

ASA system submission to Ofcom's consultation on improving broadband information for customers

1 Background and Introduction

- 1.1 This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'
- 1.2 The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 60 years and the broadcast Advertising Code (written and maintained by BCAP) for 18, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.
- 1.3 The ASA system is the 'one stop shop' for ensuring that UK advertising is legal, decent, honest, and truthful. Our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.4 As the frontline advertising regulator in the UK, the ASA brings together different statutory, co-regulatory and self-regulatory enforcement mechanisms so they appear seamless to people and businesses. Our system involves the active participation of a range of legal backstops in the consumer protection landscape. We work closely with a network of partner regulators including Ofcom, the Portman Group, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority.
- 1.5 Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line. Together, this 'collective regulation' helps to protect people and responsible business from irresponsible ads: ads that mislead, harm or offend their audience.
- 1.6 We also bring together the ad industry and media owners to set, maintain and police high standards. The UK Advertising Codes are drafted and maintained by the industry committees of CAP and BCAP, supported by experts in our Regulatory Policy team. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creating a level-playing field amongst them. There are multiple checks and balances in place to ensure the committees' development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations; mandatory regard to the advice of an expert [independent consumer panel](#); Ofcom signing off on BCAP rule changes; the ASA system's processes being open to judicial review and more besides. All to ensure the system is wholly accountable to everyone with a stake in advertising.
- 1.7 The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous benefits for responsible businesses and for consumers, who benefit from the protection the rules afford.
- 1.8 In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided over a million pieces of advice and training in 2022.

2 Overall comments on the consultation

- 2.1 The ASA notes that Ofcom's consultation makes clear the respective roles of Ofcom and the ASA, and that the research and wider policy work carried out by Ofcom makes clear that it has not included or undertaken any assessment of whether the word "fibre" in advertising is likely to mislead consumers.
- 2.2 As the consultation notes, it focuses on consumer understanding of technical terms around broadband, rather than incentives for purchase. It examines different issues to those covered by the ASA's remit, which concerns the conformity of advertising, including online advertising on companies' own websites, to the UK Advertising Codes.
- 2.3 The ASA's remit, set out in CAP Code, includes online point-of-sale information. The relevant part of the Scope of the Code states:

[I The Code applies to:]

h. Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.

- 2.4 'Fibre' broadband advertising that amounts to online point-of-sale information would be considered within the ASA's remit by virtue of 1h of the Scope of the Code.
- 2.5 Our rules and guidance make it clear that advertisers must not mislead when it comes to providing broadband products and services. Advertisers may not mislead through exaggeration, omission of material information or by presenting it in an unclear, unintelligible or untimely manner.
- 2.6 In assessing whether advertising is likely to breach the CAP Code by misleading consumers, the ASA has regard to the Consumer Protection from Unfair Trading Regulations 2008, which prohibit misleading actions and omissions.
- 2.7 The ASA has a strong history of regulating broadband advertising. In 2017 we reviewed how we interpret the Advertising Codes when judging the use of the term 'fibre' to describe broadband services, publishing research into broadband fibre ads which made our policies clear. We shared our research, [which can found here](#), with Ofcom to consider as part of its work on helping consumers to engage in communications markets.
- 2.8 Our research found that the term 'fibre' was not one of the priorities identified by consumers when choosing a broadband package; it was not a key differentiator. The word 'fibre' was not spontaneously identified within ads – it was not noticed by consumers and did not act as a trigger for taking further action. It was seen as one of many generic buzzwords to describe modern, fast broadband. Once educated about the meaning of fibre and its use or part use in the delivery of broadband services, participants did not believe they would change their previous purchasing decision; they did not think that the word 'fibre' should be changed in part-fibre ads. The totality of the evidence we saw during our review led us to conclude that the word 'fibre' was unlikely to mislead consumers in the advertising of part-fibre broadband services.
- 2.9 However, we acknowledge that there are performance differences between different types of broadband service, including between 'part-fibre' and 'full-fibre' services, and because of that, as was always the case, advertisers should not claim a service is 'fibre' if it is not, should make performance claims for 'fibre' services that are appropriate for the type of technology delivering that service and should hold evidence to support the specific claim being made. They should not claim their service is the most technologically advanced on the market if it is only part-fibre. Further information on our position on the use of fibre in advertising can be found [here](#).

- 2.10 In 2019 the High Court of Justice found in the ASA's favour on all grounds following a judicial review of our decision on fibre claims in broadband advertising. The full judgement can be found [here](#).
- 2.11 At the conclusion of Ofcom's work we will, as an evidence-led regulator, consider any evidence provided by contributors if it has a bearing on our position. Assessing what impact any new standards have on wider advertising practices around fibre, we will evaluate whether the time is right to review our 2017 decision again in the light of more recent developments and any related new compelling evidence.

3 Consultation questions

In this submission we respond in relation to our role and remit. We do not have a view on the proposed guidance on consumer information in relation to technical terms around broadband, which falls outside of our remit.