

CAP Compliance: Non-broadcast compliance procedures

Introduction

1. The Committee of Advertising Practice (CAP) is the self-regulatory body that writes the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (“the CAP Code” or “the Code”).
2. To support adherence to the Code, CAP provides a pre-publication advice service (“Copy Advice”) and a post-publication compliance function, which are delivered on a day to day basis by executive teams. The teams’ senior Executive are identified on the [CAP website](#). [Member bodies of CAP](#) have no sight of, or involvement in, the individual cases processed by the Copy Advice or Compliance teams.
3. In general terms, the CAP Compliance team seeks to secure compliance with the CAP Code through enforcing rulings of the non-broadcast Council of the Advertising Standards Authority (ASA), issuing sector-wide guidance on the implications of ASA rulings (including through Enforcement Notices (ENs)), and taking enforcement action to tackle ads in clear-cut breach of the CAP Code, including, as necessary, requesting providers of advertising space to deny a platform to non-compliant advertisements (in line with agreements with providers of advertising space¹).
4. CAP and the ASA are complementary parts of the enforcement regime, and CAP will only take enforcement action against specific ads in the absence of an ASA ruling where the breach is clear-cut. An ad is determined to be in clear-cut breach by reference to a directly applicable ASA ruling or, in the absence of a ruling, by reference to one or more CAP Code rules that, in the view of ASA or CAP and given the specific content and context of the ad, leave no reasonable scope for alternative interpretation or alternative application.
5. This document outlines sources of compliance cases, the role of ENs in sector compliance projects, the challenges faced in regulating ads online, and the case handling procedures the team follows when addressing individual cases of non-compliance with the CAP Code in non-broadcast media.

Sources of compliance work

6. Cases undertaken by the CAP Compliance team typically originate from the following sources:

¹ <https://www.asa.org.uk/static/6ba5764b-fe01-4a6c-9aca42da9e33b69a/Intermediary-and-Platform-Principles-Guidance.pdf>
<https://www.asa.org.uk/codes-and-rulings/sanctions.html>

i. The ASA Investigations team

When the ASA Council adjudicates that a non-broadcast ad has breached one or more rules in the CAP Code, the ASA Investigations team requires the advertiser to provide a written assurance that it will comply with the ASA ruling by appropriately amending or withdrawing the ad. If the advertiser does not withdraw or amend the ad and/or provide a written assurance by the given deadline, the ASA Investigations team may refer the non-compliant ad and the advertiser to the CAP Compliance team. This type of case is recorded internally as a post-investigation compliance case or PIC.

ii. The ASA Complaints team

If a complaint to the ASA identifies an ad in clear-cut breach of one or more rules in the CAP Code, the ASA Complaints team may refer the ad to the CAP Compliance team. The preliminary assessment as to whether an ad is in clear-cut breach of a Code rule (see para 4 above) is taken by the ASA Complaints team. For example, no ad-specific ASA ruling may be required in respect of online advertising that is unarguably an ad for a prescription only medicinal product (the advertising of which to the public is unlawful – CAP Code rule 12.12²), or the online business-to-consumer advertising of consumer products with VAT exclusive prices (CAP Code rule 3.18³). In practice, the final decision as to whether to refer the ad to the Compliance team on the basis that it amounts to a clear-cut breach of a Code rule is very often taken following consultation with the CAP Compliance team and as required, consultation with the ASA Investigations team. This type of case is recorded internally as a Non-compliant ad.

iii. Other sources

The ASA regulatory system is increasingly less reliant on complaints to inform its interventions and increasingly more proactive in its methods of identifying ads that are in clear-cut breach of one or more rules in the CAP Code. These proactive methods include, but are not limited to, the [ASA's Active Ad Monitoring system](#), additional tech-assisted monitoring tools⁴, self-initiated staff monitoring, and intelligence and insights from stakeholders, including regulators, companies involved in producing and publishing ads, consumer advocacy groups, journalists, academics etc. In circumstances where an ad is referred directly to the CAP Compliance team by parties other than ASA Executive teams, and where the Compliance team assesses the ad not to be in clear-cut breach of one or more rules in the CAP Code, the ad will be referred to the ASA Complaints team to be taken forward as a complaint.

² Prescription-only medicines or prescription-only medical treatments may not be advertised to the public.

³ Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers.

⁴ <https://www.asa.org.uk/news/innovate-to-regulate-policing-ads-online.html>;
<https://www.asa.org.uk/news/the100-children-report.html>; <https://www.asa.org.uk/news/online-supply-pathway-of-age-restricted-ads.html>

Enforcement Notices and sector compliance projects

7. The key role of the Compliance team is to secure amendments to or, as necessary, withdrawal of ads in clear-cut breach (see para 4 above) of one or more rules in the CAP Code.

