

Response to CAP *Gambling and Lottery Advertising Rules*

January 2021

1. About ISBA

- 1.1. ISBA is the only body in the UK that enables advertisers to understand their industry and shape its future, because it brings together a powerful network of marketers with common interests, empowers decision-making with knowledge and insight and gives single voice to advocacy for the improvement of the industry.
- 1.2. ISBA is a member of the Advertising Association and represents advertisers on the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice, sister organisations of the Advertising Standards Association, which are responsible for writing the Advertising Codes. We are also members of the World Federation of Advertisers. We are able to use our leadership role in such bodies to set and promote high industry standards as well as a robust self-regulatory regime.

2. Context

- 2.1. This consultation comes at a time of increased scrutiny of the gambling sector, at a time when our economy and society are under enormous strain from the coronavirus pandemic. Regulators and policymakers are understandably motivated to ensure that consumers are making informed choices and are being advertised to responsibly, and that action is taken to protect people’s health and well-being – particularly children and vulnerable groups.
- 2.2. CAP places children and the vulnerable at the heart of its work, and ISBA supports this focus. At the same time, we recognise that gambling is a legal activity which is enjoyed by millions of adults, and which can be done safely and securely. We support the right of our members to responsibly advertise what is a legitimate commercial endeavour, which can bring enjoyment to adults across the country.
- 2.3. In pursuing that right, we welcome the measures which gambling brands in ISBA membership have taken to promote responsible gambling and prevent harm. We also welcomed the ten-point plan set out at the beginning of the March 2020 lockdown by the Betting and Gaming Council which, among other measures, took action to ensure appropriate and responsible advertising, including monitoring volume; reported all illegal, rogue advertising from black market online operators; and increased safer gambling messages across all sites and direct to all customers.¹
- 2.4. As the CAP consultation notes, the UK’s advertising Codes already contain strict rules around gambling advertising, controlling “the scheduling, placement and targeting of gambling ads and restrict[ing] their creative content to protect children ... young people ... and other vulnerable groups”.² These rules “balance the rights of gambling operators to advertise their products as a legitimate leisure activity with the need to protect children, young persons and other vulnerable groups from gambling advertising-

¹ Betting and Gaming Council, [“10 pledge action plan announced”](#), 27 March 2020.

² [CAP and BCAP Consultation: Responding to the Findings of the GambleAware Final Synthesis Report](#), p7.

related harms”.³ We believe that this should continue to be the goal of CAP/BCAP rules pertaining to gambling advertising, while recognising that the implementation of that principle will inevitably be subject to review given the fast-changing nature of digital markets (and pending the outcome of the Government’s announced review of the Gambling Act 2005).

- 2.5. Where there are to be changes in the Codes, we support evidence-led reform, rooted in real-world understanding of gambling behaviours and the level of consumption of gambling advertising, if any, by children, young people, and vulnerable groups. We note CAP’s assessment of the evidence presented in GambleAware’s Final Synthesis Report, that “the evidence does not suggest that, under the current controls on gambling operators and their advertising, that UK gambling advertising is inherently harmful or a significant cause of harm”. It also notes that the “most prominent findings – on the appeal of creative content to vulnerable groups and the association between exposure to gambling advertising and intentions to gamble among some under-18s – suggest, at most, a modest impact”.⁴
- 2.6. We do, however, recognise that the Final Synthesis Report found “a significant association between the reported exposure to advertising of under-18s who were non-gamblers and their intention to gamble”,⁵ while also finding that “engagement with and positive views of gambling advertising among under-18s and other vulnerable groups are limited” and that “the overall trend in underage participation in any gambling activity ... has declined significantly since 2011 and adult problem gambling rates have remained stable”.⁶
- 2.7. That being said, on the point about the intention of individuals to gamble, we note that the definition of ‘susceptibility’ includes those who responded to the ScotCen quantitative study and said that they would ‘probably not’ gamble, as well as those who said that they ‘definitely’ or ‘probably would’. Only those who stated that they ‘definitely would not’ were defined as ‘not susceptible’. This means that individuals who said that they probably would not gamble were classified in the same way as those who said that they definitely or probably would. There is a clear distinction between these categories which does not seem to have fed through to the final consultation – likely because the detailed survey responses were not available when the consultation was published. We support the view that CAP consider this information, and assess whether this evidence base is sufficient to justify the changes proposed, and whether it is consistent with the wish to keep regulatory burdens to a minimum.
- 2.8. Overall, in these circumstances, we believe that while there may be an argument for amendments to the Codes to take account of recent developments, a strong, evidence-led case must be made for these changes – especially given some of the fundamental challenges to some of our members’ operating models and brands that the proposals in the consultation represent.

³ Ibid., p8.

⁴ Ibid., p16.

⁵ Ibid., p17.

⁶ Ibid., p5.

