

# The ASA and CAP

## Our commitment to good regulation

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The purpose of the Advertising Standards Authority (ASA) is to make advertisements responsible and our ambition is to make **every UK ad a responsible ad**.

We believe that responsible ads – those that don't mislead, harm or offend - are good for people, society and business. They give us value and choice. They fund the media, sport and culture we all enjoy, and they help power the economy.

We have to strike the right balance between those we regulate and those we protect. By making ads responsible we protect people and help them feel more confident in the ads they see and hear. By doing so in a way that's fair and balanced towards businesses and advertisers, we allow responsible advertising to flourish.

Helping us achieve this balance is industry's position at the heart of the ASA system, through the self- and co-regulatory Committees of Advertising Practice<sup>1</sup>. The industry created the ASA in 1962. Decisions made by the independent ASA 'jury' - against rules endorsed by industry - are enforced by industry working in concert with the ASA, and industry continues to fund the system today through an arms-length levy.

Together, the ASA and CAP are committed to regulating in a way that is **transparent, proportionate, targeted, evidence-based, consistent** and **accountable**.

We think it's important that those we regulate understand what standards they can expect from us as a regulator. Below, we set out our **six commitments** to good regulation – modelled on the **Regulators' Code**<sup>2</sup> - and some of the practical ways in which we make these commitments a reality through our day-to-day work.

Like the Regulators' Code, our commitments do not detract from our core purpose and responsibility to ensure that all UK ads are responsible.

### 1. We'll keep regulatory burdens to a minimum

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The ASA is committed to discharging its regulatory duties in the most proportionate and least burdensome way possible, in-line with the principles of good regulation.

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<sup>1</sup> CAP & BCAP – referred to in this document as the singular 'CAP' or as 'the committees')

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

## 2 Our commitment to good regulation

The ways we do this include:

- our use of **Informal Resolutions** (in 2016, of 16,999 ads subject to at least one complaint, 13,418 were not subject to detailed investigation and of the 3,581 that were, over 80% were informally resolved)
- our operation of a **persistent complainants policy**
- by encouraging **inter-party resolution**<sup>3</sup>
- by taking a **tough line** on “vexatious complainants”<sup>4</sup>

Under the ASA system, the most significant policy changes come from the industry via the CAP and BCAP committees - the ‘self’ in ‘self-regulation’. For example, the **Advertising Association**, sitting on CAP, represents 27 trade associations, professional bodies and other large businesses. **The Incorporated Society of British Advertisers (ISBA)**, also on the committees, has over 400 members representing nearly all the UK’s major advertisers.

Consequently, the committees have a clear imperative to avoid imposing unnecessary or disproportionate regulatory burdens that would, in effect, fall on the industry they directly or indirectly represent. To help them steer the right path, the committees have set out clearly<sup>5</sup> the key elements they will consider when assessing potential evidence-based changes to the Advertising Codes, to ensure that any regulatory change is necessary and proportionate.

## 2. We’ll engage with you

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When applying the rules written by industry, the ASA is committed through its published procedures and standards of service<sup>6</sup> to:

- Be accessible to industry
- Be effective in meeting the needs of our customers, whether members of the public or industry
- Be open about our procedures and our decision-making, and accountable for our performance (our rulings are published, in full, on our website: [www.asa.org.uk](http://www.asa.org.uk))
- Be clear about the reasons for non-compliance with the rules and, where we take action, provide an opportunity for a dialogue.

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<sup>3</sup> **Inter – party resolution** is the process whereby we require a competitor who wishes to make a complaint to attempt to resolve it with the advertiser first.

<sup>4</sup> E.g. persistent and unfounded new complaints arising out of the same fact, see <http://www.asa.org.uk/Consumers/Unacceptable-Contact-Policy.aspx> for more information.

<sup>5</sup> <http://www.cap.org.uk/News-reports/Consultations/~media/Files/CAP/Misc/Evidence%20Based%20Policy%20for%20CAP.ashx>

<sup>6</sup> <https://www.asa.org.uk/about-asa-and-cap/the-work-we-do/how-we-consult.html>

### 3 Our commitment to good regulation

Our leaflet **complaint about your ad**<sup>7</sup> and our **complaints handling procedures**<sup>8</sup> details what happens if we receive a complaint about an ad and, if a complaint is upheld, we've a clearly publicised route for advertisers to request a review of an ASA Council decision through the **Independent Reviewer of ASA Council Rulings**, currently Sir Hayden Phillips<sup>9</sup>.

