

Annex N

**CASE HANDLING PRINCIPLES
BETWEEN
THE GAMBLING COMMISSION
AND
THE ADVERTISING STANDARDS AUTHORITY**

1. Introduction

- 1.1 This paper has been prepared with a view to achieving co-ordinated and structured regulatory intervention and to ensure that the working relationship between the Gambling Commission ('Commission') and the Advertising Standards Authority ('ASA') is effective and that regulatory action is not duplicated.
- 1.2 These principles outline how the ASA and the Commission will work together to regulate and enforce the gambling advertising rules within the CAP and BCAP Codes. This document also establishes how and in what circumstances the ASA will refer cases to the Gambling Commission and vice versa.
- 1.3 The principles are intended to provide a useful guide to the ASA and the Commission on the procedure for considering complaints made against gambling advertisements. The appropriate way to handle individual cases can be discussed between officers at the ASA and the Commission. In the first instance the following should be used as points of contact:
Tim Evans, Complaints Executive, 020 7492 2174, time@asa.org.uk
Wayne Pearson, W.Pearson@gamblingcommission.gov.uk,
0121 230 6550.
- 1.4 The ASA is the independent body that endorses and administers the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code), the rules that apply to non-broadcast marketing communications in the UK and the CAP (broadcast) TV and radio Advertising Standards Codes, the rules that apply to broadcast marketing communications in the UK. The Committee of Advertising Practice (CAP; broadcast and non-broadcast) is the self-regulatory body that creates, revises and enforces those rules. The text Code and RASA?
- 1.5 The Gambling Commission is a Non-Departmental Public Body, sponsored by the Department for Culture, Media and Sport. The Gambling Commission is responsible for achieving the regulatory aims of the Gambling Act 2005. The Commission is also responsible for advising local and central government on issues related to gambling. It operates at arm's length from government and its advice is independent.
- 1.6 The ASA will be responsible for the day-to-day regulation of gambling advertising, although the Commission will act as the ASA's statutory backstop regulator for non-broadcast gambling advertising.
- 1.7 In accordance with section 329 of the Gambling Act, BCAP and ASA(B) will be responsible for broadcast advertising of gambling. Ofcom will continue to be the

ASA's backstop regulator for all broadcast advertising under the Communications Act 2003.

- 1.8 The Commission has made compliance with the BCAP and CAP Advertising Codes compulsory for all Gambling Commission licensees, by making compliance with the Advertising Codes a condition of the Gambling Commission's Code of Practice. This means that the Commission is able to take regulatory action against any of its licensees for unacceptable advertising.

This does not affect the ASA's co-regulatory relationship with Ofcom in any way.

- 1.9 The Commission will usually only become involved in advertising issues when the ASA refers an advertiser to the Commission or where an advertiser has committed a serious breach, or several less serious breaches, of the Advertising Codes.
- 1.10 These case handling principles will come into effect on 1 September 2007, when the new licensing regime under the Gambling Act 2005 comes into force.

2. Legal Background

- 2.1 The Gambling Act 2005 ('the Act') replaced most existing gambling law with a new regulatory system governing all gambling in Great Britain, defined as betting, gaming and lotteries (except the National Lottery). The Gambling Act does not regulate spread betting, which is covered by the Advertising Code rules.
- 2.2 The Act introduced a new legislative framework for gambling advertising, granting some gambling sectors more scope to advertise than previously permitted, particularly British licensed casinos and betting operations.
- 2.3 Under the Act, Ofcom, the Gambling Commission, and the Secretary of State (Department for Culture Media and Sport) share responsibility for the regulation of gambling advertising. The Gambling Commission can issue code of practice provisions on non-broadcast advertising in consultation with CAP, the Secretary of State, the gambling industry, problem gambling experts and HM Commissioners for Revenue and Customs.
- 2.4 The Commission asked the Committee of Advertising Practice (CAP) to perform that function and for the ASA to administer the new rules, in line with its commitment to better regulation principles and to ensure consistency with the broadcast advertising rules.
- 2.5 The Act states that Ofcom is responsible for setting, reviewing and revising broadcast gambling advertising rules in consultation with the Gambling Commission. Because Ofcom has contracted-out the regulation of broadcast advertisements to the ASA system, the Broadcast Committee of Advertising Practice (BCAP) exercises that role.
- 2.6 Only permitted / licensed gambling operators will be able to advertise in Great Britain.

