Guidance on the presentation of mid-contract price increases in advertising for telecoms contracts

Advertising Guidance
(broadcast and non-broadcast)

Legal, decent, honest and truthful

CAP

Foreword

The Committee of Advertising Practice (CAP) offers guidance on the interpretation of the UK Code of Advertising (the CAP Code) in relation to non-broadcast marketing communications.

The Broadcast Committee of Advertising Practice (BCAP) offers guidance on the interpretation of the UK Code of Broadcast Advertising (the BCAP Code) in relation to broadcast marketing communications.

Advertising Guidance is intended to guide advertisers, agencies and media owners how to interpret the Codes but is not a substitute for those Codes. Advertising Guidance reflects CAP's and/or BCAP's intended effect of the Codes but neither constitutes new rules nor binds the ASA Councils in the event of a complaint about an advertisement that follows it.

For pre-publication advice on specific non-broadcast advertisements, consult the CAP Copy Advice team via our online request form.

For advice on specific radio advertisements, consult Radiocentre, and for TV advertisements, Clearcast.

For the full list of Advertising Guidance, please visit our website.

Background

This guidance concerns the presentation of mid-contract price increases in ads for services that incorporate mobile and/or broadband contracts.

While some telecoms contracts have a fixed monthly price, many, if not most, have prices that are subject to increases during the minimum contract term. These fall into two broad types:

Tiered contracts include a definite annual increase in line with:

- the Consumer Price Index (CPI) or Retail Price Index (RPI) rate of inflation published that year;
- one of the above rates of inflation plus an additional set percentage, or;
- a set percentage that is not tied to inflation.

Variable contracts include a clause providing that the monthly price may rise in future; however, if and by how much the price might increase is unknown. In such instances, under Ofcom rules, the customer must be informed about any increase with one month's notice and has the right to terminate the contract without penalty.

The Consumer Protection from Unfair Trading Regulations 2008 (the CPRS) prohibit unfair marketing to consumers, including misleading or aggressive advertising. Whenever it considers complaints that a marketing communication misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the CPRs. That means it will take factors identified in the CPRs into account when it considers whether a marketing communication breaches the Codes.

The Codes state that ads should not materially mislead consumers, or be likely to do so. The question of whether advertising material is misleading is determined by whether it will cause consumers to take a different transactional decision.

The presence and, if it can be anticipated, the nature of a price rise that will or may be applied to a monthly contract price constitute material information that consumers need in order to make an informed transactional decision, which can include decisions prior to the act of purchase. Therefore, it is important that advertisers and consumers have clarity on how that information should be presented in ads.

The guidance assists advertisers in ensuring that ads for such services that include, or have the potential to include, mid-contract price increases, do not mislead consumers, including by not omitting material information and by presenting qualifying information clearly and prominently.

Scope

This guidance relates to the presentation in advertising of material contract terms that are permitted under Ofcom regulations. The nature and structure of the products themselves lie outside the remit of CAP and BCAP and the ASA.

Ofcom rules require that certain material information must be provided to consumers, in a specified format, before they can agree to enter into a contract for phone or broadband services. However, a transactional decision is not limited to the decision to make a final purchase but could also include a decision to enquire further in response to advertising. Therefore, such information should be sufficiently clear and prominent in the ad itself, regardless of the specific, detailed information that is required to be given to the consumer at a later stage of the purchase process.

The guidance concerns advertising for telecoms contracts that include broadband and/or mobile services, either on their own or as one part of a package or 'bundle', which may also include services such as paid-for TV or other content.

While designed with business-to-consumer advertising in mind, the principles may be taken into account by the ASA in assessing business-to-business advertising, depending on the specific circumstances of the advertising.

The same considerations should be observed in relation to TV and radio ads. Obvious differences have been explicitly accounted for within the principles.

BCAP Code rules

3.1 Marketing communications must not materially mislead or be likely to do so.

3.2 Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.

3.10 Advertisements must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

3.11 Qualifications must be presented clearly.

3.18 Price statements must not mislead by omission, undue emphasis or distortion. They must relate to the product or service depicted in the advertisement.

