

MoneySavingExpert

Response to Online Advertising Programme consultation

Department for Digital, Culture, Media and Sport

1. Do you agree with the categories of online advertising we have included in scope for the purposes of this consultation? Yes/No/Don't know. Do you think the scope should be expanded or reduced?

2. Do you agree with the market categories of online advertising that we have identified in this consultation? Yes/No/Don't know. Do you think the scope should be expanded or reduced?

Yes (to both questions 1 and 2).

We answer questions 1 and 2 together. For the most part, the scope of the consultation and the market categories identified align with our understanding of the online advertising landscape.

However, the Department should be cautious in its development of policy regarding open display ads, to ensure it is considering the full range of these type of ads online. While the 'type of advert' definition in the consultation highlights that open display ads can be found on paid-for newsletter advertising, the 'example hosts' are specifically news sites.

We would ask the Department to be mindful of just how large the landscape of open display ads can be, and that it includes sites such as blogs or live feed sites, so as to ensure all current host sites are encompassed by new regulation. The annex attached in a separate document to this submission gives just some examples of the types of open display ads that are flagged to us on a regular basis.

4. Do you agree that we have captured the main market dynamics and described the main supply chains to consider? Yes/No/Don't know

No. Although we agree largely with the market dynamics identified, attention should also be given to email advertising, which is missing from the consultation. While it will of course be very challenging to prevent scams via email, this type of fraud should also be considered as part of the Online Advertising Programme (OAP).

Similarly, some legitimate news providers carry advertising in their email newsletters. It needs to be specified if this type of online advertising is in scope of the OAP, and if not, why not, and how consumers will be protected from any harm from them.

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? Yes/No/Don't know

No.

The inclusion of 'fake endorsements', which are currently described as 'use of celebrity images to promote products or scams without their consent', as a category on the taxonomy of harms is welcome. But the description should be widened to include both fake celebrity and fake brand

endorsements. We see many examples of both Martin Lewis and of the MoneySavingExpert brand (as well as others) used as a way of playing on people's trust to trick them out of their money.

In addition, the taxonomy does not currently include scam adverts which are purposefully designed to look like editorial articles. These types of scam advert are usually found on legitimate news sites, with the adverts purposefully designed to mirror the editorial layout of other legitimate articles. These trick the reader into thinking they are still reading content from the trusted website, and not an advert by a scammer. We have had a number of these types of scam adverts reported to us, and some examples can be found on Table 2 in the annex (submitted separately).

As currently drafted, the OAP's taxonomy of harms does not include reference to these types of scam adverts; specifically, that it is the copied editorial layout of the ad that makes them such a high risk to consumers.

The Department should also proactively monitor and add to its taxonomy of harms, both throughout the consultation period and beyond, to ensure it is responsive to the sophistication of ads in the future. The taxonomy of harms should be flexible enough to encompass future harms, which can then be robustly dealt with by the policy outcomes of this consultation.

7. Do you agree that our 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.

MSE's work in this area has been focused on scammers, and as such, we limit our comments to the section related to fraud.

It is very welcome to see that both the financial and psychological impacts of falling victim to an online scam are acknowledged in this description. We also welcome the consultation's acknowledgement that many consumers do not know how to raise a complaint, or who to raise a complaint with, and that this adds to the distress caused.

The description of the current lack of incentives for bad actors to comply is also consistent with our view of the current regulatory landscape. It further highlights the need for robust intervention in all sections of the advertising supply chain, and the urgent need for the end of the self-regulatory landscape which has led to these consumer harms.

As is clear from the evidence provided in the consultation, vulnerable people must be protected against fraudulent adverts. However, it must be remembered that anyone can be harmed by a scam ad online, beyond traditional assumptions of what or who might be considered vulnerable.

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?

As well as the other consumer tools identified, the Citizens Advice Scam Action (CASA) service is a key resource.

The service allows consumers to access support from a dedicated scams adviser, whether they think they have found an online scam, they need advice, or they want to report a scam. Advisers can be contacted by phone or using a chat function. Scams can also be reported through an online form. CASA was initially funded as part of the settlement in Martin Lewis' defamation claim against Facebook in 2019.

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?

We somewhat agree.

While the lack of transparency and accountability are undoubtedly drivers of harm, specific consideration must also be given to the fact that platforms can profit from scam adverts, as the system currently works.

