

## **ASA system submission to the Department for Communities' consultation on a Code of Practice for gambling operators**

### **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 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.
- 1.3. 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.
- 1.4. 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.
- 1.5. 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.
- 1.6. 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.
- 1.7. 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.

- 1.8. 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.
- 1.9. The ASA system is providing this written submission in response to the Department for Communities' consultation on a Code of Practice for gambling operators.

## **2. The ASA's remit over gambling advertising in Northern Ireland**

- 2.1. The ASA is the UK's regulator for gambling advertising across all media. The legal framework for gambling, including the requirements for licensed gambling operators, is set out in the Gambling Act 2005 which applies to Great Britain. However, since the Gambling (Licensing and Advertising) Act 2014 we've also regulated remote gambling advertising in Northern Ireland.
- 2.2. The ASA has approached the regulation of gambling and lotteries advertising in Northern Ireland with caution recognising the special statutory arrangements that apply. The UK Advertising Codes urge marketers to take specialist legal advice if they are advertising in NI and the ASA commits to cooperating with the relevant authorities in cases involving potentially irresponsible gambling ads.
- 2.3. In practice, most of our regulatory work on gambling advertising relates to ads by or on behalf of remote gambling services. These are regulated by the Gambling Commission under the framework established by the Gambling Act 2005 and Gambling (License & Marketing) Act 2014. The ASA plays a part in this having been asked by Government and the Gambling Commission to create dedicated controls on gambling advertising when the Gambling Act 2005 entered into force in 2007.

## **3. The Advertising Codes on gambling advertising**

- 3.1. The ASA System introduced its rules on gambling advertising in response to the Gambling Act 2005, which gave operators greater freedom than before to promote gambling products.
- 3.2. The ASA is the UK's frontline regulator for gambling advertising across all media. We're supported by a range of expert statutory backstops, who can assist us, where necessary, to bring non-compliant advertisers into compliance. For gambling advertising, our statutory backstops include Ofcom for broadcast gambling ads, and the Gambling Commission for non-broadcast gambling ads.
- 3.3. Gambling sponsorship is excluded from the ASA's remit. Sponsorship, in and of itself, is a contract or other arrangement between a sponsoring brand and another party; the Codes administered by the ASA do not apply to sponsorship arrangements themselves. Where sponsorship (e.g. of events, sports teams etc.) is featured in ads, the ads are subject to ASA regulation.
- 3.4. The ASA and, to the best of our knowledge, other regulators exercising powers in relation to marketing communications, have limited scope to control the volume of advertising, beyond restrictions on the media placement or scheduling of advertising. To date, the ASA has not seen evidence of harm from gambling advertising to which volume restrictions (as opposed to scheduling, placement, or content restrictions) is likely to be an appropriate response.
- 3.5. The Advertising Codes contain gambling rules that sit on top of general Code provisions that require ads not to mislead, harm or cause serious or widespread offence. The dedicated gambling sections of the UK Advertising Codes ensure that ads are socially responsible and don't encourage gambling in ways that harm or exploit children, young people or vulnerable adults.

