

# Toothless?

Watchdog or lap dog –  
are UK regulators fit to  
rein in advertising’s  
growing climate harm





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## Introduction



In recent years advertising by companies such as oil companies, airlines and car makers for highly polluting products and services has come under increasing public scrutiny for its role in worsening global heating by driving harmful overconsumption. As well as high levels of associated carbon emissions, advertising has been criticised for its complicity in helping major polluters conceal or distract from their highly polluting business models and practices by marketing themselves as green companies. In the midst of a climate crisis, with the impacts of climate breakdown becoming more frequent and severe, such advertisements, which are now ubiquitous, amount to the deliberate promotion of general self-harm with terrible consequences.

In the UK, the Advertising Standards Authority (ASA) is the organisation in charge of ensuring that advertising adheres to advertising codes of practice and guidelines. Given the urgent need to address advertising in the context of the climate crisis, we have reviewed the efficacy of the main UK advertising regulator, the Advertising Standards Authority (ASA), in protecting consumers from greenwashing and environmentally-harmful advertising, as well as in helping the UK meet its legally binding climate commitments.

Our findings are clear: **under its current structure and mandates, the UK advertising regulator in its current form is not fit or able to protect citizens from the public health and climate impacts of high-carbon advertising.** In response, we provide a non-exhaustive list of recommendations to the UK Government to ensure that controls are placed on high-carbon advertising and to deliver an effective regulatory framework equipped with the necessary statutory powers, mechanisms, and resources to regulate high-carbon advertising and greenwashing in line with the action and ambition required to prevent the worst impacts of climate breakdown. These include:

1. A 'tobacco-style' law banning high carbon advertising
2. Making the ASA a truly independent regulatory body
3. A mandate for the ASA to issue legally binding rulings and fines in a proactive manner (rather than the current reactive approach)
4. Enforcement powers for the ASA to suspend an advert pending investigation
5. A more transparent and efficient advertising complaint process
6. Clarity on the UK's advertising and marketing regulatory architecture and how it aligns with the UK's environmental commitments

## Where are we: greenwash drowns out urgent climate action



We are currently swimming in an ocean of high-carbon advertising. Whether it is adverts promoting low cost flights to far flung destinations, or giant SUVs that pollute our streets and air, advertisements pushing harmful products and encouraging highly polluting lifestyles are everywhere.

In recent years, we have also witnessed a new wave of greenwash advertising, a direct reaction to both rising public concern over the climate crisis and legally-binding government targets to reach net zero carbon emissions by the middle of this century. These adverts successfully hide companies' harmful practices behind green slogans, far-off targets, and minority 'eco' product lines, while promoting a persuasive, and carefully strategised,<sup>1</sup> but false impression of environmental responsibility and corporate leadership on climate.<sup>2</sup>

Despite the ad industry's promises to take action on the climate<sup>3</sup>, its attention-grabbing climate pledges and initiatives are so far inadequate and serve only to delay what is necessary: **clear and properly enforced regulations to tackle high-carbon advertising**. Until then, big polluters will keep using advertising as a means of normalising high-carbon lifestyles and delaying the necessary climate action required to ensure a habitable planet.

## Why aren't regulators regulating?



### The remit and limitations of the ASA (UK)

The Advertising Standard Authority (ASA) is the UK's self-regulating advertising body, which is funded by the advertising industry. The ASA is responsible for the application of its codes of practice for broadcast and non-broadcast media, written by two industry committees, the Broadcast Committee of Advertising Practice (BCAP) and the Committee of Advertising Practice (CAP), respectively. Three other panels composed of members of the advertising and media industry - the Industry Advisory Panel, the Promotional Marketing and Direct Response Panel and the Online Publications Media Panels - help provide guidance to the ASA and CAP. Their work is non-binding but they can exert influence on the writing of the codes and the complaint process.

**"The advertising industry is central to the success of the self-regulatory system"**

CAP Committees, Panels and Executive, ASA.<sup>4</sup>

Through the CAP and BCAP Codes of Practice, the ASA's remit is to tackle misleading, harmful or offensive advertising. The Codes have dedicated sections on environmental claims and other rules ensure that ads are socially responsible, e.g.: All marketing communications should be prepared with a sense of responsibility to consumers and society (Rule 1.3)<sup>5</sup>.

The organisation subscribes to a reactive and ad hoc complaint-based approach to the regulation of advertising. In practice, this means that rules are enforced only after the adverts have been aired, and based on evidence provided in the complaints that these are in breach of the ASA's Codes.<sup>6</sup> Even then, complaints are not guaranteed to be upheld or even investigated by the ASA (see image 1 below). If a complaint is formally investigated, the ASA asks the advertiser to provide evidence to defend their advert. A recommendation is then passed onto the ASA Council for its final ruling. The ASA classifies the ASA Council as an 'independent jury' deciding whether or not there has been a breach of the codes. However, only two thirds of members are independent of the industry. Furthermore, the ASA claims that members of the Council offer a range of perspectives from various sections of society. At present, we note that

membership on the Council remains skewed towards corporate interests given that a majority of the members represent private companies from the media, marketing and advertising industry, rather than civil society interests or concerns.

Based on the ASA's own 2022 annual figures,<sup>7</sup> the organisation received a total of 21,110 complaint cases. This is a good proxy for the number of ads complained about since it is common for multiple complaints to be submitted concerning the same ad or ad campaign.

Among all complaint cases, 503 (2.4%) pertained to environmental issues.<sup>8</sup> Of these 503 environmental cases, 438 (87.1%) were not investigated as they were deemed by the ASA to either fall outside of the regulator's remit or failed to raise any issues that risked breaching Advertising Codes.<sup>9</sup> Out of the remaining 'actionable' 65 complaint cases investigated by the ASA, 49 (75.4%) were informally resolved (when the advertiser agrees to remove or amend a claim) and 16 (24.6%) were formally resolved. Of these 16 formally resolved complaint cases, 12 cases were upheld (18.5% of actionable environmental complaint cases and **just 2.4% of all environmental complaint cases filed**), meaning advertisers are asked to remove or amend the advert in its current form.



