



**Vodafone Limited's response to the ASA consultation document:
*'Guidance on the presentation of mid-contract price rises in
telecoms ads'***

DATE 17 NOVEMBER 2022

Executive Summary

We welcome the opportunity to comment on The Committee of Advertising Practice (CAP) and The Broadcast Committee of Advertising Practice (BCAP) consultation for new guidance on how information should be presented in relation to mid-contract price rises in ads for broadband and mobile services.

We note that the proposed guidance would require information about mid-contract prices to be more prominently stated in telecoms ads across media, to avoid misleading consumers.

We appreciate that the ASA recognises that many contracts for mobile and broadband services include price increases (usually linked to inflation) during the term of the contract.

We understand that under the CAP and BCAP Codes (the Advertising Codes), information about the presence or possibility of and, if known, the nature of any price rise is clearly material to consumers' decision-making process and should be made sufficiently clear in advertising.

Having read the proposed changes under the consultation, we will explain why we believe our current approach (which complies with the Advertising Codes) is sufficiently prominent. We will also put forward our view to explain the practical challenges that your proposal poses to us. Please note that we have consulted with our Brand and Marketing team and one of the major advertising agencies on this point.

Vodafone prides itself on compliance with the Advertising Codes and adjudications, consumer protection legislation, Ofcom's General Conditions of Entitlement (General Conditions) and any related guidance notes. As one of the major Communication Providers (CPs) in the UK we take our compliance responsibilities very seriously.

In June 2019, the industry was served with an Enforcement Notice, the 'Enforcement Notice: Mid-contract price increases to broadband products' which was subsequently extended to include mobile (Appendix One). The notice states *'If the monthly price will, or may, change during the suggested contract length then a qualification is required, otherwise, an advertiser will be at risk of breaching 3.1, 3.3, 3.9 and 3.17 of the CAP Code'*. We will explain below how we have gone beyond and above to comply with this statement.

Whilst we receive very few complaints from customers in relation to mis-selling we agree that it is in the customer's best interest for greater transparency and a more consistent approach that all CPs must adhere to.

We do however have some concerns with the ASA's proposed guidance:

1. As you know, Ofcom through its General Conditions already regulates CPs heavily on how mobile and broadband products are sold including how customers are notified of any changes to their contract as well as informing them when they have a right to exit without penalty that contract and any contract forming part of a bundle with that contract. CPs must provide customers with certain prescribed information in a specified format prior to entering into a contract for mobile or broadband services (the Contract Summary). In addition, customers must be notified in writing prior to any changes being made to the service or agreement where the change is not to their benefit. In the case where prices on variable contracts will increase customers have the right to terminate their contract without penalty. We have signed up to Ofcom's 'Fairness for Customers' commitments, many of which are underpinned by existing consumer laws and Ofcom will monitor compliance and step in where it considers that companies are falling short. Additionally, consumer legislation, in particular the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) and the Consumer Rights Act 2005 (the CRA) provide protection to consumers from misleading or aggressive advertising ensuring consumers can make an informed transactional decision when entering into a contract and provides remedies to consumers in such cases where those standards and requirements have not been met. The Business Protection from Misleading Marketing Regulations 2008 provide similar protection to businesses.

2. We need to ensure that any revised guidance serves to support the General Conditions and the existing consumer protection laws and that it does not create a situation where the amount of information the CP must provide at the point of sale inadvertently overwhelms the customer, leading to a lack of transparency or clarity on the key and important messages.
3. Tiered and Variable price increases should not be treated the same.
 - (i) The tiered price increase is a contractual term which is being enforced by the CP on the terms set out within the contract which the customer needs to be made aware of prior to entering the contract. The contractual term will specify which charges are included within the tiered price increase and when and how that increase will take effect. We agree that the existence of a tiered price increase is material information that should be presented in a clear, transparent and fair way to enable the customer to make an informed transactional decision about their purchase. We believe our current approach (which complies with the Advertising Codes) achieves those aims.
 - (ii) In contrast, a variable price increase is a discretionary increase which may or may not occur during the term of the contract. The General Conditions set out the strict requirements that a CP must adhere to if and when a CP wishes to make a change to the contract that is not included within defined contractual tiered price increase. These requirements include notifying the customer of the change in writing and giving them the right to exit the contract, and any contract forming part of a bundle with that contract, without penalty.
 - (iii) It is usual for a CP's mobile and broadband contract to include terms which provide for a tiered price increase as well as a variable price increase. Under the proposed guidance a CP would be required to include wording for both a tiered and variable price increase within the same advert. We are concerned that this will add confusion and will lack clarity for the average consumer meaning the material information on the tiered price increase would not be as transparent as it should be.

