

Mid-contract price increases in telecoms contracts

Committee of Advertising Practice and Broadcast Committee of Advertising Practice statement on new guidance on the presentation of mid-contract price increases in ads for telecoms contracts



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1. Executive summary

Following public consultation, the Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code), and the Broadcast Committee of Advertising Practice, author of the UK Code of Broadcast Advertising (the BCAP Code), are introducing guidance that would require mid-contract price rises to be more prominently stated in telecoms advertising across media.

The guidance will take effect on 15 December 2023, following a six-month implementation period.

The guidance sets out approaches to providing information about monthly contract prices without misleading consumers by giving the impression the price is fixed, if that is not the case.

Following pre-consultation discussion of a number of investigations, the ASA and CAP and BCAP considered that there were limitations to a casework approach in this area. CAP and BCAP decided that the various factors involved that could affect the inclusion or presentation of the information, such as different media, contract types and product bundle elements, as well as potential ambiguity in the wording of advice featured in an Enforcement Notice and Supplementary Guidance, merited a comprehensive review and public consultation on the presentation of information about these prevalent types of telecoms contract terms in advertising.

The consultation received a mix of responses from telecoms companies, industry bodies, consumer bodies, regulators and members of the public. The majority of respondents were in favour of the more detailed and strengthened guidance proposed by CAP and BCAP.

Having carefully considered all the responses and made changes where appropriate, CAP and BCAP have now adopted the new guidance.

The guidance is not, and cannot be, prescriptive of a particular approach; however, the approach recommended by CAP and BCAP is the one that they consider is the most likely to comply with the Codes. As ever, the ASA will consider complaints about individual ads on a case-by-case basis.

The guidance will be subject to review after 12 months.

2. Background

Many contracts for broadband and mobile phone services are subject to mid-term increases in the monthly price of the contract. In many cases, annual inflation-linked increases are built into the contract, while some products include variation clauses allowing for potential future increases during the term of the contract. The 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 to consumers in advertising in order to avoid misleading them into a transactional decision they may not otherwise have made.

In 2021, a small group of ASA investigations into the portrayal of mid-contract price increases in ads for several different telecoms providers, some of which involved competitor complainants, raised questions around whether an individual casework approach was sufficient to address the issue in the round, given the different types of contracts available and their implications for consumers.

Casework also identified potential ambiguity in existing advice on the subject, with some industry stakeholders pointing to inconsistent approaches to information disclosure between providers and in different media.

Price is an important consideration for consumers when choosing a telecoms product, and the presence or possibility of an increase to the monthly price they will be paying is material information in all circumstances. However, the recent wider context of increased cost-of-living expenditure due to rising inflation made it even more important that this information was presented clearly and prominently.

As a result of the above considerations, CAP and BCAP decided to examine the presentation of mid-contract price increases in telecoms contracts comprehensively through a consultation process, in order to provide greater clarity to consumers and industry.

Further background information can be found in the [consultation document](#).

3. Consultation responses

The consultation received twenty responses from a mix of telecoms providers, industry bodies, consumer groups, regulators and members of the public. The majority of respondents were broadly supportive of the proposals.

CAP and BCAP have published the responses they received, and carried out a detailed evaluation of all significant points made in these responses. A full analysis of the responses can be found in the evaluation table. The key points raised and CAP and BCAP's responses to them are summarised below.

Responses agreeing with the proposals

Twelve of the responses were supportive of the proposals.

Some of them cited research, in addition to that identified by CAP and BCAP in the consultation document, which indicated that many consumers struggle to understand that mid-contract price increases will apply to telecoms contracts, and the nature of those increases¹.

A number of them urged CAP and BCAP to go further in setting restrictions on the misleading presentation of material information about price increases. CAP and BCAP agreed with some of the suggestions made and amended the principles accordingly.

In some cases, that amounted to clarification or providing more detail on approaches that were, or were not, likely to mislead consumers.

CAP and BCAP made the following significant changes:

- Strengthening the prominence requirement to provide that ads are likely to mislead where information indicating the presence or possibility of a price rise has less than equal prominence with the price claim.
- Stating that once the inflation rate on which an advertiser bases their inflation-linked increase on has been published, an ad will be likely to mislead if it does not include the total monthly price that the consumer will pay once the price rise is applied.
- Stating that ads should make clear where, if a consumer were to exit a variable telecoms contract due to a price increase, there would be an impact on other products linked to the contract.

Other key points made by respondents who supported the proposals are below:

- Objections to the contract terms themselves

A number of respondents felt that contract terms allowing for tiered increases in line with future (as yet unknown) rates of inflation were inherently unfair and should not be permitted.

¹ Tesco Mobile Commissioned YouGov Survey (2021). [Tesco Mobile Seeks BAN on Broadband and Mobile Price Hikes - ISPreview UK](#)
[Research reveals that over nine million broadband consumers unaware they are set for biggest in-contract price hike in years\(i\) | Hyperoptic](#)

The nature of the contracts themselves is beyond the scope of the consultation and the remit of CAP and BCAP.

- Worked examples

Some respondents advocated for the inclusion of sample calculations in ads, where the rate by which a tiered contract would increase was not yet known.

CAP and BCAP consider that at such a time when the rate is known, then ads will be less likely to mislead if they include the future monthly price figure in absolute terms.

