

SECTION 3: MISLEADING

Question 3: Do you agree that rule 3.10 (qualifications must be clear to consumers who see or hear the marketing communication only once) should be included in the Code? If your answer is no, please explain why.

<p><i>Responses received in favour of CAP's proposal from:</i></p> <p>British Telecom; Independent Healthcare Advisory Services; Redcats Brands</p>	<p><i>Summaries of significant points:</i></p> <p>The respondents listed in the left hand column agreed with CAP's proposal.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>CAP welcomes the respondents' comments.</p>
<p><i>Responses received against CAP's proposal:</i></p> <p>Bond Pearce; BSkyB An organisation requesting confidentiality</p>	<p><i>Summaries of significant points:</i></p> <p>The rule unreasonably requires advertisements to include all terms and conditions in the initial ad</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>That was not the intention of the rule. CAP acknowledges that detailed terms and conditions may be supplied in follow-up material. The rule is intended to be read in conjunction with 3.9, which states that important limitations and qualifications are made clear in marketing communications. Rule 3.10 means that those limitations and qualifications that are so significant that they need to be given in the initial ad must be presented in a way that allows consumers to understand them even if they see that advertisement only once.</p> <p>CAP has re-worded the rules to clarify this:</p>

		<p><i>3.9 Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.</i></p> <p><i>3.10 Qualifications must be presented clearly.</i></p>
Alliance Boots; Sainsbury's; Tesco	The rule gold-plates the requirements of the CPRs	The CPRs state that it is misleading to omit, hide or present in an unclear, unintelligible, ambiguous or untimely manner material information that is likely to cause the average consumer to take a transactional decision he would not otherwise have taken (section 6). Requiring information to be presented in such a way that it is clear to consumers on their initial exposure to the advertisement is, in CAP's view, consistent with the CPRs.
BSkyB	We agree with the principle of the rule, provided that consumers can be assumed to pay reasonable attention to the marketing communication, including the qualifying information	Throughout the Code, consumers are assumed to be reasonably well-informed, observant and circumspect, unless the practice is likely to specifically and foreseeably affect only vulnerable groups. This follows from the CPRs and is set out in Annex 1 to the Codes.
<p>Question 4: Do you agree that rule 3.11 (exaggerating the capability or performance of a product) should be included in the Code? If your answer is no, please explain why.</p>		

<p><i>Responses received in favour of CAP's proposal from:</i></p> <p>Independent Healthcare Advisory Services; Redcats Brands; An organisation requesting confidentiality</p>	<p><i>Summaries of significant points:</i></p> <p>The respondents listed in the left hand column agreed with CAP's proposal.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>CAP welcomes the respondents' comments.</p>
<p><i>Responses received against CAP's proposal:</i></p> <p>Tesco Sainsbury's Alliance Boots</p>	<p><i>Summaries of significant points:</i></p> <p>"The 'average consumer' should be assessed as a person who is reasonably circumspect and observant. Therefore in our view this clause, requiring adverts not to exaggerate performance, would appear to go beyond what is required by the law."</p> <p>"This is an attempt to reinterpret rules unnecessarily. It should be possible to explain that the advertisement does not refer to normal use."</p> <p>"This seems to stretch the rules further than is necessary and appears to gold plate the CPR requirements"</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>The CPRs establish that it is a misleading action to give false information or by overall presentation deceive or be likely to deceive the average consumer about the main characteristics of the product, including "results to be expected from use of the product", "usage of the product" or "fitness for purpose of the product", if that false information or deceptive presentation is likely to cause consumers to take transactional decisions that they would not otherwise have taken.</p> <p>To acknowledge that the purpose of the rule is to prevent consumers from being misled, rather than to prevent obviously fantastical advertising or puffery, CAP has amended the wording:</p> <p><i>Marketing communications must not <u>mislead</u></i></p>

