



Select Committee on Democracy and Digital Technologies

Corrected oral evidence: Democracy and Digital Technologies

Tuesday 5 November 2019

10.35 am

Watch the meeting

Members present: Lord Puttnam (The Chair); Lord Black of Brentwood; Lord German; Lord Harris of Haringey; Lord Holmes of Richmond; Baroness Kidron; Lord Lipsey; Lord Lucas; Baroness McGregor-Smith; Lord Mitchell; Baroness Morris of Yardley; Lord Scriven.

Evidence Session No. 5

Heard in Public

Questions 57 - 69

Witnesses

I: Lord Currie of Marylebone, Chair, Advertising Standards Authority; Guy Parker, CEO, Advertising Standards Authority.

Examination of witnesses

Lord David Currie and Guy Parker.

- Q57 **The Chair:** Thank you very, very much for joining us. I am required to read out this statement. I always feel as though I am reading out the police caution, but it is not! As you will know, this session is open to the public. A webcast of the session goes out live and is subsequently accessible on the parliamentary website. A verbatim transcript will be taken of your evidence and put on the parliamentary website. You will have the opportunity to make minor corrections for the purpose of clarification or accuracy. Perhaps you would like to introduce yourselves for the record. We will then begin with the questions.

Lord Currie of Marylebone: I am the chair of the ASA.

Guy Parker: I am the chief executive of the ASA.

- Q58 **Lord German:** Can I start by asking you, in your experience of online advertising, what the main difference has been between regulating advertising online and offline?

Lord Currie of Marylebone: The key point of the ASA system is that the advertising codes apply equally offline and online. We seek to regulate both in exactly the same way, to the same standards. The processes by which we do it are somewhat different, given the different media, but that is a key feature. It is important that it applies equally to broadcast advertising and non-broadcast advertising, offline and online. For example, age-restricted ads online, including on social media, need to follow the same strict content and targeting rules as those in traditional media, for example the targeting of gambling products, alcohol products or food and drink defined as HFSS. We apply the same standards online as offline and seek to apply the same safeguards.

Guy Parker: On the differences in the regulation of content online and offline, there are challenges in regulating online. There is virtually no barrier to entry for micro, small or medium-sized businesses. Any business can have a website and social media presence for next to nothing, which is a good thing for growth and for our entrepreneurs, but presents some challenges to regulators.

When it comes to website and social media advertising claims, as opposed to paid-for ads, there are no media or platform gatekeepers. This is not unique to online. There is quite a lot of traditional media that we regulate where there are no gatekeepers. For example, if businesses in your local town hand out leaflets to you with advertising claims on them, we regulate those leaflets, but there is no media gatekeeper there. The scale of it online is different. Making sure that website advertising claims, social media claims and companies' claims on their own social media spaces are responsible is a really big part of what we do. It is bigger, in fact, than the amount of time we spend regulating online paid-for advertising.

We took on these website advertising and social media claims in 2011. They are now half of our regulation. Half of our regulation is regulating content and targeting issues for content that was outside our remit in February 2011. The complaint cases we deal with for online in total, both website claims and paid-for online ads, outnumber TV cases by about three to one. Around 90 per cent of the nearly 11,000 ads and ad campaigns that we had amended or withdrawn in 2018 were online either in part or in whole.

There is a bit of substitution going on, because when people complain to us they invariably do it on our website. If they have seen an ad out and about, on telly or heard it on the radio, and they cannot quite remember the claim they did not like, they may well go to the company's website, see the same claim being repeated there and conclude that it is easier to complain about that. There is probably a bit of substitution, but you get a sense of this scale challenge. It requires us to become a different regulator. We have to rebalance away from the reactive complaints casework that has been a big part of what we do, and will continue to be important in the future, towards more proactive regulation, using technology to deal with this scale challenge.

I will give a couple of examples of that. We have been conducting avatar monitoring, where we work with a technology partner to create profiles of differently aged children. We then send those avatars to hundreds of websites and video-sharing platforms. We capture the ads that are served at those avatars. We analyse them. If they include inappropriately targeted ads for things such as gambling or foods high in fat, salt and sugar, we take action against those ads and against those advertisers.

We are about to use machine learning, in the form of teaching a machine-learning model to get better at spotting illegal, organic Instagram posts by small businesses, which in the vast majority of cases do not realise what they are doing is illegal. Nevertheless, there are thousands of them. In the specific example I am thinking of, they are promoting Botox, which is a prescription-only medicine that you cannot advertise to the public, but most beauticians and beauty salons do not realise that. We will shortly be training a machine-learning model to get better at spotting these Instagram posts so we can take action against them and get them taken down.

