

ASA system submission to the Crypto and Digital Assets APPG's inquiry into the UK crypto sector

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 is providing this written submission in response to the Crypto and Digital Assets APPG's inquiry into the UK crypto sector.
- 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 60 years and the Broadcast Advertising Code (written and maintained by BCAP) for 18, 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 tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.5. As the UK's frontline advertising regulator, the ASA brings together different statutory, co-regulatory and self-regulatory enforcement mechanisms so they appear seamless to people and businesses. Our system involves the active participation of a range of legal backstops in the consumer protection landscape. We work closely with a network of partners including Ofcom, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority.
- 1.6. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line. Together, this 'collective regulation' helps to protect people and responsible business from irresponsible ads: ads that mislead, harm or offend their audience.
- 1.7. We bring together the ad industry and media owners to set, maintain and police high standards. The UK Advertising Codes are drafted and maintained by the industry committees of CAP and BCAP, supported by experts in our Regulatory Policy team. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creates a level-playing field amongst them. There are multiple checks and balances in place to ensure the committees' development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations; mandatory regard to the advice of an expert independent consumer panel; Ofcom signing off on BCAP rule changes; the ASA System's processes being open to judicial review and more besides. All to ensure the system is wholly accountable to everyone with a stake in advertising.
- 1.8. The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous one-stop-shop benefits for the marketing industry in their application of the rules and for consumers, who benefit from the protection they afford.
- 1.9. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media 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 850,000 pieces of advice and training in 2021.

2. The ASA's remit over financial advertising

- 2.1. It is important that we set out to the APPG the ASA's remit over financial advertising and relationship with the Financial Conduct Authority (FCA). We have a very close working relationship with the FCA, which is an important regulatory partner. As mentioned in 1.5, working with the FCA and other regulators is essential to consumer protection, and we place great emphasis on effective collaboration to avoid regulatory gaps.
- 2.2. Advertising of financial products is regulated by the FCA and the ASA, with a division in remit between the two regulators dependent on whether the product or service is a regulated activity, the medium in which the ad appeared and the specific content of the ad.
- 2.3. All ads for FCA-regulated financial products (including pensions, investments, insurance, deposit and savings accounts, mortgages, consumer credit, peer to peer lending, credit brokerage and debt management providers) fall under the FCA's rules for financial promotions.
- 2.4. In line with a Memorandum of Understanding between the ASA and FCA, complaints received by the ASA about the technical elements of non-broadcast ads for FCA-regulated products are referred to the FCA. Matters concerning the non-technical elements of such ads, such as serious or widespread offence or social responsibility, fall within the ASA's remit.
- 2.5. In broadcast media, due to inherited statutory responsibilities, the ASA considers all complaints received about both technical and non-technical elements of ads for FCA-regulated financial products, ensuring communication with the FCA where there is overlap of remit. The FCA, however, can also take action against broadcast ads for FCA-regulated financial products where it identifies concerns.
- 2.6. The ASA regulates all elements of non-broadcast and broadcast ads for financial products not regulated by the FCA.

3. The ASA's remit over cryptoasset advertising

- 3.1. Cryptoassets, as defined by the FCA are: *"cryptographically secured digital representations of value or contractual rights that use some type of distributed ledger technology (DLT) and can be transferred, stored or traded electronically"* and include cryptocurrencies, utility tokens and non-fungible tokens.
- 3.2. The vast majority of cryptoassets are not regulated by the FCA and, as such, the FCA currently does not exercise powers over the advertising of most cryptoassets products in the UK. However, where cryptoassets are traded on existing regulated platforms they fall under the FCA's remit.
- 3.3. In 2022, the Government announced plans to strengthen the rules for the advertising of some forms of cryptoassets to protect consumers from misleading claims by bringing them into the scope of the Financial Promotions Order and regulation by the FCA. The timescales for this work have not yet been determined but it is not expected to take effect before 2023.
- 3.4. In the meantime, all ads for unregulated cryptoassets continue to be subject to the Advertising Code. Following the date on which the FCA takes on responsibility for regulation of ads for most forms of cryptoassets, the ASA will cease to regulate technical elements, such as misleadingness, in ads for these products but will nevertheless continue to retain oversight of non-technical elements, such as social responsibility, across all forms of cryptoasset advertising.
- 3.5. Non-fungible tokens (NFTs) are currently excluded from the Government's announced changes and will therefore remain under the remit of the Advertising Code for issues relating to both misleadingness and social responsibility once these regulatory changes have taken effect.

4. Cryptoassets and the advertising rules

- 4.1. Section 14 of the CAP Code contains general requirements that ads for unregulated financial products, such as cryptoassets, must:
- Make clear the product is not regulated / protected in the UK
 - Ensure that statement is clear to consumers
 - Be easily understood by the intended audience
 - Make clear that the value of investments is variable.
- 4.2. Ads for cryptoassets are also subject to all other sections of the Code, including that ads must not:
- Materially mislead consumers
 - Be socially irresponsible, particularly by trivialising investment.
- 4.3. Under the BCAP Code, ads for unregulated investments, such as cryptoassets, can only be broadcast on specialised financial TV channels or radio stations or during specialised programming, thereby excluding cryptoasset ads from broadcast on mainstream services.

