

Communications Consumer Panel response to Ofcom's consultation: Price rises in fixed term contracts

Introduction

1. The Communications Consumer Panel welcomes this opportunity to respond to this important consultation on price rises in fixed term contracts.
2. The Panel consists of eight experts who work to protect and promote people's interests in the communications sector. We were established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and small businesses. The Panel has Members representing the interests of consumers in Scotland, Wales, Northern Ireland and England.
3. The Panel now meets in a joint session with ACOD and is particularly concerned with the ways in which older and disabled are affected by regulatory changes.

Consultation

4. In January 2012, the Panel publicly welcomed Ofcom's announcement that it was undertaking work in this area, as it was - and remains - an issue of particular concern to the Panel. At that time the Panel expressed its view that price increases within the life of a fixed-term contract could be seen as 'sharp practice'. This was based on the belief that people are likely to have made a decision to buy a phone service based on the headline cost quoted at the time when they took out the contract; and that they are likely to have taken into account that the term of that contract, and therefore not unreasonably its advertised price, was fixed for the term of that contract. Consumers may not have had their attention drawn to, or been aware of, the implications of the small print. The Panel considered that if operators believed that they must impose these charges, consumers should be given better information about the changes, along with advice on how they could cancel their contracts if they wished. Although such increases were commercial decisions for the operators, the Panel considered that price changes within the life of a fixed term contract would be contrary to the expectations of most consumers. The Panel also stated that it was unreasonable to penalise affected customers by imposing early termination charges if they decided to cancel their contracts.
5. We note that of the 1,644 consumer complaints made to Ofcom's Consumer Contact Team (September 2011 to May 2012) about changes to terms and conditions of consumer contracts, 24% concerned a lack of transparency of

variation terms and a further 25% concerned the principle of price rises in fixed term contracts which people considered unfair when they had already agreed to a fixed-term contract. These principally concerned price rises in fixed term contracts for mobile services. We are also aware of the strength of consumer feeling expressed via the Which? "Fixed means Fixed" campaign, which has attracted over 42,000 expressions of support. We consider that this data supports the Panel's view about consumers' likely expectations.

6. Contracts are entered into so that each party knows on what terms they will conduct business. As the consultation notes, "The price the consumer has to pay for the services provided by a Communications Provider is one of the most important contractual terms." It is intrinsically unfair if one of the most fundamental parts of a contract, that is the cost of the provided service, is subject to change at the behest of one party. A contract for a mobile phone is there so that both parties (consumer and communications provider) know what will be provided, at what price and for how long. The Panel believes that offering services where fixed contract terms allowing price increases are not highlighted to consumers is misleading; we further believe that the existence of such terms without giving the consumer the right to cancel without penalty places the consumer at a disadvantage and the terms are therefore indeed liable to be unfair. Such a situation is also a de facto restriction on consumer choice.
7. The Panel accepts that the costs associated with providing a mobile phone connection can increase during the term of that contract. However, given the information asymmetry in the relationship between the communications provider and the consumer, what the Panel does not accept is that this increase in costs should be passed on to the fixed-term contract consumer, without the consumer having any right to leave the contract without penalty.
8. The Panel believes that if a price increase is possible during the lifetime of a fixed term contract, this fact must be communicated clearly to consumers at the point of sale - and certainly before they enter into such a contract - along with advice that they may terminate the contract without penalty in the event of a price increase. Notice of any such price increase should also include clear information as to how the customer may terminate the contract.
9. All consumers are at risk of being affected by the current situation. Whilst for some consumers an individual increase may be relatively small, in combination the potential for consumer harm is large; and the principles of fairness and transparency are, in the view of the Panel, not being upheld. Vulnerable consumers (which may include the elderly and the disabled) are at particular risk and in some cases even a small unexpected price increase could have a disproportionate impact; and not having the option to cancel the contract without penalty could be an added burden for these consumers.
10. In this consultation Ofcom re-iterates that contract terms should not contain any 'unfair surprises' and that 'consumers should receive the contractual bargain that

signed up to and legitimately expect'. The Panel fully supports these statements. We would argue that the current provisions in GC9.6 are insufficient to protect the consumer from the harm of mid-contract price rises. Ofcom presents four options in this consultation and it is clear to the Panel that Option four is the correct course to follow. We are pleased to see that Option four also addresses the issue of potential changes to the level of service provided as these would indeed effectively constitute a (unit) price increase.

11. In summary, the Panel believes that it is vital that consumers are made fully aware of the terms of any contract into which they are entering; that the potential for price increases must be communicated clearly; and that if there is any increase in the price for services applicable during the contract period, customers are able to withdraw from that contract without penalty. This is not an extension of consumer rights but a correction to ensure a basic principle of fairness. The proposal that Ofcom has set out in its consultation will provide a clear, simple and effective remedy to an unfair situation that has caused the consumer harm.