- 3.6. It is important to acknowledge that the potential risks, harms and mitigations associated with gambling *advertising* differ from those associated with actual participation in gambling. The act of gambling can, in the absence of appropriate safeguards, be harmful to individuals, particularly those whose circumstances put them at risk of problem gambling. Statutory restrictions on the age of play for many gambling products acknowledge a key aspect of gambling-related harm: the significant risks associated with underage participation. Advertising may legitimately seek to persuade individuals to gamble, but advertisements compliant with the UK Advertising Codes must not do so in a way that is likely to encourage or condone harmful behaviour.
- 3.7. For children and young people, gambling advertising-related harm involves: directly influencing children or young people (who are legally prevented from gambling) to participate in gambling; affecting attitudinal change that is likely to result in participation later in life (either while the individual is underage or when they become of an age to gamble legally); or influencing longer-term attitudes that could result in irresponsible or harmful gambling behaviour when an individual comes of age and can gamble legally.
- 3.8. For adults, we understand there are recognised vulnerable groups as well as individuals who can be vulnerable (exceptionally or periodically) at particular points in their life. Gambling advertising-related harm involves advertisements that: encourage or condone problem gambling or risky gambling behaviours; adversely influence other vulnerable persons (for example, those exhibiting impaired judgement when it comes to gambling, mental health concerns, substance abuse or low financial acumen); or take advantage of or otherwise exploit individuals' particular circumstances (for example, presenting gambling as a means to resolve financial concerns or address issues of self-esteem).
- 3.9. We continually review the rules, taking into account evidence about the impact of gambling advertising on potential problem behaviour as well as gauging wider societal concerns to ensure that they remain effective.
- 3.10. Crucially, gambling ads mustn't be directed at children. Ads can't portray gambling in a way that's socially irresponsible or could lead to financial, social or emotional harm. They can't exploit children or other vulnerable people, including through advertising content which appeals particularly to young people, or which reflects youth culture. Amongst other restrictions, ads can't suggest gambling provides an escape from personal problems, can solve financial worries, or can enhance personal qualities.
- 3.11. In 2019, CAP [introduced new standards](#) to strengthen how the rules apply in practice. They include:
- Social media – gambling operators must use all the targeting tools available to them on a social network platform or in the open programmatic display marketplace to prevent inadvertently targeting their ads at under-18s, including those falsely registered or incorrectly inferred to be 18 or older. This includes both ad targeting tools provided directly by the platform (based on their platform users' interests and browsing behaviour), and tools that restrict under-18s' access to marketers' own social media content.
  - Parts of websites for under-18s – gambling operators should take particular care to avoid placing their ads on parts of websites of particular appeal to under-18s. For example, a football club's website might have a strongly adult audience in general, but it would be inappropriate to place gambling ads in pages dedicated to younger supporters.
  - Social and online gaming – Gambling-like games or games that feature elements of simulated gambling activity are often popular with children and young people. Such games should not be used to promote real-money gambling products. Where social and online games feature marketing communications for gambling games, they should not be directed at under-18s.

- Influencers – gambling operators should take particular care when collaborating with influencers to promote their products or brands. They should take into account the influencer’s likely appeal and obtain audience data (for instance, the age-breakdown of a follower or subscriber-base) to ensure that under-18s are not likely to comprise more than 25% of the audience.
- Affiliates – Responsibility lies with gambling operators to ensure that affiliates or other third parties acting on their behalf publish or disseminate ads that comply with the advertising rules.

3.12. In February 2018, CAP and BCAP published a [dedicated piece of guidance on gambling advertising, setting new standards](#) to ensure that ads remain responsible with a particular focus on mitigating potential harms associated with problem gambling. The guidance focused on the ‘tone’ of ads. In essence, advertisers must be more careful with the messages they use. Based on evidence, we targeted risk factors – claims, imagery or marketing approaches – that could unduly influence vulnerable groups to behave irresponsibly. Significant provisions in the guidance included:

- Restricting ads that create an inappropriate sense of urgency like those including “Bet Now!” offers during live events.
- Curbing trivialisation of gambling (e.g. encouraging repetitive play).
- Preventing approaches that give an irresponsible perception of the risk or control (e.g. “Risk Free Deposit Bonus”).
- Providing greater detail on problem gambling behaviours and associated behaviours indicators that should not be portrayed, even indirectly.
- Preventing undue emphasis on money-motives for gambling.

3.13. We have also undertaken joint work with the Gambling Commission to protect children. We took [joint-enforcement action](#) against gambling operators who we advised to amend or remove immediately any ads on their website or in third party media that are:

- likely to appeal particularly to people aged 17 or younger (‘under 18’); and,
- Generally available to view (‘freely accessible’). This relates particularly to freely accessible ads for play-for-free and play-for-money games and includes all graphics and images displayed on a website or in third party media.

Following our ‘cease and desist’ letter aimed at companies who used cartoon imagery in breach of our rules, online gambling operators took the necessary action to comply with our rules.

3.14. During the Covid-19 pandemic we [issued a warning](#) to gambling and lottery operators to uphold the highest standards in their advertising. Lockdown created a captive audience and there were concerns that many people facing an uncertain financial future or other anxieties caused by the pandemic would see gambling as a way out.

#### **4. Consultation on new strengthened rules and guidance for gambling ads to protect children and young people**

4.1. We know that advertising, including gambling advertising has the potential to cause harm. That is why the sections of the Codes dedicated to gambling advertising contain strict content and media placement restrictions. It’s common sense that ads that directly address people they shouldn’t (under 18s or problem gamblers) or include content intended to influence those groups in ways they shouldn’t (e.g., by encouraging underage gambling or risky play) have a heightened risk of causing harm and are inherently irresponsible.