# How many environmental complaint cases received by the ASA are upheld?

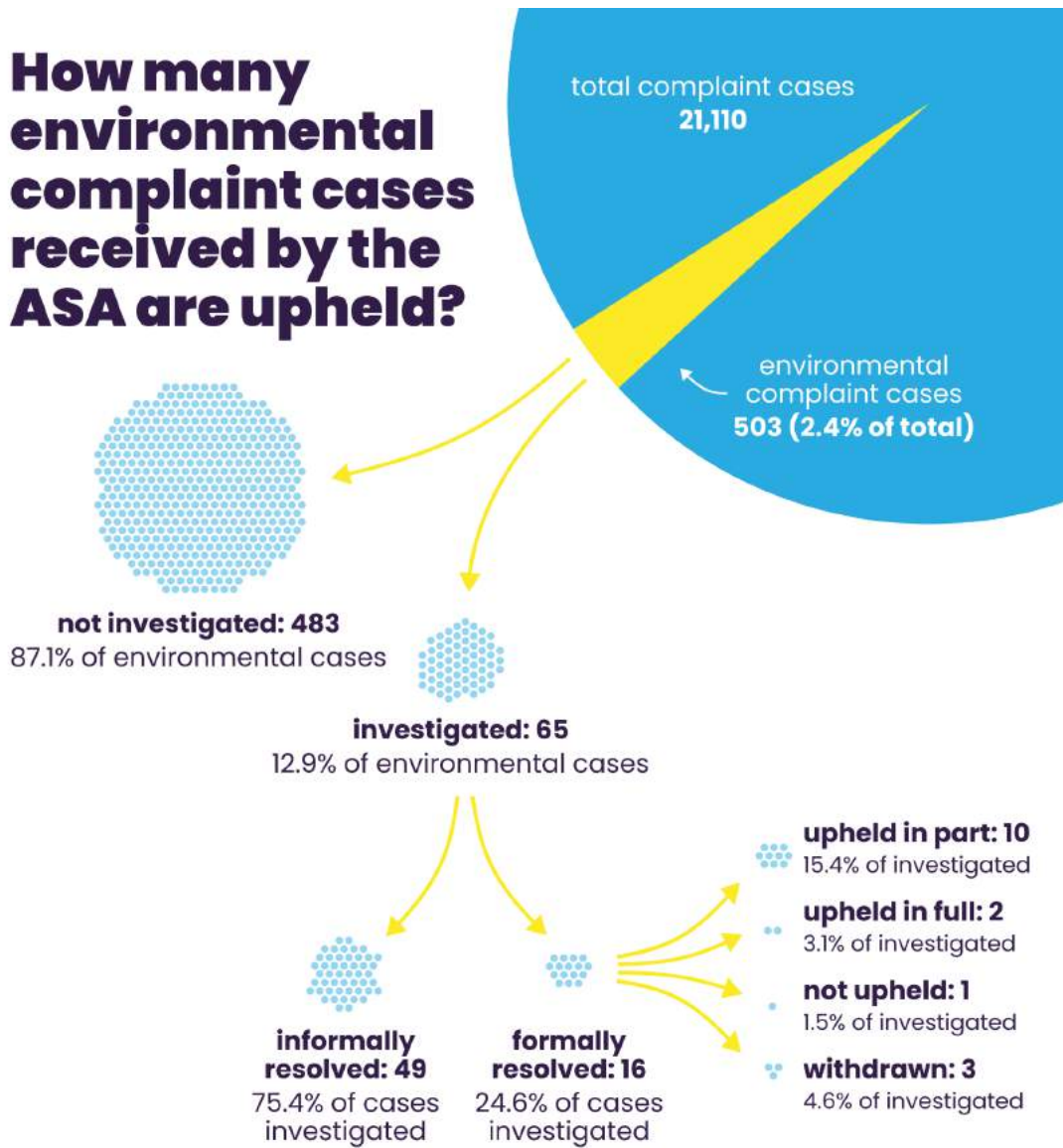


Image 1: Environmental complaint cases dealt by the ASA in 2022.  
Data: UK Advertising Standards Authority.

While it appears that the majority of complaint cases are not investigated by the regulator as they fall outside of the ASA’s remit and advertising Codes, this is more a case of the codes and remit being insufficiently broad to capture all cases that might reasonably be deemed misleading environmental advertising. Given the increasing rate of greenwashing claims by businesses, it is also worth questioning whether the ASA, under its current formation, is resourced well enough to handle this growing issue effectively.

# How many environmental complaint cases received by the ASA are upheld?

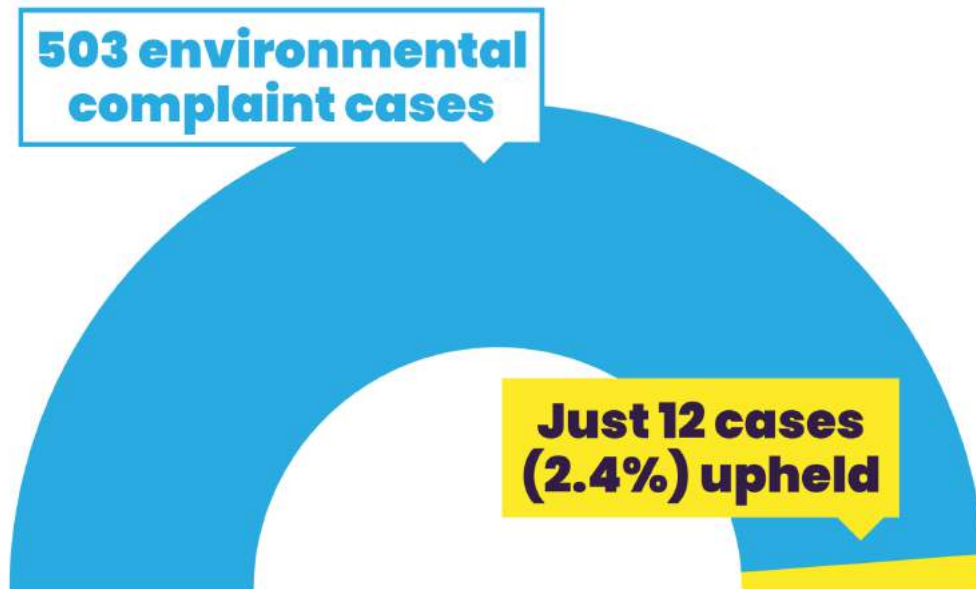


Image 2: Environmental complaint cases dealt by the ASA in 2022.  
Data: UK Advertising Standards Authority.

## Tackling misleading green advertising

To counter the growing prevalence of misleading and false environmental claims by businesses, the UK's Competition and Markets Authority (CMA) - the government body tasked with enforcing competition and consumer protection - released new guidelines in 2021, under its Green Claims Code,<sup>10</sup> to prevent consumers from falling prey to untruthful corporate green claims. In 2022, the organisation launched an investigation into fast fashion and took enforcement action against fashion brands ASOS, Boohoo and George at Asda for misleading green claims.<sup>11</sup> As part of its ongoing investigation into misleading green claims, the CMA is looking into other sectors, starting with household essentials.<sup>12</sup> As of February 2023, a new UK Government bill is also due to give new enforcement powers to the CMA with the ability to

impose civil penalties on companies who are in breach of consumer law, such as those guilty of greenwashing.<sup>13</sup>

Through its 'Climate Change and the Environment project',<sup>14</sup> the ASA separately undertook its own research into specific sectors identified as priority areas for consumer behaviour change by the UK Climate Change Committee. These sectors include: aviation, cars, waste, animal-based foods and heating. This research led to the ASA publishing new guidance in December 2022 highlighting some key aspects advertisers should pay attention to when making "General Green Claims" e.g.:

**"Advertisers should also take care not to mislead by omitting information about their environmental impact."<sup>15</sup>**

