuing this guidance, Ofcom was of the view that "as a matter of our regulatory policy judgement, [the guidance] secures fairness in relation to mid-contract increases to key aspects of the price in telecommunications contracts."[8] The current mechanisms for protecting consumers against unfair detriment from price rises in-contract, then, are twofold:

- Either price rise clauses must be sufficiently prominent and clear in the terms of a contract that consumers can meaningfully compare the value of different options and rely on the 'agreed core subscription price' for the whole of the contract term;
- Or consumers must be able to leave a contract penalty-free during their minimum term, if a provider exercises a discretionary right to raise prices.

[6] Ofcom, Guidance on "material detriment" under GC9.6 in relation to price rises and notification of contract modifications. p. 4
[7] Ibid, p. 3.
[8] Ofcom, Price rises in fixed term contracts - Decision to issue Guidance on General Condition 9.6. October 2023. p. 3.

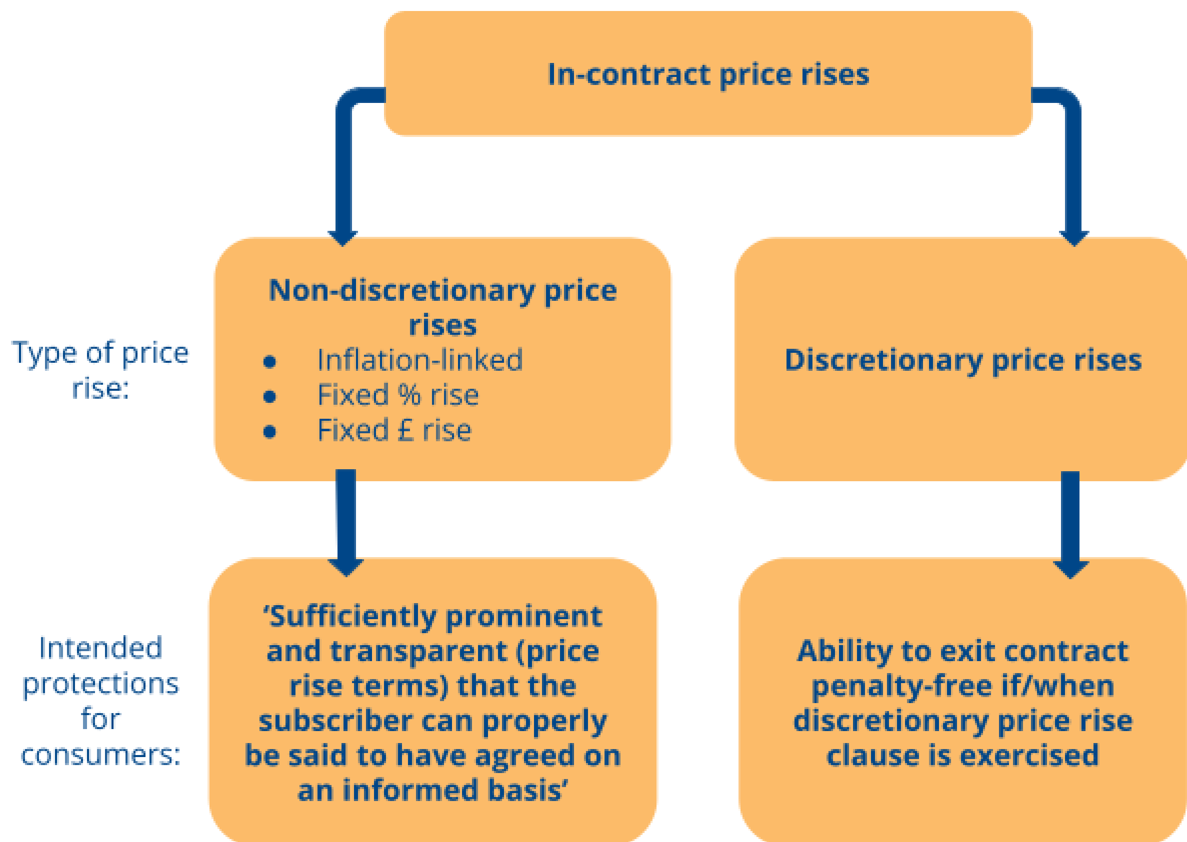


Figure 1: schema of existing protections for consumers under current Ofcom guidance on in-contract price rises

In both cases, consumer choice is at the heart of the matter: consumers must be able to choose a contract - composed chiefly of level of service, minimum length and monthly price - that suits their specific needs and circumstances. Consumers must be able to exercise this choice meaningfully either when initially shopping for contracts (by comparing prices including price rises built into the contract term) in the case of non-discretionary rises, or part-way through a contract term by being able to leave the contract if the terms are modified, in the case of discretionary price rises.

As we set out in the following two chapters, our research indicates that neither of these two mechanisms provide an adequate degree of protection for consumers against unfair price rises. As a result of this we see the need for additional protections.

2. Non-discretionary price rises

The most common approach to raising prices in-contract amongst telco providers is non-discretionary (i.e. stipulated) price rises. We estimate that contracts with these kinds of price rise clauses account for around 70% of mobile and broadband contracts.[9]

Inflation-linked price rises - can consumers really 'agree' to them?

Amongst providers who raise prices in this way, the vast majority use an inflation-linked measure - the most common being the Consumer Price Index (CPI) or the Retail Price Index (RPI) inflation - plus an additional fixed amount, typically of 3.9%. The practice of adding an extra amount above inflation to price rise terms began during the pandemic when inflation was very low; BT was the first provider to introduce the additional charge, with other major providers all following suit quite quickly over the past few years. It's now a near-universal component of inflation-linked price rise terms.[10]

Consumers don't understand inflation-linked terms

According to Ofcom's guidance, inflation-linked price rise clauses such as 'Prices will rise every April by CPI + 3.9%' do not modify the fundamental terms of a contract, because the price rise mechanism is sufficiently clear and transparent that the consumer can be said to have agreed to it when they signed up.

