



BRIEFING PAPER

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Regulation of advertising by the ASA

By Lorraine Conway

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Summary

Advertisements and promotions are a feature of modern life. Advertising techniques have rapidly evolved and now include, online behavioural advertising, native advertising and influencer advertising (e.g. in social media platforms like YouTube, Instagram and Twitter).

In the UK, the content of advertising, sales promotions and direct marketing across all media, including marketing on websites, is regulated by the [Advertising Standards Authority](#) (ASA). The advertising regulatory system is a mixture of:

- self-regulation for non-broadcast advertising and
- co-regulation for broadcast advertising

Self-regulation means that the advertising industry has voluntarily established and paid for its own regulation. Co-regulation means the ASA is given responsibility on a day-to-day basis for regulating the content of broadcast (TV and radio) adverts under contract from [Ofcom](#).

The ASA regulates the content of adverts by enforcing its advertising codes; there are separate codes for non-broadcast and broadcast advertisements. However, all adverts are expected to be "*legal, decent, honest and truthful*". The Advertising rules are regularly reviewed and updated by the ASA.

The ASA is independent of both the Government and the advertising industry. It is recognised by the Government and other regulators as the body to deal with complaints about advertising. Its remit includes acting on, and investigating complaints about, advertisements as well as proactively monitoring and acting against misleading, harmful or offensive advertisements, sales promotions and direct marketing. If a complaint about an advertisement is upheld, the advertiser must withdraw or amend the advertisement and not use the advertising approach again. If the advertiser does not comply, the ASA has other sanctions at its disposal. All ASA adjudications are published.

This Commons briefing paper considers the regulation of advertising in the UK and provides an overview of the functions and remit of the ASA.

1. Regulatory structure

The [ASA](#) is the UK's single independent advertising regulator in all mediums. It does this by enforcing the Advertising Codes; there are separate codes for non-broadcast and broadcast advertisements.

The Advertising Codes are written and maintained by two industry bodies:

- The [Committee of Advertising Practice](#) (CAP) is responsible for the non-broadcast advertising code.
- The [Broadcast Committee of Advertising Practice](#) (BCAP) is responsible for the code that covers broadcast advertising. BCAP rules cover both the content and scheduling of advertisements.

Compliance with the appropriate Advertising Code is **mandatory**. Advertisements that are in breach of the Codes are either amended or removed (see below).

1.1 Self-regulation of non-broadcast advertising

The essential points to note are:

- A self-regulatory system operates in respect of non-broadcast advertising under the "[UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing](#)," known as the "CAP Code".
- Non-broadcast advertising includes adverts published in the press, in leaflets, in magazines, in direct mail, or displayed on posters or billboards. It also includes commercial email and text messages and paid for space on the internet.
- On 1 March 2011, the ASA's remit was extended significantly to cover marketing communications on companies' own websites and in other third-party space under their control, such as social networking sites like Twitter and Facebook. The [CAP Code](#) applies in full to this new space.

The [Consumer Protection from Unfair Trading Regulations 2008](#) implement in the UK the [Unfair Commercial Practices Directive](#). The Regulations include a general prohibition against unfair commercial practices. Under the Regulations, it is illegal to give consumers misleading information. It is also illegal to make a misleading omission, including hiding or omitting material information that the average consumer needs to make an informed choice. Breach of the Regulations may result in the commission of a criminal offence. The Regulations apply to both online and offline commercial activity.

In respect of non-broadcast adverts, the ASA works within this legal framework, to make sure that advertising in the UK is not misleading or unfair. The ASA can refer advertisers who persistently break the Advertising codes to Trading Standards for enforcement action. The ASA has explained its regulatory position as follows:

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The ASA is considered the established means for keeping advertisers in line with both these pieces of legislation. This means that the law itself is not usually enforced formally through the courts; instead the ASA is first allowed to tackle any problems under the Advertising Codes. This approach works well in the overwhelming majority of cases. The ASA is able to take action quickly and this avoids clogging up our court system. [Referral to Trading Standards](#) is rarely necessary, as most advertisers prefer to work within the self-regulatory system.

1.2 Co-regulation of broadcast advertising

The essential points to note are:

- The system is co-regulatory for broadcast advertising; there is a co-regulatory partnership between the ASA and [Ofcom](#).
- The "[UK Code of Broadcast Advertising](#)" is known as the "BCAP Code".
- Broadcast advertising includes radio and television advertising in the UK, teleshopping, television text, interactive television advertisements, and the content on self-promotional television channels.
- Prior to November 2004, broadcast advertising was solely regulated by [Ofcom](#).