This is all part of our five-year strategy, running from this year to 2023, More Impact Online. It is all about us getting even better at protecting vulnerable people, particularly children, from age-inappropriate content and targeting issues. It is all about working more closely with the large online platforms, so between us we better protect people from irresponsible ads, including creating a scam ad alert system. It is all about using technology better, in the manner of the two examples I have given you, to deal with these challenges of regulating online.

Lord German: Could I follow that up? You have described a huge change in scale. You said you are a different regulator, yet you are still operating to the same codes as you were for just offline advertising. How far do the

codes impact upon what you do? Do you need to have a variation of code or even an enhanced code to deal with everything you are now dealing with?

Lord Currie of Marylebone: The codes adapt over time. CAP and BCAP, the industry representative bodies that oversee those codes, do research continuously and adapt in the light of changes in product, technology, societal attitudes and so on. Therefore, the codes are an organically developing set of standards. The change that Guy has described is pretty fundamental. We are moving from what was traditionally a complaints-led system. We will never give up on complaints. We have some very good complainants, including one or two represented around the table here. That is important, but we need to move to a much more proactive, technology-based approach.

This is true of all regulators across the piece. All regulators have to adapt to machine learning. We in particular are very clear that, over the next four years, we have to really implement that. We will be a different regulator in four or five years' time from what we are now.

Guy Parker: The codes are quite lengthy, but the issues that we deal with most of the time relate to a relatively small handful of principle-based rules in the codes. For example, you are not allowed to run ads that mislead, or are likely to mislead, the audience. It does not matter how much technology develops in terms of new techniques, new practices, influencer advertising, native advertising, et cetera. That rule can still be applied to advertising. In that sense, the core rules in our advertising codes remain fit for purpose, because they are pretty technology-neutral.

Q59 **Baroness Morris of Yardley:** I see the point about more proactive work, given the change in the landscape. Could you say a bit more about the reaction you find when you do this proactive work? You mentioned that a lot of people did not know what they were doing was illegal. Would you say that is the case in most of the things you look at? What is their response when it is pointed out? How willing are they to work with you in the proactive work that you are doing?

Guy Parker: It depends on the issue. In the majority of cases, we find that businesses, large and small, are prepared to work with us. When it comes to our rulings, there is a compliance rate of around 98.5%. Smaller businesses can get quite scared by being contacted by the ASA. It can be a shock to them. Sometimes that is the discussion: "Do not worry. We will help you through this. We just want you to make some changes to your advertising. You are not going to prison". That is often the tone of the contact we have with small businesses.

It gets hard where we are tackling something fundamental to the belief of the individual doing the advertising, in some complementary and alternative health areas, for example. If you are tackling misleading claims that homeopathy can cure autism, there is not really anywhere for the small business advertising to go, because none of the claims that

they would like to make is really acceptable. They will invariably be convinced that we are on the side of the pharmaceutical companies, doing their bidding and so on. You can quickly get into a frustrating situation where they think we are part of a conspiracy. We struggle to give them alternative claims that they can legitimately make, because it is quite binary. There are not really any claims that they can make for that sort of health approach.

Lord Currie of Marylebone: A great merit of the avatar approach, this proactive approach, is that once people realise we are going to go on doing this, it encourages compliance. They will realise we are out there looking for failures to comply with the code. Over time, we will see a greatly strengthened compliance regime.

Guy Parker: That is a really good point. The avatar monitoring I mentioned included focusing on ads by big brands for foods high in fat, salt and sugar. We caught out some really big brands for careless targeting. We did not think they were intending to serve these ads to children, not least because they were for meal offers that included beef Wellington. Children are not getting fat by eating too much beef Wellington. A campaign ran during the monitoring period for Grana Padano cheese. Again, these are not products that kids lust after, but they were technical faults. We took action. We published a report that said, "These are the things we have found and these companies need to do better".

Some of the big brands were very concerned that they had been caught out, because they reckoned they had done what they ought to have done to make sure their advertising was properly targeted. They felt a bit let down by companies in the digital advertising ecosystem. When they feel let down, they let these businesses in the advertising supply chain know that they are unhappy. That is the reverberation that goes through the advertising market, through the industry, in response to avatar monitoring. The deterrent effect can be more powerful than taking direct action against ads.

Baroness Morris of Yardley: Some things are genuine. I am thinking of homeopathy; you mentioned health. You said you are evidence-based in your papers. There is evidence on both sides there. I can see that might be an area that causes you some difficulty. Are there areas such as that where you just step back, or do you do your own research and then just believe in it and push it forward?

