

# Marketing of causes and ideas: Regulatory Statement



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**The UK Advertising Codes are the responsibility of two industry Committees – the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) and are independently administered by the Advertising Standards Authority (ASA).**

**The Codes require advertisements across media to be legal, decent, honest and truthful, promoting consumer trust in advertising and maintaining fair competition between businesses. The Codes also include additional, sector-specific rules, such as those for alcohol, food and gambling, to ensure responsible advertising and the protection of vulnerable groups.**

## 1. Summary

In 2010, CAP committed to reviewing the advantages and disadvantages of continuing to regulate marketing communications for causes and ideas after a 2-year pilot period of its online remit extension (ORE). This statement sets out the work carried out during the review and CAP's decision.

CAP assessed various options against its existing policy objectives, in particular: whether action was proportionate; whether it was targeted where it was needed; and whether it presented risks to the ASA in terms of limits it may have imposed on freedom of speech. The options that it considered against these criteria were the following: maintaining the status quo; restricting its remit; extending its remit; and creating a new Code section for causes and ideas marketing.

After its review, CAP has decided on a paid-for space test to determine whether causes and ideas marketing falls within the 'offline' remit of its Code; the online remit will remain the same. This decision will itself be subject to a 12-month review and will take effect from **14 October 2014**.

## 2. Background

### 2.1 Marketing of causes and ideas after the online remit extension (ORE)

In 2010, the Advertising Association (“AA”) invited the ASA and CAP to consider the advantages and disadvantages of continuing to regulate marketing communications for causes and ideas under the pre-ORE remit, and for the ASA/CAP to report back their findings after the two-year pilot period of the ORE.

### 2.2 CAP’s remit over causes and ideas

The CAP Code does not define advertising. Rather, it lists categories of communication to which it applies and offers supplementary definitions and exclusions, such as the definition of product in III.a. of the Introduction:

*a product encompasses goods, services, ideas, causes, opportunities, prizes or gifts*

This is the provision that brought causes and ideas into the pre-ORE remit. Marketing communications for causes and ideas in paid-for online space fall within this remit. Communications for causes and ideas on marketers’ own websites or in other non-paid-for space online under their control are excluded from the extended online remit because they are not directly connected with the supply or transfer of goods, services, opportunities and gifts unless they consist of direct solicitations of donations as part of their own fund-raising activities. This derives from I.h. of the Introduction:

*Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.*

The concept of causes and ideas marketing is a wide one, and the ASA examines a diverse range of marketing material under its current remit, including, for example: environment-related campaigning leaflets (for example, anti-wind farm and other developments); government health and safety campaigns (for example, posters to promote giving up smoking or prevent drink-driving); marketing by charities and pressure groups (for example, websites soliciting donations / posters encouraging people to espouse certain charitable or political causes); and various other categories of causes and ideas marketing.

### 2.3 CAP’s justification for its remit over causes and ideas

Causes and ideas marketing is included within the scope of the Code because CAP considers that the protection of the reputation or rights of others does not begin or end with material relating to consumers and advertisers of goods and services. It is a much broader matter than that. Marketing communications for causes and ideas make use of objective claims just as communications for goods and services do. Equally, marketing communications for causes and ideas have the ability to cause serious or widespread offence, just as communications for goods and services do. It is CAP’s understanding, and the ASA’s experience through its handling of complaints, that the public, civil society and industry all expect advertising to be held to certain common standards, among which are truthfulness and decency.

The Code commits the ASA to ensuring that it does not use the Code to diminish freedom of speech unjustifiably (Introduction, IV. i.), and there are various other ways in which the Code seeks to set limits on its application to marketing communications to ensure that it is proportionate and justified in its restrictions on freedom of speech. Notably, compliance with the Code is assessed according to the marketing communication's impact when taken as a whole and in context, depending on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any material distributed to consumers (Introduction, IV. c.). Moreover, marketers are free to give their opinion in advertising, provided that they do not imply expressions of opinion are objective claims (rule 3.6) or that their expressions of opinion are not likely to cause serious or widespread offence (rule 4.1).

CAP carried out a three-month consultation on its Code in 2009. The consultation document states in paragraph 3 v that "CAP's proposed Code has been drafted in the light of the Human Rights Act 1998 and the European Convention on Human Rights. In particular, the right to freedom of expression, as expressed in Article 10 of the Convention". CAP took extensive legal advice on its Code both before and after consultation.

### 3. Consideration

#### 3.1 Options considered

The AA's paper did not set out criteria for review but, for the purposes of the review, CAP examined options against its existing policy objectives, in particular whether the proposed action: was proportionate; targeted where it was needed; and presented risks to the ASA in terms of limits it may have imposed on freedom of speech. Options that CAP considered against these criteria were:

- **Maintaining the status quo**
- **Restricting the pre-ORE remit**

This would have involved CAP entirely giving up its regulation of the marketing of causes and ideas across all non-broadcast media. The pre-ORE remit refers to the range of paid-for and non-paid-for space across non-broadcast media covered by the CAP Code before 2011 – for example, national and regional press, outdoor media, cinema advertising and leaflets.
- **Extending the post-ORE remit**

This would have involved CAP looking at online marketing of causes and ideas, whether or not the marketing contained a direct solicitation of donations; it would have involved CAP applying the same standards to marketers' own websites and other non-paid-for space online under their control as to traditional media.
- **Creating a new Code section for causes and ideas marketing**

This would have involved different, less restrictive standards being applied to causes and ideas marketing, through the operation of a section of the Code containing these standards. Such standards might have been informed by legal precedent on restriction of freedom of expression; for example, a test of 'gratuitous offence' or a relaxation of substantiation requirements.

- **Applying a paid-for space test**

This would involve only looking at causes and ideas marketing that appeared in paid-for space.

### **3.3 Work with external stakeholders**

Given CAP's belief, central to all of its work, that the public, civil society and industry all expect advertising to be held to certain common standards, among which are truthfulness and decency, it sought the views of external people and organisations with an interest in the regulation of causes and ideas marketing. Whilst being mindful that it was not under any duty to consult on proposed changes to its Code, CAP invited certain organisations to give their perspective, which might have proved useful in informing its assessment of the options.

## **4. CAP's decision to change its remit**

### **4.1 CAP's decision**

CAP has decided to restrict its 'offline' remit over causes and ideas marketing to include only causes and ideas marketing that appears in paid-for space, except where the marketing includes a direct solicitation of donations. CAP considered paid-for space attracted that expectation of regulation and that its regulation protected its integrity. CAP's online remit over causes and ideas marketing will remain the same.

Donated space will be treated as being distinct from "non-paid-for" space and ads that appear in donated space in print media, for example, will remain within scope of the CAP Code under the proposed remit definition. This is consistent with CAP's existing position on paid-for space, which includes space that normally attracts commercial value, so a marketing communication appearing in donated space, which in usual circumstances would incur a cost, would still be in remit. An example of such space would be a billboard on which an advertiser was allowed to place an ad for no cost when in normal circumstances they would be obliged to pay.

### **4.2 Addition to the Introduction to the Code**

From **14 October 2014**, the following wording will be inserted into the Introduction to the Code to implement the remit change:

**[II The Code does not apply to:]**

p. marketing communications for causes and ideas in non-paid-for space, except where they contain a direct solicitation for donations as part of the marketer's own fund-raising activities

The ASA will not accept complaints received after this date unless they fall within the new remit.

### **4.3 Review**


Given the significance of the change, CAP will carry out a review of the remit change after 12 months.

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