d Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email: online-advertising-consultation@dcms.gov.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to the Department for Culture, Media and Sport's (DCMS) consultation on an Online Advertising Programme

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominately on the work of the FCA, however, we also look at the impact on consumers of other bodies' activities and policy where relevant to the FCA's remit. We are responding to this consultation because the Online Advertising Programme (OAP) will run adjacent to the FCA's regulatory regime for financial promotions. Whilst the OAP will apply to a range of sectors outside of financial services, it will help to address harms caused to consumers within financial services caused by online advertising. Also, some of the harms we see in financial services may provide useful insight into harms in other sectors, as do the findings of our research into digital marketing. The key harms caused by online advertising in financial services are:

- Consumers taking on more risk they are comfortable with or can afford because of inadequate disclosure of risk around investments, especially cryptoassets.
- Unaffordable or inappropriate lending because adverts for credit focus on speed and ease-of-access.
- Consumers looking for green or sustainable products end up with products that do not meet their objectives because of greenwashing in adverts.
- Targeted advertising is used to exploit and manipulate consumers who were already vulnerable to harm. This was a key finding of our research into digital marketing.
- Consumers buy fraudulent or high-risk products promoted by influencers.
- Consumers are influenced by adverts which are not easily identifiable as adverts. They might not know who is promoting or issuing the product and to what extent these parties are regulated.

We welcome the recent proposals to strengthen the FCA's financial promotions regime, especially on high-risk investments[1], which will help tackle some of these harms. It is important that the regulatory regime is strengthened elsewhere to avoid cliff-edges or gaps in protection. We therefore welcome DCMS' consultation.

[1] You can find out response to the FCA's consultation on strengthening the financial promotion regime for high-risk investments, including cryptoassets, here.

It is clear from DCMS' consultation document that the regulatory regime around online advertising is complex, with several different Codes, regulatory bodies and standards involved. Complex regulation makes it difficult for firms to know which standards apply and for regulators to determine which body has responsibility. This uncertainty could lead to inconsistent outcomes for consumers. Also, complexity makes it difficult for consumers to tell if something has gone wrong and where they should go for help.

Regulation also needs to have sufficient agility to keep up with change and innovation in online advertising methods, which happens at some pace. The number of moving parts in the current system makes it difficult for regulators to keep up, meaning emerging harms could go unaddressed.

With these concerns in mind, we would support a strengthening of the Advertising Standards Authority's (ASA) powers of supervision and enforcement to support the FCA's approach to financial promotions. A stronger, bolder and more proactive ASA would address harm more effectively than industry self-regulation and provide an effective deterrent against misconduct. We prefer this option over the addition of a statutory backstop regulator as such a backstop would in our view exacerbate the issues around complexity and agility outlined above.

Finally, we note that issues around the ethical use of data are outside the scope of this consultation. We do not think such issues can reasonably be separated from consideration of an OAP because the use of data is a key driver of the harms in online advertising and could also form an important part of the remedy if efficient 'SupTech' is developed. Therefore, we encourage DCMS to work with others conducting consultations on the ethical use of data and Artificial Intelligence (AI)[2] and ensure that the insights gained from these inform the development of the OAP.

Yours sincerely,

Wanda Goldwag
Chair, Financial Services Consumer Panel

[2] For example, the Digital Regulation Cooperation Forum are currently considering algorithmic fairness – see here for more information.

ANNEX A – Responses to questions

Question 1: Do you agree with the categories of online advertising we have included in scope for the purposes of this consultation?

Yes.

Question 2: Do you agree with the market categories of online advertising that we have identified in this consultation?

Yes.

We are pleased to see influencers in scope as this is an area where harm has emerged and worsened in recent years. There have been several high-profile examples of celebrities and influencers endorsing investments which have led to consumer losses[3]. The FCA has also called out the potential harms in its financial promotions data. The FCA said that retail investments' use of social media influencers on various platforms to market investments had 'become a concern' and advised firms to seek legal advice before using influencers[4]. We are concerned that influencers are not adequately explaining to consumers the potential risks of investments. Instead, they are over-focussing on the potential returns.

