Hyperoptic Consultation Response: Committee of Advertising Practice - Guidance on the presentation of mid-contract price rises in telecoms ads

Introduction and summary

Hyperoptic fully supports the Committee of Advertising Practice's (CAP) proposed principles for formal guidance. We consider these principles to be a vital intervention for both protecting all consumers and preventing harm to the most vulnerable, particularly in light of the rising cost of living. This consultation is then a critically important process for reaching a position that fully enshrines these consumer protection principles.

On some points, Hyperoptic consider that CAP's guidance could go further than the current proposals. On others, we have taken the opportunity to highlight practical considerations for how the guidance might interact with current industry approaches to pricing. Our response to each set question within the consultation is set out below.

In addition, given the quantum of customers who purchase telecoms services that contain mid contract prices rises, the rising cost of living and the well evidenced lack of consumer awareness regarding above inflation mid contract price rises, we believe that swift action is needed to provide basic protection as soon as possible.

Whilst we appreciate that implementation of these principles will likely take several months, the Christmas and New Year sales period is a popular time of year for the sale of broadband products, yet across operators that use such price rise clauses, the prices advertised will only be applicable to customers for a very short time before the April 2023 price rises. Some advertisers will even set their April price rises by the January CPI statement, which according to current forecasts[1] of 10.1%, could lock customers into price rises of over 14%.

As the lack of transparency around mid-contract price rises disproportionately affects the most financially vulnerable[2] and risks their ability to afford a vital broadband connection, continuing the current approach to this pricing structure at this time of year has a genuine risk of causing significant harm to a vulnerable group of consumers. The ASA may take extraordinary action to prevent public harm by having an ad amended or withdrawn pending the outcome of an investigation if the ad may be seriously prejudicial to the public.[3] By taking rapid steps to prevent immediate serious harm to financially vulnerable consumers, CAP would then be acting consistently with the principles that govern its sister body.

We therefore ask that, prior to full implementation of all proposed principles, CAP take emergency interim measures to protect consumers. This should be done by immediately requiring that price claims in relevant adverts include a prominent reference to price rises and follow this with a clear explanation of the calculation, and the real impact it will have on what their customers are going to have to pay.

Background

Hyperoptic is the UK's largest full fibre 'alt-net' internet service provider by customers served; our network currently passes over 1 million premises and serves over 260,000 customers, with a large proportion of that footprint covering social housing. The social housing part of our network is particularly important to us, as we believe that the telecoms industry plays a key role in helping to address digital poverty by providing connectivity for residents who are currently without an affordable, reliable internet connection.

Part of our approach to addressing digital poverty is the provision of high-quality, low-cost 'Fair Fibre' social tariffs, with eligibility criteria that go beyond others in the industry: as well as covering those on Universal Credit, we include people in receipt of Income Support, Pension Credit, Income-related Job Seekers Allowance

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[1] Bank of England Monetary Report November 2022, Table 2C p22 – O1 2023 forecast https://www.bankofengland.co.uk/-/media/boe/files/monetary-policy-report/2022/november/monetary-policy-report-november-2022.pdf

[2] Discussed in our answer to Q6

[3] https://www.asa.org.uk/static/171eb506-b4ef-4fec-bdcec62dc49e0be2/37c918f1-6a47-4ce8-9c3269a174228017/Non-Broadcast-Complaint-Handling-Procedures.pdf

(JSA), Housing Benefit, Personal Independence Payment, Attendance Allowance, Care Leavers support, and Income-related Employment and Support Allowance (ESA). We're proud of our Fair Fibre tariffs, we don't hide them away or make them difficult to apply for. We promote these through social media and through search engines, and we have a dedicated, easy-to-find page on our website to answer questions and encourage new and existing customers to use email, phone, webchat, or their account page to get in touch.

We also believe that you should receive the service you pay for. That's why we have signed up to Ofcom's voluntary automatic compensation scheme, so that if something goes wrong, our customers don't have to ask us to compensate them – we do it automatically. We are the only altnet to do this.

Above all, we're committed to fairness for consumers. We have **never** raised our prices mid-contract. For the whole of this year we have been campaigning to raise awareness of this practice and called on regulators to review it. To support this ask, we launched our Free to Switch campaign, prompting customers to make their voices heard by raising their concerns directly with Ofcom.[4] We are then delighted to see that progress is being made on such a vital consumer protection issue.

Through the research we have conducted, we know that this matters to consumers. In October 2022 we conducted a nationally representative survey of 1000 broadband customers to understand how mid-contract price rises affected them. The results shocked us. As explored in our below responses, consumer awareness and understanding of CPI, mid-contract price rises, and the material impact on their monthly bill is alarmingly low. The current rate of inflation is already high and the lack of consumer awareness and understanding around mid-contract price rises will mean many customers are forced to accept price rises that they were not aware of, and have not budgeted for, at a time of extreme financial hardship. This consultation is then of critical importance, and we welcome the opportunity to engage with the questions it sets out.

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

Hyperoptic strongly agree with the principles proposed by CAP. We consider that they are consistent with telecoms providers' obligations and allowances under Ofcom's General Conditions, that they reflect the relevant tests and principles of consumer protection law and long-standing ASA and CAP precedent, and that they answer some specific challenges to consumers that have been revealed in a variety of research reports.

Price as material information

Hyperoptic strongly agree with this principle and welcome its implementation in formal guidance for telecoms pricing. We consider that it is inherently opaque and unfair to consumers for ads to feature a specific price for a specific length of contract, only to reveal in the small print (or not at all) that it is subject to an annual price rise.

