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**ADVERTISING STANDARDS AUTHORITY RESPONSE TO THE EUROPEAN
COMMISSION GREEN PAPER ON ONLINE GAMBLING IN THE INTERNAL
MARKET**

1. Introduction

- 1.1. The Advertising Standards Authority (ASA) is grateful for the opportunity to respond to the European Commission Green Paper on online gambling in the internal market.
- 1.2. The ASA is the UK self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful. More detailed information can be found on our website www.asa.org.uk.
- 1.3. The ASA is surprised by the absence of any reference to self-regulation in the Green Paper as a means of securing consumer protection from potentially harmful or misleading commercial communications for online gambling services. Self-regulation has been effective at national level in the UK, where we have a fully regulated gambling industry, and self-regulation in advertising is widely used across the EU as a means of gaining fast and effective consumer protection.
- 1.4. This submission provides:
 - A summary of the UK advertising self-regulatory system. More detailed information can be found on our website www.asa.org.uk.
 - A response to the specific consultation questions relating to the regulation of commercial communications for (online) gambling services (Questions 11, 25 & 26).
 - A view on the role of self-regulation.

Chairman Rt Hon Lord Smith of Finsbury • **Chief Executive** Guy Parker
ASA Council • Louisa Bolch • Sally Cartwright • Rachel Childs • Elizabeth Fagan • Ray Gallagher • David Harker • Gareth Jones • John Mayhead • Andrew Motion • Martin Narey • Hamish Pringle • Ruth Sawtell • Anthony Wilkes

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2. Advertising Self-regulation in the UK

- 2.1. The ASA is the UK self-regulatory body for maintaining standards in advertising. The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are the industry bodies responsible for writing and maintaining The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing and the UK Code of Broadcast Advertising (henceforth 'The Advertising Codes' or 'The Codes'). The ASA administers these rules on behalf of business and consumers¹.
- 2.2. The system is both self-regulatory (for non-broadcast advertising e.g. press, poster, cinema, online, and direct mail) and co-regulatory (for TV and radio advertising). The Advertising Codes sit within a legal framework, which means that, where appropriate, they reflect the standards required in law, e.g. misleading advertising.
- 2.3. The aspects of the Codes covering harm, offence and social responsibility protect consumers from issues that are not generally covered by the legal system.
- 2.4. The ASA deals with more than 25,000 complaints per year.
- 2.5. In the event that the ASA upholds a complaint against an advertisement, the advertiser or broadcaster is required to amend, withdraw or schedule the advertisement appropriately.
- 2.6. The ASA is committed to upholding high standards in advertising. The system takes a 360° approach to regulation, which includes pro-active monitoring, comprehensively enforced rules and training and advice for advertisers to help them comply with the Codes.

¹ The CAP & BCAP Codes can be found at: <http://www.cap.org.uk/cap/codes/>, those Codes describe the remit in full.

3. **ASA responses to consultation questions relating to the regulation of commercial communications:**

3.1. **11) With a focus on the categories mentioned above, how are commercial communications for (on-line) gambling services regulated for at national level? Are there specific problems with such cross-border commercial communications?**

3.1.1. Following the introduction of The Gambling Act 2005 (the Act) in September 2007, gambling operators based in the EEA, in countries on the White List (territories outside the EEA able to demonstrate that their regulatory system for gambling is robust and meets the UK Government's published criteria², currently Alderney, Antigua & Barbuda, Gibraltar, Isle of Man and Tasmania) or holding a Gambling Commission³ licence have been legally permitted to advertise in the UK. (NB. The UK government has recently announced proposals that all operators, whether from here or abroad, will be required to hold a Gambling Commission licence to transact with British consumers).

3.1.2. The Act gave powers to the Gambling Commission and Ofcom⁴ to create Codes on gambling advertising. However, in recognition of the very effective regulation provided by the ASA, the new rules were instead drawn up by CAP & BCAP (following a public consultation) to be implemented by ASA. Recognising the social imperative of ensuring that gambling advertising is responsible, these rules, introduced on 1 September 2007, emphasise that ads must be socially responsible and do not encourage gambling in ways that harm or exploit children, young people or vulnerable adults.