5. ASA action on cryptocurrency ads

- 5.1. Cryptoassets are highly volatile, complex products, subject to frequent changes in value, that could potentially lead to investors making large losses which do not fall under the umbrella of financial compensation schemes such as the Financial Services Compensation Scheme or the Financial Ombudsman Service. We recognise the important role we play in regulating ads for cryptoassets to ensure they don't mislead consumers about a product's risks or act irresponsibly in their promotion. Cryptoassets, particularly cryptocurrency, have exploded in popularity in recent years, but there's a real danger that consumers are drawn in to invest life savings that they later lose based on poor understanding.
- 5.2. The presentation of, or the omission of, information in ads for cryptoassets can therefore easily take advantage of consumers' inexperience and credulity and affect consumers' understanding of a product that exposes them to high risk and potential tax implications, of which they may be unaware.
- 5.3. The ASA has always acted on complaints received about cryptocurrency ads. Our first ruling was published in October 2018 when we ruled against [Inside Access LLC t/a Crypto Bank Global](#). Early interventions from the ASA focused on ads appearing in print and outdoor media as this is where most ads were appearing at that time. The volume of ads for cryptocurrencies increased significantly in and around 2020 during the pandemic, with the increase particularly noticeable for online media.
- 5.4. Given the proliferation of cryptocurrency ads and the high risk of consumer detriment, in 2021 the ASA identified cryptocurrency advertising as a 'red alert' high priority issue and we took the decision to proactively investigate representative cryptocurrency ads across different online media to act as precedent setting cases that would establish the ground-rules for all advertising across all online media. We published 12 rulings together in late December to ensure widespread media impact and to bring to the attention of consumers the risks involved with cryptocurrencies.

Example rulings include:

- [ASA Ruling on Skrill Ltd](#) - A paid-for Reddit ad for an online wallet and money transfer service banned for taking advantage of consumers' lack of experience by implying that cryptocurrency investment was risk free.
- [ASA Ruling on Luno Money Ltd](#) - A paid-for display ad for a cryptocurrency trading platform banned for irresponsibly taking advantage of consumers' inexperience and for failing to illustrate the risk of the investment.
- [ASA Ruling on Exmo Exchange Ltd](#) - A YouTube video promoting a cryptocurrency exchange banned for irresponsibly taking advantage of consumers' inexperience and for failing to illustrate the risk of the investment.
- [ASA Ruling on CoinBurp Ltd](#) - A Twitter bio for a cryptocurrency trading platform banned for irresponsibly taking advantage of consumers' inexperience and for failing to illustrate the risk of the investment.
- [ASA Ruling on Coinbase Europe Ltd](#) - A paid-for Facebook ad for a cryptocurrency trading platform banned for irresponsibly taking advantage of consumers' inexperience and for failing to illustrate the risk of the investment.
- [ASA Ruling on eToro \(UK\) Ltd](#) - A paid-for display ad for a cryptocurrency trading platform banned for irresponsibly taking advantage of consumers' inexperience and for failing to illustrate the risk of the investment.

5.5. As a result of these precedent setting rulings, **cryptocurrency ads must adhere to the following requirements:**

- All ads **must** expressly and prominently state:
 - Cryptocurrencies are unregulated in the UK
 - Cryptocurrency profits may be subject to Capital Gains Tax
 - The value of investments is variable and can go down as well as up.
- Claims for rates of return must be representative, supported by documentary evidence and make clear how the rate is calculated and any significant conditions that apply
- Ads **must not** imply:
 - Cryptocurrency products or services are regulated
 - Past performance of investments necessarily give a guide for the future or guarantee a future income
 - Investments are safe or 'low risk' or that returns are guaranteed
 - There is an urgency to buy or create a fear of missing out
 - Investment decisions are trivial, simple, easy or suitable for anyone¹
 - Cryptocurrencies are suitable for purchases on credit.

5.6. We will continue to review our policies around cryptocurrency advertising and make sure that our rules always protect consumers.

¹ in some circumstances such claims may be acceptable but only if they include a suitable risk warning