In 2022, the ASA published research into consumers' understanding of "carbon neutral/net zero" and "hybrid" and "electric" car claims.<sup>16</sup> The survey concludes that there is a significant lack of clarity around such claims. What's more, the issue of offsetting, which underpins many of these brands' green claims and credentials, is a major source of confusion and misunderstanding for consumers. Easyjet's 2021 'Destination Zero Emissions' advert, which featured as a case study for the ASA's research, was judged overwhelmingly negatively by the research participants who "understood that airline travel could not deliver Zero Emissions, although the headline of the ad strongly suggested otherwise." A complaint about this specific advert was filed in November 2021 by Adfree Cities, after being spotted across bus stops and billboards in London during the COP26 climate talks in Glasgow.<sup>17</sup> However, at the time, the ASA declined to investigate further, citing their ongoing review into the travel sector. Campaigners went further with their complaint by submitting it to the Competition and Markets Authority instead.<sup>18</sup> The CMA, however, declined to investigate due to limited resources whilst it conducted a separate investigation into misleading environmental claims in the fashion sector at the time. In March 2022, a similar advert by Easyjet promoting zero emission flights by 2050 in France (image 4) was deemed greenwashing by the French advertising regulator, Jury de Déontologie Publicitaire.<sup>19</sup>



Image 3: Easyjet Destination Zero Emissions spotted at a bus stop at London Victoria on 19 October 2021. Credit: Adfree Cities | Image 4. Easyjet advert banned in France for greenwashing. Text in English: “Our ambition: zero CO2 emission flights from 2050”. Source: <https://www.lechotouristique.com/article/easyjet-accusee-de-greenwashing-par-le-jury-de-deontologie-publicitaire>

Despite not investigating Easyjet's complaint, the ASA decided more recently in its own proactive challenge to rule against the German airline Lufthansa for an advert (image 5) showing the company's aircraft juxtaposed on a globe with the tagline “Connecting the world. Protecting its future”.<sup>20</sup> The regulator claimed that the advert could be wrongly interpreted as if there were viable green aviation technologies that could substantiate the absolute green claim “Protecting its future”, which is not presently the case.<sup>21</sup> This is not the first time the airline was found guilty of greenwash advertising. In a 2022 ruling, the Swedish advertising regulator clamped down on Lufthansa's ‘CO2 neutral flights’ claims on social media.<sup>22</sup> Two Facebook adverts by the United Arab Emirates airline Etihad Airways were also recently upheld by the ASA for making the absolute claim that they are supporting ‘sustainable aviation’.<sup>23</sup>

The aviation industry's toolbox is full of false climate solutions that end up informing their advertising campaigns, despite their lack of credibility.<sup>24</sup> Rulings like these are helpful in

signalling to the advertising industry that there are consequences to be faced when making such misleading claims. As an ultimate proof that the aviation industry is paying attention, aviation marketing consultancy Simplifying released a guide for airlines and airports on the specific issue of “Avoiding the Greenwashing Trap”, which features recent rulings against greenwash airlines ads and campaigners’ messages to decry airlines’ greenwash tactics.<sup>25</sup>



Image 5. Lufthansa advert banned by the ASA. Source: <https://www.theguardian.com/business/2023/mar/01/airline-green-adverts-banned-uk-lufthansa-asa>

Image 6: Lufthansa’s aircraft with logo #MakeChangeFly Source: <https://reisetopia.de/news/cleantech-airbus-a350-von-lufthansa-startet-erstmal/>

Considering the volume of misleading green advertising claims witnessed over recent years,<sup>26,27,28,29</sup> there is no doubt that the ASA is, at the time of writing, lacking in sufficient resources and enforcement measures to address the amount of misleading and greenwash advertising. Some complaints can take over twelve months to be resolved, and while rulings may set a precedent for future adverts, enforcement mechanisms are currently insufficient to discourage future transgressions by polluting industries. Indeed, once complaints are upheld by the ASA, the regulator can only issue guidance to advertisers to remove or amend the advert in question. We have also seen virtually identical transgressions appear within days of complaints being upheld and enforced, as was the case with a greenwash advert by fossil fuel company Repsol in the Financial Times, suggesting that without stronger penalties, the deterrent effect of rulings by the ASA is weak.

## The UK advertising regulatory infrastructure

The regulatory infrastructure overseeing advertising in the UK is particularly opaque and complex. The legal framework regulating advertising practices in the UK is the Consumer Protection from Unfair Trading Regulations 2008 (CPUTR), which includes criminal offences for misleading advertising that are enforced by the Local Trading Standards (LTS), based in each local authority, and the Competition & Markets Authority (CMA). The CMA has power to enforce these offences according to its discretion, while local trading standards have a duty to do so. However, owing to funding setbacks it appears that LTS do not take any enforcement action and no formal arrangement has been made to delegate these competencies to the ASA. With regards to the CMA, it has entered a memorandum of understanding (MOU) with the ASA, which sets out the ASA as the “established means”, ie. the competent authority “for the investigation and resolution of complaints about unfair business to consumer commercial practices in marketing”.<sup>30</sup>

### 3

- (1) Unfair commercial practices are prohibited.
- (2) Paragraphs (3) and (4) set out the circumstances when a commercial practice is unfair.
  - (3) A commercial practice is unfair if—
    - (a) it contravenes the requirements of professional diligence; and
    - (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.
  - (4) A commercial practice is unfair if—
    - (a) it is a misleading action under the provisions of regulation 5;

### 5

- (1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).
- (2) A commercial practice satisfies the conditions of this paragraph—
  - (a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and
  - (b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

Image 7: Unfair commercial practices as prescribed by the CPUR rules. Source: <https://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>

While the CMA outsources investigation into breaches of consumer law on advertising to the ASA, the ASA, unlike the

CMA, has no powers to enforce consumer law and administer fines or penalties for breaches of the codes. In contrast, the CMA holds powers as a government body to bring legal prosecutions against companies deemed in breach of Consumer Protection Rights but, like the Local Trading Standards, rarely enforces these in practice.

The new [Digital, Markets, Competition and Consumers \(DMCC\) bill](#), currently being debated in parliament, is due to replace the CPUTR by giving new powers to the CMA to directly award consumers compensation and impose financial penalties for breaches of consumer protection laws, including penalties on advertising. While this bill offers scope to strengthen the UK advertising regulatory framework, as long as the ASA is not provided with proper enforcement powers or the CMA is adequately set up to enforce the law, the situation will persist whereby none of the respective regulatory authorities are capable of enforcing breaches of consumer law on misleading advertising.

## A review of case-by-case complaints to the ASA



Analysis of complaints filed by Adfree Cities and Badvertising to counter greenwash and socially irresponsible advertising between 2021 - 2023 (see table 1 below) provides an illustration of the ASA's failure to provide a systematic and effective approach to dealing with the current scale of harmful and misleading advertising. It is worth noting that these complaints represent a non-exhaustive list of cases of misleading green advertising, being only complaints filed by these organisations. It does not include, for instance, rulings by the ASA to ban advertising by major polluters including Lufthansa, Etihad and Petronas in 2023.

