

Guy Parker  
Chief Executive  
Advertising Standards Authority  
Castle House  
37-45 Paul Street  
London  
EC2A 4LS

Cristina Nicolotti Squires  
Group Director  
Broadcasting and Media Group

Email:  
[cristina.nsquires@ofcom.org.uk](mailto:cristina.nsquires@ofcom.org.uk)

7 June 2024

Dear Guy,

## Proposed renewal of the co-regulatory arrangements for the regulation of broadcast advertising, on demand programme service advertising, and video-sharing platform advertising

We are writing to you in relation to Ofcom's proposed renewal of the co-regulatory arrangements for the regulation of broadcast advertising, on demand programme service ("ODPS") advertising, and video-sharing platform ("VSP") advertising for a period of ten years<sup>1</sup>. Details of these co-regulatory arrangements, and the matters we consider relevant to the decision to renew these arrangements, are set out below.

### Background

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#### Broadcast advertising

On 17 May 2004, Ofcom issued a [statement](#) contracting out to the Advertising Standards Authority (Broadcast) Limited ("ASA(B)"), the Broadcast Committee of Advertising Practice Limited ("BCAP") and the Broadcast Advertising Standards Board of Finance Limited ("Basbof") (together "the relevant parties") certain of its statutory functions in relation to the regulation of broadcast advertising. This arrangement expired on 1 November 2014 and was [renewed](#) for a further ten years.

The practical and legal basis for the operation of this co-regulatory system for broadcast advertising is set out in a number of documents:

- an Order made under the Deregulation and Contracting Out Act 1994 ("the Contracting Out Order")<sup>2</sup>, providing Ofcom with the power to contract out these functions;
- an Authorisation given by Ofcom by virtue of that Order ("the Authorisation")<sup>3</sup>;

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<sup>1</sup> In addition to the co-regulatory arrangements for broadcast, ODPS and VSP advertising, Ofcom has also recently designated the Advertising Standards Authority ("ASA") as a co-regulator for the regulation of online advertising for less healthy food and drink products. This arrangement is in place until 31 October 2034 and therefore is not subject to the co-regulatory renewal process discussed below. See [Ofcom's Statement](#) 'Regulation of advertising for less healthy food and drink: implementation of new statutory restrictions', published 10 July 2023.

<sup>2</sup> The Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004 (SI 1975/2004)

<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0036/263979/ASA-Broadcast-Authorisation.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0036/263979/ASA-Broadcast-Authorisation.pdf)

- a Memorandum of Understanding (“MoU”)<sup>4</sup> between Ofcom and the relevant parties, which sets out the parties’ understanding of how the system of co-regulation should be implemented and operate in practice; and
- a legally binding Deed for Regulation of Broadcast Advertising entered into by all the relevant parties (“the Deed”) in order to implement the co-regulatory system.

We are writing to you now as the Authorisation is due to expire on 2 November 2024. Unless terminated earlier, the Deed also continues until 2 November 2024 and automatically terminates on expiry of the Authorisation. We propose to renew the co-regulatory arrangements under the Contracting Out Order from November this year for a further period of ten years, until 31 October 2034.

### **On demand programme services and video-sharing platforms**

On 18 December 2009, Ofcom issued a [statement](#) designating the ASA as co-regulator of ODPS advertising content. This arrangement expired on 31 August 2020 and was renewed for a period of four years to align with the renewal of the broadcast advertising co-regulatory arrangements detailed above.

On 7 December 2021, Ofcom issued a [statement](#) also designating the ASA as co-regulator of VSP advertising content.

The legal bases of these co-regulatory systems are set out in separate Designations, both of which are due to expire on 31 October 2024<sup>5</sup>. We are therefore writing to you in relation to the proposed renewal of these co-regulatory arrangements from November this year for a period of ten years, until 31 October 2034<sup>6</sup>.

### **Criteria for designating a co-regulator**

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Sections 368B(9) and 368T(5) of the Communications Act 2003 (“the Act”) require Ofcom to satisfy itself that any body to which we propose to designate regulatory functions relating to ODPS or VSP meets a series of statutory criteria. Specifically, Ofcom may not designate a body unless it is satisfied that the body:

- is a fit and proper body to be designated;
- has consented to being designated;
- has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
- is sufficiently independent of providers of on demand programme services and video-sharing platform services (as appropriate); and

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<sup>4</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/219902/memorandum-of-understanding.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/219902/memorandum-of-understanding.pdf)

<sup>5</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/229012/vsp-advertising-designation-of-asa.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/229012/vsp-advertising-designation-of-asa.pdf) and [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/97346/ASA-ODPS-Designation.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/97346/ASA-ODPS-Designation.pdf)

<sup>6</sup> For simplicity, Ofcom proposes to renew the VSP Designation for ten years until 31 October 2034. However, that Designation recognises that the existing statutory framework relevant to VSPs (and contained in Part 4B of the Communications Act 2003) will be repealed at some point during the course of that Designation when section 210 of the Online Safety Act 2023 comes into force, and that the Designation will cease to have effect at that point.

- will, in performing any function to which the designation relates, have regard in all cases—
  - i. to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - ii. to such of the matters mentioned in section 3(4) of the Act as appear to the body to be relevant in the circumstances<sup>7</sup>.

Ofcom is therefore required to assess the ASA against the above criteria when deciding whether to renew the designation of the ASA as a co-regulator for ODPS and VSP advertising. While we are not required to consider the ASA against these criteria when deciding whether to renew the co-regulatory arrangements for broadcast advertising under the Contracting Out Order, we have chosen to do so for the purpose of consistency across this renewal<sup>8</sup>.

We provisionally consider that the ASA meets the statutory designation criteria, as outlined in our assessment in Annex 1.

### **Principles for analysing self-regulation and co-regulation**

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Ofcom has also set out principles for analysing self- and co-regulation<sup>9</sup>. These are intended to set a clear framework under which we can consider if and when it may be appropriate to operate a co-regulatory system. Those principles provide that an effective regulatory body should have:

- independent governance and decision making;
- clear public accountability;
- clear regulatory objectives set out in a code;
- clear and transparent processes, which are followed;
- workable membership incentives (where relevant) and/or obligations for or on those it regulates;
- secure and sufficiently independent funding and budget control;
- accessibility to those seeking redress;
- genuine powers of investigation; and
- effective powers of enforcement and sanction.

Some of these principles overlap with the statutory criteria considered above but, for completeness, we have conducted an assessment of our proposal to renew the co-regulatory arrangements for broadcast, ODPS and VSP advertising against these principles as outlined in Annex 1. Our provisional view is that the current co-regulatory arrangements satisfactorily reflect the criteria above.

### **Proposed amendments to the co-regulatory documentation**

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If a decision is made to renew (in whole or in part) the co-regulatory arrangements between Ofcom and the ASA(B) (and the other relevant parties), Ofcom would need to issue a new Authorisation in

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<sup>7</sup> Section 3(4) lists 15 matters to which Ofcom (or the ASA, as a designated body) must have regard in performing its duties, where those matters appear to be relevant in the circumstances.

<sup>8</sup> Therefore, where we refer to ‘designation’ in our assessment of the ASA against the statutory designation criteria, this includes authorisation for the purposes of broadcast advertising.

