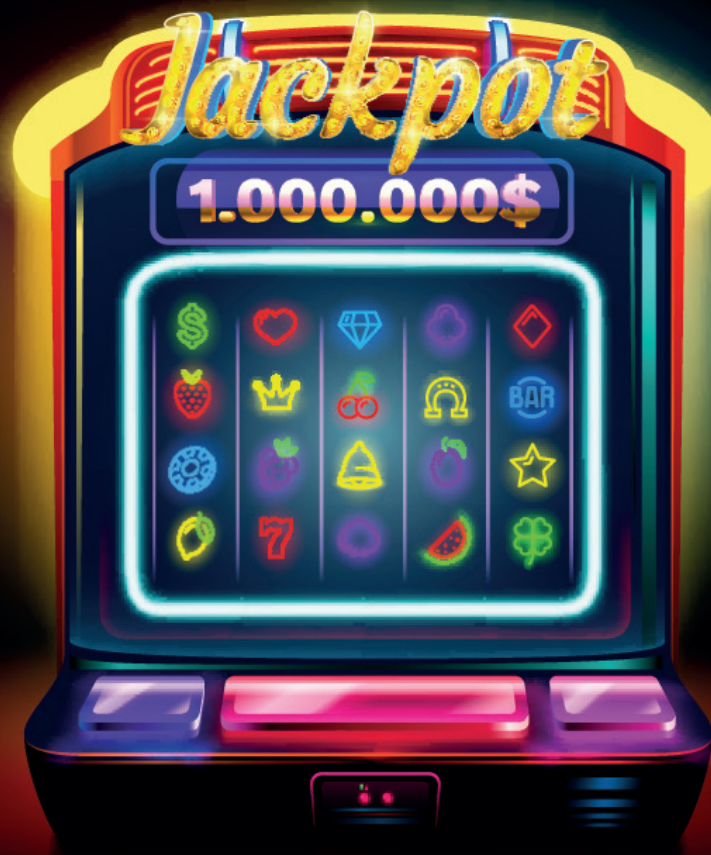


**WELCOME**

**CASINO  
ONLINE**

Slots machine

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# Important changes

Northridge Law's **Melanie Ellis** looks at key changes in Advertising Standards Authority rules for the UK

**T**he delayed Gambling Act review has long been expected to tighten restrictions on advertising gambling in the UK, but in the meantime Advertising Standards Authority (ASA) has taken its own action to bring in stronger rules. Most recently, a change to the CAP and BCAP codes means that adverts for gambling must not have “strong appeal” to children, in addition a ruling against Coral heralds a stricter approach to when adverts will be deemed “socially irresponsible”.

## “Strong appeal”

An amendment to provision 16.3.12 of the CAP Code and 17.4.5 of the BCAP Code came into force on 1 October 2022, altering the wording of the rule that gambling adverts must not be of “particular” appeal to under-18s to “strong” appeal. The effect of this change is clarified in a revised version of the ASA’s Advertising Guidance ‘Gambling and lotteries advertising: protecting under-18s’.

The first point to note about the change is that the question of whether an advert appeals to under-18s is now unrelated to its appeal to adults. Under the “particular” appeal wording, the ASA’s guidance explained that the test was whether an advert’s content appealed more to children than it did to adults. Under the new “strong” appeal wording, if an advert appeals strongly to children it breaches the rule, regardless of how much it appeals to adults.

The ASA’s expectation is that operators and marketers will satisfy themselves that an advert will not strongly appeal to under-18s before publishing it. A list of high to low risk approaches is provided in the guidance, which particularly relate to the character and personalities used in adverts. The implication is that the higher the likely risk, the more detailed evidence will be required to demonstrate that the advert will not strongly appeal to under-18s. High risk adverts include those involving children’s TV presenters, UK footballers playing for top clubs or the national team, other prominent sports people and anyone with a significant

under-18s following on social media. Lower risk characters include footballers at lower league clubs and sportspeople in more adult-oriented sports such as darts, golf or horseracing.

In addition to the characters used in the advert, content may be of strong appeal to under-18s if it includes music, graphics, animation styles, humour, language or dress that are linked to younger people. Video games are also mentioned specifically, with the use of gameplay or characters popular with under-18s a potential issue. The “general impression” created by the advert will be assessed, but also detailed information about the usual audience for, or level of participation in, the relevant activity.