On repeated occasions (see table 1 below), the ASA declined to examine advertising complaints for the reason that these concerned the areas already under scrutiny (aviation, cars, waste, animal-based foods and heating) in its own review into environmental claims as part of its 'Climate Change and the Environment Project'. In effect the ASA stopped doing its job while it reviewed the issues.

Similarly, the ASA dismissed two complaints against the banks Standard Chartered and Barclays during an ongoing investigation into HSBC Bank for misleading green advertising. These sweeping refusals to investigate certain sectors while other reviews were ongoing is concerning, given the potential harm occasioned by these companies while their advertising claims remain unchecked and in the public domain. This is a little like the police refusing to investigate a new robbery because it is already investigating an old one.

Several of the uninvestigated complaints listed in table 1. were also flagged to be outside the ASA's investigation remit, which once again raises the question over the ASA's limited scope and ability to tackle the growing prevalence of misleading and harmful green advertising. In the case of Qatar Airways' "Fly Greener" pitch side adverts at the Men's UEFA EURO 2022 Football Championship,<sup>31</sup> the ASA advised Adfree Cities, the lead complainant, to direct the complaint to Ofcom, only for Ofcom to direct Adfree Cities back to the ASA. The ASA's remit also precludes any action against advertisements on US-headquartered social media



platforms, which includes major platforms Meta/Facebook, Twitter and LinkedIn, when the advertiser is not a UK-based firm (see Chevron example in table 1). This may sit beyond the scope of the advertising regulator, but merely reveals how great swathes of advertising consumed in the UK lacks any meaningful UK regulation. Considering the numbers of adverts from international companies promoted on social media to UK consumers, it highlights the need for urgent government action to develop a new framework to regulate social media advertising to British consumers.

A similar act of 'deflecting responsibility' occurred following an international complaint filed against FIFA in 2022 for its misleading 'carbon neutral claims' at the Men's FIFA World Cup in Qatar.<sup>32</sup> The complaint, initially addressed to the British, Belgian, Dutch and French advertising regulatory bodies, was then directed to the European Advertising Standards Alliance (EASA) who ruled that it was up to the Swiss regulatory authority (the Swiss Fairness Competition) to judge, leading ultimately to contestation with FIFA's legal counsel. In this instance, a ruling was ultimately made against FIFA's misleading green claims. Unsurprisingly, campaigners have begun to utilise alternative channels to officially complain about misleading environmental claims. In 2019, the environmental law firm ClientEarth addressed a complaint to the National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) about a greenwashing advert from oil giant BP, touting its green credentials while 96% of the company's spending was directed to oil and gas projects at the time.<sup>33</sup> The authority ruled that the complaint was material and substantiated, but it did not proceed since BP voluntarily ended its advertising campaign in response. Given the generally low level of investigations and enforcement, this creates an incentive for firms like BP to keep 'seeing what they can get away with', in the knowledge that if challenged they can simply step back and try again with a different twist on greenwash. The climate charity Possible is currently preparing to submit complaints to the UK OECD NCP about misleading environmental claims made by UK airlines, which are seriously misleading consumers.



Image 8: BP 'Advancing Possibilities' advertising campaign. Source: <https://picturefarmproduction.com/bp-possibilities-everywhere/> (link inactive)

These issues highlight the extremely narrow remit within which the ASA is able to operate, which is insufficient to address the prevalence of harmful and misleading advertising.



Having organisational backing is preferable when it comes to effectively monitoring filed complaints. Indeed, the ASA is not obliged to update individual complainants (eg. McDonald's<sup>34</sup>) about the progress of the inquiry.



There are significant reasons to believe that individuals may be discouraged to file complaints because the process is time consuming and requires a basic knowledge of the advertising codes and guidance. Unlike when organisations send complaints, individuals have no opportunity to provide feedback and receive updates at different stages of the complaint process.

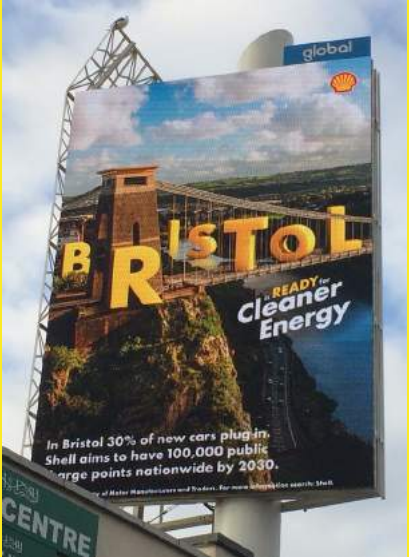
Table 1: Complaints filed by Badvertising and/or Adfree Cities citing breaches of ASA Code relating to misleading advertising, environmental claims and social responsibility, between 2021-2023.



Date submitted - ruling / dismissal	Company advertised	Reason not to investigate or take action
27.03.2021 - 13.04.2021	Chevron <a href="#">Full complaint to the ASA</a>	<p><b>Not in remit:</b> "Our remit only allows us to investigate ads if the advertiser is based in the UK or are using a UK third-party platform for the placing of the ad in question."</p> 
05.08.2021 - 24.11.2021	Jaguar Land Rover (96 complaints) <a href="#">Full complaint to the ASA</a>	<p><b>Investigated, not upheld:</b> A draft ruling by the ASA initially recommended banning the ad under grounds of Social Responsibility<sup>25</sup>: The ASA Council, however, overturned the decision saying it has not breached the Code: "The ASA considered that consumers were unlikely to interpret the claim in a literal way to mean that the vehicle had been exempted from any current laws, rules or regulations that were designed to combat global climate change or wide-scale ecological damage caused by the motoring industry"</p> 
15.07.2021 - 21.07.2021	Qatar Airways <a href="#">Full complaint to the ASA</a>	<p><b>Not in remit:</b> "The content falls outside of our remit because the ASA is not entitled to regulate material arising from sponsorship. This usually applies to logos and messages on the kits of professional sportspeople and athletes, on racing vehicles and on posters or pitch or track-side hoardings that have appeared as part of a sponsorship agreement."</p> 

Date submitted – ruling / dismissal	Company advertised	Reason not to investigate or take action
<p>26.10.2021 – 12.04.2022</p> <p><a href="#">Full complaint to the ASA</a></p>	<p>HSBC (45 complaints)</p> <p><a href="#">Full complaint to the ASA</a></p>	<p><b>Upheld:</b> ASA recommended to ban ads on 12.04.2022 for breaching the CAP Codes on misleading advertising and environmental claims</p> <p>“We considered consumers would understand the claims “HSBC is aiming to provide up to \$1 trillion in financing and investment globally to help our clients transition to net zero” in ad (a), and “we’re helping to plant 2 million trees which will lock in 1.25 million tonnes of carbon in their lifetime” in ad (b) to mean that HSBC was making, and intended to make, a positive overall environmental contribution as a company”</p> 
<p>03.11.2021 – 10.11.2021</p>	<p>Easyjet</p> <p><a href="#">Full complaint to the ASA</a></p>	<p><b>Not investigated, ongoing review into travel sector:</b> “The ASA has recently launched a Climate Change and the Environment project which is going to focus on how we regulate environmental claims in several priority areas. You can read more about this project <a href="#">here</a>. As such, we have scouted out areas which we wish to focus on, and the travel sector is one of them. Whilst this work is ongoing, we will not be taking your complaint forward at this time.”</p> 