Ofcom still has overall legal responsibility to maintain standards in broadcast advertising. However, the [Communications Act 2003](#) placed a duty upon Ofcom to look at alternative forms of regulation where practical. As such, Ofcom established a co-regulatory partnership with the ASA in 2004. In practice, this means that the ASA is responsible on a day-to-day basis for regulating the content of broadcast ads.

According to the ASA, "the Broadcast Committee of Advertising Practice (BCAP) is responsible for writing and maintaining the UK [Code of Broadcast Advertising](#), but Ofcom retains overall sign-off on major changes to the Code". The ASA is responsible for applying the Code but can refer broadcasters to Ofcom for further action if needed. However, such a referral "is extremely rare".

The system is described by the ASA as "self-regulation within a co-regulatory framework". It is underpinned by an enabling statutory instrument, the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#) and a formal deed between Ofcom and the ASA. The arrangement is monitored against clear reporting obligations and key performance indicators

2. Advertising Codes

2.1 Objectives

The overriding aim of both Codes (CAP and BCAP) is to ensure that all advertising is "*legal, decent, honest and truthful.*" Both Codes contain wide-ranging rules designed to ensure that advertising is socially responsible and prepared in line with the principles of fair competition. These broad principles apply regardless of the product being advertised.

The Codes also include more prescriptive rules for advertising sensitive products such as:

- alcohol,
- tobacco,
- weight control and slimming products,
- financial products,
- gambling,
- medicines,
- medical devices,
- health-related products,
- beauty products and so on

All advertisements must not '*mislead, harm or offend*'

These special rules sit on top of the general code provisions that all advertisements must not "mislead, harm or offend". In effect, they add an extra layer of protection. Both Codes also contain specific rules for advertising to children and young people.

2.2 Special rules for children and young people

The underlying principle for both non-broadcast and broadcast advertising (under the CAP and BCAP Codes) is that care should be taken when featuring or addressing children and young people in marketing communications. A child is deemed to be someone under 16.

The Advertising Codes contain strict rules to protect children (and young people) from potentially misleading, harmful or offensive material. For example, the rules:

- prohibit advertisements from depicting children in hazardous situations or encouraging them to engage in dangerous behaviour; and
- prevent advertisements from undermining parental authority or placing unfair pressure on children to buy products

The way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered. Marketing communications that are acceptable for young teenagers will not necessarily be acceptable for younger children. The ASA will take those factors into account when assessing whether a marketing communication complies with the Code.

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There is a separate Library briefing paper on "[Advertising to children](#)" (CBP 8198).

2.3 Over-arching social responsibility clause

There is an over-arching social responsibility clause in both the broadcast and non-broadcast advertising Codes. On occasions where an advertisement adheres to the letter of a Code but runs contrary to the spirit in which it was intended and is, as a result, socially irresponsible, the ASA can have it withdrawn. In effect, the social responsibility clause provides a "catch-all" for the unexpected or unintended advertisement. It benefits all consumers but is especially important in providing greater scope to the ASA to protect vulnerable people and children.

2.4 Funding

This regulatory system is funded entirely by the advertising industry by a levy on advertising spend. According to the [ASA website](#), the levy is currently set at 0.1% on the cost of buying advertising space and 0.2% on some direct mail. This is collected at 'arm's length' on behalf of the ASA by two bodies: the [Advertising Standards Board of Finance](#) and the [Broadcast Advertising Standards Board of Finance](#). The ASA is therefore able to act independently of both Government and industry.

3. Enforcing the Codes

3.1 ASA monitoring and compliance

Compliance with the appropriate advertising code is **mandatory**.

The ASA is required to monitor all forms of media to ensure that the Codes are properly adhered to. According to the ASA website, its' [Compliance and Monitoring Team](#) concentrates its activities on high-profile sectors (such as alcohol, health and beauty) or sectors with low compliance. If the team finds a breach, they will first contact the company or broadcaster responsible and seek an assurance that the advertisement will be changed:

The Compliance and Monitoring Team aims to do most of its work on an informal basis. However, if an advertiser or broadcaster refuses to co-operate, then the team is able to launch a formal investigation and bring the case before the ASA Council.¹

Monitoring and compliance team

The ASA also conducts regular compliance surveys into specific media or industry sectors to ensure the Codes are being followed in those areas.

