Ombudsman Services

Emailed to: AdPolicy@cap.org.uk

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Committee of Advertising Practice and Broadcast Committee of Advertising Practice consultation on new guidance on how to present information about mid-contract price rises in ads for broadband and mobile services

Thank you for the opportunity to respond to the ASA's new guidance for telecoms ads and mid-contract price rises.

We think it is sensible to take a principles based approach to guide providers of broadband and mobile services to help ensure positive outcomes for consumers. Misleading advertisements may impact a consumer's perception of a service provider and hinder brand loyalty and trust. It is important that any guidance on how to present information about mid-contract price rises in advertisements for broadband and mobile services should align and consider Ofcom's expectations around contractual information and price rises. We do think there is merit in providing illustrative examples to help consumers make appropriate and informed decisions.

Please do not hesitate to contact us if you would like further information regarding our response. Our response is not confidential.

For more information regarding this consultation please contact:

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Consultation questions

1. Do you agree with the guidance principles set out above?

Yes. However, the principles should be strengthened further in a number of areas.

2. Do you agree with taking the same approach to ads for both tiered and variable contracts, in terms of the level of prominence expected for information about mid-contract price increases?

Yes. Some providers use variable contracts to apply increases well in excess of inflation. Even if the customer has the right to terminate the contract, it can be difficult to contact the provider during the relevant window, particularly if they have notified all customers of the increase at the same time so phone lines are busy.

If variable contracts are not subject to the same rules, they could be used as a spoiler for competing offers. When the subsequent price increase is applied, the competitor's offer may no longer be available.

3. Do you have any comments on the use of terms used to describe rates of inflation such as CPI and RPI, and the level of understanding consumers have of these terms (including when they are referred to using an initialism only)?

No.

4. Do you agree with the mitigating factors listed as having the potential to cause an advertiser to take additional action in order to ensure material information relating to in-contract price increases is sufficiently clear?

Yes. Particularly the example "£30 for 24 months" which is blatantly misleading if the contract includes an automatic price increase before 24 months.

5. Do you agree that in instances where multiple offers/products appear on one page (for example, on a telecoms provider's own website), it may be sufficient for prices to link or refer to a suitably-prominent single piece of information about mid-contract price increases, rather than including this information within each individual product listing?

No. This would allow advertisers to put important qualifiers at the end of the listing rather than placing the information prominently next to the relevant headline prices.

Each price in the product listing should be clear in its own right as to the nature of any price increases during the minimum contract period.

6. Do you have any other comments or suggestions in relation to the proposals?

Yes

Above-inflation increases

The consultation document states:

> The initial price period preceding the obligatory rise can be seen as functionally the same as an introductory discount period

Consumers might consider it reasonable for the price to increase by inflation applied pro-rata from the start of the contract. However, if the price increases by more than this (e.g. if the increase is more than inflation, or if a full year's increase is applied before the contract has been running for a full year) it is functionally the same as an introductory discount period and should be given the same prominence as an introductory discount.

For contracts with a known minimum price increase (for example a fixed percentage increase, or CPI + 3.9% with a minimum increase of 3.9% annually) the advert should include the average price over the term of the contract with the minimum price increase included, because it is not possible for the customer to pay less than this amount. Alternatively, it could be presented as:

£10 per month until April 2023
£10.39 plus Jan 2023 RPI*, from April 2023
£10.80 plus Jan 2023 RPI* and Jan 2024 RPI*, from April 2024

Some customers will find a monetary amount easier to understand than a percentage increase.

Timing of the first increase

The consultation document states:

> The ASA has received complaints in the past from consumers who saw a monthly price for a tiered telecoms contract advertised shortly before the annual price increase in April, meaning that the initial price only applied for a month or two. Contracts frequently have durations of 18 months or more. It is advisable that marketers take extra care when advertising close to a tiered price increase, to ensure it is clear to consumers that the price will go up imminently.

