

Getting it right: how to comply with the “strong appeal” test when using sports personalities to advertise sports betting

By Gemma Boore

Nearly half a year has passed since the introduction of the “strong appeal” test for gambling advertisements in the United Kingdom, and it has been a whirlwind of a six months for sport:

- the Rugby League Men’s and Women’s World Cups took place in October and November 2022 after being postponed due to Covid-19 and the Cricket ICC World T20 (Men)’s event was hosted in Australia at the same time;
- the FIFA World Cup took the world by storm between November and December 2022; and
- 2023 has not disappointed yet either – sports fans have been treated to numerous events in Q1 including the Tennis Australian Open, the Rugby Six Nations and the Cricket ICC World T20 (Women)’s event.

For betting operators, the resurgence of live sports presents a rich (and well overdue) opportunity to re-engage with existing and attract new customers. However, regulatory restrictions on advertising gambling products in Great Britain have tightened in recent years and operators must be mindful not to fall foul of current advertising rules including the new “strong appeal” test, which came into force on 1 October 2022.

In this article, we explain the strong appeal test, consider the impact of recent rulings by the Advertising Standards Authority (“ASA”) concerning its implementation, and share our top tips for gambling operators,



marketing agencies and affiliates that want to ensure they comply with the strong appeal test when advertising sports betting to UK customers.

The strong appeal test – how does it work?

The [UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#) (the “CAP Code”) and the [UK Code of Broadcast Advertising](#) (the “BCAP Code”) (collectively, the “UK Advertising Codes”) set out the rules relating to marketing communications in broadcast and non-broadcast media in the UK.

Parts 16 of the CAP Code and 17 of the BCAP Code set out rules bespoke to gambling advertisements. In particular, since 1 October 2022, each section has contained the following requirement (in rules 16.3.12 and 17.4.5 respectively):

“Advertisements for gambling must not be likely to be of strong appeal to children or young persons, especially by reflecting or being associated with youth culture.

They must not include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.

Where appropriate steps have been taken to limit the potential for an advertisement to appeal strongly to under-18s, this rule does not prevent the advertising of gambling products associated with activities that are themselves of strong appeal to under-18s (for instance, certain sports or playing video games).”

These ‘strong appeal’ tests effectively prohibit content (including imagery, themes etc.) that has a strong level of appeal to under-18s regardless of how it is viewed by adults. It extends to the use of celebrities (including footballers) to promote sports betting or convey responsible gambling messaging.

The new strong appeal tests replace the ‘particular appeal’ test in the previous edition of the UK Advertising Codes, which generally allowed marketing communications regarding gambling to feature celebrities (including footballers) who were well known to under-18s, provided the vast majority of their fans were adults. A typical barometer used was the proportion of the celebrity or footballer’s fans on social media: if 25% or less of their fans and followers were under 18, it was generally accepted that they did not have a particular appeal to children and could therefore feature. The new “strong appeal” tests are much stricter as they focus only on whether there is strong appeal to children – appeal to adults is irrelevant.

The guidance published by CAP and BCAP relating to the strong appeal tests: ["Gambling and lotteries guidance: protecting under-18s" Advertising Guidance \(non-broadcast and broadcast\)](#) (the “Guidance”) notes that *"determining the likely appeal of a marketing communication is not always straightforward and is, to an extent, subjective... ..Advertising approaches or pieces of creative content of ‘strong’ appeal to under-18s can take a variety of forms"*.

The Guidance goes on to give several examples of approaches that are likely to be problematic, two of which are of particular relevance to sports betting advertisements:

1. Content linked to activities that are very popular or common among younger people (both in terms of their direct participation and viewing)

In its Guidance, the ASA confirms that it considers certain subjects and activities to be of inherently strong appeal to under-18s and gambling advertisements relating to these subjects and activities will be prohibited unless they fall under one of the exemptions. Two examples of sports with strong appeal are cited in the Guidance: football and eSports.

Other national sports such as cricket and rugby are also discussed and it is noted that by comparison, these sports have low-to-moderate levels of participation and interest among under-18s. However, the national

teams in these sports attract more media interest and are more likely to be considered of inherent strong appeal. Conversely, sports such as horseracing, greyhound racing, darts, snooker, boxing, motorsports and golf are noted to be more adult-orientated and unlikely to be of inherent strong appeal.

