Too close for comfort

A look into the Advertising Standards Authority and the case for more controls on advertising

Adfree Cities
Too close for comfort

A look into the Advertising Standards Authority and the case for more controls on advertising
Drivers don’t decide their own speed limits, or set their own fines.

Restaurants don’t decide their own hygiene ratings.

So why are advertisers allowed to decide their own rules about what they can show us?
Executive Summary

EXTENT OF ADVERTISING

Trying to avoid advertising is like trying to avoid air. Almost everything we watch, read or listen to includes some form of advertising. If we are lucky it actually takes the form of an advert rather than being hidden in the content.

In the UK alone advertising spend is estimated to be £23.6 billion a year. Figures suggest that the average American is exposed to between 4,000 to 10,000 advertisements each day. Taking the lower estimate, that is 1,460,000 adverts every year.

Not only is the abundance of advertising increasing, sophisticated research and technology are being employed to overcome our defences to it. The technique known as neuromarketing uses brain scan imaging to track responses to advertising and packaging.

IMPACTS OF ADVERTISING

Advertising comes at a cost to us all, a cost that is hard to see and measure. The adverse impacts of advertising are far less studied than the multiple ways to manipulate and influence consumers. However, some research exists that is highlighting these impacts. For example ultra-thin models in advertisements and magazine pictures produce depression, stress, guilt, shame, insecurity, and body dissatisfaction in female college students.

This report sets out the other areas of harm that advertising is creating, but is not currently covered by its regulation. These include:

- Advertising shapes what we see as ‘normal’
- Advertising manipulates our feelings

HOW ADVERTISING IS REGULATED

- The Advertising Standards authority (ASA) is the regulator for advertising.
- Complaints made by the public about adverts have to be within the remit of the advertising codes. These codes are produced by the Committee of Advertising Practice (CAP) which is made up of ad industry representatives. This means advertisers decide what can be complained about.
- The ASA then compares complaints against the codes. Most complaints will not fit into the restrictive remit of the codes.
- The ASA panels may comment on the complaint and provide information to influence the decision.
- Many complaints are resolved informally by the ASA with the advertisers.
- A smaller proportion (20%) of complaints are investigated, these go to the ASA Council.
- With the help of a Council, the ASA makes decisions on complaints.
- The ASA does not have the ability to fine.
- Television adverts are assessed by Clearcast, a group paid for by television channels.

ADVERTISING COMPLAINTS

There is a huge lack of detail about complaints, and the categorisation of them makes it impossible to see if the ASA is currently overlooking many legitimate concerns.

In 2018 only 4% of all complaints resulted in formal action being taken by the regulator. That is just 387 of the 25,259 adverts complained about. Without more information on the nature of the complaints it is hard to say whether such a low rate of action is
Executive Summary

warranted. But other indicators suggest that complaints are being ignored.

Of the ten most complained about adverts of 2017 none resulted in any action being taken at all by the ASA. Two of the adverts were voluntarily pulled by the advertisers while in all other cases the ASA stated the rules were not broken. In this report we look at some of these cases in detail. From our analysis it appears that the regulatory system is failing us.

**KEY WAYS TO IMPROVE THE REGULATION OF ADVERTISING**

1. Make the ASA a truly independent body

The funding of the body should be at arm’s length and advertisers should no longer be part of the decision making processes.

2. Experts on psychological harm to be brought into regulation process

The ASA should employ experts on the potential psychological harm caused by advertising and these experts should be part of reviewing and updating the codes.

3. Greater transparency in complaints recording

The huge numbers of complaints that are discounted currently do not contribute anything to the regulation process. More details, and categorising such as on what grounds something was offensive, would help greatly in establishing whether the codes are fit for purpose.

4. A public jury deciding advertising complaints

Similar to jury duty, members of the public should be part of the panel that decides whether a complaint should be upheld.

5. A legal ban on high carbon advertising

Use a similar legal process to the banning of tobacco advertising to ban adverts for oil companies, highly polluting Sports Utility Vehicles and airlines. People may be free to use these products but given the climate emergency it is hard to see a rationale for creating further demand through advertising.
Advertising is everywhere: on our smartphones, in the media, at the bus stop and in our streets. Many communities in Britain are organising to reduce the amount of public space that advertisers have to push their commercial messages on us. Concerns range from the impacts of advertising on the environment, our mental health and wellbeing; to how the dominance of consumerism has shaped our values, our aspirations and what we consider to be the ‘good life’.

In their attempts to fill our public spaces with more advertising screens, billboard companies like JCDecaux and Clear Channel dismiss these objections and state that any concerns about the content of adverts should be directed to the Advertising Standards Authority - the self-regulation body for advertising in the UK.

This report explores how the ASA, our supposed means of redress, is run by advertising industry figures who are reluctant to answer these public concerns. It explores what changes need to be made to better regulate and reduce the impacts of commercial messaging in our lives. It is intended to be of use by members of the public, parents, campaigners and critical voices within the advertising industry itself.

As opposition to outdoor advertising grows within Bristol, new Adblock groups have set up in Birmingham, Cardiff, Leeds and beyond. A national network is forming to answer the question: how can we reduce the dominance of consumer messaging in our public space to create happier, healthier and less stressed out cities? Understanding the systemic flaws in the regulatory framework for advertising is part of that process.

Robbie Gillett, Adblock Bristol co-founder
August 2020
“I just ignore them” – what’s so wrong with advertising?

If we don’t like advertising, then why don’t we just ignore it?

Unfortunately, it’s not that simple. Advertising is harder to avoid than ever before. You only have to walk down a high street, watch television, visit the cinema, or switch on your tablet or smartphone to see that ignoring advertising is almost impossible. The number of adverts we see or hear every day is increasing and so is their sophistication. Wherever you go, whatever you are doing, you are usually being targeted by people trying to sell you something.

Advertising plays an important role in shaping both our culture and our motivations. Even if we try to ignore it, advertising will still influence us.

The idea that humans are simply information processing machines that can choose what we consciously take in and what we ignore is outdated and at odds with today’s understanding of how the mind works. There is also a growing body of evidence suggesting that the cumulative effect of advertising is likely to be impacting on how we feel and behave. It is advertisers that know this better than anyone. They manipulate our feelings and emotions to sell us things. If this was not the case adverts would look very different - they would contain less emotional content, talking animals, aspirational ideals and more information about the products on offer.

Through the Advertising Standards Authority (ASA), marketing companies are left to regulate themselves despite the fact they are the ones actively trying to manipulate us. They fund the ASA and exclusively staff the panels in control of producing the rules that govern advertising. They are also part of the group that decides whether complaints are valid. Finally, even in the rare cases where the ASA has judged complaints to be valid, the action taken against the advert has rarely been more than simply stopping it - when it has probably already run for a sizable proportion of its intended campaign length.

While a degree of input into the process of regulation by advertisers might be argued for by some, the current level of control over it seems disproportionate and biased.

School children don’t get to mark their own homework, restaurants do not determine their own food hygiene ratings, why then should those foisting adverts upon us (that we don’t ask for and don’t want) get to decide what is appropriate for us to see?

We need a new system that prioritises people rather than the interests of advertisers. We are not setting out to do away with advertising but rather bring it under control and see it regulated independently. It is no longer appropriate for the foxes to be in control of the hen house.

The advertisers and the organisation that regulates them are just too close for comfort...
Part One

Advertising is everywhere

With every year that passes the abundance and sophistication of advertising increases. We see more adverts than ever before, many of which are being targeted at us directly. Given this bombardment we need to have confidence that those adverts are not doing us harm.

