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By post and email

Advertising Standards Authority submission to consultation on detailed proposals for the FCA regime for consumer credit

1. Introduction

- 1.1** The Advertising Standards Authority (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, and now covers all media in the UK.
- 1.2** 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.
- 1.3** More information on the advertising self-regulatory system is available at www.asa.org.uk and www.cap.org.uk.

2 Background

- 2.1** In May 2013 the ASA responded ¹ to the FSA's consultation on high-level proposals for an FCA regime for consumer credit.
- 2.2** In our response, we outlined the existing regulatory role of the ASA for financial advertising and our intention that this role be maintained under the new FCA consumer credit regime.

¹ http://www.asa.org.uk/News-resources/~/_media/Files/ASA/Public%20affairs/ASA%20response%20to%20high-level%20proposals%20for%20an%20FCA%20regime%20for%20consumer%20credit.ashx

Legal, decent, honest and truthful

2.3 We also highlighted potential issues of regulatory consistency - particularly with regard to broadcast advertising - that we are working to address with the FCA in time for the transfer of responsibility to it in 2014.

2.4 We have no detailed comments to make on the FCA's proposals for the new rules regime. We would, however, like to take this opportunity to provide feedback on consultation questions 8 and 14, which are:

Q8: Do you have any comments on our proposed approach to financial promotions?

Q14: Do you have any comments on our risk warning?

3 ASA response to consultation questions

3.1 Q8: Do you have any comments on our proposed approach to financial promotions?

3.1.1 In our response to the high-level proposals for an FCA regime for consumer credit, we highlighted our view that the current delineation of responsibility between the ASA and OFT/FCA for financial ads serves consumers well and should continue under the new rules regime.

3.1.2 We are pleased that this remains the FCA's intention, and we hope shortly to update our existing case handling principles with the FSA to reflect the FCA's new responsibilities.

3.1.3 These updated case handling principles will need to address any practical concerns around double jeopardy and regulatory consistency that might result from the new regime, not least around the regulation of consumer credit advertising on television (in light of the ASA's general statutory obligation to consider all complaints about broadcast advertisements).

3.1.4 Whilst the risk of 'double jeopardy' is already present for ads currently subject to the FSMA regime, the FCA's intention to carry out a variety of supervisory activities will mean that effective liaison between ASA and FCA will be more important than ever.

3.1.5 **Incentives** - We note that the FCA has clarified that statements about the speed at which a loan can be obtained *are* an incentive for the purpose of the rule requiring a Representative APR (or a typical APR for an agreement secured on land) to be stated in a financial promotion. We think this is a useful clarification.

3.2 Q14: Do you have any comments on our risk warning?

3.2.1 **Payday loans:** Under the current delineation of responsibility between OFT and ASA for consumer credit advertising, the ASA is responsible for maintaining standards on 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.

- 3.2.2 Reflective of the wider legal regime for credit products, the FCA has lead responsibility for maintaining rules designed to ensure that consumers are not misled as to the nature of, or risks associated with, a consumer credit product.
- 3.2.3 In this context, we note the FCA's intention to introduce mandatory risk warnings and a signpost to debt advice in ads for short-term, high-cost credit.
- 3.2.4 When considering any kind of regulatory intervention, the ASA system will consider:
- Whether there is robust evidence that the intervention would have the desired positive effect; and
 - Whether the intervention is consistent with better regulation principles that require it be targeted and proportionate.
- 3.2.5 We advise the FCA (as we would any regulator) to consider their proposals with these principles in mind.
- 3.2.6 Research the ASA system has considered previously about credit warnings in financial services advertisements demonstrated that some consumers regarded warnings with cynicism as a "disclaimer" to protect the advertiser², rather than information to help them make an informed choice. We note that the proposed FCA risk warning is relatively lengthy, and would suggest an open-minded approach to any evidence that suggests, for example, that it might be improved through reformulation.
- 3.2.7 Moreover, we note also that mandatory information requirements, e.g. around terms and conditions, can have a varying impact on advertisers (and on fair competition) depending on the medium in which their ads are deployed – especially if those requirements are detailed or lengthy. This is especially the case for radio (where mandatory messages necessitate extra airtime), and for advertisers reliant on paid-search advertising (where space is limited). Advertisers - more likely smaller businesses that lack the resources to place advertising in broadcast or other forms of non-broadcast media - can find themselves at a disadvantage to other businesses able to advertise on TV.
- 3.2.8 If and when confronted by time and space considerations, the ASA, CAP and BCAP have found it helpful to take a proportionate, flexible approach. For example, rule 8.18 within the CAP Code states that "Marketing communications that include a promotion *and are significantly limited by time or space* [my emphasis] must include as much information about significant conditions as practicable and must direct consumers clearly to an easily-accessible alternative source where all the significant

² Navigator (2004) "Radio Commercials and Wealth Warnings: Summary Report of Findings", prepared for the Radio Advertising Bureau, February 2004.

conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion."

4 Summary

- 4.1.1 The ASA system shares with the FCA the policy imperative of ensuring that ads for high-cost, short-term loans are responsible. CAP has recently published new guidance³ for payday lenders, based on previous ASA adjudications, which will help advertisers avoid the risk of trivialising high-cost credit, or targeting it, irresponsibly, at vulnerable groups (e.g. by suggesting that financial problems might be resolved through a payday loan service).
- 4.1.2 We have no detailed comments on the FCA's approach to financial promotions, other than to reiterate our desire to ensure that through our institutional arrangements and updated case-handling principles, the ASA and FCA continue to work together in a way that is consistent, complimentary, and ensures that consumers are protected by a comprehensive set of rules that cover all aspects of the advertising of a financial product or service.
- 4.1.3 On risk warnings or similar regulatory interventions, we believe that a flexible approach, taking into account the time and space limitations of different media, best ensures that regulation is consistent with better regulation principles and supports fair competition.
- 4.1.4 Should you require further information on any of the particulars in our response please do let us know, as we'd be happy to assist.
- 4.1.5 Yours sincerely,
- 4.1.6 **Rob Griggs**
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³ <http://www.cap.org.uk/News-reports/Media-Centre/2013/Payday-loans-and-social-responsibility.aspx>