



Memorandum of Understanding between the Advertising Standards Authority and the Human Fertilisation and Embryology Authority

Memorandum of Understanding between the Advertising Standards Authority and the Human Fertilisation and Embryology Authority

1. The purpose of this Memorandum of Understanding (MoU) is to set out a framework to support the working relationship between the Advertising Standards Authority and the Human Fertilisation and Embryology Authority (HFEA).
2. The Advertising Standards Authority (ASA) is the UK's independent advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Advertising Codes). The Committee of Advertising Practice (CAP) writes and maintains The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code). CAP is the sister organisation of the ASA. Henceforth, the term ASA will generally be used for simplicity, but it includes CAP.
3. The HFEA regulates the use of gametes and embryos in fertility treatment and research. The responsibilities and functions of the HFEA are set out at Annex A.
4. This MoU does not override the responsibilities and functions of the ASA and HFEA, including statutory responsibilities, and is not enforceable in law. However, the Advertising Standards Authority and HFEA agree to adhere to the contents of this MoU.
5. More detail about the working relationship between the Advertising Standards Authority and the HFEA is set out in the joint working protocol, included as Annex B of this MoU.

Principles of cooperation

6. The UK government and courts recognise the ASA as the established means for regulating non-broadcast advertising. The HFEA licenses and monitors centres which undertake research and provide treatment for infertility: it has responsibilities across the UK. It is in relation to the non-broadcast advertising of these infertility services where the Advertising Standards Authority and the HFEA will work together in cooperation, as appropriate.
7. The Advertising Standards Authority and the HFEA intend that their working relationship will be characterised by the following principles:
 - a) the need to make decisions which protect and promote patient health, safety and welfare and promote high quality health care;
 - b) a focus on working together by sharing information about relevant regulated services;
 - c) respect for each organisation's independent status and right to make different decisions about compliance given that different regulations apply;
 - d) the need to maintain public confidence in the two organisations;

- e) openness and transparency between the two organisations as to when cooperation is and is not considered necessary or appropriate;
 - f) the need to use resources effectively and efficiently through appropriate coordination and information sharing; and
 - g) the aim of learning from each other about good practice in regulation and working together to collectively influence policy where relevant.
8. The Advertising Standards Authority and the HFEA are also committed to transparent, accountable, proportionate, consistent, and targeted regulation (the principles of good regulation).

Exchange of information

9. Cooperation between the Advertising Standards Authority and the HFEA will often require the exchange of information. Exchange of information will be expected where either the Advertising Standards Authority or the HFEA identifies concerns about an organisation and those concerns are considered to be relevant to the other party's regulatory functions. The Joint Working Protocol (JWP) in Annex B sets out the detailed arrangements for sharing information between the parties.
10. All arrangements for cooperation and exchange of information set out in this MoU and the JWP will take account of and comply with the Data Protection Act 1998, the Human Fertilisation and Embryology Act 1990 (as amended), and all relevant HFEA legislation relating to these matters and respective Codes of Practice, frameworks or other policies relating to confidential personal information and information issues.

Resolution of disagreement

11. Any disagreement between the Advertising Standards Authority and the HFEA will normally be resolved at working level. If this is not possible, it must be brought to the attention of the MoU managers identified at Annex C. The parties should aim to resolve disagreements in a reasonable time.

Duration and review of this MoU

12. This MoU is not time-limited and will continue to have effect unless the principles described need to be altered or cease to be relevant. The Annexes of the MoU will be reviewed after a period of 24 months commencing on the date on which it was signed by the Chief Executives of the two regulators. Any changes made to the Annexes, should be confirmed by relevant governance structures in each organisation; they do not require sign-off by the Chief Executives unless it is specifically deemed necessary. The MoU may be reviewed at any time at the request of either party.
13. The review of the annexes will include:

- a) checking that relevant organisational, staff and contact details are current; and
 - b) reviewing whether the objectives of the joint working protocol have been met and whether the processes for sharing information need to be amended to improve effectiveness or efficiency.
14. Both organisations have identified an MoU manager at Annex C and these will liaise as required to ensure this MoU is kept up to date and to identify any emerging issues in the working relationship between the two organisations.
15. Both the Advertising Standards Authority and the HFEA are committed to exploring ways to develop increasingly more effective and efficient partnership working to promote quality and safety within their respective regulatory remits.