In order to advertise betting opportunities concerning sports that strongly appeal to under-18s, gambling operators must ensure that their product falls within one of the exemptions cited in the Guidance, five of which are of relevance to sports betting:

Exemption A: Products in general terms. This permits betting advertisements to promote licensed products in general terms. The Guidance notes that the rules focus principally on imagery, themes and characters that are of strong appeal to under-18s. They are not intended to restrict simple text or audio references to sports, teams or individuals generally held to be popular with under-18s.

Example: An advertisement stating that bets are available on the outcome of a particular football or eSports match would not be prohibited as this falls within Exemption A.

Exemption B: Generic descriptions. This permits generic depictions of or references to the subject of the licensed product. The Guidance notes that the generic depictions must be suitable and not, of themselves, likely to appeal strongly to under-18s.

Example: An advertisement using suitable characters or CGI to depict a sport held to be of strong appeal to under-18s (e.g. football or eSports) or generic items or places associated with the sport (e.g. a ball, goal post, trophy, or stadium) would not be prohibited as this falls within Exemption B provided that the depictions are not stylised to appeal strongly to under-18s (e.g. cartoons).

Exemption C: Logos and other identifiers. This permits the use of logos and other identifiers for the subject of a betting activity.

Example: An advertisement showing that bets are available on the outcome of a particular match, tournament or other event that includes the logo for the event or the teams playing in it would not be prohibited as this falls within Exemption C.

Exemption D: Branding. This permits material relating specifically to an advertiser's brand identity. The Guidance notes that this exemption does not extend to brand characters, which will need to be assessed under the strong appeal test for persons and characters (discussed below).

Example: An advertisement including the brand or livery of the operator advertising the bet (e.g. an advertisement featuring the logo of Mr Green in green and white colours) would not be prohibited as this falls within Exemption D. However, the use of the character "Mr Green" would need to be assessed separately to see whether it is of strong appeal to under-18s.

Exemption F: Certain persons and characters. This permits the use of persons or characters associated with subjects of strong appeal (e.g. football and eSports) provided marketers are satisfied that they are not, in and of themselves, of strong appeal to under-18s. Again, this will be assessed separately under the strong appeal test for persons and characters.

Example: An advertisement featuring a football player would not be prohibited as this falls under Exemption F provided the football player is not themselves of strong appeal to under-18s. See below for further discussion.

2. Persons and characters who have a strong appeal to under-18s

As set out above, the UK Advertising Codes require that gambling advertisements must not feature any person or character who has a strong appeal to those aged under 18.



Persons and characters generally fall into one of five categories: (a) personalities/celebrities, (b) brand ambassadors, (c) licensed characters (e.g. a movie or video game character), (d) characters played by actors; and (e) brand-generated characters (e.g. characters created by the advertiser).

The ASA makes its assessment of appeal of these persons and characters to under-18s based both on (i) their appearance and behaviour in the advertisement, and (ii) their profile and relevance outside the advertisement for personalities, brand ambassadors and licensed characters (but not characters played by actors and brand-generated characters as these have no external profile).

In determining the extent of a person's appeal to under-18s, advertisers are encouraged to use as many insights and sources of data as they can. Having determined what a person or character is known for (in terms of activities, roles or associations) marketers can then identify information and data sources that provide insights on the likely level of a person or character's appeal to under-18s.

For example:

Profiles outside the context of the advertisement. In determining whether a person or character is likely to appeal strongly to under-18s on the basis of their profile, the ASA will consider factors such as: (a) whether they have obvious and direct links to activities for, or highly popular with, under-18s; (b) the general audience for, and popularity of, what the person or character is known for; and (c) the likelihood that their inclusion in an advertisement will strongly attract the attention or interest of under-18s.

Example: Persons and characters with obvious and direct links to under-18s should be avoided (e.g. current or recent children's TV personalities, popstars associated with youth culture, licensed characters from popular board games and influencers that focus on youth-related themes).

If a person or character does not have an obvious and direct link to under-18s that would render them of ‘strong’ appeal, advertisers must still assess their likely level of appeal. Social and other media audience demographics are an important and quantitative source of data.

Example: Football players in national or other well-known teams such as Manchester United may be viewed in an aspirational or influential way among under-18s and should be avoided. The same principle applies in relation to leading sportspeople in other sports and those involved in World Cups or other high-profile tournaments. Players in lower-level teams and other individuals involved in sports (e.g. managers) are more likely to be acceptable if it can be demonstrated that the individuals have a negligible following of under-18s on social media and/or there is a negligible proportion of under-18s in the audience (either for their sport or other programmes in which they feature).

