

**Date: 23 January 2025**

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## **CASE STUDY:**

### **Advertising Financial Promotions**

**Response from FCA and Ofcom**

**This is an anonymised version of a query submitted to the DRCF AI and Digital Hub ('the Hub').**

The query in this case study has been responded to by the following DRCF regulators ('we', 'us', 'our'):

- Financial Conduct Authority ('FCA'); and,
- Office of Communications ('Ofcom').

This informal advice is provided in line with the [Conditions for Participation](#).

Our informal advice is provided to a business based on our current understanding of the legal and regulatory frameworks within our remits and how they apply to the business's service. This informal advice should not be treated as an exhaustive account of the issues linked to a business's service or represent an endorsement of their proposed innovation.

Our informal advice is specific to a business's circumstances as described by them in the information they provided to the Hub.

Our informal advice is provided without prejudice to any future regulatory intervention by any DRCF or non-DRCF regulator and nor is it a substitute for independent legal advice which a business may wish to seek in advance of the launch their service.

It is ultimately a business's responsibility to assess their position under the law and regulatory regime, with the benefit of independent legal advice as necessary. Recognising that some regulatory regimes are still developing and could change over time, businesses have a responsibility to keep up to date with the latest position.

A non-confidential version of the informal advice provided to the applicant is attached to this case study. This informal advice was provided on 23 January 2025 and represents the position as at 23 January 2025. Businesses should consult relevant information and guidance on regulators' websites to keep up to date with the latest developments.

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## Summary of query and response

Business C provides an AI powered compliance platform to automate the analysis and review of marketing content. The platform will use AI to assess advertising and marketing content against compliance standards, and make recommendations on how to improve compliance.

The query to the hub sought clarification on the following questions:

1. How can companies ensure consistent compliance standards when the same financial promotion is distributed through both digital channels (under FCA regulation) and broadcast media (under Ofcom regulation), given that each regulator may have distinct requirements?
2. Are there specific areas where the FCA's and Ofcom's rules intersect or diverge significantly, and how can companies best address these discrepancies through its AI-powered compliance recommendations?
3. What are the expectations from both regulators on the use of AI for compliance decision-making? For example, what level of human oversight or review is required when using AI-generated outputs to evaluate and approve marketing materials that must adhere to both FCA and Ofcom standards?
4. How can companies demonstrate that its AI models and processes are aligned with both FCA and Ofcom standards, especially when the platform's automated compliance recommendations are used to assess multi-channel marketing campaigns?

The response highlights key requirements related to advertising and financial promotions within Ofcom's and the FCA's respective remits. This includes rules in relation to TV and Radio broadcasting, finance, and new rules under the Online Safety Act in relation to illegal content and fraudulent advertising.

We highlight areas where the rules intersect, and how companies can keep up to date on changes.

We explain how the FCA and Ofcom work together through the DRCF, including the Illegal Online Financial Promotions project, which is exploring the interaction and ensuring coherence between Ofcom's codes of practice following OSA Royal Assent, and Financial Promotions legislation.

We outline Ofcom and the FCA's role in ensuring compliance. We explain how Ofcom and the FCA do not approve or endorse services or products and focus on regulating

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services rather than the underlying technologies. We also explain how the regulators take into account the use of AI when considering compliance.

This response provides the relevant advice in response to the above questions from the FCA and Ofcom. It does not cover regulations or rules which are not enforced by Ofcom or the FCA

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## **Introduction to the regulators**

The query has been responded to by the FCA and Ofcom. A brief introduction to each regulator has been included below.

Each regulator is responsible for separate legal regimes with different requirements that may be applicable to the same set of facts, and it will be necessary to take steps to comply with each regime as set out.

**Ofcom** is the regulator for the communications services that we use and rely on each day. Ofcom regulates the TV and radio sectors, fixed line telecoms, mobile, postal services, plus the airwaves over which wireless devices operate. Since 2023, Ofcom has been appointed as the regulator for online safety. Ofcom oversees the following regulations that are relevant to this query:

- Communications Act 2003
- Online Safety Act 2023

**FCA** - A financial promotion is defined in Section 21 of the Financial Services and Markets Act 2000 (FSMA) as 'an invitation or inducement to engage in investment activity, communicated by a person in the course of business'. Under the general restriction in Section 21 of the Act, only firms authorised by the FCA can issue or approve a financial promotion.

The FCA is the UK's financial services regulator and has various powers to regulate the financial promotion restriction set out in section 21 of FSMA. These include the power to make rules applying to authorised persons about the communication of financial promotions, in particular, rules around the form and content of such communications. It should be noted that the FCA's financial promotion rules are media neutral and apply across all channels used to advertise, including social media.

Our response outlines the relevant advertising standards and rules enforced by Ofcom and the FCA. It does not cover other regulations which are not enforced by Ofcom or the FCA.