We also have a published **Service Complaints Procedure**<sup>10</sup> that explains how advertisers or members of the public can make a complaint about the ASA if they are unhappy about the service we've provided or want to challenge a decision on a case that has been taken by the Executive and not the ASA Council.

We track our success against our published procedures and standards of service through advertiser and complainant **satisfaction surveys**. In 2016 we achieved a 77% satisfaction score from advertisers, against a target of 80%<sup>11</sup>.

To meet our commitment to developing effective long term relationships with business stakeholders, we have a **Stakeholder Engagement** programme (information about how stakeholders can access it is on our website<sup>12</sup>) through which businesses who participate in the programme are given a dedicated Stakeholder Engagement Manager.

Engagement extends to the committees. If consulting on potential changes to the rules, the committees will make their consultations clear and open by:

- involving, as far as possible, everyone whose views should be considered
- clearly setting out any proposed Code changes and explaining the policy considerations underpinning them
- considering all consultation responses to understand the possible effects of our proposals and inform our decisions about changing the Codes
- publishing the outcome and an explanation of how responses helped shape it.

While industry is intimately involved in all policy making through the sovereign decisions of the committees, CAP is committed to developing new and improved ways to involve wider industry in its code- and guidance-writing functions, e.g. through **pre-consultation work** with affected businesses.

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<sup>7</sup> <https://www.asa.org.uk/resource/complaint-about-your-ad-what-happens-now.html>

<sup>8</sup> <https://www.asa.org.uk/make-a-complaint.html>

<sup>9</sup> <https://www.asa.org.uk/codes-and-rulings/independent-reviews.html>

<sup>10</sup> <https://www.asa.org.uk/about-asa-and-cap/about-regulation/complaints-about-the-asa.html>

<sup>11</sup> <https://www.asa.org.uk/news/asa-and-cap-annual-report-2016.html>

<sup>12</sup> <http://www.asa.org.uk/Industry-advertisers/Stakeholder-Engagement.aspx>

### 3. We'll be targeted

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Where potential Code issues do arise, we aim to resolve them with the advertiser through persuasion and consensus where possible and appropriate (and can resolve cases informally at all stages of the complaint process). When considering enforcement action, we take into account all relevant factors including how often an advertiser has sought our **help** and **advice** (see commitment 5). Action is targeted towards those who are unwilling or unable to comply with the rules.

Importantly, the ASA does not consider that inaction in the face of a clear breach of the Advertising Codes – even if the detriment is small or limited - is the same thing as being proportionate or targeted. Where breaches have been identified by members of the public or by business, we believe it is right to try and secure compliance, albeit through proportionate means.

However, *how* we do this matters, and through the ASA's **five-year strategy** we've developed means to be more impactful where it counts most by targeting more resources on areas of greater potential detriment, and fewer resources where detriment is less. Our **Prioritisation Principles**<sup>13</sup> have been developed to guide our approach to targeting the right amount of resource on the right things.

The ASA is committed to targeted and proportionate regulation. We do this through, for example, the use of **Advice Notices** and **Informal Resolutions** where possible and through encouraging **inter – party resolution**.

Around 80% of complaints received by the ASA raise no issue under the Codes, and we will typically answer those complaints without the need even to contact the business or advertiser.

When considering **rules** and **guidance**, CAP understands that judgements necessarily involve a considered assessment of a range of risks, including the risk of conflict with the law and the risk of failing to act.

Consequently the committees choose from among a range of possible interventions - such as rules, guidance or training - according to what they deem proportionate and appropriate based upon an assessment of the best-available evidence.

### 4. We'll share information

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The ASA system is committed to working effectively with other regulators where necessary, to avoid regulatory duplication or inconsistency.

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<sup>13</sup> <https://www.asa.org.uk/resource/asa-prioritisation-principles.html>

## 5 Our commitment to good regulation

To achieve this, we've developed case handling principles, reciprocal referral mechanisms or memoranda of understanding with a number of other regulators and key stakeholders<sup>14</sup>. These include the Competition and Markets Authority, the Gambling Commission, the Claims Management Regulator, Phone-Paid Services Authority and the Financial Conduct Authority. In 2013, we agreed new case handling principles with Trading Standards; The NTSB for England and Wales, DETINI in Northern Ireland and COSLA in Scotland which, together, act as our legal backstop.. In 2016 we agreed terms for the regulation of the advertising of food in England in Wales with Defra, the Department of Health and the Food Standards Agency. We're also committed to consistency with the advertising pre-clearance bodies, Clearcast and Radiocentre.