However, there is a growing body of evidence to suggest that inflation-linked terms are not well-understood by consumers. Polling we conducted in February of this year found that consumer comprehension of inflation terms is very poor:

[9] For mobile, we estimate that around 25% of contracts are held with providers for whom we don't have representative data, so have not included them in our figures for proportion of contracts with specific price rise clauses. We estimate the same to be true for around 10% of broadband contracts. In this sense, our figures regarding the incidence of different price rises clauses across the market are likely to be underestimations, if anything.

[10] https://www.theguardian.com/business/2023/jun/27/why-are-uk-telecoms-firms-imposing-inflation-busting-bills

- One third of people on contracts which have price rises linked to CPI said they have never heard of CPI.[11]
- When we asked if people knew what it would mean if a contract said it 'increases by CPI each year' only 1 in 4 (27%) said they would understand this.[12]
- 84% of people didn't know that CPI was lower than RPI so wouldn't be able to accurately compare contracts which use different measures of inflation.[13]

This is despite lots of extra publicity around inflation rates over the past couple of years.

Research by Which? on consumer understanding of inflation-linked price rise terms paints a similar picture. They found that only around half of consumers know that CPI/RPI are measures of inflation; and amongst those who did know, less than a quarter were able to credibly forecast inflation rates for 6 months into the future from when they were surveyed. Finally, of those who were able to credibly forecast inflation, only 1 in 4 were able to then accurately calculate what the new monthly price would be for a contract featuring a price rise of CPI + 3.9%. In total, only around 5% of all participants were able to accurately estimate

[11] Based on analysis of a representative survey of 2,082 adults (18+) in the UK by Yonder Data Solutions for Citizens Advice (hereafter 'Yonder survey'). Fieldwork was conducted between 25th January 2023 and 26th January 2023. Respondents were asked whether, if they were looking at a contract that said the price quoted would "increase by CPI each year", they would know what that meant. One third of people who are on contracts with price rises linked to CPI said they had never heard of CPI.

[12] Yonder survey. Respondents were asked whether, if they were looking at a contract and it said the price quoted would "increase by CPI each year", they would know what that meant. One quarter of all respondents said they understand what this means and what it would mean for their contract.

[13] Yonder survey. Respondents were asked whether a price rise of CPI or a price rise of RPI would be cheapest. 84% said RPI was cheaper, both were the same, or they didn't know.

how much a mobile or broadband bill would cost once an inflation-linked price rise was applied.[14]

Shivalay's* story[15]

Shivalay doesn't have much spare income - but what he does have, he manages carefully. Last year, he found the ideal cheap deal for all his family's phone contracts which worked well within their tight budget - but came to us confused when his provider increased this by 14.4% in April, and told him he'd have to pay over £300 to cancel.

English is his second language - so the fine prints around price rises and cancellation fees passed him by. Now he's stuck paying £15 extra per month for his family's mobile contracts - roughly £180 more per year than he originally intended to spend.

Consumers can't predict inflation

Even for consumers who understand what inflationary measures like CPI or RPI mean, this only matters to the issue of 'agreeing to the terms of a contract' if the consumer is also able to accurately predict what these measures of inflation will actually be months or years into the future.

Someone who took out a 24 month contract with a CPI + 3.9% price rise clause in summer 2021, for example, would only have been able to calculate what the monthly price for that contract would have been in May 2022 if they were able to predict the rate of CPI inflation 6 months on from the point at which they signed the contract. For the price they'd be paying towards the end of their minimum term, say May 2023, they'd also have to be able to predict inflation rates 18 months on from when they signed the contract. Given that the Bank of England itself has struggled to accurately forecast what inflation will be this far into the future, it's fundamentally unreasonable to expect the average consumer to be able to predict how inflation rates will impact their bills part-way through their contract.

[14] Which?, Customer knowledge and understanding of mid-contract price rises. 27 July 2023.
[15] Case studies feature anonymised real-life cases seen by local Citizens Advice advisers. All names have been changed.

It's much more reasonable to expect providers to incorporate projections for increased costs over contract terms into the headline prices they offer consumers. Though, as the CMA has pointed out, it's not necessarily the case that there is even a direct connection between inflation measures like RPI or CPI and telecoms providers' actual costs.[16] RPI in particular is generally considered an unreliable measure, with the UK Statistics Association urging in 2019 that it should be avoided by both Government and the private sector.[17] The fact that some firms continue to use RPI in their price rise terms despite this consensus raises questions around motivation - as the CMA note, the continued use of RPI:

> "may have the effect of increasing the amount the trader is charging above inflation, and even where the trader has not incurred increased costs, which undermines or removes completely what we presume is the justification for it."[18]

Clearly, it's unreasonable to expect consumers to judge whether inflationary measures like RPI or CPI represent good value relative to the likely changes in costs providers will face. And it's also unreasonable to think that simply ensuring that price rise terms are prominent and transparent, as Ofcom's current guidance states, is sufficient to protect consumers from unfairness when it comes to inflation-linked rises. If few consumers understand what terms like CPI or RPI mean, and fewer still could reasonably be expected to know what the rates of CPI or RPI will be 12 or 18 months into the future, then inflation-linked price rise terms clearly do not allow consumers to "know what bargain they are striking, so that they can make informed transactional decisions."[19]

Price rise terms that include these measures are fundamentally not fair to consumers. For this reason, Citizens Advice is of the view that **inflation-linked price rises during the minimum term of contracts should be banned**.