Any advertisement published more than 5 working days after the relevant rate of RPI or CPI has been made public should show the imminent price increase as a monetary amount, in the same way that an introductory discount would be shown. This would be clearer for customers leading to fewer complaints of the type described.

For example, if the increase is CPI + 3.9% and the relevant CPI rate is known to be 11.1%:

£10 per month until April 2023
£11.50 per month from April 2023 – this price will increase by the Consumer Price Index rate of inflation plus 3.9% every April from 2024

Variable contracts

The examples shown for variable contracts put the qualifier "Price may rise during contract" in brackets. The use of brackets reduces the impact of this phrase and makes it easy to overlook. The qualifier "Price may rise during contract" should not be in brackets.

Price comparison services and websites

The consultation document states:

> CAP and BCAP consider that:
> a) the existence or known possibility of a mid-contract price increase; and
> b) if known, the nature of that price increase
> constitute material information that a consumer requires in order to make a transactional decision including the decision to enquire or otherwise engage further in the sales process. Therefore, ads that omit that information or present it in an unclear, unintelligible, ambiguous or untimely manner are likely to mislead consumers.

The same principle should apply to any advertisement or website that makes a price comparison, including dedicated price comparison websites.

If two contracts have the same initial price and contract term, but one has mid-contract price increases and the other does not, or one has increases that are known to be higher than the other (e.g. CPI + 3.9% versus CPI), this should be taken into account when determining the order in which to rank those contracts in any price comparison.

For contracts where the price is not fixed for the whole of the minimum contract period, the presence of mid-contract price increases should be displayed prominently in any price comparison, before the point at which the customer decides which offer to engage with.

For contracts with a known minimum price increase (for example a fixed percentage increase, or CPI + 3.9% with a minimum increase of 3.9% annually) any price comparison should take into account at least the minimum annual increase, averaged over the minimum contract period. The minimum monthly price, averaged over the contract term, should be shown alongside the initial price, otherwise the price comparison is misleading.

For contracts that include further increases linked to CPI or RPI, the presence of such increases should be prominently highlighted in the price comparison before the point at which the customer decides which offer to engage with. If the rate of CPI or RPI for the first increase has already been published, this amount should be included in the minimum average price of the contract (similar to my comment in the previous paragraph).

1. Do you agree with the guidance principles set out above?

I think the guidance is an improvement on the current situation, where contracts with guaranteed mid contract prices rises are essentially advertised as fixed price contract.

Nonetheless, I feel the proposed guidance is too weak in allowing misleading advertising, especially around tiered pricing. The examples in the appendix give undue prominence to the initial price, and don't give concrete enough examples of how the initial price will likely change in practice. I will elaborate on this further in my subsequent answers.

2. Do you agree with taking the same approach to ads for both tiered and variable contracts, in terms of the level of prominence expected for information about mid-contract price increases?

I think it is far more important for tiered pricing to be more explicit. I am not arguing for the proposed guidance for variable contracts to be weakened, but for the guidance to be made stronger, at least for tiered contracts.

As a consumer, I the things most important to me about a broadband contract are the speeds, the price, and the contract term. Or rather, the speed, and the effective average price over the contract term. I am less concerned about variable contracts where I have the right to switch and terminate the contract, than I am about unclear and enforced mid-contract price rises.

3. Do you have any comments on the use of terms used to describe rates of inflation such as CPI and RPI, and the level of understanding consumers have of these terms (including when they are referred to using an initialism only)?

I think it is best for understandability, both for the terms to be spelt out, and for it to be explicitly stated it is a measures of inflation.

Moreover, RPI is officially a deprecated measure of inflation. RPI is no longer a "national statistic", due to its statistical flaws, and RPI is not recommended by statistical bodies, except for existing legacy uses. CPI or CPIH is much more widely quoted, for example in the news or by the Bank of England. As such it would be good for adverts to be clear, if using RPI, that the Retail Price Index tends to be e.g. 2 percentage points higher than the much more widely used Consumer Price Index measure of inflation.