The ASA's own 2017 research ('2017 ASA research') into full- and part-fibre broadband advertising identified the cost of a service (including balancing price against speed) as one of the 'primary needs' in choosing a service[5], and recent increased pressures on the cost of living can only have served to strengthen this need. One of our regular surveys, most recently conducted in July 2022 ('July 2022 Survey') on a sample of 1000, asked what the most important factors were when deciding which broadband provider to use (multiple choice), with the following results[6]:

- 50.2% of respondents chose "cheapest cost"
- 43.6% of respondents chose "fixed price during my contract"
- 71.4% of respondents chose one or both price factors, making bill-related factors the most commonly chosen

[4] https://www.hyperoptic.com/free-to-switch-broadband/
[5] https://www.asa.org.uk/static/uploaded/d791272c-805a-495d-8e25650af1740ab7.pdf
[6] July 2022 Survey (relevant results in research summary annex)

- In addition, 65.2% chose reliability, with 73% of them also choosing at least one price factor. 61.5% chose speed, with 75% also choosing at least one price factor.

Our data shows that price still is one of the most important factors for consumers, particularly in combination with certainty over how much the service will cost for the life of the contract. Speed and reliability are also key factors and, consistent with the 2017 ASA research, these are considered alongside the price of the contract.

The price of the service is material information[7], so changes to the price during the life of the contract must be equally so because they form part of the financial commitment. As noted above, the fixed price is itself a key factor for a significant proportion of consumers. Therefore, information about a price rise should be included prominently in ads to avoid presenting it in an unclear or untimely manner or contradicting the overall impression of a static price. In October 2022 we surveyed a nationally representative sample of 1000 respondents ('October 2022 Survey'), of whom only 18% would definitely or probably have taken their current service if they had known there was a mid-contract price rise, whereas 48% of them would not have done.[8]

Since the beginning of the year we have been calling for interventions on mid-contract price rises and making sustained efforts to inform consumers about the impacts on their bills. We are pleased to see that, following our continued efforts to raise consumer recognition, more people know that these increases exist; awareness amongst consumers has risen from 40%[9] to 66%[10]. However, we have significant concerns that increased general awareness does not carry over to individual circumstances. Although two-thirds of our October 2022 Survey respondents said they were aware that some broadband providers used mid-contract price rises, only 21.9% were sure about whether or not their current provider would do so and a third said they didn't know. While we welcome the marginally increased consumer awareness of this issue across the market, it is clear that ads for telecoms services must nonetheless ensure that customers are aware of whether it affects the advertised service and what the specific impact would be. Moreover, a third of respondents did not know that this practice occurred, which is a materially significant proportion. It is not enough to rely on increased knowledge among consumers about the practice in general when seeking to bring transparency to advertising.

Interactions with Ofcom's General Conditions

Hyperoptic note that Ofcom's General Conditions allow telecoms providers to impose mid-contract prices rises if they meet specific requirements about communication and contract provision. However, we agree with CAP's position that telecoms providers using this approach also have an obligation under the Advertising Codes and the Consumer Protection Regulations to ensure that their advertising is not materially misleading. Compliance with Ofcom's GCs does not in itself ensure compliance with the Advertising Codes or CPRs; the fact that telecoms operators are allowed to raise prices during a contractual period does not affect their responsibility to ensure that this is communicated clearly to consumers. We consider that CAP's proposals and principles are entirely consistent with the pricing structures that Ofcom allows telecoms providers to adopt and present no conflict that should impede their implementation.

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?***

Hyperoptic agree with CAP's analysis of the two models used for mid-contract price rises and consider that it demonstrates a compelling rationale for the same approach to including the necessary information in a prominent manner.

[7] as per rule 3.4.3 CAP/3.3.3 BCAP
[8] October 2022 Survey
[9] January 2022 Survey
[10] October 2022 Survey

Tiered contracts

Hyperoptic agree that mid-contract price rises are a form of unavoidable extra charge on top of the original advertised price of the service. We are particularly persuaded by CAP's view that they are analogous to the familiar introductory discount model, in which a consumer pays a lower price for the first part of the contract, before the cost rises for the remaining time.

The need for that pricing structure to be clear to consumers is well-established, evidence-based, and uncontentious. CAP guidance requires ads for these standard introductory discounts to be clear both on the length of the introductory offer and its price, as well as the subsequent contract period and price:

"If an introductory discount period applies to one element of the cost - such as half price broadband for a limited period – the ad needs to make clear the total monthly cost that will apply both during and after the discount period, and for how long"[11]

Unlike standard introductory period models of price increases, services with tiered mid-contract price rises have variable length 'introductory periods' (depending on how close to April the customer takes out the contract) and variable price increases (depending on the rate of inflation at the time of the increase). Uncertainty over duration and price mean these aspects of the contract need to be communicated very clearly to consumers so that they can calculate as far as possible their financial commitments for the life of the contract.

Currently, however, despite being more complex, marketing of services with mid-contract price rises is considerably less clear than standard introductory discount models. The length of the discounted period and the degree of price rise are both hidden in a footnote rather than being shown with the price. This disparity is clearly unfair to consumers and must be addressed.

Variable contracts

Hyperoptic agree that the potential for mid-contract price increases should be prominently disclosed in ads for variable contracts and that this is completely consistent with long-established principles for other unknown charges. Given that price is material information, the potential for that price to rise mid-contract is equally material and would affect a consumer's understanding of their financial commitments and therefore their transactional decision. As such, any omission of this potential for increase lacks transparency and is highly likely to mislead.

Hyperoptic strongly disagree with the argument that the statutory requirement to allow customers to exit the contract means that disclosure of a possible increase is less important for variable contracts. We agree with CAP that the relevant test for advertising compliance is not the telecoms provider's adherence to the conditions of the GCs but whether the advertising was likely to have caused the consumer to have taken a different transactional decision than they otherwise would have.