Date submitted – ruling / dismissal	Company advertised	Reason not to investigate or take action
<p>30.05.2022 – 09.06.2022</p>	<p>Standard Chartered</p> <p><a href="#">Full complaint to the ASA</a></p>	<p><b>Already investigating HSBC:</b>            “We are currently formally investigating a different advertiser for similar issues to the ones that you have highlighted in your complaint regarding green claims in banking ads. This will lead to an ASA Council ruling and will set a precedent for this issue across the sector.”</p> 
<p>08.06.2022 – 13.06.2022</p>	<p>Barclays</p> <p><a href="#">Full complaint to the ASA</a></p>	<p><b>Already investigating HSBC:</b>            “We are currently formally investigating a different advertiser for similar issues to the ones that you have highlighted in your complaint regarding green claims in banking ads. This will lead to an ASA Council ruling and will set a precedent for this issue across the sector.”</p> 

Date submitted – ruling / dismissal	Company advertised	Reason not to investigate or take action
09.11.2022 – 12.12.2022	Coca Cola (4 complaints)  <a href="#">Full complaint to the ASA</a>	<p><b>Investigated, not upheld:</b> Complaint referred to the ASA Council.</p> <p>Then rejected on the ground that the ads were unlikely to mislead as they would be understood in relation to the specific aspect of Coca-Cola’s product rather than the wider benefits of recycling or Coca-Cola’s overall environmental impact.</p> 
02.08.2022	BP  <a href="#">Full complaint to the ASA</a>	<p><b>Not investigated, ongoing review into energy sector</b></p> 

Date submitted - ruling / dismissal	Company advertised	Reason not to investigate or take action
08.07.2022 - 07.06.2023	Shell  <a href="#">Full complaint to the ASA</a>	<p><b>Investigated, upheld</b></p> <p>ASA recommended to ban ads for breaching CAP and BCAP Code rules on misleading advertising and environmental claims.</p> <p>"[B]ecause ads (a), (b) and (c) gave the overall impression that a significant proportion of Shell's business comprised lower-carbon energy products, further information about the proportion of Shell's overall business model that comprised lower-carbon energy products was material information that should have been included. Because the ads did not include such information, we concluded that they omitted material information and were likely to mislead.</p> 

Date submitted - ruling / dismissal	Company advertised	Reason not to investigate or take action
06.02.2023-07.06.2023	Repsol  <a href="#">Full complaint to the ASA</a>	<p><b>Investigated, upheld</b>            ASA recommended to ban ads for breaching CAP codes on misleading advertising and environmental claims.</p> <p>"...while we agreed that synthetic fuels and biofuels could contribute towards Repsol's goal of achieving net zero emissions, they would not as a single measure 'achieve' net zero emissions. We also considered that in the context of an ad making a claim based on initiatives to achieve net zero, the timeframe of 2050 to achieve that goal was material information that needed to be made clear to consumers."</p> 
20.03.2023-	Toyota  <a href="#">Full complaint to the ASA</a>	<p><b>Under investigation</b> on the grounds that the advert breached advertising Codes on social responsibility and the environment, by encouraging dangerous driving and trivialising consumer behaviour likely to result in harmful pollution and damage to ecosystems.</p> 

In a recent case, the ASA ruled favourably on a complaint instigated by Adfree Cities against advertisements for HSBC, which emphasised a selection of green financing activities



including a tree-planting initiative.<sup>36</sup> The ASA considered HSBC's advert to be misleading to consumers given that it omitted information about the bank's substantial investments in fossil fuels and activities driving deforestation. This ruling influenced the ASA's update to its guidance on 'general green claims',<sup>37</sup> setting a precedent for financiers and other companies who will no longer be able to omit information about their environmental impact, such as investments in fossil fuels when making 'green' marketing claims.<sup>38</sup> Following this case, a suite of rulings for misleading advertising 'by omission' banned adverts for three major fossil fuel companies: Shell, Repsol and Petronas.<sup>39</sup> The adverts touted the companies' sustainable energy plans while omitting crucial information about them expanding their fossil fuel operations, which continue to make up the vast majority of their activities.

Despite these precedent-setting rulings and the ASA's work to update guidance on green claims,<sup>40</sup> it is concerning that advertisements from businesses with poor environmental credentials can still adhere to ASA guidelines by exploiting loopholes in the regulation where any green claim is followed by a mention of their polluting activities. In a recent social media advert<sup>41</sup>, one of the world's largest fossil investors declared: "At Barclays, we are helping finance the transition to a low-carbon economy while working to reduce the emissions we finance". Similarly BP's 'Backing Britain' campaign (image 9), reported to the ASA on misleading grounds (see table 1), acknowledged the company's expansion of oil and gas projects.<sup>42</sup> Neither advert was investigated. Ultimately, what these rulings or lack thereof fail to consider is that any positive brand associations generated by advertising for a major polluter (e.g. fossil fuel companies), whether visual or textual, is fundamentally unbalanced and misleading in itself, as the adverts mask or misdirect from the true impact of these companies' practices.<sup>43</sup>



Image 9: BP 'Backing Britain' advert - Canary Wharf, London - June 2022. Credit: Fossil Free London.

Furthermore, given the considerable economic leverage held by corporations in today's economy, it is only fair to assume that the ASA may adopt a cautionary approach to investigating, or ruling on, the advertisements of large corporations for fear of legal repercussions. The financial and legal resources of larger corporations are likely to significantly play in their favour when it comes to winning complaint cases, should they reach that stage.

## **Tobacco-style restrictions on high-carbon adverts**

As evidenced above, a system of self-regulation based on case-by-case public complaints is not sufficiently adept or resourced to deal with the sheer scale and complexity of high-carbon and greenwash advertising. Given the ASA's strict remit to provide industry guidance and enforce its 'Advertising Codes', it is evident that many of the necessary measures to tackle the scale of the problem with greenwash and harmful advertising require the Government to step in with 'tobacco-style' restrictions on high-carbon advertising and more robust legislative guidelines for the advertising industry.

Recommendations from an inquiry by the House of Lords' *Environment and Climate Change Committee* urged the Government to develop effective guidance to limit the damage caused by high-carbon and environmentally harmful advertising.<sup>44</sup> In its submission to the House of Lords' inquiry into behaviour change and action on climate change and the environment, the ASA itself recognised that regulation is required to align the advertising sector's activities with the Government's climate targets.<sup>45</sup>

*"The ASA recognises that as Government sets new and ambitious targets, and as the scale of the challenge to avoid catastrophic climate change becomes ever clearer, advertising and, by extension, ad regulation needs to play its part in working towards agreed climate goals." – ASA's submission to the House of Lords Environment and Climate Change Committee's inquiry, 2021.<sup>46</sup>*

The regulator also stressed that issues of 'social responsibility' are currently overlooked in the complaints they receive, and conceded that greater scrutiny needs to be placed on these given the important role assigned to positive behaviour change in the transition to zero carbon emissions. Our experience is that when wider issues of social responsibility are raised, too often, for one reason or another, the complaints are claimed to be beyond the remit or scope of the ASA.

