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Dear Sarah

### **Update on CAP and BCAP's response to the GambleAware research**

I'm pleased to inform you that CAP and BCAP have today [published a consultation](#) proposing significant new restrictions on the creative content of gambling and lotteries advertising. This is an important step in meeting our commitment to respond in full to the emerging findings of the GambleAware research and ensuring that the UK Advertising Codes remain up to date with the evidence base in protecting under-18s and other vulnerable groups. The consultation will run until 22 January and we hope to announce the outcome in the first half of 2021, introducing any changes to the Codes by the end of the year.

As well as introducing the consultation, this letter comments on several of the GambleAware recommendations directed at industry or where we have been carrying out policy and enforcement activity separate to the consultation. You'll be aware that several of the recommendations have been carried over from GambleAware's [Interim Synthesis Report](#), published in July 2019

### **Restrictions on advertising volumes**

We address in the consultation the GambleAware question of whether to strengthen the existing policy (CAP's '25% test') on where, in non-broadcast media, it is acceptable to place a gambling ad. But, we also note the separate recommendation, directed at industry, to reduce the overall volume of gambling advertising and marketing messages reaching children, young people and vulnerable adults.

The recommendation is directed mainly to gambling operators and raises the potential for the industry to implement additional voluntary restrictions on its advertising. As you are aware, the [Industry Code for Socially Responsible Advertising](#) presently includes a restriction on sports betting and casino advertising appearing on TV before 9pm. We nevertheless think it important to give a regulatory perspective on volume-based

[Legal, decent, honest and truthful](#)

restrictions: in other words, reducing the amount of gambling advertising in permitted media.

In relation to gambling products, the UK Advertising Codes establish appropriate restrictions on advertising for legally available products that are, through operators' observance of licence conditions and oversight by the Gambling Commission, considered sufficiently well-regulated to limit the risks of gambling related harms.

The UK Advertising Codes prevent gambling advertising that is likely to cause harm. Scheduling, placement and targeting restrictions prevent marketers from inappropriately directing gambling advertising at an audience younger than the legal age of participation. However, neither the Codes, nor the Gambling Act 2005, explicitly prohibit children, young people or other vulnerable groups from seeing or hearing commercial messaging related to gambling and the available evidence does not support a view that exposure to gambling ads compliant with the UK advertising codes is intrinsically harmful. Gambling operators may, naturally, direct gambling advertising, compliant with the UK Advertising Codes, at a legitimate adult audience, including to persuade that audience to participate responsibly in gambling. The Gambling Commission is responsible for licensing gambling operators and ensuring the provision of their products to customers is compatible with the Act's requirement on the protection of children and young people, and other vulnerable groups.

Beyond the capacity to restrict the scheduling, placement and targeting of advertisements, CAP and BCAP do not have legal powers to restrict the amount of advertisements that can be shown, for instance, in a given media or during a period of time. It is notable that [section 328](#) of the Gambling Act creates powers for the Secretary of State to make regulations controlling the form, content, timing and location of gambling advertising but that those powers do not extend to limiting advertising volumes. Similarly, there are no powers to limit the volume of certain types of advertising in the Communications Act 2003, which underpins the BCAP Code and the standards for advertising appearing on UK-licensed TV and radio services.

Ultimately, it is government and parliament that determines policy on the provision of gambling and lottery products and advertising for them. They set the core regulatory tests that must be met and afford powers to regulators to design and oversee a regulatory framework to meet those tests. Powers to restrict the volume of gambling advertising in permitted media have not been afforded to regulators and there are significant practical hurdles to overcome, including unintended distortion of fair and effective competition, in granting any such powers. As we've set out in the consultation, CAP and BCAP consider its approach to regulating gambling advertising has due regard to the policy aims of the Gambling Act 2005 and is proportionate to the evidence of harm arising from gambling advertising.

### **Use of ad tech: under-18s**

We note the GambleAware recommendation directed at industry to make better use of technology to limit exposure to gambling advertising. Following the Interim Synthesis

Report in 2019, industry has already begun work to respond to this following the Gambling Commission's [challenge](#) for it to develop solutions to improve practice in this area. It is important to note that CAP has maintained and the ASA has enforced guidance on targeting in online media, [Children and age-restricted ads online](#), since 2017.

Our guidance has underpinned numerous ASA interventions against advertisers who have failed to take sufficient care, through their use of known and/or inferred data, to target programmatic, age-restricted ads away from under-18 audiences. In August, we [published news](#) of the first outputs of the ASA's 'Tech as a Force for Good' project, which will see increasing use of ad tech for regulatory monitoring and enforcement purposes. The core aim of this work is to ensure CAP's guidance is firmly adhered to by gambling operators and other marketers of age-restricted advertisements.