6. The ASA's Enforcement Notice on advertising of cryptocurrencies

- 6.1. In March 2022, following publication of our 12 rulings we issued an [Enforcement Notice](#) to more than 50 companies which advertise cryptocurrencies, instructing them to review their ads and to ensure they understand and are complying with the rules so that consumers are treated fairly.
- 6.2. The Enforcement Notice provides guidance to the crypto industry on how to stick to the rules and warns that we will monitor for compliance and implement sanctions if we do not see improvements. The guidance requires that advertisers adhere to all of the requirements listed in 5.5 above.
- 6.3. The notice continues our work in clamping down on problem crypto ads. As part of this, we are working closely alongside the FCA to take action against those who appear unable or unwilling to abide by the rules.
- 6.4. The notice applies to ads for cryptocurrencies, crypto exchanges and ads or promotions which otherwise involve the transfer, sale or supply of cryptocurrencies, targeted at UK consumers or that are targeted globally on behalf of UK-based advertisers.
- 6.5. The ASA's Compliance team has worked closely with our in-house Data Science team to enable comprehensive follow-up monitoring using AI tools that automatically monitor all of the ads and social media posts of the relevant companies, using machine-learning algorithms to identify potentially problematic ads, allowing for swift intervention where needed.
- 6.6. This has enabled us to have a 100% compliance rate with the Enforcement Notice, and where advertisers step out of line, we can quickly ensure that their ads are taken down. If we see any continuing patterns of non-compliance, we can swiftly follow up with them to ensure that they understand their obligations – and if necessary, we can report non-compliant advertisers to the FCA.

7. ASA action on ads for utility tokens

- 7.1. Utility tokens are a form of cryptoasset that can be used within a specific ecosystem. These tokens allow users to perform some actions on a certain network are linked to cryptocurrencies because they use digital ledger technology and are sometimes acquired through the prior purchase of a cryptocurrency. These tokens can be used to create incentive schemes enabling people to perform unique actions within the ecosystem.
- 7.2. Alongside the increase in ads for cryptocurrency, the ASA also witnessed a surge in the promotion of utility tokens, in particular “fan tokens” used by sports clubs, which are a form of utility token. Both paid-for and free fan tokens may be promoted in ads.
- 7.3. In light of the similar risks to consumers posed by utility/fan tokens, we initiated a proactive investigation against advertising by Arsenal Football Club plc. The ruling ([ASA ruling on Arsenal Football Club plc](#)), re-published this summer following an appeal by Arsenal to an earlier published ruling, set out the following requirements for the advertising of utility/fan tokens:
 - Ads must make sufficiently clear that the value of investments in paid-for fan tokens is variable and as cryptoassets they are unregulated
 - Ads should not mislead consumers by omitting material information in their ads, including that free fan tokens require a consumer to open a cryptoassets exchange account and that paid-for fan tokens are a cryptoasset that have to be bought using another cryptocurrency.
 - Ads must not trivialise investment in cryptoassets by omitting appropriate and prominent risk warnings.

- Ads must not irresponsibly take advantage of consumers' lack of experience or credulity by not making clear that Capital Gains Tax could be due on cryptoasset profits.

7.4. We have initiated plans to engage with industry to enforce these requirements.

8. ASA action on non-fungible tokens

8.1. Non-fungible tokens (NFTs) are unique, non-interchangeable units of data stored on a blockchain. NFTs are also a form of cryptoasset, but with the difference being that NFTs cannot be replicated and therefore cannot be traded or exchanged at equivalency or used for commercial transactions. However, they can be bought and sold online, usually through NFT marketplaces. NFTs can be created to represent both tangible and non-tangible items in a digital form.

8.2. Last year saw an explosion in the popularity of NFTs, primarily their presence in the world of collectibles and digital art, collaboration with noted celebrities or sportspeople and the media attention surrounding the sale of particular NFTs at auction for very high prices, sometimes reaching into the millions.

8.3. As with the other cryptoassets, lack of regulation and high volatility means that NFTs present similar risks to consumers, particularly for those who wish to resell them, highlighted by recent media articles detailing significant falls in NFT prices and financial loss for consumers following a decline in the crypto market. However, compared to cryptocurrency there is a greater level of nuance and complexity associated with NFTs:

- NFTs can represent any item and may be sold by a large variety of retailers which includes cryptoasset firms and NFT marketplaces but also sports teams, fashion retailers, jewellers, musicians, artists and museums, for both commercial and charity-linked purposes. NFTs are also becoming more prevalent for purchase within games, where they may be used as avatars, skins or clothing and so may be advertised both within the game or in ads in other media. NFTs can also have a utility function, where they grant their owner privileges, rights, or rewards which they would not otherwise be able to access. This wide range of sectors in which NFTs are promoted presents the possibility of many business models and scenarios which increases the difficulty of enforcing advertising requirements.
- There is wider debate about whether all NFT ads should be subject to the same risk warnings and qualifications as cryptocurrency ads where they are presented, for example as collectibles, in a gaming context or which have a utility function, and which don't include any terminology or claims associated with investment activity.
- The BCAP Code excludes unregulated investments from appearing on mainstream channels but a ruling that might suggest an NFT is not being promoted as an investment may open the door for mainstream broadcast advertising.
- We're aware that the Gambling Commission has been investigating whether some NFT services constitute unauthorised gambling and some NFTs may also be used within regulated gambling services.

8.4. As part of our consideration of NFTs, we will be engaging with other regulatory stakeholders, including the FCA, Gambling Commission, Ofcom, CMA as well as the clearance bodies to ensure the most appropriate regulatory outcomes. In the meantime, to minimise the potential for consumer harm we have proactively initiated three investigations, which will set out some core principles for ads that promote NFTs for investment activity. Rulings are on target to be published by the end of the year and we will keep relevant stakeholders updated.

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