3.19 Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. However, VAT-exclusive prices may be given if all those to whom the price claim is clearly addressed pay no VAT or can recover VAT. Such VAT-exclusive prices must be accompanied by a prominent statement of the amount or rate of VAT payable.

CAP Code rules

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Guidance

CAP and BCAP have set out a model which they consider is most likely to comply with the Codes and least likely to mislead consumers into making a transactional decision they would not otherwise have taken. The model is not intended to prescribe or proscribe any particular approach. However, CAP and BCAP consider that by conforming with the principles outlined, marketers are less likely to be in breach of the rules and that approaches where the information about mid-contract price information is not in line with these principles carry a greater risk of breaching the rules.

The model accounts for a variety of media, and both tiered and variable contract types.

The model places information indicating that the price will or could rise with equal prominence to the price claim, with further details placed one step away. This reflects the position confirmed by the ASA Council in relation to previous rulings.

As ever, ads will be assessed by the ASA on a case-by-case basis, taking into account factors including the likely audience, medium and context in which the ad appears.

Guidance principles

- An ad is more likely to comply when advertisers do not state or imply that a price will apply for the full minimum term of the contract, if that is not the case.

  For example, wording such as 'fixed' or '£X for X months' is likely to mislead if the price is due to rise before the end of the minimum term. Subsequent information detailing the mid-contract price increase is likely to contradict rather than qualify a claim that implies the price applies for the full contract.

- An ad is more likely to comply when information indicating the presence or possibility of a price rise has equal prominence with the price claim.

- An ad is more likely to comply when, if known, information about the nature of the price rise is featured prominently within the main copy of the ad. Specifically:
    - In static-format ads, no lower than one 'step' on the qualifications ladder (see Guidance on the use of qualifications) below the information signalling the price increase.
    - In TV or video ads, within the main copy, rather than in superimposed text.

  The following approaches are unlikely to give adequate weight to the significance of this material information:

    - an asterisk linking to information more than one 'step' below the price claim

    - a link that has to be clicked on or hovered over with a cursor in order to access the information
    - in a radio ad, featuring the information only in the terms and conditions that follow the main copy

If the minimum contract term is greater than 12 months and therefore there will be more than one tiered increase, the ad should make that clear.

Examples of how this could appear can be seen below:

- For a tiered increase:

£48/month until April 2023 Monthly price will increase each April by the Retail Price Index rate of inflation published in January + 3.6%

- For a variable increase:

£28.99 / month (price may rise during contract)

- Ads are more likely to comply when descriptions of future price rises and terminology used are clear and simple to understand. That is more likely to be achieved when terms such as ‘retail price index’ are written out in full the first time they are used in an ad (rather than using an initialism such as RPI) and followed with ‘rate of inflation’ to aid understanding.

- Ads are more likely to comply when advertisers are mindful of the time of year the ad is being published, relative to the timing of any compulsory or potential annual inflation-linked increase (usually April) to avoid misleading consumers. In particular:
    - Ads are less likely to mislead if consumers will be charged the monthly price stated in the ad at least once before the upcoming increase is applied.
    - Once the inflation rate on which an advertiser bases their inflation-linked increase on has been published, then an ad is less likely to mislead if it includes the known monthly price that the consumer will pay once the

price rise is applied in absolute terms. In most cases, a grace period of five working days from the publication of the relevant rate of inflation should be sufficient to allow for the necessary updates to be made.

  - If a monthly price is set to rise by a known percentage (not linked to yet-to-be published rate) then the full amount of the future rise should always be included.

- An ad is more likely to comply when advertisers make clear when a price rise applies to only one element of the contract.

- Where a variable telecoms contract is linked to another product (for example, another telecoms contract, a device finance plan, or a TV or other content subscription service), exiting the variable contract following a price increase may affect the status of the other product.

  Where applicable, ads should make clear that if consumers exit the contract for the variable product due to a price rise:
  - They will lose a linked product;
  - The price of a linked product will increase; and/or
  - They will incur charges as a result of terminating a linked product

- Where a product listing is included on a webpage with multiple other listings, then it may be sufficient to link each price statement to one or more qualifications providing further information, further down the page – provided the qualification is sufficiently prominent and visible at all times without having to scroll down the page.

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