There are also dedicated financial influencers, or 'finfluencers', whose primary content is to promote certain investments, or investment strategies, which are often high risk. These 'finfluencers' often do so without FCA authorisation and so the protections offered by regulation (such as disclosure requirements) do not apply. Some 'finfluencers' may also promote fraudulent investments (deliberately or inadvertently). Whilst 'finfluencers' may not have the same social media reach as a celebrity, they may benefit from perceived legitimacy if their brand is solely financial services related. Consumers may therefore be more likely to be influenced by the content of 'finfluencer' advertising, which might not be easily identifiable as an advert.

Question 3: Do you agree with the range of actors that we have included in the scope of this consultation?

Yes. We support DCMS' proposals to cover the entire online advertising supply chain. This will allow harm to be tackled holistically. However, we would urge DCMS to consider any potential unintended consequences of this. For example, actors in the chain must not rely on others in the supply chain to evade or obscure their responsibility for breaches of any Codes or rules.

Question 4: Do you agree that we have captured the main market dynamics and described the main supply chains to consider?

No comment.

Question 5: Do you agree that we have described the main recent technological developments in online advertising in this section (section 2.2.2)?

No comment.

Question 6: Do you agree that our taxonomy of harms covers the main types of harm found in online advertising, both in terms of the categories of harm as well as the main actors impacted by those harms?

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[3] For example: https://www.dailymail.co.uk/news/article-9841277/Katie-Price-fans-lose-thousands-trader-paid-promote-Instagram.html

[4] https://www.fca.org.uk/data/financial-promotions-data-2021

Yes. There are some specific examples of harms caused by online advertising in the financial services market that we wish to draw DCMS' attention to:

(i) **Inadequate disclosure of risk in investments** – some online advertisements do not make the level of risk involved clear to consumers. Consumers may therefore inadvertently take on more risk than they are comfortable with and may ultimately suffer financial loss.

(ii) **Inadequate warning around crypto investments** – cryptoassets are extremely volatile and high-risk, yet around 2.3 million people in the UK own a cryptoasset[5]. Whilst ownership is increasing, the level of understanding of cryptoassets is declining, suggesting that some crypto users may not fully understand what they are buying. Online adverts for cryptoassets do not make the level or risk clear and over-focus on potential returns which, due to the volatility, are by no means guaranteed.

(iii) **Greenwashing** – some online advertisements mislead consumers in relation to how 'green' or 'sustainable' a product is. Consumers may therefore end up with investments which do not align with their aims.

(iv) **Inappropriate or unaffordable lending** – online advertisements for credit, especially high-cost credit, tend to emphasise the speed and ease of acquiring the product which could encourage consumers to take on loans they don't need or cannot afford. This can cause financial difficulty, as well as unnecessary damage to credit files, if consumers are unable to meet repayments.

(v) **Targeting of consumers in vulnerable circumstances** – our research into digital advertising found that there was potential for targeted advertising to exploit and manipulate consumers who were already vulnerable to harm. This could mean consumers buy products that are not right for them, which may lead to harms such as financial loss and an unexpected lack of regulatory protections.

(vi) **Influencer content** – influencers promote fraudulent or high-risk investments that result in consumer losses.

Question 7: Do you agree that our above description of the harms faced by consumers or society cover the main harms that can be caused or exacerbated by the content of online advertising?

Yes. We comment on the categories highlighted by DCMS below:

- **Illegal**: harm is caused to financial services consumers by fraud and scams. This is a well-recognised harm and we are pleased to see steps being taken to address it by the FCA, via its ScamSmart and InvestSmart campaigns, and others, such as Government expanding the scope of the Online Safety Bill to include fraudulent paid-for advertising. However, more needs to be done to effectively tackle fraud and scams, which are increasing in prevalence and complexity at a worrying rate.
- **Misleading**: this is arguably the most prevalent area of harm from online advertising within financial services. Online adverts can over focus on benefits, such as speed, ease and potential returns, and downplay risks, such as financial loss and damage to credit files. Online adverts may also mislead consumers by

[5] https://www.fca.org.uk/publications/research/research-note-cryptoasset-consumer-research-2021

creating the impression the product or service is covered by regulatory protections when it is not (sometimes referred to as the 'halo' effect).