We therefore do not consider that it would be in the customer's best interest to treat tiered and variable price increases the same.

4. We think the ASA should use its existing enforcement powers to ensure all CPs adhere to existing guidance rather than widening the scope of the guidance further than necessary.

Introduction

5. Our customers are at the heart of our business and we have been constantly investing and innovating to provide the best quality service we can to the millions of people across the country who rely on us. In general, strong competition in the mobile and broadband phone market has seen prices come down at the same time as data usage across our networks has increased.
6. The availability of digital infrastructure is one of the most important aspects of providing the services our customers expect. Customers continue to demand and expect access to a network service wherever they are in the UK. That demand is increasing. Ofcom have shown that between 2015 and 2020, prices have come down by 22% while data usage has gone up by 369%¹.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0013/222331/Pricing-trends-for-communications-services-in-the-UK.pdf

Summary document along with a worked example showing clearly that if the relevant rate of inflation next year is [X%], the new charge applicable following the tiered price increase would be [EXX].



15. Our marketing communications also make it clear that the monthly plan charges will increase each April and provides the calculation and rate of inflation measure that will apply to that increase. The same information is made available at repeated intervals to customers throughout the customer order journeys on our digital platforms. Information about tiered price increases is also set out in the footer of each online digital page across the various media types.
16. Our customer services advisors are also trained to inform both new and existing customers that their monthly charge will increase in April each year. In addition to the above, we also make available an online page explaining how relevant customers are impacted by tiered price increases.
17. On or around March each year we send written confirmation to our consumer customers reminding them about the tiered increase in prices which will take effect in April. Information is presented in a common way across all products meaning customers are receiving the same information in a format which is familiar to them regardless which product, or range of products they choose from Vodafone.
18. In relation to any other increases (variable pricing), our consumer and small business terms are clear, transparent and prominent on how variable charges may be changed. The amendments to the GCs effective from June 2022 give greater protection to consumers and small business customers who will be given a right to exit their contract without penalty if CPs make certain changes to the contract, including a change to the variable price. Any changes must be notified in writing advising customers what changes are being made, the date those changes are taking effect and informing them of their right to exit the contract without penalty. Variable pricing, by its very nature, is not prescribed and is based on business decisions at a particular time and may mean that customers may or may not receive any changes to their terms or variable pricing during their contract term.
19. The increase of pricing is not a decision that Vodafone takes lightly. However, considering the ever-increasing costs and investments we need to make in our network, rising costs of equipment and services from our suppliers and regulators' increases, we unfortunately have no alternative but to pass some of those costs onto our customers. We understand that in the current cost of living crisis that such price increases will mean additional financial pressures for our customers, and we agree that it is even more important than ever that they are presented with clear and prominent information about what their contract will cost them throughout its term. We consider that our current approach on marketing and advertising of our products and services is compliant with the Advertising Codes and provides customers the material information in a clear and transparent manner which does is not misleading.
20. We have set out our responses to the specific questions in this consultation and are keen to engage positively and constructively with the ASA on any proposed changes to guidance on how to present information about mid-contract price rises in ads for broadband and mobile services to ensure that we get the balance right both for consumers and CPs

Response to Consultation Questions

Q1. Do you agree with the guidance principles set out above?

In part. We agree that the existence or known possibility of a tiered price increase and the nature of that price increase constitutes material information that a consumer requires to make a transactional decision. This applies to information included as well as any information omitted within any marketing communication.

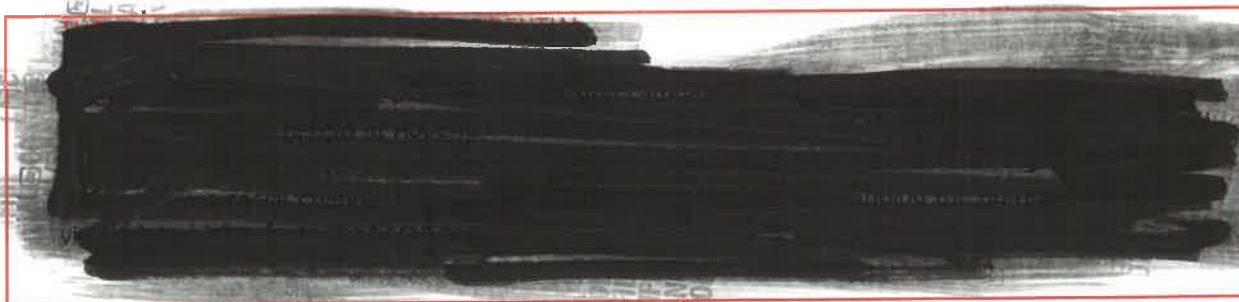
We agree that tiered price increases which customers are contractually obliged to pay should be presented in a clear, intelligible, unambiguous and timely manner so as not to mis-lead consumers but should not have the inadvertent effect of causing other material information to be less prominent.

