

ASA system response to Department for Culture, Media and Sport Review of Gaming Machines and Social Responsibility Measures

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 System welcomes the opportunity to respond to this call for evidence as part of the Review of Gaming Machines and Social Responsibility Measures.
- 1.3. The ASA is the UK’s independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for over 50 years and the broadcast Advertising Code (written and maintained by BCAP) for over ten, with our remit further extended in 2011 to include companies’ advertising claims on their own websites and in social media spaces under their control.
- 1.4. 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.
- 1.5. In addition to investigating ads, we also provide a wealth of training and advice services for advertisers (most of which are free) 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 quarter of a million pieces of such advice in 2015.

2. Overview

- 2.1. The ASA system welcomes the opportunity to respond to this call for evidence. Given our responsibility for regulating gambling advertising, the ASA is particularly interested in the elements of the call for evidence which relate to advertising, and our response will focus solely on this aspect of the review.
- 2.2. CAP and BCAP are responsible for setting advertising standards regulating the placement and content of gambling advertising, with the ASA acting as the enforcement body. On the broadcast side, we have a formally delegated responsibility for the regulation of gambling advertising from Ofcom, which was given these duties as part of the Gambling Act 2005. As Ofcom has contracted-out the day-to-day regulation of broadcast advertisements to the ASA System, BCAP exercises that role, but Ofcom retains final approval over changes made to the BCAP Code. In addition, under the Gambling Act 2005, the Gambling Commission was given responsibility for issuing code of practice provisions on gambling advertising, a function it delegated to CAP in 2006.
- 2.3. The ASA system takes its role in the protection of children and vulnerable people extremely seriously. Our rules are a robust interpretation of the requirements of the Gambling Act 2005. Following the passing of the Act, we updated our rules to ensure that ads are socially

responsible and do not encourage gambling in ways that harm or exploit children, young people or vulnerable adults.

2.4. CAP and BCAP's current rules state that ads for gambling must not:

- Portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm
- Exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young people or other vulnerable people
- Suggest that gambling can be a solution to financial concerns
- Link gambling to seduction, sexual success or enhanced attractiveness
- Be of particular appeal to children or young people, especially by reflecting or being associated with youth culture
- Feature anyone gambling or playing a significant role in the ad if they are under or appear to be under 25 years old.

2.5. However, while the ASA system regulates the content and placement of ads, it is worth noting that we cannot regulate the volume of specific product ads.

2.6. As noted in the Call for Evidence, in 2014, following a request by the Department for Culture, Media and Sport, we conducted a [review](#) of the evidence on gambling advertising and its impact on young people and problem gambling behaviour to establish whether CAP and BCAP's rules continued to provide the right level of protection. The review found that the gambling rules remained fit for purpose, with the impact of gambling advertising on young people and problem gambling behaviour found to be limited.

2.7. Despite this, the findings from the reviews and research did lead to a number of follow on actions, including an exercise seeking to identify further information and insights on 'risk factors' to help us develop practical guidance on what types of content or approach could breach the rules. The responses provided no information which could be used to develop new guidance, and indicated that concerns about gambling advertising are related more broadly to an objection to gambling as a legitimate practice, including the ability of companies to advertise gambling in any capacity, and the volume of gambling advertising.

2.8. Prior to this CAP and BCAP review, the ASA published the findings from its own enforcement [review](#). It was based on independent research, which showed that the ASA's decisions on complaints around gambling ads were meeting societal expectations and people were satisfied with the way in which gambling ads are regulated. The review also looked at trends in complaints data from 2007 onwards, included qualitative research into the public's views on gambling advertising and included a review of all ASA decisions on gambling advertising complaints in the year preceding the review.

2.9. However, the ASA review did raise a couple of issues that warranted further consideration, which the ASA has since taken action to address. This included concerns over whether gambling sales promotions were clearly advertised, which is covered below, and whether some ads indirectly featured themes linking gambling to toughness, or were overly aggressive in tone. Since our work in this area, it is notable that the tone of some ads from advertisers which had previously used relatively aggressive calls to action has changed, with one prominent advertiser replacing the phrase at the end of their ads from "bet now!" to "gamble responsibly."

