

Marketing and advertising workstream: Government review of gambling advertising

For Board approval	
For Board briefing	
For Board steer	
For Board information	

Prepared by:

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Executive summary

1. This paper updates the Board on the findings of the four strand review of gambling advertising, the expected response from Government and proposed next steps.
2. Prompted by the publication by Ofcom of Broadcasters' Audience Research Board (BARB) data in November 2013, which showed a significant increase in the volume of gambling advertisements shown on television, the Government committed to a review of the rules which govern gambling advertising.
3. In April 2014 Government announced the scope of a four strand review intended to ensure that the rules keep pace with technological developments, provide adequate protections and remain consistent with public expectations about gambling advertising. The strands involved:
 - The Remote Gambling Association (RGA)¹ reviewing and recommending changes to the Industry Voluntary Code for Socially Responsible Advertising
 - The Committees of Advertising Practice (CAP and BCAP) evaluating the latest evidence in relation to gambling advertising and considering if changes to the rules are required
 - The Advertising Standards Authority (ASA) reporting on the proportionality, robustness and consistency of its enforcement action on the gambling rules
 - The Commission reviewing LCCP (with a focus on free bets and bonuses) to ensure that all gambling advertising continues to comply with the licensing objectives of the Gambling Act 2005.
4. **[Exempt information under section 22 of the Freedom of Information Act]**
5. CAP and BCAP published the findings of its review on 12 December. Although the review findings suggest that the approach of the Codes remains effective in addressing gambling related harms, CAP and BCAP have committed to: respond to any new research as it is published; work with industry and regulators to review and up-date its picture of risk factors (with a focus on young people and social media), which will inform revised guidance; work with other relevant bodies to expand and improve the evidence base.
6. The ASA published the findings of its review on 30 October and found that its decision making was broadly 'in the right place' and in line with societal expectations. In dealing with issues arising from its review, the ASA has committed to: prioritise breaches relating to sales promotions in gambling advertisements and being more proactive in identifying them; adopting a more proactive stance on 'toughness' in advertisements and the risk of appeal to children; work closely with DCMS and the Commission on issues related to offers and rewards.
7. We published the outcome of our review work in *Strengthening social responsibility - February 2015*. It included a number of new and amended LCCP provisions relating to marketing and advertising – including a new social responsibility code on the marketing of free bet offers - which will come into force on 8 May 2015. We expect to consult on further marketing-related changes later in the year.
8. We are already driving forward a range of relevant activities, including: proactive and routine advert referrals to the ASA on an 'Authority to Challenge' basis; working closely with the Information Commissioner's Office (ICO) to tackle spam text messages; and the

¹ It was subsequently agreed that the Industry Group for Responsible Gambling (IGRG) would coordinate this review, with the support of the RGA.

establishment of an internal working group on social media to consider our policy approach, trends, regulatory coverage and compliance.

9. Government is expected to publish its response to the review by the end of March 2015, although there is a risk that it may now be deferred until after the General Election.
[Exempt information under section 22 of the Freedom of Information Act]
10. The following annexes are attached for reference:
 - Annex A: IGRG correspondence to Ministers regarding the review of the industry voluntary code (June, November and December 2014).
 - Annex B: Commission advice letter to the Minister for Sport and Tourism (7 January 2015)
 - Annex C: RGSB advice letter to the Commission (3 February 2015)
 - Annex D: CAP and CAP review report published on 12 December 2014
 - Annex E: Gambling Commission research advice letter to Shahriar Coupal, Director of CAP and BCAP (20 May 2014)
 - Annex F: ASA review report published on 30 October 2014
 - Annex G ASA qualitative research report: Public Perceptions of Gambling Advertising in the UK (October 2014)
 - Annex H: 'Marketing' chapter of *Strengthening Social Responsibility* – February 2015

