

Guidance on advertising delayed payment services

Advertising Guidance
(broadcast and non-broadcast)

Foreword

The Committee of Advertising Practice (CAP) offers guidance on the interpretation of the UK Code of Advertising (the CAP Code) in relation to non-broadcast marketing communications.

The Broadcast Committee of Advertising Practice (BCAP) offers guidance on the interpretation of the UK Code of Broadcast Advertising (the BCAP Code) in relation to broadcast marketing communications.

Advertising Guidance is intended to guide advertisers, agencies and media owners how to interpret the Codes but is not a substitute for those Codes. Advertising Guidance reflects CAP's and/or BCAP's intended effect of the Codes but neither constitutes new rules nor binds the ASA Councils in the event of a complaint about an advertisement that follows it.

For pre-publication advice on specific non-broadcast advertisements, consult the CAP Copy Advice team by telephone on 020 7492 2100 or you can log a written enquiry via our [online request form](#).

For advice on specific radio advertisements, consult [Radiocentre](#), and for TV advertisements, [Clearcast](#).

For the full list of Advertising Guidance, please [visit our website](#).

Background

This guidance is about marketing communications for delayed payment services (also known as buy-now-pay-later); payment services increasingly available to customers at the 'checkout' of online retailers. The guidance specifically relates to advertising for those services that are not regulated by the Financial Conduct Authority (FCA). The FCA's ["Dear CEO"](#) letter dated 19 August 2022 provides information on its regulation of buy-now-pay-later services, and His Majesty's Treasury are consulting on draft legislation to bring currently exempt buy-now-pay-later products within the scope of the FCA's regulation.

Delayed payment services enable the payment for goods or services to be deferred for short periods of time. The services covered by this guidance have the following characteristics:

- Charge no interest (although may have late payment charges)
- Allow consumers to defer payment for goods from a merchant by:
 - Charging the full amount after a set period (e.g. 30 days); and/or
 - Charging partial amounts in no more than 12 instalments e.g. on a weekly or monthly basis (with or without a monthly payment).
- Integrated into the checkout process in online shops, which typically form a marketing communication subject to regulation under the CAP Code

Given the potential for overlapping regulation on advertising for currently exempt services, the ASA and CAP will work with the FCA, where necessary, to determine, on a case-by-case basis, whether specific marketing communications for delayed payment services fall within the scope of the FCA's regulation.

The guidance is intended to prevent marketing communications for delayed payment services from misleading their audience. In particular, it advises marketers on how to ensure that consumers understand the service being offered, most notably that it comprises a form of credit, so they are not misled. The guidance is relevant to providers of the delayed payment service itself, as well as merchants incorporating these services into their online checkout.

The guidance does not cover other marketing issues, such as social responsibility or offence.

BCAP Code rules

- 3.1 Advertisements must not materially mislead or be likely to do so.
- 3.2 Advertisements must not omit material information or information required to be included by law. This includes providing such information in a way that is unclear or untimely, or in a way that the consumer is unlikely to see or hear it.
- 3.3 Regard will be had to any limitations (e.g. as to time or space) resulting from the means of communication used and steps taken by the marketer to overcome these by providing the information by other means. “Material information” is information that the average consumer needs to take an informed transactional decision (as defined in Appendix 3). For advertisements that quote prices for advertised products, omitting material information [for the purposes of rule 3.2] includes omitting any of the following information, unless it is already apparent from the context:
 - 3.3.1 the main characteristics of the product or service
- 3.10 Advertisements must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.
- 3.11 Qualifications must not mislead by not being presented clearly.

CAP Code rules

- 3.1 Marketing communications must not materially mislead or be likely to do so.
- 3.3 Marketing communications must not omit material information or information required to be included by law. This includes providing such information in a way that is unclear or untimely, or in a way that the consumer is unlikely to see or hear it.
- 3.4 Regard will be had to any limitations (e.g. as to time or space) resulting from the means of communication used and steps taken by the marketer to overcome these by providing the information by other means. “Material information” is information that the average consumer needs to take an informed transactional decision (as defined in Appendix 1). For marketing communications that quote prices for advertised products, omitting

material information [for the purposes of rule 3.3] includes omitting any of the following information, unless it is already apparent from the context:

- 3.4.1 the main characteristics of the product
- 3.9 Marketing communications must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.
- 3.10 Qualifications must not mislead by not being presented clearly.
- 14.1 Offers of financial products must be set out in a way that allows them to be understood easily by the audience being addressed. Marketers must ensure that they do not take advantage of consumers' inexperience or credulity.
- 14.2 Marketing communications should state the nature of the contract being offered, any limitation, expense, penalty or charge and the terms of withdrawal. Alternatively, if a marketing communication is short or general in its content, free material explaining the offer must be made readily available to consumers before a binding contract is entered into.