- 2.10. CAP and BCAP are committed to regulation which is transparent, accountable, proportionate and targeted. As an evidence-based regulator, it is imperative that we see clear arguments and evidence that our rules are failing adequately to protect consumers for us to amend our existing position.
- 2.11. Since 2014, we have seen no evidence to suggest that any changes are required to our existing rules, or that they are failing to provide adequate protections.
- 2.12. For this reason, and in the absence of any new, robust evidence to suggest that the current rules are failing to provide adequate protections, we do not believe further review or amendment of the advertising rules, just two years after our previous review, is justified.
- 2.13. Instead, we've found the primary issue in terms of advertising in the gambling sector in the past five years to be misleading promotions, including 'free' bets and bonus introductory offers. To address this, the ASA has ruled against a number of advertisers for the misleading advertisement of promotions, CAP has delivered industry training and engagement alongside the Gambling Commission to ensure that advertisers know their responsibilities and how to comply with the code in this area and has also published a new online 'e-learning' module for the same purpose, and CAP will publish new guidance in the new year and undertake compliance activity once the CMA has concluded its investigation in this area (which is looking more broadly at whether online gambling firms are treating their customers fairly, including promotions, companies' ability to alter odds and terms of redress).
- 2.14. We take all concerns around the impact of advertising extremely seriously, and should we be presented with clear evidence that might be submitted as part of this consultation which supports further consideration of our position, we will be open to doing so.

3. ASA response to consultation questions

Question 7: Is there any evidence on whether existing rules on gambling advertising are appropriate to protect children and vulnerable people from the possible harmful impact of gambling advertising?

- 3.1. The ASA system has not seen any substantial and robust evidence to suggest that existing rules on gambling advertising are not sufficient to protect children and vulnerable people. The CAP and BCAP 2014 review considered a wide range of available evidence on the volume and impact of gambling advertising, while also looking at rates of gambling participation and problem gambling. As noted in the Government's call for evidence, the CAP and BCAP review 'broadly found that the Codes that regulate gambling advertising remained effective in protecting people from harm.' We continually monitor all available evidence on the impact of advertising in this sector, and we are open to new evidence, but we do not believe that there have been any significant changes in the evidence base in the last two years.
- 3.2. As the Government notes, the number of gambling ads increased significantly from 2005 to 2012. This is unsurprising, as the Gambling Act 2005 substantially changed the legislative and regulatory environment, and prior to the Act coming into effect in 2007, the scope for gambling advertising on TV was significantly limited; there was a ban on gambling advertising on broadcast media, with a small number of exemptions including the National Lottery, bingo halls and football pools. According to Ofcom figures, there were 1.4 million

spot ads for gambling in 2012, with bingo ads accounting for 41.2% of these, lotteries and scratchcards 27.2%, online casinos and poker 19.2% and sports betting 12.4%.

- 3.3. The CAP and BCAP review looked at the latest breakdown of child impacts (Ofcom, 2013) which showed that in 2012, children saw, on average, just over four gambling advertisements each week on TV. 30% of these were from lottery and scratchcard advertising and 40% from bingo advertising. Children saw, on average, less than one sports betting or casino and gaming advertisement per week. Ofcom figures also showed that gambling advertisements accounted for less than 2% of all of children's advertising impacts. The data showed a higher number of impacts for adult audiences, with adults seeing, on average, 12 gambling advertisements each week on TV in 2012, with over 41% of these for bingo, and 27% for lotteries.
- 3.4. We conduct our own analysis of Barb data, to explore trends in advertising impacts across product categories. This analysis has shown that following the Ofcom study in 2013, gambling impacts for children aged 4 to 15 have continued to fall, even when accounting for the decline in overall child advertising impacts. Our analysis has also shown that impacts are also falling for the 16-24 year old age group.
- 3.5. While establishing the number of impacts is useful to form an understanding of exposure to gambling advertising, it is worth noting that there is no evidence to suggest that children or adults viewing gambling advertising is, in itself, harmful. CAP and BCAP's strict rules ensure that gambling ads must not appeal to children, and the evidence, as set out below indicates little significant link between exposure to gambling advertising and participation in gambling activities.
- 3.6. The CAP and BCAP review in 2014 also took into account rates of participation in gambling. According to the Seabury and Wardle study on *Gambling behaviour in England and Scotland in 2014*, in 2012, 65% of those aged 16 and over spent money on a gambling activity, with the National Lottery the most popular form of gambling, with a participation rate of 52%. In contrast, other gambling activities are significantly less popular, with 10% gambling on horse racing, 7% on slot machines, 5% on online betting, 5% on bingo and 3% on football pools. Evidence also shows that middle age groups ranging from 25 to 64 year olds have the highest participation rates.
- 3.7. It is worth noting that underage participation was found to be low in a study carried out on behalf of the National Lottery Commission. While 5% of 11-15 year olds had played cards, fruit machines or had engaged in private betting with friends, just 1% had engaged in other gambling activities such as gambling at a betting shop or on a website. Significantly, the data also shows that participation in gambling activities among this age group is trending downward since 2007. This is supported by statistics from the Gambling Commission, which show that gambling participation rates amongst this age group decreased by 7% since 2011.
- 3.8. Additionally, the Seabury and Wardle study, which was the most up-to-date and authoritative study of problem gambling rates in Britain, concluded that overall, problem gambling rates in Britain appear to be relatively low and stable.
- 3.9. A research study published by the Gambling Commission on *Young People and Gambling* in November 2016 found that while 75% of 11-15 year olds have seen gambling advertisements on TV and 63% have seen ads on social media, this does not appear to translate to gambling activity or problem gambling rates. The study shows that the