There are some exceptions to the new rule, the most notable one being that if under-18s can be excluded from seeing the advert, for example when viewers are age-verified, it would not be a breach of the rule if the advert’s content would strongly appeal to under-18s. Generic use or mention of high risk activities such as football are also permitted, for example the name of a football team can be used to advertise a bet on that team.

It remains to be seen what evidence of the lack of strong appeal of a character or theme will be deemed sufficient by the ASA. An operator might seek to rely on data showing the average participation in a sport or activity, or the proportion of a sports star’s social media followers who are under 18. The ASA guidance does not make clear either whether such data alone would be sufficient, or what figures and proportions would demonstrate compliance so operators will need to make their own reasonable assessments on these points.

### Social responsibility

The ASA’s 3 August 2022 ruling against an advert by Coral is worth noting, as its interpretation of when an advert is “socially irresponsible” arguably extends previous rulings and guidance on this topic. CAP Code 16.3.1 and BCAP Code 17.3.1 provide that adverts must not “portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm”. The Gambling Commission’s Licence Conditions and Codes of Practice also includes a rule that “all marketing of gambling products and services must be undertaken in a socially responsible manner”, however the ASA’s ruling will not necessarily influence the Commission’s interpretation of its own provision.

The ASA has issued guidance on ‘Gambling advertising: responsibility and problem gambling’ which states that certain marketing approaches are likely to have a disproportionate impact on problem gamblers and that marketers must take all reasonable steps to protect problem gamblers from being harmed or exploited by such advertising.

The advert in question depicted a horse race, showing shots of spectators cheering and waiting in anticipation. A voice-over stated “Exciting, isn’t it? When your horse wins by a nose. But if that’s exciting, how about three furlongs ago? Look, look, any horse could win. How about now when your horse is under starters orders? How long have you waited for those gates to crash open? But that’s nothing. What about earlier still? Your horse is the only horse that matters. Coral. Get closer to the action.”

The key issue was whether this advertising approach was one which was likely to have a disproportionate impact on problem gamblers. The ASA made particular reference to the

use of the phrase “your horse” in the context of a closely fought race, the exciting tone of the advert and the creation of a sense of anticipation for the race in reaching a decision that it would. The ASA recognised that portraying gambling as exciting was not a breach of the code itself, however the particular presentation of exciting elements of horse racing in this advert in combination with the voice over created a significant risk for problem gamblers recalling “highs” associated with previous betting. Positioning gambling as part of the appeal of horse racing was also found to imply a behaviour linked with problem gambling.

The difficulty here is that any advert for gambling is likely to have an impact on problem gamblers should they view it. Assessing whether an advert will have a “disproportionate” impact on problem gamblers is no easy task for operators, but any proposed advert involving similar themes to the Coral one should be considered carefully against the ASA’s comments in this ruling.

### Implications for licensees

Although the ASA cannot fine marketers for breaching its rules, that the Gambling Commission can and will penalise licensed operators for advertising breaches was demonstrated by its recent £400k fine against Betway, which related to the display of its logo by sponsored club West Ham on areas of the club’s website aimed at children. It is worth noting, however, that the Commission’s interpretation of the codes and of whether an advert is “socially responsible” will not always align with the ASA’s.

In relation to both “strong appeal to under-18s” and “disproportionate impact on problem gamblers”, operators are faced with the task of determining the appeal or effect of an advert on a group of people, without being able to (legally and/or ethically) test what that appeal or effect may be on a sample group. In both cases, my recommendation is that the operator gathers the data that can be obtained and documents this along with its rationale, so that a reasonable and defensible decision can be made and demonstrated. Action by the Commission is much more likely to follow advertising which is clearly in breach of the codes, whereas it will be more reluctant to intervene in cases where the operator can defend its use of certain themes or characters.

Melanie is a gambling regulatory lawyer with 13 years’ experience in the sector. Melanie advises on all aspects of gambling law including licence applications, compliance, advertising, licence reviews and changes of control. She has acted for a wide range of gambling operators including major online and land-based bookmakers and casinos, B2B game and software suppliers and start-ups. She also frequently advises operators of raffles, prize competitions, free draws and social gaming products.

Melanie has a particular interest in the use of new technology for gambling products and novel product ideas.