However, in the absence of a known, absolute figure (which would be the case most of the time), CAP and BCAP consider that calculations using example percentages or the previous known rate would be likely to confuse consumers in the context of an ad and unlikely to add to their understanding. Sample calculations are included as part of the pre-contract information providers are required to supply to consumers under Ofcom rules², in which context consumers will have more time to digest that they are only a theoretical illustration to help them understand the calculations and do not represent the actual amount they will pay.

What is most important in the initial ad is that consumers are made aware that their monthly price could or will rise in future.

Responses disagreeing with the proposals

Eight respondents disagreed with some or all of the proposals on the basis that they were too restrictive.

- Overloading consumers with information

Some respondents argued that the proposed level of prominence for information about mid-contract price increases would result in ads needing to contain excessive levels of information, considering the complexity of many telecoms packages and the different pieces of material information that needed to be included in ads to account for that. Some respondents also thought that the proposals could result in information about mid-contract price rises being given undue prominence over other important information. Many believed that would be particularly problematic in media with space and time restraints, and considered that the guidance was too 'one-size-fits-all'. They argued that it could result in consumers being confused or overwhelmed by ads and limit consumer choice and competition rather than aiding it.

CAP and BCAP consider that the presence and, if it can be anticipated, the nature of a price rise that will or may be applied to a monthly contract price constitute material information that consumers need in order to make an informed transactional decision.

They acknowledge that, where there are many pieces of material information, lengthy and/or complex text, this could, in certain circumstances, impact on consumer understanding.

If advertisers find that the quantity of material information that needs to be conveyed to avoid misleading consumers is such that it is creating overly-long or dense text, they may

² [General Conditions of Entitlement](#)

wish to consider the elements of the particular product or offer in question, as well as whether all the information featured is strictly necessary.

The consultation document considered the requirements of different media. While CAP and BCAP accept that there may be some instances where media are genuinely space-limited, they concluded that the formats indicated (particularly paid-for search results) were not so limited in space as to justify not including information about price rises in the ad itself.

In relation to video ads, the amount of information needed to immediately qualify price statements within the main ad would not appear prohibitive, and if other elements of the offer are causing issues then advertisers may want to consider the necessity of those elements.

Ultimately, the guidance presents a set of principles, in aligning with which CAP and BCAP consider advertisers are more likely to avoid misleading consumers. There may be circumstances where presentation of this information at a lower level of prominence would be acceptable, as individual ads must be assessed on a case-by-case basis.

- Ofcom requirements on contract information disclosure

Some respondents also considered that the proposals did not take sufficient account of statutory Ofcom rules³ that set requirements on how companies provided consumers with important information prior to entering into contracts.

CAP and BCAP have considered Ofcom statutory requirements on providing contract information when developing the principles. CAP and BCAP consider that the presence and nature of price increases are material information that should be made clear to consumers to avoid them being misled into a transactional decision they would not otherwise have made. A transactional decision is not limited to the decision to make a final purchase, but could also include a decision to enquire further in response to advertising. Therefore, such information should be sufficiently clear and prominent in the ad itself, regardless of the specific, detailed information that is required to be given to the consumer at a later stage of the purchase process.

- Differences between tiered and variable contracts

Some respondents considered that it was disproportionate to require the same level of prominence for price information in ads for both tiered and variable contracts. They considered that information about the right to vary a price, which might not ever be exercised, and following which the consumer had the statutory right to exit the contract without penalty, did not require the same level of prominence as an agreed increase that would take place.

CAP and BCAP consider that the ability to exit the contract does not negate the need to prevent consumers being misled into entering it. The consumer is required to be alert to notifications that prices will change and then go through the labour of finding a new contract, which may act as a disincentive.

³ [General Conditions of Entitlement](#)

CAP and BCAP consider that it is justifiable to require similar levels of prominence about price rise information for both types of contracts, which in both cases constitute material information that may influence a consumer's transactional decision.

- Terminology

Some respondents disagreed that it was necessarily to write out terms referring to measures of inflation in full. They argued that consumer familiarity with and awareness of rates of inflation had been heightened in response to the cost-of-living crisis, and initialisms such as CPI would be widely understood.

CAP and BCAP consider that information about the nature of a price increase is material information that should be made sufficiently clear to consumers. As above, there is no reason to believe that formats that were of concern to some respondents are so limited in time or space as to justify not including such information. Increased discussion of cost of living does not necessarily translate to greater understanding of these concepts and their impact.

4. Outcome

In light of the reasons set out in the consultation proposal, and the evaluation of consultation responses, CAP and BCAP will introduce new guidance on the presentation of mid-contract price increases in telecoms contracts, including the changes detailed in the previous section.

Application

CAP and BCAP drafted the guidance with business-to-consumer advertising in mind; however, the principles are also likely to be relevant to business-to-business advertising.

Implementation

The guidance will be subject to a grace period of 6 months; the ASA will enforce the revised rules from 15 December 2023.

Advertisements published from this date must comply with the amended rules. Existing advertisements should be changed or withdrawn as soon as possible.


CAP and BCAP are mindful of the need to avoid unintended consequences of amending the wording of rules and to ensure that changes are effective. As such, the amended rules will be subject to review after 12 months from 15 December 2023.

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