		<i>consumers by exaggerating the capability or performance of a product.</i>
Sainsbury's	The rule conflicts with 3.2, which states that obvious exaggerations are allowed	<p>The Code seeks to draw a distinction between those exaggerations that are unlikely to mislead consumers, permitted by rule 3.2, and those that are likely to mislead them. CAP has amended the wording to make this clear:</p> <p><i>Marketing communications must not <u>mislead consumers by exaggerating the capability or performance of a product.</u></i></p>
British Telecommunications plc	"If (and it is by no means clear) "normal use" were to be interpreted as "standard/ average performance" (in itself a difficult concept), this may be taken to preclude advertising based on the possibility of superior performance. We consider such advertising to be entirely legitimate, provided it is of course suitably qualified (as currently permitted by CAP and ASA)."	<p>CAP agrees that the Code should not prevent marketers from referring to maximum possible performance, even if that is available only to some consumers. Indeed, custom and practice allow for "up to" claims, provided they do not mislead consumers. CAP also notes that some products offer features that the majority of consumers may disregard, but considers that marketers should be permitted to advertise such advanced features.</p> <p>CAP has deleted "claims must be based on normal use" and will rely instead on the revised rule:</p> <p><i>Marketing communications must not <u>mislead consumers by exaggerating the capability or performance of a product.</u></i></p>

Question 5: Given CAP's policy consideration, do you agree with the revisions made to rule 3.28.3 (restrictions on the availability of products)? If your answer is no, please explain why.

<p><i>Responses received in favour of CAP's proposal from:</i></p> <p>Independent Healthcare Advisory Services; Redcats Brands; An organisation requesting confidentiality</p>	<p><i>Summaries of significant points:</i></p> <p>The respondents listed in the left hand column agreed with CAP's proposal.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>CAP welcomes the respondents' comments.</p>
<p><i>Responses received against CAP's proposal:</i></p> <p>British Telecom; Tesco; Sainsbury's</p>	<p><i>Summaries of significant points:</i></p> <p>The rule unreasonably requires marketers to give an exhaustive list of restrictions in marketing communications; it should not be necessary to state restrictions that are well-known or those that are enforced primarily as the point of sale (for example, the over-18 restriction on alcohol sales). Giving an exhaustive list would be impractical in marketing communications that promote several different products.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>The intention of the rule was not to require advertisers to state restrictions that are likely to be obvious to consumers, such as the over-18 restriction on alcohol sales. The intention is that marketing communications must state those restrictions that are not obvious from the context and that are likely to affect consumers' decisions: for example, the non-availability of insurance products in Northern Ireland or the restriction of a promotional offer to over-16s.</p> <p>CAP has amended the rule to</p>

		<i>Marketing communications must <u>not mislead consumers by omitting</u> restrictions on the availability of products, for example, geographical restrictions or age limits.</i>
Question 6: Given CAP's policy consideration, do you agree that rule 3.45 (documentary evidence of testimonials) should be amended to require documentary evidence and contact details only? If your answer is no, please explain why.		
<i>Responses received in favour of CAP's proposal from:</i> Independent Healthcare Advisory Services; Office of Fair Trading; An organisation requesting confidentiality	<i>Summaries of significant points:</i> The respondents listed in the left hand column agreed with CAP's proposal.	<i>CAP's evaluation of those points and action points:</i> CAP welcomes the respondents' comments.
<i>Responses received against CAP's proposal:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>

Office of Fair Trading	Code should also state that courts may, under the CPRs, require evidence to support a testimonial	CAP considers that the purpose of the Code is to set out the standards to which the ASA will hold marketers, not to set out the legal powers that the courts may invoke under legislation, outside the scope of the CAP/ASA system.
Redcats	Would like clarification as to whether it remains acceptable for the marketer to conceal the identity of those giving the testimonial (for example, by referring to them as "Mrs P" or "customer from London") in the marketing communication.	The rule does not require the marketer to give the identity of the person giving the testimonial in the marketing communication, merely to hold documentary evidence to prove that the testimonial is genuine, if challenged.
Question 7: Given CAP's policy consideration, do you agree that rule 17.2 (additional rights provided by a guarantee) should be deleted from the Code? If your answer is no, please explain why.		
<i>Responses received in favour of CAP's proposal from:</i> Alliance Boots; British Telecom; Redcats Brands; An organisation requesting confidentiality	<i>Summaries of significant points:</i> The respondents listed in the left hand column agreed with CAP's proposal.	<i>CAP's evaluation of those points and action points:</i> CAP welcomes the respondents' comments.
<i>Responses received against CAP's proposal:</i> None	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>