In the section below, we review other advertising regulatory systems in countries across Europe and North America to draw comparisons and provide insights on what an effective regulator should – or could – look like.

## International comparisons



The review into international advertising regulating systems thereafter recalls similar issues encountered by campaigners when tackling high-carbon advertising in the U.K. All six countries listed in the table below prioritise a system of self-regulation whereby the ad industry is directly involved with writing and enforcing its own rules. This model acts as a significant barrier to developing and implementing stricter rules and guidelines to counter the effect of greenwash and harmful advertising on citizens. In the United States, France, Sweden and the U.K., state-funded parallel authorities charged with a mission of consumer protection complement the work of the advertising regulator, but their enforcement mechanisms remain fairly limited. This comparison exercise isn't aimed at assessing which regulator performs best but rather points to the general failures of these regulatory systems across Europe and the United States in protecting consumers and citizens from climate-harmful advertising and misleading environmental claims.

Table 2: A country-based comparison of advertising regulatory systems.

Country and full name of regulator	Type of regulation and funding	Good points	Bad points
Advertising Standards Authority (ASA) – UK	Self-regulation.  Funded by the advertising industry.	Wishes to improve its role regarding climate breakdown and the zero carbon transition.	Funded and staffed by advertising industry personnel.  Not independent.  Ideologically committed to a consumerism model.  Won't investigate if a complaint falls outside its codes.  Very limited enforcement powers and duties.
Consumer and Markets Authority (CMA) – UK	UK Government body	Produced a Green Claims code to tackle greenwash advertising. Has enforcement powers.	Under-resourced to address the scale of the issue.
Autorité de Régulation Professionnelle de la Publicité (ARPP) – France	Industry funded self-regulation	Because of the organisation's origins in 2008, it is explicitly environmental.	The ARPP is run by representatives of corporations, advertising agencies and the media. Out of the 32 seats, only 2 are taken by members outside the private sector. Civil society isn't represented.  - ARPP rulings do not have binding power. - They tend to be politically influenced and often lack coherence. - No mandate to administer fines - Reviews adverts based on filed complaints (a posteriori) except for TV adverts

Country and full name of regulator	Type of regulation and funding	Good points	Bad points
Direction Générale de la concurrence, de la consommation et de la répression des fraudes – France	French government body (Ministry of Economy)	Has enforcement powers.	Have hardly used its power to sanction greenwashing so far
Federal Trade Commission (FTC) – United States	Federal government, state-funded	<p>Has broad authority to look at practices and issue fines.</p> <p>Produce the “Green Guides,” an advisory set of guidelines for avoiding greenwashing. Has the authority to turn these into formal rules, but can’t make enforcement action based on the guides.</p> <p>Focused on consumer harm and the impact of claims on spending decisions, rather than simply adjudicating truth/misleading claims per se.</p>	<p>Recent Supreme Court decision has removed the agency’s ability to seek monetary damages against advertisers (damages will typically be significantly greater than fines).</p> <p>Can be conservative in defining “commercial speech,” which must be shown to impact consumer/business decisions” Reluctant to go after advertising that may have a political/social aspect.</p> <p>Slow process, with commissioners appointed by Presidents and confirmed by the Senate. Often led by partisan political agenda.</p>
National Advertising Division of Better Business Bureau – United States	Industry funded, self-regulatory	<p>Moves more quickly than FTC.</p> <p>Implements FTC regulations like the “Green Guides.”</p> <p>Increasingly focused on greenwashing issues and on hearing from nonprofit organisations.</p>	<p>Decisions are non-binding (if advertiser refuses to comply with decision, matter can be referred to FTC).</p> <p>Filing fees for having complaints heard can be steep.</p> <p>Tendency to issue “split-the-baby” decisions to avoid alienating industry players.</p>

Country and full name of regulator	Type of regulation and funding	Good points	Bad points
Swedish Consumer Agency - Sweden	State-funded and controlled by the government.	Has power if they wish to use it, some good writing in legislation. Publishes guidelines etc on "green" advertising.	Hesitant to use the power they have, prone to "dialogue" and compromise. Slow.
Reklamombudsmannen - Sweden	Self-regulation funded by industry	Advertisers have to be able to prove their claims. Quick.	No mandate to sanction. Follows ICC guidelines.
Jury voor Ethische Praktijken inzake Reclame / Jury d'Ethique Publicitaire (JEP) - Belgium	Self-regulation funded by the industry	Produced a Green Claims code to tackle greenwash advertising. Produced a code with the automobile industry and another one to regulate sugar in sweetened drinks and unhealthy fats in food	Funded and staffed by advertising industry personnel. Not independent. Ideologically committed to a consumerism model. The codes are not efficient against the negative effects of advertising. They treat complaints a posteriori. Sanctions are ineffective
Reclame Code Commissie (RCC) - Netherlands	Industry funded, self regulation	In recent years, have ruled more often in favour of complaints against the fossil fuel and airline industry.	Tendency to withdraw sensitive complaints following intimidation from corporate lawyers Issue no fines and decisions are non-binding. The board only responds to text, not images. Pro consumerism default position and ideologically biased to techno-fixes to solve the climate crisis. The burden of proof lies still very much with the complainant and not with the advertiser.

Country and full name of regulator	Type of regulation and funding	Good points	Bad points
European Advertising Standards Alliance (EASA) – E.U.	Self-regulation, funded by the industry.	<p>Advertisers have to be able to prove their claims.</p> <p>Juries of people who are not advertisers</p>	<p>Funded and staffed by advertising industry personnel.</p> <p>Ideologically committed to a consumerism model.</p>

In Sweden, some of the codes put in place by the advertising regulatory body, Reklamombudsmannen, have great potential to tackle harmful advertising. However, Swedish campaigners flag that these are not applied as they ought to be given the regulatory authority’s tendency to prioritise a non-confrontational approach with industry. This is a general trend across the countries listed above in table 2.

Furthermore, these regulatory bodies lack the enforcement powers required to provide deterrent tools to advertisers from misleading the public. Their decisions are, for the most part, non-binding and they do not, or rarely, administer fines to the advertisers found in breach of regulation. An investigation from Greenpeace Sweden found that during a period of ten years, Reklamombudsmannen had only issued a single fine against companies that used deceptive environmental messaging.<sup>47</sup>

In the rare cases of a company facing trial for misleading advertising, it often proved to be the result of tireless efforts from campaigners putting pressure on the regulatory authorities to act accordingly. In November 2021, following more than 250 public complaints filed against the company’s vague and deceptive advertising (image 8), Swedish-Danish dairy industry Arla Foods was eventually brought to court, and ended up losing the case, by the national Consumer Agency for its misleading use of the wording “net zero climate impact”.<sup>48</sup> Back in 2019, several complaints had already been issued against the company but did not lead any further.