[16] CMA response to Committee of Advertising Practice ('CAP') and Broadcast Committee of Advertising Practice ('BCAP') consultation on new guidance on how to present information about mid-contract price rises in ads for broadband and mobile services ('the consultation'), p. 2, §4.
[17] UK Statistics Authority Statement on the future of the RPI, 4 September 2019.
[18] CMA response to CAP/BCAP consultation, p. 6.
[19] Ofcom, Price rises in fixed term contracts - Decision to issue Guidance on General Condition 9.6. October 2023. 'Principle 1' p. 4.

Would fixed rises be better?

If inflation-linked price rises are fundamentally unfair to consumers, what about price rises that are instead couched in terms of fixed increases - either fixed percentages ('Prices will rise every year by 5%') or fixed amounts ('Prices will rise each year by £3')?

Fixed increases would remove the uncertainty that comes with inflation-linked rises, which would remove one of the key ways in which inflation-linked price rise clauses are unfair to consumers.

Even so, scrapping inflation-linked rises in favour of fixed rises would only provide consumers with some protection over egregious price hikes.

Fixed rises create unnecessary barriers for consumers

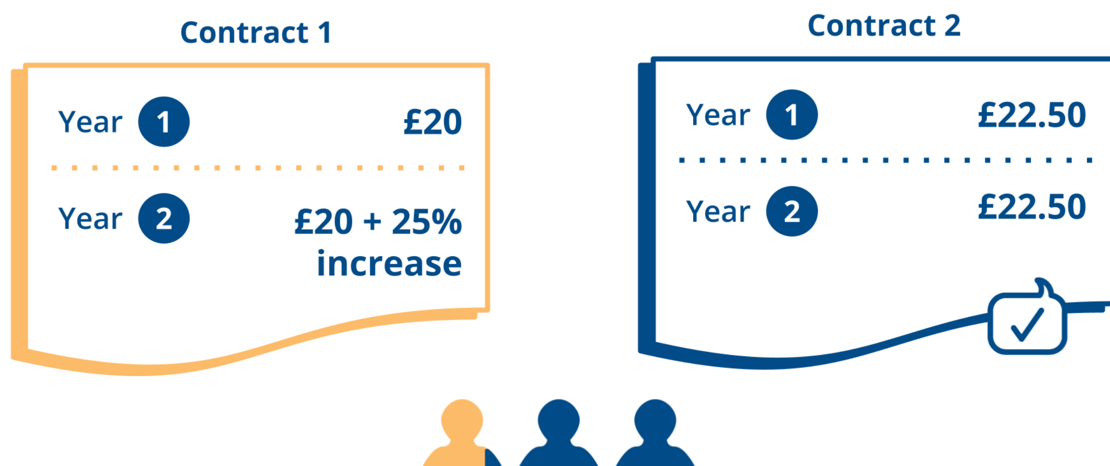
For one thing, calculating fixed percentage increases is not necessarily easy for all consumers. One report found that only 1 in 4 participants were able to calculate the impact of a price rise on a monthly bill when they were given information about exactly how much the rise would be[20]. And we found that a significant minority of people were unable to effectively compare the value of two contracts which cost the same overall but had the total cost distributed differently across the contract term. Almost 40% of people who chose one contract over the other said they did so because it was better value for money - even though they both offered the exact same value overall.

Given that fixed price rise terms are not going to be as clear or easy to compare for some consumers as others, it's not clear what role they should have in fixed-term contracts at all. A fixed price rise would mean a set amount would be added to contracts every year - but given that the exact price increase is known (and committed to by the provider) at the onset of the contract, there's no practical reason for the total cost to not be distributed evenly across the contract term. This would mean consumers could compare the value of different contracts simply by comparing only the upfront monthly cost, rather than the monthly cost *plus* the cost of various price rises across the contract term.

[20] Which? Research in July - "Customer knowledge and understanding of mid-contract price rises" https://www.which.co.uk/policy-and-insight/article/customer-knowledge-and-understanding-of-mid-contract-price-rises-aH6Rj2y6KKP8

It’s often assumed that consumers may prefer having lower prices earlier in their contracts, meaning that a move to a fixed cost throughout a contract term would be unpopular with consumers. However, in our research we explicitly tested this and found that to the contrary that such a change would be popular with consumers.

We asked people to choose between two different two-year contracts with the same total cost: one with a price of £20 per month for year 1 and £20 plus a 25% increase per month for year 2; another with a price of £22.50 per month for both years. Strikingly, more than two thirds of consumers picked the second contract - and of those that did, 62% said they picked that one because a fixed price makes it easier to plan and budget.



More than **two thirds** of customers picked **contract 2**

Citizens Advice advisers tell us that being able to plan their finances is key for our clients, who often choose specific contracts that work within their budgets. While telco price rises aren’t normally the main issue that brings clients in, advisers tell us they contribute to other cost of living, debt and affordability issues - often as an “aggravating factor”.

> **“We are in "the straw that broke the camel's back" territory.**
>
> **It's not the increase itself but the fact it is yet another increased cost. The only way to manage for some is eat less, heat less, switch off all appliances, use credit more, don't use public transport if possible and don't pay some bills”**
>
> Frank*, local adviser

What's more, over a third of consumers say that it's difficult for them to predict their financial situation a year from now. Consumers signing up to fixed term contracts of 12, 18 or 24 months are already having to try and predict what will be affordable to them for the duration of their contract length.

Including fixed price increases in contracts instead of offering consumers one set monthly cost for the duration adds another level of difficulty to consumers' budgeting.

Liz's story[21]

Liz* is a single mother of a four-year-old daughter. Liz has been suffering from depression and anxiety for the past few years, which meant she had to stop working - but she's keen to get back to work soon, and has been looking for jobs recently.

