[redacted]

From: FOI
Sent: 27 March 2023 15:41
To: [redacted]
Subject: FOI 020-23 - Response

Dear [redacted],

Our Ref: FOI-020-23

Thank you for your email to the Electoral Commission dated 1 March 2023.

The Commission aims to respond to requests for information promptly and has done so within the statutory timeframe of twenty working days.

Your request is shown below followed by our response.

Please disclose, preferably by PDF, a copy of any correspondence received from or sent to the Advertising Standards Authority related to the informally resolved complaint case that the Authority records against the Commission on 18 August 2021.

Our response is as follows:

We hold the information you have requested and are releasing eight documents to you.

To access these documents you will need to use our secure document-sharing system Objective Connect. You will receive an 'Invitation to Objective Connect Email Notification' (sent to the inbox of [redacted]). This notification will contain a link to enable you to start accessing your information. Please find below details on how to access the specific area we have set up for your documents.

1. Click on the link in the email.
2. You will be prompted to set up your username and password. Your username will be your email address, and your password can be whatever you like.
3. With your username and password, enter both details at the login screen and click 'login'.
4. You will now see your personal page, which will show the Share 'FOI 020-23'
5. By clicking on the name of the share, you will find your documents.
6. You may view any of these documents
7. In addition you may download a copy to your personal computer by selecting the 'download' option and then 'save'.

This service will be closed one month from our response date, this is the **27 April 2023.**

You will notice that some of the documents have information redacted. This is in line with the section 40 exemption of the Freedom of Information Act which allows for the non-disclosure of information if it would breach one of the data protection principles. Some of the documents contain personal data (as defined by the Data Protection Act) which relates to identifiable living individuals, including some

junior staff members who would not reasonably expect their information to be released. For this reason, those details have been redacted.

The Commission strives to be an open, transparent authority and I trust that this information satisfies your request.

If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at: https://www.electoralcommission.org.uk/freedom-information/make-a-freedom-information-request.

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website: https://ico.org.uk/

Yours sincerely

Information Officer
FOI@electoralcommission.org.uk

The Electoral Commission
electoralcommission.org.uk

From: [redacted]@ASA.Org.UK>
Sent: 02 August 2021 12:18
To: [redacted]
Cc:
Subject: A21-1114390

Dear [redacted]

Many thanks for your call earlier.

In response to your query, I've checked with a colleague in the Investigations team and they confirmed that, should you wish to resolve the complaint on an informal basis, you would not need to send any advice from other regulators to us.

I hope this helps.

Kind regards,

[redacted]

[redacted]

Direct Line [redacted]

Advertising Standards Authority
Castle House, 37-45 Paul Street
London EC2A 4LS
Telephone 020 7492 2222
www.asa.org.uk

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From: [redacted]@cap.org.uk>
Sent: 23 February 2022 16:39
To: [redacted]
Subject: CAP Copy Advice C22-1146611 revised ad proposal

Dear [redacted]

Thank you for your enquiry to Copy Advice.

I write to confirm that the revised advertising copy you submitted seems to comply with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). We have looked at this copy in light of existing ASA rulings and believe that, if factual evidence is held to support the claims made, the ASA is unlikely to uphold complaints against it. We shall advise the ASA of our belief if it considers complaints against this copy.

Although it is given by the CAP Copy Advice team in good faith, this advice does not bind CAP or the ASA, both of which might require you to provide evidence to substantiate their claims at a later date. Please note also that CAP has a regulatory role for many types of marketing communications. Our independence would be compromised if we were to endorse products or services and our advice should never be used for such purposes. You should be aware that, although it is designed to reflect the law, the Code does not cover marketers' legal or other obligations, which remain their responsibility.

For more information on specific sections of the CAP Code, please see our AdviceOnline guidance and follow @CAP_UK on Twitter for updates.

I hope this is useful, if you have any questions please do not hesitate to contact me.

Kind regards

[redacted]

[redacted]
Direct line [redacted]

Committee of Advertising Practice
Castle House, 37-45 Paul Street
London EC2A 4LS
Telephone 020 7492 2200
www.cap.org.uk

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Query:
Last year you kindly checked our five online ads for our 'digital transparency campaign' which aims to make people aware of online political advertising and how it works. We have one new ad and I would appreciate it if you could check this meets your CAP code.

The Electoral Commission is independent of governments; our ads are not political, they aim to make people be confident about understanding digital political campaigning; understand who is targeting them and why; and know how to take action if they see something that concerns them.

