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## **Which? response to proposed guidance on the presentation of mid-contract price rises in telecoms ads**

Which? welcomes the opportunity to respond to the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) consultation. We welcome this new guidance on the presentation of mid-contract price rises within telecommunications advertising with the intention of providing clarity for businesses when presenting crucial price information to consumers.

- Which? agrees with the principles outlined in the suggested guidance
- We caution that transparency is important but not sufficient to mitigate the consumer harms associated with price variation clauses and recommend continued monitoring of the impact on consumers
- The guidance should be clear that price rise information should always be available at the point of promotion
- We require further clarity on the guidance surrounding the promotion of multiple offers, and caution that the current wording could inadvertently allow current bad practices to continue
- As part of the Which? Cost of Living campaign, we are calling on providers:
  - To carefully consider the level of mid-contract prices that can be justified during the cost of living crisis
  - To enable consumers to leave their contract without penalty when they increase prices mid-contract, regardless of whether or not these increases can be said to be 'transparent'

In 2013 Which? campaigned against Communications Providers advertising tariffs as 'fixed' whilst simultaneously burying price rise clauses in consumer's contracts. This led to a change in Ofcom's approach to regulating this area.<sup>1</sup> Today, we continue to campaign on the issue of mid-contract price rises, as rising inflation drives up the cost of telecoms for consumers and the cost of living crisis applies pressure to household budgets.<sup>2</sup>

In October 2022, Which? published an article on broadband price hikes using figures from a nationally representative survey of broadband customers to calculate the potential impact of these price rises in 2023, when the Bank of England predicts CPI will be around 10%. We predict that many consumers will face price increases of just under 14% – even higher than this year's (2022) increases, which were just under 10%.<sup>3</sup>

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<sup>1</sup> [Ofcom, 2013 1 Guidance on "material detriment" under - GC9.6 in relation to price rises and notification of contract modifications](#)

<sup>2</sup> [Which? launches cost of living campaign - Which? News](#)

<sup>3</sup> [Broadband customers could face bill hikes of £113 in 2023 - Which? News](#)

Consumers must be provided with information about mid-contract price rises before they can make an informed choice for their telecoms service. Ofcom has recognised that the core subscription price for a telecoms service is likely to be one of the most important aspects of the contract in consumer decision making.<sup>4</sup> Consumers must not be led to believe their core subscription price is fixed, either through the omission of, or lack of prominence given to price variation clause information.

The guidance that mid-contract price rises are material information with a requirement of absolute clarity is especially important given the inflationary environment set out in the Which? investigation. Which? supports the proposed guidance to businesses calling on them to raise the prominence of this information by placing information indicating the presence or possibility of a price rise immediately adjacent to price claims. These changes will likely ensure greater awareness of mid-contract price rises for consumers when they encounter telecoms offers in promotional material.

### **Consumer barriers beyond transparency**

Despite these positive changes, Which? is clear that transparency alone is insufficient to address the complexity of consumer harm surrounding mid-contract price rises. No matter how transparent price variation clauses are in promotional materials, consumer contracts, or contract summaries, this does not guarantee consumer understanding of these price increases or the impact they could have on their bills. The evidence below demonstrates that consumers face significant challenges understanding and predicting mid contract price rises.

- A Tesco Mobile Commissioned YouGov Survey (2021<sup>5</sup>) found:
  - 50% of respondents with a mobile phone contract weren't aware a network provider could put prices up mid-contract.
  - Consumers generally don't have a good understanding of inflation indexes like CPI and RPI.
  - 48% of respondents did not understand the term RPI.
  - 69% were unaware of what CPI means.

Given these gaps in understanding, Which? welcomes that the guidance will recommend index initialisms like CPI are spelled out and referred to as a 'rate of inflation' in adverts. We would like to highlight that we are not convinced that this clarity will be sufficient to educate consumers of the complexity of inflation. Evidence from the Economic Statistics Centre of Excellence (ESCoE) in 2020<sup>6</sup> showed:

- 37% of respondents either failed to identify the meaning of inflation from a list of options, or answered "don't know".
- That large parts of the population have misperceptions about how economic figures like inflation indexes are collected and measured.