Question 8: Given CAP's policy consideration, do you agree that marketing communications should not describe items as "free" if the consumer has to pay for packaging? If your answer is no, please explain why.		
<p><i>Responses received in favour of CAP's proposal from:</i></p> <p>Office of Fair Trading; PhonepayPlus; Redcats; An organisation requesting confidentiality</p>	<p><i>Summaries of significant points:</i></p> <p>The respondents listed in the left hand column agreed with CAP's proposal.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>CAP welcomes the respondents' comments.</p>
<p>BSkyB</p>	<p>The rule might be amended to clarify that packaging costs may be payable on items that are paid for as a condition of obtaining the "free" item</p>	<p>CAP has amended the rules to make that clear:</p> <p><i>Marketing communications must not describe items as "free" if [...]</i></p> <p><i>The consumer has to pay packing, packaging, handling or administration charges <u>for the "free" product</u></i></p>
<p><i>Responses received against CAP's proposal:</i></p> <p>Alliance Boots</p>	<p><i>Summaries of significant points:</i></p> <p>Believes the rule goes beyond the requirements of the CPRs and may ban legal promotions</p>	<p>The rules are in line with recent Guidance from the European Commission on the interpretation of the Unfair Commercial Practices Directive (the Directive on which the CPRs are based).</p>
<p>Sainsbury's</p>	<p>Packaging should be regarded as a reasonable charge</p>	

British Telecom	The Code should allow marketers to charge the uninflated cost of packaging.	CAP and ASA will take account of any UK or European rulings on the use of “free”
Question 9: i) Taking into account CAP’s general policy objectives, do you agree that CAP’s rules on misleading are necessary and easily understandable? If your answer is no, please explain why. ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration? iii) Do you have other comments on this section?		
<i>Responses received from:</i>	<i>Summaries of significant points:</i>	<i>CAP’s evaluation of those points and action points:</i>
Rule 3.1		
Independent Healthcare Advisory Services	Guidance is required as to what constitutes misleading marketing	CAP routinely publishes guidance on the application of the rule to specific sectors or marketing practices.
Internal respondents	Rule should include the phrase “likely to mislead”	The draft followed the structure of the CPRs, which prohibits “misleading” practices and defines “misleading” as including practices that are “likely to” deceive consumers or cause them to take transactional decisions they would not otherwise have taken. CAP considers, however, that the inclusion of “likely to mislead” is helpful because it clarifies that practices may be deemed to be misleading even before evidence is available that consumers’ interests have in fact been harmed.

		<p>The has revised the rule to: <i>Marketing communications must not materially mislead or be likely to do so.</i></p>
Tesco	One complaint is unlikely to be sufficient under the CPRs to demonstrate that a marketing communication is misleading.	<p>On the contrary, the OFT's Guidance on the CPRs states that "[...] there is no requirement to show evidence of actual consumers being affected by an unfair commercial practice". CAP considers that, in some cases, one complaint can raise concerns that a marketing communication is likely to mislead, for example, if a technically-qualified complainant realises that claims are untrue, where other consumers are unlikely to have the specialist knowledge to determine that.</p>
Office of Fair Trading	"It might be helpful if rule 3.1 clarified 'materially mislead' to make it clear that this includes the giving of false or deceptive information, and – even if all of the information given is factually correct – creating a misleading impression through the overall manner of presentation of the marketing communication concerned."	<p>CAP considers that that is established by the statement, in the introduction to the misleading section that <i>"The ASA will take into account the impression created by marketing communications as well as specific claims"</i>.</p>
Sainsbury's	Taking into account the 'impression' on consumers instead of assessing whether it would lead the average consumer to take a transactional decision he would not otherwise have taken" amounts to gold-plating the CPRs.	<p>The definition of misleading action in the CPRs involves both concepts (overall impression and transactional decision):</p> <p><i>A commercial practice is a misleading action if it [...] (a) contains false information and is therefore untruthful [...] or if it or its overall presentation in any way deceives or is likely to deceive the</i></p>