Improving transparency and accountability in the advertising eco-system would of course create better incentives for all actors in this space to tackle illegal scam ads, but this has its limitations if it remains cost-effective for services to host scam ads.

The consultation highlights that the Advertising Standards Authority's (ASA's) enforcement powers are insufficient. Beyond this, the ASA's ability to tackle illegal scam ads is even weaker. This is because it is extremely unlikely that the ASA will be able to find any organisation or person to hold to account, or that they will cooperate. Such enforcement *should* be carried out by the police, but this has significant practical challenges, as police forces largely do not have capacity to investigate this type of crime.

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 the taxonomy of harms?

We strongly disagree.

Currently, the industry-led self-regulatory regime is not only ineffective at addressing harms caused by scam ads, but contributes to the proliferation of scams online. A lack of checks and balances across the industry has led to an almost Wild West situation – of criminals acting with no consequence, scamming countless people of their hard earned and hard saved cash.

As acknowledged in the consultation, regulators do have some powers to hold advertisers to account, but this only works when the advertiser is a legitimate one. The ASA currently has no formal powers to hold platforms to account, even though, in our experience, it is on social media platforms that these scam ads are found most frequently.

The retrospective nature of many platforms' current policies in this area, i.e. taking down scam ads when they have been reported by users, puts the onus on those being harmed to take steps to prevent it from happening to others. This is not an effective way to act against a problem which can have such devastating consequences.

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 the taxonomy of harms? Yes/No/Don't know

No.

While Google's recent introduction of verification requirements for financial ads has been welcome, ultimately, voluntary industry initiatives in this area can never be assumed to be sufficient, as they will always be balanced with commercial considerations. Which? has said that industry representatives have told its researchers that the industry's initiatives are focused on protecting

advertisers rather than consumers. Stringent regulations, enforced effectively, and with real consequence for publishers, is the only effective solution.

15

- A. Which of the following levels of regulatory oversight do you think is appropriate for advertisers?
- B. Which of the following levels of regulatory oversight do you think is appropriate for platforms?
- C. Which of the following levels of regulatory oversight do you think is appropriate for intermediaries?
- D. Which of the following levels of regulatory oversight do you think is appropriate for publishers?

For all questions, option 3: a full statutory approach is necessary for all actors.

Our strong view is that platforms are publishers. Any entity that is paid to publish an advert online is a publisher. There should be no difference between the requirements for the OAP's definition of a 'publisher' and a 'platform', as they are the same.

While we acknowledge there are some differences between advertisers and intermediaries, every actor in the advertising supply chain should be responsible for their role in the process. As we have explained in our response to questions 13 and 14, the current self-regulatory landscape is not effective at dealing with fraudulent adverts, and so we have no reason to believe that oversight that includes a self-regulatory element will be able to introduce the kind of consumer protection that is so urgently needed.

Requiring each actor in the supply chain to take responsibility should reduce the chance of a user encountering a scam ad online. The additional powers given to the statutory regulator would also give welcome redress to consumers who have been harmed by any ads that do slip through the net.

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?

We are agnostic about the exact measures used to regulate the online advertising landscape – whether that is a technological solution or based on employing teams to manually check adverts, if the technology is not available. Regardless of the mechanism, the onus should be on industry to successfully implement proactive solutions to the problem of fraudulent advertising, and not on consumers to take action.

Reporting tools on platforms, which allow users to report scam ads when they appear, should also be a key part of the package of solutions for any scam ads that do slip through the net. For best efficacy, this should involve a unified system across the UK for internet users to easily report scam adverts they encounter. This should include the same method for reporting, for example being able to report a scam ad with one click and without the need to fill in personal details, as well as consistent language and symbols across all reporting systems on all platforms so that the process is easily learnt and used when needed. This process would empower consumers to be able to easily report scam ads wherever they encounter them so that they can be quickly taken down. Currently, nothing like this exists and reporting scam ads can be incredibly difficult.

However, a reporting tool is only a reactive measure for those scam ads that have slipped through the net. It is not an alternative to effective regulation of the online landscape, and measures to prevent such adverts from appearing in the first place.

When more detailed information on measures is available, we would also like to see how these are expected to align with those outlined in the Online Safety Bill.

Annex

Please see the accompanying annex for examples of fraudulent adverts that we have seen or that have been reported to us by our users.