Because she's on benefits, she's had to carefully budget for the past few years - but this has only gotten harder as prices keep on increasing. Last year, she signed up for a new mobile contract - 24 months for the service she and her daughter needed, at a price that worked for her. In April, however, the price of her mobile contract went up - alongside lots of other bills. Even though it was only a few pounds, she couldn't budget for this anymore alongside other increases - and because she didn't pay, she was cut off.

This has only made her money issues worse. Having access to her mobile is vital for her Universal Credit claim. They were unable to contact her for a commitment interview - so she's been sanctioned, and not been paid her award.

Fixed price rises are bad for price competition

Fixed price rises within contracts are not only unnecessarily obstructive for consumers - they're also, by extension, bad for overall price competition within the market. As is acknowledged by Ofcom's current guidance, it's likely that consumers make decisions about which contracts to sign up to largely on the

[21] Case studies feature anonymised real-life cases seen by local Citizens Advice advisers. All names have been changed.

basis of a combination of contract length, package of services and the monthly price payable for the contract.[22] This means that when comparing deals in terms of best value for money, consumers are likely to compare primarily on the basis of the initial advertised monthly price. This creates an incentive for providers to artificially lower these initial monthly prices, while building significant price rises into the contract term to ultimately increase the total cost of the contract as a whole. The result is that providers are not incentivised to compete primarily on the basis of the overall value for money they are providing to consumers throughout their contracts. The CMA raise similar concerns, noting that partitioned pricing in telecom contracts "may obstruct effective upfront price competition by making it harder for consumers to find the lowest priced offer."[23]

A 'fixed means fixed' approach to pricing in-contract, by contrast, would be most beneficial for pricing competition. It would align advertised monthly payable cost with the total cost that a contract as a whole offered, simplifying the consumer process of comparing deals and shopping around for the best bargains. This would mean consumers who only look at the headline monthly price are able to accurately compare total cost, so would drive better competition without needing any behavioural change from consumers. This would incentivise providers to compete on the basis of this overall value for money, maximising the benefits of effective price competition for consumers. It would also have the additional benefit of freeing up consumer cognitive capacity when shopping around, making it more likely that people will be able to compare non-price elements of contracts such as customer service.[24]

Arguably there is a cost to consumers in terms of reduced choice of different pricing structures but we consider that any value derived by consumers from this choice is significantly less than the value derived by all from better competition. Finally we note our findings above that the majority of consumers would prefer to have contracts which spread the costs evenly over the course of the contract.

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[22] Ofcom, Guidance on "material detriment" under GC9.6. pp. 1-2, §A1.5.
[23] CMA response to CAP/BCAP consultation, p. 2.
[24] The impact of unnecessarily complex information on consumer capacity to shop around (and, by extension, on effective competition) is covered in the FCA/CMA paper Helping people get a better deal: Learning lessons about consumer facing remedies. October 2018. p. 15, 'Suppliers' actions that make demand-side problems worse' .

We conclude that it is in the interests of both individual consumers at the point of shopping around effectively for good-value contracts, and consumers as a whole in needing good value out of the market, for **Ofcom to ban fixed price rises within the minimum term of contracts.**

Early termination charges - adding insult to injury

Ofcom's current guidance allows for Early Termination Charges (ETCs) - penalty fees a customer has to pay to leave a contract before the end of the minimum term - to be charged when in the case of non-discretionary price rises. This is because consumers are considered to have known what they were signing up to in the case of non-discretionary price rise terms, and 'agreed' to the overall price including the rises.[25]

However, it's clear that this isn't really the case - certainly not with inflation-linked rises and often not with fixed % or £ rises either. Consumers can't meaningfully agree to a price rise as part of the 'core subscription price' of a contract if they can't reliably calculate how the monthly price will be affected by potentially multiple price rises over the contract term.

In light of this, the idea that providers should be entitled to charge ETCs to keep consumers within contracts when exercising these non-discretionary price rise clauses feels unfair - not least because these fees are typically very expensive.

Example ETC calculation from provider website:

You pay £35 a month. You have four months left in your minimum commitment period. We multiply £35 by four months, totalling £140.

We take off VAT, reducing it to £116.67.

We take off the costs we save (for example, £15 per month, multiplied by four = £60), leaving £56.67 We discount by 1% for early receipt, making £56.10.

We add on VAT, making your final early termination fee £67.32.

[25] Ofcom, Guidance on "material detriment" under GC9.6. p. 4. Examples 1 and 2 in §A1.14, which describe different versions of non-discretionary price rises (described in the guidance as 'agreed prices), are offered as examples of cases where Ofcom would not consider the price rises to modifications of the contract in a way that would meet the GC9.6 material detriment requirement (which, if met, entails that consumers must be able to exit contract penalty-free within the minimum term).

And this price can quickly snowball. For customers that have higher monthly prices or more months left within their minimum term, they can face hundreds of pounds worth of fees.

Since prices went up in April, a third of local Citizens Advice advisers that we spoke to said they've seen or been made aware of clients who are stuck in mobile or broadband contracts that they can't afford anymore - and can't get out of due to exit fees.

> **"We always have clients who have signed up to contracts that increase in price... then they cannot afford them and are trapped for 2 or 3 years"**
>
> Yusuf*, local adviser

Importantly, this does not mean that simply removing ETCs entirely from the equation when it comes to price rises within minimum contract terms would be an effective protection for consumers. This is an option that Ofcom considered but ultimately rejected when it last consulted on in-contract price rises in 2013, partly on the grounds that it would not be a proportionate means of securing fairness in relation to the core subscription price rises in-contract.[26]

As we will go on to demonstrate in the next chapter, it is our view that **scrapping ETCs for all in-contract price rises would be an ineffective, rather than disproportionate, protection for consumers when it comes to unfair price increases**. This is because consumer protections need to be effective in the context of how consumers actually behave, rather than how they ideally would. Having the right to exit a contract penalty-free will only be an effective protection from unfair price rises in the case that consumers reliably exercise this right when prices are raised in a way they aren't happy with - but our research suggests this is not the case.