Background

11. The publication by Ofcom of the Broadcasters Audience Research Board (BARB) data in November 2013 showed that the total number of gambling advertisement spots shown on television increased from 152,000 in 2006 to 537,000 in 2008 after the market was liberalised, reaching 1.39 million in 2012. Adults' exposure to gambling advertising increased five-fold from 5.8 billion impacts² in 2005 to 30.9 billion impacts in 2012, accounting for 3.2% of all advertising seen in 2012. When taken as a whole (i.e. including advertisements for lotteries and bingo) some 55% of gambling advertisements are shown before 9pm.
12. The advertising of remote gambling on television featured in a number of proposed amendments during the passage of the Gambling (Licensing and Advertising) Act 2014. Although the amendments were ultimately withdrawn or resisted, the Government committed to a review of gambling advertising to ensure that regulatory controls were properly examined.
13. On 4 April 2014 the Responsible Gambling Trust (RGT) published ['Gambling advertising: a critical research review'](#) by Dr Per Binde. The report paid particular attention to studies about the impact of advertising on participation in gambling and the prevalence of problem gambling. It identified gaps in evidence relating to knowledge and understanding of gambling advertising and its impact. Binde concluded that it is very difficult, if not impossible, to assess how many people gamble excessively because of the direct or indirect influence from advertising. Part of the difficulty of measuring the impact of advertising on problem gambling is that it is, in general, most probably relatively small.
14. In ['Gambling Protections and Controls'](#) (April 2014) Government called for the rules and codes which govern gambling advertising to be re-examined to ensure that existing

² An 'impact' is the number of times an advert was seen by viewers

controls keep pace with developments in the market, provide adequate protection – especially to children and the vulnerable – and remain consistent with public expectations about gambling advertising. A four strand review was announced:

- The RGA [IGRG] will make recommendations to Government on any changes needed to the industry voluntary code, including on the suitability of the **9pm watershed arrangements**
 - CAP and BCAP will evaluate the latest evidence in relation to gambling advertising and problem gambling to consider what regulatory implications arise as a result
 - The ASA will report on the proportionality, robustness and consistency of its enforcement action on the gambling rules.
 - The Commission will ensure that its current review of LCCP (which includes a focus on free bets and bonuses) ensures that all gambling advertising continues to comply with the licensing objectives of the Gambling Act 2005
15. Government advised that the work would be completed by the end of 2014. The ASA published the findings of its review on 30 October and CAP/BCAP published its work on 12 December. The IGRG submitted a set of proposals to Ministers, which has not been published. The Commission's review of LCCP concluded on 31 October with the findings published in *Strengthening social responsibility: Amendments to the social responsibility provisions in the licence conditions and codes of practice (LCCP) for all operators*, on 6 February 2015.
16. **[Exempt information under section 36 of the Freedom of Information Act]**
17. Government is expected to publish its response to the review by the end of March 2015, although there is a risk that it may now be deferred until after the General Election.

The four strands of the review

18. **[Exempt information under section 36 of the Freedom of Information Act]**

The Committees of Advertising Practice (CAP and BCAP)

The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) will evaluate the latest evidence in relation to gambling advertising and problem gambling to consider what regulatory implications arise as a result.

19. CAP and BCAP published the findings of its review on 12 December. A copy of the report can be seen in Annex D.
20. CAP and BCAP assessed the regulatory implications of key research on the impact of gambling advertising, with specific focus on the exposure of children to gambling advertising and the relationship between advertising and gambling related harms.
21. The terms of reference for the review committed CAP and BCAP to:
- Assess and explore the implications of Dr Per Binde's 2014 study on gambling advertising and problem gambling
 - Assess and explore the implications of relevant quantitative and qualitative data, principally, ASA complaint data on gambling advertising and for BCAP, recent Ofcom research on TV exposure to gambling advertising

- Invite the Commission to make recommendations as to the key pieces of further research that should be included under the scope of the review (submitted on 20 May 2014 – Annex E)
22. In the context of the review’s objectives, ‘harm’ was considered in relation to four categories: problem gambling; children and young people; other vulnerable groups; and general consumers.
23. CAP and BCAP state that the findings for each category strongly support the view that the approach of the Codes is effective in addressing gambling related harms. In particular, they conclude that:
- The central approach of the Codes, targeting risk factors with content restrictions, is acknowledged as the best means of effectively controlling advertising
 - The literature suggests the impact of gambling advertising, both on the propensity toward problem gambling and under-age participation is limited
 - the level of restrictions embodied in the Code – prohibitions on targeting those underage coupled with content restrictions prohibiting inappropriate or irresponsible appeal – is appropriate to the potential for harm
 - There is no significant indication that there are gaps in the Codes
24. CAP and BCAP argue that these conclusions are reinforced by the fact that problem gambling rates and participation rates among children and young people have both been, at worst, stable during a period of unprecedented growth in gambling advertising.
25. However, CAP and BCAP acknowledge that gambling advertising remains a sensitive topic and call for renewed and ongoing vigilance to ensure that the regulation of gambling advertising remains effective. This means addressing the evidence gaps in relation to problem gambling-related harm and harm to children and young people, and responding to evidence promptly as it is published.
26. In the review conclusion, CAP and BCAP set out a series of proposed next steps to address these issues. They will:
- respond to new research stemming from Binde’s recommendations as it is published
 - consult experts, industry and other stakeholders to build a more up to date picture of risk factors and how they might translate into advertising issues. The objective will be to produce updated and more detailed guidance to aid the interpretation of the rules
 - ensure that the risk factor exercise focuses on children and young people and their interactions with online media
 - co-operate with other relevant bodies in expanding and improving the evidence base.
27. CAP and BCAP are now preparing to initiate the various elements of work outlined above and will be seeking expert input from the Commission, industry and other key stakeholders.