During our November 2022 focus group (November 2022 Focus Group) session[12], several participants expressed the view that an unanticipated increase was akin to a breach of contract because it altered the terms under which they had taken up the service. In our October 2022 Survey, 70% of respondents didn't believe it was fair for the price of a contract to change[13]. It is evident that consumers are deeply unhappy about unexpected price rises and do not consider them to be consistent with the service that they believed they were committing to.

Although consumers may be able to exit the contract upon the price increase being imposed, this directly contradicts the surety of a price advertised for a specific contract period. In addition, the need to find and secure a new service (particularly if it is on a different physical network to their current telecoms provider) is likely to be a significant downside that, for many consumers, would affect their intention to take up the

[11] https://www.asa.org.uk/news/new-approach-to-broadband-pricing-claims.html
[12] November 2022 Focus Group Summary Annex
[13] October 2022 Survey

service. As such, Hyperoptic disagree that an exit clause offers sufficient mitigation of unexpected price increases to warrant the omission of material information from the price claim.

Prominence of price rises

Hyperoptic agree that the presence or possibility of a price change should be as up-front as possible and consider that 'as possible' in almost every context would be part of the price claim itself. Because the price stated is not guaranteed for the contract period, any separate qualifications that were not part of the claim itself would contradict the impression that the stated price would remain static.

However, these claims must convey that the price will increase, rather than just 'change'. Providers know that their price will increase and never decrease mid-contract and there is no justification for advertisers implying that their prices will do anything else. CAP's consultation document said that ads for variable contracts, "should state that mid-contract increases may be payable alongside the price, with details of the nature of the possible increase, if known,"[14] and the fact that the price will increase is a known detail of the nature of the price change. This should therefore form part of the qualification in the claim for variable and tiered contracts.

For tiered contracts, the imposition of a price rise is certain and there is a set date for the increase. This should be explicitly included in the headline price claim as a date and/or time period, consistent with existing standards for standard introductory discount periods. A price claim indicating that the cost will increase on a date two months from now has very different implications from one indicating that the cost will increase on a date ten months from now.

The examples given by CAP may not be fully clear on the above points. "£X (2022-2023)" and "£X until April 2023" do not necessarily convey a price change and could reasonably be understood as references to the contract length itself or a deadline for signing up. The "(2022-2023)" version could also give the impression that the price would be fixed during the calendar years stated, not that a rise should be expected in 2023.

"Starting at £X" refers to costs above £X but could be interpreted as a claim that the price is the lowest at which the features in the ad are available, with additional costs due to optional add-ons rather than a mid-contract rise. Car ads, for example, very commonly use "starting at/from £X" to establish that there is a price for the base model but that additional costs will apply for extras and upgrades. As such, it is likely that many consumers would not interpret this claim as an indication that the price is subject to increase during the contract, but as a claim that the price would be higher if they added extras like an upgraded router.

We offer the following suggestions of claims that are more likely to be clear to consumers:

- £X per month, increasing from April 20XX
- £X, subject to future increases
- £X, but may go up
- £X, unless we decide to raise it

Detailed information

Hyperoptic agree that it is appropriate for clarification to be one level less prominent than an appropriately worded headline price. However, the clarification should remain immediately near to the price claim; the wider the separation between the two statements, the less likely it is that they will be linked by the consumer. There should also be no scenario where, regardless of how inconspicuous the price claim might be within the body of the ad, the information is relegated to the footnote unless this is also where the price claim has been placed. Footnotes are materially less prominent than any body copy. We also consider that, in online contexts,

[14] https://www.asa.org.uk/static/cd21d488-bf53-455e-aebd7bac1ff2be0a/Guidance-on-the-presentation-of-mid-contract-price-rises-in-telecoms-ads.pdf p15

approaches requiring interaction, such as a symbol that displays information when clicked on or hovered over, could not be considered sufficiently prominent.

The implementation of this approach in audio-visual ads needs to be considered carefully to take account of the increased prominence of audio claims over visual claims. Hyperoptic consider that an on-screen clarification for a spoken price claim would not be sufficiently prominent. Should a price claim be made in a voiceover, the spoken clarification should follow it immediately, and this should happen every time the price is said. This is consistent with the treatment of other pricing clarifications (such as per-order booking fees) where information about extra charges must appear alongside every main price claim. Hyperoptic consider that the 'small print' supers on a video ad would never be an appropriate location for the additional information unless this was the only place in which the price claim was made.

We note CAP's statement that the slightly lower prominence would be appropriate "particularly if linked to the primary claim via an asterisk," and note that the mock-ups where an explanation is relevant all include an asterisk even where the explanation is immediately next to the price. We consider this is appropriate to ensure that consumers are confident about the applicability of the explanation to the price statement.

However, CAP's 'Help Note' on qualifications states:

"If a qualification is at least two "steps" less prominent than the primary claim, the use of an asterisk will normally allow a marketer to account for one "step" of the "qualifying ladder". For example, if a primary headline claim requires qualifying in the body copy, marketers can instead place the qualification in a footnote linked to the headline by an asterisk."[15]

We are concerned that the encouragement to use asterisks may be used by advertisers as an excuse to place their explanations of price increases less prominently than appears to be envisaged by CAP, on the basis of this guidance. Indeed, this is the current approach used by providers at the moment, which is challenged by CAP's proposals. We ask that CAP ensure the guidance makes clear that 'a slightly lower level of prominence' is a high bar and that the caveat in the qualifications guidance that an asterisk "will normally allow a marketer" to account for lower prominence means that advertisers may not automatically rely on this general principle.