- 4.2. We have continuously reviewed the evidence base for gambling advertising and its impact on young people and problem gambling behaviour. CAP reviewed the evidence in 2014 based on the Responsible Gambling Trust's evidence review on vulnerable adults carried out by Per Binde and our own literature review related to gambling advertising and children. It updated these reviews in both 2018 and 2019.
- 4.3. Following our review of [GambleAware's Final Synthesis Report](#), CAP ran a [consultation](#) on further tightening the rules around the content and targeting of gambling ads, in particular, to further limit the appeal of gambling ads to under-18s and other vulnerable people.
- 4.4. This was a part of our commitment to continually review the available evidence on the potential harm arising from gambling advertising and to update our rules and guidance where there is a case to do so.
- 4.5. While our Codes already contain strict rules around gambling ads which significantly limit children's exposure to gambling ads, GambleAware's research provided evidence that the creative content of gambling ads, which were compliant with the UK Advertising Codes, had more potential, than previously understood, to adversely impact under-18s and vulnerable adults.
- 4.6. CAP consulted on proposals to strengthen the rules to prohibit creative content of gambling and lotteries ads from appealing 'strongly' to under-18s (currently gambling ads are prohibited from appealing 'particularly' to under-18s; in other words, they are banned from appealing more to under-18s than to adults). A 'strong' appeal test identifies content (imagery, themes and characters) that has a strong level of appeal to under-18s regardless of how it is viewed by adults. Adopting the 'strong' appeal test would decrease the potential for gambling ads to attract the attention of under-18s in an audience.
- 4.7. Child-oriented content (like animated characters and superheroes) are already banned. The new rules would extend to cover characters' behaviour, language, fashion/appearance etc. which are likely to appeal strongly to under 18s. In particular, ads would be prohibited from including a person or character who is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.
- 4.8. The new restriction would have significant implications for gambling advertisers looking to promote their brands using prominent sports people and celebrities, and also individuals like social media influencers.
- 4.9. CAP is also proposing to update existing guidance to prohibit:
  - presenting complex bets in a way that emphasises the skill or intelligence involved to suggest, inappropriately, a level of control over the bet that is unlikely to apply in practice.
  - presenting gambling as a way to be part of a community based on skill.
  - implying that money back offers create security (for example, because they give gamblers the chance to play again if they fail or that a bet is 'risk free' or 'low risk').
  - humour or light-heartedness being used specifically to play down the risks of gambling.
  - unrealistic portrayals of winners (for example, winning first time or easily).
- 4.10. The outcome of the consultation is due to be published shortly. CAP published an [interim statement](#) on the consultation in 2021 stating that they were keen to implement the proposed revisions to guidance and technical updates to the Code, particularly as the guidance revisions provided increased protections for adult audiences.

## 5. Online gambling advertising

5.1. We cover online ads including:

- Companies' and other organisations' advertising claims on their own websites, social media spaces, apps and advergames
- Influencer ads on websites, social media spaces, apps and advergames
- Paid ads on websites, social media spaces, apps and advergames

5.2. In non-broadcast media (including online, cinema, newspapers and outdoor spaces) no medium should be used to advertise gambling products if more than 25% of its audience is under 18. As with the broadcast scheduling rules, the content and placement rules should be viewed alongside each other.

5.3. In 2017, CAP introduced [standards](#) requiring advertisers to use all the tools available to them on social media platforms to target their ads away from under-18s in the case of gambling ads. This is because, while age targeting provides a means to reach an audience on the basis of their known or inferred ages, it can be subject to inaccuracies e.g. by younger users misreporting their age, or people of different ages sharing the same device.

5.4. Primary responsibility falls on the advertiser to demonstrate that they've done everything they can to target gambling ads away from under-18s, including by not just relying on reported age. Advertisers, of course, hold to account the agencies that support them and the platforms and networks they advertise on in order to help meet that responsibility. The Advertising Codes also place secondary responsibility on those intermediaries, platforms and networks.

5.5. Selecting or deselecting interest-based factors for the purpose of targeting an ad online, such as what users are interested in, share on social media or the accounts with which they interact, can – in combination with age-targeting tools – help remove certain demographics, including children, from a target audience. For example, a child who misreports their age is still very likely to remain interested in content designed for their real age and less likely to be interacting with much content designed for adults. Such interest-based factors can be used as a tool to reduce inappropriate exposure.