<sup>9</sup> [Identifying Appropriate Regulatory Solutions: Principles for Analysing Self- and Co-regulation](#)

respect of broadcast advertising and the parties would again enter into a legally binding Deed to give effect to this renewal. Similarly, Ofcom would need to issue new Designations to the ASA in respect of ODPS advertising and VSP advertising.

Ofcom does not propose any substantive changes to the current arrangements. A summary of the proposed amendments to the relevant documents is enclosed in Annex 2. The proposed amendments are intended primarily to update the documentation to reflect current and established practice, to update references to legislation, and to ensure consistency across the Designations where possible.

### **Next steps**

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In light of the above, I invite the ASA and the other relevant parties to submit formal comments on our proposal to renew the co-regulatory arrangements for the regulation of broadcast advertising, ODPS advertising and VSP advertising for a period of ten years, until 31 October 2034. Comments should be sent to [ofcomadvertisingteam@ofcom.org.uk](mailto:ofcomadvertisingteam@ofcom.org.uk) by 17:00 on 19 July 2024.

Although we do not propose to make significant changes to the system now in place, we will be publishing a copy of this letter, together with the relevant documentation, on Ofcom's website, and drawing it to the attention of interested parties through an emailed update, so that they, and the public more widely, are given the opportunity to comment on the proposal and their comments can be taken into account before a decision is made.

We anticipate publishing our decision during the autumn, subject to considering any comments we receive in response to our proposal as set out in this letter and to any substantive points that arise during the formulation of the Authorisation, Designations, and related documentation should we proceed to renew the current arrangements.

Yours sincerely,



**Cristina Nicolotti Squires**

## Annex 1: Our provisional assessment of the ASA<sup>10</sup> against the criteria for designating a co-regulator and the principles for analysing self-regulation and co-regulation

### Criteria for designating a co-regulator

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We provisionally consider that the ASA meets the statutory designation criteria set out in the letter above. In particular, we are satisfied that:

- a) the ASA's experience of co-regulating broadcast, ODPS and VSP advertising demonstrates that it is a fit and proper body to be designated;
- b) the ASA has indicated that it would consent to being designated as a co-regulator;
- c) the ASA would have access to adequate financial resources to effectively perform the functions we propose to designate;
- d) the ASA's governance structure is sufficiently independent of persons who carry out business that involves or is associated with a financial interest in the sectors it regulates; and
- e) the ASA's experience of co-regulating broadcast, ODPS and VSP advertising demonstrates that it would have regard to appropriate regulatory principles.

In Ofcom's view, the ASA's experience of regulating advertising under the self-regulatory system further demonstrates that it is fit and proper to be designated.

We are not aware of any substantive changes over the period since the ASA was last designated that could lead to concerns over the ASA's fitness and propriety, willingness to be designated, access to adequate financial resources for regulating ODPS or VSP services, independence from ODPS or VSP providers, or adherence to the relevant regulatory principles.

Ofcom has had regard to the ASA's extensive experience of co-regulating broadcast, ODPS and VSP advertising when considering the above criteria. The ASA has reported to Ofcom annually on its regulation of broadcast, ODPS and VSP advertising and neither Ofcom nor the ASA has, since the last renewal of the relevant co-regulatory arrangements, identified any issues which have warranted statutory intervention by Ofcom.

The statutory designation criteria require that a designated body has access to adequate financial resources. The ASA's current system for advertising regulation is funded primarily by levies on advertising collected by Basbof and Asbof. This levy funding enables the ASA's regulatory activities including complaints-handling and investigations, as well as supporting its pre-publication advice service to advertisers, agencies and the media. The ASA also receives some income from seminars and advice services it offers. Under the existing co-regulatory arrangements between Ofcom and the ASA, the ASA reports regularly on its performance, including its financial position.

In assessing the ASA's independence, Ofcom has considered its governance structure. The ASA is a limited company, independent of the Government and the advertising sector. The Chair of the ASA, who leads the ASA Council (the ASA's adjudicating body) is appointed by Asbof and is also

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<sup>10</sup> For the purpose of this Annex, references to the ASA are intended to cover all relevant parties that are involved in the co-regulatory arrangements for broadcast, ODPS and VSP advertising, namely the ASA, ASA(B), BCAP and Basbof.

unconnected with Ofcom, industry and Government. All ASA Council members sit as individuals and are recruited through an open recruitment process, for a maximum of two three-year terms. A majority of members are independent of industry and the remaining members have a recent or current knowledge of the industry.

Further to this, the ASA has a review process where an Independent Reviewer can be asked to reconsider a ruling, which is open to advertisers, complainants, broadcasters, ODPS and VSP providers. The Independent Reviewer is not part of the ASA Executive or the ASA Council and, while they are entitled to observe Council discussions, they cannot partake in these discussions or discuss cases with the Council or Executive that have not been referred for review.

We have also had regard to the ASA's funding structure in assessing the ASA's independence. As set out above, the ASA is funded through an arm's length arrangement based on charging a levy on the cost of advertising space, to ensure that it is sufficiently independent of industry and Government. As the levy is collected by Asbof and Basbof, the ASA is unaware of who is paying the levy or how much they are paying. Ofcom considers that this funding model helps to ensure that the ASA remains sufficiently independent.

We therefore consider that the ASA's governance and funding structure demonstrates that it would be sufficiently independent of industry for the purposes of the proposed renewal of the co-regulatory arrangements.

In light of the above, we are provisionally satisfied that the ASA meets the statutory designation criteria listed above.

### **Principles for analysing self-regulation and co-regulation**

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We provisionally conclude that the current co-regulatory arrangements satisfactorily reflect each of the principles for analysing self-regulation and co-regulation set out in the letter above:

Independent governance and decision making: The ASA is independent of both Government and industry and has a transparent governance structure. The ASA Council is appointed by the ASA Chair and has a majority of members who are independent of industry. The Council will consider the recommendations of the ASA but is free to come to its own conclusion.

Clear public accountability: The ASA currently publishes details of all its investigations into broadcast, ODPS and VSP advertising (as well as advertising in other media, on a self-regulatory basis). It also publishes an annual statement that includes an evaluation of its performance under key performance indicators ("KPIs"), such as the number of complaints received and resolved. Under our proposal:

- The ASA will continue to report, on a regular basis, details of investigations. This information would be publicly available.
- The ASA will continue to provide Ofcom with performance data against a range of KPIs regarding its complaints-handling arrangements, which are set out in the MoU for broadcast advertising and in the ODPS and VSP Designations.
- The co-regulatory arrangements with the ASA will be reviewed in ten years (2034) and provide scope for review before that time if appropriate.

Clear regulatory objectives set out in a code: Under this proposal, the ASA would ensure that the relevant statutory requirements are reflected appropriately in the CAP and BCAP Codes.

Clear and transparent processes, which are followed: The ASA's current processes for investigating and adjudicating on complaints about advertising are described in its Complaint Handling Procedures available on its website<sup>11</sup>. The ASA's website also contains information for consumers on how to complain.