		<p><i>average consumer [...] even if the information is factually correct; and (b) it causes or is likely to cause the average consumer to take a transaction decision he would not have taken otherwise.</i></p> <p>CAP therefore considers that taking the overall impression that a marketing communication leaves on consumers into account is justified.</p>
Tesco	<p>Our overall comment is that this section of the Code should be drafted with explicit reference to the terminology, concepts and definitions used in the Consumer Protection Regulations including 'average consumer', 'transactional decision' and, for the purpose of this section 'product'. Further, any 'likely effect' on consumers as stated in the principles section should be determined by reference to the 'likely effect on the average consumer taking or deciding not to take a transactional decision' or to pursue a particular course of conduct.</p>	<p>CAP has included these important definitions in Annex 1 of the Code. It has not incorporated these into the rules themselves because the scope of the rules is wider than that of the CPRs. It would be inappropriate to refer to the concept of transactional decisions, for example, in relation to marketing communications for ideas and causes. That is why the introduction to the "misleading" section states that the ASA will take the CPRs into account and refers readers to Appendix 1 for further information.</p>
Rule 3.2		
OFT	<p>The wording of rule 3.2 does not appear to us to accurately reflect the provisions of the CPRs in relation to 'puffery'. The exclusion for 'puffery' provided by the CPRs appears as part of the vulnerable consumer provisions (sections 2.5 and 2.6 of the Regulations). It is used to set a limit on the extent to which consumers should be considered to be vulnerable in relation to claims</p>	<p>An obvious exaggeration or claim that the consumer is unlikely to take literally will not mislead the average consumer, or the average member of a targeted group, <u>because</u> they will not take it literally or make transactional decisions on the basis of it; the only way such a claim could be deemed misleading would be because of a potential effect on vulnerable (credulous)</p>

	that are clearly not intended to be taken literally. The use, in the proposed code text, of specifically permissive language defining what is 'allowed', and the adoption of an 'across the board' exclusion for 'puffery' is not in our view helpful. It might therefore be preferable to simply include a qualification to rule 3.1 to the effect that marketers' claims that are clearly not intended to be taken literally would, in general, not be considered misleading. The test is whether consumers are likely to be misled in any material way.	consumers, but those consumers are explicitly exempted, as the OFT notes. (i.e. the rule incorporates the idea that the claim is not in fact misleading through the use of "obvious", "unlikely to take literally" and "do not affect the accuracy or perception of the marketing communication in a material way"). The rule therefore seems consistent with the provisions of the CPRs.
Rule 3.3		
OFT	Rule 3.3 might more accurately reflect the idea of transactional decision if it used the phrase "information that the consumer needs in order to make informed decisions in relation to a product ", rather than the current formulation "information.....decisions about whether or how to buy a product ".	CAP has amended the wording as proposed: <i>"material information in information that the consumer needs to make informed decisions <u>in relation to a product</u>"</i>
Rule 3.4		
Tesco	It should only be a breach of the Codes to omit information in such a way that the consumer is misled by not having it.	CAP agrees: 3.4 merely sets out the information that may be considered material for the purposes of 3.3, and 3.3 states that an omission breaches the Code only when the consumer is misled.
Tesco	<i>3.4.2 should require a statement of geographical address only if that is not apparent from the context</i>	<i>3.3 states that context must be taken into account in decisions as to whether an omission is misleading.</i>
British Telecom	We are strongly in favour of deleting the new rule	Rule 3.4.6 corresponds to 6(4) of the CPRs: the

	<p>3.4.6 (i.e. requirement to include applicable cancellation rights in marketing communications that quote a price – added since last Code review).</p> <p>We can see no justification for such a requirement. There is already a general law requirement to provide information regarding cancellation rights before a consumer enters into a contract and to provide confirmation of that information in writing. To require inclusion of those rights in all marketing information amounts to the imposition of a new substantive requirement which goes beyond current UK and EU law. Moreover, on a practical note, cancellation requirements do not apply in all instances and this would have to be clarified in every communication.</p> <p>We have been advised by the CAP Copy Advice team that cancellation rights need only be included if omission is likely to affect the consumer's decision to purchase, and are, therefore, not required where there is a clear order journey where this additional information is explained. We believe this is a reasonable approach.</p>	<p>right to withdraw or cancel appears at paragraph (g).</p> <p>CAP considers, however, that 3.4 must be read in conjunction with 3.3 and therefore that omission of a reference to withdrawal or cancellation rights will breach the Code only if the omission is likely to mislead consumers by affecting their transactional decisions.</p>
Rule 3.5		
OFT	<p>3.5 could perhaps be clarified by more precise drafting. For example, it could be redrafted to say that marketing communications must make clear the identity of the marketer where required to do so by law, and must not omit this information if such omission is likely to mislead consumers</p>	<p>CAP considers that the Code correctly urges marketers to seek legal advice to ensure they identify themselves when required to do so by law; CAP does not intend for the ASA to determine whether the law requires identification and therefore that the proposed addition would go</p>