This new ad is a replacement for one of the ads from last year which received a complaint to ASA made by Reform Political Advertising (case number: A21-1114390). We resolved the complaint informally and confirmed we would not use the statement "A range of organisations can help address any concerns".

The new wording (in capitals) is as follows (the other wording is the same as last year's ads):
Think you know online political ads?
Fact or Fiction?
NO ONE IS REGULATING ONLINE POLITICAL ADS
(Fiction) SOME ASPECTS OF ONLINE POLITICAL CAMPAIGNING ARE REGULATED
Discover the facts about online political advertising
Learn more
Online political ads
Know them like they know you

Please can you let me know if the new wording meets the CAP code. Thank you.

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Complaint Notification

Subject To Confirmation

The Electoral Commission
3 Bunhill Row, London EC1Y 8YZ

Media: Social media (paid ad)
Agency:
Complaint Ref: A21-1114390
Complaints: 1

AD DESCRIPTION

A paid-for Facebook ad by the Electoral Commission, seen in May 2021, stated "Think you know online political ads? Quiz yourself to find out. Online political ads. Know them like they know you". An embedded video featured a gameshow-like format which presented two options, "Fact" and "Fiction", followed by the statement "There's nowhere to complain about online political ads". The answer was shown to be "Fiction", with further text stating "A range of organisations can help address any concerns".

ISSUE

Reform Political Advertising, who understood there were no organisations to which the public could complain about election advertising, challenged whether the ad was misleading.

RELEVANT RULES

We will consider the complaint under the following rules. Marketing communications must comply with all other relevant rules, among which are the underlying principles. You can access the full Code via the link below.

CAP Code

Misleading advertising

3.1 Marketing communications must not materially mislead or be likely to do so.

3.3 Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.

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Substantiation

3.7 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

Exaggeration

3.11 Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.

CONFIDENTIAL

[redacted]
The Electoral Commission

[redacted]@electoralcommission.org.uk

Advertising Standards Authority
Castle House, 37-45 Paul Street
London EC2A 4LS
Telephone 020 7492 2222
Email enquiries@asa.org.uk
www.asa.org.uk

29 July 2021

Ref: A21-1114390/EE/ts

By email

Dear [redacted]

Complaint about your ad

As you know, we received a complaint about your advertising from Reform Political Advertising in May 2021. While the ASA Executive initially took the view that no further investigation was needed, after subsequently receiving a more detailed rationale from the complainant, we put the case to the ASA Council for their view and they confirmed that the case should be considered further. Therefore it has been passed to the Investigations team. We need a response from you to help us decide how to resolve the complaint.

The attached Complaint Notification provides a summary of the complaint and the rules under which we will consider it. Further information you may need to provide a response is set out below.

Our process

We intend to treat this as a formal investigation.

Full information about the process is available on our website, here. You will find details of what we do when we first receive a complaint, how we will communicate with you during the process, and the stages of the investigation. You can also download our leaflet, *"Complaint about your ad What happens now?"*

What you need to do

We need you to respond to the complaint. We will then draft a recommendation for the ASA Council that the complaint is either upheld or not upheld, based on your response to us. You will get the chance to comment on the recommendation before it is put to the Council, who will decide the outcome. If the ASA Council upholds the complaint, its ruling might affect the acceptability of similar ads in other media, including broadcast.

We have reviewed your previous response on this issue. We acknowledge that the Electoral Commission website provides further information including examples of regulators and other bodies such as fact-checking organisations which people can contact with some concerns about some types of political ads, and states that advertising as part of an election campaign

Chairman Lord Currie of Marylebone **Chief Executive** Guy Parker
ASA Council Aaqil Ahmed, Tess Alps, Zaid Al-Qassab, Reg Bailey, Krystle Fonyonga, Alison Hastings, Wesley Henderson, Richard Lloyd, Kirsten Miller, Nita P Woods, Rebecca Rumbul, and Neil Stevenson

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is exempt from regulation by the organisations listed. However, we note that ad refers generically to "political ads" and states "A range of organisations can help address any concerns" (emphasis ours). Particularly considering the context in which the ad was seen (the run-up to local elections in May 2021) and the fact that it originated from the Electoral Commission, we think it is likely that members of the public would understand from the ad that there are organisations that regulate claims made in election ads (such as misleading or offensive claims), and that members of the public can make complaints to them.

We appreciate that there is a degree of subjective interpretation involved, however we think the above represents a legitimate view that many people are likely to take. As you know, the ASA Council has requested that this complaint be investigated, and there is a reasonable chance that they will uphold the complaint if we continue with a formal investigation.