3.2 ASA as an adjudicator

The ASA accepts complaints from the public and industry about advertisements that appear to be in breach of the Codes.² If a complaint is upheld by the [ASA Council](#), then the advertisement must be withdrawn or amended. The ASA Council is the body that adjudicates on investigations of complaints. The ASA publish its rulings on its adjudications on its website every week. Its rulings remain on its website for five years.

According to the ASA, most advertisers and broadcasters comply with ASA rulings. For the small minority who don't, there are consequences:

The main aim of the system is to help ensure compliance with the Advertising Codes, rather than punish advertisers. However, some of the sanctions at our disposal can be detrimental to those advertisers who choose to not comply. One of the most persuasive is bad publicity – an advertiser's reputation can be badly damaged if it is seen to be flouting the rules designed to protect consumers.³

¹ Advertising Standards Authority website, '[Monitoring Ads](#)', [online] (accessed 23 February 2016)

² The ASA website states that any complaint made by a member of the public about an advertisement will remain anonymous; this is the case even if the complaint is upheld and the adjudication published. Since the role of the ASA is to investigate potential breaches of the Advertising Codes, it reasons that naming private complainants would not assist this process or have any bearing on the outcome. However, the ASA usually names competitors in respect of "business to business" complaints and name orchestrated campaign groups when and where these arise.

³ Advertising Standards Authority website, '[Monitoring Ads](#)', [online] (accessed 23 February 2016)

3.3 Sanctions: non-broadcast advertisements

In respect of non-broadcast advertisements, most sanctions are coordinated through CAP (whose members are trade associations representing advertisers, agencies and media). There are several CAP sanctions, which can be employed in different circumstances (see **Box 3** below).

Box 3: Possible consequences for breach of the CAP Code:

If a non-broadcast advertisement is found to be in breach of the CAP Code, one or more of the following sanctions might be employed depending on the circumstances:

- **Ad Alerts** - CAP can issue alerts to its members, including the media, advising them to withhold services such as access to advertising space.
- **Withdrawal of trading privileges** - CAP members can revoke, withdraw or temporarily withhold recognition and trading privileges. (For instance, the Royal Mail can withdraw its bulk mail discount, which can make running direct marketing campaigns prohibitively expensive).
- **Pre-vetting** - Persistent or serious offenders can be required by the ASA to have their marketing material vetted before publication. This pre-vetting can last for two years.
- **Sanctions in the digital space** - CAP has additional sanctions that can be invoked to help ensure marketers' claims on their own websites, or in other non-paid-for space under their control, comply with the Codes. Specifically, CAP can ask internet search websites to remove a marketer's paid-for search advertisements when those advertisements link to a page on the marketer's website that hosts non-compliant marketing communications. Marketers may face adverse publicity if they cannot or will not amend non-compliant marketing communications on their own websites or in other non-paid-for space online under their control. Their name and non-compliance may be featured on a dedicated section of the ASA website and, if necessary, in an ASA advertisement appearing on an appropriate page of an internet search website.

Importantly, for misleading or unfair advertising, the ASA can refer the matter to Trading Standards to take action under the [Consumer Protection from Unfair Trading Regulations 2008](#). It is the ASA's decision whether to make a referral to Trading Standards. It will normally do so in circumstances where ASA's sanctions have not deterred a marketer from continuing with misleading advertising. It is then Trading Standards independent decision whether to investigate or take any enforcement action, in accordance with their own enforcement policy and administrative functions.

For an example of how this regulatory approach might work in practice, see the Library's briefing paper on "[Secondary ticketing](#)" (CBP 4715). Section 4 of this paper (pages 14 to 17) considers ASA enforcement action.

For the ASA, Trading Standards act as its legal 'backstop' for non-broadcast advertising.

3.4 Sanctions: broadcast advertisements

In respect of broadcast advertisements, the responsibility to withdraw, change or reschedule a commercial lies with the broadcasters. This is because broadcasters are obliged by a condition of their broadcast licences to enforce ASA rulings. If a broadcaster persistently runs an advertisement that is in breach of the Code, the ASA may refer the broadcaster to [Ofcom](#). In turn, Ofcom can impose fines and even withdraw their licence to broadcast.

Although the obligation to comply with the BCAP Code rests with the broadcaster, advertisers also suffer consequences if their broadcast advertisements breach the Code (see **Box 4** below).