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)?

Hyperoptic strongly agree that information provided to clarify the price claim in the tiered model should make clear the basis for the increase; to do otherwise would not be sufficiently transparent. This should include: specifically referencing inflation (since CPI/RPI may be unfamiliar to consumers), the increase above inflation that will be added, and the first month when the increased price will be applied on the customer's bill.

We note that CAP's examples almost always use the full name of the price indices rather than initialisms and that the document states "ads are less likely to mislead consumers where they write out the initialisms in full and also make clear that the term used refers to a measure of inflation." We agree with this statement.

However, CAP's examples of social media ads use the initialism 'RPI' instead of 'Retail Price Index'. In line with our above view, we do not consider that this initialism is sufficiently clear. We are concerned that, should CAP allow short-form ads to use the initialisms because of limited space, this implies that there is no consumer detriment in doing so and therefore no impetus for advertisers to use the full terms in any other medium. Consumer understanding of this initialism does not change just because there is less space available.

Our October 2022 Survey suggests that consumers are not generally aware of what 'CPI' relates to at all, let alone what it stands for. We asked "Do you know what CPI affects?" and provided a choice of answers: data, price, quality, service, speed (alongside 'don't know', 'none', and a blank field).

[15] https://www.asa.org.uk/static/5ef9f4e1-3949-4978-af9b08c0c2d21eeb/CAP-qualifications-guidance.pdf

- 63% selected “don’t know”
- Only 15.3% correctly chose “price”

In the November 2022 Focus Group, there was confusion amongst participants about what ‘CPI’ meant and how it applied to broadband contracts. One participant, despite saying they were familiar with it through work, referred to it as ‘tax’ and implied that they thought it would be added to the price of the contract straight away (akin to VAT).

We strongly agree that the full name of the index and a reference to inflation are required to ensure that consumers understand what applying CPI means for their financial commitment.

Understanding inflation

In addition to low consumer understanding of what ‘CPI’ stands for, we are concerned that a significant number of consumers may not be aware of how much the rate of inflation could be and that this could impact their understanding of the basis of the price rise. While we acknowledge that recent sharp rises could not have been foreseen by the public, it is nonetheless the case that some consumers may not know what a reasonable estimate of inflation might be for the purposes of considering their long-term financial commitments or where to find the official OBR and ONS data. Therefore, our view is that a footnote (or equivalent) to tiered product ads should include a current forecast of the relevant inflation measure with the source of the forecast (e.g. Office of Budget Responsibility or Bank of England and month of publication), what month’s forecast will be used,. For example:

“Every April we will apply the Consumer Price Index rate of inflation published by the ONS in January that year plus an additional 3.9%. Current OBR forecast for CPI in January 2023 is 8.1%, which is subject to change.”

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?**

Hyperoptic agree that the list of factors that indicate the need for more care are clear and reasonable. However, as some of these points can raise complex issues, we have explored some considerations of how the guidance principles might apply and how common industry practice might interact with those principles. We ask that CAP take this into account when finalising their guidance.

Clarity of key information

Hyperoptic agree that new requirements relating to mid-contract price rises should not have the effect of making other key information less prominent to the point that it is unclear or obscured. We consider that CAP’s proposed principles allow for multiple approaches that would avoid this risk.

Given that inflation-linked price rises are set to be imposed in a specified month and that ads for tiered services must therefore include a date or timeframe for such a change, there is an increased risk that the length of the contract might be made ambiguous (as discussed in response to the price claim examples). Advertisers would need to take care not to imply that the date given for the price rise is the end of the contract itself.

We note that CAP’s examples of social media ads for tiered contracts do not include the minimum term, leading to the claim “[service] for £X a month until April 2023* *Monthly price increases every April…”[16] We

[16] https://www.asa.org.uk/static/ce147bff-6702-4154-b7418a2725f8743d/Appendix-Midcontract-Price-Rise-Examples.pdf pp13-14

are concerned that, even with the qualification about the price rise, the most likely interpretation of this ad is that the contract itself ends in April rather than being a reference to a price increase.

Claims and terminology contradicted by price rises

Hyperoptic note that ads for broadband services habitually use language such as 'fixed' to describe the prices in their contract, such as this variable tariff:

"Take a great price today, fixed for 18 months. £48.80 a month** […] ** The price of your services may increase during your contract. If this happens, we will notify you beforehand and you will have the option to leave your contract without paying an early termination fee, including where you are in a minimum term contract"

Hyperoptic believe that the qualification "the price of your services may increase during your contract" directly contradicts the main claim "Take a great price today, fixed for 18 months." Either it is fixed, or it may be increased – these cannot both be true. Either it is offered for 18 months, or it is curtailed when the price increases – these also cannot both be true.

We consider that in both the tiered and variable models any qualification relating to a price increase (even when at a suitable level of prominence) is highly likely to contradict a 'fixed' price claim, and request that CAP address this in their final guidance.

Timing of price rises and advertising

Hyperoptic strongly agrees that the timing of an ad will affect the action an advertiser must take to comply with the Codes. If a consumer sees an ad in January for a contract due to increase in March, they may only pay the price on the ad for one or two months. In some circumstances, particularly if they order a service some weeks in advance to coincide with the end of a current contract, they may never pay the advertised price. We acknowledge that it is challenging for CAP to impose a strict timeframe for when such ads would be considered so close to the price rise as to be misleading. However, we propose that where a customer would not reasonably be likely to receive more than one bill based on the advertised price, the ad should not be used.