		beyond the proper remit of the ASA.
Rule 3.7		
British Telecom	<p>Although it does not appear to be of particular significance, we are surprised by the change to the substantiation rule, i.e. “must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation” (old 3.1) being amended to “must hold documentary evidence to prove claims that consumers are likely to regard as objective” (new 3.7). That is, the new rule implies that the measure of objectivity is subjective. It may be more appropriate here to replace “are likely to” with “can reasonably”.</p>	<p>CAP considers that some claims are <u>capable</u> of objective substantiation but, if consumers do not regard them as objective, need not be substantiated (for example, the sort of obvious exaggerations or non-literal claims allowed as puffery). Consumers are always assumed to be reasonable, so the suggested amendment is unnecessary. However, there are some claims that consumers are likely to regard as objective but are nonetheless incapable of objective substantiation (for example, the recently-investigated claims about the likelihood of the existence of God). CAP has therefore amended the rule to:</p> <p>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 <u>and that are capable of objective substantiation</u>.</p>
Tesco	<p>Whilst we accept there is a requirement that documentary evidence be held to prove claims, it is contrary to prevailing legal standards that the ASA does not have to make a case against which the advertiser is entitled to defend itself. This is unduly burdensome, does not accord with the enforcement systems embedded in the applicable legislation and simply cannot be supported</p>	<p>CAP considers that it is a fundamental principle of the CAP/ASA system that marketers are required to prove the truth of their claims and that the ASA may regard them as misleading in the absence of evidence.</p>

Rule 3.17		
Tesco	The requirement that price statements must not mislead by undue emphasis is unclear and is a prime example of the Codes going well beyond the requirements of law in the Consumer Protection Regulations.	CAP notes that, under the CPRs, traders are deemed to mislead consumers if the overall presentation deceives or is likely to deceive the average consumer, even if the information is factually correct, with respect to number of factors including price (CPRs sections (5(2) and 5(4)(g)). It therefore considers that the rule is consistent with the CPRs.
Rule 3.24		
OFT	This rule may need to be revised in light of legal decisions on the meaning of article 20 of the UCPD	CAP acknowledges that the rule needs to remain in line with the UCPD and will amend it, if necessary, in light of court decisions.
Bond Pearce	The rule should explicitly refer to Buy One Get One Free and introductory offers	CAP considers that, in the absence of a definitive legal position, it is best not to refer to such terms in the Code and proposes to maintain its present practice of giving advice on specific types of “free” claim in Guidance, not the Code itself.
British Telecom	Rule 3.25 conflicts with CAP’s Guidance on “free” claims, which makes clear that an element of a package may be described as free if it has been recently added to the package.	CAP has amended the rule to make that clear: Marketers must not describe an element of a package as “free” if that element is included in the package price <u>unless consumers are likely to regard it as an additional benefit because it has recently been added to the package without increasing its price.</u>
BSkyB	The rule could be re-ordered to emphasise its consistency with the present UK interpretation of	CAP proposes to amend the wording to

	the CPRs	<p>Marketing communications must not describe items as “free” if:</p> <p>[...]</p> <p>Cost of response, including the price of any product that the consumer must by to take advantage of the offer, has been inflated.</p>
Sainsbury	The rule gold-plates the CPRs	<p>The Code repeats the wording of the CPRs and adds further rules that are intended, not to further restrict claims, but to clarify CAP /ASA;s interpretation of the general principle. The respondent does not explain the scenario in which they believe the Code would prohibit something that would be allowed under the CPRs.</p>
Rule 3.28		
Alliance Boots	The rule gold-plates the CPRs	<p>The rule corresponds to the practice identified in Schedule 1 to the CPRs as always unfair:</p> <p>“Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered”. CAP has highlighted three situations in which marketers may wish to promote products,</p>