3. Consultation Questions Response

'Strong appeal' and sports personalities

- 3.1. We have carefully noted the proposed amendment to the Codes, replacing 'particular' appeal to under-18s with 'strong' appeal, and note the section on how this is proposed to be defined. As was the case with our submission to the pre-consultation, we urge clarity over the final definition of these terms, and clear guidance as to how they will be assessed in practice.
- 3.2. In the first instance, on the definition of the term 'strong', we note the proposal to follow the guidance which has previously been issued with the alcohol sections of the Codes. Our members have expressed their concern that this is a subjective term and that they would wish to see specific examples of what would be considered 'strong' appeal, so that they could better assess what this change would mean for their advertising and whether the change is indeed proportionate.
- 3.3. We also note CAP's assertion that the ASA would "take a strict line in its approach to the application of any new test of appeal".⁷ This being the case, we believe it is important to be as clear as possible about the definition of 'strong' appeal, to give clear, real-world examples of how it could apply, and also to be clear about how an advertiser could prove their case if one were brought against them. On what grounds could an advertiser make the case that a personality did not have 'strong' appeal?
- 3.4. On a related vein, we believe that clarity is needed on the metrics on which would it be judged that a personality had a 'strong' appeal to under-18s. The consultation mentions social media follower demographics as one example; would there be any thresholds for this? Are there other potential metrics in prospect? Members have argued that there is the possibility for very loose interpretation of whether a personality is 'likely to be followed' by under-18s, and have queried what criteria this is to be judged upon and at what threshold.
- 3.5. Members have also raised the issue of ensuring that they are able to comply with the amended Code should this change go ahead, noting that they would clearly wish to train their staff to comply, but that this could be made more difficult by the lack of specific criteria against which judgments can be made. CAP should ensure that full guidance and support is available should these changes be made.
- 3.6. It is clear that the proposed new approach would likely prohibit specific types of advertising content, including the use of prominent footballers and other sportspeople, where those sports are likely to have 'strong' appeal to under-18s. For some of our members, the promotion of sports brands represents almost the entirety of their business model. It would accordingly be extremely difficult for them to advertise at all without the use of sports personalities – especially, for example, in relation to boxing or mixed martial arts events, where the event itself is often titled by the competitors' names. They have queried whether a sweeping restriction on the use of all sportspeople when trying to promote a sports brand is reasonable or feasible, and whether this accords with the consultation's recognition that it is not the role of CAP/BCAP to severely restrict a licensed operator's ability to advertise its products or services.

⁷ Ibid., p.24.

- 3.7. In keeping with point 3.4, members would also seek clarity on how the 'likelihood' of a sportsperson to be followed by under-18s is to be defined. If this is to be decided solely on the basis of the person being a professional footballer, then members have raised the question of whether any such person – even an unknown person who is playing football – is likely to be caught by the provision, given the game's popularity with under 18s. Some members previously raised the question of whether the end result will be that football promotions are ruled out altogether, although this point appears to be covered by the exemption set out in section 6.4.4 of the consultation.⁸
- 3.8. However, members have also raised the issue of the different appeal likely to be enjoyed by retired footballers, or former senior people within the game. Individuals from previous seasons of football competition may not enjoy as wide appeal with under-18s as the more recently retired, or current players. They have also queried whether former managers (for example, Harry Redknapp) could be held to have 'strong' appeal when compared, for example, to a contemporary footballer.

Responsibility and problem gambling

- 3.9. Moving to the consultation questions relating to proposed additions to the responsibility and problem gambling guidance, we note the proposed changes on presenting complex bets in a way that emphasises skill or intelligence; presenting gambling as a way to be a part of a community based on skill; implying that money back offers security; using humour or light-heartedness to play down the risks of gambling; and unrealistic portrayals of winners (for example, winning first time, or easily).
- 3.10. As stated above, we recognise the motivation behind these proposed changes, and understand the public policy challenge for industry and regulators. Industry remains committed to playing its full part in addressing this challenge. We would also refer to the Betting and Gaming Council consultation response for analyses of these proposed changes and their impact in practice.
- 3.11. On prohibiting the presentation of gambling as a way to be part of a community based on skill, members have raised the specific matter of bingo customers. The sense of community which bingo generates is often extremely important to certain segments of the population and is far from harmful. Members question how belonging to a community of this kind could cause harm in the context suggested.
- 3.12. On money back offers, members have asked whether the prohibition on implications that money back offers create security means that the ASA is considering a ban on all such offers.
- 3.13. On the use of animation, members have raised points regarding the use of this in order to deliver advertising which also conveys a public health message. For example, one member has used animation which contained a message on social distancing during the coronavirus crisis. The question arises of whether there may be exemptions for examples of this kind.
- 3.14. More widely, as with the use of sports advertising, it is the case that some ISBA members' brand identities are substantially or wholly built around animation. Any blanket restriction would likely require an absolute reset of that identity. This would clearly impact widely on the brand's operation, beyond the issue of advertising which

⁸ Ibid., p25.

may impact on children, young people, and vulnerable adults, and we would query whether this is the intention of the proposed changes to the Codes.