8. If evidence indicates that advertisers within a given advertising sector e.g. telecoms, airlines, gambling etc. are publishing ads in clear-cut breach of one or more specific rules in the Code, the CAP Compliance team may initiate a sector compliance project. Depending on the circumstances, including the number of advertisers in the sector, the team may decide to publish an EN. CAP sees ENs as a valuable tool in acting swiftly to help mitigate the harm caused by ads in clear-cut breach of the Code and, therefore, an effective means to better protect consumers and better uphold the principles of fair competition generally accepted in business.

9. The aim of an EN is to bring to the attention of a relevant advertiser (as swiftly as possible, in a way most likely to attract their interest and by means likely to reach all or most in that sector) the need to review their ads and, as necessary, to amend or withdraw any in breach of the CAP Code. ENs are published on the CAP website and circulated to applicable advertisers and, as relevant, trade bodies on the ASA/CAP database, media platforms and relevant government bodies.

10. ENs typically seek to draw out the key lessons from particular ASA rulings to inform advertisers in a relevant sector whether their ads are in breach of the Code and, if so, how to amend their ads or, if amendment cannot resolve the non-compliance, to withdraw the ad entirely. They include a deadline (usually one month from the date of publication) by which date the CAP Compliance team expects advertisers to have taken the opportunity to address any ads that by reference to the EN, amount to a clear-cut breach of one or more rules in the CAP Code, and after which the team may undertake escalating enforcement action including the application of sanctions. ENs therefore serve to provide an educative role and offer a window of opportunity for advertisers to suitably amend or withdraw ads that are in clear-cut breach of the Code.

11. Often, ENs are issued in liaison with a government body with a particular interest and expertise in the area and/or in conjunction with online social media platforms or other providers of advertising space. In all cases, ENs are signed off by [senior executives of the CAP Compliance team](#).

12. When conducting such sector compliance projects, we may work with regulatory or other enforcement partners and/or representative bodies such as trade organisations, to help disseminate ENs, for example, with the intention of raising the awareness of all or most advertisers in the given sector.

Examples of ENs can be seen [here](#).

Securing compliance online

13. ENs are a particularly effective tool for helping to secure compliance online where, depending on the sector, tens, hundreds or even thousands of advertisers compete to secure customers and win market share. Relatively low barriers to entry differentiates online advertising from the many broadcast and offline advertising environments. At any one time there may be many millions, if not billions, of online ads. The Advertising Association has calculated that in 2023 alone, over £14bn was spent in the UK on internet search advertising and nearly £13bn on online display advertising⁵. This facilitates competition, but gives rise to regulatory challenges.

14. Research and experience informs the ASA regulatory system that the overwhelming majority of ads comply with the CAP Code, but a small percentage (of an exceptionally large number) do not comply. Given the remit and scale of its online work, the CAP Compliance team has had, and will have, many occasions to use ENs to reach online advertising sectors involving multiple advertisers in line with its strategy to deliver more effective regulatory interventions online. All parts of the ASA regulatory system are having to be increasingly proactive, innovative and agile in order to deliver effective regulation online.

15. For example, in November 2023 the ASA published its 2024-2028 strategy under the heading “*AI-assisted collective ad regulation*”, which stated that success in online regulation “*will involve us processing far more than three million ads/potential ads (2023 estimate) through our Active Ad Monitoring system to help us identify and swiftly act against irresponsible online ads*”⁶. The Active Ad Monitoring system captures ads in social media, search and other online display environments, returning to ASA and CAP executive teams, ads identified as potentially in breach of the CAP Code. Those determined to be in clear-cut breach of the CAP Code, following human review, may be taken forward by the CAP Compliance team for corrective action.

16. CAP member bodies agree through their own members (including media owners) to seek to secure compliance with the CAP Code, invariably through the application of terms and conditions for the acceptance of advertising which reference the CAP Code.

17. And, following the Intermediary and Platform Principles (IPPs) pilot, platforms and intermediaries, such as Amazon Ads, Google, Meta, Yahoo for Business and TikTok currently volunteer to act swiftly, in line with the IPPs, to remove, on notice from the CAP Compliance team, an ad found to be in clear-cut breach of a Code rule. For the avoidance of doubt, for our purposes a clear-cut breach means the same as “indisputably a prima facie breach” referenced in the Principles.