Particular attention should be paid to the New Year period, as this is a particularly busy time for the take-up of new telecoms services and is very close to the timing of mid-contract increases (especially for advertisers who impose the increase in March/April). If a contract taken up in the context of a 'January Sale' focus on price has a price increase imposed shortly after, this is contrary to the spirit of the ad.

In addition, some telecoms providers use the January ONS rate of inflation as the benchmark for a rise in March or April. From the release of that information, the rate of increase becomes a known amount. CAP's guidance requires that known mandatory charges are included in the price of a product, so there is no justification for advertisers to withhold this information. As such, any ads published between the release of the data and the imposition of the price rise (subject to the above principles on fair timing) should specifically state the full percentage increase and the actual cost of the increased monthly bill:

"£30, increasing every April*

* Monthly price will increase every April by the Consumer Price Index rate of inflation in January + 3.9%. Monthly bill from April 2023: £33.60

Short-form ads

Hyperoptic strongly agree that all the information required to be in the price claim and the prominent qualification following it should appear in every ad, regardless of limitations on space. The information required for a consumer to make a transactional decision is not affected by the space in the ad, but by its content as it relates to the product. There is no justification for omitting information on the basis of limited space if that information would be required in the body copy of all other forms of advertising. We agree that, if signposted appropriately, information that would be allowable in (e.g.) a footnote could reasonably be placed on the landing page of the link in the ad, if it were immediately visible on that page.

As outlined in a previous answer, we note that CAP's examples of social media ads use the initialism 'RPI' instead of 'Retail Price Index'. In line with our above view, we do not consider that this initialism is sufficiently clear. In other areas of the consultation document, CAP have stated that "ads are less likely to mislead consumers where they write out the initialisms in full" and, as covered earlier in our response, 85% of our October 2022 Survey respondents could not identify that 'CPI' related to price and were therefore clearly unfamiliar with the initialism. We are concerned that, should CAP allow short-form ads to use the initialisms because of limited space, this implies that there is no consumer detriment in doing so and therefore no impetus for advertisers to use the full terms in any other medium. Consumer understanding of this initialism does not change just because there is less space available.

Hyperoptic acknowledge that short-form ads pose a challenge for advertisers who need to include a lot of material information to avoid misleading consumers through omission or ambiguity. We understand that some telecoms providers may therefore object to this proposal on the basis that it makes using this type of ad difficult and that this is disproportionate. However, this challenge cannot be sufficient grounds to reduce the consumer protection measures of CAP's proposals, whether in whole or in relation to short-form ads. If advertisers decide to sell products with mid-contract price rises then they must acknowledge that some forms of advertising may be unsuitable for conveying the information required to market these products. This is consistent with CAP's position on promotional marketing. We therefore do not consider that it is unreasonable or disproportionate for CAP's proposals to have the effect of restricting how advertisers can use short-form ads for these products.

Other issues affecting pricing clarity

The telecoms market has some common pricing and sales models that could make compliance with the Codes significantly more complicated, and on which specific guidance would therefore be hugely helpful for advertisers. While we appreciate that it would be impossible for the guidance to cover every eventuality, it would nonetheless be reasonable for the most common scenarios in current use to be addressed.

To be clear, Hyperoptic do not consider that the relative complexity of advertising these packages is grounds for disapplying any of the proposals set out in CAP's consultation or Hyperoptic's submission. Whether to offer a bundle, device finance plan, and/or an introductory discount while also imposing mid-contract price rises is a deliberate decision by an individual telecoms provider. All such business decisions must balance a variety of elements, including the ease of implementing compliant marketing to avoid misleading consumers. While requiring effort and care, relatively complex offers can be advertised clearly and with all appropriate information included. The more complicated the pricing structure and the calculations required to understand the full financial commitment of the contract, the higher the risk of ambiguity or misunderstanding. It would therefore be helpful if CAP's guidance gave examples of how some of the following packages and scenarios might be marketed clearly.

Telecoms and device bundles

Where a telecoms service and a finance plan for a device are sold under a single monthly payment that covers a charge for each element, the price rise would affect only the telecoms service portion of the monthly charge (as the payment for the device is subject to financial regulations). This is different to the package model in CAP's mobile contract mock-ups, which has a single monthly price and is no longer commonly used.

As the increase does not apply to the whole headline price, information about how the price will be calculated must therefore be clear about how the price of the package is split. For example:

"*Monthly cost of airtime (£29) will increase every April by the Consumer Price Index rate of inflation in January + 3.9%..."

This is also sometimes the case for contracts bundling (e.g.) TV and broadband services. Hyperoptic consider that the steps needed to calculate the financial commitment of this type of service are so complicated that an estimate of the actual price would be vital to ensure the cost is clear to consumers. Our comments on price estimates are outlined in detail under Question 6.

In addition, the minimum contract term for a device finance plan is usually longer than the attached telecoms service contract term (often 36m and 24m respectively). The stated price will rise twice over 24 months, then change to an unknown degree when the telecoms term ends and consumers seek a replacement contract. This calls into question whether a single price can reasonably be given for a contract where (price rises aside) the combined single headline price is only relevant for two-thirds of the timeframe. Hyperoptic consider that it should be made clear to consumers (with the same degree of prominence as the information about calculating price rises) how the monthly price is split and how long each term is for.

It is unclear how the headline price claim itself could be formulated to clearly reflect that there would be increases due to mid-contract price rises *and* that it will change before the whole financial commitment ends.