Added to this, in the light of ASA rulings and insights drawn from the ASA's innovative use of online monitoring technology, CAP is currently updating its guidance to better meet the existing policy imperative. We intend to make it even clearer to the gambling industry the active steps it needs to take to target their dynamically served online ads away from under-18s. The GambleAware research has provided useful insights that have been fed into this work. The project is well-advanced and the revised online targeting guidance will be published later this year.

Finally, as a result of the Commission's Adtech Challenge, the Betting and Gaming Council's (BGC) recently announced new and stronger best practice provisions relating to online targeting. In particular, that BGC code signatories will now seek to target only those over the age of 25 in online media. This is a useful example of how action by industry itself can complement our regulation. The move to focus on over-25s will likely reduce the potential for under-18s to be served gambling advertising and further improve compliance of advertisers who follow the voluntary code.

### **Use of ad tech: vulnerable adults**

The GambleAware avatar study also provided evidence of vulnerable adults being exposed to online, dynamically-served gambling advertising. There is little indication in the GambleAware evidence that gambling operators deliberately targeted audiences on the basis of their vulnerabilities. But the findings nevertheless invite consideration as to the steps that gambling operators might take or, perhaps must take, to minimise vulnerable adults' exposure to online gambling ads.

As those aged 18 and above are legally of age to participate in gambling, it is legitimate for gambling operators to direct advertising to this age cohort. As a general principle, the UK Advertising Codes restrict the scheduling or placement of otherwise acceptable ads to adults, only in circumstances where there is an obvious and harmful juxtaposition between the ad and context in which it appears. For example, the ASA would likely uphold an ad for a gambling product appearing on a website designed to tackle gambling addiction. This principle was used by the ASA in its application of responsible marketing rules to [take action](#) against a gambling ad that, through the use of 'key word' ad tech, was inadvertently

presented to web users searching for 'how to unsubscribe from all gambling'. On the assumption that at least some of those web users were likely to be adults vulnerable to gambling, the ASA took action.

Part of the ASA's 'Tech as a Force for Good' project explores the extent that adult vulnerabilities can, deliberately or otherwise, be identified by different online targeting platforms and asks what more could reasonably be done to mitigate the likelihood of vulnerable individuals receiving dynamically-served gambling ads. The project will report in the winter and, dependent on the outcome, it may recommend that CAP consider the adoption of new standards.

### **eSports-related gambling advertising and compliance concerns**

The Final Synthesis Report's recommendation relating to eSports reflects the recommendation presented in the Interim Synthesis Report. This prompted significant regulatory activity to assess the regulatory implications of eSports betting. The focus was on understanding the implications of different scenarios both in terms of the social media content and the operator's website.

As we informed you in April, our analysis of a sample of eSports related Tweets gives us confidence that the UK regulatory framework is sufficiently comprehensive and empowered to address the potential harms posed by gambling ads related to eSports. There are clear lines of regulatory responsibility protecting consumers from unlicensed operators and ensuring that lawful marketing of gambling in Great Britain is strictly controlled. There is a clear division of responsibility, with the Gambling Commission, and the ASA and CAP using their respective powers to achieve these ends.

A further recommendation raised concerns over compliance of social media gambling advertising. As we informed you in April, the majority of the content identified in the research related to non-GB marketers who were not targeting British consumers. Such content falls outside of our remit. However, noting GB-licensed operators increasingly offer bets on eSports and promote them through various media channels, we [published](#) an Advice Notice making clear that eSports betting-related:

- advertising must comply with rules applying to marketing for conventional gambling will be applied in the same way to marketing communications for eSports betting; and
- social media marketing content must comply with the Codes in the same way as other kinds of marketing.

### **Tackling unlawful advertising**

The GambleAware Final Synthesis Report includes a further recommendation to maintain oversight over unlicensed operators online, which follows on from the eSports recommendation. The Gambling Commission of course exercises powers under the Gambling Act 2005 to control unlicensed gambling in Great Britain. In the course of its

work, the ASA may identify ads that unlawfully promote unlicensed gambling operators, which it undertakes to bring to the attention of the Gambling Commission.

Finally, our consultation also sets out proposals for technical updates to the UK Advertising Codes. These seek to address a variety of issues with the aim of making the Codes more accessible and clearer to Code users. The proposals draw on insights from the policy analysis work on eSports. In particular, they seek to make clearer the distinctions between promoting licensed and unlicensed gambling products – stating explicitly that the ASA will refer marketing communications for unlicensed operators to the Gambling Commission – and how the Codes apply to advertising in Northern Ireland and Crown Dependencies not covered by the Gambling Act 2005.

As I hope you'll agree, we've been very active on gambling advertising matters and have already delivered tangible outputs responding to the challenges emerging from GambleAware's work on marketing and advertising.

Yours sincerely

A handwritten signature in black ink that reads "S. Coupal". The signature is written in a cursive, slightly slanted style.

Shahriar Coupal  
**Director, Committees of Advertising Practice**

CC: GambleAware  
Department for Digital, Culture, Media and Sport  
Advisory Board on Safer Gambling