The ASA notes that more weight should be attached to present and recent activities. Personalities whose appeal has shifted away from under-18s over time are less likely to fail the strong appeal test.

Example: An individual that played in a national sports team in 2002, such as David Beckham, is less likely to appeal to under-18s now compared to an individual that played in a national sports team in 2022, such as Raheem Sterling.

Appearance and behaviour within the advertisement. The second part of the ASA’s assessment of ‘strong’ appeal for persons and characters is how they appear and behave in advertisements.

Marketers must avoid featuring behaviour that is likely to strongly appeal to under-18s. This includes youth culture themes (e.g. disregard for authority, rebelliousness, immature adolescent or childish behaviour and participation in practical jokes), speech and language (e.g. sounding like a child or using slang terms or text

abbreviations), humour (e.g. slapstick or juvenile jokes) and other behaviour (e.g. dancing, singing or reciting rhymes).

Example: A person that is behaving in a manner associated with under-18s (such as Simon Bird from The Inbetweeners) is more likely to appeal to under-18s.

In addition, persons and characters played by actors must not be presented in a way that renders them likely to be of ‘strong’ appeal to under-18s. They should not wear clothing, accessories, jewellery, body art, piercings or hair styles that are obviously associated with a current trend or style popular with under-18s.

Example: A person that is wearing clothing associated with teenagers (e.g. a crop top, oversized hoodie, baggy jeans or a bucket cap) should typically be avoided.

Finally, characters that are colourful or have exaggerated features are more likely to be of strong appeal to under-18s and this includes ‘cuddly’ or ‘cute’ animals. Licensed characters (for example, from games and movies) will be assessed based on the popularity of the game or movie with under-18s.

Example: Characters with similarities to soft toys and exaggerated features such as enlarged eyes should typically be avoided. Characters related to stories or themes that are popular among children like pirates, princesses, superheroes, robots and fairy tale characters should also be avoided unless they are from traditional fairy tales, not stylised with exaggerated features and are not otherwise associated with childhood (e.g. characters such as Santa Clause, the tooth fairy and the Easter bunny are cited in the Guidance as being associated with childhood and should therefore be avoided).

There is a helpful checklist at the beginning of the Guidance that summarises the risk-based scenarios of featuring different types of persons in gambling advertisements:

High risk

- o Anyone with direct connections to under-18s through their role like children's TV presenters or film stars
- o Anyone with a significant under-18 following on social media
- o UK footballers who play for top clubs, UK national teams or in high-profile competitions – this would apply also to managers
- o Non-UK 'star' footballers, particularly those at top European clubs – this would apply also to managers
- o Other prominent sportspeople involved in sports like cricket, tennis and rugby that, at the highest levels, have a significant national profile
- o Leading eSports players

Moderate risk

- o Footballers from teams outside the top-flight will be assessed on the basis of their social and other media profile
- o Footballers with lower profiles at top Euro/world clubs might be acceptable
- o Retired footballers who have moved into punditry/commentary will be assessed on the basis of their social and other media profile.
- o Other eSports players dependent on their social media and general profile
- o Sportspeople involved in clearly adult-oriented sports who are notable 'stars' with significant social media and general profiles making them well-known to under-18s

	<ul style="list-style-type: none"> o A small but notable following of under-18s on social media will be considered alongside the personality's general profile and could contribute to an ASA decision to categorise the individual as being of 'strong' appeal
<u>Low risk</u>	<ul style="list-style-type: none"> o Footballers at lower league and non-league clubs o Footballers at lesser Euro/world clubs o A long-retired footballer now known for punditry/commentary o Sportspeople involved in sports like cricket, tennis and rugby that don't have a significant role in the sport or general profile o Sportspeople involved in clearly adult-oriented sports (e.g. darts, snooker, golf, horseracing, and motorsports)

Exception for narrowly targeted advertising

There is one key exception to the strong appeal rules: they do not apply in media where under-18s can, for all intents and purposes, be entirely excluded from the audience.

Principally, this applies in circumstances where the marketer can robustly age-verify the potential recipients of the advertisement as being 18 or older such as:

- a) direct mail, email and SMS communications sent to recipients who have been verified as being 18 or older;
- b) areas of websites and applications that can only be viewed/accessed those who have been verified as 18 or older on sign-up; and

- c) online platforms (such as social networks or publications) that provide advertisers with functionality enabling them to target users that have been age-verified to a very high degree of accuracy.