Introductory discounts

As noted by CAP, services sold with a standard introductory period that also have a mid-contract price rise under the tiered model will need careful consideration. Consumers would have to consider how many months would be spent at potentially three prices[17], at least one of which they must calculate by applying a percentage. With regard to price rises that occur within the discount period (e.g. a 6-month discount product taken in November), Hyperoptic note that consumers would never pay the stated post-discount price because it would already have risen by the time it was applicable to the customer. This needs very careful consideration to make clear that the post-discount price is indicative and would be subject to another increase in future. Otherwise, the post-discount price would be misleading, as the customer would never pay it. For example:

"£25 for 6 months, increasing in April 2023, thereafter £30 (subject to April 2023 increase), rising in April 2024*

*Monthly cost will increase every April by the Consumer Price Index rate of inflation in January + 3.9%."

Hyperoptic consider that calculating the financial commitment from these pricing models can be highly complex. In our answer to Question 6, we come back to this point and propose that an estimate of price is vital for enabling informed consumer choice.

Telecoms bundles and complementary products

Providers who offer broadband and mobile services commonly sell bundled tariffs that combine these services at a relative discount. They might also offer incentives to take out multiple services outside a formal bundle agreement, such as boosting mobile data and fixed broadband speeds for households who take both services separately.

Some providers with these offers apply a tiered price structure to mobile, but a variable price structure to broadband: their mobile customers do not have the option to leave when the price changes but their broadband customers do. Ads for these products run the risk of confusing consumers about the nature of the price rise and their rights when it happens, and would also need to explain what proportion of the monthly cost would rise by what degree (similar to the telecoms and device bundles).

Where a benefit to one service depends on having a contract for another, the price increase structure may mean that the customer is disadvantaged in a way they would not have anticipated. If an increased data allowance is given to a mobile customer on condition that they have a broadband service with the same company, then this acts as a disincentive for them to exit the broadband service. If a variable pricing structure

[17] Price rises during the discount period: discount price, discount price plus rise, post-discount price plus rise
Price rises during the post-discount period: discount price, post-discount price, post-discount price plus rise

is used for the broadband service and the monthly price changes, a customer will be less likely to want to take up their right to exit that contract because they will lose the mobile benefits, and they have no right to exit the mobile contract without paying early termination charges. This is a significant factor affecting the nature of a potential price rise under a variable contract, which should be made clear in ads relating to this form of product combinations. For example:

"Combined benefits only applicable when both services are taken. Prices of broadband service may change, at which point you may exit the broadband contract without paying a termination fee. However, exiting the contract will disapply the combined benefits from your mobile contract."

Contract lengths and multiple price rises

Finally, most telecoms contracts are offered on 18- or 24-month terms, meaning that the majority of consumers opting for tiered services will experience two sets of price rises. This could have a wide range of effects on implementing the proposals:

- Price claims would need to refer to both dates, e.g. "£X, rising every April"
- Forecasts would need to clearly be for the first increase and mention that a second will follow the next year with a different CPI rate
- Explanations of the increase would need to note that the second increase layers on top of the first, as it may not be self-evident to some consumers

Where a discount, bundle, or device finance plan is part of the advertised package, the specific considerations applying to those pricing models would combine with these issues and require further care. For example, an introductory discount tariff where the post-discount price spans two price rises (which is not unlikely) would have 4 different monthly prices for consumers to calculate and consider.

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?**

Hyperoptic consider that in every tariff containing a mid contract price increase, the headline price claim must be presented alongside an explanation of potential for a price rise, no matter how closely presented to another on the same page. We understand from CAP's example ads that this would be the case. With regard to information explaining how the increase is calculated, we agree that it could be possible for a standalone clarification to be placed with sufficient prominence to have consistent clarity with other forms of advertising. In principle, it is reasonable that a common piece of information may be more effectively communicated when presented once, if it is prominent and clearly signposted. However, any such approach should meet the same "slightly lower level of prominence" principle as all other forms of advertising, and there are some commonly used elements that could make this more challenging.

Most telecoms provider websites present multiple tariffs in a table format with key information (usually price and speed or data allowance) made very prominent in relation to all other elements. The mock-up provided by CAP is a relatively mild version of this approach, with little to draw attention away from the clarification and make it harder to notice. In that context, a simple line of text may have sufficient prominence, particularly when the asterisk is used. However, in practice, the presentation of the tariffs is likely to be much busier and attention-grabbing, meaning that advertisers would have to do considerably more to make the clarification prominent enough – a line of text would not be nearly so prominent as large prices on brightly-coloured speech-bubbles or images of devices.

In relation specifically to placement, we consider it is vital that the clarification be immediately proximate to the price claims. For instance, if the price is highlighted at the top of the tariff comparison, having the clarifying information below the table would not meet the 'slightly lower level of prominence' principle. This point notwithstanding, we do not consider that the information could ever be sufficiently prominent if it were not visible at the same time as the price claims. This may require repeating the statement throughout the page; a mobile provider may present several rows of tariff 'cards' to scroll past, which means that a single instance of clarifying information would not be visible when looking at most of the price claims. Mobile websites would have similar challenges, as they are often limited to displaying one or two tariffs at a time as customers scroll through.

Regardless of specific placement, we consider that it would never be appropriate for the clarifying information to require interaction to be visible. For instance, consumers should not have to hover over or click a symbol to see the details of the price increase, even if labelled "about this increase" or similar. As it is material information, it should be freely available already, rather than prompted by the customer.

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

We are concerned that some consumers may not be readily able to calculate a percentage increase with confidence and that presenting the increase as a percentage would not have the same impact as showing it in pounds. We therefore consider that the information to clarify the price claim should include an up-to-date estimate of the future monthly price.

