

Memorandum of understanding between the Gambling Commission and the Advertising Standards Authority.

1. Introduction

- 1.1. This agreement is between the Gambling Commission (the Commission) and the Advertising Standards Authority (ASA) and provides a structured framework on how both parties will work together to ensure the effective regulation of gambling advertisements.
- 1.2. The scope of this agreement is to achieve a common understanding and set of standards where both can commit to:
 - promote mutual support, common understanding and co-operation between both parties in support of their regulatory responsibilities, working procedures, and legal powers;
 - have an agreed procedure and processes for handling advertising complaints and for providing operational assistance to each other in support of the effective regulation and enforcement of the gambling advertising rules;
 - share and exchange information effectively in support of their legitimate roles and responsibilities;
 - ensure appropriate consultation and collaboration on matters of mutual interest.
- 1.3. The ASA is the UK's independent regulator of advertising. Its work includes acting on complaints and proactively checking media, to take action against misleading, harmful or offensive advertising, sales promotions and direct marketing. The UK Advertising Codes cover the content and placement of advertising and are intended to ensure gambling advertising is socially responsible. Compliance with these codes is enforced by the ASA across all forms of media.
- 1.4. The Commission is an independent, non-departmental public body, sponsored by the Department for Culture, Media and Sport (DCMS). The Commission is responsible for advising local and central government on issues relating to gambling. Under the Gambling Act 2005 the Commission regulates all gambling in Great Britain, apart from spread betting, in partnership with local Licensing Authorities. It does so in the public interest and through its statutory licensing objectives to:
 - prevent gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime;
 - ensure that gambling is conducted in a fair and open way;
 - protect children and other vulnerable persons from being harmed or exploited by gambling.

- 1.5. The permission to advertise gambling in Great Britain will be restricted to operators licensed by the Commission (following the enactment of the Gambling 'Licensing and Advertising' Act 2014). Gambling operators wishing to advertise must comply with the UK Advertising Codes which applies to the context and media in which they advertise their gambling facilities or services as well as the 'Gambling Industry Code for Socially Responsible Advertising' which is a voluntary code developed in conjunction with the gambling industry. These requirements are set within an ordinary code of practice provision for licensed gambling operators in the Commission's 'Licence Conditions and Codes of Practice' (LCCP).
- 1.6. The parties do not intend this MOU to be legally binding and it shall not create any legally enforceable duties or obligations between them. No charges or disbursements will be made between the MOU parties for the sharing of information, unless previously agreed.

2. Information sharing

- 2.1. To fulfil the above described roles effectively the parties need to share information with each other. This will help support their legitimate roles and responsibilities.
- 2.2. Both parties agree to share relevant information with each other where it can do so lawfully in order to assist each other in discharging its regulatory responsibilities. Such information may include (but not be limited to):
 - sharing information about gambling related complaints and how those complaints are being investigated;
 - sharing in advance of publication information about advertising policy developments or changes which could impact on the other party or would benefit from input from the other party;
 - sharing information on changes or developments in the regulation of gambling advertising;
 - sharing information on proposed or new research which relates to gambling advertising.
- 2.3. There are legal obligations regarding information sharing between the parties:
 - Personal data
 - Confidential information
 - The Gambling Act 2005 (GA 2005)
- 2.4. Personal data shall only be shared in accordance with the Data Protection Act 1998 (DPA 1998) and the Human Rights Act 1998 (HRA 1998):
 - Personal data is processed in accordance with the eight Data Protection Principles (DPA 1998).
 - An individual's right to privacy and family life (Article 8 of the European Convention of Human Rights incorporated by the HRA 1998) is only interfered with in accordance with the law, in pursuit of a legitimate aim, and necessary in a democratic society.
 - With reference to principle 8 of DPA 1998, information shall not be transferred outside of the European Economic Area (EEA) unless adequate levels of protection are confirmed.

- 2.5. Information considered 'confidential' shall not be shared where an actionable breach may be brought, as defined by law.
- 2.6. The Commission may exchange information according to sections 30 and 350 of Gambling Act 2005.