Lord Currie of Marylebone: We want to make sure we get on top of the research. If there is evidence on both sides, we would want to appraise and assess that. It is very important that we are evidence-based in what we seek to do.

Guy Parker: We do not duck difficult evidential decisions because they are difficult.

Q60 **Lord Lucas:** Do you have the legal basis you need to use avatars? I

remember once trying to persuade Ofcom to test algorithms, but it said it did not have the basis to effectively deceive people in that way.

Guy Parker: We believe so. We have not been challenged on that front. I hope you are not giving them ideas to challenge us, but we have not been challenged on that front. We have published two reports. One was our use of avatar monitoring to tackle some very poorly and carelessly targeted gambling ads. The other was the HFSS report that I alluded to.

We have been very honest about what we have done in describing the methodology of our approach. We have said that this is both real and unreal. It is real in the sense that these were real ads served by real businesses to profiles that they thought were children, but the way in which we ran the research involved us sending our avatars to the top websites and video-sharing platforms, hundreds of them, twice a day, once in the morning and once in the afternoon. No one does that. No real human being has that sort of browsing behaviour. It was both real and unreal. We believe that we can lawfully conduct this monitoring.

Lord Currie of Marylebone: I do not see why we should not be able to.

Lord Lucas: It is fundamentally a deception. You are not who you say you are. That is what Ofcom was saying to me.

Lord Currie of Marylebone: We will go and check that.

Q61 **Lord Lipsey:** By coincidence, I came on to the ASA council in 1999, the year that we finally got out of the monitoring political advertising business. I remember the arguments from the time. You give three reasons in your evidence for not including political advertising within your scope. I wonder if I could interrogate you a bit on each of them. The first is that, during an election campaign, decisions would have to be taken very quickly, more quickly than you are able to.

I would say two things to that. First, a lot of political advertising takes place outside election campaigns. Secondly, the ASA has shown itself on numerous occasions to be swift when there is something particularly unacceptable in the advertising world. Could you not speed your act up for the purpose of an election?

Lord Currie of Marylebone: You are right. There is a continuum here. On occasion, we do things quickly. Our general processes are not suitable for rapid responses of the kind we do here, which would be needed in a political case. It is possible, but we would need substantial resource.

I do not see that as the major reason why we would not want to take this on. The key one is that we are a collective self-regulatory system. We rely on the buy-in of the people we regulate to comply with the system. I do not see signs yet that the political parties and the players in the political sphere have that willingness to buy into a system for regulating political advertising. The self-regulatory aspect of what we do would be questioned.

Lord Lipsey: In the most heinous cases, such as "£325 million a week"

on the bus, it took about three minutes for anybody who was familiar with things to know that was a lie. That would not be impossible. I welcome the fact that you half open the gate to considering that particular argument not necessarily decisive.

On the argument you were moving on to, political parties' agreement, it seems strange for a regulator to seek the agreement of those it is trying to regulate to what it is trying to do. The farmers cannot object to the farming regulator and so on. I accept that the ASA is a co-regulatory body and is not quite in the same position as those, but it would be possible easily in statute to give you power to do that, without changing the basic co-regulatory nature of the organisation.

Lord Currie of Marylebone: The collective self-regulatory system of the ASA is somewhat unique. There is not anything like it. A key part of the reason it works so effectively is that we have, in effect, enforcement by the industry. It is the industry that takes the ads down. That aspect of it would be quite hard to replicate in the political sphere. I also worry about a system that works very well taking on something highly contentious. The contention that arises in that area could well contaminate the system that we have already. That would be a terrible outcome. It is better, if one is going to have regulations on political advertising, to create a new structure, which may be along the ASA lines but not necessarily the same body.

Lord Lipsey: I take that point and that suggestion, which the Committee will consider. At the same time, if this election turns out to be ghastly in terms of political advertising, it would be a brave political party afterwards that says, "No, we refuse to be regulated". The third argument you use I found very puzzling, which is human rights legislation. What is the chance, honestly, of anybody taking the ASA to court on the grounds that by stopping people lying you are busting their human rights?

Guy Parker: The human rights constraint is a real one, but it is not an impassable one if you carefully and quite tightly define the scope of your regulation of political advertising: for example, permitting expressions of a political opinion, even if quite robustly put or controversial, and focusing only on the most clear-cut factual inaccuracies. It is not an impassable object, but the advice that we have received from QCs, including back in the 1990s when we fully pulled out of regulating political advertising, was at the time, and probably would remain, that you have to tread carefully if you are regulating political free speech. The courts are likely to allow quite a lot of discretion to those speaking.