“Every year, advertisers press a little further into our lives, shrinking the uncontaminated space in which we may live. In ways in which we are often scarcely aware, they change our perceptions of the world, alter our values, infiltrate the language.”

GEORGE MONBIOT, Author
Advertising is everywhere

ADVERTISING IS BIG BUSINESS

The fact that advertising exists is proof of its effectiveness in persuasion.

In the UK alone advertising spend is estimated to be £23.6 billion\(^1\) a year. The larger companies now spend the equivalent of a small country’s Gross Domestic Product (GDP) on advertising every year. Clearly advertising works or it would be a total waste of money. This position is nicely summarised in a quote by Rory Sutherland written in his former capacity as President of the Institute of Practitioners in Advertising:

“The truth is that marketing raises enormous ethical questions every day—at least it does if you’re doing it right. If this were not the case, the only possible explanations are either that you believe marketers are too ineffectual to make any difference, or you believe that marketing activities only affect people at the level of conscious argument. Neither of these possibilities appeals to me. I would rather be thought of as evil than useless.”\(^2\)

HOW MUCH ADVERTISING ARE WE EXPOSED TO?

There are many studies and figures about our exposure to advertising. Although there does not seem to be one definitive estimate, the numbers opposite [Fig 1] give you an indication of its scale.

Over 40k
Number of TV ads the average child in the USA sees in a year\(^3\)

4,000 – 10,000
Number of adverts Americans are exposed to a year\(^4\)

42
Number of TV adverts UK viewers are exposed to a day\(^5\)

However, these figures concentrate mainly on television. Recent attempts to record our exposure to all types of advertising including digital show an even starker picture of how we are bombarded with advertisers’ messages. It is estimated that the average American is exposed to between 4,000 to 10,000 advertisements each day.\(^6\) Taking the lower estimate, that is 1,460,000 adverts every year.

Clearly this is too many to fully engage with or consciously process. However the fact we have not registered seeing an advertisement does not mean it has not affected us. Some used to think we could choose to respond only to what we see and consciously process. But psychological research now suggests messages influence us at an unconscious level.

NEUROMARKETING

As Professor Agnes Nairn explains:\(^7\)

“We know from a substantial body of neuroscientific research that the brain processes information (including advertising messages) using two systems: implicit and explicit. Implicit processing happens at a subconscious level, is automatic, fast and impulsive whilst explicit processing happens at a conscious rational level and is deliberate, slower and more effortful. These systems...
appear to operate in separate parts of the brain and can lead us to form contradictory attitudes. In other words we can tell a researcher that we believe that a particular product is bad for our health whilst at the same time an implicitly processed message can lead us to form a positive feeling for the brand which can ultimately lead us to buy the product.”

The fact that we are unconsciously impacted and influenced by the messages we see is something that those in advertising and marketing know very well. That is why a whole field of advertising based on employing insights from neuroscience has emerged, called neuromarketing.

“Neuromarketing is the application of neuroscience to marketing. Neuromarketing includes the direct use of brain imaging, scanning, or other brain activity measurement technology to measure a subject’s response to specific products, packaging, advertising, or other marketing elements. In some cases, the brain responses measured by these techniques may not be consciously perceived by the subject; hence, this data may be more revealing than self-reporting on surveys, in focus groups, etc.”[8]

The mere existence of neuromarketing seems to shatter the idea that advertisers are simply trying to show us products and give us choices. Their aim is to influence us even if that is unconsciously.

**NEVER TOO YOUNG FOR ADVERTISING**

It is not just adults that are targeted by advertisers. Advertisers also understand the importance of establishing brand relationships as early as possible. This article in Packaging Digest is candid:[9]

Kids’ relationships with brands begin at a very early age. At six months of age, babies begin to recognize brands by forming mental images of corporate logos and mascots. Brand loyalty may begin as early as age two. By age 3, one out of five American children make specific requests for brand-name products. By age 5, children are ready to make their own (parent-financed) purchases. And by age 7, they are totally in control. With this control comes power— a power to make their own decisions. Add the complexities in a seven-and-older child’s life (including elusive tweens and teens) and prepare yourself for potentially turbulent brand relationships. Yet many of these relationships last a lifetime. In fact, in many categories over 25% of brand preferences persist from childhood to adulthood. Adult brand allegiance is powerfully influenced by nostalgia and childhood associations.”

Whether these insights should be used in this way is deeply questionable. Children may be able to build a long-
Advertising is everywhere

standing relationship with a brand by age 5, but should they? Surely their susceptibility means children should be better protected, not exploited.

But the above seems unambitious when compared to revelations that emerged in 2012 about US marketing practices. Why wait for the child to be born when you can recruit an expectant mother instead? Andrew Pole, a statistician employed by American supermarket chain Target, explained how they used data on people’s spending habits to find out if they were pregnant and used this information to advertise them further products.

“We knew that if we could identify them in their second trimester, there’s a good chance we could capture them for years.”[10]

Companies know that at significant times in our lives we are more open to changing our behaviours, like our shopping preferences. A number of companies have been using statisticians in order to mine the data they have on people’s spending habits so they can influence them to spend more. A Target executive explained:

“We found out that as long as a pregnant woman thinks she hasn’t been spied on, she’ll use the [Target store] coupons. She just assumes that everyone else on her block got the same mailer for diapers and cribs. As long as we don’t spook her, it works.”[11] With these two things in mind it is imperative we understand the potential harm advertising can do to us.

**BUT WHAT IS ADVERTISING?**

The line between what is and is not advertising has become increasingly blurred in recent years. When most people think of an advert they probably think of a TV commercial or a billboard or perhaps a sponsored response to a google search. However, more than ever advertising is also bleeding into the actual content of the media we consume. Product placement is everywhere, from the Nationwide cashpoint in Coronation Street to Instagram celebrities being paid to use products. Even newspapers have started to run ‘advertorials’, articles where the content is written by the advertisers rather than journalists.

With the amount and type of advertising we are facing changing so rapidly clearly we need a regulator that is up to the challenge. Two things are now becoming clear:

1. We are being subjected to more advertising in more forms than ever before.

2. Advertisers have made it their goal to influence us on a subconscious level.
Part Two
The impacts of advertising

Advertising undermines our wellbeing. It drives both consumption and consumerism, and as a consequence increases pollution and environmental degradation. Adverts often manipulate our feelings to make us feel bad about ourselves and our bodies - and even when we think we don’t notice them, they are affecting our subconscious.

“The primary function of advertising, is, we are told, to introduce a wide range of consumer goods to the public and thus support the free market economy, but this is clearly not its only role; over the years it has become more and more involved in the manipulation of social values and attitudes.”

GILLIAN DYER,
Author of Advertising as Communication
The impacts of advertising

The reason we need greater controls on advertising is because of the potential harm it can do. Advertising impacts on us in many ways, a large number of which we are not aware of.

**ADVERTS TRY TO INFLUENCE US, NOT INFORM US**

The entire point of advertising is to convince us to buy products by manipulating us in some way. If no manipulation was involved adverts would simply be lists of features a product has and a description of how they work. Car adverts don’t tell you the amount of boot space, instead they tell you a story about how exciting your life could be, using large amounts of special effects. Even those in advertising, who may not frame it as manipulation, would certainly agree that an advert is more than just information transfer. The previous section highlighted that both big data and neuroscience are being used to influence our subconscious minds. What impacts might this type of manipulation be having?

**YOU CAN’T IGNORE ADVERTS, EVEN IF YOU TRY**

Research from the University of Bath shows that we do not need to pay conscious attention to an advertisement in order to be influenced by it.[12] The ‘Low Attention Processing Model’ argues that because we are very accustomed to seeing adverts on a daily basis our minds stop processing them consciously and leave them to the subconscious to deal with. Advertisers know this: some of the most creative people in the world are currently employed to create a slick repetition of brand images to create familiarity. With familiarity comes trust. Trust in a brand means we’re more likely to purchase them. All this can happen at a subconscious level.