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### Regulator Response References

In the below table, we set out the relevant regulator and the respective responses that they have input on. Each regulator is only responsible for the responses within their regulatory remit as noted in this table.

Regulator	Question	Relevant Responses
Ofcom	Q1	1.1 – 1.2, 1.7 – 1.24
	Q2	2.1- 2.5
	Q3	3.1 – 3.4, 3.9 - 3.11
	Q4	4.1 - 4.2
FCA	Q1	1.1, 1.3 – 1.6, 1.19 – 1.20,
	Q2	2.1 - 2.5
	Q3	3.1, 3.5 - 3.11
	Q4	4.1 – 4.2

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## Response

### 1. How can Business C ensure consistent compliance standards when the same financial promotion is distributed through both digital channels (under FCA regulation) and broadcast media (under Ofcom regulation), given that each regulator may have distinct requirements?

#### What are the requirements?

- 1.1. Ofcom and the FCA work together under the DRCF to provide regulatory clarity regarding expectations and requirements of regulated parties in relation to financial promotions. This is reflected in our workplan: [DRCF Workplan 2024/25](#)
- 1.2. Ofcom works with the ASA to regulate advertising on broadcast TV and radio. Ofcom also has statutory responsibility under the Online Safety Act for ensuring that online platforms put in place appropriate measures to protect their users from financial harm. Further detail of these arrangements are outlined below.

#### Financial promotions

- 1.3. The FCA's financial promotion rules apply to all financial promotions regardless of the medium through which it is distributed, it applies to broadcast media as well as digital channels.
- 1.4. Financial promotion rules differ across sectors and conduct sourcebooks. Where firms are undertaking advertisements that fall under Ofcom's rules, and are a financial promotion under FCA rules, the onus lies on the firm to ensure that it is conducting its business in compliance with the relevant promotion rules that apply.
- 1.5. The FCA expects financial promotions to be clear, fair and not misleading - [examples of good and bad practices](#).
- 1.6. Firms which approve financial promotions must ensure those promotions follow the FCA rules – [approving financial promotions](#)

#### TV and Radio

- 1.7. Ofcom is required under section 319 of the Communications Act 2003 and section 107 of the Broadcasting Act 1996 to draw up codes for television and radio, covering standards in:
  - programmes
  - advertising
  - sponsorship and product placement

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1.8. These standards are set out in codes, including:

- the UK Code of Broadcast Advertising (BCAP Code), which applies to the content of advertisements on radio and television services licensed by Ofcom; and
- the Ofcom Broadcasting Code ("the Broadcasting Code"), which addresses standards in programming.

### **BCAP Code**

1.9. Ofcom has contracted out responsibility for the frontline (day-to-day) regulation of advertising on broadcast TV and radio to the Broadcast Committee of Advertising Practice (BCAP) and the Advertising Standards Authority (ASA). BCAP is responsible for writing and maintaining the BCAP Code, with the ASA responsible for enforcing the rules. Ofcom retains backstop powers, including the ability to apply statutory sanctions when necessary, and is responsible for signing off any changes to the BCAP Code.

1.10. The BCAP Code includes a specific chapter on the advertising of financial products, services and investments, which is accessible here:

[https://www.asa.org.uk/type/broadcast/code\\_section/14.html](https://www.asa.org.uk/type/broadcast/code_section/14.html)

### **Broadcasting Code**

1.11. Ofcom is responsible for writing, maintaining and enforcing the Broadcasting Code. There are specific sections within the code on commercial references in TV programmes and commercial communications in radio programmes:

- Section 9 of the Broadcasting Code applies to commercial references (i.e., references to products, services and trade marks) in TV programming. This section ensures broadcasters maintain editorial independence and control over programming, and that there is a distinction between editorial content and advertising. <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-nine-commercial-references-tv/>
- Section 10 of the Broadcasting code applies to commercial radio communications. This section ensures transparency of commercial communications. For example, radio programmes which are subject to a commercial arrangement must be appropriately signalled to listeners. [See: https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-ten-commercial-communications-radio/](https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-ten-commercial-communications-radio/)

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1.12. The rules in the BCAP Code and the Broadcasting Code complement the FCA regulations.

### **Online Safety Act**

1.13. The Online Safety Act places requirements on user-to-user and search services to prevent users from encountering illegal content online, including illegal financial promotions. Specific duties related to fraudulent advertising also apply to a subset of 'categorised' services which are larger and/or have particular features.

1.14. Ofcom's role under the Act is to make sure that regulated online services have appropriate measures in place to protect their users. Ofcom is currently implementing the Act in three phases: the first phase focusing on illegal harms (including fraudulent user-generated posts); the second phase on protecting children from content that is harmful to them; and the third phase on additional duties (including the fraudulent advertising duties) that apply to a subset of 'categorised' services which are larger and/or have particular features.