5.6. We know people are spending more time online, businesses are increasingly advertising online, and the pace of technological change online is contributing to societal concerns. That's why, in November 2018, we launched our five year strategy, [More Impact Online](#), which focused on improving the effectiveness of our online advertising regulation. We're proud of the technological initiatives we've undertaken as a part of our More Impact Online strategy.

5.7. In the first year of the strategy, we used new Avatar Monitoring technology in the form of child avatars, which simulate children's online browsing activity, to identify ads that children see online. The research is a breakthrough in harnessing technology to provide the ASA with intelligence to help it better protect children and vulnerable groups online.

5.8. Over a two-week period:

- We collected data on the 10,754 times that ads were served to the child avatars across 24 websites and 55 YouTube channels clearly aimed at children.
- Gambling ads were served to the child Avatars on 11 of the children's websites monitored. Gambling ads were seen by the child Avatars on those 11 children's websites a combined total of 151 times – 1.40% of all ads served to child avatars in children's media during the research.
- One gambling operator was responsible for 122 of the ad impressions (81% of the 151).
- No gambling ads were served on any of the open-access YouTube channels.

- Gambling operators, NetEnt (Viking Video Slot); Evoke Gaming (RedBet); Multilotto UK Ltd; Platinum Gaming Ltd (Unibet); and Skill On Net (PlayOjo), all broke the strict advertising rules, which prohibit gambling ads
- 5.9. The gambling operators accepted their ads broke the rules. In most instances, we were informed that the problems arose due to errors by third-party companies who served the campaigns on behalf of the operators. We instructed the companies to take immediate action to review their online ads, to ensure they are not served to web users aged below 18 years of age through the selection of media or context in which they appear and to put in place measures to ensure this does not happen again.
- 5.10. The 2019 Avatar Monitoring work gave us a springboard to expand our proactive monitoring of online advertising. In 2020/2021, we published the [first](#), [second](#), [third](#) and [fourth](#) reports of our year-long, CCTV-style online monitoring project, which identifies and tackles age-restricted ads appearing in children's media.
- 5.11. Over three-month intervals, we used monitoring tools to capture ads served on a sample of over 50 websites and YouTube channels aimed at under-18s or attracting a disproportionately high under-18 audience. This allowed us to:
- Identify instances where the ad rules were being broken
  - Take follow-up action to contact advertisers whose ads broke the rules to secure the removal of the problem ads; and
  - Warn advertisers to review and, as necessary, amend their practices to ensure they target future ads responsibly
- 5.12. In the first sweep we found 159 ads which broke the rules, of which 70 were gambling ads from four gambling operators which appeared on eight websites. In the second sweep we found 127 ads which broke the rules, of which five were gambling ads from three gambling operators which appeared on six websites and zero YouTube channels. In the third sweep we found 47 ads which broke the rules, of which three were gambling ads from one gambling operator which appeared on three websites and zero YouTube channels. In the fourth sweep we found 21 ads which broke the rules, of which again three were gambling ads from one gambling operator which appeared on three websites and zero YouTube channels.
- 5.13. It is encouraging that the number of gambling ads reduced significantly, from 70 ads in the first sweep to five ads in the second sweep, and three ads in the third and fourth sweeps.
- 5.14. We have publicly reported the above figures, shared them with relevant industry groups, and taken compliance action against any repeat offenders.
- 5.15. In 2021 we published a new [Avatar Monitoring report](#) focusing on age-restricted ads in mixed-age online media (websites and YouTube channels likely to appeal to both adults and children, but where under-18s make up less than 25% of the audience) to assess whether these ads are being targeted away from child members of the audience.
- 5.16. The Avatars are constructed to reflect the online browsing profile of these age groups, but their automated actions – visiting 250 web pages on both desktop and mobile devices, twice a day – are obviously not indicative of real-world online behaviours.
- 5.17. Our six uniquely age-categorised Avatars received 27,395 ads, published on 250 sites, over a three-week monitoring period. These high figures clearly do not reflect real-world exposure levels to advertising, but the data gave us a good basis for assessing whether age-restricted ads are being targeted away from children in online media attracting a heavily weighted (75%+) adult audience.

5.18. Following our report, we called on advertisers to make better use of audience and media targeting tools to help minimise children’s exposure to age-restricted ads in mixed-age sites.

5.19. Examples of some of our rulings on online gambling advertising:

[Online Targeting](#) - A gambling ad appeared in the ‘I’m A Celebrity, Get Me Out Of Here’ app. It was banned because it was likely to be used by under-18s, but the app did not have a mechanism through which age-restricted ads could be targeted only to the appropriate age group.

