

DCMS Committee

Responses to Committee's *'Disinformation and fake news'* Report (HC 1791)

- Advertising Standards Authority
- Competition and Markets Authority
- Electoral Commission
- Ofcom



Damian Collins MP
Chair of the Digital, Culture, Media and Sport Committee
House of Commons
London
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24 May 2019
By post and email

Email: damian.collins.mp@parliament.uk

Dear Damian

I write in response to Recommendation 47 in your committee's Disinformation and Fake News Enquiry Report. I'm also sending a copy of this response to Secretary of State, in recognition of the Government's support for the recommendation.

As you know, Recommendation 47 says the following:

"The public need to know more about their ability to report digital campaigning that they think is misleading and or unlawful. Ofcom, the ASA, the ICO and the Electoral Commission need to raise their profiles so that people know about their services and roles... (Paragraph 313)"

We continue to extend our efforts to raise public awareness of the ASA's regulation, including how people can make complaints about potentially irresponsible ads. Those efforts have succeeded in increasing awareness over recent years. We will be launching a new public advertising campaign later this year.

Crucially, though, the Codes we enforce exclude political advertising, defined as ads "*whose principal function is to influence voters in local, regional, national or international elections or referendums*".

The decision, taken in the late 1990s, to exclude such ads was driven by three factors. Firstly, the short, fixed timeframes over which elections run (i.e. the likelihood that complaints subject to ASA investigation would be ruled upon after an election has taken place). Secondly, the 1998 Human Rights Act, which raised concerns about the legality of the ASA restraining the freedom of political speech around democratic elections and referendum. Finally, and most importantly, there has been no consensus amongst the political parties that political advertising should be brought within the scope of our Codes.

Legal, decent, honest and truthful

Chairman Lord Currie of Marylebone Chief Executive Guy Parker
ASA Council Tess Alps, Reg Bailey, Kate Bee, Wesley Henderson, Nita Patel, Aaqil Ahmed, Zaid Al-Qassab, Suzanne McCarthy, Shireen Peermohamed,
Sam Younger, Tracey Follows, Neil Stevenson and Kirsten Miller

The Advertising Standards Authority Limited, registered in England No 733214, Mid City Place, 71 High Holborn, London WC1V 6QT
The Advertising Standards Authority (Broadcast) Limited, registered in England No 05130991, Mid City Place, 71 High Holborn, London WC1V 6QT

The ASA Council reviewed its position on this matter in 2017 and concluded that those barriers remain in place. Of course, we would revisit the issue if, as a starting point, the main political parties changed their position. If another body takes up responsibility for regulating such advertising, we'd want to share our insights from our long-standing role in regulating other forms of advertising across all media.

Crucially, cause-related advertising is included in our remit (provided the claims are not principally designed to influence voters). Advertising claims around some fiercely contested public policy issues have been investigated and ruled on over the years. Airport expansion and fracking and environmental protection are just two examples from the recent past.

We agree that we and our partner regulators can work together to raise public awareness of our respective roles and remits. Since 2017, we've been a member of a group convened by the Electoral Commission which includes the organisations named in the committee's recommendation. Some of the other members include the Committee on Standards in Public Life, UK Statistics Authority and the Equality and Human Rights Commission. Those discussions have helped ensure a shared understanding of each organisation's respective activity, and helped ensure our activity complements that of other organisations. We've also coordinated common lines to use for public and media enquiries to ensure that the public gets clear, consistent information about roles and responsibilities. The group will continue to meet regularly to discuss emerging issues and, if necessary, to take further steps.

I hope these actions address the thinking behind the Committee's recommendation. As ever, I'd be very happy to help in any further ways, including meeting to discuss these important issues.

