Guidance on the presentatio mid-contract price increas advertising for telecoms c

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 have prices that are subject to increases during the minimum contract term.

Amendments to Ofcom's General Conditions[1], introduced in July 2024 (and which take effect from 17 January 2025), require providers to set out at the point of sale what the changed monthly price of a contract will be, if it is to change during the commitment period, and from when the changed price will apply, in pounds and pence. In effect, this change to Ofcom's rules prohibits providers from offering contracts that provide for inflation-linked price rises, or price rises set out in percentage terms, to the monthly price during the contract period.

This updated guidance reflects that new context.

There are two broad types of contracts where monthly price is not fixed:

> Tiered contracts include a definite annual increase.
>
> 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 Unfair Commercial Practices (UCP) provisions in Chapter 1 of Part of the Digital Markets, Competition and Consumers Act 2024 (DMCCA) prohibit unfair business-to-consumer commercial practices, 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 UCP provisions That means it will take factors identified in the UCP provisions 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.

Omission of material information from an invitation to purchase is an unfair commercial practice in its own right, regardless of the transactional test. The Codes state that

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[1] Ofcom Statement – Prohibiting inflation-linked price rises

material information, for the purposes of an ad that quotes a price, includes the price of the advertised product, including taxes, or, if the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated.

The same considerations apply as to misleading omission, with regard to the limitations of the medium and other efforts made by the advertiser to provide material information by other means.

Following the prohibition of inflation-linked and percentage-based price increases, providers should always be able to set out when and by how much the monthly price of tiered telecoms contracts will increase, allowing for the future monthly price of a tiered telecoms contract to be calculated in advance. The full future monthly price and when it will rise are likely to constitute material information that the consumer needs to make an informed transactional decision (which can include decisions prior to the act of purchase).

Given that the future price of a tiered contract can be calculated in advance, presentation of the mid-contract increase in percentage terms, or in terms of a pounds and pence figure to be added to the original price, is unlikely to be sufficient to communicate this material information to consumers.

The fact that the price may be subject to an increase (in the case of a variable contract where the customer has the right to exit should that come to pass) is also likely to constitute material information.

The guidance assists advertisers in ensuring that ads for telecoms 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 mid-contract price rises 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 final decision to make a 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 Advertisements must not omit material information or information required to be included by law. This includes providing such information in a way that is unclear or untimely, or in a way that the consumer is unlikely to see or hear it.

Regard will be had to any limitations (e.g. as to time or space) resulting from the means of communication used and steps taken by the marketer to overcome these by providing the information by other means. “Material information is information that the average consumer needs to take an informed transactional decision (as defined in Appendix 3).

3.3 For marketing communications that quote prices for advertised products, omitting material information [for the purposes of rule 3.2] includes omitting any of the following information, unless it is already apparent from the context:

3.3.3 the total price of the advertised product, including any fees, taxes, charges or other payments that the consumer will necessarily incur if the consumer purchases the product.

If, owing to the nature of the product, the whole or any part of the total price cannot be calculated in advance, how the price (or that part of it) will be calculated.

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

3.11 Qualifications must not mislead by not being 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

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

3.3 Marketing communications must not omit material information or information required to be included by law. This includes providing such information in a way that is unclear or untimely, or in a way that the consumer is unlikely to see or hear it.

Regard will be had to any limitations (e.g. as to time or space) resulting from the means of communication used and steps taken by the marketer to overcome these by proviing the information by other means. “Material information” is information that the average consumer needs to take an informed transactional decision (as defined in Appendix 1).

3.4 For marketing communications that quote prices for advertised products, omitting material information [for the purposes of rule 3.3] includes omitting any of the following information, unless it is already apparent from the context:

3.4.3 the total price of the advertised product, including any fees, taxes or other payments that the consumer will necessarily incur if the consumer purchases the product.

If, owing to the nature of the product, the whole or any part of the total price cannot be calculated in advance, how the price (or that part of it) will be calculated.

3.9 Marketing communications must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

3.10 Qualifications must not mislead by not being presented clearly.

3.17 Price statements must not mislead by omission, undue emphasis or distortion. They must relate to the product featured in the marketing communication.

3.18 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.

Guidance

CAP and BCAP have set out a model which they consider is most likely to comply with the Codes. 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 initial price claim.

- An ad is more likely to comply when the future price statement 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 be sufficiently prominent:

    - 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 2025 Monthly price will increase to: £X on 1 April 2025 £X on 1 April 2026

- For a variable increase:

£28.99 / month (price may rise during contract)

- Ads are more likely to comply when advertisers are mindful of the time of year when the ad is being published, relative to the timing of any compulsory annual increase, 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.

- 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

- For ads for variable contracts, 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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