- **Non-identified adverts**: this harm is most commonly seen with influencer and editorial content that may not obviously be advertising. In our view, non-identified adverts cause similar harm to fake reviews, which the Government has proposed welcome measures to tackle in its response to BEIS' consultation on reforming consumer and competition policy.
- **Legal but harmful**: in financial services, legal but harmful online adverts tend to fall into the misleading category above. Several life insurance adverts fall into this category, particularly those for 'Over 50's life assurance' that are increasingly being advertised and presented as 'Funeral Plans' and in many cases celebrity endorsed.

It is also worth noting that issues around the ethical use of data and Artificial Intelligence (AI) can cause or exacerbate the harm caused by the content of online advertising. Data and AI can be used to personalise the content of online adverts in ways that make them more likely to get the attention of or influence consumers. Whilst we note data ethics is outside the scope of this consultation, it is such a key driver of harms in online advertising that we would urge DCMS to bear it in mind when making choices about the OAP.

Question 8: Do you agree that the above description of the harms faced by consumers or society cover the main harms that can be caused or exacerbated by the placement or targeting of online advertising?

Yes, our research into digital advertising clearly shows the harms caused by the targeting of online advertising, as discussed in answer to Question 6 above. For example, in high-cost credit markets we found that advertising may target those already vulnerable to harm, such as those with low credit scores. Digital adverts for the high-cost loans specifically target these people by saying "all credit types welcome" or mentioned the loans were available to those with "poor or bad credit scores". Consumers may therefore have taken on credit they didn't need or couldn't afford.

However, we believe the definition of 'mis-targeting' should be broader to include unsuitable products. This would capture the existing categories, but also instances when products and services are marketed to consumers they are not suitable for. In financial services, this could include complex high-risk investments being marketed to retail consumers.

We would again urge DCMS to consider issues around the ethical use of data and AI when designing the OAP. The potential for harm if data or AI is used to target consumers is significant. In our research we raised concerns about the use of advertising technology or 'adtech' to create detailed profiles of individual consumers for personalised, targeted marketing but also potentially for discrimination, manipulation, and exploitation. We also had a poignant insight from a consumer in relation to the advertising of high-cost credit products: 'as soon as you think about it, the cookies come for you'.

The placement of online advertising also causes harm where the advert is not easily identifiable as an advert. This is particularly prevalent in the later-life lending market, where editorials can be used to promote products, such as funeral plans, over 50s policies and equity release, but it may not be immediately obvious the editorial is a promotion. It may also be difficult with this sort of placement for the consumer to tell *who* is promoting the product. They therefore won't be able to determine if that firm is regulated, if it is an appointed representative or who the actual product is issued by.

Question 9: Do you agree with our description of the range of industry harms that can be caused by online advertising?

No comment.

Question 10: Do you agree that we have accurately captured the main industry initiatives, consumer tools and campaigns designed to improve transparency and accountability in online advertising?

We note the complexity of the landscape here, with lots of actors and initiatives involved. This makes it difficult for the consumer to identify if something has gone wrong and know where to go for help. It is also difficult for the consumer to check the validity of the firm promoting and issuing the product, via, for example, the FCA Register. The complexity also makes issues and harms more difficult to address as it will not always be clear which regulator has jurisdiction/responsibility.

Question 11: Should advertising for VoD closer align to broadcasting standards or follow the same standards as those that apply to online?

No comment.

Question 12: To what extent do you agree with our rationale for intervention, in particular that a lack of transparency and accountability in online advertising are the main drivers of harm found in online advertising content, placement, targeting, and industry harm?

Strongly agree.

Question 13: To what extent do you agree that the current industry-led self-regulatory regime for online advertising, administered by the ASA, to be effective at addressing the range of harms we have identified in section 3.3?

