

Memorandum of understanding between the Advertising Standards Authority (“the ASA”) and the Phone-paid Services Authority

This memorandum provides a framework for co-operation between the ASA and the Phone-paid Services Authority. Both are committed to:

- Promoting mutual support and a common understanding of each other’s regulatory responsibilities;
- An agreed procedure for handling complaints;
- Facilitating the effective exchange of information to assist each organisation in fulfilling its regulatory responsibilities; and
- Ensuring appropriate consultation on matters of mutual interest.

The parties do not intend this memorandum to be legally binding and it shall not create any legally enforced duties or obligations between them.

The role and function of the ASA

In 2004, after more than forty years of successful self-regulation of non-broadcast ads, the ASA/CAP system assumed responsibility for TV and radio ads.

The newly-formed communications regulator, Ofcom, took the decision, in a move supported by Parliament, to contract-out responsibility for broadcast (TV and radio) advertising to the ASA system in a co-regulatory partnership. The co-regulatory agreement created for the first time in the UK a single regulator for advertising – a one-stop shop for advertising complaints.

To create the one-stop shop, broadcast equivalents of the non-broadcast institutions (ASA/ CAP/ Asbof) were established. A new industry committee, the Broadcast Committee of Advertising Practice, was created to write and maintain the Broadcast Advertising Codes. The Broadcast Advertising Standards Board of Finance (Basbof) was established to collect the 0.1% levy on broadcast advertising space costs and an ASA (Broadcast) was launched to administer the Codes.

The ASA’s role is to ensure ads are legal, decent, honest and truthful by applying the Advertising Codes in order to protect consumers and create a level playing field for advertisers.

The role and function of Phone-paid Services Authority

Under the Communications Act 2003, the Office of Communications (Ofcom) regulates the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

Premium rate services (PRS) are defined in Section 120 of the Communications Act and cover information and entertainment transmitted for a fee by telephone, fax, PC (email, internet), mobile telephone (SMS/WAP) or interactive digital TV. Services range from sports alerts, TV voting and adult chat lines, to mobile ringtones and logos, competitions, directory enquiries, and business information services. The money paid by a user for a PRS is shared between the company carrying the service and the organisation providing the content.

The Phone-paid Services Authority is responsible for the day-to-day regulation of PRS in the UK. The Phone-paid Services Authority is recognised by Ofcom as the enforcement authority for PRS, and Ofcom has approved the Phone-paid Services Authority Code of Practice for this purpose. The Phone-paid Services Authority and Ofcom have a framework agreement setting out the ways in which the two bodies relate to each other. The Phone-paid Services Authority is a non-profit making company limited by guarantee.

Mutual Support

The ASA and the Phone-paid Services Authority agree to provide relevant support to each other in discharging their regulatory responsibilities in areas where they have mutual interests. This may be in respect of ads for a premium rate service or which otherwise include a PRS number/shortcode. There is a need to avoid duplication of effort (and associated cost to industry); to provide regulated parties as well as the public, Parliament and the media with a clear idea of which regulator will deal with which kind of issues; to ensure consistency of decision (and especially to avoid conflicting or contradictory adjudications on the same subject); and to build trust in regulation across the board.

Complaints handling

The principle which underlies complaints handling is that the organisation best equipped to handle the complaint should do so having regard to the nature and causes of public harm, including enforcement efforts.

The process should be broken into the following:

- Complaints to the ASA about PRS which are not thought to be within the ASA's remit will be referred to Phone-paid Services Authority and the complainant advised of this.
- Complaints to the Phone-paid Services Authority about ads which sit neatly with the Advertising Codes will be referred to the ASA and the complainant notified of this fact.
- If there is doubt over whether the Advertising Codes apply, the organisation receiving the complaint will (subject to any duty of confidentiality which might be owed to the complainant), at the earliest opportunity liaise with the other organisation with a view to agreeing the best approach under the circumstances.

Effective communications and information sharing

Both parties agree to share relevant information with each other where they can do so lawfully in order to assist each other in discharging its regulatory responsibilities. Such information may include (but not be limited to):

- Sharing information regarding complaints where an ad contains a premium rate element and how those complaints are investigated;
- Sharing in advance of publication information about adjudications/policy and or any other documents deemed to be relevant.

Review

The ASA and the Phone-paid Services Authority aim to create and maintain positive and effective communications. In addition, we commit to review the effective operation of this memorandum of understanding on an annual basis.