

# ASA Prioritisation Principles: Consultation Responses

Responses received from internal panels and committees



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## **Response from the Sales Promotion and Direct Response Panel (SPDRP)**

### **Memorandum of understanding text on SPDRP:**

- The Sales Promotion and Direct Response Panel (SPDRP) concerns itself with sales promotions and direct marketing. It advises on non-broadcast advertising only.
- The role of the Panel is to provide industry expert advice on the interpretation and development of the Advertising Codes and a forum for information exchange between the industry and the ASA and CAP Executive.
- It is often an opportunity for marketers to have industry representatives review an aspect of an investigation and to feed into the decision-making process. Although consideration is given to its recommendations and the Minutes of the meeting will be given to the ASA Council if relevant, the Panel's opinion is not binding on either the Executive or the ASA Council.
- The SPDRP is made up of a Chairman (Philip Circus), an ASA Council representative, about ten marketing or media practitioners, the Secretary (Director of Advertising Policy and Practice) and an Assistant Secretary (Operations Manager - Compliance).

### **Questions**

**1. Do you consider that the prioritisation principles and their accompanying explanations are clearly set out and understandable? If not, please explain why and provide your suggestions for improvement.**

- Yes I think they are clear and understandable. (PB)

**2. Do you agree with the prioritisation principles? If not, please explain why and provide any suggestions you may have for different principles or approaches.**

- Yes I would agree with the principles and the broad outline of how they are proposed being used. (PB)

**3. Do you wish to provide any other comments?**

- I would however like to make another comment/observation. That is around transparency. My understanding of these principles is that there will be more judgement made by the ASA over which ads, advertisers and industry practises are investigated, reviewed or where interventions by the ASA are made. Whilst the principles behind this approach are very good, I would urge there to be some process to make these decisions and the decision process as transparent as possible, so that the ASA can maintain its image of impartiality and independence. (PB)

- The problem with a principles based approach is that it brings in an element of vagueness as to what will be pursued and what won't because clearly much will depend on individual judgements. I think there is a danger of arbitrary decisions and inconsistency which does require the greatest degree of transparency as to the operation of the principles.
- Do these principles in practice mean that there will be more cases resolved informally? Presumably, the logic of the principles suggests that that will be the case. Again, we need transparency. Also, it would be interesting to see what mechanisms will seek to ensure the greatest degree of consistency. If it's down solely to individual case officers, there could be huge disparities in terms of consistency. (PC)

## **Response from Advertising Advisory Committee**

We welcome the opportunity to respond to this consultation. The Advertising Advisory Committee (AAC) is a committee of the Broadcast Committee of Advertising Practice (BCAP), and has been set up to provide independent, third party advice to BCAP on advertising issues, particularly in relation to the advertising codes. We all have non-executive roles, and are drawn from a range of backgrounds to represent the interests of citizens and consumers. We have an independent Chair, and are scheduled to meet six times a year to discuss and develop opinions on key current issues. Our meetings are also attended by the Chair of BCAP and by Ofcom in an observer capacity.

### **Our general perspective**

Most of the proposals in the consultation paper are designed to impact on the ASA's handling of casework, in which the AAC has only an indirect interest given that our function is to advise on the broadcast codes and associated guidance. There is however a two-way read across between the codes and casework, and from casework back to the codes where an issue has been identified that justifies a modification to a code provision or to guidance. It is in this context - and especially the latter type of interaction - that our comments are offered.

### **Question 1: Do you consider that the prioritisation principles and their accompanying explanations are clear and understandable?**

We think they are very clearly drafted, but the challenge of applying them in practice should not be underestimated. One key requirement will be to develop a consistent methodology for the assessment of 'harm or detriment'. The former Office of Fair Trading and Consumer Focus both attempted to develop economic measures of consumer detriment, but this was always a difficult area; and the more generalised notion of 'harm' is more difficult still. We think the codes and associated guidance have an important role to play here, in fleshing out the more detailed considerations caseworkers and the ASA Council should consider in reaching views on individual ads. In particular, there will be a heightened need to maintain and if appropriate refresh the codes and guidance so that they deal effectively with any newly identified forms of harm or detriment, and to modify any existing provisions that may no longer be needed.