Box 4: Possible consequences for breach of the BCAP Code

If a broadcast advertisement is found to be in breach of the BCAP Code, one or more of the following sanctions might be employed depending on the circumstances:

- They might be subjected to bad publicity generated by an upheld complaint to the ASA.
- Advertisers might also have wasted hundreds of thousands of pounds making the banned advertisement in the first place and lost the revenue that it might have generated.
- Since broadcasters cannot show advertisements that breach the Codes, advertisers might lose prime advertising slots in which a banned advertisement has been booked to appear.
- Finally, any advertisements that break the Codes are disqualified from industry awards, denying advertisers and the agencies that created the advertisements the opportunity to showcase their work.

3.5 Challenging an ASA adjudication

In certain circumstances, advertisers or complainants (often a member of the public) can request a review of the ASA Council's adjudication. Both sides have **21 days** in which to ask the [Independent Reviewer](#) of ASA Adjudications to review the case. But they must be able to establish that:

- a substantial flaw of process or adjudication is apparent, or
- additional relevant evidence is available⁴

The Independent Reviewer can decide not to accept the request (in whole or in part) if he considers that it does not meet either of the two grounds set out above.

If the Reviewer accepts a request, he will inform the other parties to the case that a request for review has been accepted and invite their comments on the submission made by the party requesting the review.

The Independent
Review procedure

Judicial review

⁴ Full terms of reference of the Independent Review procedure for non-broadcast adjudications are set out in the [CAP Code](#) and in the ASA procedures for investigating complaints under the [BCAP Code](#) for broadcast adjudications.

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At the conclusion of his investigation, he will make a recommendation to the ASA Council which may ask for the Council to reconsider its ruling. **The Council's adjudication on reviewed cases is final.** Again, adjudications that are revised following a review will be republished on the ASA website.

The ASA is recognised by the court as being a public organisation for the purposes of Judicial Review. However, it should be noted that there are very strict time limits in which to bring Judicial Review proceedings.

4. Scope of the ASA's remit

4.1 Advertisements covered by the ASA

The ASA will deal with most types of advertisements but not all. The types of advertisements that the ASA will deal with are set out in **Box 1** below.

Box 1: The types of advertisements regulated by the ASA

The types of advertisements that the ASA will cover, include:

- Magazine and newspaper advertisements
- Radio and TV commercials (including teleshopping presentations)
- Advertisements on the Internet, smartphones and tablets (including banner and display advertisements)
- Paid-for (sponsored) search
- Advertising or marketing claims on companies' own websites and in other space they control like social networking sites (Twitter and Facebook)
- Commercial e-mail and text message advertisements
- Posters on billboards and other legitimate poster sites (not fly posters)
- Leaflets and brochures
- Advertisements at the cinema
- Direct mail advertising (whether addressed to the recipient personally or not)
- Door drops and circulars (advertising posted through the letter box with the homeowner's name on)
- Advertisements on CD ROMs, DVD and video, and faxes
- Sales promotions, such as special offers, prize draws and competitions wherever they appear.
- Online behavioural advertising

It is important to note that the ASA now regulates Online Behavioural Advertising (OBA). In a nutshell, OBA is the practice of collecting information from web browsers so that it can be used to present online advertisements that are more relevant to the user of a particular computer. The ASA oversees rules which require businesses to make it clear when they are collecting and using information for OBA, and to provide a tool so that individuals can choose not to receive it.

The ASA now regulates 'Online Behavioural Advertising.

4.2 Advertisements not covered by the ASA

There are a several issues that the ASA cannot help with. It has published online a comprehensive list of areas of complaint outside its remit. By way of example, types of advertisements not covered by the ASA are set out in **Box 2** below.

Box 2: The types of advertisements not covered by the ASA

The types of advertisements that the ASA will cover, include:

- **Credit advertising** – The ASA have powers to investigate financial advertising on television and radio, but complaints about product-related claims in non-broadcast adverts for credit products (such as credit cards, store cards, personal loans and secured loans) should be made to the [Financial Conduct Authority](#).
- **Data protection and freedom of information** - The ASA can look into complaints about the use of personal data for marketing by mail, fax and some e-mail as well as the content of advertising that uses those media. However, data protection and freedom of information legislation are enforced by the [Information Commissioner's Office](#).
- **Direct mail, telemarketing calls and fax marketing** - To reduce the amount of direct mail received, the recipient should contact the [Mailing Preference Service](#) (MPS).
- **Discrimination on the grounds of race, sex, age or disability** – Advice on discrimination in advertisements and equality law is available from the [Equality and Human Rights Commission](#).
- **Editorial content** – Complaints about the editorial content of newspapers and magazines should be properly addressed to the [Independent Press Standards Organisation](#) (IPSO); complaints about the editorial content of television and radio programmes (including on the BBC) should be addressed to [Ofcom](#); complaints about the editorial content of BBC programmes can also be sent to the [BBC Trust](#).
- **Financial advertising** – although the ASA have powers to investigate financial advertising on television and radio, complaints about product-related claims in non-broadcast advertisements for mortgages, general insurance, investments, pensions, cash savings and bank accounts are dealt with by the [Financial Conduct Authority](#).
- **Fly posting** – Since most fly posting is illegal complaints should be addressed to the relevant local council.
- **Fundraising** - The ASA regulates advertisements that refer to fundraising, but complaints about fundraising in general (for example on–street collections) should be addressed to the new [Fundraising Regulator](#).
- **Misleading claims displayed on shop shelves or at till points** - This should be reported to the relevant [local authority trading standards](#) department. However, the ASA will look into complaints about any leaflets or brochures that can be taken away from a store; it can also consider complaints about sales promotions that appear in-store.
- **Medicines** - The ASA can investigate complaints about most medicines advertising. However, depending on the nature of the complaint, it may refer the matter to the [Medicines and Healthcare products Regulatory Agency](#).
- **Phone-paid services** - [PhonepayPlus](#) (not the ASA) is the organisation that regulates phone-paid services in the UK (the services and goods that can be bought by charging the cost to a phone bill and pre-pay accounts. These include helplines, competitions, downloads, TV voting, news alerts, charitable donations and interactive games.
- **Political advertising** - All complaints of political bias in television or radio advertising should be made to [Ofcom](#). On its website the ASA states that for reasons of freedom of speech, its remit does not extend to non-broadcast advertisements where the purpose of the advert is to persuade voters in a local, national or international electoral referendum. Complaints about political advertising should be made directly to the party responsible for that advertising.
- **Products, services and contractual disputes** - Companies' trading practices, the quality of goods and services, claims on packaging and trade names are covered by consumer protection legislation. Advice might be sought dealt from local authority [trading standards](#) or, alternatively, from Citizens Advice.
- **Shop window displays** - Misleading claims in shop window displays should be reported to the relevant local authority [trading standards](#) department. However, trading standards departments do not investigate complaints about taste and decency. If a member of the public finds a shop window display offensive they are advised to take it up with the shop in the first instance.

- **In-store advertising** – Misleading claims on posters, shelves or till points should again be reported to the relevant local authority trading standards. However, the ASA will investigate complaints about sales promotions that appear in-store.
- **Television and radio programme sponsorship** - Programme sponsorship (where the name of the programme sponsor is announced in a 'credit' at the beginning and end of a programme, and when breaks occur in the programme). Complaints of this nature should be properly addressed to [Ofcom](#).

5. The role of the ASA in Europe

5.1 Membership of the EASA

The ASA is a founding member of the [European Advertising Standards Alliance](#) (EASA). According to the ASA website, the EASA brings together national advertising self-regulatory authorities (like the ASA) and organisations representing the advertising industry in Europe. Based in Brussels, EASA promotes self-regulation of advertising and sales promotions as an alternative to detailed legislation across the single market.

EASA's role is to encourage high standards in advertisements through effective self-regulation, while being conscious of national differences of cultural, legal and commercial practice. Its main objectives are to:

- promote advertising self-regulation
- encourage best practice and common high standards in advertising self-regulation
- stimulate improvements in self-regulation
- co-ordinate [cross-border complaints](#) with its members to make sure they are resolved as quickly and effectively as possible

Every three years EASA publishes [The Blue Book](#), a comprehensive guide to the self-regulatory and legislative rules governing advertising across Europe. The current edition was published in 2018.

EASA's [cross-border complaints \(CBC\) system](#) was set-up soon after the establishment of the EASA in 1992. In a nutshell, the CBC system is an agreement by which all self-regulatory organisations that are a member of EASA have agreed to handle cross-border complaints under the same conditions as national complaints.

Complaints about an overseas advertisement

Two types of complaints fall under the term "cross-border complaint:

- First, it may be a complaint from a person in one country about an advertisement that has appeared in that country but was carried in media based in another country. For example, an Irish consumer who receives television broadcasts from the UK and wishes to complain about the content of an advertisement.
- Second, it may be a complaint made by an individual who, for example, is ordinarily resident in the UK about an advertisement he/she saw while on holiday in France. That person would send their complaint to the self-regulatory organisation in the UK (i.e. the ASA) who would then forward it to its counterpart in France.

Complaints can also be made directly to EASA who will then forward the complaint to the correct body.

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