



# Enforcement Notice:

## Advertising of Fertility Treatments

### Who we are

We are the [Committee of Advertising Practice \(CAP\)](#). We write the advertising rules, which are enforced by the Advertising Standards Authority (ASA), the UK's independent advertising regulator. You can read about the UK advertising regulatory system [on the ASA website](#).

The [Human Fertilisation & Embryology Authority \(HFEA\)](#) is the government regulator responsible for making sure fertility clinics and research centres comply with the law.

The [Competition and Markets Authority](#) is a non-ministerial government department. It is the UK's primary competition and consumer authority, with powers to tackle practices and market conditions that disadvantage consumers and hinder their decision-making.

### Why are we contacting you?

Negotiating the fertility industry as a consumer can be challenging, not least because of the high emotional and financial stakes involved. Fertility treatments are also likely to be an incredibly complex purchase for consumers because of the extensive scientific terminology and 'jargon' associated with them. We are working closely alongside the HFEA and CMA in relation to how these services are advertised – with particular reference to the way information is displayed on advertisers' own websites.

We ask that you now please carefully review your advertising to ensure compliance with the [CAP Code](#), and as set out in the guidance below. If we see continued problems in this area after November 2021, we will take targeted enforcement action to ensure a level playing field. This may include – where advertisers are unwilling to comply – referral to our legal backstop Trading Standards, or another enforcer such as the CMA and / or HFEA. You can read more about the sanctions available to the ASA [here](#).

### Scope

We are only concerned with ensuring that advertisers' marketing claims for fertility treatments comply with the CAP Code; we are not seeking to regulate the business practices of clinics or their consultations. Please remember that the Code applies to [most forms of advertising](#), including your own websites and leaflets, and in other non-paid-for space under your control such as social networking sites like Instagram, Twitter and Facebook. This guidance should be read in conjunction with the CMA's separate [consumer law guidance](#) to fertility clinics.

## Guidance

### #1: *Ensure transparency when presenting success statistics*

CAP understands that success rates are a key influencing factor for consumers when determining which clinic to go to for fertility treatment. Clinics must take care to avoid misleading consumers in their presentation of success rates:



**Do not** mislead by omitting material information that consumers would need in order to make an informed decision in relation to purchasing fertility treatment. It's important that clinics don't give consumers the impression that their success rates are better than they are by, for example:

- Advertising old success rates because they are more favourable than the latest success rates; clinics should ensure that they only publish the very latest HFEA-verified data available to them
- Only advertising or giving undue prominence to the results of a subset of patients whose results are good (for example, those aged under 35), in a way that suggests such rates are common for all patients
- Only advertising success rates as a percentage without making clear the actual number of patients treated (which may be relatively low)
- When part of a group of clinics, only advertising or giving prominence to the clinic or clinics with the most favourable results in that group
- Making superiority claims or comparisons with unidentifiable competitors (e.g. "No.1 clinic in London") without suitably clarifying the basis or substantiation for such claims

### *Clarity is key when it comes to terminology*

CAP understands that fertility clinics use various metrics and terminology to illustrate their success rates. This can make it difficult for consumers to make meaningful comparisons between clinics, particularly when much of the terminology is of a scientific or technical nature. Clinics must indicate exactly which metrics are being used to demonstrate success, so as to avoid misleading consumers:



**Be clear** when using technical terminology to illustrate your success rates, both in terms of qualifying the technical basis for your given success rates, and in terms of suitably explaining what those terms actually mean. Commonly used metrics include:

- "Live birth rate per cycle started"
- "Live birth rate per embryo transfer"
- "Live birth rate per embryo transferred"

The HFEA's preference is for "Live birth rate per embryo transferred", because it promotes embryo transfer practices which minimise the chances of multiple births

which carry health risks for the babies and the mother. Clinics must also be sure to distinguish between “clinical pregnancy rates” and “live birth rates”, the latter being the metric which results in an actual birth, as opposed to simply a positive pregnancy test, which may not ultimately result in a live birth.

## ***#2: Manage cost expectations: present prices, packages and promotions in an intelligible way***

CAP understands that along with success rates, price is another key factor for consumers in determining which clinic to use for fertility treatment. Although the nature of fertility treatments means that it isn't always possible to calculate a final cost upfront, there are several steps clinics must take to ensure that consumers aren't being misled:



**Ensure that** you aren't advertising misleadingly low headline prices to attract consumers, only for costs to unexpectedly escalate further down the line. Whether you are advertising package prices or providing itemised price lists, be clear on exactly what is and isn't included within your advertised costs, for example:

- If you are charging per cycle, what constitutes a “cycle”?
- Are blood tests included and if so, does this cover all the blood tests which might be needed?
- Are scans included and if so, does this include all the scans which might be needed throughout a cycle?
- Is the cost of medication included? If it is not possible to provide a full upfront cost, could a likely minimum or maximum be provided?
- Are all the costs associated with egg collection (including sedation/anaesthetist fees) included?
- What embryology costs are included? Does this include blastocyst culture if needed? Does this include time-lapse imaging?
- Is the cost of the actual embryo transfer included?
- Is freezing and storage of any surplus embryos included? If so, for how many and how long?
- Is a follow-up consultation included if the treatment is unsuccessful?

This isn't an exhaustive list; please review your marketing materials in line with the relevant CAP Code rules in the Appendix, and the CMA's consumer law guidance to clinics.

## ***Make the basis of any promotions, packages or refund programmes suitably clear***

CAP understands that clinics sometimes offer “multi-cycle” treatment packages for a fixed price, or even refund programmes in the event of unsuccessful treatment. When advertising such offers, clinics must take care to clearly outline all significant Terms and Conditions associated with them. For the purposes of the CAP Code, T&Cs are considered significant if they are likely to affect a consumer's purchasing decisions.