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<sup>4</sup> Ofcom, 2020. [Fair Treatment and Easier Switching for Broadband and Mobile customers.](#)

<sup>5</sup> [Tesco Mobile Seeks BAN on Broadband and Mobile Price Hikes - ISPreview UK](#)

<sup>6</sup> ESCoE, 2020. Public Understanding of Economics and Economic Statistics, p.5 & p.60  
<https://www.escoe.ac.uk/publications/public-understanding-of-economics-and-economic-statistics/>

Even where informed consumers fully understand inflation and popular indexes, inflation is incredibly hard to forecast, and particularly in the current economic climate this is unrealistic to ask of consumers. We believe further monitoring will be required to measure the impact of this guidance change for advertising and how this translates into consumer understanding of terms that describe rates of inflation.

#### **Rules for Tiered vs Variable contracts**

Which? supports CAP and BCAP's assessment that tiered and variable telecoms contracts should be subject to the same guidance on this issue. Consumers materially require information about mid-contract price rises, or the potential for them, in order to make an informed transactional decision to take out a new telecoms contract. This is true regardless of the nature of the clause that provides for price rises, and any future statutory rights the consumer might have. Equally, the nature of the clause is an important piece of information to the consumer when choosing between contracts. If CAP and BCAP were to hold tiered contracts to a higher transparency standard, this could risk depriving consumers of their ability to weigh the benefits and drawbacks of the different pricing models.

We are also aware that some providers use the fact that they do not employ price variation clauses as a marketing asset. CAP and BCAP's rules must allow these providers to be crystal clear about this differentiation.

#### **Mitigating factors**

We agree with the mitigating factors listed as having the potential to cause an advertiser to take additional action to ensure mid-contract increase information is sufficiently clear. Which? agrees that price rise information is essential for consumers to make decisions about their telecoms packages and should be prominent in the advertising. We would suggest that the guidance should make it clear to providers that this information should be prioritised even when there are constraints on advertising space. This crucial information should always be available *at the point of promotion*. Providers should not be able to skirt the guidance by pointing to prominent price rise information provided later in the consumer's purchase journey. This will help to ensure that consumers have the information they need to make informed decisions prior to entering into the purchase journey.

#### **Where there are multiple offers**

We require further clarity on the suggestion that where multiple offers/products appear on one page, it may be sufficient for prices to link or refer to a suitably-prominent single piece of information about mid-contract price increases. We would like to caution that providers may use this example and its wording in two negative ways:

1. To list multiple deals in one advertisement offering the opportunity to link to further information or asterisk price rise information for less prominence.
2. As a reason not to improve clarity and prominence of mid-contract price rise information on their websites. Asterisks on the price are a common tool to communicate this information on provider websites. Currently, the consumer must then scroll to the bottom of the webpage to learn about price rises. CAP and BCAP's inclusion of the phrase 'lower down the page' when allowing for this scenario gives permission to providers to continue with this poor practice.

While we believe it is sensible that identical price rise information should not have to appear many times in close proximity where there are multiple offers, the guidance must be clearer and emphasise that the information must be just as prominent as where there is a single offer.

**Current economic conditions**

As part of our Cost of Living Campaign<sup>7</sup>, Which? is making two immediate calls with regards to mid-contract price rises.

We are calling for consumers to have the ability to leave their contract without penalty when providers increase prices mid-contract, regardless of whether the increases can be said to be 'transparent'. Given the current inflation level and economic environment, the barriers to understanding CAP has highlighted in its consultation and the evidence we have provided here, the punitive exit fees providers charge are not fair - consumers need greater flexibility when faced with price increases.

Additionally, we are calling on providers to carefully consider what level of mid-contract price increases are justified given the cost of living crisis.

**For further information, or to discuss in more detail, please contact [REDACTED]  
Policy Adviser at [REDACTED]**

**November 2022**

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<sup>7</sup> Which?, 2022. [An agenda for business to support consumers through the cost of living crisis](#)