However, we consider that the proposed guidance goes further than is necessary on both tiered and variable price increases.

We agree that adverts should include all key material information in a prominent, clear and transparent way to enable the customer to make an informed decision. However, there is a need to ensure that all material information is displayed in a way so as not to confuse the average consumer or inadvertently cause some of the key information to be less prominent due to the amount of information being shown to the consumer.

Vodafone ensures that all its adverts across all media types comply with the requirements of the Advertising Codes and relevant ASA adjudications and in accordance with all requirements imposed by the General Conditions and relevant laws. We make a clear distinction between the full contractual price that applies before any tiered increase and any introductory discounts that may apply.

In complying with the existing the Advertising Codes on 'qualification ladders', Vodafone's advertising already includes an asterisk immediately after the headline price of a contract linking to a qualification when that headline price is not a fixed price contract to establish immediate, adequate prominence. We consider that our existing approach provides the average consumer with all material information in a clear, transparent and prominent manner to enable them to make an informed transactional decision.



We do not agree with the guidance in relation to variable pricing. For reasons set out in more detail at Q2 below, we do not consider that variable pricing should be treated with the same level of prominence as tiered pricing.

Q2. Do you agree with taking the same approach to ads for both tiered and variable contracts, in terms of the level of prominence expected for information about mid-contract price increases?

No. We do not agree that CPs should take 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.

A tiered price increase is a term of the contract which prescribes the exact method by which prices will increase at a prescribed time each year. The tiered price increase is guaranteed to occur, and the level of prominence, transparency and clarity should therefore be greater than a variable price increase to enable the average consumer to make an informed choice prior to entering into a transactional decision.

In contrast, a variable price increase is one which may or may not happen at any stage of the contract term. In the event that a CP wants to make a change to a variable price there are existing regulations enforced by Ofcom (General Conditions C1.14-C1.20)² which require that CPs must give relevant customers at least one month's notice of any contractual modifications relating to a service or bundle of any elements thereof, that is provided to the customer, unless the proposed modification is exclusively to the benefit of the customer, is of a purely administrative nature and has no negative effect on the customer or is directly imposed by law. Notice must be given in a durable medium, in a clear and comprehensible manner so that the customer can understand the changes and the impact to them. CPs must inform the customer of their right to terminate their contract without paying a cancellation charge if the proposed modification and changes are not acceptable to them. Consumers will also be allowed to terminate any contracts forming part of a bundle with that contract.

Any decision to make changes to a variable price is not a decision that a CP makes lightly. The effect of which means that a CP is informing those consumers impacted by the change that they can terminate their contract, and any other contract forming part of the bundle with that contract, that they can terminate those contracts with the CP without charge. The CP is also required to remove any restrictions, free of charge, on the equipment purchased or obtained by the customer as part of the contract so that the customer can use that equipment on another CP's network.

It is usual practice within CP's mobile and broadband terms and conditions to include a term which allows for variation of the contract, such as a price increase. Where a CP's contract additionally allows for a tiered price increase such contracts will contain terms for both a tiered and a variable price increase. For those CPs the proposed guidance would mean that any advert would have to include the proposed wording in the headline and sub-heading for both tiered and variable pricing.

For Vodafone, and other CPs who have tiered pricing, the proposed guidance would mean that any advert for mobile and broadband would need to contain wording in the headline and sub-heading stating that '*price may rise during contract and monthly price will increase every April by the Consumer Price Index rate of inflation +3.9%*'. We are concerned that including both proposed statements with such prominence in the same advert would create confusion to the average consumer who may be unlikely to understand the nuances between '*monthly price*' and '*price*' in the context of the price increases.

In our view, this 'one-size-fits-all' approach for both tiered and variable pricing does not reduce complexity or make it easier for customers to understand what their contract will cost them throughout its term.

Further guidance, which is well intended, but requires an advert to contain complex messages in relation to price increases is likely to overwhelm the average consumer and may inadvertently contradict the requirements set out in consumer protection laws on transparency, fairness and clarity of message such as to unintentionally mislead consumers.