		despite the existence of such reasonable grounds to believe they may be unable to supply the products: CAP maintains its view that the situations highlighted (estimated demand exceeds supply; the marketer wishes to assess demand and does not intend to fulfil orders; and the offer is subject to geographic or age restrictions) constitute reasonable grounds for believing that the product may not be supplied for a reasonable period or in reasonable quantities.
Tesco	The rule should refer to the scale of advertising, the product and the price	CAP has amended the rule to state:
Sainsbury's	The rule should apply only to invitations to purchase, as defined in the CPRs	Marketing communications that quote a price for a featured product must state any reasonable grounds the marketer has for believing that it might not be able to supply the advertised (or an equivalent) product at the advertised price within a reasonable period and in reasonable quantities.
Rule 3.35		
CMS Cameron McKenna	The rule should be interpreted in such a way that the ASA may determine whether a marketer has verified a comparative claim, if the information that verifies the claim is too complex or technical for consumers to understand or is commercially confidential	The ASA does interpret the rule in that way. CAP considers that it is not necessary to include that interpretation in the rule itself.
An organisation requesting confidentiality	Comparisons that do not relate to price need not state the basis of the comparison	CAP considers that comparisons with competitor products, whether of price or other attributes, are likely to mislead consumers and injure the featured competitor if they do not make clear the

		basis of the comparison.
Rule 3.39		
British Telecom	Welcomes principle; considers that rule might helpfully cross-refer to the Help Note on Price Claims in Telecommunications	Several Help Notes expand on the application of the rule to different product categories; CAP considers that it is not helpful to list all of them, and has chosen to cross-refer only to those that apply to all product categories.
Sainsbury's	Considers that this should be Guidance, not a rule	CAP considers that including this in a rule gives marketers clarity about the way the ASA is likely to assess comparative claims.
Animals		
Royal Society for the Prevention of Cruelty to Animals	We would like guidance, to cover: identifying seller as private or trader; pet vending licence; minimum age at which mammals may be sold, licence requirements for dangerous animals; inc breeds of illegal dogs; use of "pedigree"; country of origin of imported dogs; certification required for dogs with docked tails.	CAP considers that such detailed rules are not necessary. In practice, the general rules mean that advertisements should not mislead consumers or promote illegal sales, which address the concerns raised.
Comparative advertising principle		
Internal	Not clear what is meant by "subjective superiority claims such as "the best" are unlikely to be justified"	<p>The sentence adds little to the principle: the previous text on unqualified superiority claims, puffery and objective claims are adequate to establish the relevant principles. CAP has deleted the sentence and the principle now states:</p> <p>The ASA will consider unqualified superlative claims as comparative claims against all</p>

		competing products. Superiority claims must be supported by evidence unless they are obvious puffery (that is, claims that consumers are unlikely to take literally). Objective superiority claims must make clear the aspect of the product or the marketer's performance that is claimed to be superior.
Relationship between Consumer Protection from Unfair Trading Regulations and the CAP Code		
Alliance Boots; Home Retail Group; Sainsbury's	The Codes need not duplicate the law	CAP considers that the Code should reflect the most relevant legal provisions. The ASA investigations process provides an alternative to legal action. From society's point of view, this is advantageous because it allows consumers to pursue their concerns without the tax payer paying the prohibitive cost of mounting legal challenges and means that complaints are resolved more quickly; from marketers' point of view, it provides a cost-effective alternative to pursuing or defending legal challenges and promotes the resolution of complaints through simple changes to advertisements, rather than punitive measures. The inclusion of relevant legal requirements simplifies the compliance process for those marketers who do not employ full-time legal advisors.
Home Retail Group	Regulations now exist (the Consumer Protection from Unfair Trading Regulations, or CPRS, implementing the UCPD) extending the reach of the legislative framework to cover areas that traditionally were only covered in the code. The	CAP considers that the previous legislative framework (Control of Misleading Advertisements Regulations) similarly covered areas that are also covered by the Codes, and that the introduction of the CPRs does not extend the reach of legislation

