



Advertising Standards Authority
2 Torrington Place London WC1E 7HW Telephone 020 7580 5555 Fax 020 7631 3051
Internet <http://www.asa.org.uk>

**Department of Culture, Media and Sport
Gambling Bill Consultation**

**Joint Response of the Advertising Standards Authority
and Committee of Advertising Practice**

Introduction

The Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP) are responsible for maintaining the highest standards in non-broadcast advertising in accordance with the British Code of Advertising, Sales Promotion and Direct Marketing. The CAP Code (the Code) applies to all non-broadcast marketing communications in the UK, covering such media as print, posters, sales promotions, direct mail, SMS and internet advertising.

The Code, adjudicated by the ASA, requires all marketing communications to be 'legal, decent, honest and trustful'. They should be prepared with a sense of responsibility to consumers and society, and should respect the principles of fair competition generally accepted in business. The Code, and the ASA's interpretation of it, is the standard to which all organisations involved in non-broadcast advertising in the UK defer. Although the system is non-statutory, participation in it is mandatory by virtue of the agreement of advertisers, agencies and media to maintain common standards.

More information about the ASA and CAP is available on their respective websites, www.asa.org.uk and www.cap.org.uk.

We welcome the opportunity to contribute to the DCMS consultation on the draft Gambling Bill, but preface our response by noting that the specific clauses of the Bill dealing with the regulation of advertising had still to appear at time of writing. The remarks that follow are, therefore, based on the Bill's policy instructions (9 April 2003) and the more recent Draft Gambling Bill Policy Note 6: Advertising of Gambling (5 February 2004).

This response is submitted jointly on behalf of the ASA and CAP and confines itself solely to those parts of the Bill that deal with the future regulation of betting and gaming advertising.

Chairman. Lord Borrie, QC
Director General. Christopher Graham
Members of Council
Jean Coussins
Christine Farnish
Sunil Gadhia

Mike Ironside
David Lipsey
Lizzie Marsden
David McNair
Susan Murray
Dan O'Donoghue

Martyn Percy
Pauline Thomas
Donald Treford

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Summary of position

In our comments on the Budd Report (2001), response to the Gambling Bill policy instructions (2003), and submission to the Joint Committee on the Gambling Bill, the ASA and CAP have stressed the need to avoid regulatory overlap, duplication of complaint handling mechanisms and double jeopardy in the future regulation of gambling advertising. We are heartened to see recognition of many of these concerns by the DCMS in Policy Note 6.

We further support the broad policy objective of the Gambling Bill to recognise gambling as an acceptable leisure activity, if one that does potentially give rise to acknowledged risks. It is right, therefore, that the advertising of gambling should be subject to effective codes with genuine sanctions available to regulators where breaches occur.

We understand from Policy Note 6 that the precise mechanisms through which the advertising of gambling will be regulated are still to be finalised. Some reservations about this continued uncertainty aside, we welcome the status granted to the ASA in paragraph 19, and the intention therein to avoid overlap and inconsistency in regulation, and provide flexibility for co-regulation – with the Gambling Commission remaining as the statutory backstop – with a partner robust enough to ensure necessary standards.

Specific Remarks

In our previous submissions to government regarding its gambling reform proposals we accepted whole-heartedly the need for adequate and appropriate controls to exist with regard to the administration and licensing of gambling. We were, however, unpersuaded of the need for the Gambling Commission to create a separate advertising code and establish a parallel complaints investigation system under the Commission, as the Policy Instructions of April 2003 appeared to suggest.

We argued that the development of sector-by-sector advertising regimes would be contrary to the interests both of consumers and fair competition, and inimical to the effective maintenance of consistent standards. Indeed, we considered that the construction of a parallel code and adjudicatory process was likely to raise issues of double jeopardy, and create significant uncertainty for consumer and business alike as to the division of responsibility across regulators.

Further, the duplication of structures and purposes seemed to us very much contrary to the intent of government and expressed by the Better Regulation Task Force and its principles of best practice regulation.

We welcome the assurance given in Policy Note 6 that the Gambling Bill should avoid overlap or inconsistency, and ensure so far as possible that those responsible for advertising were not subject to duplication of regulation (para 19)

The Policy Note is also correct to identify the content of Codes as fundamental to the maintenance of appropriate standards in the advertising of gambling, or indeed any

other product or service. As the DCMS is aware, the CAP Code contains a section dealing specifically with betting and gaming – reflecting current legislation about the advertising of gambling – and we have consequently developed a significant expertise handling complaints on this issue. We point out also that the CAP Code covers a range of issues not specific to gambling – for example, decency, honesty and social responsibility – but which may apply to betting and gaming advertisements, and will not be dealt with in the proposed Gambling Commission Code.

We do, however, recognise and support the objective of the DCMS to ensure that relevant Codes be updated to reflect the proposed changes to the regulation of gambling, and anticipate a constructive dialogue with the Gambling Commission on this issue as we co-operate in delivering the necessary level of consumer protection for the advertising of gambling. This aside, some uncertainty remains about the scope of the “technical” matters the Bill seeks to reserve for the Commission. Although we acknowledge the logic behind reserving “technical” matters, the practicalities of this for the relationship between regulatory bodies should be further examined.

A further anomaly regarding Code ownership and enforcement bodies appears to arise in respect of broadcast Codes. Paragraph 15 of Policy Note 6 states “the policy is that regulations will not apply to broadcast advertising which can effectively be regulated by Ofcom under the Communications Act 2003. Ofcom would be expected to consult the Gambling Commission in preparing or amending codes insofar as they relate to gambling, and to have a duty to reflect the general effect of the Commission’s requirements on its own licensed operators”. In this connection we draw the Department’s attention to the recent Ofcom consultation on the future regulation of broadcast advertising. Although a decision on this has yet to be made, Ofcom is proposing to contract out responsibility for the regulation of broadcast advertising in a co-regulatory partnership with a new self-regulatory regime under the banner of the Advertising Standards Authority.

Under this proposal, ownership of the broadcast advertising Codes will transfer to an industry body, the Broadcast Committee of Advertising Practice, although Ofcom will retain a power of recommendation and veto over changes to that Code. You will note that the trend here is towards the convergence of advertising regulation rather than its fragmentation, whereas Policy Note 6 suggests the opposite: the emergence of significant differences between the regulation of gambling advertising in broadcast and non-broadcast media. Although the DCMS is correct to note – and the proposed legislation should acknowledge – the existence of a licensing regime for broadcast media, it is not clear that the implications of this for the regulation of gambling advertising as a whole have been fully considered.

We fully accept that the Gambling Commission, as the proposed licensing body for all legal gaming services, must act as the effective backstop enforcer where no other is present. Non-broadcast advertising is one such sphere. We welcome also the assurance in paragraph 19 of Policy Note 6 that the Bill should provide flexibility for co-regulation on the non-broadcast sphere but question the appropriateness of the backstop model, that of the Financial Services Authority, the Bill proposes to utilise. That said, Policy Note 6 is an encouraging start and we look forward to further

constructive discussions with the DCMS and Gambling Commission on the detailed mechanics of gambling advertising regulation.

Dr David Webster
Head of Policy

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