

**ASA submission to the Department for Digital, Culture, Media and Sport:
Public consultation on the Statement of Strategic Priorities**

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 57 years and the broadcast Advertising Code (written and maintained by BCAP) for 15, 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. We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes undertaking proactive projects and acting on complaints to take action against misleading, harmful or offensive advertisements. We are committed to evidence-based regulation and we continually review new evidence to ensure the rules remain fit-for-purpose.
- 1.4. 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 500,000 pieces of advice and training in 2018.
- 1.5. The ASA is providing this written submission in response to the Department for Digital, Culture, Media and Sport's consultation on its Statement of Strategic Priorities.

2. Consultation response

- 2.1. The ASA is pleased that in the consultation document the government welcomes the reforms that we made to the way broadband speed claims can be advertised, which came into force on 23 May 2018.
- 2.2. The ASA acknowledges the government's aim, outlined in the UK's Digital Strategy, to ensure broadband advertising accurately reflects the speeds consumers can expect to receive and the technology used. We want to

ensure that government is properly informed of the Advertising Standards Authority's November 2017 decision on "fibre".

2.3. As the UK's advertising regulator, the protection of consumers is our top priority. Our rules and standards are regularly reviewed to make sure they are fit for purpose and reflect any new evidence.

ASA intervention in broadband market on pricing, speed and fibre claims

2.4. In 2016, we changed the policy regarding pricing which ended the practice of advertisers separating out line rental from the cost of broadband, making the total monthly cost much clearer. We also required increased prominence for the contract length and one off costs (such as router delivery charges and connection fees). This clearly benefits consumers, and it also benefits full-fibre services because such services do not require a landline. So, for example, a part-fibre service which would previously have been advertised as £5 a month plus £15 line rental should now be expressed as £20 a month, ensuring that the price of those services do not appear artificially cheaper than full-fibre services.

2.5. The second intervention concerned broadband speed claims. New guidance advises advertisers to be much clearer in making speed claims by referencing the speeds available to at least 50% of customers at peak times and describing it as an "average" speed. Again, this change provides consumers with better information on the services available to them, and it has directly benefitted full-fibre services because the nature of that product means that they can offer speeds with more certainty, which means they do not necessarily need to rely on "average" speeds. This provides full-fibre services the ability to clearly differentiate themselves from part-fibre services. The clarity required for consumers surrounding broadband speed claims is directly addressed by the new CAP guidance.

2.6. We acknowledge that there are performance differences between different types of broadband service, including between part-fibre and full-fibre. That is why in November 2017 we also told advertisers that they should have regard to the following principles in their ads that include fibre claims:

- As has always been the case, ads should not describe non-fibre services as "fibre".
- Ads should make performance claims for "fibre" services that are appropriate for the type of technology delivering that service, and should hold evidence to substantiate the specific claims made.

- Specifically, ads should refer to speed in a manner that is appropriate for the technology, including by having due regard to the Committees of Advertising Practice's new guidance on numerical speed claims.
- Ads should not state or imply a service is the most technologically advanced on the market if it is a part-fibre service.

Further information on our review of "fibre" claims

2.7. We conducted a detailed review on the use of the term "fibre" to describe part-fibre services, in order to reach a considered finding on whether consumers were being misled by current practices.

2.8. Our decision was made based on the evidence we received, including representations from full-fibre broadband providers and consumer groups. We considered the evidence base, including research provided to us by CityFibre and other full-fibre service providers. We also commissioned our own independent and detailed qualitative research from Define Research and Insight Ltd which included consumer insight testing. We published the research which included detailed findings and was summarised as follows

- The term "fibre" is not one of the priorities identified by consumers when choosing a broadband package; it is not a key differentiator.
- The word "fibre" is not spontaneously identified within ads – it is not noticed by consumers and does not act as a trigger for taking further action. It is seen as one of many generic buzzwords to describe modern, fast broadband.
- Once educated about the meaning of fibre, participants do not believe they would change their previous purchasing decision; they do not think that the word "fibre" should be changed in part-fibre ads.

2.9. Under the Consumer Protection from Unfair Trading Regulations 2008 there is a test we must apply to determine whether consumers are likely to be misled by advertising; we must decide whether the inclusion or omission of information causes or is likely to cause the average consumer to take a transactional decision they would not otherwise have taken. The totality of the evidence we saw during our review led us to conclude that the word "fibre" is unlikely to mislead the average consumer as it is currently used in the advertising of part-fibre broadband services.

2.10. All of our research and inquiry into this market since 2016 has shown that consumers are most concerned about getting a broadband deal that

meets their needs – a judgement they make based primarily on obtaining their required download speed at the right price. They care about what they get, not how they get it, and they are therefore not automatically interested in having the fastest and most technologically advanced product available at any price.

2.11. Our rules prevent part-fibre providers falsely claiming: a price advantage over full-fibre providers, equivalent speeds to full-fibre providers or technology as advanced as full-fibre providers. As an evidence-based regulator we are confident that we have reached the appropriate conclusions based on the current state of evidence and in the context of the legal tests we are obliged to apply. In so doing we have preserved for full-fibre providers the tools to make an effective advertising offer that can differentiate them from part-fibre services. However, all of our broadband research suggests low consumer knowledge regarding broadband services. We recognise that this might be evidence of a barrier to consumers choosing the best deal for their needs. We have therefore shared our research with Ofcom to consider as part of its work on helping consumers to engage in communications markets.

2.12. We have however committed to keep this issue under review as the evidence base evolves.

2.13. In early 2019 CityFibre judicially reviewed our decision on fibre claims in broadband advertising. We have robustly defended our decision and the case was heard in the High Court in December 2018. We await the Court's judgment.

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