Signatures



Guy Parker
Chief Executive
Advertising Standards Authority

Peter Thompson
Chief Executive
Human Fertilisation and Embryology Authority

Date 12 April 2022

Date

Annex A: Responsibilities and functions

1. The Advertising Standards Authority and the Human Fertilisation and Embryology Authority (HFEA) acknowledge the responsibilities and functions of each other and will take account of these when working together.

Responsibilities and functions of the Advertising Standards Authority and the Committee of Advertising Practice

2. The Advertising Standards Authority (ASA) is the UK's independent advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Advertising Codes).

The Committee of Advertising Practice (CAP) is the sister organisation of the ASA and is responsible for writing the Advertising Codes. The ASA and CAP are committed to regulating in a way that is transparent, proportionate, targeted, evidence-based, consistent and accountable.

Responsibilities and functions of the HFEA

3. The responsibilities and functions of the HFEA are set out in the Human Fertilisation and Embryology Act 1990 (as amended). The HFEA is a non-departmental public body established under the 1990 Act. In summary, the HFEA must:
 - a) issue licences under the Human Fertilisation and Embryology Act 1990 (as amended)
 - b) inspect establishments licensed under the Human Fertilisation and Embryology Act 1990 (as amended)
 - c) issue a Code of Practice setting out maintain a statement of the general principles which it considers should be followed in the carrying-on of activities governed by the Human Fertilisation and Embryology Act 1990 (as amended)
 - d) promote compliance with the Human Fertilisation and Embryology Act 1990 (as amended) and with the Code of Practice
 - e) keep under review information about embryos and about the provision of treatment services and activities governed by the Human Fertilisation and Embryology Act 1990 (as amended), and advise the Secretary of State about those matters, and

- f) provide advice and information for persons to whom licences apply or who are receiving treatment services or providing gametes or embryos for use for the purposes of activities governed by the Human Fertilisation and Embryology Act 1990 (as amended), or may wish to do so.

Annex B: Joint working protocol

Introduction

This bilateral joint working protocol between the Advertising Standards Authority and the HFEA sets out the detail of the working arrangements between the ASA and the HFEA in two parts: **Operational protocols** which will be carried out by each regulator's staff; and **Joint management arrangements** which will be carried out by members of the Executive listed at Annex C.

Operational protocols

1. Sharing information

2.1 Who will share information?

Information will generally be shared at an operational level, between the Advertising Standards Authority and the HFEA. The information shared will relate to an organisation which is licensed or registered by the HFEA.

2.2 Situations in which information will be shared

We will aim to foster a culture of information-sharing, in which staff are empowered to pick up the phone to their counterpart to discuss an organisation or clinic which is causing them concern. Staff at the Advertising Standards Authority and the HFEA will contact the single point of contact for either regulator to speak to the relevant staff. These contact details are:

- ASA: Nicky Baker at nickyb@cap.org.uk
- HFEA: Clare Ettinghausen at clare.ettinghausen@hfea.gov.uk

There will be a two-way sharing of information, which may be volunteered by one regulator to the other, or provided in response to a particular request. Information will only be shared where the organisation is regulated by, or carrying out activities which should be regulated or licensed by the HFEA.

Under certain circumstances, there will be an **expectation** that information held by one regulator will be shared with the other. These circumstances are as follows:

The Advertising Standards Authority	HFEA
	<ul style="list-style-type: none">• Whistle-blowing event as defined by HFEA
<ul style="list-style-type: none">• Media interest in an organisation, which may give rise to concerns which need further consideration	<ul style="list-style-type: none">• Media interest in an organisation, which may give rise to concerns which need further consideration

	<ul style="list-style-type: none"> • Grade A incident reported
	<ul style="list-style-type: none"> • A responsive inspection is being undertaken
	<ul style="list-style-type: none"> • Licence is suspended or revoked or varied to restrict the activities permitted.
<ul style="list-style-type: none"> • Significant regulatory sanctions are imposed 	<ul style="list-style-type: none"> • Significant regulatory sanctions are imposed
<ul style="list-style-type: none"> • Referral is made to another agency, for example Trading Standards 	<ul style="list-style-type: none"> • Referral is made to another agency, for example the HSE or the MHRA

In the circumstances listed above, staff will be expected to contact their counterpart in the other regulator using the details above, both to pass on the information and to ascertain whether there is any additional information held by the other regulator which should be taken into account. The counterpart should ensure colleagues within their organisation, who may be relevant, are aware that the information sharing has taken place. Contact between the Advertising Standards Authority and the HFEA may occur in other circumstances where it is considered to be appropriate and proportionate, and if necessary agreed with a relevant manager.