I do not want to get into specifics but, as someone who has a career in regulation, I have seen political claims that I would quite like to have regulated. There are others that would have been a nightmare, would have been fiercely contested and would have required a lot of resource to get to the bottom of. This comes back to the resource point that really matters because, although you are right that not all political advertising appears within campaign periods, a lot of it does. Because of the media

focus on general elections or referendum campaigns, they generate a lot of heat. That advertising generates a lot of heat and attracts comment, complaint and so on.

It would be very expensive to make sure that we had sufficiently fast-tracked processes and procedures to take decisions before the vote happened. No one wants to run a political advertising regulatory system that is routinely taking decisions after the vote. That is my perspective on the Human Rights Act point. It is not an immovable constraint, but it would need to be thought about very carefully.

Clear-cut factual inaccuracies, or lies as some would call them, are perhaps more common now than they were 10 to 20 years ago, but it is still true to say that the vast majority of claims that would be contested in political advertising would not fall into that category. There would be arguments for and arguments against. That is when you get into the difficulty of weighing up those arguments thoroughly enough to survive challenge by judicial review. There is a very real prospect that we would be challenged by a disappointed political party or campaign group if they came out on the wrong end of a decision, if only to show their supporters that they thoroughly disagreed with the decision. It is still the case that the majority of claims fall into that more contestable area and are not clear-cut.

Q62 Lord Harris of Haringey: First, I should say for the record that I chair National Trading Standards, which provides your statutory back-up. I wanted to take a step. What is the definition of “political”? In your evidence you talk about advertising “whose principal function is to influence voters in a local, regional, national or international election or referendum”. You could have third-party advertising — that is, not from a political party — which is about their sweet spot or their particular concern. You could, for example, in the current context, have water companies talking about the implications of water nationalisation or better competition between water companies. You could have arguments from taxpayer groups about the level of taxation. You could have stuff about the relationship between policing and crime, what the trends mean and so on. Is that political or is that non-political?

Guy Parker: That is political if the principal function of the ad is to influence voters in an election. It does not have to be a registered political party for it to be a political ad under the code.

Lord Harris of Haringey: I say, on behalf of the water companies for which I am placing these adverts, “This is not political. This is just our public information. We want the public to understand the importance of competition between water companies. The fact that there is an election going on and one of the parties is saying one thing or another is neither here nor there. We would be saying this anyway. This is just part of our general promotion of good-quality water production”, or similarly for other areas. How do you draw the line there? Would you just say, “Sorry, you are political. Go away”?

Guy Parker: We would apply ourselves to the test and the code. We would make a judgment on whether we thought that was a compelling enough argument in light of what the ad said, the context in which the ad appeared and the audience to whom the ad was addressed. If we ended up coming down on the side of the argument that said that the principal function—the primary purpose—of this ad was to influence voters, we would say it was a political ad and it fell outside the advertising code, despite the fact that it was a water company that ran it. If we thought their arguments were compelling and the primary purpose of the ad was not to influence voters, but something else, we would regard it as a non-political ad and it would be subject to our advertising code.

Lord Harris of Haringey: If it is part of creating a climate of opinion over several years rather than just in the immediate run-up to an election, the short or long campaign period, where does that fit? If it is about creating a climate that says, for example, that EU regulations are stifling business and you have been running that campaign for several years, is that political or non-political?

Guy Parker: It might depend on the specific ad, but my instinct is to say that sort of approach would be political advertising. The advertising rule that defines political advertising makes it clear that it does not matter when the ad is published. It does not have to be within a campaign period. The wording is about an ad, “whenever published or distributed”. The fact that an advertising campaign or an advertising approach might have happened over a period of months or years need not make any difference to the judgment we have to make about whether the primary purpose of this ad or ad campaign, over whatever period, is to influence voters. That is the test we would apply.

Q63 **Baroness Kidron:** I wanted to return to the exemption for political advertising. Like Lord Lipsey, I felt when I read the written evidence that you were saying it should not be done for these three reasons. If I have understood what you are saying, it is a little different from that, in the sense that it should be done and would need to be paid for, but it should be done by somebody else. Can I clarify which one of those positions you currently hold?

Lord Currie of Marylebone: It is not for the ASA to advocate the regulation of political advertising. We do not have a position on that. It is for politicians, Parliament and so on to make that decision. We are saying there are reasons why the ASA may not be the best vehicle for doing the regulation of political advertising. The ASA model could well be useful in designing a regulator of political advertising. The reasons we do not relish the thought of the ASA taking it on are those we set out in our evidence. You are quite right. We are not saying that you should not have regulation of political advertising. That is not our position.