4. Do you agree with the mitigating factors listed as having the potential to cause an advertiser to take additional action in order to ensure material information relating to in-contract price increases is sufficiently clear?

These factors, which require extra clarification, seem fairly sensible.

5. Do you agree that in instances where multiple offers/products appear on one page (for example, on a telecoms provider's own website), it may be sufficient for prices to link or refer to a suitably-prominent single piece of information about mid-contract price increases, rather than including this information within each individual product listing?

No, this information is highly relevant, so doing this would unreasonably minimise information about the price rises. If advertisers are pressed for space, they have the alternative of increasing their initial prices, but then keeping them constant.

Moreover, as I will explain in question 6, a generic page doesn't contain concrete enough information about a tiered price rise.

Finally, I disapprove of an antipattern I have seen: A broadband supplier, on a product listing on their website, gave the URL of their generic price rise information page, but did not make the URL a clickable link.

6. Do you have any other comments or suggestions in relation to the proposals

As I have mentioned previously, I don't think the examples in the appendix convey, concretely enough, information on tiered contracts.

As a consumer, price is one of the most important facts about a contract. Not so much the introductory price (although that may grab my attention), but the effective average monthly price and/or the post-introductory period price.

There are several aspects to my reasoning:

(a) In the consultation document, you say "In principle, tiered mid-contract price increases that consumers are contractually obliged to pay are analogous to other types of compulsory charges addressed in CAP Advice online, such as delivery charges and booking costs."

I strongly agree with this logic. But this raises the question, why is this new proposed guidance weak, compared to e.g. the ASA position on not including mandatory line rental in headline pricing.

Suppose inflation for two years is 10%. This no longer seems completely remote, given some credible estimates of CPI are that it will peak at 14%. Well, 10+3.8 = 13.8%. And 1.138 * 1.138 = 1.295. In other words, a typical tiered contract might increase price in-contract by 30%. This is hugely material. Recall that asterisks can be used to clarify, but not contradict. It wouldn't be permissible to advertise a fixed price £30 contract as "£21*".

Yes, CPI in April next year isn't yet known for certain, but we know what CPI is at the moment, and there are ranges of credible estimates for CPI in April next year. There is no excuse for not using e.g. the highest of these reasonable estimates.

I also note that mortgage contracts are often fixed then variable (the difference being the contract can be broken after the fixed portion ends!) and yet the variable portion is described in adverts using concrete numbers and the words "currently". The fact there is a variable portion isn't used an excuse to avoid conveying the rough impact.

(b) In the consultation document, you say "The initial price period preceding the obligatory rise can be seen as functionally the same as an introductory discount period".

There is a degree of truth to this, but it isn't fully accurate. In particular, there might be two annual price rises, in an 18 or 24 month contract. As such, more prominence and concrete information is required compared to a proper introductory discount period.

(c) In the consultation document, you mention Ofcom's recently revised General Conditions of Entitlement. Section C1 was revised on 2022-06-17.

However, I don't think you have sufficiently considered this when forming your own guidance.

Ofcom's Section C1 sets out how the Contract Information document should present key facts to the customer, including for tiered pricing. Ofcom considers it necessary for concrete examples to be given of the effect of plausible concrete CPI values, on the monthly price.

Please see 1.20 to 1.24 of Section C1, if it is not clear what I mean by concrete examples.

How can *not* providing these concrete examples be considered misleading by Ofcom at the pre contract stage, yet leaving out these examples is not considered misleading by the ASA in advertising?

The answer is *of course* this information is highly relevant, and not including concrete examples gives undue prominence to a misleading headline price. ASA guidance should be strengthened, in line with Ofcom Section C1.

In fact I think ASA guidance could even be stronger, seeing as current CPI figures are much higher than CPI back in April this year.