Informal resolution

We understand that the campaign is no longer running, but that you have not ruled out using it again. If you would prefer to address the complaint without going through a formal investigation, we may be able to resolve the complaint informally if you agree to make changes to your advertising in future.

That may be possible if you agree not to use the claim "A range of organisations can help address any concerns", or claims likely to have similar meaning for members of the public, in future, and to avoid giving the impression that claims in election advertising are regulated and the public can complain about them to a regulating body. That might be achieved by toning down claims to state that there are organisations that can address "some" concerns, or being more specific about the types of political advertising issues that are overseen by regulators. If you wish to consider resolving the complaint informally, please let us know as soon as possible.

The names of advertisers who agree to resolve complaints informally are published on this page of our website, under the "Informally resolved" tab, where you will see we do not publish details of the complaint or state that there has been a breach of the Code. In the event of a press enquiry, we would give a brief description of the ad and the nature of the complaint, and confirm that we approached you about the issue raised and that you agreed to amend or withdraw the ad.

As well as responding to the complaint, please also:

- Check that your organisation's legal name and address are listed correctly at the top of the complaint notification.

- Let us know the name of your advertising agency or any other company that prepared the advertising on your behalf.

- Submit any advice you may have received from another regulator in relation to this advertising. If you have a Primary Authority partnership, please provide us with copies of any relevant assured advice you have received and contact details for the person who provided that advice. Should you have reason to contact your Primary Authority regarding this or similar advertising during the course of our investigation,

please let us know in advance and ensure that the Primary Authority is made aware of our investigation.

Your response deadline

So that we can conclude this matter as soon as possible, please respond in writing, preferably by email to [redacted]@asa.org.uk within SEVEN working days. Please be aware that an unreasonable delay in responding to our enquiries may be considered a breach of The Advertising Code. If we do not receive a reply from you by **9 August**, we may add your lack of response to the other issues that we are investigating which will form part of any formal published ruling.

We shall be sending notification of this complaint to Facebook for their information only.

Thank you for your co-operation. We look forward to hearing from you.

Yours sincerely

[redacted]

[redacted]

[redacted]@asa.org.uk

[redacted]

We shall use your contact details, together with other information from or about you, to deal with the complaint. We may contact you to assess the quality of our services or to give you information about our activities, which might interest you. If you do not want to be contacted for that purpose, you can opt out of this by contacting us at enquiries@asa.org.uk. We'll process this information on the basis of a legitimate interest. To find out more, please read our Privacy Notice at www.asa.org.uk.

From: [redacted]@ASA.Org.UK>
Sent: 10 August 2021 16:25
To: [redacted]
Cc: Susan Crown
Subject: RE: [External] ASA complaint ref: A21-1114390

Dear [redacted]

Thank you for your email below.

We think your assurance that you will not reuse the claim "A range of organisations can help address any concerns" and will revise the language used for future campaigns will resolve the complaint without the need for a formal ruling by the ASA Council.

On the basis that you will make those changes, we will close our file on the complaint.

As I explained in my original letter, the names of advertisers who agree to resolve complaints informally are published on this page of our website, under the "Informally resolved" tab, where you will see we do not publish details of the complaint or state that there has been a breach of the Code. In the event of a press enquiry, we would give a brief description of the ad and the nature of the complaint, and confirm that we approached you about the issue raised and that you agreed to amend or withdraw the ad.

The name of your organisiation and the number of complaints we received will be published on **Wednesday 18 August**.

Please note, where similar claims appear elsewhere in your advertising, you should take steps to ensure they are removed line with the assurance given in this case.

Thank you for your co-operation.

Kind regards

[redacted]
Direct line: [redacted]

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From: [redacted]@electoralcommission.org.uk]
Sent: 03 August 2021 09:26
To: [redacted]@ASA.Org.UK>
Cc: Susan Crown <SCrown@electoralcommission.org.uk>
Subject: RE: [External] ASA complaint ref: A21-1114390

Hello [redacted]

Thank you for forwarding the complaint (A21-1114390) made by Reform Political Advertising regarding one of our "Think you know online political ads?" adverts.

We wish to resolve the complaint informally. We were planning to refresh our statements/answers in these series of adverts for our next campaign in 2022, therefore we can confirm, we will not use the statement "A range of organisations can help address any concerns" and we will look for language to make our intent clearer.

While we do not agree with the view proposed by Reform Political Advertising, we accept that some people may interpret it in that way specified and we would not wish there to be misunderstanding, particularly when the campaign is designed to promote understanding.