Guy Parker: I have said publicly to the DCMS Committee that, in my personal view, political advertising should be regulated.

Lord Currie of Marylebone: I would take the same position.

Guy Parker: Most people would agree with that.

Lord Currie of Marylebone: It is not an ASA position.

Guy Parker: That is right. It is not a formal ASA position. David mentioned that Parliament could mandate by statute the regulation of political advertising. That made me think of the point that David made earlier: before we even thought about this again, we would need to at least have majority support from the main political parties and campaign groups to subject themselves to a code policed by the ASA or some other regulatory vehicle. If you had a statute that mandated the regulation of political advertising, you would have that support, because by implication you would have the support of Parliament. Parliament is made up of the political parties, so by implication you would have the support of the political parties. Were that to be the case, we would be in a different world to the one we are in now.

This point about the reputational risk, in the current febrile climate, to any single body of taking this on alone is a really important point. That is why I quite like the idea of exploring whether experts from various regulators with an interest in this area could get together, maybe not outside a campaign period, but at least for a campaign period. They could pool their resources and spread the reputational risk to any one organisation.

So long as there was sufficient buy-in from political parties and campaign groups, and there was, importantly, sufficient funding, you could construct a political advertising regulatory vehicle that would be effective and would help meet the public demand for this area not to go unregulated forever.

Baroness Kidron: There was something you said earlier and I just wonder what your view is. It was that, when the advertisers feel let down by the advertising supply chain, they have the power to make quite a lot of noise. I wonder whether you think that the advertisers do feel let down by the supply chain, by virtue of the problems with political advertising. The muddle is being made in the public mind that advertising is less trustworthy, because we have seen things in the democratic space that challenge the idea of it being fair and trustworthy.

Lord Currie of Marylebone: I am not sure that we have firm evidence that political advertising in some way has undermined faith in other advertising. Political advertising is seen somewhat differently by the public. There may be some effect. That would be unfortunate, but it is not a strong drive.

Q64 **Baroness McGregor-Smith:** You said it was not the formal position of the ASA to recommend that another regulator be set up, but it is your personal opinion. Why is it not the formal opinion of the ASA?

Lord Currie of Marylebone: It is not for a body such as the ASA to take a position on that sort of issue, which is essentially a political judgment.

Baroness McGregor-Smith: My observation is that the public will look at you and say, "You're the experts. We hope that the experts might tell us what we need". If you think individually that it would be a sensible thing to do, I genuinely do not understand why the ASA cannot turn round and say, "Someone needs to set this up once and for all, because this is completely uncontrollable and it is going to get even more uncontrollable since the advent of social media". I am just interested. If, as an expert, you were to say, "In our experience, this is what we would recommend", the Government should take it seriously.

Lord Currie of Marylebone: We could certainly advise on how to set up such a body along the ASA lines. If I were to put it to my council that we should recommend the regulation of political advertising, I have no idea what my council members think about that. It is not a question we have discussed as such.

Baroness McGregor-Smith: Could you discuss it?

Lord Currie of Marylebone: The council decided that it did not want to do that itself. That was a decision made before my time, but for the reasons we have set out.

Baroness McGregor-Smith: Would it not be fantastic if your council could consider it? Ultimately, I am thinking about it from the point of view of a member of the public who says, "You are the experts. Tell us what we need". To me, you are the expert in this space. I am almost thinking, "Why can you not just tell us what to do, what we need, so that it can be done?" Sorry, it is my observation.

Lord Currie of Marylebone: I am not sure the respect for experts is quite as high as that suggests.

Baroness McGregor-Smith: I think it is. I certainly respect all that you stand for. It would be fantastic to hear what you think could work and, if another one needs to be set up, how it could be done.

Lord Currie of Marylebone: You have heard the personal views of both Guy and me. We think this could be made to work and we have suggested a possible model. That is on the public record.

Baroness McGregor-Smith: I hope you take my thoughts on board.

Q65 **The Chair:** May I just tie together what Baroness Kidron and Baroness McGregor-Smith have just said? You are in the trust business. You mentioned at one point that you are working on behalf of the industry. In a sense, as I see it — tell me if I am wrong — you work on behalf of the industry to create trust between citizens and the industry. Lord Currie and I have spent a lot of time over the years discussing the merits of the consumer/citizens versus the citizen/consumer. The nexus of your task is surely creating trust between the advertising industry and the citizen/consumer.

If you are a trusted source, and I sincerely believe you are, you are able

to create that trust. When the consumer becomes aware that you do not play a role in one very important aspect of their lives have you not, in a sense, undermined their trust in what you do? Do you see what I am trying to say? You are the only authority that people can at present look to. If you ignore Boris Johnson's claims on the side of a bus, but come down like a tonne of bricks on the claim that "Persil washes whiter" because it is not provable, then the consumers I have talked to simply don't get it. Their brains go into a spin.