Yours sincerely



Guy Parker
Chief Executive, ASA

Cc. Secretary of State Jeremy Wright QC MP

Mr Damian Collins MP
Chair, DCMS Select Committee
House of Commons
London
United Kingdom
SW1A 0AA

From: Mr Andrea Coscelli
Chief Executive

Direct line: 020 3738 6286

20 May 2019

Dear Mr Collins

I am writing to formally respond to your Committee's report: Disinformation and fake news, in particular, recommendation 15 where you have called on the CMA to conduct an investigation into the digital advertising market.

The digital revolution is transforming the economy and has brought positive change to people across the UK, such as improved innovation and increased choice, but also new forms of consumer detriment which require a response. The CMA is at the forefront of tackling these issues. We have considerable experience of applying competition and consumer law in digital markets and the launch of our Data, Technology and Analytics unit has increased our understanding of how firms use data and algorithms and what implications this might have for consumers and competition. A number of recent merger investigations in the technology sector have also seen the CMA closely scrutinise the potential impacts on innovation and competition in digital markets.

I reiterate my comments from an earlier letter to you on this matter; the CMA agrees the issues you raise are significant and we are mindful of the role we can play in addressing them. We have been considering whether to undertake work in the digital advertising market. However, our ability to launch new discretionary projects is heavily dependent on the outcome of EU Exit negotiations. In light of the latest extension to the date the UK exits the EU and while leaving without a deal continues to remain a possibility (now at the end of October), my team and I must be conscious of not over programming our workload and pipeline.

Let me assure you that we are fully cognisant of the concerns your report and other important reviews have highlighted. I will be in touch as soon as we are in a better position to say whether we will be able to carry out the work your Committee has recommended be undertaken.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Coscelli', written in a cursive style.

Andrea Coscelli

Chief Executive

andrea.coscelli@cma.gov.uk

The Rt Hon. Damian Collins MP
Chair of the Digital, Culture, Media and Sport Committee
House of Commons
Westminster
London
SW1A 0AA

17 May 2019

Dear Mr Collins,

Re: DCMS Select Committee final report on disinformation and ‘fake news’

We are writing to give our views on recommendations 22, 23, 24, 27 and 47 from the DCMS Committee’s final report on disinformation and ‘fake news’ and the UK Government’s recently published response. While recommendation 47 is directly addressed to us, the other recommendations to Government affect our regulatory role so we also welcome the opportunity to feed into the Committee’s thinking on those.

We would like to take this opportunity to thank the Committee for its detailed consideration of these issues, and for its support for our own package of recommendations set out in our June 2018 report [Digital campaigning: increasing transparency for voters](#). These include supporting our calls for imprints on digital campaign material, for increasing our maximum fine and for giving us greater powers to compel information from third party organisations that we do not regulate, like social media companies.

Recommendation 22: The Committee expects that following the Cabinet Office’s consultation, the Government will conclude that paid-for political advertising should be publicly accessible, with detailed information about the source.

We welcome the Committee’s calls for greater transparency of online campaigning. We have been calling for imprints on digital election and referendum campaign material since 2003. We are pleased that on 5 May the UK Government announced its commitment to extending the imprint rules to digital election material. We think extending the imprint rules to digital material is urgent. This gap in transparency is affecting voter confidence and our ability to enforce the rules.

We therefore want to see the draft legislative provisions of the Government’s proposal as soon as possible. Since 2018, we have been discussing with Cabinet Office officials how to put new regulations into practice and which types of election material they would cover. We will continue to provide our expert advice and feedback as their proposals develop.

We agree with the Committee that there needs to be more information about targeting of activity on social media platforms so that voters, and the Commission as the regulator, can see why and where campaign messages are being targeted. The advert libraries/reports that Facebook, Google and Twitter are running for the European

Parliamentary Elections are a useful tool for seeing who is campaigning online. But the companies need to increase the amount of information about campaign spending and targeting the libraries/reports provide.

The recent Online Harms White Paper proposes that a Code of Practice for disinformation could include measures that would increase the transparency of political advertising. We will provide expert advice to the independent regulator when it drafts such a Code to ensure that it provides the transparency about elections and referendums that we and voters need. We think tools like the advert libraries should be put on a more formal footing, and that the new regulator of online harms will need to look at how to set common standards for them.

