

Ofcom consultation on improving broadband information for customers.

1. Below is the response of the Fern Group to the above consultation. The Fern Group comprises vertically integrated all-fibre network builders, fibre wholesale providers, and retail ISPs. Fern companies include Jurassic Fibre, Swish Fibre, Giganet, Cuckoo, and AllPointsFibre. These companies are in the process of consolidating.
2. Fern Trading supports Ofcom's proposal for new guidance on the consistent and accurate labelling of broadband services. This means reserving the terms "*fibre*" and "*full-fibre*" for broadband services that deliver Fibre To The Premises.
3. Consumers should be able to make informed choices based on accurate product information. Those who buy a "*fibre*" service have the right to expect that the underlying infrastructure comprises fibre optic cables to the premise. It should be self-evident that using the term "*fibre*" to describe a service which is only part fibre (e.g. FTTC or HFC) is likely to confuse consumers.
4. Ensuring that those who want full fibre get full fibre, and that there is broad public understanding of what this means, should help stimulate greater consumer take-up of broadband on full-fibre networks. This in turn should lead to further investment in ultrafast broadband services, consistent with Government and Ofcom objectives.
5. Unfortunately, Ofcom's proposed guidance comes far too late. The seeds of confusion have already been sown, as Ofcom own research demonstrates. Indeed, BT themselves openly acknowledge (in industry meetings coordinated by the Office of the Telecoms Adjudicator) the difficulty of persuading customers to migrate from copper to digital, because they already think they have fibre.
6. Other countries have acted much sooner to address this issue. The Irish ASA, for example, introduced similar guidelines to those that Ofcom are proposing from 1st September 2019. Crucially, this guidance also related to the advertising of broadband. France and Italy acted even sooner, taking positive action in 2015 and 2018 respectively.
7. With fibre now available to around half the population, providers who rely on part-copper/part-fibre network have successfully muddied the waters by the use of deceptive descriptions of these networks, in areas where they are being over-built by alternative full-fibre providers. This is likely to limit the impact of any new guidance on the more accurate labelling of broadband services, particularly as the ASA do not

appear to be proactively following the Ofcom's lead and banning the use of the word "fibre" to describe part-fibre services in broadband advertising.

8. It is disappointing in this context that Ofcom lost over a year by convening an industry group to develop common standards for broadband terminology in 2021. This desire to allow industry to self-regulate is laudable. However, it should have been clear to Ofcom that, with such divergent interests, this approach was highly unlikely to work. ISPs operating over the Openreach network and Virgin Media were always likely to want to promote terms which obfuscated the nature of the service they provided and made them sound better than they are.
9. To the extent that there is still an opportunity to correct public perception and understanding of the term "fibre", and the additional performance benefits this brings, it is critical that the Advertising Standards Association ('ASA') follows Ofcom's lead.
10. The ASA's 2017 review of fibre broadband stated that the term "fibre" was not one of the priorities identified by consumers when choosing a broadband package. It concluded that *"The totality of the evidence we have seen during our review has led us to conclude that the word 'fibre' is unlikely to mislead consumers as it is currently used in the advertising of part-fibre broadband services."*¹
11. The ASA did not appear to consider the possibility that this might be because the term had by then already been so widely used to describe both part-fibre and full-fibre services, that most consumers struggled to tell the difference. The ASA therefore said merely that *"Ads should not describe non-fibre services as 'fibre'"*². In other words, that a wholly copper based service should not be described as "fibre"! It did not say that *part-fibre* services should not be described as fibre.
12. To this day, the ASA still allows misleading advertising of part-fibre services. When Swish Fibre ran a "fake-fibre" advertising campaign in 2021, in response to continued mis-use of the term "fibre" by other ISPs, BT complained to the ASA. When Swish counter-claimed, the ASA said it would look at neither complaint.
13. We note Ofcom's statement that *"In future, the ASA may consider again whether the use of the word 'fibre' in advertising is misleading."*³ However, in recent

¹ "ASA concludes review of "fibre" broadband" statement

² Ofcom Broadband Information consultation 2.11

³ Ibid 2.19

correspondence with the ASA, Swish has not received any assurance that the ASA will do so, despite Ofcom's consultation and the coverage of full fibre services increasing to 50% of UK premises now, according to the last figures from ThinkBroadband, compared to just 3% of premises, according to Ofcom's 2017 Connected Nations report, when the ASA last considered this issue.

14. We very much hope the ASA understands the strong signal that this Ofcom consultation sends. If not, Ofcom should simply stop contracting out its statutory functions, in relation to the regulation of broadcast advertising content, to the ASA. It should instead take back control. Ofcom should not wait to do this until its current Memorandum of Understanding with the self-regulatory bodies ends on 1 November 2024. By this time most of the country will be covered by fibre.

15. Take-up of broadband on full fibre networks needs to increase rapidly to ensure a return on the billions that have already been invested by the sector in upgrading the UK's digital infrastructure, and to justify further investment to deliver the Government's ambitions of nationwide coverage. Requiring the sector to use accurate terminology to describe the technology that they are selling is a fundamental building block to deliver these ambitions.