Summary

In this chapter we've argued that:

[26] Ofcom, Price rises in fixed term contracts - options to address consumer harm. January 2013. P.4, 'Option 4'.

- Consumers don't understand inflation-linked price rise terms such as CPI and RPI.
- Even where they do have some understanding of them, they're not in a position to predict inflation - so aren't in a position to effectively compare the value of contracts that include inflation-linked price rise terms.
- Consumers value fixed prices - it makes budgeting easier, which is especially important when financial planning is already difficult for many.
- Fixed price rises are bad for price competition as well as unhelpful for consumers - incentivising providers to compete on the basis of artificially low initial prices rather than overall value of contracts as a whole.

On this basis, we recommend that:

→ **Ofcom should ban the use of inflation-linked price rise terms in minimum term contracts**

→ **Ofcom should ban the use of fixed (% and £) price rise terms in minimum term contracts**

3. Discretionary price rises

Discretionary price rise clauses are a less common approach providers take to increasing prices in-contract. Despite being less common than non-discretionary price rises, however, it's important to assess the extent to which consumer interests are protected in the case of discretionary rises as well. One outcome of tightening the rules on non-discretionary price rise clauses, as we recommend above, could be that more providers shift to the discretionary price rise model for their contracts. It's therefore important to assess whether Ofcom also needs to take steps to address any risks from the discretionary model.

In the case of discretionary price rises, Ofcom's current guidance gives consumers the right to leave contracts penalty-free if providers exercise their discretionary right to raise prices. This, as indicated earlier, is because discretionary rises are considered a modification of the terms of the contract, likely to be materially detrimental to consumers. Discretionary price rise clauses mean that consumers could face multiple hikes in their monthly price over their contract term, which they have no way of predicting in advance. Hence, Ofcom's considered judgement when it last consulted on in-contract was that it would be unfair for consumers to be tied into contracts like this with no way of leaving without penalty.

Certainly, it seems unarguable that contract terms which allow providers to raise prices by unspecified amounts, at unspecified intervals, are not terms that consumers can fairly agree to in advance. In this sense, discretionary price rises are worse for consumers when it comes to clarity and transparency of price than non-discretionary rises. The question is whether the ability to leave contracts penalty-free when a discretionary price rise clause is exercised is sufficient to protect consumer interests - and we think it isn't.

Switching isn't a silver bullet

Our research suggests that inertia is a strong force when it comes to consumer behaviour in mobile and broadband markets.

In April, we saw the biggest price hikes in mobile and broadband in over 30 years - affecting people who were both in and out of minimum-term contracts. There was a lot of publicity around the fact that prices would be going up - with lots of consumer advocates advising that those who were out of contract, and so free to switch without paying exit fees, should. This presented the opportunity of a natural experiment to test how far broadband and mobile customers would actively shop around and switch ahead of the April rise in order to avoid the price hike. If ever there was a time to switch, it was a time when unprecedented price hikes were hitting the headlines.

And yet our research suggests that the vast majority of people who could switch, didn't. More than half of mobile (52%) and broadband (53%) customers we surveyed told us their prices went up in April - which means an estimated 25 million mobile and 11 million broadband customers were aware that they face a hike in their contract prices.[27] Of these, we estimate that almost half of mobile customers and one third of broadband customers wouldn't have been within a minimum contract term when the rises kicked in, meaning they could have switched penalty free.[28] Despite this, we found that only 10% of mobile customers and 8% of broadband customers (2.5 million and 825,000 respectively)[29] who faced a price rise in April switched to a different contract or provider just before the price increase - even though nearly half of mobile customers and a third of broadband customers who faced these rises would have been able to do so without paying a fee.

This lack of switching as prices rose, though, is not a sign of widespread satisfaction with the new higher prices. Fewer than 1 in 5 people who didn't switch when prices rose said they didn't switch because they were happy with

[27] We asked survey participants if their mobile or broadband contract price increased in April - 52% of mobile customers and 53% of broadband customers said yes. Our desk research indicates that the number of people whose prices actually increased in April was likely significantly higher than 25 million for mobile and 11 million for broadband - as 71% of mobile and 90% of broadband customers have contracts with providers who increase prices every April.
[28] We estimated the proportions of customers in minimum-term contracts and rolling contracts based on the current split from polling data, where we asked 4,519 people what kinds of contracts they were on. 45% of mobile customers and 33% of broadband customers are currently on rolling contracts. We assumed these proportions would stay relatively constant due to the turnover of contracts ending and new contracts beginning.
[29] We asked survey participants who were aware that their prices went up in April whether they switched or not - 10% of mobile customers and 8% of broadband said they did switch as prices increased.

the new price.[30] Meanwhile, our advisers tell us that switching can be difficult for our clients, which means people can remain stuck on a contract that they want to get out of, but struggle to.

> **"...lots of our clients don't understand how the process works. They require sustained help to switch, but they can't always get it."**
>
> Angela*, local adviser

More broadly, it's not clear that consumers are generally sufficiently active and engaged in telecom markets for switching and shopping around to act as a safeguard against unfair price rises, as Ofcom's current guidance suggests. Only 1 in 3 people say they always shop around for the best deals. Those that don't say it's because shopping around to find the best deal is too time consuming (31%), stressful (26%) or difficult (17%).