3.1.3. The rules are administered by the ASA, with Ofcom and the Gambling Commission acting as legal backstops. All gambling operators must abide by the Gambling Commission's Licence Conditions and Codes of Practice (LCCP) under the Gambling Act. The Commission's LCCP⁵ makes clear that licensed gambling operators should comply with the CAP and BCAP Codes. If serious or recurring breaches of the advertising rules are committed by licensed gambling operators, the ASA will refer them to the Gambling Commission who can take backstop action. This has not yet been necessary.

3.1.4. **Our remit**

² <http://www.culture.gov.uk/images/publications/WhiteListingCriteria.pdf>

³ The Gambling Commission was set up under the Gambling Act 2005 to regulate commercial gambling in Great Britain. They are an independent non-departmental public body (NDPB) sponsored by the Department for Culture, Media and Sport (DCMS). Website: www.gamblingcommission.gov.uk

⁴ Ofcom is the independent regulator and competition authority for the UK communications industries. Website: www.ofcom.org.uk

⁵ <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf>

- 3.1.5. The ASA is responsible for controlling marketing communications in all media, including: on-line commercial communications (including banner and display ads and paid-for (sponsored) search); direct marketing (including Commercial e-mail and SMS text message ads); magazine and newspaper advertisements; radio and TV commercials; posters; leaflets and sales promotions wherever they appear.
- 3.1.6. In March 2011 the ASA extended its remit to cover marketing communications on companies' own websites and in other, non-paid-for space under their control, including Facebook and Twitter. This means that the Advertising Code rules on gambling advertising, and the added protections these rules bring to consumers, now apply directly to all advertising on UK based gambling websites and advertiser controlled social media.
- 3.1.7. Should the ASA receive complaints about marketing communications on gambling websites of companies registered overseas we will refer the complainants to the relevant national regulatory authority. The ASA is a member of the European Advertising Standards Alliance (EASA), a body that promotes responsible advertising self-regulation across the Single Market for the benefit of consumers and business. EASA operates a cross-border complaints system, whereby all EASA member organisations agree to handle cross-border complaints under the same conditions as national complaints. The system is widely used.
- 3.1.8. If the ASA receives a complaint about a marketing communication on an overseas website that seems to target UK consumers, but is not subject to regulation by one of our international or EASA partners, we will take what action we can to achieve consumer redress.
- 3.1.9. **Complaints**
- 3.1.10. The number of complaints about gambling product ads received by the ASA since the introduction of the Gambling Act has been slowly decreasing.
- 3.1.11. In 2008 the ASA received 262 complaints about gambling ads, in 2009 it received 211 and in 2010 it received 210. The 2010 Gambling Compliance Survey⁶ found that of the 796 ads which were assessed, 96.1% of ads were considered compliant with the Advertising Codes. This result is 2.9% down on the findings of the 2007 Gambling Survey, which recorded a compliance rate of 99%. It is worth noting, however, that 25 of the 31 ads considered in breach in the 2010 survey were near identical and were placed by only two companies. The majority of them offered "free bets" but did not include significant terms and conditions.

⁶ <http://www.asa.org.uk/Resource-Centre/Reports-and-surveys.aspx>

3.1.12. For those advertisers who refuse to comply with an ASA adjudication, sanctions can be brought to bear. For example, Ad Alerts can be circulated to the media advising them not to publish non-compliant advertising, poster pre-vetting can be imposed and direct marketing companies can have benefits such as Royal Mail bulk-mailing discounts removed.

3.1.13. To date no gambling advertiser has had to be referred to the Gambling Commission or Ofcom for regulatory action following non-compliance. Complaints have been able to be resolved via the self-regulatory system.

3.2. **25) How are commercial communications for gambling services regulated to protect minors at national or EU level? (E.g. limits on promotional games that are designed as online casino games, sports sponsorship, merchandising (e.g. replica jerseys, computer games etc) and use of social online networks or video-sharing for market purposes.**

3.2.1. Both CAP and BCAP Advertising Codes contain dedicated gambling sections. These rules sit on top of the general Code provisions that all ads must not mislead, harm or offend, and should be prepared with a sense of responsibility to consumers and society.

