



Guidance on the presentation of mid- contract price rises in telecoms ads

Response to 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

November 2022

Introduction

As a company that prides itself on being consumer-led, Sky welcomes CAP and BCAP's efforts in their Consultation on new guidance on how to present information about mid-contract price rises in ads for broadband and mobile services ("**Consultation**") to address the ambiguity that exists in the current guidance on the presentation of mid-contract price rises in telecoms ads.

Regulatory certainty regarding the scope of obligations is critical to any business. To be useful and effective, guidance must be good guidance, and regulation should be appropriate and proportionate. That the existing guidance is ambiguous, and has been applied in an inconsistent manner, does not automatically mean that a 'one-size-fits-all' solution is required. Indeed, CAP and BCAP have themselves identified this as a shortcoming of the current guidance in their pre-engagement with stakeholders, so it is somewhat surprising that CAP and BCAP are proposing a new 'one-size-fits-all' approach in its place.

We agree that information about price, and consequently price increases, during the term of a contract is material to consumers' transactional decisions and should be provided in an appropriately prominent manner. However, a nuanced approach that recognises the differences between types of telecoms contracts, their implications for consumers, and their rights and protections that already exist in legislation, is more likely to result in a fair, effective and proportionate outcome.

Sky supports CAP and BCAP's proposed guidance in respect of tiered pricing models, since consumers agree upfront to a certain and inevitable price rise and have no remedial action (or right to exit) when it takes place. However, we consider that since variable contracts give the consumer the right to exit without penalty, information about the possibility of price rises in variable contracts can be presented in a less prominent manner, without giving rise to risks that consumers will be misled (for example, in close proximity to the headline price rather than incorporated into it or placed immediately adjacent to it).

Further comments and suggestions are set out below and, for ease, we include an appendix which sets out our answers to CAP and BCAP's specific consultation questions.

Sky supports a nuanced approach to guidance on the presentation of pricing and price rise information

Context is important in assessing appropriate presentation of 'material information'

Tiered contracts include a contractually agreed price increase, whose date and amount are certain. In order to achieve the certainty required by providers and Ofcom (to avoid Ofcom's rules regarding customers benefitting from a penalty-free right to exit when the 'change' occurs), consumers know at the outset that (1) the price will

increase, (2) it will increase at a particular time, and (3) it will increase by a particular amount, be that a set percentage (e.g. 5%), set amount (e.g. £1), by reference to an objective and independent measure (e.g. CPI or RPI), or the sum of a set percentage and objective measure (e.g. CPI + 3.9%). Because consumers *agree* to this contractual arrangement, price changes are not considered ‘contractual modifications’ for the purposes of Ofcom’s rules, so consumers have no choice but to see out the full remainder of their contract (or ‘minimum term’), regardless of their ability or desire to pay the increased fee. There is simply nothing that they can do if they cannot afford the new price.

Conversely, variable contracts contain merely *a right* for the provider to change the price on notice. It is not inevitable that this right will be exercised or that, if it is, the price will increase. For example, since its launch in 2017, Sky Mobile has had the right to vary the price of its data plans on notice (a variable pricing model) - with an associated penalty-free right to exit if it does, but has never exercised this right by increasing prices for customers who are in contract (i.e., still subject to a minimum term). Where a variable price rise right is invoked by the provider, as CAP and BCAP have noted, consumers are notified in advance and given the right to leave the contract without penalty.

We note that ‘material information’ has a specific meaning, set out in section 6(3) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. It is the information which the average consumer needs, according to the context, to take an informed transactional decision. In other words, what is material information depends on the context. It follows, therefore, that in ensuring that consumers are not misled by advertising into transactional decisions that they would not otherwise have taken, it is both appropriate and right for the same underlying principles to be applied differently where they regulate different pricing models.

A nuanced approach to guidance for mid-contract price rises in telecoms advertising should, therefore, take into account the nature of a contract, the potential harm arising from the price rise occurring, and the existing legislative protections setting out the consumers’ rights and remedies. This will ensure proportionality of regulation. Indeed, the Consultation itself recognises that there is a “*sense that the current position was too ‘one-size-fits-all’, suggesting the need for a more nuanced approach that would take account of differences between contracts and their implications for a consumer’s rights under statutory regulations, as well as statutory requirements on the disclosure of information at the point of sale*”¹.