Whilst the ASA has seen little evidence that our work is inconsistent with other enforcement bodies (e.g. Trading Standards), we've introduced steps to make it easier for business to highlight inconsistent regulation should it occur. If neither the CAP consultation process nor the ASA complaints handling process are the appropriate means of registering concerns, businesses can make their voice heard through a dedicated page of our website encouraging stakeholders to bring matters of inconsistency to our attention:

<http://www.asa.org.uk/Industry-advertisers/Consistency.aspx>

Any concerns will be acknowledged within five working days. If we agree that a valid point of inconsistency has been identified, we'll make it our priority to tackle it.

### 5. We'll provide advice and training support

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As well as writing the rules, CAP provides a range of **bespoke advice, training seminars, eLearning and online resources**<sup>15</sup> to help advertisers stay on top of the requirements of the Codes and prevent breaches from occurring in the first place.

This includes Copy Advice<sup>16</sup>, a free, confidential pre-publication advice service for advertisers, agencies and media.

In 2016 CAP provided advice and training on **281,061** occasions – up 10% on 2015. There were **59** industry presentations, **40** *Insight* articles, **5,397** requests for copy advice and **over 145,000** visits to the *AdviceOnline* database<sup>17</sup>.

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<sup>14</sup> <https://www.asa.org.uk/transparency/who-we-are-and-what-we-do.html>

<sup>15</sup> <https://www.asa.org.uk/advice-and-resources.html>

<sup>16</sup> <https://www.asa.org.uk/advice-and-resources/bespoke-copy-advice.html>

<sup>17</sup> <https://www.asa.org.uk/advice-and-resources/resource-library/advice-online.html>

## 6. We'll be transparent

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The ASA has made a commitment to being a **transparent** organisation. Through our **published procedures** and **standards of service**, the ASA is committed to:

- Being accessible to members of the public and the advertising industry
- Resolving complaints without undue delay, whilst recognising that complex complaints can take longer than average
- Being effective in meeting the needs of our customers, whether members of the public or industry
- Delivering a high quality and professional service
- Being open about our procedures and our decision making, and accountable for our performance

Industry and consumers can judge the ASA's performance against these commitments in our **Annual Report** and our **Half-year Report**..

More information on how we are transparent can be accessed at: <http://www.asa.org.uk/General/Transparency.aspx>

### The 2017 independent audit of the ASA's performance against its *Commitment to Good Regulation*

We take our responsibilities contained in this *Commitment to Good Regulation* seriously. That's why in 2016 the ASA commissioned a six-month long independent audit of how we are performing against them.

In 2017 Dame Janet Paraskeva DBE published the findings of her independent audit of our performance against five of the key areas set out in our *Commitment to Good Regulation*.<sup>18</sup> Her audit involved a detailed review of our processes, policies, ways of working and she observed us in action and talked to people at all levels in the organisation. Dame Janet also met a wide range of industry stakeholders and listened to their views and ideas.

Following her thorough review she concluded that the ASA is meeting the regulatory commitments we have set out, and she confirmed that those commitments in the main either meet or exceed the requirements of the statutory *Regulators' Code*, on which they are modelled.

Dame Janet's findings confirmed that the ASA is a "successful regulator" which is "fit for purpose", is "a modern online regulator with efficient systems" and has an Independent Review process that "works efficiently". We were pleased to note that

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<sup>18</sup> <https://www.asa.org.uk/resource/independent-audit-of-the-asa-s-commitment-to-good-regulation.html>

## 7 Our commitment to good regulation

she found that the ASA has the support of the industry it regulates but has in place appropriate systems and protocols that demonstrate independence from that same industry.

Nevertheless, as a confident regulator that is unafraid to seek and act on feedback, we recognise that there is always room for improvement. We therefore carefully considered and acted on the 30 recommendations that Dame Janet made in her report, most of which concerned process improvement, engagement and communications at an internal level and with business compliance representatives of the businesses we regulate. We reported on our progress against our response to the audit findings in September 2017, (which can be accessed via footnote 18).

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