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**Marketing stimulus**

i.e. advertising, packaging, product etc

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**Fig 2. A simplified illustration of ‘The Low Attention Processing Model’**

Developed by Professor Robert Heath (University of Bath) & Professor Agnes Nairn (University of Bristol).
The impacts of advertising

ADVERTISING HAS PROVEN PSYCHOLOGICAL IMPACTS

Studying the impact of an individual advert is extremely difficult, but numerous studies suggest these impacts are significant:

- Television adverts for fast food cause people to snack more on unhealthy foods [13]

- Exposure to ultra-thin models in advertisements and magazine pictures produce depression, stress, guilt, shame, insecurity, and body dissatisfaction in female college students [14]

- Advertising that is not noticed by the person still has effects on that person’s purchase behaviour up to three months later [15]

- When 8-11-year-olds were happier with their lives, they became less materialistic. But more material possessions did not make them happier. [16]

ADVERTISING SHAPES WHAT WE SEE AS ‘NORMAL’

The representations we see around us, on television, the internet, in magazines and in cinema give us a sense of what the world around us looks like and importantly what ‘normal’ is. If TV shows, films and adverts consistently only show us white, straight, able-bodied people doing certain jobs or roles then where are the role models for people, especially children, who come from a more diverse background? This view that advertising shapes our cultural expectations is supported by research, and is something the ASA already accepts in the case of adult representation of gender only, as we will see later in the report.

ADVERTISING MANIPULATES OUR FEELINGS

In 1928 Edward L. Bernays wrote “Men (people) are rarely aware of the real reasons which motivate their actions.” [17] The ‘godfather of public relations’ knew even back then, that successful advertising has never been about the actual product but rather the unconscious associations advertisers are trying to connect with it.

“The more abundant goods become and the more removed they are from basic social needs, the more open we are to appeals which are psychologically grounded... The reason that we have to be ‘magically’ induced to buy things through fantasy situations and satisfactions is because advertisers cannot rely on rational arguments to sell their goods in sufficient quantity. The primary function of advertising, is, we are told, to introduce a wide range of consumer goods to the public and thus support the free market economy, but this is clearly not its only role; over the years it has become more and more involved in the manipulation of social values and attitudes, and less concerned with the communication of essential information about goods and services.”

– Gillian Dyer, Advertising as Communication [18]

We would probably all agree that an entertaining advert is better than a boring one. The use of humour and over-the-top imagery have been a part of advertising for decades. However there is a fine line between making adverts that entertain and adverts that manipulate. Attempts to associate products with a certain feeling or family value is where this line is not just crossed but stamped over.

The highs and lows of adoption have been used to sell fried chicken (KFC, 2015), a defining moment of peace in the brutal First World War has been used to sell supermarket chocolate (Sainsburys, 2014) and a big burger chain has tried to convince us that it is all about community and friendship rather than fatty highly processed food (McDonald’s, 2013). As discussed in the previous section, some ‘neuromarketeers’, those using insights from neuroscience to inform advertising, have suggested “the best advertising actually works through emotional processing, not persuasion, and emotional content is processed.
The impacts of advertising

The impacts of advertising further away from their role as housewives and into the workplace, beauty ideals were increasingly used by advertisers and magazines to control, manipulate and to keep women firmly in their role as the primary consumer. Wolf calls this tactic the ‘beauty myth’ and notes that:

“Someone must have figured out that they [women] will buy more things if they are kept in the self-hating, ever-failing, hungry and sexually insecure state of being aspiring “beauties.””

- Naomi Wolf, The Beauty Myth

As we are bombarded with marketing images from a young age, the impacts on our mental wellbeing have been well documented. Eating disorders such as bulimia and anorexia have increased in the UK: doubling between 2010 and 2017 with a particular surge amongst teenage girls and women in their early 20s.

More recently the constant portrayal of unrealistic beauty and body images in social media, using similar airbrushing and alteration techniques used in advertising, has led to a rise in cosmetic surgery requests.

The American Psychological Association found that the sexualisation of women and girls in advertising and other media is harmful to girls’ self-image and is linked to eating disorders, low self-esteem and depression.

“A fairly substantial body of research agrees that those who feel bad about themselves and who are exposed to advertising are much more likely to rush to purchase all the toys, gadgets and electronics that we are urged to buy. They think it will make them feel better. But of course it doesn’t – it just creates a vicious circle of wanting and poor well-being. It can also cause tension in families as kids ask for things they can’t have and parents feel endlessly guilty about buying stuff and about not buying stuff. No one really wins, apart from the retailers.”

- Professor Agnes Nairn, University of Bristol

ADVERTISING UNDERMINES OUR SELF-ESTEEM AND MENTAL HEALTH

In ‘The Beauty Myth’ (1991), Naomi Wolf argues that as women moved

ADVERTISING UNDERMINES OUR SELF-ESTEEM AND MENTAL HEALTH

In ‘The Beauty Myth’ (1991), Naomi Wolf argues that as women moved

ADVERTISING HELPS FUEL THE ENVIRONMENTAL CRISIS

Just as adverts help normalise the roles of different people in society they also create norms about animals.

We currently have a system where the advertising codes rightly stop someone promising a false interest rate on a credit card but if misleading information relates to animals it is simply ignored. Adverts for butter, that in reality are produced in intensive closed systems where cows don’t see the light of day, are allowed to contain cows frolicking in the grass or products that are made from factory farmed poultry can be advertised using dancing chickens, even though both are as misleading as false financial information. This is something a large number of people feel strongly about: a 2017 KFC advert was the most complained about of the year (a more detailed case study can be found later in the report).

Even if adverts are seeking to be humorous, they are still attempting to link their product with happy animals, misleading the viewer about the conditions in which their products are farmed.

ADVERTISING IS HAPPY TO HIDE ANIMAL CRUELTY

A Lynx Deodorant billboard advert

A Lynx Deodorant billboard advert
The impacts of advertising

problem is not just that it encourages us to buy more things we don’t need but also the way it does it. Fossil fuel-guzzling vehicles, that are wrecking the climate, are sold to us using adverts full of wildlife and habitats threatened by climate change. Many products, often disposable, are made to look life fulfilling and part of an adventurous or healthy lifestyle.

While it may not be the responsibility of advertisers to decide what products are created and sold, it is their responsibility to decide how they are marketed.

Should travel adverts be able to highlight exotic wildlife when the cheap flights they are offering are actually causing harm to the environment on which this wildlife depends? Should fast food outlets and supermarkets be able to ignore the waste they produce?

The more we continue to see adverts for airlines, sports utility vehicles and plastic products, the longer we will continue to see these things as normal and necessary.

Just because an environmentally damaging product is available to buy does not mean that it should be advertised and promoted. Like smoking, high carbon products have an impact on everyone, not just the user. And both have been heavily promoted through advertising. It was due to the indirect impacts on others that, although still available to buy, the Tobacco Advertising and Promotion Act 2002 banned the direct and indirect advertising or promotion of tobacco products.

The situation for high carbon products is strikingly similar to the situation we were once in with tobacco. While it might be argued that the products should not be banned it is clear they are harmful and that advertising them can no longer be seen as acceptable.

It is impossible to ignore the science and news coverage about the severity of climate change. We need to act urgently. Like everyone else, advertisers have a responsibility to try to resolve the environmental crisis we face (something we will come back to in the final section).