Workable membership incentives (where relevant) and/or other obligations for or on those it regulates: The ASA system has a high level of buy-in from the advertising industry, as well as involvement from online platforms. Further, Ofcom also recently consulted on designating the ASA as co-regulator for the regulation of online advertising of less healthy food and drink products, which involved a careful assessment of the ASA against the relevant criteria. There was a high level of support from stakeholders for this proposal, with respondents agreeing that there is benefit in maintaining a single point of contact for consumers for advertising issues across all media.

Secure and sufficiently independent funding and budget control: As set out above in relation to the statutory designation criteria, the ASA's funding system is structured so as to ensure its independence.

Accessibility to those seeking redress: The ASA's public profile as the established regulator for advertising across all media makes it a suitable body to continue to regulate broadcast, ODPS and VSP advertising. It provides information to consumers on how the regulatory system works via its website, including setting out its current processes for investigating and adjudicating on complaints in its published Complaint Handling Procedures. As noted above, the ASA retains an Independent Reviewer<sup>12</sup>, who reviews decisions made by the ASA, and considers appeals about the conduct of ASA investigations.

Genuine powers of investigation: If Ofcom were to proceed with its proposal to renew the co-regulatory arrangements for broadcast advertising and its designation of the ASA as the appropriate regulatory authority for ODPS and VSP advertising regulation, the ASA would have the ability to find the regulated party in breach of the relevant rule(s).

Effective powers of enforcement and sanction: The ASA has established approaches to compliance including prohibiting adverts and particular advertising techniques. Based on the ASA's experience of regulating advertising, Ofcom is confident that it operates appropriate enforcement measures. In any event, Ofcom would retain the power to carry out its own investigation, where appropriate, as well as the power to issue enforcement notifications or impose financial penalties on regulated parties who failed to comply with the relevant restrictions. This model, where the ASA acts as the frontline regulator and Ofcom provides a statutory backstop, has been proven to work well in our broadcast, ODPS and VSP co-regulatory arrangements to date.

The co-regulatory arrangements are underpinned by the principle that it is beneficial for consumers to have a single point of contact for advertising issues across all media, and that a co-regulatory approach to advertising regulation is generally well-suited to managing the convergence of issues between advertising in different media.

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<sup>11</sup> ASA's [Broadcast Complaint Handling Procedures](#) and [Non-Broadcast Complaint Handling Procedures](#)

<sup>12</sup> <https://www.asa.org.uk/codes-and-rulings/independent-reviews.html>

Ofcom's experience of co-regulation with the ASA has been a productive one. We have an established co-regulatory system, which has worked very effectively to date. It is designed to minimise complexity, and to ensure that statutory regulation and the self-regulatory system complement each other.

Our provisional view is therefore that the current co-regulatory arrangements satisfactorily reflect the criteria above. Further, we recognise that the effective relationship established between Ofcom and its co-regulatory partners is testament to the successful operation of the system.

In light of the above, and subject to considering any comments we receive in response to publishing this letter, Ofcom is minded to renew the co-regulatory arrangements for broadcast, ODPS and VSP advertising for a further ten years.



## Annex 2: Summary of proposed changes to the ODPS Designation, VSP Designation, Broadcast Authorisation and Broadcast MoU

As set out in the open letter, Ofcom is not proposing to make any substantive changes to the current co-regulatory arrangements. However, we are proposing to update the relevant documents that underpin the arrangements to:

- ensure consistency of language and, where appropriate, structure;
- update references to legislation, dates etc; and
- clarify regulatory processes, and reduce unnecessary administrative burden etc.

The following table sets out the most notable changes, alongside an explanation of the proposed change. A link to each of the current documents is included at the top of each section.

### On Demand Programme Services (ODPS) Designation (2020)

Subject Area	Summary of issue	2020 ODPS Designation	New (draft) ODPS Designation
<b>Obligations and Conditions</b>  <b>General</b>	Reference to public law duties to bring the Designation in line with VSP Designation.	N/A	7.  (i) to ensure that it takes all appropriate steps to comply with the statutory and regulatory duties and obligations that apply to Ofcom in performing its regulatory functions, including in particular:  <b>d. to act in accordance with public law duties, including the duty of fairness.</b>
<b>Obligations and Conditions</b>  <b>Complaints handling, assessments/investigations and reporting obligations</b>	Amendment to reflect that the ASA may launch investigations on its own initiative as well as in response to a complaint.	7.  (ix) to have in place and publish appropriate and robust complaints handling processes for the assessment, investigation and adjudication of complaints in order to carry out the Designated Function, such processes to be formulated in consultation with Ofcom;	7.  (ix) to have in place and publish appropriate and robust <del>complaints handling</del> processes for the assessment, investigation and adjudication of complaints <b>and potential breaches of the Code identified through ASA self-initiated activities</b> in order to carry out the Designated Function, such processes to be formulated in consultation with Ofcom;

Subject Area	Summary of issue	2020 ODPS Designation	New (draft) ODPS Designation
<p><b>Obligations and Conditions</b></p> <p><b>Cooperation with Ofcom</b></p>	<p>Additional requirement for the ASA to inform Ofcom where it has identified a potential breach of the Rules on a service that is not an ODPS notified service and may meet the notification criteria. (This reflects a similar provision in the VSP Designation).</p>	<p>N/A</p>	<p>7.</p> <p>(xvii) to inform Ofcom in cases where it is unclear whether a service that has not been notified to Ofcom in accordance with section 368BA of the Act constitutes an on-demand programme service for the purposes of section 368A(1) of the Act, and it appears on the face of it that there may have been a contravention of the Rules;</p>
<p><b>Obligations and Conditions</b></p> <p><b>Cooperation with Ofcom</b></p>	<p>New paragraph setting out expectations regarding the handover of cases and other relevant information in the event that the Designation is revoked.</p>	<p>N/A</p>	<p>7.</p> <p>(xxi) where Ofcom revokes this Designation in accordance with Paragraph 15 or 16 below, the ASA shall, as soon as reasonably practicable, transfer to Ofcom all outstanding cases together with copies of associated documents and files relevant to those cases (including the relevant evidence and submissions, any correspondence between the parties, and any materials in draft format).</p>
<p><b>Schedule</b></p> <p><b>Reporting Obligations and Key Performance Indicators</b></p> <p><b>Key Performance Indicators</b></p>	<p>To simplify complaint categories (recognising that misleadingness is not applicable to the statutory ODPS provisions) and create a single reporting KPI for Formal Investigations.</p>	<p>7. Key Performance Indicators</p> <p><b>Turnaround times for complaint cases (in working days)</b></p> <p>No Additional Investigation (15)</p> <p>No Additional Investigation after Council Decision (20)</p> <p>Informal Investigation (35)</p> <p>Formal Investigation (Harm &amp; Offence) 60</p> <p>Formal Investigation (Misleadingness) 115</p>	<p>7. Key Performance Indicators</p> <p><b>Turnaround times for complaint cases (in working days)</b></p> <p>No Additional Investigation (15)</p> <p>No Additional Investigation after Council Decision (20)</p> <p>Informal Investigation (35)</p> <p>Formal Investigation (Harm &amp; Offence) 60</p> <p><del>Formal Investigation (Misleadingness) 115</del></p>