The Advertising Standards Authority (ASA)

The ASA will report on the proportionality, robustness and consistency of its enforcement action on the gambling rules.

28. The ASA published the findings of its review on 30 October. A copy of the report can be seen in Annex F.
29. The primary objective of the ASA's review was to ensure that the rules in the UK Advertising Codes are being applied to gambling adverts proportionately, consistently, and in line with societal expectations. In conducting the review, the ASA was mindful of the following areas of particular concern:
- Children's exposure to gambling advertising. In particular, sports betting adverts on TV which may be seen around live sports events before 9pm, and bingo adverts which are not subject to the industry's voluntary code and can be broadcast during the day.
 - Whether adverts for in-play sports betting, containing messages such as 'bet now', are 'aggressive' and hurry consumers into making a decision to gamble.
 - Adverts featuring 'free bets' and other bonus offers which continue to prompt complaints and breach the rules more commonly than other gambling adverts. There are concerns about these types of promotions both in terms of their potential to mislead, and whether they are socially responsible.
30. The ASA adopted a mixed methodological approach which considered:
- Complaints data – ASA complaints data from 2007 onwards was analysed for trends in complaints about gambling advertising
 - Societal benchmarking – A research agency was commissioned to conduct qualitative research into the public's views on gambling advertising. The associated report can be seen in Annex G
 - A series of questions was included in the Commission's telephone omnibus survey to obtain quantitative data
 - ASA decisions - All decisions on gambling advertising complaints from the past year were reviewed
31. The ASA found that the number of gambling related cases³ has been on an increasing trend since 2011 although they only represented 3.5% of all cases dealt with in 2013. A significant minority of complaints refer to a dislike of gambling advertising in general, rather than the content of a specific advert. Of complaints about specific adverts, around half referred to potentially misleading content, and in particular concerns about 'free bets' or other promotional offers. The remaining complaints were divided between concerns about potentially harmful or offensive content.
32. The ASA's qualitative research found that majority of participants considered gambling to be a normal leisure pursuit and were relaxed about the concept of gambling advertising provided it did not mislead or was not specifically targeted at children. A majority of respondents agreed with the judgements made by the ASA, which they found appropriate and balanced. Children's exposure to bingo or sports betting adverts was not seen as a significant problem.
33. Although the ASA believes that the research supports the view that its decisions on gambling advertising are meeting societal expectations, some issues were flagged which require further consideration: the interpretation of 'appeal to children'; adverts for in-play sports betting and the potential link to 'toughness'; and the appeal of 'free bet' offers to younger people.