Finally, the UK Government has said that it will consult further on electoral integrity, and this may include the transparency of digital political advertising. We would welcome this, and it should also include other recommendations from our report on digital campaigning.

Recommendation 23: The Government should carry out a review of the rules for elections and referendums, including the length of regulated periods, defining political campaigning, and deadlines for submitting spending returns.

We are pleased that the Committee is highlighting the need to consider these issues. In our digital campaigning report, we said that the Government should look again at when the spending and funding rules start to apply before a referendum, and at the deadlines for reporting spending after an election or referendum. We welcome the Government's commitment to ensuring the law around campaigning is kept up-to-date, and that its response expresses support for our [*Codes of Practice on election spending for political parties and candidates*](#). We have been working on, and consulted on, these Codes to give practical clarity on the reporting of digital spend amongst other spending. We aim for them to be laid, in due course, before the UK Parliament to approve.

The Committee has recommended that the Government look at defining *political* campaigning. It is important to clarify that we regulate *election and referendum* campaign spending under definitions that are already set out in electoral law. Regulating broader categories of political advertising requires more thought and more scrutiny. The UK's governments and legislatures would need to give careful thought to the principles that underpin any new rules on political campaigning, how they could be enforced and how to ensure they do not curtail free speech. We would want to contribute our experience and expert advice to any discussion about defining *political campaigning* differently in future.

Recommendation 24: The Government should explore ways to strengthen the Electoral Commission's investigation and enforcement powers, and to reform the election petitions process.

We are pleased that the Committee supports our call for the Government to strengthen our investigation and sanctioning powers. The Committee's thought to give us powers to enforce UK law in other jurisdictions would require careful consideration by government. We are pleased that the UK Government is considering our recommendations in these areas, and would welcome the opportunity to feed in our developing thinking about how these powers could be strengthened.

We note the Committee's comments about the need to reform the election petitions process. We think the Law Commissions' widely supported proposals for reforming election petitions – particularly clarifying the law and including petitions in the ordinary court process – would be a significant improvement, although we have not previously supported the suggestion of giving the Commission a direct role in initiating petitions.

We have recently submitted [written evidence](#) to the Public Administration and Constitutional Affairs Committee inquiry on electoral law reform, highlighting the urgent need for simplified and modernised electoral law. Fundamental electoral law reform would, for example, reduce confusion and improve regulation of political finance rules, make challenges to elections more accessible and facilitate better regulation of campaigning in the digital age. It is time for governments to take seriously and commit to prioritising the time and resources needed to deliver meaningful improvements to electoral law, and we look forward to the Committee's consideration of these issues.

Recommendation 27: The Committee supports the ICO's recommendation for improving transparency about the use of data during elections and referendums. The Committee hopes the UK Government will look at foreign interference in elections.

We have been working closely with the Information Commissioner's Office on its proposed Code of Practice for the use of personal data for election and referendum campaigning. We have given advice about which types of political campaigning are covered by electoral law, and we responded to its call for views at the end of last year. We stand ready to assist and continue to provide expert advice as the ICO takes forward its programme of work.

We are pleased that the UK Government has now committed to consulting on measures to strengthen protections against foreign influence on UK elections. We hope this consultation begins as quickly as possible. It should consider recommendations that we have already made to prevent companies donating non-UK funds here, and to prohibit foreign individuals and entities from spending money on campaigning in UK elections and referendums.

Recommendation 47: The UK Government should lead on coordinating Ofcom, the ASA, the ICO and the Electoral Commission to raise their profiles with the public. It must inform the public about their rights regarding social media companies.

Recommendation 47 highlights the importance of improving the public's ability to report digital campaigning that they think is misleading and/or unlawful. There is clear value in raising public awareness of what is and is not acceptable, in terms of digital campaigning, and of the organisations to which people can go for further information or to raise concerns.