## Video Sharing Platform (VSP) Designation (2021)

Subject Area	Summary of issue	2021 VSP Designation	New (draft) VSP Designation
<p><b>Obligations and Conditions</b></p> <p><b>Complaints handling, assessments/investigations and reporting obligations</b></p>	Amendment to reflect that the ASA may launch investigations on its own initiative as well as in response to a complaint.	<p>7.</p> <p>(x) to have in place and publish appropriate and robust complaints handling processes for the assessment, investigation and adjudication of complaints in order to carry out the Designated Function, such processes to be formulated in consultation with Ofcom;</p>	<p>7.</p> <p>(x) to have in place and publish appropriate and robust <del>complaints handling</del> processes for the assessment, investigation and adjudication of complaints <b>and potential breaches of the Code identified through ASA self-initiated activities</b> in order to carry out the Designated Function, such processes to be formulated in consultation with Ofcom;</p>
<p><b>Obligations and Conditions</b></p> <p><b>Cooperation with Ofcom</b></p>	New paragraph setting out expectations regarding the handover of cases and other relevant information in the event that the Designation is revoked.	N/A	<p>7.</p> <p>(xxiv) where Ofcom revokes this Designation in accordance with Paragraph 16 or 17 below, the ASA shall, as soon as reasonably practicable, transfer to Ofcom all outstanding cases together with copies of associated documents and files relevant to those cases (including the relevant evidence and submissions, any correspondence between the parties, and any materials in draft format).</p>
<p><b>Duration of this Designation</b></p>	Update to reflect the Online Safety Act will repeal the existing VSP regime (more information on VSP repeal can be found at: <a href="https://www.ofcom.org.uk/online-safety/information-for-industry/vsp-regulation/repeal-of-the-vsp-regime">https://www.ofcom.org.uk/online-safety/information-for-industry/vsp-regulation/repeal-of-the-vsp-regime</a> ).	<p>11. This Designation is to have effect from 7 December 2021 and to continue until:</p> <p>a) 31 October 2024 ('the expiry date'), or</p> <p>b) the relevant provisions of the Act regarding the regulation of VSPs are superseded by the Online Safety Bill (as enacted), or</p> <p>c) until such time as it is revoked in accordance with Paragraphs 15 or 16 below.</p>	<p>11. This Designation is to have effect from <del>7 December 2021</del> <b>1 November 2024</b> and to continue until:</p> <p>a) 31 October 202<del>34</del><sup>34</sup> ('the expiry date'),</p> <p>b) <del>the relevant provisions of the Act regarding the regulation of VSPs are superseded by the Online Safety Bill (as enacted),</del> <b>Section 210 of the Online Safety Act 2023 (Repeal of Part 4B of the Communications Act 2003) comes into force,</b> or</p> <p>c) until such time as it is revoked in accordance with Paragraphs 15<del>6</del><sup>6</sup> or 16<del>7</del><sup>7</sup> below.</p>

Subject Area	Summary of issue	2021 VSP Designation	New (draft) VSP Designation
<b>Duration of this Designation</b>	Proposed new paragraph to reflect the process for handling any outstanding complaints following repeal of the existing VSP regime in Part 4B of the Communications Act 2003 (see above).	N/A	<p><b>13.</b></p> <p>Where this Designation ceases to have effect in accordance with Paragraph 11b above, the ASA shall continue to assess, investigate and adjudicate (as appropriate) any complaints received by it prior to the Designation ceasing to have effect in accordance with the terms of this Designation immediately before it ceased to have effect.</p>
<b>Schedule</b>  <b>Reporting Obligations and Key Performance Indicators</b>  <b>Key Performance Indicators</b>	To simplify complaint categories (recognising that misleadingness is not applicable to the statutory VSP provisions) and create a single reporting KPI for Formal Investigations.	<p>7. Key Performance Indicators</p> <p>Turnaround times for complaint cases (in working days)</p> <p>No Additional Investigation (15)</p> <p>No Additional Investigation after Council Decision (20)</p> <p>Informal Investigation (35)</p> <p>Formal Investigation (Harm &amp; Offence) 60</p> <p>Formal Investigation (Misleadingness) 115</p>	<p>7. Key Performance Indicators</p> <p>Turnaround times for complaint cases (in working days)</p> <p>No Additional Investigation (15)</p> <p>No Additional Investigation after Council Decision (20)</p> <p>Informal Investigation (35)</p> <p>Formal Investigation (Harm &amp; Offence) 60</p> <p><del>Formal Investigation (Misleadingness) 115</del></p>

## Memorandum of Understanding: Broadcast Advertising (2021)

Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<p><b>Delegated functions</b></p> <p><b>Consideration and resolution of complaints and cases</b></p>	<p>Amendment to reflect that the ASA may launch investigations on its own initiative as well as in response to a complaint. Text also updated to reflect that Ofcom will not, except in exceptional circumstances, entertain complaints, even if asked to do so by complainants.</p>	<p><b>6.1 (a) Consideration and resolution of complaints</b></p> <p>The Parties agree that the processing, consideration and resolution of complaints concerning the content of radio and television advertisements will be the responsibility of ASA(B). Ofcom will pass all complaints it receives about broadcast advertising that fall to be regulated by ASA(B), under the functions Ofcom has contracted out to it, directly to ASA(B), and will not entertain such complaints, even when specifically requested by the complainant to do so. ASA(B) will maintain a set of published procedures governing the processing, consideration and resolution of complaints.</p>	<p><b>6.1 (a) Consideration and resolution of <del>complaints</del> cases</b></p> <p>The Parties agree that the processing, consideration and resolution of <b>cases (from either complaints or, where relevant, generated by the ASA)</b> concerning the content of radio and television advertisements will be the responsibility of ASA(B). Ofcom will pass all complaints it receives about broadcast advertising that fall to be regulated by ASA(B), under the functions Ofcom has contracted out to it, directly to ASA(B), and will not, <b>except in exceptional circumstances</b>, entertain such complaints, even when specifically requested by the complainant to do so. ASA(B) will maintain a set of published procedures governing the processing, consideration and resolution of complaints <b>and ASA-generated cases</b>.</p>
<p><b>Delegated functions</b></p> <p><b>Code setting, monitoring and enforcement</b></p>	<p>Clarification of process for Ofcom approval of BCAP Code amendments.</p>	<p><b>6.1 (b) Code setting, monitoring and enforcement</b></p> <p>The Parties also note that:</p> <ul style="list-style-type: none"> <li>- via consultation with Ofcom, the Secretary of State may (in accordance with section 321 of the Act) issue directions in relation to prohibited categories of advertising and that BCAP must comply with such directions, if so notified by Ofcom;</li> <li>- any Code changes proposed by BCAP must be agreed by Ofcom; and</li> <li>- broadcasters are required by the terms of their Ofcom licences to ensure compliance both with the BCAP Code and with directions made by ASA(B).</li> </ul>	<p><b>6.1 (b) Code setting, monitoring and enforcement</b></p> <p>The Parties also note that:</p> <ul style="list-style-type: none"> <li>- via consultation with Ofcom, the Secretary of State may (in accordance with <del>s</del>Section 321 of the Act) issue directions in relation to prohibited categories of advertising and that BCAP must comply with such directions, if so notified by Ofcom;</li> <li>- <b>Ofcom's approval is required for all any Code changes proposed by BCAP must be agreed by Ofcom Code changes prior to implementation (including minor or technical changes or changes stemming from changes in legislation);</b> and</li> <li>- broadcasters are required by the terms of their Ofcom licences to ensure compliance both with the BCAP Code and with directions made by ASA(B).</li> </ul>