**Important things** to consider include:

- Ensure that you do not advertise treatments as being discounted for a “limited time only” if this is not the case; consumers must not be pressured into making a rushed decision to purchase fertility treatment due to apparent time-limitations
- Ensure that you make the basis of any advertised fixed-cost “multi-cycle” treatment packages suitably clear, by, for instance, clearly outlining what constitutes one “cycle”, how many complete cycles are included in that package, and over what time frame
- If a refund programme is being advertised, clinics must be transparent about the qualifying criteria for any refund/s to be issued; clinics should make clear whether a refund is issued only if treatment doesn’t result in a live birth, or whether a patient might reasonably expect to receive a partial refund if not all permitted treatment cycles are needed in order to achieve a successful outcome
- Similarly, clinics should be careful not to misrepresent the benefits of any refund package. Absolute claims such as “100% refund” should be avoided if the reality is that patients will be entitled to claim “up to” 100% of the costs

As above, these suggestions are not exhaustive; please review your marketing materials in line with the relevant CAP Code rules in the Appendix, and the CMA’s consumer law guidance to clinics.

**#3: Be transparent with regards to “add-ons”**

CAP understands that some clinics may offer various treatment “add-ons” to consumers. These range from optional treatments and tests, to extra (non-essential) treatments and techniques. They can also include additional drugs, products, equipment and surgical procedures. When advertising such “add-ons”, clinics must take care to:



**Provide clarity** on the likely cost implications, risks and evidence base for any “add-ons” you offer. The [HFEA website](#) provides a useful traffic-light system for a number of different “add-ons”, which assesses their evidence base and associated risks. We recommend that clinics directly link to or signpost consumers towards this section of the HFEA website when advertising such “add-ons”.

#### **#4: Take care when making efficacy claims for complementary therapies**

CAP understands that some clinics may offer consumers access to a range of complementary therapies as part of their treatment. Examples of complementary therapies include acupuncture, reflexology, homeopathy and aromatherapy, amongst many others. In order to avoid misleading consumers, when advertising such services clinics must:



**Avoid making** direct or implied claims that a particular therapy can treat or aid with fertility problems, or increase a consumer's chances of falling pregnant. To date, CAP has not been provided with sufficiently robust clinical evidence to support claims for the efficacy of complementary therapies in relation to fertility.



**Steer claims** for complementary therapies towards more generalised claims around feelings of well-being. Claims that complementary therapies can promote feelings of relaxation and improve mood are likely to be acceptable.

More information on what's likely to be considered acceptable for various complementary therapies can be found in the Appendix.

#### **Appendix: Relevant Code rules, legislation and useful reading**

This guidance should be read in conjunction with the [CMA's consumer law guidance](#) to fertility clinics.

##### **Relevant [CAP Code](#) rules:**

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

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

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

**3.4** For marketing communications that quote prices for advertised products, material information (for the purpose of 3.3) includes:

**3.4.1** the main characteristics of the product;

**3.4.2** the identity (for example, a trading name) and geographical address of the marketer and any other trader on whose behalf the marketer is acting;

**3.4.3** the price of the advertised product, including taxes, of, if the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated;

**3.4.5** the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect.

**3.7** Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

**3.11** Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.

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

**3.19** If a tax, duty, fee or charge cannot be calculated in advance, for example, because it depends on the consumer's circumstances, the marketing communication must make clear that it is excluded from the advertised price and state how it is calculated.

**3.21** If the price of one product depends on another, marketing communications must make clear the extent of the commitment the consumer must make to obtain the advertised price.

**3.22** Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by the consumer.

**3.31** Marketing communications must not falsely claim that the marketer is about to cease trading or move premises. They must not falsely state that a product, or the terms on which it is offered, will be available only for a very limited time to deprive consumers of the time or opportunity to make an informed choice.

**3.32** Marketing communications must not mislead the consumer about market conditions or the possibility of finding the product elsewhere to induce consumers to buy the product at conditions less favourable than normal market conditions.

**3.33** Marketing communications that include a comparison with an identifiable competitor must not mislead, or be likely to mislead, the consumer either about the advertised product or the competing product.

**3.34** They must compare products meeting the same need or intended for the same purpose

**3.35** They must objectively compare one or more material, relevant, verifiable and representative features of those products, which may include price.

**3.38** Marketing communications that include a comparison with an unidentifiable competitor must not mislead, or be likely to mislead, the consumer. The elements of the comparison must not be selected in order to give the marketer an unrepresentative advantage.

**3.53** Marketing communications must not use the word "guarantee" in a way that could cause confusion about a consumer's rights.

**3.54** Marketing communications must make clear each significant limitation to an advertised guarantee (of the type that has implications for a consumer's rights). Marketers must supply the full terms and conditions before the consumer is committed to taking up the guarantee.

**3.55** Marketers must promptly refund consumers who make valid claims under an advertised money-back guarantee.

**12.1** Objective claims must be backed by evidence, if relevant consisting of trials conducted on people. Substantiation will be assessed on the basis of available scientific knowledge.

**12.2** Marketers must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional. Accurate and responsible general information about such conditions may, however, be offered.

Health professionals will be deemed suitably qualified only if they provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of members' skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

**15.1** Marketing communications that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim, as specified in the EU Register. Claims must be presented clearly and without exaggeration.

**15.2** References to general benefits of a nutrient or food for overall good health or health-related well-being are acceptable only if accompanied by a specific authorised health claim.

**Other useful reading:**

The below articles are from CAP's AdviceOnline database, which outline the ASA's current position on a number of complementary therapies:

[Health: Reflexology](#)

[Health: Aromatherapy](#)

[Health: Homeopathy](#)

[Health: Therapies \(General\)](#)

[Advertising complementary and alternative medicine and therapies](#)