

## Marketing

# Is the UK heading for an advertising ban?

**David Clifton, director of Clifton Davies Consultants, offers his perspective on the future of marketing restrictions**

Robert Simmons | 17 October 2018



In the gambling industry, advertising is something of a poisoned chalice of late with many regulators and governments looking to heavily restrict, or in some cases outlaw, advertising of gambling-related products entirely. In the UK, one of the worlds most developed gambling markets, the Gambling Commission and Advertising Standards Authority (ASA) have stepped up their efforts in trying to make the industry clean up its act on advertising. This is largely as a response to pressure from charities, the media and government that the average UK punter is being bombarded by gambling adverts and that these adverts are contributing to problem gambling rates.

In August, UK minister for sport Tracey Crouch said the industry should be able to police its own advertising, tweeting that “if industry leaders think there are too many advertisements, then don’t commission them. Government need not be involved.” But what is the best solution to the UK’s problem with gambling advertising? David Clifton, director of Clifton Davies Consultants Limited, offers his perspective.

**EGR Compliance: Is advertising of gambling and gambling-related products overregulated?**

**David Clifton (DC):** No. Gambling is an age-restricted product and therefore requires more careful and sensitive treatment when it is the subject of advertising in the same way that, for example, alcohol does too. In my view, gambling operators have historically regarded an adverse ASA ruling as little more than a slap on the wrist and it is only within the last year that considerably tighter regulatory controls have been introduced, albeit for perfectly understandable reasons given the level and nature of non-compliance with advertising codes, consumer law, privacy regulations and data protection requirements by some gambling operators and, crucially, by their affiliates.

**EGR Compliance:** Are the complaints received by the regulators merely an ersatz way of the industry policing itself?

**DC:** Whilst it is true that complaints to the ASA about gambling advertisements get made by rival operators, I don't think this can legitimately be regarded as akin to the industry policing itself. Such a description could possibly more accurately be applied to the Gambling Industry Code for Socially Responsible Advertising.

**EGR Compliance:** Should there be a mechanism for industry firms to report advertising related transgressions by other entities as a way of policing themselves?

**DC:** As indicated above, it is already open to a gambling operator to make complaint to the ASA about non-compliance of another operator's advertisement with the advertising codes, if it considers justification exists for doing so. To date, this has not worked of itself to prevent non-compliant advertising occurring, as repeated rulings by the ASA prove.

Greater potency in this respect is likely to be derived from the imminent LCCP changes, coming into effect from 31 October, that will elevate compliance with the advertising codes of practice to a social responsibility code provision and will make it easier for the Gambling Commission to take tougher enforcement action against gambling operators who breach advertising rules or consumer law.

**EGR Compliance:** Are the recent clampdowns on advertising of gambling-related products by regulators all over Europe a sign that the industry needs to change its strategy on advertising?

**DC:** It has been politicians reacting to perceived public opinion that has led to Italy's blanket ban on gambling advertising across all media platforms (including sponsorship of sports clubs by gambling operators). We wait to see if similar may

happen in Spain if recent speculation turns out to be true. A radical overhaul of gambling regulation and advertising will happen in the UK if the Labour Party takes power and sticks to its recently announced plans.

However, in so far as regulators are concerned, the last year has witnessed a distinct direction of travel on the part of the Gambling Commission, the ASA, the CMA and the ICO in relation to controls on gambling advertising and marketing and I don't see that changing any time soon unless the gambling industry effectively takes its own voluntary steps to bring about radical change, something that I think is unlikely unless all sectors are able to speak, and act, with one voice.

**EGR Compliance: In your opinion what is the best way for the industry to respond to the increased perception that advertising of gambling is reaching saturation levels?**

**DC:** The word "saturation" is key here. There are no statutory or regulatory controls on the amount of gambling advertising any one operator can produce. As long as the content is compliant, bombarding and pestering the public with intrusive gambling ads is not itself unlawful. However, it is that bombardment, fuelled by so many adverse media reports and well-publicised concerns that so much advertising normalises gambling for children, that has led to a general perception that advertising of gambling has already reached saturation levels and must reduce.

Insofar as an industry response is concerned, a good start will be for it to react as positively as it can to the Commission's recent call for "*a proper and constructive debate about gambling marketing and advertising, including sponsorship arrangements in sport*" and when better to do it than during the imminent Responsible Gambling Week?

**Bio:** *David Clifton practised for 30 years as a partner in a London law firm before founding Clifton Davies Consultancy Limited in 2013. He is a highly-regarded advisor to, and commentator on, both the online and land-based gambling industry.*

**Advertising | Advertising Standards Authority | Gambling Commission |  
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