So we have seen how advertising does us harm, the next question is why are we not being protected from this harm? Who is currently responsible for controlling advertising?

Above: A KFC advert from 2017 shows a chicken with room to dance, contrasted with the reality of conditions inside a KFC supplier

Below: Car adverts in particular use nature and open space to make their products look more attractive. They rarely, if ever, show the reality of cars stuck in traffic jams in congested urban streets
Part Three

How adverts are currently policed

Advertising is self-policing. Advertisers pay for their own regulation and get to write their own rules. The advertising regulator is unable to give out fines even when rules are broken. The punishment given to those adverts that ignore the codes is usually a slap on the wrist or occasionally removal of the advert. However, adverts are only removed once an investigation into breaches has been undertaken, which can take weeks.

“The further away something is, the better I can see it, but once it gets close, I lose sight of it”

AI YAZAWA, Manga author
Out of control... How advertising is currently policed

Advertising is “self-regulated”. What this means in practice is that the regulatory body, the Advertising Standards Authority, is paid for directly by advertisers and advertisers are involved in producing and enforcing regulation.

In order to see its shortcomings it may help to look at other examples. Would we allow water companies to control water quality or the Food Standards Agency to be replaced by a group appointed entirely by supermarkets and the food industry? The “horse meat scandal” in Britain in 2013 (where horse was labelled as beef in many products) and the Volkswagen emissions scandal show a clear need for independent regulation. While neither scandal was directly the result of self-regulation, both were caused by rolling back enforcement and reducing checks, relying more on trusting those involved to follow the rules in place.

While successive governments have striven for less regulation and more voluntary approaches, evidence that these self-regulatory approaches work is thin on the ground. What incentive is there for industry to adhere to the rules? If they make the rules and also apply them - who is keeping an independent eye on things?

The onus on so called “self-regulation” is made all the more concerning because advertising isn’t always something we make a choice about being subjected to.

No consent means more controls are needed

It is because of the impacts mentioned in the previous chapter that advertising needs stricter controls. The content of advertising is not like the content of other media that you make an informed choice to view. Although you may buy a newspaper, visit a website, go to the cinema or switch the television channel and understand that the content includes some advertising, you have no choice about what advertising you will be exposed to. You have no control over the content and must trust that the regulator has ensured that what you hear or see will not harm or offend you. In other circumstances you have no choice at all, as billboards and bus stops fill our public space with advertising whether we like it or not. Advertising has a single purpose: to make you buy a product. If we have no choice about what we see and hear, we should at least be assured that it is not doing us harm.

Overview of complaints process and roles

• The ASA is the regulator for advertising.
• According to the ASA an organisational diagram does not exist so exact roles and responsibilities are hard for those outside to see.
• Television adverts are assessed by Clearcast, a group paid for by television channels.
• Complaints about adverts have to be within the remit of the advertising codes.
• These codes are produced by the Committee of Advertising Practice (CAP) which is made up of industry representatives.
• The ASA then compares complaints against the codes.
• The ASA panels may comment on the complaint providing information to influence the decision.
• Many complaints are resolved informally by the ASA with the advertisers.
• A small number of complaints are investigated, these go to the ASA Council.
• With the help of a Council, the ASA make decisions on complaints.
• The ASA does not have the ability to fine.

Fig 3. Overview of complaints process
THE ADVERTISING STANDARDS AUTHORITY (ASA)

The ASAs stated role is: “The ASA is the UK’s independent advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Advertising Codes).” [26]

The Advertising Standards Authority could best be described as the UK’s “semi-independent” or perhaps “barely independent” advertising regulator. It is paid for by the advertising industry and members of the industry sit on its boards, panels and committees. As the ASA is paid for directly by advertisers it has a direct interest in keeping them happy. Much of their online and published material focuses on proportionate intervention and highlights the small number of adverts that receive sanctions or break the codes and the large number of cases that are resolved without the need for any action.

“We have to strike the right balance between those we regulate and those we protect. By making ads responsible we protect people and help them feel more confident in the ads they see and hear. By doing so in a way that’s fair and balanced towards businesses and advertisers, we allow responsible advertising to flourish.” [27]

The above quote from the ASA document Our commitment to good regulation shows the emphasis put on “balancing” the needs of both those being regulated and the public. Surely the public should come first?

THE COMMITTEE OF ADVERTISING PRACTICE (CAP)

According to the ASA:

“The Committee of Advertising Practice (CAP) is the sister organisation of the ASA and is responsible for writing the Advertising Codes. The ASA and CAP are committed to regulating in a way that is transparent, proportionate, targeted, evidence-based, consistent and accountable.” [28]

It is comprised entirely of industry people.

According to the ASA website, CAP membership consists of representatives from the following organisations, all of which are from the industry:

- Television on Demand Industry Forum
- Advertising Association
- Cinema Advertising Association
- Direct Marketing Association
- Direct Selling Association
- Incorporated Society of British Advertisers
- Institute of Practitioners in Advertising
- Institute of Promotional Marketing
- Internet Advertising Bureau
- Mobile UK
- News Media Association
- Outsmart Out of Home
- Professional Publishers Association
- Proprietary Association of Great Britain
- Royal Mail
- Scottish Newspaper Society
- Clearcast
- Radiocentre

While the broadcasting equivalent (BCAP) is made up of the following:

- Advertising Association
- Sky UK Ltd
- Channel 4 Television Corporation
- Channel 5 Broadcasting Ltd
- Commercial Broadcasters Association (CoBA)
- Direct Marketing Association
- Electronic Retailing Association UK
- Incorporated Society of British Advertisers
- Institute of Practitioners in Advertising

Numerous scandals, such as the car emissions scandal being satirised by Jonathan Barnbrook in the Brandalism project above, show that business has little interest in policing itself [Brandalism, 2015]
Advertising
• ITV plc
• Radiocentre
• S4C
• BT
• STV

As you can see, both the CAP and BCAP memberships are entirely made up of industry representatives. [28]

ASA BOARD
This board is made up of industry people and other broadcasting or consumer rights groups. This body reviews complaints but importantly is not involved in writing the codes; that process is advised entirely by those in the industry.

ASA PANELS
According to the ASA website, the role of the panels is as follows:

“The CAP receives valuable support from three industry panels – the Industry Advisory Panel, the Promotional Marketing and Direct Response Panel and the Online Publications Media Panel.

The Panels bring together advertisers, creatives, media planners and publishers who volunteer their time to give advice on regulatory aspects of marketing communications.

The Panels’ opinions are not binding on either the ASA and CAP Executive team or the ASA Council. The panels may be asked to discuss:

• A recommendation before the ASA Executive gives it to Council, either at the request of the Executive or any party to the complaint. The Panels’ opinion will not be included in the recommendation but will be reported to Council.
• Specific copy advice
• The application of a Code rule
• Common industry practice or,
• Other general regulatory subjects.

CAP may also use the Panels to help draft Advertising Guidance or revisions to the Codes for its consideration. The Panel will almost never consider scientific or highly specialised evidence: where necessary the ASA and CAP Executives will instruct outside experts on matters beyond the collective knowledge of the Executive and Council.”

So while these panels sit outside the standard process of code writing and making rulings on complaints they have an influence on both. Given that the codes themselves are already produced by a group of advertisers it is unclear why the panels themselves are necessary. Even if they existed as a consultative forum, given the involvement of industry people at every stage from code writing to decision making it is unclear why further consultation would be required. It appears to be another way in which the ASA’s independence is questionable. The informal nature of the role of the panels makes decision making seem unclear and untransparent from the outside.