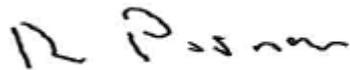
The Committee recommended that the UK Government should take a leading role in coordinating the awareness raising of the Electoral Commission, Advertising Standards Authority (ASA), Ofcom and the Information Commissioner's Office (ICO). We would have welcomed this, but note that in its response the government has not taken up this suggestion. Nevertheless, the recommendation complements conversations that we are having with the ASA and the ICO, along with the UK Statistics Authority, Committee on

Standards in Public Life, the Equality and Human Rights Commission, and the Broadcasting Liaison Group and Ofcom as observers.

Since October 2016 this group has been discussing and informing government of issues of common regulatory interest, including digital campaigning and the truthfulness of campaign content. This has been with a view to ensuring a shared understanding of each organisation's relevant activity in this area, and that this activity complements that of the other organisations and makes best use of public resources. As a group we have coordinated common messages to public enquiries to ensure that the public gets useful and joined-up answers that will help them understand what our respective roles and responsibilities are. There is potential for this work to extend further. We plan to explore options for collaborative working and raising public awareness at future meetings, encouraged by the Committee's recommendation to our respective organisations. We will keep the Committee and the government informed of any developments.

If you would like to discuss these issues in more detail we would be happy to meet. You can contact our Public Affairs Manager, Laura McLeod, at lmcleod@electoralcommission.org.uk to arrange this.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bob Posner'.

Bob Posner
Chief Executive

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Sharon White
Chief Executive

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17 May 2019

Dear Damian,

Recommendations from the Committee's report on Disinformation and 'fake news'

In its final report on disinformation and "fake news", the DCMS Select Committee made two recommendations which directly relate to the work of Ofcom. I am writing to set out for the Committee the relevant work that we have now committed to do.

In recommendation 47, the Committee called on Ofcom, the ASA, the ICO and the Electoral Commission to raise their profiles so that people know about their services and roles. In recommendation 50, the Committee noted that all four regulators work on digital literacy and recommended that there should be a united strategy. Although this recommendation was directed at the Government, we think that Ofcom and our fellow regulators can play an important role in fostering a collaborative approach on media literacy work.

Over the last two years we have had continuing discussions with the Electoral Commission, ASA, ICO, the UK Statistics Authority, Committee on Standards in Public Life, the Equality and Human Rights Commission, and the Broadcasters Liaison Group. These have been useful to discuss areas of common regulatory interest, including digital campaigning, ensuring a shared understanding of each organisation's relevant activity.

Since the Committee published its report we have continued to develop our new Making Sense of Media research and engagement programme. As set out in our Annual Plan, this programme is focussed on expanding our work in relation to online media literacy, including developing an in-depth understanding of specific harms continuing our close research work with the ICO; working with policy makers, academics, charities and platforms to develop a rounded view of online harms and potential solutions; and actively contributing to the international discussion about online harms and media literacy. Collaboration with other regulators forms a key part of this programme, and we have been in conversation with both ICO and the CMA about our forthcoming Online Nation report which takes a closer look at what people are doing on the internet, how people are being served by online content providers and platforms and people's attitudes to and experiences of using the internet.

With this in mind, we are continuously looking for better ways to reach and engage with consumers. For instance, we have developed our social media engagement to support consumers to find help and advice, as well as helping them to complain to us if they need to. This will continue to be an area of focus for us in the future.

We regularly undertake research into the public's understanding and perception of the regulation Ofcom is responsible for and of Ofcom itself. In addition to this, last year we worked with the ICO on research to understand the experiences of online harms by UK adults online. This research looked at concerns about the internet and their experience of various online harms online. Amongst this group, approximately three in ten adult internet users identified Ofcom as the relevant regulatory body for television and online catch-up services.

I would be happy to discuss this work with you further when we meet.

Yours sincerely



Sharon White