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By email

Advertising Standards Authority submission to the consultation on high-level proposals for an FCA regime for consumer credit

1 Introduction

- 1.1** The Advertising Standards Authority (ASA) welcomes the opportunity to input on high-level proposals for an FCA regime for consumer credit. Our response focuses on the proposals to carry across Consumer Credit Act (CCA) and OFT conduct standards to the new FCA regime.
- 1.2** The ASA is the UK's independent regulator for ensuring that advertising in all media is legal, decent, honest and truthful, for the benefit of consumers, business and society. For over 50 years the ASA has been responsible for maintaining the highest standards in advertising content across all media in the UK.
- 1.3** We administer the UK Advertising Codes, which are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). These rules are mandatory – advertisers cannot opt out of the system.
- 1.4** We have no objections to the FCA applying a similar framework for regulating advertisements for consumer credit to that currently applied to other FCA-regulated activities. We would, however, like to take this opportunity to:

Legal, decent, honest and truthful

Chairman Rt Hon Lord Smith of Finsbury **Chief Executive** Guy Parker
ASA Council Louisa Bolch, Alan Bookbinder, Rachel Childs, Roisin Donnelly, Ray Gallagher, David Harker, David Hepworth, John Mayhead, Sir Andrew Motion, Sir Martin Narey, Hamish Pringle, Ruth Sawtell and Anthony Wilkes

The Advertising Standards Authority Limited, registered in England No 733214, Mid City Place, 71 High Holborn, London WC1V 6QT.
The Advertising Standards Authority (Broadcast) Limited, registered in England No 05130991, Mid City Place, 71 High Holborn, London WC1V 6QT.

- Clarify the existing regulatory role of the ASA for financial advertising and our view that this role should be maintained under the new consumer credit regime;

- highlight potential issues of regulatory consistency with regard to broadcast advertising that we would like to address, in concert with the FCA, in time for the transfer of responsibility for consumer credit regulation to it in 2014.

1.5 More information on the advertising self-regulatory system is available at www.asa.org.uk and www.cap.org.uk.

2 The ASA's remit over financial advertising

2.1 The ASA is not the lead regulator for financial advertising. Rather, our work compliments that of the FCA and OFT by covering the 'non-technical' elements of financial marketing communications that are not subject to the 'technical' requirements of the Financial Services and Markets Act 2000 (FSMA), the Consumer Credit Act 1974 (as amended) and the Consumer Credit (Advertisements) Regulations 2004 (CCARs); for which the FCA and Office of Fair Trading (OFT) are the lead enforcers respectively.

2.2 'Non-technical' in this context refers to matters of serious or widespread offence, social responsibility and the truthfulness of claims that do not relate to specific characteristics of the financial product itself.

2.3 This arrangement means that consumers are protected by a comprehensive set of rules that cover all aspects of the advertising of a financial product or service. The ASA liaises with the OFT and FSA/FCA regularly to ensure consistency of approach and to avoid double jeopardy.

2.4 The ASA & FSA/FCA

2.5 The ASA has established case handling principles with the FSA/FCA, under which the FCA will refer complaints to the ASA where these arise in relation to authorised firms, but where the issue is not ordinarily within the scope of the FCA Conduct of Business Sourcebook Chapter 4 (COBS4).

2.6 This means that the ASA will deal only with matters in relation to taste and decency, serious or widespread offence, social responsibility and the truthfulness of claims that do not relate to specific characteristics of the financial product itself. Under our case

handling principles, the FCA will inform a complainant if it has passed material to the ASA.

2.7 The ASA will refer to the FCA complaints where concerns are that elements or characteristics of investment business, mortgages, general insurance and pure protection policies (e.g. term assurance) are misleading, (including that they are unclear, unfair or misrepresentative) or where impermissible comparisons have been made. (See 2.12 to 2.16 for complaints relating to broadcast advertisements)

2.8 The ASA & the OFT

2.9 For complaints about 'technical' elements of non-broadcast financial ads covered under the Consumer Credit Act (e.g. requirements in relation to APRs and interest rates - their calculation, presentation and relative prominence), the ASA will direct complainants to contact their local Trading Standards department.

2.10 As with ads subject to FSMA regime, the ASA will consider concerns about ads for consumer credit that relate to matters of serious or widespread offence, social responsibility or the truthfulness of claims that do not relate to specific characteristics of the consumer credit product itself.

2.11 The following two examples are illustrative of the types of complaints that currently fall under the ASA's remit, and that have been subject to ASA action:

Instant Cash Loans

WHAT WOULD YOU DO WITH EXTRA CASH?

INSTANT CASH ADVANCES AND PERSONAL LOANS FROM £50 - £1000

The Money Shop
www.moneyshop.tv

Yellow Pages
Find us under Cheque Cashing

All customers must be 18 or over. All loans subject to status.

The ASA received a complaint about this poster ad for The Money Shop.

We banned the ad, judging that the depiction of the use of high rate, short-term credit to fund aspirational, non-essential purchases such as a party, a shopping trip or a holiday was likely to be seen as encouraging care-free, impulsive and frivolous spending on credit.

Wonga.com Ltd



The above is a still image taken from a TV ad for a payday lender. The ad showed a man who spoke as two different characters. Light hearted music played throughout the ad.

We agreed that the light hearted presentation of the ad was likely to mislead vulnerable viewers about the nature and implications of the product. The ad was prohibited from appearing again in its current form.