Guidance

Marketing communications for delayed payment services, subject to the Advertising Codes, may broadly be split into the following two categories:

- General advertising for the service and the places in which it can be used, which may feature in/on media such as:
 - TV spots
 - Print ads
 - Social media (own channels and influencer marketing)
 - Online display

- Offering the service at checkout on an online retailer's site

Some of the guidance presented here is relevant to all types of marketing communications, but some is mainly relevant to the information made available at the point of online checkout. Although this guidance should be considered as a whole, it has been organised according to these categories to aid interpretation.

As an overarching principle, prior to deciding to use the delayed payment service, consumers should have sufficient information to understand what the service is, how they are expected to settle their balance, and what penalties or fees they may be subject to. Any significant conditions (which includes any onerous or unusual terms) should be adequately prominent.

Advice relevant to all forms of marketing communication

Making clear that delayed payments are a form of credit

Although delayed payment services are, in themselves, not a new form of payment or credit, the easy accessibility brought through integration into online checkouts and popularity with younger consumers means that prospective customers may be less aware that deferring payment using these services is a type of debt. As such, they may be less likely to appreciate fully the possibilities of late payment fees and, potentially, referral to debt collection agencies and any subsequent impact on credit scores.

CAP and BCAP consider that, for delayed payment services, the nature of the service as a form of credit is material information likely to affect a consumer's decision to use the product. As such, advertisers should take care to ensure that marketing for such products makes clear that they are a form of credit and does not state or imply that they are not.

Consequences on credit scores and future payments

CAP and BCAP understand that delayed payment services often only use a 'soft' credit check that does not impact credit score or form part of a consumer's credit report, as opposed to 'hard' credit checks, which may lower credit scores. It is also understood that some delayed payment providers also have a policy of not referring late or missed payments to credit reference agencies, therefore not having a direct impact on credit scores. On this basis, some providers might want to claim through marketing communications that their services will not have an effect on users' credit scores or are otherwise low-risk.

However, CAP and BCAP note that credit scores are complex and calculated differently by various financial institutions and that, in some cases, it can be possible for the use of certain types of credit to affect a consumer's ability to access further credit. As such, unless a provider can demonstrate that use of the product will never affect a consumer's credit score or ability to access further credit, they should not claim that their services will

have no consequences or impacts on credit score.

Moreover, although some delayed payment service providers may not report late or missed payments to credit reference agencies, they may pass the debt on to a debt collector or buyer, who will pursue the debt. Where this is the policy of the lender, marketers should not claim or imply that there are no consequences for missing payments.

For the avoidance of doubt, advertisers may explain that the 'soft' credit check may not appear on credit reports or affect credit scores.

Suitability

Like all forms of credit, delayed payment services may not be appropriate for all consumers, particularly those with a history of difficulty in managing their finances. As such, marketing communications for such services should not imply that they are suitable for all customers or a risk-free way of obtaining credit.

'Free' claims

For the purposes of the Codes and rules 3.3 (BCAP) and 3.4 (CAP), covering marketing communications that quote prices for advertised products, 'free' claims are considered to be price statements. As such, where advertisers describe delayed payment services as free, those rules apply in full, and it must be clear to consumers whether any subsequent fees (such as for late payment) are chargeable. Depending on the nature of any charges and the way in which they are levied, qualifications may be acceptable in a footnote or similar. However, such qualifications might have the effect of contradicting the free claim, potentially breaching rules 3.9 (CAP) and 3.10 (BCAP), covering claims that require qualification. It is recommended that marketers treat with caution the use of 'free' claims for a product that may have associated fees under some circumstances.

Terms and conditions

The CAP Code requires that ads for financial products state "the nature of the contract being offered, any limitation, expense, penalty or charge and the terms of withdrawal," (rule 14.2, Financial Products) except where ads are very brief or general in scope, in which case this information should be freely available prior to using the service. CAP would therefore expect all non-broadcast marketing that is brief or general in scope to include a link to comprehensive online information (including terms and conditions). Ads referring to specific products (including where the service is offered during checkout) must

include the above required information in the ad itself.

Broadcast advertisers should note that, although the BCAP Code does not contain an equivalent rule to CAP 14.2, in practice the section 3 rules relating to material information required for an informed decision are very likely to be interpreted in a manner consistent with the non-broadcast requirements.

Advice relating to product information during online checkout

Nature of payment option

Where delayed payment services are provided at checkout, their nature should be explicitly clear to customers and (where relevant) obvious that standard forms of payment are available. This is particularly important where the delayed payment service option is presented primarily in the form of a card detail entry form, since it may not be immediately obvious to a consumer that this is anything other than a means of paying by card.

Significant conditions

Prior to deciding to use a delayed payment service, customers must have access to the full terms and conditions of the service, including any arrangements or consequences for late or missed payments, which should be easy to locate. In practice, this is likely to mean that a link should be placed in the section of the checkout process that offers the service. Any particularly significant conditions or qualifications, including fees, penalties, and payment schedules (see above advice on 'terms and conditions') should be made clear as part of the checkout process, not just through a link to terms.

Further information

The following CAP and/or BCAP guidance may be relevant to advertisers of delayed payment services:

[Guidance on claims that require qualification](#)

[Guidance on the use of 'free' claims in advertising](#)

[Guidance on superimposed text](#)

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