Lord Currie of Marylebone: I understand that people may not see why we make that distinction, but it was a welcome decision by the ASA not to do this. It is one that we would continue to stick to, for the reasons that we have given. You are assuming that the trust we have established with the public and the industry is transferrable into this highly contentious area, where there is no agreement to the principle of self-regulation. There is a risk of going the other way, that the trust is undermined.

The Chair: I do not want us to misunderstand each other. I do not mean that at all. What I'm suggesting is that you are a powerful, trusted body. Given what I have just heard you both saying, why have you not unambiguously come out and said, "There is a lacuna at the centre of public life. We cannot fill it, but we know how to fill it. Please Government, get it filled"? What is to stop you saying that? You could only be that much more respected.

Lord Currie of Marylebone: We will take that away and consider it, but we have debated this. It is for your Committee also to make that statement.

The Chair: I think you can be certain that we will.

Q66 **Lord Lucas:** How effective are the social media platforms and the systems they have at enabling people to report misleading advertisements? When someone does, do the platforms tell you about it?

Lord Currie of Marylebone: We do not currently assess the effectiveness of platform reporting tools, but we know that the big platforms—Facebook, Instagram, Google, YouTube, et cetera—invest heavily in automated and human ad review systems. The platforms and networks such as Google and Facebook are signed up to the ASA system. To advertise on those platforms, advertisers have to conform to the ASA advertising codes. That is an important part of the ecosystem that we are operating with.

Guy Parker: It is incredibly easy to report misleading ads on many platforms, because you just click on the top right-hand corner of the ad and follow the instructions to report the ad. The two interesting questions are what happens next, if anything, and what platforms and networks are doing in terms of operating effective ad review systems, for example to stop misleading ads appearing in the first place.

On what happens next, Google publishes a report each year called its bad ads report, which describes, at quite a high level, the bad ads it has taken down in the previous year. There are lots of them. It took down 2.3 billion bad ads in 2018. Facebook does similar. It reports on content that it has prevented or removed in its community standards enforcement report. Both of these are global reports. Their takedowns cover a whole bunch of infringements of their platform policies, some of which reflect rules in our code and some of which go beyond.

For example, Google took down 500,000 ads by bail bonds in 2018 because it has a policy that bans for-profit bail bond ads. That is obviously not an issue in the UK, but it is contributing to that big number. Most of Facebook's enforcement is against non-advertising organic content such as nudity, sexual activity, bullying and harassment, child sex exploitation, fake accounts and hate speech — all the stuff that is being considered in the Online Harms work the Government are undertaking.

The effectiveness of platforms' and networks' ad review systems varies, between companies and within a single company, dependent on the issue. Generally, it is true that the more binary the issue, the easier it is for them to introduce automated systems or update their systems to tackle the problem. Many, probably most, of the advertising regulatory issues we are dealing with are non-binary. They are nuanced and require judgment, which makes it harder to automate. That is why their systems are quite a long way short of being perfect for stopping stuff appearing in the first place.

They focus on taking down bad ads, suspending the accounts of bad actors and trying to stop them from gaming their systems. Some of the worst actors in this space are criminals operating internationally, often out of China, eastern Europe and so on. They are very, very technologically advanced and they are effectively in a game of cat and mouse with the big online platforms.

Your question referred to whether they draw our attention to issues they face. They do not currently refer complaints to us, although we would be happy for them to do that. We talk with them about what content in our world — advertising content — they are stopping. We are on a journey with them where we are trying to understand better what is happening at the UK level, because, as I mentioned, these reports are global at the moment. We regularly talk to platforms and networks about ad regulatory issues of concern to us, such as detox ads, scam ads, influencer advertising and advertising by health practitioners that might affect vulnerable people.

Q67 Lord Scriven: I have sat and listened, thinking that your organisation might become part of the past rather than the future if it does not change. I am not being disrespectful. It is just that the technology is changing. Part of the issue is not just what the ad says. With technology, it is how that is put together, the algorithms and everything. Does part of your role need to be much more about looking at these algorithms? It is

how they do it, rather than what they do. There seems to be a fundamental issue here: rather than playing catch-up, you need to get ahead of the game. You are dealing with things that have gone wrong. You can become more proactive, particularly with the technology, the machine learning and the algorithms. Do you feel you need more powers or responsibility in that area?

Guy Parker: The short answer is yes. We are investing in that exact area as one of the key elements of our strategy that I talked about earlier.