We agree that the example proposed wording that '*monthly price will increase every April by the Consumer Price Index rate of inflation +3.9%*' is material information and should be included in a prominent position to enable the customer to make an informed transactional decision prior to entering into a contract. We consider, in line with our existing approach on marketing and advertising, that it is sufficient for a clear asterisk to be used immediately after the headline price of a contract linking to a qualification included in

² [Unofficial consolidated version of the General Conditions of Entitlement \(as of 17 June 2022\) \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/gc22/gc22.pdf)

the footnote when the headline price is not a fixed price contract to establish immediate, adequate prominence.

We do not agree that such equal prominence should be given to wording '*that prices may rise during the contract*'. Prices may or may not rise during the term of the contract and in the event that they do rise it is our view that the customer has adequate protection based on the requirements set out within the General Conditions so as not to be impacted by such changes.

Q3. 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)?

We agree that whilst the average consumer may not previously have understood what initialisms like CPI and RPI referred to, or indeed understood inflation measures more widely than in the current economic climate we consider that the average consumer will have a greater understanding of the inflation measures and the impact of the changes in inflation.

We have put measures in place to assist with the average consumer's understanding of the rate of inflation used.

Where we are not restricted by space in our adverts, we will set out the initialism in full. However due to space constraints in some media types it is necessary to use initialisms. Within communications to our customers and the Contract Summaries the initialisms will be set out in full.

Q4. 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?

For the reasons set out in Q1 above we do not agree with the mitigating factors listed.

Q5. Do you agree that in instances where multiple offers/products appear on one page (for example, on a telecoms provider's own website), it may be sufficient for prices to link or refer to a suitably prominent single piece of information about mid-contract price increases, rather than including this information within each individual product listing?

Yes. We agree that in instances where multiple offers and products appear on one page, for example our own website, that it is sufficient for prices to link or refer to a suitably prominent single piece of information about tiered price increases, rather than including this information within each individual product listing.

In our view, to require each individual product listing to contain such information will create a poorer customer experience with an abundance of repeated information contained in one page which would inadvertently detract from other material information that a customer needs to know to enable them to make an informed transactional decision prior to purchase.

Q6. Do you have any other comments or suggestions in relation to the proposals?

It is our view that how we present and provide information to customers in our adverts and customer order journeys is clear, transparent and not misleading and enables customers to make an informed transactional decision prior to entering into a contract. We do not think it is necessary that further guidance on tiered or variable pricing is required. However, in the event that the ASA do not agree with our position we would

welcome the opportunity for discussion prior to any further guidance being issued. We would also want to ensure that any further guidance does not apply retrospectively to contracts already in place which have been advertised, sold and operated in accordance with all current advertising requirements, regulation and legislation.

Next steps

We are keen to liaise with the ASA on any proposed changes to the guidance and would welcome the opportunity for further discussion to ensure that we get balance right for both consumers and CPs.

Appendix One

Enforcement Notice: Mid-contract price increases to broadband products – June 2019



Enforcement Notice: Mid-contract price increases to broadband products

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](#).

Why are we contacting you?
In 2015 the ASA [found](#) that advertisers offering variable broadband contracts, where the monthly price of the contract could increase at any time throughout the contract period, should immediately qualify the monthly price of the contract with a qualification that makes sufficiently clear that prices could rise during the contract.

If the monthly price will, or may, change during the suggested contract length then a qualification is required, otherwise, an advertiser will be at risk of breaching [3.1, 3.3, 3.9 and 3.17 of the CAP Code](#).

Please take immediate action to ensure your advertising complies. If we see continued problems in this area after 1 July 2018 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 enforcement](#).

Scope
This guidance covers the presentation of pricing information in all of your marketing that falls within the remit of the [CAP](#) and [BCAP Code](#).

Guidance
If an advertiser offers a consumer the opportunity to pay a certain monthly price for a specific length of time "X for Y months" consumers will expect to pay the "X" amount for that "Y" period.

If the contract being offered is fixed with no price rises or decreases that is a suitable way of marketing your product.

If the contract being offered is a fixed contract, when the price rises occur and by how much should be made sufficiently clear.

If the price being paid per month is variable, a qualification directly after the price per month should make it clear that prices may rise.

The context and presentation of a marketing communication will always be taken into consideration when assessing whether an ad has breached the CAP Code. In order to make it sufficiently clear the qualification should be prominent for consumers. For further guidance read our Advertising Guidance on [Qualification Claims](#).

Appendix: Code rules

Relevant [CAP Code](#) rules:

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

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Legal, decent, honest and truthful



Legal, decent, honest and truthful



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.

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

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

Want more?

For guidance on whether your specific advertising approach is likely to comply with the CAP Code you can use the [Eye Color Advice Service](#).