Image 10. Arla Swedish dairy milk bottle with 'Net Zero Climate Footprint' label Credit: Badvertising Sweden | Image 11. Shell Drive Carbon Neutral advert spotted at petrol station - Corby, October 2021. Credit: Veronica Wignall

Similar pressure was mounted by Dutch climate campaigners and law students on fossil fuel giant Shell for its promotion of carbon neutral petrol under the slogan “Drive CO2 neutral” (image 9) incentivising customers to pay 1 cent extra on filling their engines at the petrol station.<sup>49</sup> After the Dutch self-regulatory body ruled the advert to be misleading, Shell appealed the decision by changing the wording to “CO2 compensation” but the Dutch Advertising authority ruled against it a second time.<sup>50</sup> Despite these positive rulings against misleading adverts, the huge amount of public campaigning required to secure these rulings highlights the inefficacy of the process to effectively address the issue of high-carbon and greenwash advertising in a timeframe commensurate with the climate emergency.

## Civil society versus the French advertising regulator

In France, the 2007 environmental policy agenda (Grenelle de l'Environnement) made specific recommendations with implications for advertising regulation, stressing the need for: 1. Non-binding rules on matters of sustainable development 2. A dedicated space for consumer rights and environmental organisations. These led to the creation of the ARPP in 2008 (Autorité de Régulation Professionnelle de la Publicité) - replacing the former Bureau de Vérification de la publicité (BVP).

The ARPP is made up of three different bodies: the CEP<sup>51</sup> (Conseil de l'Éthique Publicitaire); the CPP<sup>52</sup> (Conseil Paritaire de la Publicité); as well as the JDP<sup>53</sup> (Jury de Déontologie Publicitaire). While the CEP makes the rules, the JDP is in charge of applying them and dealing with complaints. The space allocated to civil society organisations (CPP) was restricted to a consultative role only. As a result, most environmental organisations decided to leave the organisation given their disappointment with the situation.<sup>54</sup> Despite this apparent division of powers with these three different bodies, there is in fact only one real executive arm in charge: the [ARPP's board of directors](#) made up of representatives from the advertising industry.<sup>55</sup>

According to critics<sup>56</sup>, it is precisely via this clever trick of establishing several sub-groups and including members of academia, consumer rights and environmental organisations that the ARPP curates an image of professionalism and legitimacy while in reality it is merely serving industry interests. It is therefore no surprise that the organisation has been criticised on several occasions by civil society groups for issuing guidance and enforcement heavily skewed towards industry interests.<sup>57</sup>

A lack of consideration for adverts promoting 'socially irresponsible' consumption can also be noted across these countries. In 2018, the French environmental energy agency (Ademe) and several other environmental organisations challenged one of its respective advertising regulatory

authorities (Jury de Déontologie Publicitaire) for not upholding complaints about adverts for computers incentivising overconsumption.<sup>58</sup> The adverts in question (image 10) featured reflections from people stating for instance: “I don’t need a bigger screen.. Although my eyesight is getting worse...” or “My old computer still works but an accident can occur any time”.



Image 12. French advert for a computer screen inciting overconsumption. Text in English: “I don’t need a bigger screen. Although... my eyesight is getting worse.” Source: [Rosapark pour Cdiscount - « N’économisez pas votre plaisir » - Janvier 2018 - Stratégies.](#)

In the United Kingdom, a socially irresponsible advert promoting the use of a fossil-fuelled SUV engine in ecologically sensitive environments with the caption “Life is so much better without restrictions” (image 11) received 49 complaints but didn’t get upheld by the ASA.<sup>59</sup> That was despite the organisation maintaining that adverts for socially irresponsible behaviour need to be better regulated to foster the positive behaviour changes needed to meet net zero targets. In Belgium in October 2020, 102 complaints were sent to the advertising authority (Juri d’Ethique Publicitaire, JEP) about an advert for the carmaker Jeep (image 12). The advertising authority resolved to raise the issue with Belgian car makers federations (Febiac and Traxio) who simply committed to subject their members to public information campaigns about the CO2 emissions of their vehicles and about environmental regulations.



Image 13: The Land Rover SUV advert not upheld by the ASA. Credit: Badvertising | Image 14. Jeep advert complained to the Belgian regulator. Text in English: “Inspired by nature”. Source: <https://www.canopea.be/le-jury-dethique-publicitaire-sauto-detruit/>

In the absence of an international and independent advertising regulatory authority, it is also not uncommon that the exact same advert or similar versions of it end up being regulated differently across countries. In 2020, a complaint against an advert by VanMoof – a Dutch company making electric bicycles – was upheld by the French self-regulatory authority (ARPP) for the reason that it was causing damage to the car industry, stating that “advertisements should not seek to exploit sentiment of fear or suffering for their own interests”.<sup>60</sup> The advert featured a large sports car associated with car-related issues including traffic jams, accidents, pollution.<sup>61</sup> The same advert did not pose any issue to the Dutch regulatory authority.

## Recommendations: an effective advertising regulator



To prevent the harm done by high-carbon advertising, new Government guidelines are necessary to end advertising of the most polluting companies and products, including fossil fuel companies, airlines and fossil-powered vehicles such as SUVs. Moreover, as shown above, the self-regulatory system currently in place is inadequate to tackle the scale of environmentally harmful advertising. In order to be able to regulate effectively, regulators need more resources and proper independence from the advertising industry. This implies moving from a system of ‘self-regulation’, funded by advertising industry donations, towards an independent public authority. Furthermore, to mitigate advertising’s impact on the climate, it is necessary for the ASA to adopt a more proactive regulatory approach by screening out adverts prior to their distribution – a practice long-established for terrestrial broadcasting – and by aligning with guidance from public bodies governing different sectors of the economy (e.g. transport, energy departments) to aid the transition towards net zero by 2050.

**“Many States have adopted laws, but commercial advertising remains mostly self-regulated. This situation is unsatisfactory, leading to poor overall implementation, gaps, inconsistencies and legal uncertainty for both the industry and the public, as well as a paucity of clear, transparent and efficient complaint mechanism.”<sup>62</sup>**

Farida Shaheed, Special Rapporteur of the UN Human Rights Council

Below we provide an overview of the necessary reforms to the ASA which the UK Government should introduce. These will provide the adequate structure and resources for the regulator to deal with the scale and complexity of adverts harming people and planet.<sup>63</sup>

## 1. A 'tobacco style' law banning high carbon advertising

The regulator is currently limited to regulating misleading and socially irresponsible advertising as well as environmental claims. However, given the scale and influence of advertising for the most polluting sectors and the urgency of the climate crisis, this is no longer sufficient.