The burden of switching isn't felt equitably

The problem of relying on switching as a safeguard for consumer interests isn't just that significant numbers of consumers as a whole are not shopping around or renegotiating their contracts very often. It's also that this kind of active engagement with the market is more difficult for certain groups of consumers than others.

For example, 1 in 5 consumers say they find it difficult to switch contracts or renegotiate with their provider - but this rises to 1 in 4 for disabled people and nearly 1 in 3 people with chronic mental health conditions. And where 1 in 3 consumers report always shopping around for the best deals, for people who don't use the internet every day, it's only 1 in 5. People with serious mental health issues are more than twice as likely to report finding shopping around for good deals stressful (42%) than people with no mental health issues (20%).

[30] One third of people who didn't switch said that they didn't switch because they were happy with the service they were getting on the contract. We can't conclude from this, however, that they were therefore happy with the increased price - as some might have not switched despite being unhappy with the new price, because they might experience a drop in service if they switched. This question allowed participants to select all that apply, so all those who were happy with the new price after the price rises were able to select this option, even if they also selected others.

There are also disparities in how confident people feel with the different methods for shopping around. Our research found that disabled people are significantly less likely to feel confident comparing deals on a price comparison website than people who aren't disabled - and people with serious mental health issues feel much less confident phoning up a provider and haggling for the best deal than people with no mental health issues.

We also found that consumers with lower household income consistently reported feeling less confident with various methods for shopping around than consumers with higher household incomes. This suggests that shopping around for the best-value deals - currently the only mechanism for safeguarding consumer interests in the case of discretionary price rises - is less accessible to the people who are most likely to really need to find the cheapest deals and for people in vulnerable circumstances. This suggests that further protections are needed beyond merely giving consumers the opportunity to switch penalty free.

Summary

In this chapter we've argued that:

- Discretionary price rises are even worse than inflation-linked price rises for consumers in terms of clarity and predictability.
- But the ability to leave a contract penalty-free when a discretionary price rise is introduced is not an effective protection for consumers against unfair or detrimental hikes, because of consumer inertia.
- Despite unprecedented price increases earlier this year, only a small minority of consumers actually switched to a new contract or provider just before the hikes kicked in.
- A significant minority of consumers say they don't always shop around for the best deals - and 1 in 5 say they find it difficult to switch contracts or negotiate with their provider.
- The burden of switching is not felt equally by consumers. Disabled people and people with mental health issues are more likely to find switching difficult or stressful, and people from households with lower incomes are significantly less confident with the various methods of switching than those from households with higher incomes.

On this basis, we recommend that:

- → **Ofcom should ban discretionary price rises during the minimum term of contracts.**

4. Out-of-contract price rises

The main target of scrutiny over the past year - and the focus of Ofcom's review - has been the specific issue of price rises within the minimum term of telco contracts. There's good reason for this: there is a sense in which in-contract price rises undermine the basic idea that consumers are getting something important out of signing up to a contract - namely, a certain level of service for a specified time period at a particular price point.

However, Ofcom can't afford to neglect the issue of price rises beyond the minimum term either. Of the £1.4 billion extra that we estimate will be added to annual consumer telco bills in April next year, around £660 million will hit consumers who are out of the minimum term of their original contract.

When consumers come to the end of the minimum term of their original contract, they are typically automatically moved by their provider onto a monthly rolling contract for the same level of service they had during their original contract term. The monthly cost of this rolling contract may be the same price the customer was paying when their original contract term ended - or it may be significantly higher if the in-contract price reflected, for example, an introductory or new-customer offer that was applied to their original contract when they first signed up. Citizens Advice has previously highlighted how these latter significant rises - what we've termed the 'loyalty penalty' - can result in consumers who don't switch their contracts at the end of their minimum term paying large sums more for the same level of service than new customers.[31]

But even where consumers are not hit with a sudden jump in price once they roll off their original contract, they can still end up paying significantly more for the same level of service over time, thanks to price rise clauses being applied beyond the minimum term of contracts as well. In all of the contracts we looked at, providers who increase contract prices by CPI + 3.9% every year during the minimum term also raise prices by that same amount every year beyond the end of that term as well.

[31] See for example: Citizens Advice, The cost of loyalty: Exploring how long-standing customers pay more for essential services, February 2018.