ASA EXPERTS
The ASA also have a number of experts to help advise them on claims made by adverts. These experts are on hand to assess if claims made in adverts can be substantiated, like verifying the health benefits of a product or the small print of a financial product. But none are qualified in looking at the harm advertising does to our wellbeing.

LACK OF TRANSPARENCY
This self-funding, arms length from government approach also produces other problems. It is imperative that independent regulators are both transparent about their processes and open to questions about them. However, the lack of government involvement means that the same rules and levels of scrutiny do not apply. Take the Freedom of Information Act as an example. This paragraph is from the ASA website.

The ASA has taken legal advice. CAP understands that the Act does not apply to ASA, ASAB, CAP or BCAP because they are not classed as “public authorities”. People who believe they can request information under the Act, or are concerned that the ASA or CAP might release sensitive information to others, are mistaken. [30]

Given its role as a regulator, it seems fair that the ASA should be subject to FOI requests like other public bodies.

CLEARCAST
This is a group independent from the ASA and directly funded by ITV, Channel 4, Sky and Turner. Their role is to vet advertising scripts for clearance against the ASA’s codes before they get made. A Clearcast publication states that their job is to “get adverts on the air and keep them there”. [31]

It is strange that for broadcast a separate body is involved in the clearance process. Getting the ASA to do this role would make much more sense and give at least the air of independence to the process.

Script clearance is obviously used at this early stage as advertising is an expensive business and advertisers want to know their TV ads will be compliant before potentially hundreds
of thousands of pounds are spent.

Clearcast focuses the majority of its efforts at the script stage. The filming and editing can have a huge impact on the end result. It can change the emphasis and focus of the story meaning that elements that may have adverse impacts on people could be in the finished product that were not obvious in the script. Video clearance of the adverts does occur but Clearcast’s website makes it clear that this is for minor changes like checking for flashing images to prevent triggering epilepsy and checking performing rights for music used. Significant changes are difficult to make and unlikely once the huge budget has already been spent. [12]

OFFICE OF COMMUNICATION (OFCOM)

Ofcom used to be in charge of television advertising but has now given this responsibility to the ASA. The ASA reports to Ofcom about complaints. Ofcom are still responsible for non-advertising content on television, including political adverts.

How a complaint is processed by the ASA

As we will see in the following section very few complaints are investigated, but those that are end up with rulings being published on the ASA website.

The rulings are available for anyone to see and it’s interesting to note how few of the complaints result in any sort of action.
Part Four

The current advertising rules

The advertising codes are the rules, written by advertisers, that state what adverts can and can’t include. They are currently focused on factual accuracy and claims about products. They do little to address the mental, social and environmental harms advertising causes.

“Most advertising works by trying to excite us about things which we didn’t know we wanted and in many cases that we don’t deeply need, and that pull us in unhelpful directions. It’s not the new car, the holiday or the latest restaurant experience, these things aren’t going to resolve our desire to belong, or to work out our relationships for us.”

ALAIN DE BOTTON, School of life
THE CURRENT RULES AND WHAT THEY COVER

There are separate codes for broadcast (TV and radio) and non-broadcast media. Figure 5 lists all of the different codes (for full details on every code visit the ASA website). Some codes are the same in terms of what they cover, but different in terms of the detail for the codes for broadcast and non-broadcast.

As you can see from Figure 5 there are a large number of codes. It is somewhat overwhelming: if a consumer wants to check whether a code has been breached there is a lot of work for them to do. Considering almost all of the codes listed are primarily concerned with whether claims are factual or if content could be considered misleading it is hard to understand why they are not more streamlined.

WHAT IS IN THE CODES?

The majority of codes relate to whether an advert is misleading. As well as there being a specific code about misleading advertising, most of the codes about specific types of advert (such as cosmetics, food, homeworking, financial services, environmentally friendly products etc) are also largely focused on whether an advert is making false claims or not.

The idea of having codes is sensible but if they consistently fail to cover nearly 80% of complaints (see next section) then they do not appear to be fit for purpose.

To give one example of a full code, see the non-broadcast code for harm and offence. [Fig 6]

Notice that “widespread offence” is frequently mentioned but not defined. Also the code states that “The fact that a product is offensive to some people is not grounds for finding a marketing communication in breach of the Code.” While this may seem a sensible assumption it fails to set out what criteria make something offensive. While we understand and agree what offends one person might not offend us all, we must have some workable criteria that are easy for everyone to understand. Clearer criteria for what is considered offensive would both help the public making complaints and allow the ASA to more clearly demonstrate the reasons for its rulings.

The codes themselves are highly ambiguous which makes decisions made using them hard to challenge. This is particularly true for section 4.2 that states “must not cause fear or distress without justifiable reason”. Given the involvement of advertisers in the regulatory process they are likely to have the biggest influence over deciding what is, and will be, considered “justifiable reasons”.

What the ASA codes cover

Codes which apply to non-broadcast only (Internet/newspapers/billboards etc)

- Promotional marketing
- Use of data for marketing

Codes which apply to both broadcast and non-broadcast

- Tobacco, rolling papers and filters
- Electronic cigarettes
- Prohibited categories
- Faith, religion and equivalent systems of belief
- Charities
- Betting tipsters
- Premium-rate telephone services
- Telecommunications-based sexual entertainment services
- Instructional courses
- Services offering individual advice on consumer or personal problems
- Introduction and dating services
- Competitions
- Private investigation agencies
- Pornography
- Other categories of radio advertisements that require central copy clearance
- Scheduling

Fig 5. What the ASA codes cover
You will note that the rules on environment [Fig 6] are based purely on claims made about products, and does nothing to cover the environmental impact of a product. This means that the rules only apply if an advert claims a product is better for the environment than it is and has no evidence to prove it. There is nothing limiting the advertising of environmentally damaging products or that stops advertising from using the environment to sell products that damage it.

**HOW COMPLAINTS RELATE TO CODES**

If you make a complaint it will only be investigated if it is seen to be in breach of one of these codes.

Only when codes cover the nature of the complaint will an investigation happen. However, these small number of investigations are highly dependent on what the CAP have written codes about.

For example; the most complained about advert of 2017 was the use of dancing chickens in a KFC advert. Many found this ad offensive. Despite the large number of codes covering different types of misleading information, the codes on offence or misleading advertising do not cover the misrepresentation of animals or their conditions. In this instance then the ASA stated that as the slaughter of the animals was not mentioned then it could not be considered offensive.

### ADVERTS THAT BREACH THE CODES

If an advert is found to breach a code by the ASA then action can be taken.

### HOW LONG DOES THE PROCESS TAKE?

If investigated the process can typically between 60 and 115 days according to the ASA annual report figures. This means in many cases an advert can run for all, or at least the majority of its intended time even if the complaint ends up being upheld.

<table>
<thead>
<tr>
<th><strong>ASA code examples</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CAP Code 04: Harm and offence</strong></td>
</tr>
<tr>
<td>Principle: Marketers should take account of the prevailing standards in society and the context in which a marketing communication is likely to appear to minimise the risk of causing harm or serious or widespread offence.</td>
</tr>
<tr>
<td>4.1 Marketing communications must not contain anything that is likely to cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of race, religion, gender, sexual orientation, disability or age. Compliance will be judged on the context, medium, audience, product and prevailing standards. Marketing communications may be distasteful without necessarily breaching this rule. Marketers are urged to consider public sensitivities before using potentially offensive material. The fact that a product is offensive to some people is not grounds for finding a marketing communication in breach of the Code.</td>
</tr>
<tr>
<td>4.2 Marketing communications must not cause fear or distress without justifiable reason; if it can be justified, the fear or distress should not be excessive. Marketers must not use a shocking claim or image merely to attract attention.</td>
</tr>
<tr>
<td>4.3 References to anyone who is dead must be handled with particular care to avoid causing offence or distress.</td>
</tr>
<tr>
<td>4.4 Marketing communications must contain nothing that is likely to condone or encourage violence or anti-social behaviour.</td>
</tr>
<tr>
<td>4.5 Marketing communications, especially those addressed to or depicting a child, must not condone or encourage an unsafe practice (see Section 5: Children).</td>
</tr>
<tr>
<td>4.6 Marketing communications must not encourage consumers to drink and drive. Marketing communications must, where relevant, include a prominent warning on the dangers of drinking and driving and must not suggest that the effects of drinking alcohol can be masked.</td>
</tr>
</tbody>
</table>

**Fig 6. ASA code examples**
4.7 Marketers must take particular care not to include in their marketing communications visual effects or techniques that are likely to adversely affect members of the public with photosensitive epilepsy.