⁵ <https://adassoc.org.uk/credos/uk-advertising-reports-36-6bn-spend-in-2023/> and <https://www.iabuk.com/news-article/aawarc-uk-ad-market-grows-61-2023-lead-digital>

⁶ <https://www.asa.org.uk/static/42c50098-a985-4e98-858769e7218933c9/AI-assisted-collective-ad-regulation-ASA-Strategy-2024-2029.pdf>

Compliance procedures: what to expect from the CAP Compliance team

18. The key role of the CAP Compliance team is to secure amendments to or, as necessary, withdrawal of ads in clear-cut breach of one or more rules in the CAP Code (see para 4 above). . For example, no ad-specific ASA ruling may be required in respect of the online advertising of a prescription only medicinal product (the advertising of which to the public is unarguably unlawful – CAP Code rule 12.12⁷), or the online business-to-consumer advertising of consumer products with VAT exclusive prices (CAP Code rule 3.18⁸).

19. Depending on the nature of its non-compliance, an ad in clear-cut breach of the rules may mislead, seriously offend or otherwise harm its audience. The CAP Compliance team and relevant parties act as swiftly as practicable to resolve the non-compliance, protect consumers and uphold the principles of fair competition generally accepted in business.

20. Contacting the advertiser

- i. When the CAP Compliance team (“we”) decide to contact an advertiser about a clear-cut breach of the CAP Code, we will normally enter into correspondence by email.
- ii. If a compliance case is referred to the CAP Compliance team by the ASA Investigations team (see 6i), we will correspond with the person who acted as the primary point of contact for the advertiser during the ASA’s investigation.
- iii. For other compliance cases, we will make reasonable efforts to ensure that correspondence is addressed to a named contact. Reasonable efforts to secure a named contact may involve reviewing the advertiser’s website or social media channels, searching Companies House or investigating any prior contact the advertiser may have had with ASA or CAP executive teams.
- iv. In circumstances where an advertiser has failed, in breach of CAP Code rule 1.7⁹, to respond to the ASA investigations team during the course of an ASA investigation, we will, irrespective of that fact, make reasonable efforts to correspond with the advertiser.
- v. If, ultimately, no named contact can be identified, we may make use of any general email addresses or contact forms published on the advertiser’s website or social media platforms. If no such communication channels can be located, correspondence may be sent via registered post to the advertiser’s registered business address. If no registered business address is available, the team may

⁷ Prescription-only medicines or prescription-only medical treatments may not be advertised to the public.

⁸ Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers.

⁹ Any unreasonable delay in responding to the ASA’s enquiries will normally be considered a breach of the Code.

rely on any viable-looking address published on the company's website or social media channels.

- vi. If non-compliance relates to an ad in third party media space, we may make a request to the third party media provider (for example, a social media platform) to pass on correspondence from the CAP Compliance team to the advertiser.

21. In the course of its work, the Compliance team will ordinarily seek to apply the above procedures, but retains discretion to deviate from them in circumstances where it is appropriate to do so. For example, if we are unable to make contact with an advertiser after reasonably diligent efforts to do so the team may consider it is justified to request a provider of advertising space (for example, a social media platform) to remove an ad in clear-cut breach of the Code. Where we do so, we will make reasonably diligent efforts to contact the advertisers after the fact. In relation to an ad where it is clear-cut that an ad is fraudulent (illegal) or likely to be harmful to consumers' health or safety, then we might also act without prior recourse to the advertiser.

22. We will also consider abridging the time for a response, to meet the requirements of urgency as an alternative to acting without notice.

23. Key information

- i. In correspondence, the Compliance team ("we") will provide key information to help the advertiser ("you") to understand why we are contacting you, what you are requested to do and by when, and to give you an opportunity to make representations to the CAP Compliance team prior to the date by which we expect you to have amended or withdrawn the non-compliant ad.

24. Identifying the ad and the Code rules breached, and the remedy sought

- i. We will provide information to enable you to identify the ad in clear-cut breach of the CAP Code; the date and context in which the ad appeared; the relevant Code rules that CAP has concluded have been breached and; as necessary, additional explanation as to why we have concluded that the rules have been breached. We will also provide, as relevant, ASA precedent rulings, an EN and published guidance.
- ii. We will set out the action which you must take. Typically, we will require you to amend the ad or, if amendment cannot resolve the non-compliance, to withdraw the ad entirely, and to provide written assurance of future compliance. When we receive the assurance and are satisfied that the non-compliance has been resolved, we will close the case.
- iii. We will inform you that you should not run substantively similar ads in the future, which entail breaching the rules in substantively the same way. If you

do, we retain the discretion to deviate from the casework procedures we normally apply including, but not limited to, by providing an appropriately shorter deadline for compliance.