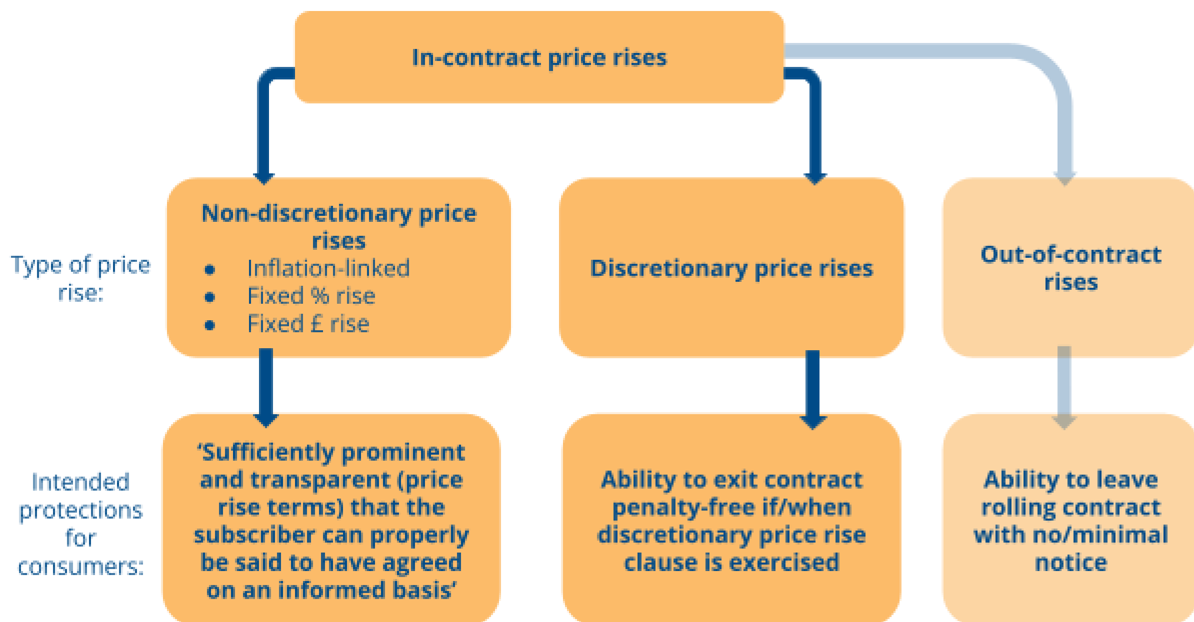

Figure 2: existing protections for consumers against out-of-contract price rises, in the context of current Ofcom guidance on in-contract price rises

Our research found that 23% of mobile customers and 30% of broadband customers haven't changed their contract for more than 2 years. Many of these customers will have had the compounding effect of multiple above-inflation price rises. This can be considerable. The combined effect of CPI + 3.9% rises for April 2022, 2023 and 2024 (as predicted) would be an average 38% increase in mobile and broadband prices. For someone who took out average priced mobile and broadband contracts in summer 2021 (the start of the cost-of-living crisis), that means they'll be paying almost £220 more a year than they were originally, for the same level of service.[32] And this price will keep creeping up the longer they stay on the same rolling contract with the same provider. Of those who haven't switched in the past two years, the majority had in fact not switched for a good while longer. 15% of mobile and 22% of broadband customers haven't

[32] To calculate this estimate, we used last year's polling to pull average prices for mobile and broadband in summer 2022. We then calculated the average prices pre-April 2022 price rises - using desk research from last year about price rise clauses in April 2022. We then used this to calculate the average monthly and annual price hikes for April 2022 across mobile and broadband in £. We then used this - and the average increase across both markets in 2023 and 2024 based on this year's polling - to calculate the total % price rise the average consumer would have faced since mid-2021, facing 3 rounds of price hikes. We calculated what this would look like in £s using average costs of mobile and broadband - calculating that this 38% increase would work out as £218.65 more per year than original price.

switched for more than 4 years - since before the start of the financial turbulence of the Covid-19 pandemic, through a serious cost-of-living crisis and multiple rounds of hefty price rises.

As with discretionary in-contract price rises, consumers who are outside of their fixed term period are supposed to be protected from unreasonable price increases by the fact that they can switch penalty-free - you can usually cancel a rolling contract with minimal notice. But as we saw in the previous section, only a small minority of consumers who faced the historic price rises earlier this year switched their contract in the run-up to the hikes kicking in - despite the fact an estimated one third of broadband customers and nearly half of mobile customers who faced these rises were no longer within the minimum term of their contract.

Indeed, all of the concerns raised in the previous section about consumer inertia apply out-of-contract. If a significant proportion of consumers do not regularly exercise their ability to switch contracts and shop around for better deals, then it doesn’t seem that the ability to switch is a robust protection against unreasonable prices for consumers out-of-contract either.

And it’s not just worries about consumer inertia that apply beyond the realm of in-contract price rises. Given that most providers use the same inflation-linked price rise mechanisms to raise prices for their monthly rolling contracts as they do for their fixed term contracts, the concerns about the opaqueness and uncertainty of inflation-linked price rises also apply out-of-contract.

What could fairer pricing out-of-contract look like?

Admittedly, the indefinite nature of rolling contracts makes it tricky to assess what a fair out-of-contract pricing structure should look like. But previous Citizens Advice research on the loyalty penalty makes it clear that simply allowing prices for out-of-contract consumers to continue to rise while consumers who shop around benefit from cut-price deals for new customers creates a deeply unfair settlement for less active consumers. The kind of price competition generated by markets with a significant proportion of disengaged or inactive consumers is generally only going to serve the interests of consumers who regularly and proactively shop around. As we highlighted in relation to

in-contract price rises in the previous section, out-of-contract price rises also incentivise providers to compete aggressively for the custom of active consumers - embedding pricing models that prioritise the lowest prices for new customers over longer-term value for money for longer standing customers. Given that our latest research confirms previous Citizens Advice findings[33] that certain groups, including those on low-incomes and people in certain vulnerable circumstances, are disproportionately likely to struggle with effective switching and shopping around, there is an important equalities angle to this form of price discrimination as well.

We don't think it's acceptable that consumers who don't regularly shop around should be expected to accept paying higher and higher prices for the same level of service that other customers are getting much better deals for - and our research suggests neither do consumers.

We wanted to explore what consumers think would be a fairer pricing model for consumers when they come to the end of a minimum term contract. We asked survey participants how providers could treat customers at the end of their minimum-term contracts instead, instead of moving them onto a rolling contract - and found strong support for the following options:

- 89% support making customers aware of their actual usage at the end of their contract and offering them the best priced contract which meets those needs.[34]
- And 76% support automatically putting customers on the best priced contract which meets their needs.
- And 66% support keeping customers on the same tariff they had during their contract, but only charging the same monthly price that new customers are offered for the same tariff.