In the event of challenge, the ASA expects advertisers to provide evidence to demonstrate that the systems used to identify audiences from which under-18s are, for all intents and purposes, excluded are robust. Gambling Commission licensed websites are cited as a good example of a media environment where under-18s are extremely unlikely to form part of the audience. Other sources of marketing data may also be acceptable where robust means of age verifications have been employed (e.g. payment data or credit checking). More general marketing data, such as that inferred from user behaviour, is unlikely to be sufficient.

Recent ASA rulings – what do they tell us?

To date, there have been three ASA rulings regarding the strong appeal tests, each of which provides helpful context - particularly in relation to footballers who, as noted as above, can be potentially low, medium or high-risk depending on the individual.

Philippe Coutinho, Jesse Lingard and Kalidou Koulibaly – of strong appeal

In December 2022, the ASA upheld [a complaint](#) for a promoted Tweet featuring the text “*Can these big summer signings make the question marks over their performances go away?*” and an embedded video that featured three current Premier League footballers: Philippe Coutinho, Jesse Lingard and Kalidou Koulibaly, set against a background of question marks.

The advertiser argued that although football and topflight footballers could strongly appeal to under-18s, targeting and age-gating tools had been used to remove under-18s from the advertisement’s audience. This included self-verification by the audience and targeting techniques

designed to ensure the advertisement would only reach users aged 25 or over.

The ASA did not accept these arguments and upheld the complaint. In its view, both football and the players used (who were Premier League and international footballers at the time) were likely to be of strong appeal to under-18s; and the targeting techniques were not sufficiently robust to exclude under-18s from the audience with the highest level of accuracy, as required.

Peter Crouch and Micah Richards – not of strong appeal

In February 2023, the ASA did not uphold two complaints regarding advertisements featuring retired footballers.

The [first complaint](#) concerned two TV advertisements featuring Peter Crouch conducting a choir and celebrating (amongst other activities) with the text “COMPLETELY FREE BET BUILDER ON ALL ENGLAND GAMES”. During the advertisement, a voice-over was heard saying, “You hear that? That’s the sound of Christmas and the world cup colliding. So come on all ye faithful, let’s be having ya. Glory to the king of headbutts. Knit those kits. Cross those sprouts. Stuff those turkeys. And attack those carols. Cause from this day we’ll forever ask where were you in twenty-two.”

The [second complaint](#) concerned a promoted Tweet featuring the text “Club football returns following the international break... Get £20 IN FREE BETS when you place a £5 bet!” and an image of Micah Richards.

Both Crouch and Richards had retired in 2019 and the ASA took a pragmatic approach that although this meant “not long retired”, the teams and the games in which the players featured during the later years of their career (e.g. Burnley and Stoke City for Crouch, and Aston Villa for Richards) meant that they were unlikely still to be of strong appeal to under-18s. The players were therefore assessed on the basis of their social and other media profiles:

(i) Peter Crouch

Crouch did not have public accounts on TikTok, Facebook or Twitch at the time the advertisements were broadcast, and his Instagram account had not been updated since 2014. He did have a public account on Twitter that, at the time the advertisements were seen, had almost 1.5 million followers but demographic data from September to December 2022 showed that 0.46% of his followers were aged 13-17 years. Even though Twitter is a media environment where users self-verify, the ASA accepted this as evidence that a very small number of Crouch's followers on Twitter were aged under 18.

The ASA further noted that the TV programmes in which Crouch appeared (such as BT Sport, the documentary 'Save Our Beautiful Game' and Crouch's own TV shows, 'Peter Crouch: Save Our Summer' and 'Crouchy's Year Late Euros') and his podcasts were primarily aimed at adult audiences and not of strong appeal to children. The exception being 'The Masked Singer' in which Crouch appeared as a panellist. The ASA noted this to be a family entertainment programme and of appeal to children. However, Crouch appeared as one of four panellists, the programme was of broad demographic appeal and there was no evidence that his role in the programme had led to him being viewed in an aspirational or influential way by under-18s. Accordingly, the ASA concluded that Crouch's appearance in this programme was unlikely to make him of strong appeal to under-18s.

(ii) Micah Richards

Richards did not have active public accounts on YouTube, TikTok or Twitch and audience demographics on Instagram and Twitter showed that: 0.07% of Richards' Instagram followers were aged 0-16 years and 2.19% were aged 17-19 years; and 0.04% of his Twitter followers were aged 0-16 years and 2.15% were aged 17-19 years. Again, the ASA accepted that this data



demonstrated that his social media profile was unlikely to make Richards of strong appeal to under-18s.