	continuing existence of the code in these areas has to be questioned.	into areas previously covered only by the Codes, as the respondent contends.
Home Retail Group	We feel very strongly about this as there are already examples where a matter has been assessed as being compliant with the CPRs (e.g. by a Home Authority TSO) but upheld as a breach of the code.	This is primarily a question of ASA investigations processes: the ASA has asked the respondent for examples and will consider the problem in the context of its Process Review.
Office of Fair Trading	The Compliance section should refer to the CPRs.	The Compliance section is a guide to the self-regulatory system and the principles under which it operates: it is not a guide to the law and CAP believes it would unhelpful for the Code to cite just one of the many pieces of legislation that might apply to marketing (although CAP acknowledges that the CPRs are, in most cases, very significant regulations; nonetheless, other legislation may, depending on the circumstances, have equal relevance)
Office of Fair Trading	Appendix 1 should summarise the BPRs as well as the CPRs	CAP agrees that Appendix 1 should have a similar summary of the BPRs and has included one.
Office of Fair Trading	The CPRs should be cited in the principle of every section to which they might be relevant	CAP considers that the addition would not be helpful. The principle is intended to draw the reader's attention to significant legislation that may apply, in addition to the Code, to advertisements subject to that section. They are not intended as comprehensive guides to the law that may apply. Adding the CPRs to the principles of other sections will give the

		misleading impression that the principles seek to provide a comprehensive guide to the legal framework.
Sainsbury's; Tesco	The Code must be regarded as guidance to compliance with the law, not as the only means to compliance with the CPRs	CAP agrees: it never intended the Code to be seen as the only route to compliance with the CPRs. The Code does not have legal force and is not an extension of the law.
Home Retail Group	Non compliance [with the Code] cannot be treated as matter that is contrary to the legislative framework, until due legal process has applied.	
Alliance Boots	It is our view that the Codes should not be used as regulatory documents, which they are often referred to as, but as guidance as to how the compliance objective of not misleading customers can be achieved ... If there is a need for that detail it is in order to assist and inform how compliance can be achieved, it should not be regarded as the only way of delivering that compliance as it so often is.	CAP does not regard the Code as the only route to compliance with the law, although it is the only route to compliance with the ASA's self-regulatory regime.
Office of Fair Trading	The Pricing Principle should state that sector-specific legislation may also apply	CAP does not intend for the principles to be an exhaustive statement of the legislation that may apply; it is intended to set out the overriding principle that the ASA will take into account when it adjudicates under rules in the relevant section.
Office of Fair Trading	We would agree that rule 3.45, as amended, seems appropriate. We would make the comment, in addition, that the Code could usefully also make some reference (both here and in Appendix 1) to the fact that the courts may require substantiation	CAP considers that the purpose of the Code is not to outline the legal action that may be taken against marketers; its purpose is to set out the self-regulatory rules.

	of claims under the CPRs.	
Office of Fair Trading	This section (as well as the information contained in Appendix 1 to the Code) should also, in our view, contain some reference to the fact that failure to comply with the provisions of the CPRs/BPRs not only involves civil breaches of the regulations, but that the regulations also create prosecutable offences in relation to most of the prohibitions.	
Office of Fair Trading	The inclusion of a code provision that directs advertisers to the BERR pricing guidelines, with a suggestion that they should consider them, is in our view useful.	CAP welcomes the OFT's comments on the background information provided under "Prices" in Section 3.
Sainsbury's	The suggestion that price statements should take account of the Pricing Practices Guide is an attempt to make law by the back door. The Guide itself says it can be ignored! The section should be re-phrased to make it clear it is one way of securing compliance.	The Code states merely that marketers should take account of the Pricing Practices Guide. Following the Pricing Practices Guide is an easy way for a marketer to demonstrate that their pricing claims are responsible and unlikely to mislead, but marketers may be able to justify departures from the Guide. The reference occurs in background information, not in a rule, so there is no question that CAP has attempted to make adherence to the Guide a requirement of the Code.
Office of Fair Trading	In our view the paragraph on 'principles' in this section should make it clear that the CPRs and the BPRs, which deal with – amongst other things – misleading marketing, must be complied with as well as the code's provisions.	CAP considers that it is not the business of the Code to state what laws must be complied with, only to establish what rules marketers must <u>under the Code</u> obey. The ASA will not adjudicate on whether a marketer has complied with the CPRs, only whether they have complied with the Code.