The UK House of Lords, alongside international bodies like the UN Environment Programme and the World Health Organization, are calling for national regulation to ban these types of adverts. Using a similar legal process to that which restricts tobacco advertising, adverts for oil companies, highly polluting SUVs and airlines should be prohibited on climate and public health grounds. While people may continue to be free to buy and use these products, creating excess demand for these harmful products through advertising seriously compromises our ability to meet climate targets.

To determine precisely what constitutes high-carbon advertising, an official standard will need to be drawn-up based on existing evidence that these activities have a disproportionately high carbon impact. This could follow the precedent of the Nutrient Profiling Model (NPM) used to prohibit junk food advertising for products categorised by the NPM to be High in Fat, Salt or Sugar (HFSS).

## 2. Making the ASA a truly independent body

### Funding

To ensure impartiality of the ASA, it is important that the sources of funding for the organisation remains independent from industry. To honour the ASA's public mandate, the organisation's funding should be fully or partly generated through taxation on all the advertising activities that are still being permitted. Such a mechanism would create a truly independent regulator and shift incentives around advertising within industry.

### Representation

Greater distance should also be kept between advertising industry professionals and the regulator in the decision

process. As it stands, the ASA Council and the 'industry panels' include representatives from the advertising industry. Instead, we propose that these should be replaced with an independent public panel advising on advertising complaints. The recruitment process should be open to members of the public, similar to citizen juries or climate assemblies, and it should seek to have representatives from public health, academia, environmental and consumer rights organisations to ensure a balance of views and interests.

## **Rules**

This independent body should develop its own set of rules informed by public policies to regulate advertising content prior to being broadcasted. This would ensure a far-reaching regulation of advertising content which, where necessary, could also rely on guidance from other regulatory institutions governing different sectors of the economy.

### **3. A mandate for the ASA to issue legally binding rulings and fines**

All arms of the regulatory architecture should have enforcement mechanisms, including the ability to issue constraining sanctions and fines in a proactive manner instead of the current reactive approach it follows.

In order for the ASA's decisions to have a deterrent effect on companies' advertising practices, it is necessary that the organisation is given statutory enforcement powers to issue legally binding rulings and administer fines to businesses and advertisers in breach of regulation.

### **4. Enforcement powers for the ASA to suspend an advert pending investigation**

To prevent any ASA reviews or investigative work into specific sectors or categories of adverts from obstructing the complaint process, and where there is reasonable cause to believe a complained-about advert contravenes the Codes, adverts should be suspended for the entire duration of this process.

Furthermore, in light of the prevalence of greenwashing adverts and the lack of available resources to tackle the problem effectively, a basic 'greenwashing test' could be run for all advertising complaints against the ASA's Green Claims

guidance and Codes to suspend adverts prior to an investigation.

## **5. A more transparent and efficient advertising complaint process**

As illustrated in this report, many of the advertising complaints sent to the ASA end up being discounted for various reasons. To respect standards of transparency and public accountability, it would be of great public benefit if a detailed breakdown on the categorisation of complaints was made public. For instance, it would be helpful to know how many complaints are made for misleading green claims.

To avoid significant delays between the filing of an advertising complaint and its resolution, a reasonable time limit should be respected. Past this deadline, the advert should be suspended until a final decision is made.

Furthermore, ongoing updates should be sent to all complainants about the progress of their complaint - not just formally constituted organisations.

## **6. Clarity on the UK advertising regulatory architecture**

Greater clarity on the specific roles of every authority responsible for advertising regulation in the UK, and how these align with environmental commitments, is necessary. As of today, public information is lacking on the specific mandates, and where they overlap, of all the different organisations concerned with advertising regulation in the UK.



## Conclusion



This report aims to provide a broad overview of the issues concerning regulation of high-carbon advertising and greenwashing by the UK's Advertising Standards Authority (ASA). Overall, we find that the ASA's role more closely aligns with that of an arbitration arm of the industry, whose investigations and rulings are erratic and somewhat discretionary, rather than an actual regulator with adequate and well-resourced enforcement powers that can be deployed proactively and consistently across the realm of advertising. The structure of the organisation, its self-regulation, industry-funded and complaint-based model, among other shortcomings, prevents it from sufficiently dealing with the scale of the issue with the urgency required.

The international overview presented in this report also gives an indication that the problems encountered with the ASA are not unique to the UK. Many other national advertising regulatory bodies, across Europe and the US, follow a similar organisational structure that prevents them from adopting a proactive and deterrent stance to tackle high-carbon and greenwash advertising. For this purpose, we believe that a fundamental restructuring of the UK's regulatory framework, including the ASA, is necessary, alongside an outright end to high-carbon advertising, akin to the ban on tobacco advertising and sponsorship, which we outline in our list of recommendations to the UK Government.

# Endnotes



1. <https://influencemap.org/landing/-a794566767a94a5d71052b63a05e825f-20189>
2. [Big-banks-greenwashing-goes-unregulated](#)
3. AdnetZero is the Advertising Association's flagship climate initiative. However it fails to address the high-carbon clients agencies are working with and only focus on actions to reduce emissions from business operations and media planning  
<https://adnetzero.com>
4. <https://www.asa.org.uk/about-asa-and-cap/people/cap-panels-and-committees.html#IAP>
5. <https://www.asa.org.uk/advice-online/social-responsibility.html>
6. For the complaints to be accepted by the ASA, the concerned adverts need to be seen in UK in the last three months
7. <https://www.asa.org.uk/static/794c34b2-8a15-45cd-ad224541b6463703/Annual-Report-ASA-CAP-2022-Full-Version.pdf>
8. Data based on email correspondence with Miles Lockwood, Director of Complaints and Investigations at the ASA
9. E.g. These included one complaint directed at a Tesco advert stating that: "30% of global greenhouse emissions come from the food sector". The complainant contested this figure claiming that the food sector was only responsible for 1.6% of man-made greenhouse gas emissions.
10. <https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims>
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23. <https://www.asa.org.uk/rulings/etihad-airways-a22-1174208-etihad-airways.html>
24. <https://www.badverts.org/latest/airline-industry-advertising-is-fuelling-the-climate-emergency-and-needs-to-be-grounded>
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26. The CMA talks about a “proliferation of products, services and businesses” which claim to meet consumers’ demand for “products and services which minimise harm to, or have a positive effect on, the environment”  
<https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services#introduction>
27. Greenpeace research found that 63% of adverts from 6 major fossil fuel firms released between the start of December 2019 and the end of April 2021 were greenwashing  
<https://www.greenpeace.org/static/planet4-netherlands-stateless/2021/10/3b500e9b-words-vs-actions-the-truth-behind-fossil-fuel-advertising.pdf>
28. A report led by Harvard University found that two-thirds (67%) of oil, car and airline companies’ posts on social media were greenwash  
<https://www.greenpeace.org/eu-unit/issues/climate-energy/46388/harvard-investigation-social-media-new-frontier-climate-deception-delay/>
29. A 2022 review by the newspaper The Independent found that the numbers of adverts banned for greenwashing by the ASA tripled in a year  
<https://www.independent.co.uk/climate-change/news/adverts-greenwashing-triple-asa-watchdog-b2039055.html>
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