### **Question 2: Do you agree with the prioritisation principles?**

We strongly support the proposed prioritisation principles. It makes very good sense for advertising regulation to respond proportionately and proactively to problems based on their likely impact, and to be driven by a range of factors in addition to complaints. Greater targeting, and prioritisation of resources, are clear hallmarks of good, consumer-driven regulation.

Following through from our general perspective as set out above, we think the principles will need to be applied, in due course, to code and guidance development as well as to casework. This would be a very welcome development - especially if it encourages those involved in the preparation of codes to work more proactively to understand and anticipate problems rather than wait for external drivers such as new legislation or government reviews.

### **Question 3: Do you wish to provide any other comments?**

We have three further comments:

First, we think there is a more positive case for change than appears to be made in the consultation document. This needs to be done because as things stand, there is a risk that critics will focus mainly on what advertising regulation will be doing less of (responding to consumer complaints). The document seems somewhat inward looking, based on how the ASA works and how it will handle casework. As we have sought to make clear, there are issues for the whole of the advertising regulation system - all of which can and should be made as fully responsive to the external environment as it can be. A more proactive, targeted approach will benefit consumers and (responsible) advertisers alike. The prioritisation principles will enhance the role here for thought leadership work, for example in relation to developing markets and changing social concerns, and for effective collaboration between the advertising regulators and other key partnership bodies. Some current examples include new markets such as electronic cigarettes (in which CAP and BCAP have played an extremely important role) and the developing debates on potential 'problem' products such as alcohol, gambling and cosmetic surgery. If this kind of thought leadership helps to nip new problems in the bud, the prioritisation principles will have done their job well. We think this is what is intended by the fifth strand of the strategy set out in 2.2.2 which talks in terms of being 'an authority on advertising and active on issues that cause societal concern'. But it would be helpful to carry this strategic objective across to the prioritisation principles by highlighting the centrality of thought leadership work by the advertising self-regulatory system.

Second, we think that in communicating the new principles, advertising regulators should take great care not to downplay the importance of tackling misleading or socially harmful ads wherever and whenever these arise. The new emphasis on harm and detriment should cover this, but it is important not to let irresponsible advertisers work on the assumption that they can 'get away' with it e.g. because they are operating in a small or niche market. There is a parallel need to ensure that emerging social concerns - even where these are not directly linked to identifiable harm – are effectively identified and acted upon where necessary. If this doesn't happen, there are risks to the credibility of the self-regulatory system.

Third, where there are complaints that in future receive lower priority treatment, we think it is important to keep track of the issues raised, and the circumstances in which the cases arise. Whilst individual complaints may not match the prioritisation criteria, they may be harbingers of growing problems affecting a given category of product, a type of advertiser, or a growing societal concern - any of which could require a revision to code or guidance provisions.

## Comments received from the General Media Panel

*(Taken as notes in the context of a GMP meeting)*

- \* The potential role of research in guiding regulatory decisions was not entirely clear in the document. The GMP asked us to consider whether it could be better fleshed out in future.
- \* One member was unclear as to whether some issues / casework would, as a result of the PPs, not be dealt with at all.
- \* One member commented that there was a risk that inaction on particular issue might be seized on by critics or picked up elsewhere (for example by another regulator / govt department etc.)

A panel member providing written comments said:

“The principles are clear and understandable but lack context. For example, the ASA will consider "the likely risk of action versus inaction" - how will risk be assessed i.e. by what criteria? Returning to the commitment to tackle ads of possible high detriment, what will the ASA stop doing in terms of complaints related to ads of lesser harm to ensure resource is sufficient and proportionate to implement this undertaking? I agree and approve of the intention behind the principles - but there is a lack of transparency on by what means they will be achieved. Perhaps this is understandable and they are after all "principles" and I understand the ASA must be able to act independently and without impediment - but the statement under Section 3: How we intend to use the Prioritisation Principles, seems to negate the good intentions: "..The principles do not represent strict criteria for action: they are intended to guide and not dictate our work and it will not be necessary to meet all of the prioritisation requirements for us to act. It will be for the ASA to decide how to allocate resources or what work to prioritise.." This appears to say "we have established these principles (look at how proactive we are) - but we reserve the right to ignore them at our discretion.