3. Legal gateways

- 3.1. Information may be shared between the Commission and other parties by virtue of:
 - S.29 and s.35 of DPA 1998
 - S.30 and s.350 of GA 2005
 - case law
- 3.2. S.29 (3) of DPA 1998 permits the sharing of information between the parties for the following purposes:
 - the prevention and detection of crime
 - the apprehension or prosecution of offenders
 - the assessment or collection of any tax or duty or any imposition of a similar nature
- 3.3. S.35 (1) of DPA 1998 permits the sharing of information where another Act, law or court order requires it.
- 3.4. With reference to s.35 (1) of DPA 1998, sections 30 and 350 of GA 2005 permit the limited exchange of information between the Commission and other parties (s.30) and between the other parties themselves (s.350) subject to the conditions listed.
- 3.5. However the legal gateway provided by s.30 and s.350 does not override restrictions established by other Acts and the further use or sharing of information provided by another body may be prohibited.

4. General information sharing process

- 4.1. This process does not cover information that is already in the public domain.
- 4.2. The parties agree to share relevant information both pro-actively, i.e. where one party identifies information that is relevant to the other's role, and reactively, i.e. in response to a request where one party believes the other holds information relevant to their role, where they have mutual interests. This will assist in avoiding unnecessary duplication of work effort and provide a coordinated approach.
- 4.3. No electronic or non-electronic pro-forma shall be required for the exchange of information unless specified by either party.
- 4.4. Procedures for notifying the other party of the transmission and receipt of sensitive information shall ensure all exchanges of information are traceable and that receipt, or otherwise cannot be plausibly denied.
- 4.5. Any specific technical and customary standards for the packaging, transmission, recording and reading of exchanged information shall be explicitly stated; otherwise standard commercial solutions shall be applied.

- 4.6. The Commission uses the UK government's system of protective marking (Government Security Classification Policy) and all information shall be handled in accordance with this criterion.
- 4.7. The receiving party will verify that the request is lawful and compliant with this agreement and:
 - provide the required information where it exists in the agreed format promptly; or
 - provide a negative response where the information does not exist; or
 - refuse the request and provide an explanation for refusal.
- 4.8. Requests will normally be fulfilled within five working days unless otherwise required.
- 4.9. Requests should be made to, and be authorised by, the designated Information Sharing Single Points of Contact (SPOCs) of both parties.
- 4.10. Shared information must not be further disclosed to any other party or used for a purpose alternative to any one stated without the consent of the originating agency.
- 4.11. Both parties will ensure that, to the best of their knowledge, shared information is as accurate, up to date and adequate for the purpose disclosed and where one party discovers this not to be the case, they will inform the originating party of this.
- 4.12. Exception to this process shall only be permitted where they are agreed to by both parties, there is a clear requirement (for example, time-sensitive operations) or harm or injury could occur otherwise.

5. Information storage

- 5.1. Both parties agree that shared information should only be retained for the period necessary to achieve the objectives of the disclosure or support an adjudication or investigation.
- 5.2. Both parties will ensure that received information is attributable and traceable to the other by marking or referencing.
- 5.3. Both parties shall apply security controls to all processing of shared information including transmission, storage and destruction and that personal data shall be protected according to principle 6 of DPA 1998.
- 5.4. Both parties will ensure that staff handling protectively marked material are appropriately trained and vetted.

6. Handling and referral of cases involving gambling advertising

- 6.1. The Commission and the ASA share common goals in making sure that gambling advertising is both fair and open and socially responsible, in order to prevent harm or exploitation of children, young persons or vulnerable adults.
- 6.2. The ASA is the primary regulator 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.