Lord Scriven: You can, but, if you do not understand the algorithms of these companies, no matter how much you invest you will not get ahead of the game. You are blocked from understanding what they are targeting and what they are putting together, which are issues that you have a role in.

Guy Parker: I am talking about investing in the capability to understand the algorithms. I am talking about investing in our data science expertise. We have plans to do exactly that from next year under our strategy. It is still going to be the case that we are dealing with issues after the event a lot of the time. Millions, probably billions, of ads appear in the UK every year that fall within our jurisdiction. You cannot pre-vet everything. We already provide a lot of help and advice to the industry to get its advertising right in the first place. Last year, we delivered about 535,000 pieces of advice and training to the industry. We already make substantial investments in trying to prevent bad stuff happening.

Lord Scriven: Can I be clear? You can work with the industry as much as you want. The clear issue here on social media is the platforms, algorithms and tools they have to deal with that. We have heard previous evidence that one of the big issues in understanding how they use advertising, politically or non-politically, is understanding the algorithms. Are you saying that you are investing to understand their algorithms and you do not need them to be more transparent, or that you need them to be more transparent to help you do your job, in terms of sticking to the standards and codes you have?

Guy Parker: The answer is both. Yes, we are investing to have the capability to understand the algorithms companies are using to, for example, target their advertising so we are not reliant on just trusting what they tell us. We can investigate the algorithm ourselves.

Lord Scriven: What are you not able to understand? It is a strange question, the unknown unknowns. Even though you are investing, what do they need to open up for you to feel more comfortable regulating in accordance with your standards and code? What are you really struggling with, even though you are making the investment, if they are not more transparent about their algorithms?

Guy Parker: That is quite a forward-looking question. I do not really know how to answer it, if I am honest. I cannot think of any occasions to date where we have asked for an algorithm and not received it, or asked

for an algorithm and not been able to look into it. The use of algorithms will develop in the coming months and years, and will play a bigger part in the personalisation of advertising content to people — personalisation of pricing and things such as that. We need the expertise and capability to look into algorithms and how they are being used, so we can make sure companies are following our advertising codes.

The Chair: We will look carefully at what you are saying. We might write to you for clarification on this, because we probably both have some problems in this area. If we could write to you to follow this up, that would be very helpful.

Q68 **Lord Mitchell:** What is the relationship like between the ASA and the main social media platforms? Have they been constructive partners in regulating this content, or do they perform only their basic legal obligations?

Lord Currie of Marylebone: We have a constructive relationship and it is evolving in a positive way. We have seen a step change in their willingness to engage with us over the last few years, including helping to implement our new strategy, More Impact Online. We are working to improve the systems and processes between us and the large online platforms, to make them more automatic. We have a strategy working group, which is overseeing the progress of the ASA implementing its new strategy. We have the active participation of Google and Facebook in that and very positive dialogue.

There is a lot of work to be done and I think both sides recognise we have to make progress. We are seeing more collaborative work to overcome the operational issues between us, to make sure we get more effective regulation and better consumer protection. We are actively engaged to find new ways of working together to solve big issues, such as scam ads, and to explore whether we can build ways of checking on platform standards. It is fair to say that it is constructive but it is a process. We are on a journey with the big platforms. I am relatively optimistic, but we have to make sure that we continue to make progress, and I think we will.

Guy Parker: It is worth remembering that these are huge, global companies, so the success of our partnerships with them can depend on the issue. Generally, the more straightforward, binary or international the issue, the easier it is to get a result through partnership working. The more nuanced and local, the harder it is to get a fast result. The size of these companies can be a barrier to the speediest action, because there are lots of teams and departments in these big companies that need to be consulted and may block collaboration and partnership working, so sometimes it is slower than we would like.

Enlisting the strong support of the most senior execs in the UK and Ireland is clearly vital. We are doing that through the strategy working group David talked about. That is not always the end of the matter, because they have some convincing to do within the companies

themselves. David is right: the relationship is constructive. The direction of travel is positive. The progress we are making through the strategy working group is helping us to solve operational issues and now begin to get into the bigger, macro issues that we think will help move things forward.

The scam ad alert system that we are planning will provide a comprehensive and universal way of drawing platforms' and networks' attention to scam ads that might just be running on one. Those scam ads can then be taken down more quickly than they are at the moment and the message can go out in a more uniform fashion.

From September next year, the audio-visual media services directive will hold video-sharing social media platforms to account for compliance with specific ad rules. That is likely to entail a regulatory focus on platforms' user redress systems, including reporting functionality, reporting on ads that have been reported to them by members of the public. That development, plus anything that comes out of the Government's Online Harms work, will allow us and other regulators to comment formally on platforms' reporting and other consumer redress functionality. That is the direction of travel.