Each regulator should record the information shared, who it was shared with and when, and any outcomes. The manner in which this is done is up to individual regulators to determine.

3. What information will be shared?

The information to be shared in the situations listed above will include:

- background information about the organisation concerned and its compliance history
- information about regulatory action taken to date and the effect it has had
- the steps in place for on-going monitoring of compliance or follow up of required improvement or enforcement actions.

Only non-patient identifying information will be shared between the regulators under this protocol. Sharing patient identifiable information is a criminal offence under the Human Fertilisation and Embryology Act 1990 (as amended) and also subject to legal restrictions in both regulators. Account must also be taken of the Data Protection Act when information is shared about registered or licensed individuals and people who work for the provider.

Where needed, case management meetings will be arranged between the regulators. This would be in exceptional circumstances only and subject to the agreement of the relevant senior managers

4. FOI requests for information shared between the regulators

Any request put to the HFEA under the FOI Act relating to information which was all or in part provided by the other regulator will not be released without first seeking advice from the organisation that provided the information. This includes information or data relating to serious incidents, which may include information about individuals. For example, if either regulator informs the other about allegations made by a whistle-blower, following which an FOI request is received by the HFEA for information held about the organisation concerned, no information relating to the incident would be released without discussion with the [name of organisation] about whether the information which had been shared is subject to any exemptions under the FOI Act or Data Protection Act.

Legal responsibility for responding to an FOI Act request – including final responsibility for making any decision to withhold information under exemption – remains with the organisation receiving that request. Although the ASA is not subject to FOI requests, the ASA will follow its organisational principles of a commitment to transparency and information sharing as appropriate

5. Press enquires

Where inspectors share information about regulatory non-compliance within an organisation, and that organisation becomes the subject of press interest, the regulators will co-ordinate their press responses, while ensuring that the judgement or position of each is adequately reflected.

Joint management arrangements

This JWP will have effect for a period of 24 months commencing on the date on which the MoU was signed by the Chief Executives of the two regulators. The joint working protocol may be reviewed at any time at the request of either party.

The formal review date will be April 2024.

Review of operational protocols and joint working arrangements

The efficacy of implementing the protocols for sharing information will be informally reviewed by the Advertising Standards Authority and the HFEA on a biannual basis to:

- a) ensure that relevant organisational, staff and contact details are current
- b) review instances where information has been shared, the impact of that on regulatory responses, and whether the processes needed to be amended to improve effectiveness or efficiency.

Any changes made to the joint working protocol should be confirmed by relevant governance structures in the Advertising Standards Authority and the HFEA; they do

not require approval from the Chief Executives unless it is specifically deemed necessary.

The Chief Executives of the Advertising Standards Authority and HFEA will meet biannually, where possible, and will include consideration of joint working arrangements. Additional meetings may be called at any time if required.

Annex C: Contact details

The Advertising Standards Authority Castle House 37-45 Paul Street London EC2A 4LS Telephone: 020 7492 2222	Human Fertilisation and Embryology Authority 2 Redman Place London E20 1JQ Telephone: 020 7291 8200
--	---

There will be named contacts between the Advertising Standards Authority and the HFEA as follows:

Nicky Baker, Compliance Executive, Committee of Advertising Practice
Clare Ettinghausen, Director of Strategy and Corporate Affairs, HFEA

NOTE: The following generic email address should be copied into all joint working correspondence. This includes matters concerning joint working, information sharing and review of this MoU.

Advertising Standards Authority: complianceteam@asa.org.uk

HFEA: HFEACompliance@hfea.gov.uk

Chief Executives (internal escalating policies should be followed before referral to Chief Executives)	
Guy Parker Chief Executive Email: guyp@asa.org.uk	Peter Thompson Chief Executive Email: peter.thompson@hfea.gov.uk
Joint working and information sharing	
Nicky Baker Compliance Executive nickyb@cap.org.uk	Clare Ettinghausen Director of Strategy and Corporate Affairs clare.ettinghausen@hfea.gov.uk
MoU management (including strategic issues)	
Nick Hudson Operations Manager - Compliance nickh@cap.org.uk	Sharon Fensome-Rimmer Chief Inspector sharon.fensome-rimmer@hfea.gov.uk