The common thread running through each of these options is the idea of a 'best price' for a given level of service that is anchored in some way to what the provider offers to other consumers. In the final option the comparison point is

[33] Citizens Advice, Excessive prices for disengaged consumers: A super-complaint to the Competition and Markets Authority. September 2018. pp. 17-26 'Impact on vulnerable and low income consumers'.
[34] It's important to note that this first option is not merely an informational remedy - providers in this case have to proactively offer consumers the best priced contract which meets their actual usage needs.

explicitly new customers; in the others ‘best’ is anchored by the general pricing offer of the provider. But in all cases, there is an idea of what is fair being in some way pegged to the value other customers are receiving.

We think the idea that existing customers should be guaranteed the same value-for-money as new customers (or existing customers who have renegotiated their contract) - and that supply-side methods of ensuring this, such as those described in the examples above, are necessary and appropriate ways of achieving this.

While the scope of Ofcom’s current review is on in-contract price rises, one potential consequence of any restriction on mid-contract price rises is that providers move to shorter term contracts (e.g., 1 year). This would lead to a rise in customers who are out of contract and therefore mean more people are subject to the harms discussed in this chapter. We therefore encourage Ofcom to use any forthcoming consultation to explore measures to address price rises out of contract.

Summary

In this chapter we’ve argued that:

- Alongside in-contract price rises, out-of-contract price rises are also adding significantly to consumer bills every year.
- For the significant minority of consumers who don’t reliably shop around when their contracts end, out-of-contract prices rises can lead to them paying significantly more for the same level of service than new customers are paying.
- Since certain groups of consumers struggle more with the process of switching, these groups are also more likely to be paying these inflated out-of-contract prices.
- There is widespread consumer support for supply-side measures that guarantee existing customers the same value for money for a given level of service as providers are offering to other customers.

On this basis, we recommend that:

- → **Ofcom takes the opportunity of any consultation period following the end of their current review to explore appropriate approaches to out-of-contract price rises.**

Conclusion and recommendations

Ofcom will shortly be concluding their review into inflation-linked in-contract price rises. In this report we've made the case that when they do so, they should be looking to take swift action to ban this practice and protect consumers from fundamentally unpredictable price hikes.

But it's also clear that banning inflation-linked in-contract price rises could have significant knock-on impacts for other aspects of contract pricing - so it's vital that Ofcom take this opportunity to scrutinise the fairness of the various different price increase structures consumers are subject to in the round. We've set out two additional steps we think they should be looking to take as soon as possible to ensure consumers are protected from unfair price rises throughout the market: banning discretionary in-contract price rises, and exploring options for tackling out-of-contract price rises too.

Taking action on the different kinds of price rises, both within and outside of contracts, will not only create a fairer pricing settlement for telecoms consumers - it will also help to promote more effective overall price competition. Under such conditions, providers would be incentivised to compete on the basis of the long-term value-for-money they can provide consumers, rather than the lowest initial price they can attach to their contracts which may not represent the value of the contract as a whole.

Recommendations for Ofcom

Recommendation 1: Ofcom should ban all non-discretionary or 'agreed' price rises within the minimum term of mobile and broadband contracts

- **Inflation-linked price rise terms** are opaque and poorly understood; and unpredictable price rises undermine consumers' ability to budget and plan.
- **Fixed % or £ price rises** are set from the outset of the contract - so it would be easier for consumers to just have one price fixed for the duration of the contract rather than tiered pricing across the contract

term. A ‘fixed means fixed’ approach would be good for overall price competition, and our research shows consumers would support this change.

Recommendation 2: Ofcom should also ban discretionary price rises within minimum term contracts

- **The ability to leave a contract penalty-free is not sufficient protection for consumer interests**. Consumers, by Ofcom’s own words, should be able to rely on the core subscription price for the whole of their contract term - this is what makes minimum term contracts valuable to consumers, especially when balancing other rising costs.

Recommendation 3: Ofcom should take the opportunity of any consultation period following the end of their current review to explore appropriate approaches to out-of-contract price rises.

- The dominant model of baking in above-inflation price rises every year for out of contract isn’t fair to consumers given what we know about inertia.

Methodology

1. Unless otherwise indicated, all figures used in this report come from Citizens Advice analysis of an online poll conducted by Savanta for Citizens Advice. A nationally representative sample of 4,519 adults aged 18+ in the UK were surveyed. The figures have been weighted and are representative of all UK adults (18+). Fieldwork was conducted between 14th - 22nd September 2023. Savanta is a member of the British Polling Council and abides by its rules.
2. Statistics about understanding of CPI and RPI come from Citizens Advice analysis of a nationally representative survey of 2,082 UK adults carried out by Yonder Data Solutions between the 25th-26th January 2023, of which 93% had a mobile contract and 95% had a broadband contract at the time of the survey. The figures have been weighted and are representative of all UK adults (18+). Yonder Data Solutions is a member of the British Polling Council and abides by its rules.
3. Calculations:
    a. Rise of £1.4 billion: desk research and market share data from polling used to calculate the weighted average of all price increases for all mobile and broadband providers - 8.4% for mobile and 9.4% for broadband. These were added to the current average price of mobile and broadband contracts from Savanta polling. The price difference between current price and estimated price post-April price was scaled up by the number of UK adults with mobile and broadband contracts. This came to £1.4billion (£1,433,969,304.95) of total added across 12 months in both markets for all customers - and £47 (£46.64) a year for one customer paying the average amount across both mobile and broadband.
    b. £770 million rise in minimum term contracts and £660 million out-of-contract: polling participants provided details of contract types - and were grouped into those on minimum-term contracts, and those outside these minimum terms. Participants were also separated out according to their providers' price rise policies, i.e. those facing CPI+3.9%, those facing RPI+3.9% etc. Our researchers calculated what proportion of total UK adults within each price rise group were in a minimum-term contract. This was used to work out exactly how much of the price rise was attributable to those on minimum-term contracts - £771,098,312.62. The remaining £662,870,992.33 was attributed to out-of-contract customers.

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