Lord Mitchell: You see, that is not my feeling. My feeling is that, if you take these social media companies, deep down in their DNA they loathe regulators. They exist to change the world and to disrupt. The key words in the question were "performing their legal obligations". I feel that they will do that under sufferance and they will not go beyond that. One of the things we have to probe in this Committee is what we can do to get them to co-operate in a greater way. We have seen in the last week the difference between Twitter and Facebook with respect to political advertising. These are not UK issues; these are worldwide issues that have to be addressed. Fortunately, the USA and other countries face the same issues as we do and have committees like ours looking at it, seeing how it could be regulated. I just want to be sure. I have the feeling that they are running fast. They are incredibly well funded and they have this contempt for regulators and government. Are we losing out and is there anything we can do to put ourselves on an equal standing?

Guy Parker: It is not right to think of these huge companies as having only one perspective on such issues. It can depend who you are talking to and whether you are talking to people in the UK. I think it is true to say that the senior UK execs in these companies have a much more positive attitude to working with the ASA system than perhaps some execs on the west coast of America do. America does not have much of a tradition of resolving issues through advertising self-regulation.

It depends on the nature of the issue that you are talking about. Google and Facebook, for example, already expect advertisers to comply with the advertising codes. That is not written into statute law in this country, but they do that. They already partner and collaborate with us in helping to take down ads that we have an issue with. If we ask the people in Facebook to take ads down, they take ads down. Again, we are not going

to them with a court order to get their assistance in delivering those sorts of good outcomes. I do not think it is as black and white as that.

There are occasions when we would like the big online players to move further and faster than they are willing to do. There are other areas where it works really well. The focus of the work we are doing under our strategy is to make progress on areas where it is stickier and slower and where we feel there are opportunities for us to work together to deliver better outcomes to the public.

You are obviously in a different place, in your perspective on whether we will be successful on this. Whether we succeed remains to be seen. Reports from committees such as yours, challenging us and the constituent parts of the advertising industry to go further and faster, help. I am optimistic that we can improve the effectiveness of our online regulation through the work we have underway under our strategy, through much greater use of technology along the lines of what Lord Scriven was talking about. We expect to be held to account for our success or failure in delivering.

Q69 The Chair: We have questions from Baroness Kidron, Lord Black and Lord Holmes. Which unfortunately we do not have time for so if you don't mind we will write to you. It would be very helpful if you could respond to those. One last question if I may. If the Government could focus on any one thing to improve the regulation of digital technologies, what should it be? Again, you will possibly want to write to us. But off the top of your heads, what would you like to see the Government do?

Lord Currie of Marylebone: That is an enormous question. The plea that I would make, as I said in the House a few months ago, is that we have a good working system for the regulation of advertising. I hope that any interventions that come, in the form of new regulations in whatever area — political advertising or Online Harms — work in a complementary way to what we have in place, which is working, rather than cutting across it, which would be very damaging.

Guy Parker: I do not really have anything to add to that. Referring to something I said in my last answer, we expect to be held to account for our delivery under our strategy. It is quite ambitious. I think we will succeed in most areas, but probably not in all. Explicit government support for our direction of travel helps us, not least because it helps put additional pressure on all the actors in the advertising industry to step up to the plate and do their bit.

The Chair: I would like to make one point, for the record. I hear exactly what you have said, and you are right. In all the evidence I have listened to, formal and informal, written and oral, it is quite clear that the British, and indeed Irish, CEOs of the major digital companies are sympathetic, and understand there has to be regulatory movement. Unfortunately, their views get trumped by their corporate offices in Silicon Valley. No matter how well meaning they are, nothing very much happens. That inevitably ends up with Ms Vestager in Europe becoming their hate figure,

when all she is trying to do is impose the same sort of clarity of regulation she believes the CEOs of the European companies would, left to themselves, find acceptable. We have to find a way through this issue, we cannot sit around waiting for those on the West Coast of the United States to decide at what point they want to join the human race. At present we in the UK and Europe don't appear to have the political will to resolve the problem.

Lord Currie of Marylebone: I do not disagree with that. This is a moving feast and a developing scene. We need to make sure the pressure continues to move in the right direction. Your report may well be an important part of that.

The Chair: We will try to help you, and it would be good if you can try to help us.

Lord Scriven: Before the session finishes, for the record, I forgot to say that, because of trading standards, I am a vice-president of the Local Government Association, so my interests are declared.

The Chair: Thank you both very much. I am sorry it ran on a little.