Calculating basic monthly costs

As identified by the ASA and Ofcom in their 2015 broadband pricing research ('ASA and Ofcom 2015 research'), calculating the cost of a complex contract can be very difficult even where the arithmetic is relatively straightforward multiplication and addition[18]; deriving a percentage increase, particularly to a decimal place, is far more complicated. For bundles, where separate elements of the monthly cost have different approaches to price rises, this becomes even more complex as it requires consumers to apply a percentage to a figure and then add the result to another figure (both of which they may have had to derive from the overall monthly price or find in a footnote). In some cases, one element of the monthly cost comes under the tiered model, and the other under the variable model, leading to further complexity.

This difficulty with calculating the cost of broadband is still evident. In our October 2022 Survey we asked respondents how confident they were about adding a percentage to a price, then asked them to select the correct monthly price for a £25 tariff that would rise by CPI + 3.9% if CPI were forecast to be 12% (11 choices, plus 'I don't know' and 'This is too complicated').

- 52% of respondents said they were 'very' or 'quite' confident
- 23% of respondents chose the correct answer
- 27% of respondents chose 'I don't know' or 'this is too complicated'

It is clear that consumers are unlikely to be able to calculate the future price of the contract, even when explicitly given the information to do so in the most straightforward tiered scenario. Concerningly, 69% of the October 2022 survey respondents who were confident in their ability to do this calculation did not choose the correct answer. This means there is a significant risk that consumers would incorrectly believe they knew the future price and make a transactional decision on the basis of inaccurate information.

Moreover, one of the principles derived from the Ofcom/ASA research was that "the ad needs to make clear the total monthly cost that will apply both during and after the discount period,"[19] and that monthly charges

[18] https://www.asa.org.uk/static/uploaded/5707a8cf-7ecf-4cb5-8681c4db3f35c06c.pdf p4
[19] https://www.asa.org.uk/news/new-approach-to-broadband-pricing-claims.html

should be consolidated to make calculating costs simpler for consumers. We do not consider that stating a percentage increase fits the principle of 'the total monthly cost after the discount period' or is adequate consolidation of the monthly cost. This research and its resulting principles are directly relevant because CAP has described the tiered model as a form of discounted introductory period pricing, so we would therefore expect the principles from the 2016 work to apply.

We therefore consider that the estimated price of the increased bill should be included with the information clarifying the price claims. For example:

> "£30, increasing in April 2023*
>
> * Monthly price will increase every April by the Consumer Price Index rate of inflation in January + 3.9%. Estimate April 2023: £33.60"

The addition of two words and two numbers would not significantly increase the amount of text on the ad, but would dramatically increase the ability of the majority of consumers to fully understand the impact of the increase on their financial commitments. It would be easy to implement and unlikely to result in too much information to digest. Rather, it would resolve the confusion or lack of certainty that may arise from consumers struggling to estimate CPI and apply a stated percentage. This small addition would prevent many people from making a transactional decision on the basis of incomplete information.

To clarify the basis of this estimate, a note about the forecast used should be included in the footnote:

> "Every April we will apply the Consumer Price Index rate of inflation published by the ONS in January that year plus an additional 3.9%. Price estimate for 2023 based on current OBR forecast of 8.1%, which is subject to change. Total estimated increase for this package is 12% (8.1% CPI + 3.9%)."

If CAP disagree that the estimated price should be included in the body copy clarification of the increase, we consider that it is absolutely necessary for it to be included in a footnote or similar. For example:

> "Based on current OBR forecast of 8.1%, which is subject to change, the total estimated increase for this package is 12% (8.1% CPI + 3.9%). Estimated bill from April 2023: £33.60"

Contract length

As noted above, telecoms contracts are commonly 18 or 24 months, and therefore the majority of them will span two price rises. Hyperoptic consider that, as the second year's forecast CPI rate is inherently less certain and would be applied to a price that is already an estimate based on the first year's forecast, a specific price estimate for the second increase would not be sufficiently accurate or certain to be helpful to customers. Although it is important for consumers to have an estimate where possible, the uncertainty of daisy-chaining economic forecasts is a reasonable limitation on providing future pricing information. However, care must still be taken by advertisers to make clear that there will be more than one price rise in the contract period.

Introductory discounts

As noted above, for services sold with a standard introductory period that also have a tiered mid-contract price rise the cost calculations can be complicated. These types of scenarios are at high risk of misleading consumers through providing insufficiently clear information, and Hyperoptic consider that an estimate of the actual cost of the increased prices would significantly enhance consumer understanding. For example, where the price rises after the discount period:

"£25 for 6 months then £30, increasing each April*

*Monthly cost will increase every April by the Consumer Price Index rate of inflation in January + 3.9%. Estimated full price from April 2023: £33.60"

With regard to price rises that occur within the discount period, consumers would never pay the stated post-discount price. Such claims would need to make clear that the post-discount price is the indicative basis for calculating the total post-rise price, and that it would be subject to another increase in future. For example:

"£25 for 6 months, increasing in April 2023, thereafter £30 (subject to April 2023 increase), rising in April 2024*

*Monthly cost will increase every April by the Consumer Price Index rate of inflation in January + 3.9%. Estimated price from April to end of discount: £28, thereafter £33.60 until April 2024"

Including an estimate of the post-discount price ensures consumers understand what their financial commitment is, making clear that they will *not* be paying the £30 that is used as a baseline cost for the provider to attach the price rise to.

Savings claims

Hyperoptic note that the variation in the size of mid-contract price rises (both tiered and variable) could affect the accuracy of 'cheapest' or 'best value' claims relating to the whole market. An advertiser's tariff may be the cheapest at the time the ad was produced, but if they have a higher mid-contract price rise than other providers (some of whom do not impose them at all) the tariff may not *remain* the cheapest, whether across the life of the contract and/or the monthly cost. Similarly, for more specific "Save over £200 vs [provider]" claims against individual competitors, mid-contract price rises for either party would affect the accuracy of the stated saving.