I can confirm that the name and address of The Electoral Commission are listed correctly at the top of the complaint notification, and our advertising agency is MSQ Partners. As we are pursuing the 'informal resolution' route, your colleague [redacted] upon checking with the Investigations Team, has informed me that we do not need to provide any advice from another regulator in relation to this advertising.

With thanks,
[redacted]

[redacted]

The Electoral Commission
[redacted]
electoralcommission.org.uk

From: [redacted]@ASA.Org.UK>
Sent: 29 July 2021 14:16
To: [redacted]@electoralcommission.org.uk>
Subject: ASA complaint ref: A21-1114390

Dear [redacted]

Please view the attached documents regarding a complaint we have received about your advertising.

Please note a written response is required by **9 August.**

Kind regards

[redacted]
Direct line: [redacted]

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From: [redacted]@ASA.Org.UK>
Sent: 14 July 2021 12:39
To: [redacted]
Subject: RE: [External] ASA Query - Ref A21-1114390

Dear [redacted]

Many thanks for the information and please accept my apologies for the delay in responding to you.

We received a complaint from Reform Political Advertising about the ad in May and it was determined by the Complaints team that no further action would be taken at that time. We explained this to the complainant, but they subsequently responded in detail with continued concerns about the issue.

In light of this, we then put the case to the ASA Council for their view and they have confirmed that the case should be considered further by our Investigations team. We have, therefore, referred the case to them, which includes the information about your Copy Advice query. As such, a colleague of mine will be in touch to update you on next steps.

Your patience is much appreciated in the meantime. Thank you again for your assistance thus far and, again, my apologies for the delayed reply.

Kind regards,

[redacted]

[redacted]
Direct Line [redacted]

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Please consider the environment before printing this email.

From: [redacted]@electoralcommission.org.uk]
Sent: 30 June 2021 16:07
To: [redacted]@ASA.Org.UK>
Subject: RE: [External] ASA Query - Ref A21-1114390

Hello [redacted]

Thank you for your email.

You are correct in that we contacted the ASA for copy advice about this series of ads and received the attached email on 10 March 2021.

We have not yet decided which ads we will use in our campaign next year, however there is a possibility that this one will run.

We understand the complainant believed that there were no organisations which regulated election advertising.
Our ad says 'There's nowhere to complain about online political ads' and asks whether that statement is 'fact or fiction'. It then states it is fiction and explains 'A range of organisations can help address any concerns'.

We provide further information on our website, including examples of regulators and other bodies such as factchecking organisations which people can contact with a concern about an ad. The first link is the landing page which people who click on these ads are directed to and the second link can be reached from the landing page.

- https://www.electoralcommission.org.uk/i-am-a/voter/online-campaigning - see 'Who has a role in the regulation of online political ads?
- https://www.electoralcommission.org.uk/i-am-a/voter/online-campaigning/claims-made-online-political-ads

We understand that the ASA reviewed a complaint about this ad in May and did not uphold the complaint. Are you able to tell us if this is a separate complaint or is linked to that complaint?

With thanks,
[redacted]

[redacted]

The Electoral Commission
[redacted]
electoralcommission.org.uk

From: [redacted]@ASA.Org.UK>
Sent: 29 June 2021 12:46
To: [redacted]@electoralcommission.org.uk>
Subject: ASA Query - Ref A21-1114390

Dear [redacted]

I hope you're well. I'm writing from the Advertising Standards Authority regarding a complaint we've received about the attached ad.

The complainant challenged whether the ad was misleading as they believed that there were no organisations which regulated election advertising.

We understand that you sought Copy Advice about this series of ads and, so that we may fully understand all of the issues, I'd be grateful if you could please confirm whether the claim will appear in any similar ads in the future?

It would be helpful if you could please get back to me by, if possible, Thursday 1 July at the latest.

I look forward to hearing from you, and with thanks in advance

Kind regards,

[redacted]

[redacted]

Direct Line [redacted]

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From: [redacted]@cap.org.uk>
Sent: 09 February 2022 09:39
To: [redacted]
Cc: Susan Crown
Subject: RE: ASA CAP Code

Hi [redacted]

Thank you for your email. The Copy Advice Team would be best placed to advise on new wording. You can get in touch with them via our website here. It's worth noting that a similar ad was subject to a previous complaint when you submit your request, so they are aware.

Kind regards

[redacted]

[redacted]
Direct line: [redacted]

Committee of Advertising Practice
Castle House, 37-45 Paul Street
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From: [redacted]@electoralcommission.org.uk>
Sent: 08 February 2022 17:48
To: [redacted]@cap.org.uk>
Cc: Susan Crown <SCrown@electoralcommission.org.uk>
Subject: [External] ASA CAP Code

Hello [redacted]

We corresponded last year about a complaint (A21-1114390) made by Reform Political Advertising regarding one of our "Think you know online political ads?" adverts (see email below).