Rules and guidance on prominence of pricing information should be appropriate and proportionate

An important consideration in ensuring that the final guidance will be effective is whether the model proposed is appropriate and proportionate. Given that information about price and price increases is material to a consumer’s transactional

¹ Page 14 of the Consultation

decision, according to the context, we support CAP and BCAP's proposal that this information be afforded appropriate prominence in ads. However, we encourage CAP and BCAP to scrutinise the model proposed, and reflect on whether it is appropriate to require all pricing information to be presented with the same degree of prominence, regardless of other factors. We do not believe that it is.

In the Consultation, CAP and BCAP rightly distinguish between tiered and variable telecoms contracts. But they do not draw the same distinction in their proposed guidance. We would caution against disproportionate obligations being applied to the *mere possibility* of a change in price, when compared to *confirmed*, non-discretionary price increases, particularly when the amount of a confirmed price rise is known. We therefore do not support a 'one-size-fits-all' approach that requires the same treatment, by way of prominence within advertising, of tiered and variable pricing models. Such an approach would be disproportionate and overly burdensome for those providers who have simply allowed for the possibility of a variation to prices, which they may or may not exercise, and whose customers have a clear remedy should they do so.

If a consumer has the right to be notified in advance and exit a telecoms contract without penalty when there is a price increase that they are unwilling or, increasingly likely, unable to pay, there is limited harm to that consumer if a price increases: they may need to seek an alternative product or provider, but will have the freedom to choose one that suits them and their budget. Contrast this with a tiered contract where a consumer is locked into an agreement where a price rise is unavoidable, and the consumer has no option but to pay the increased price for the remainder of the agreed term regardless of changes in their financial circumstances.

We agree that, if it is known, the nature of a price rise should be featured prominently within the main copy of the ad, and we support the proposal that known, contractually agreed price rises, as in tiered pricing models, should be indicated as part of a price claim or placed immediately adjacent to it. This is appropriate and in proportion to the harm that consumers may suffer. Given that consumers will have no right to exit tiered contracts should they be unable to pay the increased price, they ought to have their attention suitably drawn to the full extent of the price(s) they are agreeing to at the time of entering the contract. As CAP and BCAP have identified in the Consultation, tiered pricing is analogous in this regard to other types of compulsory charges the consumer *must* pay.²

However, we do not agree that the same degree of prominence is required where variable contracts are advertised. Strong statutory protections are in place for consumers who take up variable pricing contracts, which enable consumers to take advantage of the advertised price unless and until the price increases, if indeed it does. Those consumers are then free to select another product or provider that suits them if they are unhappy with the price increase.

Whilst we agree that the *possibility* of a price rise remains 'material information' relevant to the transactional decision being made, the combination of a remedy and

² Page 15 of the Consultation

the fact that there is no guarantee that prices will increase means we consider that variable pricing could be indicated in a less prominent manner without giving rise to a risk of the consumer being misled by the advert, for example, in close proximity to the headline price (rather than “[as] part of the price claim, or immediately adjacent to it”).

Guidance on prominence of price rise information where multiple products are listed must be applied consistently

We agree with CAP and BCAP’s proposal that 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, lower down the page – provided the qualification is sufficiently prominent.

However, notwithstanding our support for the principle that consumers should be presented with the material information that is relevant to the transactional decision they are making in an appropriately prominent manner, we have concerns about the inconsistency with which CAP and BCAP have applied their proposed ‘one-size-fits-all’ guidance in the examples provided in the Appendix to the Consultation. These examples – extracted below – ultimately require that providers of variable contracts include more information in the main copy about potential price increases (which may not ever arise) than providers of tiered contracts with definite price rises.

Only in the variable contract example is it required that the full extent of price information be provided with every price point, i.e., that prices *may* vary. The tiered contract examples set out the price that is in place until a certain date, and locate the information under an asterisk further away. We do not think this is fair or what CAP and BCAP intended.

We propose that at minimum, were CAP and BCAP to proceed with the guidance as proposed in the Consultation, any examples of how this may be implemented for tiered and variable models where multiple products are listed on a webpage should apply the guidance consistently. In practice, for both variable and tiered pricing models, that would mean the current known price would be stated in the body copy with an asterisk linking to information lower down the page (in the variable pricing model the asterisk would link to the “price may rise during contract” wording and in the tiered pricing model it would link to information about the future, known, prices).

Website

Broadband – Tiered

Everyday	Superfast	Ultimate
50Mb	150Mb	500Mb
Upload 10Mb	Upload 30Mb	Upload 70Mb
Everyday browsing, streaming and sharing.	Superfast browsing, streaming, downloading and sharing.	Ultrafast browsing, streaming, gaming and sharing across multiple devices.
Broadband Only	Broadband Only	Broadband Only
£24.99 a month until April 2023*	£35.99 a month until April 2023*	£43.99 a month until April 2023*
£20 set up fee	£30 set up fee	£50 set up fee
Free Router Delivery	Free Router Delivery	Free Router Delivery
24 month contract	24 month contract	24 month contract

* Monthly price will increase every April by the Retail Price Index rate of inflation + 3.6%. See CAP.org.uk/prices for information.