<p><b>Delegated functions</b></p> <p><b>Teleshopping and other non spot advertising content</b></p>	<p>Updated to reflect the legislative framework following the UK's withdrawal from the EU.</p> <p>Clarification that Ofcom publishes a list of Ofcom licensed television services on its website.</p>	<p><b>6.1 (c) Teleshopping and other non spot advertising content</b></p> <p>The Parties agree that ASA(B)/BCAP will be responsible for broadcast advertising content that is subject to the BCAP Code and falls to be regulated by ASA(B) under the functions contracted out to it (subject to any exceptions agreed by the Parties from time to time). This content is not limited to traditional spot advertising, but also encompasses:</p> <ul style="list-style-type: none"> <li>- long-form advertising (including teleshopping), either as extended advertising items in programme-based output, or as the entire output of dedicated teleshopping channels; and</li> <li>- any output involving a transactional element that Ofcom determines is subject to Advertising Code provisions, having regard to the requirements of the Audiovisual Media Services ('AVMS') Directive.</li> </ul> <p>The Parties agree that the above excludes Participation TV (i.e. long -form television advertising for direct-response remote entertainment services that typically include the possibility of interacting with broadcast content), concerning which Ofcom retains responsibility for the processing, consideration and resolution of complaints.</p> <p>To assist ASA(B) in its monitoring and enforcement functions, Ofcom undertakes to inform it of all new licence awards concerning television services that intend to broadcast any advertising content, identifying the nature of such services (i.e. whether they are editorial, teleshopping or self-promotional channels). Ofcom will also, where practicable, notify ASA(B) of any change in the nature or launch date of any such television service.</p> <p>The Parties note the provisions in the AVMS Directive relating to teleshopping channels, teleshopping windows and teleshopping spots, as interpreted by Ofcom's Code</p>	<p><b>6.1 (c) Teleshopping and other non spot advertising content</b></p> <p>The Parties agree that ASA(B)/BCAP will be responsible for broadcast advertising content that is subject to the BCAP Code and falls to be regulated by ASA(B) under the functions contracted out to it (subject to any exceptions agreed by the Parties from time to time). This content is not limited to traditional spot advertising, but also encompasses:</p> <ul style="list-style-type: none"> <li>- long-form advertising (including teleshopping), either as extended advertising items in programme-based output, or as the entire output of dedicated teleshopping channels; and</li> <li>- any output involving a transactional element that Ofcom determines is subject to <del>Advertising</del> <b>BCAP</b> Code provisions, having regard to the requirements of the Audiovisual Media Services ('AVMS') Directive <b>(as it had effect in the UK immediately before IP completion day) and the European Convention on Transfrontier Television T-TT(2000)008 ('ECTT')</b>.</li> </ul> <p>The Parties agree that the above excludes Participation TV (i.e. long -form television advertising for direct-response remote entertainment services that typically include the possibility of interacting with broadcast content), concerning which Ofcom retains responsibility for the processing, consideration and resolution of complaints.</p> <p>To assist ASA(B) in its monitoring and enforcement functions, Ofcom <del>undertakes to inform it</del> <b>publishes</b> <del>on its website</del> <b>a list</b> of all new licence awards concerning television services that intend to broadcast any advertising content, identifying the nature of such services (i.e. whether they are editorial, teleshopping or self-promotional channels). Ofcom will also, where practicable, notify ASA(B) of any change in the nature or launch date of any such television service.</p>
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Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
		<p>on the scheduling of television advertising ('COSTA'), the enforcement of which remains Ofcom's responsibility.</p> <p>The Parties also note that responsibility for compliance with the Articles of the AVMS Directive that relate to the insertion of advertising breaks, the amount of advertising permitted, and sponsorship are specifically excluded from the remit of ASA(B)/BCAP in the Authorisation. However, the Parties agree that, in carrying out their delegated functions, ASA(B)/BCAP will, where appropriate, take account of any other relevant international obligations of the UK with respect to advertising included in television and radio services.</p>	<p>The Parties note the provisions in the AVMS Directive <b>and ECTT</b> relating to teleshopping channels, teleshopping windows and teleshopping spots, as interpreted by Ofcom's Code on the <b>s</b>Scheduling of <b>t</b>Television <b>a</b>Advertising ('COSTA'), the enforcement of which remains Ofcom's responsibility.</p> <p>The Parties also note that responsibility for compliance with the Articles of the AVMS Directive <b>and ECTT</b> that relate to the insertion of advertising breaks, the amount of advertising permitted, and sponsorship are specifically excluded from the remit of ASA(B)/BCAP in the Authorisation. However, the Parties agree that, in carrying out their delegated functions, ASA(B)/BCAP will, where appropriate, take account of any other relevant international obligations of the UK with respect to advertising included in television and radio services.</p>

Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<p data-bbox="141 228 367 252"><b>Delegated functions</b></p> <p data-bbox="141 325 360 349"><b>Political advertising</b></p>	<p data-bbox="459 228 824 384">Removal of reference to BCAP interaction with third parties, as the purpose of the MoU is to outline the relationship between Ofcom and the ASA(B) and BCAP.</p>	<p data-bbox="853 228 1151 252"><b>6.1 (d) Political advertising</b></p> <p data-bbox="853 276 1491 1054">Ofcom is required, under the Act, to ensure that political advertising is not included in the television and radio services regulated by Ofcom. The Parties agree it is appropriate that Ofcom itself remains responsible for carrying out this function, notwithstanding that it involves the control of advertising content. The rules relating to political advertising will be determined by Ofcom but will remain in the BCAP Code, for consistency and transparency. In practice, should ASA(B) or BCAP have grounds to believe, either through complaints or through its own monitoring, that an advertisement may contain political content, it will refer the matter as soon as practicable to Ofcom. Ofcom will consider and, as appropriate, investigate it, to determine whether the advertisement is political advertising, and therefore prohibited, or is not political advertising, and therefore a matter that should remain within ASA(B)'s remit. Any adjudication made by Ofcom relating to broadcast political advertising will be published in Ofcom's Broadcast Bulletin, when Ofcom undertakes to inform ASA(B) of Ofcom's decision prior to publication. Should Clearcast or the RACC need advice concerning political advertising (or potential political advertising), they should consult BCAP, which will seek a view from Ofcom on the matter raised.</p>	<p data-bbox="1516 228 1814 252"><b>6.1 (d) Political advertising</b></p> <p data-bbox="1516 276 2154 1054">Ofcom is required, under the Act, to ensure that political advertising is not included in the television and radio services regulated by Ofcom. The Parties agree it is appropriate that Ofcom itself remains responsible for carrying out this function, notwithstanding that it involves the control of advertising content. The rules relating to political advertising will be determined by Ofcom but will remain in the BCAP Code, for consistency and transparency. In practice, should ASA(B) or BCAP have grounds to believe, either through complaints or through its own monitoring, that an advertisement may contain political content, it will refer the matter as soon as practicable to Ofcom. Ofcom will consider and, as appropriate, investigate it, to determine whether the advertisement is political advertising, and therefore prohibited, or is not political advertising, and therefore a matter that should remain within ASA(B)'s remit. Any adjudication made by Ofcom relating to broadcast political advertising will be published in Ofcom's Broadcast Bulletin, when Ofcom undertakes to inform ASA(B) of Ofcom's decision prior to publication. <del>Should Clearcast or the RACC need advice concerning political advertising (or potential political advertising), they should consult BCAP, which will seek a view from Ofcom on the matter raised.</del></p>



Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<p><b>Delegated functions</b></p> <p><b>On Demand Programme Services</b></p>	<p>Updated to reflect other co-regulatory arrangements that are not subject to this MoU.</p>	<p><b>6.1 (g) On Demand Programme Services</b></p> <p>The Parties note that advertising included in On Demand Programme Services is not subject to this MoU, but forms part of a separate regulatory regime.</p>	<p><b>6.1 (g) On Demand Programme Services and Video-Sharing Platform Services and Online Advertising of Less Healthy Food and Drink Products</b></p> <p>The Parties note that advertising included in On Demand Programme Services, <b>audiovisual commercial communications included in Video-Sharing Platform Services and online advertising of less healthy food and drink products</b> <del>is</del> <b>are</b> not subject to this MoU, but forms part of <del>a</del> separate regulatory regimes.</p>
<p><b>Delegated functions</b></p> <p><b>Public Policy requirements</b></p>	<p>Amendment to reflect that setting/reviewing/revising the BCAP Code falls within BCAP's remit, not ASA(B).</p>	<p><b>6.1 (h) Public Policy requirements</b></p> <p>The Parties agree that ASA(B)/BCAP will take the lead in ensuring public policy requirements are reflected in the BCAP Code, as necessary. Ofcom may from time to time wish to make representations about such requirements to ASA(B)/BCAP or others – e.g. when issues run across both advertising and programming or where Government makes public policy considerations known directly to Ofcom. Ofcom is at liberty to make, and – if it regards it appropriate to do so – to publish any such representations. Where such representations are made to ASA(B)/BCAP, these parties undertake to take account of them.</p>	<p><b>6.1 (h) Public Policy requirements considerations</b></p> <p>The Parties agree that ASA(B)/BCAP will take the lead in ensuring public policy <b>considerations</b> <del>requirements</del> are <del>reflected</del> <b>taken into account</b> in <b>setting, reviewing and revising</b> the BCAP Code, as necessary. Ofcom may from time to time wish to make representations about such <del>requirements</del> <b>considerations</b> to ASA(B)/BCAP or others – e.g. when issues run across both advertising and programming or where Government makes public policy considerations known directly to Ofcom. Ofcom is at liberty to make, and – if it regards it appropriate to do so – to publish any such representations. Where such representations are made to <del>ASA(B)/BCAP, these parties</del> <b>BCAP</b> <del>undertakes</del> to take account of them.</p>
<p><b>Structure and function of the parties to the MoU</b></p> <p><b>Powers of ASA(B)</b></p> <p><b>Enforcement of decisions</b></p>	<p>Removal of reference to advertisers and agencies as the co-regulatory arrangements apply to the regulation of broadcasters.</p> <p>Also updated reference to Radiocentre.</p>	<p>7.10 The Parties agree that ASA(B) will communicate its decisions clearly and promptly to all parties in response to a complaint/challenge. The initial contact will be with the broadcaster, as a Broadcasting Act licensee carrying ultimate responsibility for what appears on its channel(s), or with the relevant pre-clearance centre (e.g. Clearcast or RACC), acting on the broadcaster's behalf. The advertiser/agency will also be kept informed at all times.</p>	<p>7.10 The Parties agree that ASA(B) will communicate its decisions clearly and promptly to all parties in response to a complaint/challenge. The initial contact will be with the broadcaster, as a Broadcasting Act licensee carrying ultimate responsibility for what appears on its channel(s), or with the relevant pre-clearance centre (e.g. Clearcast or <b>Radiocentre RACC</b>), acting on the broadcaster's behalf. <del>The advertiser/agency will also be kept informed at all times.</del></p>

Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<p><b>Structure and function of the parties to the MoU</b></p> <p><b>Advertising Advisory Committee</b></p> <p><b>Composition</b></p>	<p>Removal of final bullet as considered an unnecessary administrative burden. Ofcom is satisfied that the requirements, as set out in the draft MoU, provide Ofcom with sufficient insight into the operation of this Committee and will enable it to raise issues for discussion should any be identified.</p>	<p>7.27</p> <ul style="list-style-type: none"> <li>• the Chair of the AAC will be:</li> <li>• appointed by the independent Chair of ASA(B), independently advised, as appropriate, and by a proper process after due consultation to ensure his or her independence from Ofcom, industry or Government; and</li> <li>• appropriately qualified and of good standing, free of interests in the advertising and media industries;</li> <li>• the expert/lay members of the AAC will be appointed by a process involving public advertisement and selection by the Chair of the AAC, the Chair of BCAP and the Chair of ASA(B);</li> <li>• BCAP will provide Ofcom with details of new appointments to the AAC in a timely manner after they are made;</li> <li>• Ofcom will be provided with the minutes of each AAC meeting, redacted to remove material that is relevant solely to non-broadcast advertising, within two weeks of the date of each meeting;</li> <li>• The Chair of the AAC will meet with Ofcom on at least an annual basis to discuss the operation of the committee; and</li> <li>• The AAC will be added as a standing item to the agenda for the regular Ofcom/BCAP Executive meetings.</li> </ul>	<p>7.27</p> <ul style="list-style-type: none"> <li>• the Chair of the AAC will be:</li> <li>• appointed by the independent Chair of ASA(B), independently advised, as appropriate, and by a proper process after due consultation to ensure his or her independence from Ofcom, industry or Government; and</li> <li>• appropriately qualified and of good standing, free of interests in the advertising and media industries;</li> <li>• the expert/lay members of the AAC will be appointed by a process involving public advertisement and selection by the Chair of the AAC, the Chair of BCAP and the Chair of ASA(B);</li> <li>• BCAP will provide Ofcom with details of new appointments to the AAC in a timely manner after they are made;</li> <li>• Ofcom will be provided with the minutes of each AAC meeting, redacted to remove material that is relevant solely to non-broadcast advertising, within two weeks of the date of each meeting; <b>and</b></li> <li>• The Chair of the AAC will meet with Ofcom on at least an annual basis to discuss the operation of the committee; <del>and</del></li> <li>• <del>The AAC will be added as a standing item to the agenda for the regular Ofcom/BCAP Executive meetings.</del></li> </ul>

Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<b>Monitoring and performance reporting to Ofcom</b>	Amendment to reflect proposed new publishing format and updated reporting requirements, which take into account the maturity of the co-regulatory arrangements and that adequate checks and balances are in place to ensure contracted out functions are met.	<b>Monitoring and performance reporting to Ofcom</b> 8.2 The Parties agree that, to assist Ofcom’s monitoring of the effectiveness of the system, ASA(B)/BCAP shall report biannually to Ofcom on a number of agreed KPIs, as outlined in paragraphs 8.3 -8.4, below.	<b>Monitoring and performance reporting to Ofcom</b> 8.2 The Parties agree that, to assist Ofcom’s monitoring of the effectiveness of the system, ASA(B)/BCAP shall report biannually to Ofcom on a number of agreed KPIs, as outlined in paragraphs 8.3 and 8.4, below. <b>The Parties also agree that, to provide transparency about the effectiveness of the system, ASA(B)/BCAP shall also publish an annual and mid-year report, as outlined in paragraphs 8.9 to 8.11 below.</b>

Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<p><b>Monitoring and performance reporting to Ofcom</b></p> <p><b>Quantitative</b></p> <p><b>Complaint response times</b></p>	<p>Amendment to reflect proposed new publishing format and updated reporting requirements, which take into account the maturity of the co-regulatory arrangements and that adequate checks and balances are in place to ensure contracted out functions are met.</p>	<p>8.3 The Parties agree to the following completion benchmarks against which ASA(B) will report average complaints turnaround to Ofcom:</p> <ul style="list-style-type: none"> <li>• 10 working days for a complaint that falls outside ASA(B)'s remit – i.e. the material complained about is excluded from the definition of broadcast advertising provided in the Introduction of the BCAP Code;</li> <li>• 15 working days for a complaint that requires no investigation – i.e. the material complained about does not appear to breach the BCAP Code and does not therefore require referral to the ASA(B) Council;</li> <li>• 20 working days for a complaint that requires no investigation after an ASA(B) Council Decision – i.e. where the ASA(B) Council has decided, without further investigation, that the material is not in breach of the BCAP Code;</li> <li>• 35 days for a complaint that requires an informal investigation – i.e. where a potential breach of the BCAP Code has been resolved by seeking co-operation from the relevant broadcaster(s) and advertiser without referral to the ASA(B) Council;</li> <li>• 60 days for a complaint that requires a standard investigation – i.e. where the complaint has warranted further investigation (and an ASA(B) Council Adjudication); and</li> <li>• 115 days for a complaint that requires a complex investigation – i.e. where the complaint has required further investigation of a detailed and/or technical nature (and an ASA(B) Council Adjudication).</li> </ul>	<p>8.3 The Parties agree to the following completion benchmarks against which ASA(B) will report average complaints turnaround to Ofcom <b>annually</b>:</p> <ul style="list-style-type: none"> <li>• 10 working days for a complaint that falls outside ASA(B)'s remit – i.e. the material complained about is excluded from the definition of broadcast advertising provided in the Introduction of the BCAP Code;</li> <li>• 15 working days for a complaint that requires no investigation – i.e. the material complained about does not appear to breach the BCAP Code and does not therefore require referral to the ASA(B) Council;</li> <li>• 20 working days for a complaint that requires no investigation after an ASA(B) Council Decision – i.e. where the ASA(B) Council has decided, without further investigation, that the material is not in breach of the BCAP Code;</li> <li>• 35 <b>working</b> days for a complaint that requires an informal investigation – i.e. where a potential breach of the BCAP Code has been resolved by seeking co-operation from the relevant broadcaster(s) and advertiser without referral to the ASA(B) Council;</li> <li>• 60 <b>working</b> days for a complaint that requires an <b>standard</b> investigation <b>that relates to a matter of harm and offence</b> – i.e. where the complaint has warranted further investigation (and an ASA(B) Council Adjudication); and</li> <li>• 115 <b>working</b> days for a complaint that requires an <b>complex</b> investigation <b>that relates to any other issue</b> – i.e. where the complaint has <b>required warranted</b> further investigation of a <b>detailed and/or technical nature</b> (and an ASA(B) Council Adjudication).</li> </ul>

Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<p><b>Monitoring and performance reporting to Ofcom</b></p> <p><b>Qualitative</b></p>	<p>Amendment to reflect proposed new reporting requirements, which take into account the maturity of the co-regulatory arrangements and that adequate checks and balances are in place to ensure contracted out functions are met.</p>	<p>8.7 The Parties agree that ASA(B) and BCAP will also report biannually to Ofcom in relation to the following, to ensure Ofcom’s comprehensive assessment of the effectiveness of broadcast advertising regulation at the time of reporting:</p>	<p>8.7 The Parties agree that ASA(B) and BCAP will also report biannually to Ofcom in relation to the following, to ensure Ofcom’s comprehensive assessment of the effectiveness of broadcast advertising regulation at the time of reporting:</p>

<p><b>Performance reporting to Ofcom</b></p>	<p>Amendment to reflect proposed new publishing requirements and formats.</p> <p>Updated to reflect the ASA's reporting of ongoing surveys.</p>	<p><b>Performance reporting to Ofcom</b></p> <p>8.9 The Parties note that:</p> <ul style="list-style-type: none"> <li>• the ASA(B and NB) Annual Report is published in May of each year, reporting on the previous calendar year; and</li> <li>•ASA(B) Ltd and BCAP Ltd's year end is 31 December.</li> </ul> <p>8.10 The Parties agree that:</p> <ul style="list-style-type: none"> <li>• the ASA Annual Report will contain a section dealing with the work processes and performance of ASA(B) and BCAP. Basbof will publish a separate report; and</li> <li>• ASA(B) and BCAP will publish a half-year statement in October of each year, setting out their performance for the past period and their objectives and targets for the forthcoming calendar year. Performance information will update the results reported in the Annual Report for the previous year, drawing on the results for the first six months of the year.</li> </ul> <p>8.11 The Parties agree that:</p> <ul style="list-style-type: none"> <li>• the annual reports and half-year statement will inform Ofcom's Annual Plan and also fits with Basbof's business planning cycle, public reporting against KPI's therefore taking place formally at year-end and at half-year;</li> <li>• rolling Customer Satisfaction surveys will feed into the six-monthly public reporting (ASA Annual Report and half-year statement), covering both complainants and advertisers/broadcasters;</li> <li>• the interpretation of complainant satisfaction scores must take into account the extent to which complaints about broadcast advertising are not upheld;</li> <li>• an annual Attitude and Awareness survey will feed into the annual statement;</li> </ul>	<p><b>ASA public Performance reporting to Ofcom</b></p> <p>8.9 The Parties note that:</p> <ul style="list-style-type: none"> <li>• the ASA(B and NB) Annual Report is published in <b>no later than</b> May of each year, reporting on the previous calendar year; and</li> <li>•ASA(B) Ltd and BCAP Ltd's year end is 31 December.</li> </ul> <p>8.10 The Parties agree that:</p> <ul style="list-style-type: none"> <li>• the ASA Annual Report will <b>report annually on</b> <del>contain a section dealing with</del> the work processes and performance of ASA(B) and BCAP. Basbof will publish a separate report; and</li> <li>• ASA(B) and BCAP will publish a <b>mid-year report</b> <del>half-year statement</del> in October of each year, setting out their performance for the past period and their objectives and targets for the forthcoming calendar year. Performance information will update the results reported in the Annual Report for the previous year, drawing on the results for the first six months of the year.</li> </ul> <p>8.11 The Parties agree that:</p> <ul style="list-style-type: none"> <li>• the annual reports and <b>mid-year reports</b> <del>half-year statement</del> will inform Ofcom's Annual Plan and also fits with Basbof's business planning cycle, public reporting against KPI's therefore taking place formally at year-end and at <del>half</del><b>mid</b>-year;</li> <li>• rolling Customer Satisfaction surveys will feed into the six-monthly public reporting (ASA Annual Report and <b>mid</b><del>half-year statement</del> <b>report</b>), covering both complainants and advertisers/<del>broadcasters</del>; <b>and</b></li> </ul>
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Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
		<ul style="list-style-type: none"> <li>• when considered appropriate by Ofcom, and by invitation, the Chair of ASA(B) (and, where appropriate, the Chair of BCAP) will attend the Ofcom Board and/or Content Board, to discuss the ASA Annual Report (in relation to ASA(B)) and/or other matters concerning advertising on Ofcom-licensed broadcast services; and</li> <li>• Ofcom will report, in relation to the regulation of broadcast advertising, on both ASA(B) and BCAP's performance and its own performance in its annual report, in July of each year.</li> </ul>	<ul style="list-style-type: none"> <li>• <del>the interpretation of complainant satisfaction scores must take into account the extent to which complaints about broadcast advertising are not upheld;</del></li> <li>• <del>an annual Attitude and Awareness survey will feed into the annual statement;</del></li> <li>• when considered appropriate by Ofcom, and by invitation, the Chair of ASA(B) (and, where appropriate, the Chair of BCAP) will attend the Ofcom Board and/or Content Board, to discuss the ASA Annual Report (in relation to ASA(B)) and/or other matters concerning advertising on Ofcom-licensed broadcast services; <del>and</del></li> <li>• <del>Ofcom will report, in relation to the regulation of broadcast advertising, on both ASA(B) and BCAP's performance and its own performance in its annual report, in July of each year.</del></li> </ul>