In terms of TV programmes, the ASA noted that Richards was a regular and well-known pundit on Match of the Day but BARB data in the lead up to the advertisement confirmed that a significant number of children had not watched live. The regulator also noted that Richards appeared as a pundit on Sky's live coverage of Premier League matches which would be of strong appeal to under-18s, but that the strong appeal did not extend to the pundit-based discussion that took place around the game. Accordingly, Richards' appearance in this context would be unlikely to hold strong appeal to under-18s.

Aside from his role as a football pundit, Richards had appeared on 'A League of their Own' and 'Gogglebox'. Both programmes were scheduled post 9pm and primarily aimed at an adult audience.

In addition, Richards appeared on a CBBC programme 'Football Academy', which was considered likely to be of strong appeal to under-18s but the episode had not aired at the time the advertisement was seen. The ASA noted that if Richards had appeared regularly and prominently on such a programme, it was likely he would have been considered to have strong appeal to under-18s.

Top Tips

Below are our key takeaways for operators, marketing agencies and affiliates that want to comply with the strong appeal rules when advertising sports betting in the UK.

1. **Be careful of using anybody in the advertisement that has an active presence on YouTube, TikTok or Twitch.** These platforms are known to have particular appeal to under-18s. Although recent rulings do not expressly state that an active account on these

platforms would denote someone as having strong appeal, it is notable that neither Crouch nor Richards had a presence on these platforms.

2. **Do not assume that retired players will automatically fall outside the strong appeal category.** Consideration should be taken of the individual's complete career history including the time since they played topflight sport, when they stopped playing completely, and whether they played for a national team during their career, as well as recent appearances on television and other media. The sport that was played is also relevant: football and eSports are highest risk, whereas adult-orientated sports such as darts, snooker, golf, horseracing, and motorsports carry a much lower risk and the use of current or more recently retired players in these sports may be acceptable.
3. **Do not automatically exclude football pundits.** Even recent appearances as a football pundit covering football matches that are of strong appeal to under-18s, do not automatically mean that the individual will be of strong appeal themselves. Consideration should be taken of their overall appeal to under-18s.
4. **Be cautious of links with children's or family entertainment programmes, but do not assume this precludes all individuals featuring in them.** Although an appearance in the television show that is aimed at children or is otherwise of strong appeal to under-18s is relevant and should carefully be considered, this will not automatically preclude an individual from appearing in a gambling advertisement provided the advertiser can demonstrate this did not alter the individual's appeal to under-18s as a result.
5. **Make use of available, verifiable data regarding social media and other followings.** Be prepared to defend selections by use of robust data including individual's social media followings and audience demographics for other media appearances. The ASA's recent rulings on the strong appeal test are lengthy by usual standards and it is clear significant data was considered. Being able to

produce relevant data is going to be vital in cases like this going forward.

6. **Keep the position under review.** Where advertisements appear on multiple occasions and/or an individual is used to represent a brand on an ongoing basis (e.g. as a brand ambassador), evidence that the individual does not strongly appeal to under-18s should be kept under regular review. An individual that did not appeal strongly to under-18s yesterday may do so today if they have featured in a new children's or reality TV show, for example. To mitigate this, consider adding restrictive covenants to commercial agreements with brand ambassadors and others used in gambling advertisements, restricting them from participating in other programmes or media that appeals strongly to under-18s before or during the period that an advertisement is broadcast.
7. **Review commercial scripts to ensure advertisements do not feature characters that appear or behave in a way that is likely to strongly appeal to under-18s.** Avoid behaviour, speech / language and humour that is associated with youth culture. Ensure the individuals are dressed in an adult manner and do not feature other characters (e.g. cartoons or licensed characters) in the advertisement that may strongly appeal to under-18s.
8. **If you are not satisfied that you can demonstrate that the advertisement is unlikely to appeal strongly to under-18s, exclude under-18s from the audience.** It is imperative that reliable age-gating mechanisms are utilised. These may include validation by payment data and credit checking, but do not extend to self-verification or the use of data inferred by user behaviour.

Summary

This article has explained the strong appeal test, considered the impact of recent rulings by the ASA concerning its implementation and outlined key takeaways for gambling operators, marketing agencies and affiliates



that want to ensure they comply with the strong appeal test when advertising sports betting to UK customers.

If you would like to discuss any of the matters raised, please do [get in touch with us](#).