3.2.2. The robust gambling rules reflect the social imperative of protecting vulnerable consumers and children from potentially harmful gambling ads.

3.2.3. With respect to protecting minors, advertisements are prohibited from being likely to be of appeal to under-18s, either by reflecting or being associated with youth culture, or featuring anyone who is, or appears to be, under 25 years-of-age. No-one appearing in a television ad for gambling services must behave in an adolescent, juvenile or loutish way.

3.2.4. The full gambling rules are attached at **Annex A**.

3.2.5. Under a scheduling provision of the UK Code of Broadcast Advertising, gambling advertisements must not be advertised in or adjacent to programmes commissioned for, or likely to appeal particularly to audiences under the age of 18.

3.3. **26. Which national regulatory provisions on licence conditions and commercial communications for online gambling services account for risks described in the Green Paper and seek to protect vulnerable consumers. How do you assess them?**

3.3.1. The gambling rules in the Advertising Codes are designed to ensure that marketing communications for gambling products are socially responsible, with particular regard to the need to protect children, young persons under 18 and other vulnerable persons from being harmed or exploited by advertising that

features or promotes gambling. The rules were drawn up by CAP & BCAP following a public consultation.

3.3.2. The Advertising Codes contain a number of specific rules designed to protect vulnerable players. Ads must not:

- suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression.
- suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security.
- portray gambling as indispensable or as taking priority in life; for example, over family, friends or professional or educational commitments.
- suggest that gambling can enhance personal qualities, for example, that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration.
- be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.

4. A view on self-regulation

- 4.1. The ASA understands that the current regulatory situation for online gambling across the EU is characterised by fragmentation and legal uncertainty, in which Member States apply national regulatory approaches embodying a greater or lesser degree of restriction on both the offer and promotion of gambling services. Under current arrangements, restrictions imposed by each Member State are expected to continue to vary widely.
- 4.2. The Commission has set as an objective of this consultation to aid the emergence in the Member States of a legal framework for online gambling, providing for greater legal certainty for all stakeholders.
- 4.3. The ASA notes within the document the absence of any reference, explicit or otherwise, to self-regulation as a means to regulate commercial communications for online gambling. It is the view of the ASA and other stakeholders in the UK that self-regulation, as a model outlined above, has been effective at national level in ensuring consumers are protected from potentially misleading or harmful gambling advertisements.
- 4.4. We hope, therefore, that the Commission, in its work to facilitate the emergence of a legal framework for on-line gambling, will recognise the efficacy of advertising self-regulation and encourage self-regulatory approaches within the Internal Market as a means to meet the relevant public interest objectives.

I do hope that you find the comments contained within this response useful. If the Commission has any questions about this response, then please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R Griggs'.

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Annex A – Gambling Advertising Rules

The Advertising Codes contain wide-ranging rules designed to ensure that advertising does not mislead, harm or offend.

In addition, the Advertising Codes contain specific rules for certain products and marketing techniques. The sector specific rules for gambling are detailed below.

The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code)

Section 16 - Gambling

Principle

The rules in this section are designed to ensure that marketing communications for gambling products are socially responsible, with particular regard to the need to protect children, young persons under 18 and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.

Background

The term “gambling” means gaming and betting, as defined in the Gambling Act 2005, and spread betting. For rules on lottery marketing communications, see Section 17.

The Gambling Act 2005 does not apply outside Great Britain. Specialist legal advice should be sought when considering advertising any gambling product in Northern Ireland or the Channel Islands.

Spread betting may be advertised as an investment under the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) and other FSA rules and guidance (see Background, Section 14, Financial Products). A “spread bet” is a contract for difference that is a gaming contract, as defined in the glossary to the FSA Handbook.

The rules in this section apply to marketing communications for “play for money” gambling products and marketing communications for “play for free” gambling products that offer the chance to win a prize or explicitly or implicitly direct the consumer to a “play for money” gambling product, whether on-shore or off-shore.

These rules are not intended to inhibit marketing communications to counter problem gambling that are responsible and unlikely to promote a brand or type of gambling.