### **Illegal content**

1.15. The OSA requires that user-to-user services and search services conduct a risk assessment of their services and take appropriate measures to prevent users from encountering priority illegal content on the service, and mitigate and manage risks to users. Specific financial services, fraud, and proceeds of crime offences are included as 'priority offences' under the Act, including offences under the Financial Services and Markets Act 2000 and the Financial Services Act 2012. As these duties apply to regulated user-generated content<sup>[1]</sup>, they may be relevant to influencer advertising.

1.16. Ofcom is required to publish an illegal content code of practice, outlining steps which services can take to meet their duties. Ofcom published its final illegal content Codes on 16 December 2024<sup>[2]</sup>, and they will come into force when they have passed through Parliament.

### **Fraudulent advertising**

1.17. Specific fraudulent advertising duties apply to a subset of categorised services (Category 1 user-to-user and Category 2a search services). These duties apply in relation to specific fraud offences, including offences under the Financial Services and Markets Act 2000 and Financial Services Act 2012.

1.18. The Government needs to introduce secondary legislation determining which services they will apply to. Ofcom will then consult on a draft fraudulent advertising Code of Practice as part of its third phase of implementation.



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Ofcom will consider the consultation responses before publishing a final fraudulent advertising Code. Once this Code has passed through Parliament, the duties will become enforceable.

### **How can Business C ensure compliance?**

1.19. Ofcom and the FCA expect in-scope party to familiarise itself with the relevant regulatory requirements and ensure that its activities are compliant with the law.

1.20. Ofcom and the FCA publish regulatory documents and guidance to aid compliance, which helps clarify our approach and expectations. It also consults publicly, when it proposes new rules or changes to existing rules.

### **TV and Radio**

1.21. Ofcom regularly reviews and amends areas of the Broadcasting code to reflect:

- changing public policy,
- changing attitudes and sensitivities, and
- changes to the industry.

1.22. Ofcom consults on changes to its code. Any updates to its codes will be published on Ofcom's website here: [TV and radio broadcasting codes - Ofcom](#)

1.23. Ofcom also publishes a fortnightly broadcast and on demand bulletin which contains details of updates to codes, latest decisions and new investigations launched. Sign up to this bulletin here: [Broadcast and On Demand Bulletin - Ofcom](#)

### **Online services**

1.24. The Online Safety regime is now in force and Ofcom published its first codes of practice and guidance on preventing illegal content in December 2024. For a comprehensive overview of Ofcom's approach to implementing the OSA and future milestones, including the publication of codes and consultations, please see: [Implementing the Online Safety Act: progress update](#).

## **2. Are there specific areas where the FCA's and Ofcom's rules intersect or diverge significantly, and how can Business C best address these discrepancies through its AI-powered compliance recommendations?**

2.1. The FCA and Ofcom work together through the DRCF. A key project is the Illegal Online Financial Promotions project, where FCA and Ofcom are exploring the interaction and ensuring coherence between Ofcom's codes of practice following OSA Royal Assent, and Financial Promotions legislation. This work is aimed at

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ensuring overall regulation is as effective as possible in reducing the prevalence of illegal financial promotions online. [DRCF Workplan 2024/25](#)

- 2.2. The ASA and the FCA have also published a Memorandum of Understanding, which sets out how regulatory activities in relation to advertising are coordinated. This is available at <https://www.fca.org.uk/publication/mou/mou-fca-asa-2019.pdf>
- 2.3. The ASA and Ofcom have published a Memorandum of Understanding, which sets out how regulatory activities will be carried out. This is available at: [Ofcom – UK regulator of communications - ASA | CAP](#)
- 2.4. As outlined in response to Question 1, the regulations intersect in specific areas:
  - The UK Code of Broadcast Advertising (BCAP Code), which Ofcom oversees and the ASA enforces, includes a specific chapter on the advertising of financial products, services and investments, and is available here: [https://www.asa.org.uk/type/broadcast/code\\_section/14.html](https://www.asa.org.uk/type/broadcast/code_section/14.html)
  - The Broadcasting Code includes specific sections on commercial references, including financial promotions and investment recommendations, in TV and radio programming:
    - Section 9, Commercial TV references: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-nine-commercial-references-tv/>
    - Section 10, Commercial Radio References: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-ten-commercial-communications-radio/>
  - Offences consisting of a contravention of the prohibition on carrying on regulated activity unless authorised or exempt; false claims to be authorised or exempt; and contravention of restrictions on financial promotion under sections 23, 24 and 25 of the Financial Services and Markets Act 2000 respectively are addressed in the Online Safety Act in the following sections:
    - Section 40 covers fraud and other offences relevant to the fraudulent advertising duties: <https://www.legislation.gov.uk/ukpga/2023/50/section/40>