[Gambling Ad on a Shared Device](#) – A gambling ad in an in-game app was seen by the complainant’s seven-year-old son. The ad was banned because the advertiser did not use tools available to target ads away from children on shared devices.

[Influencer marketing](#) – The Influencer Sam Gowland posted an Instagram story for Thebettingman, a gambling advice service, with a link to their website. The ASA found that the ad was not obviously identifiable as such, encouraged financial irresponsibility, and featured a young person under the age of 25 which is against the Codes.

[Irresponsible Content](#) - A gambling affiliate placed two ads – one for Ladbrokes Casino seen on [www.24hourlynews.co.uk](http://www.24hourlynews.co.uk) and one for 888 Casino seen on [www.casinohack.co](http://www.casinohack.co) which had the appearance of an editorial article about a man in considerable debt as he was funding his wife’s cancer treatment. The man was encouraged to gamble because of a promotion that would reward him with 600 free chances. The ad was banned for being irresponsible by suggesting that gambling could provide an escape from depression and was a solution to financial concerns. Although the ads were produced by an affiliate, the ASA held the companies benefitting from the affiliate marketing of their products responsible for sticking to the advertising rules.

[Particular Appeal to Children](#) - The gambling website promoted three different games which featured animated images of a rainbow, a pot of gold and a leprechaun; fishes swimming in the ocean; and of a wizard which we banned as they were likely to be of particular appeal to children.

[Linking Gambling to Sexual Success](#) – An ad for gambling operator William Hill seen on the dating app Tinder was banned for linking gambling with sexual success.

## 6. Commentary on the draft Code of Practice

6.1. We welcome the opportunity to comment on the content of the proposed Code of Practice. Although not frequent, the ASA does receive complaints about marketing by terrestrial operators in Northern Ireland. In practice, such cases are referred, as appropriate, to the Northern Irish authorities (many relate to ads that are likely to be illegal in Northern Ireland). The proposed codes of practice are the first instance where the ASA’s role has been formally cited. As such, this is likely to create a renewed expectation among the public that they can seek redress for Northern Irish terrestrial advertising issues. It could be useful to discuss the ASA’s case-handling approach to ensure that such matters are being handled effectively where Northern Ireland specific considerations are involved.

6.2. On page 5, in the introductory sections, it might be useful to include a brief explanation of the wider regulatory framework, in particular, for remote services. This would make clear to advertisers that advertising for remote services is regulated by the Gambling Commission.

6.3. On pages 15-16, the guidance states: *“Marketing of gambling services and products should never be targeted, directly or indirectly, at people under the legal age for gambling.”*

The ASA’s placement and targeting restrictions place an extensive range of general and media-specific requirements on marketers to prohibit direct marketing to under-18s and to limit



the media spaces where under-18s might encounter gambling advertising directed at the audience in general. It's only acceptable to place ads in 'one-to-many' media where the adult audience comprises more than 75%, but the Codes do not stop under-18s from seeing gambling ads entirely. It would be useful to understand your expectations with regard to indirect targeting and whether your expectations align with our approach to controlling under-18s' exposure.

- 6.4. Page 18 states: *"marketing schemes which are designed to induce customers to gamble through incentives such as VIP programmes, free bets or spins (i.e. entail no cost, penalty or other loss to the customer) and free bonuses present wider societal risks. Therefore these should always be avoided."*

The final sentence suggests that the objective is to prohibit advertisers from including promotional offers like free bets and bonuses in ads. This would create a different standard to the one applied by the ASA. Such offers are allowed to be included in ads but must comply with our guidance on responsibility. It would be useful to clarify this point so we can determine the implications for our Codes and guidance.

- 6.5. Page 18 additionally states: *"The principles included in all CAP codes should also be regarded as relevant to media that may not be explicitly covered in the codes."*

The CAP Code's remit covers the vast majority of commercial communication across all traditional and online media. There are some notable exemptions – like sponsorship arrangements, classified ads, and PR material – but the Codes effectively cover what a reasonable person would consider 'advertising'.

## **Contact**

Kate Roche

Public Affairs Advisor

Advertising Standards Authority

[kater@asa.org.uk](mailto:kater@asa.org.uk) or [publicaffairs@asa.org.uk](mailto:publicaffairs@asa.org.uk)