- 6.3. If the ASA finds an advertisement in breach of the CAP or BCAP Codes, it will take all steps available to it in order to achieve compliance with the codes.
- 6.4. When the Commission receives a complaint from a third party about an advertisement that appears to be covered by the CAP or BCAP Codes, it will refer the complainant directly to the ASA in the first instance, as the 'established means' for regulating gambling advertising.
- 6.5. If the Commission directly uncovers an issue with an advertisement that appears to be covered by the CAP or BCAP Codes, it will refer the matter directly to the ASA. The ASA will consider cases referred to them from the Commission without the additional support of third party complaints (for example a public complaint over the same advertisement).
- 6.6. If the advertiser refuses to comply with the codes or an ASA adjudication, or has repeated breaches of the codes, the ASA will consider referring the case back to the Commission for possible regulatory action under the Gambling Act 2005. The ASA will consider whether referral to the Commission would be most likely to lead to a cessation of advertising.
- 6.7. The Commission will usually only become involved in advertising issues that are outside the remit of the Advertising Codes and the ASA will refer or will consider referring to the Commission cases where:
 - The advertisement is outside the remit of the CAP or BCAP Codes; for example section 2 (b-s) of the CAP Code and not suitable for investigation by Ofcom;
 - The operator refuses to comply with an ASA requirement or ruling;
 - The operator has not replied to ASA approaches;
 - The operator complied with the ASA ruling but then breaches the advertising code again with further advertising;
 - The operator has committed a serious breach or is persistently non-compliant with the advertising codes;
 - The operator is advertising unlawful gambling under Section 330 of Gambling Act 2005 or advertising gambling to UK consumers without an appropriate licence from the Gambling Commission.
- 6.8. Referring an advertising case to the Gambling Commission for any of these reasons may prompt a review of the gambling operator's licence or prosecution by the Commission.
- 6.9. Where an advertising complaint is referred by one party to another and the organisation receiving the complaint does not consider itself the most appropriate body to manage that complaint, both parties will discuss the rationale behind the decision and agree an appropriate resolution.
- 6.10. In the case of misleading advertisements that specifically fall within the scope of the Consumer Protection from Unfair Trading Regulations 2008 (CPR's) the ASA may consider referring non-compliant advertisers to Trading Standards. Where non compliant advertisements occur via television or radio (broadcast), the ASA may refer to The Office of Communications (Ofcom). The ASA will

advise the Commission when complaints relating to gambling advertising are referred to a different regulator or organisation.

- 6.11. The outcome of all gambling related adjudications by the ASA and gambling advertising investigations by the Commission, whether they be upheld or not, should be notified to each party within five days of their conclusion.
- 6.12. Complaints to the Commission should be referred to: (Intelligence SPOC or Workstream member)
- 6.13. Complaints to the ASA should be referred to: (SPOC)

7. Management of the agreement

- 7.1. The SPOCs who will act as the main point of contact and have day-to-day responsibility for control and management of this agreement, and resolution of issues arising from its operation will be:

Gambling Commission:

Mr Robert Bradford - Intelligence Unit Manager
(Intelligence and investigations information)
R.Bradford@gamblingcommission.gov.uk
0121 230 6552

Mr Ian Angus - Senior Manager
(Policy information)
I.Angus@gamblingcommission.gov.uk
0121 230 6675

The Advertising Standards Authority:

Joanne Poots - Head of Operations (Complaints and Investigations)
(All ASA information)
Direct line 020 7492 2190
JoP@ASA.Org.UK

- 7.2. Where issues cannot be resolved they may be escalated to:

Gambling Commission: **[INSERT NAME AND CONTACT DETAILS]**

The Advertising Standards Authority: **[INSERT OTHER PARTY NAME AND CONTACT DETAILS]**

- 7.3. In the absence of these persons other, responsible individuals may be delegated.
- 7.4. Where appropriate, both parties will promote and advance this agreement internally.
- 7.5. Where members of the public have cause for complaint against activities generated by the operation of this agreement, any complaint received by either

of the parties to the agreement should be forwarded to the other for consideration.

- 7.6. This agreement will be reviewed annually by the Commission working in conjunction with the ASA.
- 7.7. Either party may cancel this notice by giving the other party 30 days notice in writing.

8. Authorisation of the MOU

- 8.1. This agreement formalises the arrangements for joint operations, and the sharing of information between the Commission and the ASA. Both Parties agree to abide by the terms of this Agreement.

Signed:
For the Commission

[INSERT SIGNATORY'S NAME AND JOB TITLE]

Signed:
For the Advertising Standards Authority

[INSERT ORGANISATION NAME]

[INSERT SIGNATORY'S NAME AND JOB TITLE]