Unless they portray or refer to gambling, this section does not apply to marketing communications for non-gambling leisure events or facilities, for example, hotels,

cinemas, bowling alleys or ice rinks, that are in the same complex as, but separate from, gambling events or facilities.

For the purposes of this section, “children” are people of 15 and under and “young persons” are people of 16 or 17

Rules

16.1 Marketing communications for gambling must be socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited.

16.2 In line with rule 1.2, the spirit as well as the letter of the rules in this section apply whether or not a gambling product is shown or referred to.

16.3 Marketing communications must not:

16.3.1 portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm

16.3.2 exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons

16.3.3 suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression

16.3.4 suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security

16.3.5 portray gambling as indispensable or as taking priority in life; for example, over family, friends or professional or educational commitments

16.3.6 suggest that gambling can enhance personal qualities, for example, that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration

16.3.7 suggest peer pressure to gamble nor disparage abstention

16.3.8 link gambling to seduction, sexual success or enhanced attractiveness

16.3.9 portray gambling in a context of toughness or link it to resilience or recklessness

16.3.10 suggest gambling is a rite of passage

16.3.11 suggest that solitary gambling is preferable to social gambling

16.3.12 be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture

16.3.13 be directed at those aged below 18 years (or 16 years for football pools, equal-chance gaming [under a prize gaming permit or at a licensed family entertainment centre], prize gaming (at a non-licensed family entertainment centre or at a travelling fair) or Category D gaming machines) through the selection of media or context in which they appear

16.3.14 include a child or a young person. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way

16.3.15 exploit cultural beliefs or traditions about gambling or luck

16.3.16 condone or encourage criminal or anti-social behaviour

16.3.17 condone or feature gambling in a working environment. An exception exists for licensed gambling premises.

16.4 Marketing communications for family entertainment centres, travelling fairs, horse racecourses and dog race tracks, and for non-gambling leisure facilities that incidentally refer to separate gambling facilities, for example, as part of a list of facilities on a cruise ship, may include children or young persons provided they are accompanied by an adult and are socialising responsibly in areas that the Gambling Act 2005 does not restrict by age.

16.5 Marketing communications for events or facilities that can be accessed only by entering gambling premises must make that condition clear

The UK Code of Broadcast Advertising (BCAP Code)

Section 17 – Gambling

Rules

17.1 Radio Central Copy Clearance – Radio broadcasters must ensure that advertisements for gambling are centrally cleared.

17.2 Advertisements for events or facilities that can be accessed only by entering gambling premises must make that condition clear
Rules for all advertisements

17.3 Advertisements must not:

17.3.1 portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm

17.3.2 suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression

17.3.3 suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security

17.3.4 portray gambling as indispensable or as taking priority in life; for example, over family, friends or professional or educational commitments

17.3.5 suggest peer pressure to gamble or disparage abstention

17.3.6 suggest that gambling can enhance personal qualities; for example, that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration

17.3.7 link gambling to seduction, sexual success or enhanced attractiveness

17.3.8 portray gambling in a context of toughness or link it to resilience or recklessness

17.3.9 suggest gambling is a rite of passage

17.3.10 suggest that solitary gambling is preferable to social gambling.
Rules for gambling advertisements

17.4 Advertisements for gambling must not:

17.4.1 exploit cultural beliefs or traditions about gambling or luck

17.4.2 condone or encourage criminal or anti-social behaviour

17.4.3 condone or feature gambling in a working environment (an exception exists for licensed gambling premises)

17.4.4 exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of under-18s or other vulnerable persons

17.4.5 be likely to be of particular appeal to under-18s, especially by reflecting or being associated with youth culture

17.4.6 feature anyone who is, or seems to be, under 25 years old gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way.

17.5 Advertisements for family entertainment centres, travelling fairs, horse racecourses and dog racetracks, and for non-gambling leisure facilities that incidentally refer to separate gambling facilities as part of a list of facilities on, for example, a cruise ship, may include under-18s provided they are accompanied by an adult and are socialising responsibly in areas that the Gambling Act 2005 does not restrict by age.