In instances where such claims are used, the substantiation to support the claim should therefore take into account any price rises (including inflation forecasts where relevant) rather than just the advertised price. Moreover, because savings claims are a significant part of demonstrating the desirability of the price, the potential for the specified saving to decrease or even be nullified as a result of mid-contract price rises is material to making a decision on the basis of that claim. As such, the variability of this savings claim must be clear to consumers by forming part of the claim itself, in the same manner as headline price claims.

Variable models for price increases have an additional barrier to substantiation. A claim such as "Ultrafast broadband for over £100 less than [provider]" could easily be negated by a mid-contract price rise. However, the nature of a variable model means that at the time of preparing the ad a price rise has not been ruled in or out by the provider (if it had been decided upon, it would no longer be 'variable' because the details would be known to the provider and must therefore appear in the ad). As a variable contract provider could therefore not know the future price of their own service, it would not be possible for them to substantiate a savings claim calculated on the life of the contract.

Vulnerable consumers

The ASA's current strategy is committed to effective outcomes of their work in "areas that cause the most detriment to people, particularly children and other vulnerable people"[20] and, in CAP's 2018 statement on vulnerable people[21], financial vulnerability is named as a specific concern. We believe strongly that the financially vulnerable should be given specific consideration in CAP's guidance, since consumer protection issues relating to price will always be of particular importance to this group.

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[20] https://www.asa.org.uk/static/19479626-b0c7-4ff8-9a46f07ff20be3c2/1dc18b73-1b42-4591-a7b1873bc76a3051/more-impact-online.pdf

[21] https://www.asa.org.uk/static/uploaded/1ad39f9f-4410-431f-945a8de9dcdb2130.pdf

Increases in the cost of living mean many people are facing uncertainty over their ability to meet their financial commitments. Unexpected and unknown price rises increase the risk of significant financial harm. For some, a mid-contract price rise may mean they suddenly cannot afford their service; this creates a catch-22 where they cannot afford the monthly cost but also cannot afford to pay an early termination fee. Our October 2022 Survey shows that, as would be expected, consumers' expectations that price rises would affect their ability to afford their broadband services are directly correlated with their household income. To prevent this group being caught in a contract that could cause financial harm, it is vital that they are aware their tariff is, or may be, subject to a price increase and how much they should expect this to be.

The Joseph Rowntree Foundation has established that, because of the impacts on all aspects of day-to-day life, those in significant financial difficulty are likely to have far lower levels of educational attainment[22] across generations. Our October 2022 Survey found statistically significant interactions between educational attainment[23], respondents' confidence in their ability to apply a percentage increase to a price, and their actual ability to choose the correct answer (or even attempt an answer): education and confidence are linked[24], confidence and ability are linked[25], education and ability are linked.[26] Those in significant financial difficulty are likely to have lower educational attainment, which leads to a lower likelihood of correctly calculating the percentage price increase and to lower confidence and willingness to even guess an answer. The UK Government's threshold for poverty is 60% of median household income. This figure varies by household composition, with the highest (two parents with two children) set at just under £24200.[27] Respondents in our October 2022 Survey whose household income was below £25k (the nearest data threshold we have) were almost 24% less likely to correctly calculate or guess the post-rise monthly cost of a broadband service than those with a salary at or above £25k.[28]

The consumers most affected by these rises are also those who are least likely to be able to calculate the costs and, therefore, have complete information about the extent of their financial commitment. This contributes to Hyperoptic's view that the inclusion of a pounds and pence forecast of the increased monthly cost is vital to ensure that consumers do not make a transactional decision that they would not have, had they had this information.

While every ad with a price claim will, to some degree, be of relevance to anyone with concerns about their finances, ads heavily predicated on value and/or savings will be far more likely to be of note to those in a vulnerable financial situation. Our above points about the impact of mid-contract price rises on savings claims are therefore particularly relevant to these consumers. We consider that ads using these approaches should significantly exceed the minimum requirements of CAP's proposals, thus minimising the possibilities of disproportionate financial harm on those who are particularly vulnerable.

As the lack of transparency around mid-contract price rises disproportionately affects the most financially vulnerable and risks their ability to afford a vital broadband connection, continuing the current approach to this pricing structure has a genuine risk of causing significant harm to a vulnerable group of consumers.

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[22] https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/poorer-children-education-full.pdf

[23] 5 passes at GCSE is a common benchmark for educational attainment. Our sample size for those below GCSE was insufficiently large to use for comparison, so we compared those *with* GCSEs or below and those with qualifications above GCSE-level. Including those with GCSE-level attainment gives a more conservative result.

[24] 39% of GCSE-or-below respondents and 57% of above-GCSE respondents were 'very' or 'quite' confident that they could apply a percentage increase to a price

[25] 13% of those who were 'very' or 'quite' *un*confident and 31% of those who were 'very' or 'quite' confident chose the correct answer. 42% and 14% respectively chose "don't know" or "too complicated" instead of choosing an answer.

[26] 19% of GCSE-or-below respondents and 25% of above-GCSE respondents chose the correct answer. The indicative result when using the smaller 'below GCSE' sample was that 7% (2 of 28) chose the correct answer.

[27] https://www.jrf.org.uk/report/uk-poverty-2022 UK Poverty 2022 full report, p100-101

[28] 19% and 25% respectively chose the right answer

We therefore ask that, prior to full implementation of all proposed principles, CAP take emergency interim measures to protect consumers. This should be done by immediately requiring that price claims in relevant adverts include a reference to price rises and (where relevant) follow this with the basis of the calculation.