

## Written evidence submitted by Alex Tait and Benedict Pringle

### **Factual claims proposed process – submission to the DCMS “Fake News” & Disinformation Committee**

#### **The Coalition for Reform in Political Advertising – Alex Tait and Benedict Pringle**

We believe that political ad regulation can borrow heavily from the way consumer advertising is regulated.

#### How the ASA and CAP system for consumer advertising works

If you aren't familiar with it already it is worth reading this page from the ASA website, that explains how the process works.

<https://www.asa.org.uk/about-asa-and-cap/about-regulation/about-the-asa-and-cap.html>

However, in summary the ASA's site states:

“The Advertising Standards Authority (ASA) is the UK's independent advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Advertising Codes).

The Committee of Advertising Practice (CAP) is the sister organisation of the ASA and is responsible for writing the Advertising Codes [which are the BCAP and CAP codes for broadcast and non-broadcast respectively.]

“We're passionate about what we do because responsible advertisements are good for people, society and advertisers. Our mission is to make every UK ad a responsible ad.

We respond to concerns and complaints from consumers and businesses and take action to ban ads which are misleading, harmful, offensive or irresponsible. As well as responding to complaints we monitor ads to check they're following the rules.”

#### How Clearcast works

Clearcast is an advisory service for media owners to ensure advertising they carry complies with the advertising code.

Advertisers work with Clearcast to “clear” their ads, i.e. to ensure that the ads they are developing comply with the codes.

We've attached an extract from the latest Clearcast training to show how this process works. With regard to our proposed process around factual claims it is worth noting in particular that

- It is a fast service. Pre-production scripts are turned around within 3 working days and post-production films in less than 2 working days (slide 7);
- *Compliance (slide 10)* - Ads must reflect the spirit, not merely the letter of the Code;
- *The ASA Investigation Process (slide 8)* – For the media they cover, Clearcast provides a defence against complaint, e.g. by confirming it was submitted in the development of the campaign;
- *(Slide 5)* – Many problematic ads are picked up pre-production when ‘Scripts’ are submitted along with their substantiation.

One of the roles the ASA provides is as a regulatory backstop for handling complaints. Again from the ASA website: “When ads are found that clearly break the rules we seek assurances from advertisers - and the clearance centres in the case of broadcast advertising - that those ads are withdrawn or amended.”

“When the ASA publishes an upheld ruling, it asks the advertiser for a written assurance that the claim or image which broke the advertising rules will be removed or amended.”

“On the rare occasions when an advertiser is unwilling or unable to follow the rules, the team will consider applying sanctions.”

“UK broadcasters (licenced by Ofcom) are required to follow ASA rulings and the UK Code of Broadcast Advertising as part of their licence conditions.

For broadcast advertisements, the responsibility to withdraw, change or reschedule a commercial lies with the broadcasters.

Broadcasters [media owners] are required by a condition of their broadcast licences to enforce ASA rulings. If they persistently run ads that fall foul of the Broadcast Advertising Code, broadcasters risk being referred by the ASA to Ofcom, which can impose fines and even withdraw their licence to broadcast.

Although responsibility for sticking to the Code rests with the broadcaster, advertisers also suffer consequences if their broadcast ads break the rules.

They might, for example, face bad publicity generated by an upheld complaint. Advertisers might also have wasted hundreds of thousands of pounds making an advertisement in the first place and lost the revenue that it might have generated if it is banned. And because broadcasters cannot show ads that break the rules, advertisers might lose prime advertising slots in which a banned ad has been booked to appear.”

### Political ad code

We believe the core of a political ad code should be as outlined in our [response to Damian Collins’ call for such a code in the marketing press.](#)

- Imprints – all advertising with a political purpose should include a clearly identifiable imprint that tells you who paid for the advertising and whom it is promoting.

- Factual claims – a regulator should rule on factual claims in political ads, requiring that there be evidence to substantiate the claims being made. We believe these should be pre-cleared, as is currently the case with TV ads via Clearcast.
- Messaging transparency – a searchable repository of online political advertising should be developed, including information on when each advertisement was posted, at whom it was targeted, and how much was spent on it. There should be a requirement for all political advertising work to be listed for public display so that, even if the work does not require regulatory clearance, it is accountable, clear, and available for all to see. It should be run and managed independently of the advertising industry and political parties.
- Political advertising should be restricted to registered campaigns during the regulated election period.
- We now believe that to inform the rules around data and targeting it would make sense to use the “Code of Practice for the use of personal information in political campaigns” being developed by the Information Commissioner’s Office.

We think the following principles need to apply

1. There has been an understandable focus in the interim recommendations on digital, and there is no doubt that regulation of political advertising is in woeful need of being brought up to date with the digital world we now live in. Legislation hasn’t been changed since 2003, which tells you how out of date it is. If you think of regulation around factual claims as an example, regulation needs, however, to apply to all media rather than only to digital.
2. When tackling digital specifically, several recommendations made so far have singled out Facebook as being in need of reform. While Facebook is obviously a very important actor, the digital marketing ecosystem is complex as anyone that works in marketing will testify. Social platforms are important, but the need is for regulation to be updated to cover the entire digital marketing ecosystem if we are to counter disinformation and fake news effectively.
3. We’d add that advertisers increasingly look at their communications in terms of a ‘customer journey’ that takes account of all the touchpoints with consumers in the fragmented media landscape we now inhabit. We agree with the Independent Commission on Referendums that ‘An inquiry should be conducted into the regulation of political advertising across print, broadcast and online media, to consider what form regulation should take for each medium and whether current divergences of approach remain justified.’ For example, account needs to be taken not only of paid adverts but of what marketers call ‘owned media’: all the communication channels under an entity’s control, such as websites, blogs, email – and also ‘earned media’, such as publicity resulting from editorial influence of various kinds.

In the political ad code for factual claims, as Guy Parker outlined in his evidence to the Committee, a line would need to be drawn between what is “legal and permissible political opinion, and straightforward misrepresentations of fact.” It is worth emphasising to the political parties that the latter is rare. However, our view is that they can have a significant impact on a campaign when they do appear, and it is therefore vital this area is included in any reform.

Some precedents in the consumer ad regulation that presumably could apply are in section 3 of the CAP (non-broadcast code) and BCAP (broadcast code) that “marketing communications must not materially mislead or be likely to do so” and “marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner”.

Also, in respect of verifiability, “before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.”

Ultimately our view is that the DCMS committee should formally take the ASA up on the offer they mentioned when they gave evidence that “none of these [problems] are insoluble and [the ASA] have a lot of expertise to help.” “If political parties are serious about writing a code, we could help them draw one up.” We “could help [the parties] put in place processes that would help them decide between straightforward misrepresentations and political opinion.”

### Regulation

We believe factual claims in political advertising should be dealt with in a similar way to how the Clearcast process works for TV and VOD (Video On Demand) ads in the UK.

Political advertisers should use a similar process to check whether their use of factual claims complies with the code.

Although we’ve cited the ASA several times above, and indeed when they gave evidence they were indicating they would be the body most suited to ruling on factual claims, we don’t think it necessarily has to be they who deal with political ad regulation. Alternatives would be the Electoral Commission or a new regulator that provides the regulatory backstop for handling complaints against a political ad code.

As Guy Parker also said in his evidence, the ASA could help political parties put together processes so that there could be rapid rulings within a relatively short election period.

We also think that, owing to the short duration of an election cycle, the penalties for transgression would not only need to apply to the media owners but also include a meaningful financial penalty for the political parties.

We’ve tried to keep this submission brief but also to make clear how we think Factual Claims could be dealt with.

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