Somewhat disagree. As identified throughout DCMS' consultation and our response, the current industry-led self-regulatory regime for online advertising is not preventing harm from occurring. We do not believe that self-regulation provides sufficient incentive for firms to change their behaviour.

We also note the ASA tends to look more at the legality of the online advert, rather than considering regulatory compliance. This means harms caused by adverts in the 'misleading', 'non-identified' and 'legal but harmful' categories under Question 7 above may not be addressed. The ASA also tends to focus on issues reported to it rather than use proactive monitoring. This approach relies on consumers being able to identify when an advert does not meet requirements, which would not often be the case. It is for these reasons that we call for a strengthened ASA in answer to Question 15 below.

Question 14: Do you consider that the range of industry initiatives described in section 4.3 are effective in helping to address the range of harms set out in section 3.3?

No.

Question 15A: Which of the following levels of regulatory oversight do you think is appropriate for advertisers?

a) Continued industry self-regulation with some backstopped areas (status quo)
b) Backstopped regulation for all or some higher risk areas of harm
c) Statutory regulation
d) Other (please specify

AND

Question 15B: Which of the following levels of regulatory oversight do you think is appropriate for platforms?

a) Industry self-regulation
b) Backstopped regulation for all or some higher risk areas of harm
c) Statutory regulation
d) Other (please specify)

AND

Question 15C: Which of the following levels of regulatory oversight do you think is appropriate for intermediaries?

a) Industry self-regulation
b) Backstopped regulation for all or some higher risk areas of harm
c) Statutory regulation
d) Other (please specify)

AND

Question 15D: Consultation question 15D

Which of the following levels of regulatory oversight do you think is appropriate for publishers?

a) Industry self-regulation
b) Backstopped regulation for all or some higher risk areas of harm
c) Statutory regulation
d) Other (please specify)

We are answering all elements of question 15 together, as our comments apply across the range of actors.

As we have outlined above, we do not think the status quo (Option 1) is effectively addressing harms caused by online advertising. With regard to Options 2 and 3, our preference would be to strengthen the powers, capacity and capabilities of the ASA so that it can supervise and enforce standards more efficiently and more proactively. This stronger, bolder approach would be in line with the FCA's approach to financial promotions and help create a coherent regulatory regime. It would also provide an effective deterrent to firms which would prevent harm occurring in the first place.

The complexity of the current regime discussed throughout this response means we are hesitant about proposals to introduce new bodies as it could exacerbate existing issues around confusion and overlap in jurisdiction. It also adds to difficulties consumers face in navigating the regulatory landscape when they feel something has gone wrong.

We have long advocated for better coordination within the regulatory family, and this is a good example of where such coordination would be helpful. With the ASA, FCA and others (e.g. Ofcom) supervising adjacent regimes in relation to advertising, there is real opportunity for these regulators to come together and share knowledge and insight to tackle common themes across sectors. Opportunities for true joint working should be identified and pursued where possible. This joined up approach would help close any gaps between regimes and ensure better, more consistent outcomes for consumers.

Question 16: Following on from your answer to question 14, do you think a mix of different levels of regulatory oversight may be warranted for different actors and/or different types of harm?

We are supportive of proportionate regulation, so long as the minimum or lightest touch position is above that required to address the harms discussed above.

Question 17: What is your preferred option out of the three permutations described under option 2?

a) Permutation 1
b) Permutation 2
c) Permutation 3

No comment.

Question 18: For each of the actors, which measures (set out in the tables in section 6.1.3 and section 6.1.4) do you support and why?

No comment.

Question 19: Are there any measures that would help achieve the aims we set out, that we have not outlined in the consultation?

As discussed at various points throughout this response, we do not think issues around the ethical use of data and AI can reasonably be excluded from considerations on what the OAP should look like. The use of data and AI is a key driver of both the content and targeting of online advertising and therefore a key driver of harm. Data and AI can also be part of the solution if opportunities for effective SupTech are pursued. We therefore urge DCMS to work with others exploring issues around the use of data and AI, by both firms and regulators.