2.12 Broadcast advertising

2.13 The ASA's remit over broadcast advertising is different to that of non-broadcast ads.

2.14 When the ASA took on the contracted-out broadcast functions from Ofcom in 2004, we acquired a general statutory obligation to consider all complaints about broadcast advertisements (TV and radio). These obligations are rooted in the Communications Act 2003. The ASA will, therefore, consider all complaints about financial broadcast advertisements, even when they concern 'technical' matters of financial promotion that would usually fall within the remit of the FSA or Trading Standards.

2.15 If, for example, the ASA were to receive a complaint about a 'technical' element of a broadcast ad for consumer credit, we will seek advice from the OFT on the requirements of the relevant regulations.

2.16 We expect to maintain a similar relationship with the FCA when it assumes responsibility for consumer credit; notwithstanding any potential requirement for

further clarity on the ASA and FCA's respective broadcast responsibilities when the latter assumes responsibility for consumer credit in 2014 (see 4.2)

3 The role of the ASA under the new FCA consumer credit regime

- 3.1 The Government proposes to apply a similar framework for the regulation of advertisements for most consumer credit as is currently applied to other FCA-regulated activities. We have no objections to these proposals, and see the potential benefit of a more streamlined regulatory landscape whereby the ASA has only one regulatory partner for financial advertising.
- 3.2 However, we do ask that as the FCA considers in the autumn the details of its new consumer credit rules regime, it does so mindful of the ASA's existing role regulating the 'technical' and 'non-technical' (for broadcast) and just 'non-technical' (for non-broadcast) aspects of consumer credit advertising.
- 3.3 We believe that the current delineation of responsibility between the ASA and FCA/OFT for financial ads serves consumers well. The public is protected by a comprehensive standards regime that covers both the 'technical' (i.e. elements related to the risks and nature of the financial product itself) and 'non-technical' (harm, offence and social responsibility) elements of financial marketing communications.
- 3.4 **Consequently, the ASA's role enforcing mandatory 'non-technical' content complements the wider statutory framework and should be maintained under the new FCA financial promotions regime for consumer credit.**
- 3.5 We envisage maintaining our current working relationship with the FCA, including on-going casework liaison and updated case-handling principles, when it assumes its new responsibilities in 2014.
- 3.6 **Payday loans**
- 3.7 We understand that the FCA intends to take a robust approach to tackling problems in the payday loan sector; including exploring whether new rules are necessary to address potential consumer detriment being caused by these high-interest, short-term loans.
- 3.8 The ASA takes concerns over payday loan advertising very seriously, and we are currently considering whether we are drawing the line in the right place when we apply our general Code rules on harm, offence and social responsibility.

- 3.9** The payday loan sector is, and will continue to be under the FSMA regime, subject to a proscriptive, legal advertising regime that contains specific requirements (e.g. around the use of APRs) designed to ensure that consumers are aware of the risks associated with the product.
- 3.10** Where such a legislative framework exists, the self-regulatory system of ASA and CAP will not normally seek to introduce additional advertising rules or, through rulings, require of advertisers standards related to, or that go beyond, the conditions contained within the relevant legislation or statutory rules regime. Such an intervention would risk unnecessary regulatory duplication and/or 'gold plating' and would open up the ASA system to legal challenge.
- 3.11** **It will be for the FCA to take the lead (for broadcast advertising) or be solely responsible for (for non-broadcast advertising) enforcing any measures that are designed to ensure that consumers are not misled as to the nature of, or risks associated with, a consumer credit product. The ASA, for our part, will continue to ensure that ads are not irresponsible (see examples 2.11), capable of causing serious or widespread offence, or untruthful in terms of claims that do not relate to specific characteristics of the consumer credit product itself.**
- 3.12** We look forward to considering the detailed proposals for a new financial promotions rules regime for consumer credit in the autumn, and look forward to inputting in more detail at that stage

4 Avoiding regulatory overlap

- 4.1** We note that the FCA proposes to align the supervision of consumer credit advertising with that of its existing financial promotions regime, through which it will carry out a variety of supervisory activities including the proactive monitoring of advertisements across all media types (including television) to assess whether advertisements comply with the relevant consumer credit rules.
- 4.2** Given that both the ASA and FCA will have remit over both the technical and non-technical aspects of consumer credit advertising on television - under the ASA's general statutory obligation to consider all complaints about broadcast advertisements (TV and radio) - this raises the potential for regulatory duplication.
- 4.3** Whilst the risk of 'double jeopardy' is already present for ads currently subject to the FSMA regime, effective liaison between ASA and FSA/FCA on investigations has meant that this has been avoided.

- 4.4 However, we believe that the risk of regulatory overlap and/or duplication may be greater once the FCA assumes responsibility for consumer credit regulation in 2014.
- 4.5 **We believe that now is a useful opportunity to resolve any practical concerns around double jeopardy and regulatory consistency that might result from the new regime. The ASA would welcome a meeting with the FCA to discuss these points at the earliest opportunity.**

5 Summary

- 5.1 The ASA has no objections in principle to the high-level proposals for an FCA regime for consumer credit.
- 5.2 We believe that the ASA's current non-broadcast role enforcing mandatory 'non-technical' content standards compliments the FSA and OFT's own work and should be maintained under the new FCA financial promotions regime.
- 5.3 Whilst for broadcast advertising there has always been a risk of regulatory duplication, this has been avoided through effective liaison between the ASA and FSA. In light of the proposals to transfer CCA and OFT content standards to the FCA, we believe that now is an appropriate time to address any potential issues of regulatory inconsistency.
- 5.4 If the FCA has any questions about this submission or would like any further details on the points raised therein, please do not hesitate to get in touch.
- 5.5 Contact details:

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