- 2.7 The Gambling Commission has made compliance with the Advertising Codes a provision of the Commission's Code of Practice. This means that the Commission will be able to apply pressure on its licensees to comply with the Advertising Codes via a series of written warnings. Serious or persistent non-compliance with the Advertising Codes and/ or ASA adjudications and a referral from the ASA to the Gambling Commission may be sufficient to prompt license revocation procedures, where appropriate. This would be on the basis that the operator is no longer 'fit and proper' to run a gambling business within the terms of its operating licence.

3. Handling of cases involving gambling advertising

3.1 Basic Principles

- 3.1.1 The Commission and the ASA share a common goal to ensure that gambling advertising is socially responsible and that no advertisement harms or exploits children and young persons or vulnerable adults.
- 3.1.2 The ASA is the primary means for handling complaints about gambling advertising. It will consider all complaints it receives about gambling advertisements which fall within the scope of the CAP and BCAP Advertising Standards Codes.
- 3.1.3 All complaints received will be dealt with as per the ASA's published standards of procedure.
- 3.1.4 The Commission will use the ASA system wherever possible to act against problematic gambling advertising.
- 3.1.5 Where the Commission is contemplating direct action against a gambling operator, it will check early with the ASA whether it is already acting. In such cases, the Commission will report its concerns to the ASA and the ASA will outline the scope of its investigations. The Commission could nevertheless bring a separate action if it later identified serious problems falling outside the Advertising Codes.
- 3.1.6 In exceptional cases, where there is clear evidence of an act contrary to the gambling advertising rules, or where the operator is known for repeated breaches of the Codes, the Commission may want to act straightaway without recourse to the ASA process.
- 3.1.7 Where the Commission considers that a case is best suited to action on their part, rather than the ASA, the Commission will discuss with the ASA in advance.

3.2 Referral of cases by the Commission to the ASA

- 3.2.1 If the Commission receives a complaint about an advertisement that appears to be covered by the CAP or BCAP Codes, it will refer the complaint to the ASA as the 'established means' for regulating gambling advertising.
- 3.2.2 Complaints should be referred to:
Tim Evans, Complaints Executive, 020 7492 2174, time@asa.org.uk

Non-broadcast advertisements

- 3.2.3 If the ASA finds an advertisement in breach of the CAP Code, it will take all steps available to it in order to achieve compliance with the Codes. If the advertiser refuses to comply with the CAP Code or an ASA adjudication, the ASA will consider referring the case back to the Commission for regulatory action under the Gambling Act 2005.
- 3.2.4 In the case of misleading advertisements, the ASA may consider referring non-compliant advertisers to the Office of Fair Trading for action under the Control of Misleading Advertisements Regulations 1988 (as amended). The Gambling Commission will be advised of any such referral.

Broadcast advertisements

- 3.2.5 If the ASA proves unsuccessful in stopping an advertisement which was in breach of the BCAP Code, it will refer the broadcaster to Ofcom for further action under the Communications Act 2003. The Gambling Commission will be advised of any such referral.

3.3 Referral of cases by the ASA to the Commission

- 3.3.1 Examples of types of case where the ASA will refer or will consider referring to the Commission are as follows:

- i. where the advertisement is outside the remit of the Codes; e.g. see 1.2 b-s of the CAP Code. Some matters outside the remit of the BCAP Codes (i.e. complaints relating to sponsorship, programmes or programme promotions) will be referred to Ofcom;
- ii. where an advertiser refuses to comply with an ASA requirement. This includes:
 - where an operator has not replied to ASA approaches
 - where the ASA has ruled but advertising has continued
 - where an operator complies with the ASA ruling but then causes further problems with new advertising.

The ASA will consider whether continued ASA action or a referral to the Commission would be most likely to lead to a cessation of advertising.

- iii. Where it appears that the operator is advertising unlawfully

- 3.2.2 Referrals to the Commission should be sent to:
Wayne Pearson, W.Pearson@gamblingcommission.gov.uk, 0121 230 6550.