4.8 Marketing communications must not portray or represent anyone who is, or seems to be, under 18 in a sexual way. However, this rule does not apply to marketing communications whose principal function is to promote the welfare of, or to prevent harm to, under-18s, provided any sexual portrayal or representation is not excessive.

4.9 Marketing communications must not include gender stereotypes that are likely to cause harm, or serious or widespread offence. See Advertising Guidance: “Depicting gender stereotypes likely to cause harm or serious or widespread offence”

**CAP Code 11: Environmental claims**

11.1 The basis of environmental claims must be clear. Unqualified claims could mislead if they omit significant information.

11.2 The meaning of all terms used in marketing communications must be clear to consumers.

11.3 Absolute claims must be supported by a high level of substantiation. Comparative claims such as “greener” or “friendlier” can be justified, for example, if the advertised product provides a total environmental benefit over that of the marketer’s previous product or competitor products and the basis of the comparison is clear.

11.4 Marketers must base environmental claims on the full life cycle of the advertised product, unless the marketing communication states otherwise, and must make clear the limits of the life cycle. If a general claim cannot be justified, a more limited claim about specific aspects of a product might be justifiable. Marketers must ensure claims that are based on only part of the advertised product’s life cycle do not mislead consumers about the product’s total environmental impact.

**WHAT DOES ‘ACTION’ LOOK LIKE? WHAT HAPPENS WHEN A COMPLAINT IS UPHELD?**

Although there was nothing readily available on the ASA website about it, a Daily Telegraph article on the regulator suggested that the executive body does have one power that is infrequently invoked.

_In exceptional circumstances the ASA’s executive body can instruct an advertiser to remove a particularly offensive or misleading advert pending the final outcome of an investigation._

_This was the case in 2006 when the then chairman of the ASA, Lord Borrie, ordered the immediate removal of adverts for thepool.com, an online gambling company, which he deemed had broken strict rules banning the promotion of gambling to under 18s._

Some adverts are changed or modified through informal contact with the ASA during the investigation process so these complaints are not considered to be “upheld”. When a complaint is “upheld” this means that it has been found to be in breach of the advertising codes.

**THE SANCTIONS**

When a complaint is formally upheld, the few sanctions that can happen are all of relatively low consequence:

1. **No action**

In a number of cases even when a complaint is upheld the action is simply to say the advert did not conform to the codes and future adverts should not do this. The advert is not even pulled or in many cases has already run its course.

2. **The advert is pulled... after running for quite a long time**

This minimal sanction is actually the harshest type of action usually applied under the current regime. However, how much of a penalty this actually is depends on a couple of factors. Even the most offensive of misleading adverts is likely to get some of its advertising seen. Both advertisers and complainants have 21 days from when a complaint is raised to refer it to investigation (there is no information about the difference between a “received” complaint or “raised” complaint so it is unclear whether it takes additional time for the ASA to formally “raise” the complaint, making the process longer than 21 days in practice).

By its own admission the ASA states...
that “A small number of our most complex cases can take six months”. [35]

This means that even if an advert has been seen to breach the very narrow set of codes it may already have been taken off the air or out of print before the ruling and the only punishment dished out is to pull the advert.

This means that even under the tightest time frames the worst adverts will still get to run for around a month before they are pulled. In that time they may be misleading or offending thousands or millions of people.

3. The ASA tells people about the breach of code

The ASA may send an “Ad Alert” that makes people aware that the breach occurred, but this is purely a public shaming mechanism and has no formal status.

4. Withdrawal of trading benefits

According to the website the ASA can “can revoke, withdraw or temporarily withhold recognition and trading privileges. For example, the ASA can ask Royal Mail to withdraw its bulk mail discount, which can make running direct marketing campaigns prohibitively expensive.” [37] So this sanction is removing a benefit or privilege the industry has rather than taking away any sort of basic ability the organisation has to trade.

5. Pre-vetting

The absolute worst multiple offenders might have to have their adverts seen by the ASA before release.

**FOR THE CARROT TO WORK YOU NEED A STICK**

Many people would find it astonishing that creating an advert that breached advertising codes did not result in any type of monetary fine. The current sanctions seem inadequate when we think about the potential impacts advertising can have on us. We need substantial changes to the system, and recommendations for what these changes might look like can be found in the last section of this report.
Part Five
What are the complaints and are they listened to?

What are the advertising rules and how are they applied? Most complaints are ignored or lead to no action. Over the last ten years close to 80% of adverts complained about were not investigated, as they are not considered to be covered by the industry codes, which advertisers create. In 2018 less than 2% of adverts complained about had any action taken on them.

“You can’t fake listening, it shows”
RAQUEL WELCH, Actress
LOOKING AT THE FIGURES ON COMPLAINTS

Every year there are many complaints about advertising. The number of complaints in the last 10 years has been steadily growing: from 2009 to 2019 complaints have risen by 20% from 28,929 to the highest ever level in 2019 of 34,717. In part this increase is due to the ASA taking on responsibility for online advertising. These complaints in 2019 covered 24,866 different adverts.

However over the last ten years, even though complaints have gone up, the number of adverts where action has been taken has gone down.

In 2018 only 4% of all complaints resulted in formal action being taken by the regulator. That is just 387 of the 25,259 adverts complained about.

The chart opposite [Fig 8] shows us that most complaints are not investigated in any way and of those that are there is infrequently any action taken.

Figures from the 2018 ASA report [34] show that combined complaints for broadcast and non-broadcast media could be categorised as per the chart [Fig 8].

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**Overview of complaints 2009 - 2019**

- **29,440**
  - Average number of complaints per year between 2009 and 2019

- **34,717**
  - Number of complaints recorded in 2019, covering 24,866 different adverts

**Fig 7. Increase in ASA complaints, this rise is partly explained by the ASA taking on the role for online advertising.**

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**Adverts investigated, 2018**

- **2%**
  - Cases upheld (387 of 25,259)

- **20%**
  - Cases investigated, not upheld

- **78%**
  - Cases not investigated

**Fig 8. 2018 complaints explained [34]**

The information compiled in this section is from the ASA annual reports. The way in which the figures are combined, displayed and reported changes between years. A central database of this information should be created by the ASA to allow external scrutiny of trends in complaints.
NOT ALL COMPLAINTS ARE EQUAL

In producing this report we have not had access to the individual complaints. The figures are from annual reports published on the ASA website. Even if we were to exclude those complaints listed by the ASA as being about “no issue” these only amount to 1,579 cases in 2018. This represents just 6% of all the adverts complained about.

Clearly we are not arguing that every complaint the ASA receives is necessarily equally valid. With the number of complaints they receive it is likely some should not lead to action, for example a small minority of people in the UK may find homosexuality offensive. Clearly some complaints should be ignored as they are out of step with mainstream societal views and anti-discrimination laws. However, the current reporting mechanism does not allow anyone outside the ASA to determine what types of complaints are being discounted.