percentage of children in this age group that have spent their own money on a gambling activity in the week prior to the study has remained relatively stable in recent years, and is currently at 16%, down from a peak of 23% in 2011. In addition to this, problem gambling rates among children remain very low at 0.4%, and have fallen from 0.6% in 2015.

- 3.10. It is also worth noting that the gambling activities which are most prevalently advertised are not those most closely associated with harm. Fixed odds betting terminals, for example, have been identified by political stakeholders as a source of potential harm, yet do not feature in the vast majority of gambling advertisements.
- 3.11. The ASA receives and investigates a significant number of complaints from the public and industry each year. We continually monitor our complaints data allowing us to analyse trends in the nature of complaints and understand emerging or growing public concerns. An overall analysis of gambling complaints data over the last five years shows that while there has been an increase in the number of complaints about gambling ads this year, to over 1,400 in 2016 from a relatively stable range of between 1,052 in 2012 and 911 in 2015, when looking at the breakdown of these numbers, this does not appear to reflect an increase in the levels of public concern about gambling advertising in general. In this time, the number of ads that people are complaining about (we refer to such ads as 'cases') has remained largely consistent, meaning that there are a similar number of cases to recent years, but some of these ads have attracted more complaints in 2016.
- 3.12. Only a relatively small number of these ads have been found, following investigation, to have broken the rules. Of the 595 cases relating to gambling ads this year, we've upheld or upheld in part complaints against just 62 of them, with the vast majority therefore found to be compliant with the Codes. We're also satisfied from our investigation and analysis of ads that aren't judged to break the rules that they have not raised harms or risk factors that cause us to look again at either our rules or our interpretation of them.
- 3.13. By far the largest proportion of cases, each year, has related to potentially misleading advertising, rather than ads that are deemed to be otherwise harmful – for example suggesting gambling can be a solution to financial concerns or appealing particularly to children. However, notably, the drive in the increase in the number of complaints in 2016 relates to a substantial increase in the volume of complaints about advertising that has the potential to cause serious or widespread offence. So far in 2016, the ASA has received 796 complaints about such advertising, compared to just 257 in 2015. This is largely due to the emergence of a small number of campaigns that some found controversial, from a small number of advertisers, with individual ads generating complaints figures in the hundreds due to people finding them offensive or in bad taste. The ASA has taken complaints about these campaigns extremely seriously, although a number of them have been found to simply be in poor taste, rather than likely to cause serious and widespread offence.
- 3.14. Significantly, while the number of complaints relating to harmful gambling advertising has fluctuated over recent years, the number of cases has been in decline, from 160 in 2013 to 104 in 2016. This suggests that the current rules and ASA enforcement action is proving sufficient in limiting the number of potentially harmful gambling ads.
- 3.15. Based on this evidence, therefore, despite the increase in the volume of gambling advertising which has followed the implementation of the Gambling Act 2005 as noted in the call for evidence, current regulation of the sector's advertising appears to be sufficient, with child gambling advertising impacts falling, problem gambling remaining stable, and child participation low and declining.

- 3.16. CAP and BCAP found in the 2014 review that there was a lack of robust evidence pointing to direct links between advertising exposure and problem gambling. However, it did find a consensus that the likely effect of gambling advertising on problem gambling is relatively small. As noted in the review, Dr Per Binde, Associate Professor of Social Anthropology at the University of Gothenburg found that “the impact of advertising on the prevalence of problem gambling is relatively small. However, it is not negligible.”
- 3.17. The ASA system therefore believes that any decision by Government to intervene with the self- and co-regulatory system to introduce new restrictions would, based on the information available to us, be disproportionate and would have no significant impact on harm. However, we remain committed to evaluating any new arguments and evidence to ensure our rules remain in the right place, and if robust arguments or evidence emerges in the context of this review which warrants consideration, we will of course want to review them.