Website

Broadband – Variable

Everyday	Superfast	Ultimate
50Mb	150Mb	500Mb
Upload 10Mb	Upload 30Mb	Upload 70Mb
Everyday browsing, streaming and sharing.	Superfast browsing, streaming, downloading and sharing.	Ultrafast browsing, streaming, gaming and sharing across multiple devices.
Broadband Only	Broadband Only	Broadband Only
£24.99 a month (price may rise during contract)	£35.99 a month (price may rise during contract)	£43.99 a month (price may rise during contract)
£20 set up fee	£30 set up fee	£50 set up fee
Free Router Delivery	Free Router Delivery	Free Router Delivery
24 month contract	24 month contract	24 month contract

Appendix

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

We agree with the principle that price rise information should be presented in an appropriately prominent manner in ads, but believe that a nuanced approach is required, rather than requiring the same of all contracts regardless of pricing model.

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?

No, we do not agree that a 'one-size-fits-all' approach is appropriate or proportionate. We believe information about a mere right to vary a price, which may not ever be exercised, does not require the same degree of prominence as is required of an agreed increase that will inevitably take place.

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)?

The relevant test for what level of information needs to be included in advertising, and with what degree of prominence, comes from the Consumer Protection from Unfair Trading Regulations 2008 ("CPRs"). In order to avoid committing a misleading act or misleading omission, the 'average consumer' needs to be given the relevant 'material information' to avoid them taking a transactional decision they might not otherwise. As set out in section 2(2) of the CPRs, the material characteristics of such an average consumer include their being "*reasonably well informed, reasonably observant, and circumspect*". We consider that the average consumer, therefore, would either know what CPI and RPI mean, or be able to easily find this out, and be sufficiently circumspect to familiarise themselves with such terms before making a transactional decision if they felt it was of relevance to them. We do not believe that it is necessary to prescribe specific measures regarding the use of these terms.

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?

Given the prominence requirements set out in the proposed guidance (price rise information must be included in or immediately adjacent to the headline price), it is unclear what further action might be expected or possible. In particular, it is not clear what more advertisers of variable contracts could reasonably be expected to add as regards the pricing model: the extent of pricing information is that prices may vary, but they do not know at this stage whether they will or by how much. Likewise, it is

unclear to us how a provider could make this more prominent than the guidance requires.

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?

Yes, we do agree, but we request this principle be applied consistently including in any examples given by CAP and BCAP.

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

We agree with CAP and BCAP's proposal to issue guidance covering ads for telecoms services specifically.

The reason this guidance is needed is not because *"telecoms contracts...have the potential to involve a complexity of product combinations that can make them more difficult for consumers to understand"*³ or *"[t]he variety of products available, comprising different combinations of mobile and/or broadband services with or without other services that may have varying durations and conditions, can add to the complexity of material information that needs to be conveyed..."*⁴.

The technical complexity and range of product choices available is not the root cause of the 'harm' CAP and BCAP are seeking to address. This complexity does not mean that the price information for a telecoms contract is inherently confusing. The price is a single data point in an ad and should be easily identified by the average consumer. They are perfectly able to discern between two price points and know that £20 per month is lower than £40 per month. The fact that a consumer must consider their options and whether they want a certain broadband speed, or call rates to a certain country, does not make it difficult to understand that one price is lower than another.

Instead, the root cause of 'harm' that CAP and BCAP are seeking to address, and which warrants the guidance being issued, is the range of pricing models in use in the telecoms sector, in particular the presence of the 'tiered pricing' model which is unique to the sector.

Variable pricing is commonplace with many subscriptions, for example, Amazon Prime, many pay-tv services, other utilities, gym memberships, magazine and newspaper subscriptions, and even the Which? monthly membership, etc. Just as with telecoms contracts, consumers have the right to leave these subscriptions, or can choose not to renew, if they do not accept the new price, and we do not consider it

³ Page 8 of the Consultation

⁴ Page 14 of the Consultation

necessary or appropriate that such providers include details of their right to change the price in the body of their advertising.

We therefore disagree with CAP and BCAP that “...[the] principles of any resulting guidance may also have relevance to other types of contracts that involve mid-term price increases...”⁵ But we would agree with this statement if it applied to instances where tiered pricing or a multitude of pricing models is present.

⁵ Page 8 of the Consultation