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- Schedule 7, Paragraph 35 covers priority offences in relation to illegal user-generated and search content:

<https://www.legislation.gov.uk/ukpga/2023/50/schedule/7>

2.5. Further documents which may aid understanding are as follows:

- Under the OSA, Ofcom is required to produce Illegal Content Judgements Guidance, to aid regulated parties to judge whether content is illegal or not. A section of this guidance refers to financial promotions. [Statement: Protecting people from illegal harms online - Ofcom](#)
- This recent blog post elaborates further on how the FCA and Ofcom are working together under the DRCF to tackle online fraud and scams under the OSA: <https://www.drcf.org.uk/publications/blogs/tackling-online-fraud-and-scams-ofcom-and-fca-collaboration/>

**3. What are the expectations from both regulators on the use of AI for compliance decision-making? For example, what level of human oversight or review is required when using AI-generated outputs to evaluate and approve marketing materials that must adhere to both FCA and Ofcom standards?**

- 3.1. As outlined above, it is ultimately for regulated parties to ensure that their activities are compliant with the law.
- 3.2. Ofcom's focus is regulating the services that people use, rather than the underlying technologies, including AI. Ofcom does invest in understanding the technologies used in its regulated sectors and their outcomes for consumers and the markets it regulates.
- 3.3. Ofcom has published an update on [Ofcom's strategic approach to Artificial Intelligence \(AI\) 2024/25](#). This sets out the impact AI may have in Ofcom's sectors, and its implications for Ofcom's ability to deliver on its regulatory outcomes.
- 3.4. Ofcom has also published advice to UK broadcasters in a recent bulletin, explaining how the use of synthetic media is subject to the Broadcasting Code. [Note to Broadcasters - Synthetic media \(including deepfakes\)](#)

More recently, Ofcom has published an open letter to online service providers operating in the UK about how the UK's Online Safety Act will apply to Generative AI and chatbots. [Open letter to UK online service providers regarding Generative AI and chatbots - Ofcom](#)

- 3.5. Similar to Ofcom, the FCA's regulatory requirements do not generally require or prohibit the use of any form of technology to meet a particular rule. If a firm

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chooses to use AI to review its advertising and marketing content to support compliance, it remains the firm's responsibility to ensure that content complies with the FCA's regulatory requirements.

- 3.6. There are also various FCA rules that can be relevant to the use of technology that clearly require human involvement. These include, for example, the framework of personal accountability established by the Senior Managers and Certification Regime (SM&CR) and the rules on systems and controls in SYSC (see, for instance, the general organisational requirements in SYSC 4). For more information on the FCA's regulatory approach to AI, see its [AI Update](#).
  - 3.7. [The FCA's Conduct of Business \(COBS\)](#) sets out rules and guidance for firms when dealing with clients, marketing products and providing financial advice. In the COBS handbook, and possibly of relevance to the query, [COBS 4 provides rules pertaining to Communicating with clients, including financial promotions](#) (although please note that this is primarily concerned with investment-related promotions). There are provisions where human oversight might still be required when using AI-generated outputs ('human in the loop'). For example, [COBS 4.11 Record keeping: financial promotion](#) sets out rules involving the delegation by the person allocated the compliance oversight function of making records relating to the communication or approval of a promotion by employees of the firm.
  - 3.8. The FCA has also published rules which provides guidance on the level of competence required of regulated firms and provides useful information to ensure there are adequate [senior management arrangements, systems and controls](#) - for example [SYSC 5.1.2 G, 5.1.14 R and 5.1.15 G](#).
  - 3.9. In all cases, ultimate responsibility for ensuring that the requirements of the regulatory system are met sits with the firm.
  - 3.10. Any firm concerned would need to be satisfied that the specific way in which it was using an AI compliance solution was consistent with the rules that apply to it, and these will differ from firm to firm.
  - 3.11. We understand that AI standards are being developed by global standards development organisations such as the International Standards Organisation (ISO). The [AI Standards hub](#) aims to help stakeholders navigate and actively participate in international AI standardisation efforts. The AI Standards hub has a repository of AI standards and Business C may wish to review the standards that are most relevant to Business C's AI systems.
- 4. How can Business C demonstrate that its AI models and processes are aligned with both FCA and Ofcom standards, especially when the platform's automated**

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**compliance recommendations are used to assess multi-channel marketing campaigns?**

- 4.1. Ofcom and the FCA do not approve or endorse the processes of advertisers or the software they use to ensure compliance. Ofcom and the FCA's role is to establish the rules and standards for advertising to ensure that it is not misleading, harmful, or offensive. Both Ofcom and the FCA work with the ASA to enforce these rules and standards.
- 4.2. We recommend that regulated parties take steps to ensure they understand their regulatory requirements and adopt appropriate process to ensure that their activities are compliant with the law.