In order to be more transparent about why many complaints don’t breach the ASA codes it would make sense for the ASA to formally record and report (in the annual report) the types of complaint even if not investigated. This would give a much clearer indication of whether the ASA codes are in-step with societal views. Complaints that are based on any unacceptable prejudice such as homophobia, racism or sexism should also be clearly recorded so it is clear why they have been discounted. The codes on offence should also be updated to specifically state that a complaint based on these attitudes will not be investigated.

However, even if we are to assume a significant number of complaints are from an outdated and prejudiced viewpoint, that still leaves a large number of complaints that are not being investigated. The trend showing complaints are rising but action is falling is an indicator that the ASA is not moving with society. The harm section in part two of this report shows many areas that the codes urgently need to address. With such reforms we might have a more effective complaints process and better adverts.

EXEMPLARY

Three of 2017’s most complained about adverts, all of which had no action taken and the complaints were not upheld: KFC, Money Supermarket and McDonald’s.

Kentucky Fried Chicken (Great Britain)Ltd

755 Complaints - Not upheld

“This year, KFC’s ad, featuring a chicken dancing to a rap soundtrack, received complaints that it was disrespectful to chickens and distressing for vegetarians, vegans and children and that it depicted a chicken who was heading for slaughter. We ruled it was unlikely that the ad would cause distress or serious or widespread offence as there were no explicit references to animal slaughter.”

[ASA ruling] [33]

It would unlikely be a surprise to anyone, even KFC customers, that their poultry is bred in cramped conditions, with little room to move, let alone dance. There is a question here not only about the slaughter of the animals but the portrayal of their life beforehand. Of course the advert is supposed to be humorous but the joke requires an unfair representation of the conditions
in which the animal lives which must be considered misleading. The dancing KFC chicken advert was one of 2017’s most complained about but no action was taken as the codes do not currently cover this area of misleading and offensive content. The high number of complaints should lead the ASA to cover animal cruelty and truthful representation of animal husbandry in their codes.

Moneysupermarket.com Ltd

455 Complaints - Not upheld

“This Moneysupermarket.com ad campaign also featured in the ASA’s Top Ten list for 2015 and 2016. Like many of the ads in the same campaign, 2017’s ad re-featured the two #epicsquads – the strutters and the builders – and a new female character. Many found the ad to be offensive on the grounds that it was overtly sexual and possibly homophobic. We thought the character’s movements would generally be seen as dance moves and not in a sexual context. We also thought most viewers would recognise the ad’s intended take on humour. We ruled it was unlikely to condone or encourage harmful discriminatory behaviour.”

[ASA website] [33]

Although the Moneysupermarket advert is also obviously an attempt at humour the advert does feature a group of builders holding bats and chasing a group of men in hotpants who run away. Crucially the advert relies on reinforcing a negative image initially. For the idea to work the audience must accept that violence against LGBT people might happen and that this threat even if not followed through, is something acceptable to joke about. Although the ad ends in a dance off, the beginning is clearly based on a stereotypical homophobic confrontation. If it wasn’t then the “turn around” point of the dance off would neither be surprising or funny. This is exactly the type of advert that if the joke was instead about gender it would be banned under the new gender stereotyping codes.

Interestingly, the ruling states that the advert is “unlikely to condone or encourage harmful discriminatory behaviour.” This contains a certain amount of ambiguity. It also states that “most viewers” would recognise it as humour - does this make it justifiable, if the humour is based upon the threat of violence to a protected minority? Even though the advert only alluded to a homophobic attack, isn’t this enough as it reinforced and trivialised the behaviour?

McDonald’s

256 Complaints - Not upheld

The 5th most complained about advert of 2017 according to the ASA was the incredibly distasteful McDonald’s advert that used family grief to sell fillet-o-fish burgers.

The advert involves a mother harshly and unfavourably comparing her son to his deceased father in a number of different ways. The smartness of his clothing, the shininess of his shoes and his lack of footballing ability. After being emotionally teased by his mother the advert ends with the child finally finding some common ground with his deceased father through a shared fondness for fillet-o-fish.

Many people found this advert offensive and harmful and after 256 complaints even McDonald’s conceded:

“It was never our intention to cause any upset. We are particularly sorry that the advert may have disappointed those people who are most important to us – our customers. Due to the lead-times required by some broadcasters, the last advert will air tomorrow, Wednesday 17 May. We will also review our creative process to ensure this situation never occurs again,”
However, despite the outcry no investigation by the ASA was undertaken as McDonald’s withdrew the advert themselves.

On May the 16th 2017 the ASA was quoted as saying to Marketing Week “We’re carefully assessing the complaints but no decision has been reached on whether there are grounds to launch an investigation”. In this instance the regulators, the ASA and Clearcast, failed to correctly apply the rules (codes on offence) before broadcasting and then failed to investigate the advert once it had been withdrawn. If the advertiser pulls the advert then the case is considered closed by the ASA. However, what if we consider the harm caused to those that saw it? And the fact that the current system allowed such an advert through its process of checks.

This case raises a number of concerns about the regulation process. It leads to questions about the adequacy of the vetting process undertaken by Clearcast before the advert was assessed. It raises questions about the codes and their ability to tackle issues such as offence which they are already supposed to cover. Clearly those at Clearcast did not view the distasteful advert as offensive. It asks questions about the ASA’s ability to respond rapidly when a problem arises and it also shows a big failure in the system that does not allow scrutiny after the fact. Even though the advert was taken off air, it still offended a large number of people before its removal.

Given the ASA’s main sanction is just to pull an advert, what reason is there for the advertisers not to repeat the offence with another advert? Such an example shows a clear need for sanctions and quicker actions by the regulator.

It is worth noting that the examples given here are just three of the ten most complained about adverts of 2017. Given the inadequate response to these highly publicised cases it is hard to see how the handling of less complained about cases would be any better.
Part Six

Time for action – what we need to do

Given the failings of the system it is clear we need codes that cover more areas. We need stronger sanctions for adverts that breach rules. Fines are an essential first step.

“When Nike says, just do it, that’s a message of empowerment. Why aren’t the rest of us speaking to young people in a voice of inspiration?”

NAOMI KLEIN, Author
5 key ways to improve the regulation of advertising

1. Make the ASA a truly independent body

   The funding of the body should be at arm’s length and advertisers should no longer be part of the decision making processes.

2. Experts on psychological harm to be brought into regulation process

   The ASA should employ experts on the potential psychological harm caused by advertising and these experts should be part of reviewing and updating the codes.

3. Greater transparency in complaints recording

   The huge numbers of complaints that are discounted currently do not contribute anything to the regulation process. More details, and categorising such as on what grounds something was offensive, would help greatly in establishing whether the codes are fit for purpose.

4. A public jury deciding advertising complaints

   Similar to jury duty, members of the public should be part of the panel that decides whether a complaint should be upheld.

5. A legal ban on high carbon advertising

   Use a similar legal process to the banning of tobacco advertising to ban adverts for oil companies, highly polluting Sports Utility Vehicles and airlines. People may be free to use these products but given the climate emergency it is hard to see a rationale for creating further demand through advertising.

WE HAVE SEEN THAT THE ASA IS NOT FIT FOR PURPOSE:

It focuses on the industry, not the public.

There are more complaints than ever but we have seen a decrease in action taken over the past 20 years. The ASA is trying to balance the needs of industry and consumers, rather than just protecting consumers.

It does not listen.

Many areas that are complained about are ignored as they don’t fit the codes. The codes clearly need updating.

It does not act.