³ A case equates to a group of complaints about the same advert

34. During the period June 2013 to May 2014 the ASA received 398 complaints about gambling adverts. The ASA's assessment found that the decision it reached in each case was the correct one. However the ASA did identify a small number of matters for which additional scrutiny or a more proactive approach would be more appropriate in future.
35. In light of the review findings - particularly the feedback received from members of the public – the ASA is satisfied that it has been meeting its key objectives of protecting young people and vulnerable adults. However, some areas were identified which the ASA feels warrant further consideration:
- **'Free bet' offers and other sales promotions**, which continue to raise concerns in terms of clarity and social responsibility
 - **Children and scheduling**: the ASA considers it important that a view should be sought from ASA Council in cases that might not be clear cut, in particular around issues of appeal to children
 - The need to be more proactive on the issue of **'toughness' in adverts**, raising its own challenges if appropriate and presenting more cases to ASA Council
36. Although the ASA is confident that the review findings support its approach and decision making on complaints it has committed to a series of next steps which address some of the main issues raised:
- The findings have been presented to ASA Council so that it is fully aware of the issues arising in this review when making decisions on cases
 - Potential breaches relating to sales promotions in gambling adverts will be prioritised. ASA will raise proactive challenges about issues not raised by complainants. If ASA spots a problem, it is more likely that a published ruling will be sought so that gambling marketers know where the line is drawn and why
 - ASA will be proactive on issues relating to social responsibility, especially around 'toughness' in adverts and particular appeal to children. ASA will raise challenges if appropriate and present more cases to ASA Council
 - ASA will continue to work with DCMS and the Commission, particularly around the issues of offers and rewards, finding ways to continue to source data to inform decision making
37. **[Exempt information under section 41 of the Freedom of Information Act]**

The Gambling Commission

The Gambling Commission will ensure that its current review of LCCP (which includes a focus on free bets and bonuses) ensures that all gambling advertising continues to comply with the licensing objectives of the Gambling Act 2005.

38. The main focus of our contribution to the review was to consider whether amendments could be made to LCCP to provide additional guidance and/or requirements to ensure that the marketing of free bets and bonus offers is consistent with the licensing objectives. We also looked more broadly at relevant provisions relating to fairness, openness and socially responsible rewards.
39. This work was incorporated into our wider social responsibility review of LCCP, which closed on 31 October. The Commission received 500 written responses across the 10 consultation questions relating to marketing, advertising and fair and open terms.

40. We published the outcomes of the consultation in *strengthening social responsibility February 2015* (Annex H: Marketing chapter) and a number of new and amended LCCP provisions relating to marketing and advertising will come into force on 8 May 2015.
41. In addition to amendments which give greater prominence and focus to the advertising rules and associated legislation, we have introduced a new social responsibility code provision which will require operators to adhere to specific elements of CAP/BCAP guidance on the marketing of free bet and bonus offers. Although some respondents expressed concern about a duplication of regulation, we considered it desirable and necessary to publish the proposed new social responsibility code provision, subject to some minor drafting amendments, for the following reasons:
- The ongoing level of public and political interest and concern relating to the marketing of free bet and bonus offers
 - The publication by the ASA of a significant number of upheld adjudications on free bet and bonus offers for sports betting and online gaming websites
 - The increase in the number of new overseas remote operators licensed by us as a result of the Gambling (Licensing and Advertising) Act 2014
 - The findings of the ASA report into gambling advertising which identified concerns over whether gambling sales promotions are always clearly and accurately advertised
 - The outcome of a recent remote website review by us, which identified a number of relevant breaches of the CAP rules.
42. We are working closely with CAP, BCAP and the ASA to raise awareness of the rules governing the marketing of 'free bets' and we are planning a programme of targeted remote compliance activity during the summer period.
43. **[Exempt information under section 31 of the Freedom of Information Act]**
44. As part of our awareness raising exercise we are also now raising concerns on an informal basis directly with operators.
45. We are working closely with the ICO to raise awareness of the rules and regulations governing electronic marketing and to challenge operators who are found to be in possible breach. **[Exempt information under section 31 of the Freedom of Information Act]**
46. We are exploring more fully the way in which operators are marketing via social media platforms, notably Facebook and Twitter. We have established an internal social media working group which is considering social media trends, regulatory coverage and how the Commission monitors operators' social media pages for routine compliance purposes. **[Exempt information under section 31 of the Freedom of Information Act]**
47. We expect to consult on further marketing-related changes later in 2015. This is likely to involve proposals to improve the drafting of the current code provision concerned with marketing linked to intensity of gambling. We are keen to protect the principle of socially responsible rewards whilst not prohibiting legitimate and commercially necessary practices.
48. We are also committed to responding to the Consumer Rights Bill, once enacted. This may lead to the provision of supplementary advice for the gambling sector and gambling customers, both to ensure that operators understand their responsibilities to offer fair and open terms and conditions and to help consumers understand their rights.
49. **[Exempt information under section 22 of the Freedom of Information Act]**

Recommendations

50. Commissioners are asked to note the findings of the four strands of the advertising review and to raise any specific observations, interests or concerns they may have, particularly in relation to the Commission's ongoing and future work in this area.