Subject Area	Summary of issue	2021 Broadcast MoU	New (draft) Broadcast MoU
<p><b>Recovery Programme</b></p>	<p>Paragraphs 10.2 and 10.3 to be deleted on the assumption that the MoU is agreed and the Deed is signed at the same time. If this is not the case, paragraphs 10.2 and 10.3 to be amended as stated.</p>	<p>10.1 The Parties agree that, if the system were consistently to fail to meet the agreed standards, they would open discussion at a Senior Management or Chief Executive level, to agree an appropriate strategy concerning corrective measures.</p> <p>10.2 Notwithstanding Ofcom’s statutory powers, the Parties intend the system described in this document should operate for a period of ten years, subject to the Parties entering into a new Deed of Arrangement by no later than 31 January 2015, such Deed to set out the operational arrangements to be agreed between them including any provisions relating to termination and compensation as may be appropriate. The new Deed of Arrangement will replace the 2004 Deed of Regulation. The Parties agree to enter into discussions in good faith.</p> <p>10.3 The Parties intend that the 2004 Deed of Regulation shall continue to apply pending agreement of the new Deed of Arrangement but that the 2004 Deed of Regulation shall in any event cease to apply on 31 January 2015.</p>	<p>10.1 The Parties agree that, if the system were consistently to fail to meet the agreed standards, they would open discussion at a Senior Management or Chief Executive level, to agree an appropriate strategy concerning corrective measures.</p> <p>[These paragraphs to be inserted only if the Deed and MoU are not signed at the same time]</p> <p>10.2 Notwithstanding Ofcom’s statutory powers, the Parties intend the system described in this document should operate for a period of ten years, subject to the Parties entering into a new Deed of Arrangement by no later than <del>31 January 2015</del>, <b>2 November 2024</b>, such Deed to set out the operational arrangements to be agreed between them including any provisions relating to termination and compensation as may be appropriate. The new Deed of Arrangement will replace the <del>2004</del> <b>2015</b> Deed of Regulation. The Parties agree to enter into discussions in good faith.</p> <p>10.3 The Parties intend that the <del>2004</del> <b>2015</b> Deed of Regulation shall continue to apply pending agreement of the new Deed of Arrangement but that the <del>2004</del> <b>2015</b> Deed of Regulation shall in any event cease to apply on <b>2 November 2024</b> <del>31 January 2015</del>.</p>



## Broadcast Authorisation (2014)

Subject Area	Summary of issue	2014 Broadcast Authorisation	New (draft) Broadcast Authorisation
<p><b>Standards functions to be exercised by BCAP</b></p> <p><b>Excluded Standards Objectives</b></p>	<p>Updated to reflect the legislative framework following the UK's withdrawal from the EU.</p>	<p>2. (f) so much of the objective set out at paragraph (i) of section 319(2), namely that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with, as relates to the obligations set out in Articles 10, 11, 20, 23, 24 of Directive 2010/13/EU.</p>	<p>2. (e) so much of the objective set out at paragraph (ha) of section 319(2), namely that the requirements of any EU directives, as they had effect immediately before IP completion day, with respect to advertising included in television and radio services are complied with, as relates to the obligations set out in Articles 10, 11, 20, 23, 24 of Directive 2010/13/EU.</p> <p>2. (f) so much of the objective set out at paragraph (i) of section 319(2), namely that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with, as relates to the obligations set out in Articles <del>10, 11, 20, 23, 24</del> of Directive 2010/13/EU <del>11(5), 12, 14, 16, 17, 18</del> of the European Convention on Transfrontier Television.</p>
<p><b>Standards functions to be exercised by BCAP</b></p> <p><b>Reporting to Ofcom</b></p>	<p>Updated to reflect proposed reporting requirements that take into account the maturity of the co-regulatory arrangements and that sufficient checks and balances are in place to ensure the contracted out functions are met.</p>	<p>5. BCAP shall, biannually, provide OFCOM with a written report detailing BCAP's exercise of the standards functions in the preceding calendar year. This report may be combined with the report referred to in paragraph 14 below at the discretion of BCAP and ASA(B).</p>	<p>5. BCAP shall, biannually, provide OFCOM with a written report detailing BCAP's exercise of the standards functions in the preceding calendar year. This report may be combined with the report referred to in paragraph 14 below at the discretion of BCAP and ASA(B).</p>
<p><b>Code complaints functions to be exercised by ASA(B)</b></p> <p><b>Reporting to Ofcom</b></p>	<p>Updated to reflect proposed reporting requirements that take into account the maturity of the co-regulatory arrangements and that sufficient checks and balances are in place to ensure the contracted out functions are met.</p>	<p>14. ASA(B) shall, biannually, provide OFCOM with a written report detailing ASA(B)'s exercise of the code complaints functions in the preceding calendar year. The report shall include quantitative and qualitative information regarding complaints received and handled and the monitoring of such standards set under section 319 of the 2003 Act as relate to advertising. This report may be combined with the report referred to in paragraph 5 above at the discretion of ASA(B) and BCAP.</p>	<p>14. ASA(B) shall, biannually, provide OFCOM with a written report detailing ASA(B)'s exercise of the code complaints functions in the preceding calendar year. The report shall include quantitative and qualitative information regarding complaints received and handled and the monitoring of such standards set under section 319 of the 2003 Act as relate to advertising. This report may be combined with the report referred to in paragraph 5 above at the discretion of ASA(B) and BCAP.</p>