25. Deadlines for compliance

- i. We will clearly communicate to you a deadline for compliance. When we set a deadline for compliance, we have in mind the need to act as swiftly as practicable, but we seek to give you a reasonable period of time to comply¹⁰, typically by amending the ad or, if amendment cannot resolve the noncompliance, to withdraw the ad entirely, and to provide us with written assurance of future compliance. We also factor in time to allow you to make representations to the effect that we are wrong to assess your ad as being in clear-cut breach of the CAP Code (see Advertiser Representations).
- ii. For certain compliance cases, for example “post-investigation cases”, we set a shorter deadline (i.e. 24 hours from when we send the email, or the next business day if we contact you on a Friday or before a bank holiday) because the advertiser has had, following the conclusion of the ASA investigation, ample time to resolve the non-compliance and make representations. We will also take into account any representations made as part of the ASA investigation process.
- iii. Owing to the need to be consistent in our dealings with advertisers and to mitigate harms arising from ads in clear-cut breach of the Code, the CAP Compliance team will grant an extension to the deadline only where we consider the advertiser has reasonable grounds for requesting one, or for some other good reason. Any extension is unlikely to be for longer than five working days and a repeat request for extension is likely to require compelling justification (see Advertiser representations).

26. CAP Compliance ‘take down’ notice

- i. In our correspondence with the advertiser (“you”), the CAP Compliance team (“we”) will inform you that if you fail to resolve the non-compliance by the deadline, and the non-compliant ad appears in third party media space, we may provide notice to the third party (for example, a social media company) to act swiftly to remove the ad.
- ii. Mindful of the need to act as swiftly as practicable to mitigate harms arising from ads in clear-cut breach of the Code, we will not normally provide a second

¹⁰ e.g. 2-5 working days. For standard casework, it is likely to be five working days, but might be shorter for very offensive, illegal or harmful content. For ENs, it's normally 4 weeks.

notice to you of our intention to provide notice to the third party (or an alternative third party media) to act swiftly to remove the ad.

- iii. We will ordinarily notify you if we intend also or instead to apply sanctions of a different nature (eg referral to another regulator).
- iv. Responsibility rests with you, the advertiser, to notify us, the CAP Compliance team, when you have resolved the non-compliance. If the team is satisfied with the actions you have taken, the relevant sanction(s) will be lifted and you will be notified of that.

27. Applications for independent review of the ASA's ruling

- i. For post-investigation compliance cases, if the advertiser is making an application for [independent review](#) of the ASA's ruling, corrective action and the assurance of compliance, requested by the CAP Compliance team, will normally continue to be required (see paragraph 43 of the [ASA's non-broadcast complaint handling procedures](#)).
- ii. It is acknowledged that the independent review process may ultimately lead to the ASA ruling being amended in a way that renders the assurance of compliance, provided to the CAP Compliance team, obsolete.

28. Advertiser representations

- i. CAP will consider any representations which are made by an advertiser within the deadline set.
- ii. Any representation should be in writing¹¹, explaining why we are wrong to assess your ad as being in clear-cut breach of the CAP Code.
- iii. In each case, the Senior Executive of the CAP Compliance team will initially consider your representation. If you are not satisfied with the response you receive, you should explain why, and if you are able to demonstrate reasonable grounds for why CAP was wrong in its categorisation of your ad as non-compliant, it will be escalated to the Manager of the CAP Compliance team. If you remain dissatisfied and again put forward reasonable grounds for review, it will be escalated to the Director of Advertising Policy and Practice. The Director may, in seeking to resolve the matter, liaise with a Head or Director of the ASA Complaints & Investigation teams.
- iv. We will not take action against an ad which, on reflection, we are persuaded is not in clear cut breach, but retain the discretion to refer it to the ASA Complaints

¹¹ If providing information in writing is not possible for you, because of a protected characteristic under the Equality Act 2010, we will accept representations via other means.

team; and, we will not take action until the deadline has expired and/or we have considered and reached a view on any representations submitted.

29. Advertiser representations after the application of sanctions

- i. If you consider the CAP Compliance team's decision to apply sanctions, or the process we followed to reach that decision (including any notice we provided to a third party, for example, a social media company, to act swiftly to remove your ad) was wrong, you must inform us as soon as practicable, explaining why.
- ii. In this case, the Manager of the CAP Compliance team will initially consider your representation. If you are not satisfied with the response and reasonable grounds for review can be made, it will be escalated to the Director of Advertising Policy and Practice, who may, in seeking to resolve the matter, liaise with a Director or Head of the ASA Complaints & Investigation teams.
- iii. If we agree that we were in fact wrong to apply sanctions, we will seek swiftly to withdraw them, including where appropriate notifying any relevant third parties and working with them to expedite the reinstatement of your ad as swiftly as practicable.

CAP, 27 January 2025