The most severe action the ASA usually takes is to require the advert to be pulled, but in many cases this is after the advert has already run for a long time.

In a forward thinking step the ASA has amended the advertising codes to include guidance on unhelpful stereotypes of gender. This is great news but only the first step as the same research also shows similar impacts in many other areas. Stereotypes based on sexuality, ethnicity and disability are all similarly problematic. Codes for these other areas should be produced as a priority.

DETAILED RECOMMENDATIONS:

INDEPENDENT REGULATION

Only a truly independent body can serve the interests of the general public. The ASA should be replaced with a totally independent regulator that is funded indirectly in order to ensure any conflict of interest is minimised. We understand that this is a big undertaking and therefore recommend the following changes in the meantime.

• While the industry can provide the funds they should have no other involvement with a regulator.

• This means removing the ambiguous role of the additional industry panels’ input in the complaints process. Only the ASA should produce the codes.

• Clearcast should have no role in assessing TV adverts as they have a clear conflict of interest. This role should be given to the ASA.

• There should be fines. Currently the disincentive for breaking the codes is almost non-existent. This money could then be channelled back into the ASA, or contributed to charities.
• Adverts that receive over a certain number of complaints should trigger emergency decision making processes with a minimum three-day resolution.

• A public jury to judge on complaints - this would be similar to jury duty. This system would better reflect the feelings of the public in the process and allow them some representation in it.

IMPROVEMENTS TO THE COMPLAINTS PROCESS

We don’t expect that every complaint is acted on, as clearly not all complaints are equally valid. However if over 80% of the complaints are outside the remit of the codes then the codes clearly need to be updated.

• The codes need to be updated to reflect the nature of the complaints. A formal annual review of complaints and code updating should be put in place.

• After ten days from an unresolved complaint, the advertiser is given two options; either to voluntarily take down the ad during the complaints process, or to carry on airing it with the potential of a large fine if the complaint is upheld.

MORE ADAPTIVE REGULATIONS

For the last 20 years the codes governing advertising have been out of step with the views of the public. This is clear due to the vast number of complaints that do not fall within the remit of the codes over this timeframe. The codes have concentrated on accuracy and truthfulness which, although important, has meant they have neglected to look at the other forms of harm that advertising causes.

• The codes themselves should make it clearer what best practice is rather than what it means to breach codes. The industry should be seeking to increase standards rather than keep the worst in check.

• The codes should give references to what terms like ‘widespread’ and ‘serious’ harm are.

• We propose a new ASA code on ‘Representation of product function and use.’ Adverts should be made to contain footage of real products in use. This would help consumers by showing what they are buying and go some small way to encouraging advertisers to sell on the merits of the product rather than appeals to the subconscious.

ADDRESS THE HARM ADVERTISING CAUSES

Psychological impacts:

• Experts in the potential psychological harm advertising can do to adults and children should be appointed to the board of the ASA.

• The codes should be reviewed in detail every year with input from experts in social psychology and other relevant disciplines.

Stereotyping and sexism

• We welcome the new codes on gender stereotyping, but as the ASA has conceded the need for this it should also note there is an equally compelling argument of similar codes against stereotyping LGBTQIA+ people, or on the basis of disability, race, religion, age or marital status. All of these should be drafted immediately.

• The codes on gender stereotyping are focused on adult roles, but gender stereotyping of children is also harmful. Given that the codes on gender stereotyping are actively trying to limit the misrepresentation of genders in certain fixed roles, it should no longer be the case that adverts for dolls only contain girls and adverts for toy guns and cards only show boys using the products. The codes on advertising to children should be updated to include guidance on gender stereotyping.

Manipulating our feelings

Almost all advertising makes little or no attempt to engage with us rationally, instead using excitement, aspiration, shame or humour to catch our attention and influence us. However, such manipulation should have its limits. Using sentiment to sell should be used carefully and respectfully as it can influence the way we think and feel about those things. Adverts like the one in which KFC use adoption to sell...
fried chicken are clearly unacceptable and codes should be established to stop such cynical manipulation.

A simple starting point might be that unrelated products cannot use issues like bereavement, war, adoption and friendship to sell things.

Environmental impact

• The ASA needs to conduct an urgent review into the industry’s pivotal role in the climate crisis. In line with the treatment of tobacco, there needs to be new legislation to impose a ban on the advertising of high carbon products such as petrol cars and airline flights.

• Nature and wildlife should not be used to sell any type of product that does harm to the environment

Animal welfare

• The codes must be amended to ensure that any animal used in an advert for a food retailer is shown in conditions that reflect how it is kept in reality. This is in line with other codes on misleading product information.

The value of making a complaint

Despite the flaws in the current process, it is currently the only means of redress for the public. Make sure you use your right to complain. If you see an advert you object to, let the ASA know about it. If your complaint is not covered by the codes, tell the ASA why new codes are needed.

Visit www.asa.org.uk/make-a-complaint.html to log your complaint.

The ASA has changed in the past and can change again

In 2015, huge public outcry over Protein World’s ‘Beach Body Ready’ adverts led to 380 complaints to the ASA and 70,000 signatures on an online petition. The ASA did not uphold the complaint stating that “the headline and image were unlikely to cause serious or widespread offence”. Nonetheless, the episode prompted the ASA to look again at its codes and in 2019 new codes on gender stereotyping and body shaming came into force.

The case shows that focused public pressure can lead to change. Campaigners seeking to strengthen advertising regulation could use mass complaints to prompt the ASA to investigate the wider harms of advertising and improve its guidance. Some potential examples:

• Climate campaigners could use the complaint system to argue that the ASAs definition of ‘harm’ must also include the longer term impacts of climate breakdown arising from advertising and consumption of high carbon products and services.

• Health campaigners could use the complaint system to argue that the ASAs codes regarding the advertising of food and drink that is high in fat, salt or sugar (HFSS) to children should be strengthened. [40]
Take collective action

We can all make a complaint as individuals. But taking collective action is more effective. If you’re already part of a parents’ group, an environmental organisation or a women’s group you could lodge complaints together.

Get involved with an Adblock group near you or start a new one

There are currently Adblock groups in Birmingham, Bristol, Cardiff, Exeter and Leeds who are part of the Adfree Cities network.
You can find details of your local group at www.adfreecities.org.uk

These Adblock groups are working towards happier, healthier, less stressed-out cities, free from corporate outdoor advertising. They work with local councils, residents, community groups and artists to prevent new billboards, remove existing billboards, explore policy change and offer creative alternatives to outdoor advertising which celebrate communities, wellbeing and a healthier environment.

If you would like to start a new Adblock group in your area visit: https://adfreecities.org.uk/resources/starting-an-adblock-campaign

You could also host a workshop for your local group with the Adfree Cities network; contact us via our website.

Much of the material used to produce this report was from the ASA website. Links to this information are provided in the references. A draft was given to the ASA for feedback but after several weeks of communication none was provided. Given the ASA has many different organisational processes, panels and structures but provides little information on how these interact with each other it is likely some errors in describing it may have occurred. This likelihood is increased significantly without the help of the regulator. We welcome any feedback.
REFERENCES


22. Davis A. People are getting surgery to look like their snapchat selfies, BBC, 19th April 2018. https://www.bbc.co.uk/bbcthree/
References


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Where a statistic is not explicitly referenced, data is from the ASA annual reports 2009 to 2019 available at https://www.asa.org.uk/advice-and-resources/resource-library/annual-reports.html

For more information about our working see the spreadsheet available from the Adfree Cities website.
Adfree Cities is a new network of groups across the UK who are concerned about how corporate advertising affects our health, wellbeing, environment, climate, communities and local economies. www.adfreecities.org.uk @adfreecities