We resolved the complaint informally and confirmed we would not use the statement "A range of organisations can help address any concerns".

We have new wording for the advert and I wondered who in the ASA would be able to check whether the new wording meets the CAP code. As well as yourself, I previously dealt with [redacted] and [redacted]. I'm presuming it will be [redacted] in the [redacted].

I did want to check in with you however to see – as this is new wording for an advert which received a previous complaint – whether there were any other procedures we needed to do before going live with it.

Thank you,
[redacted]

[redacted]

The Electoral Commission
[redacted]
electoralcommission.org.uk

From: [redacted]@ASA.Org.UK>
Sent: 10 August 2021 16:25
To: [redacted]@electoralcommission.org.uk>
Cc: Susan Crown <SCrown@electoralcommission.org.uk>
Subject: RE: [External] ASA complaint ref: A21-1114390

Dear [redacted]

Thank you for your email below.

We think your assurance that you will not reuse the claim "A range of organisations can help address any concerns" and will revise the language used for future campaigns will resolve the complaint without the need for a formal ruling by the ASA Council.

On the basis that you will make those changes, we will close our file on the complaint.

As I explained in my original letter, the names of advertisers who agree to resolve complaints informally are published on this page of our website, under the "Informally resolved" tab, where you will see we do not publish details of the complaint or state that there has been a breach of the Code. In the event of a press enquiry, we would give a brief description of the ad and the nature of the complaint, and confirm that we approached you about the issue raised and that you agreed to amend or withdraw the ad.

The name of your organisiation and the number of complaints we received will be published on **Wednesday 18 August**.

Please note, where similar claims appear elsewhere in your advertising, you should take steps to ensure they are removed line with the assurance given in this case.

Thank you for your co-operation.

Kind regards

[redacted]
Direct line: [redacted]

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From: [redacted]
Sent: 21 February 2022 16:07
To: [redacted]
Subject: RE: Copy Advice - banner ads and online political advertising

Hello [redacted]

We corresponded last year (see email below) about our 'digital transparency campaign' (our online ads for making people aware of online political advertising and how it works).

You and your team kindly checked our suite of five online ads as part of your Copy Advice Service.
We have one new ad and I would appreciate it if you and your team could check this meets your CAP code.

This ad is a replacement for one of the ads from last year which received a complaint to ASA made by Reform Political Advertising (case number: A21-1114390). We resolved the complaint informally and confirmed we would not use the statement "A range of organisations can help address any concerns".

The new wording (highlighted in yellow) is as follows (the other wording is the same as last year's ads):

Think you know online political ads?
Fact or Fiction?
No one is regulating online political ads
(Fiction) Some aspects of online political campaigning are regulated
Discover the facts about online political advertising
Learn more
Online political ads
Know them like they know you

Please can you let me know if the new wording meets the CAP code.

With thanks and kind regards,
[redacted]

[redacted]

The Electoral Commission
[redacted]
electoralcommission.org.uk

From: [redacted]@cap.org.uk>
Sent: 10 March 2021 15:15
To: [redacted]@electoralcommission.org.uk>
Cc: Susan Crown <SCrown@electoralcommission.org.uk>
Subject: Copy Advice - banner ads and online political advertising

Dear [redacted]

Thank you for your enquiry to Copy Advice.

I write to confirm that the advertising copy you submitted about online political advertising seems to comply with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). We have looked at your copy in light of existing ASA adjudications and believe that, if you have the factual evidence to support your claims, the ASA is unlikely to uphold complaints against it. Also, we shall advise the ASA of our belief if it considers complaints against your copy.

Although it is given by the CAP Copy Advice team in good faith, this advice does not bind CAP or the ASA, both of which might require you to provide evidence to substantiate your claims at a later date. Please note also that CAP has a regulatory role for many types of marketing communications. Our independence would be compromised if we were to endorse products or services and our advice should never be used for such purposes. You should be aware that, although it is designed to reflect the law, the Code does not cover marketers' legal or other obligations, which remain their responsibility.

For more information on specific sections of the CAP Code, please see our AdviceOnline guidance and follow @CAP_UK on Twitter for updates.

I hope this is useful, if you have any questions please do not hesitate to contact me.

Kind regards

[redacted]
Direct line [redacted]

Committee of Advertising Practice
Castle House, 37-45 Paul Street
London EC2A 4LS
Telephone 020 7492 2222
www.asa.org.uk

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