

## DWP and a breach of the CAP Code

25/08/2015

**Commercial analysis: Could the Department of Work and Pensions (DWP) face legal action over the use of fictitious claimants on leaflets? Charles Swan, specialist in advertising and marketing at Swan Turton LLP, explains that legal action is doubtful considering the DWP has already removed the leaflets.**

### Original news

Use of fictitious claimants on DWP leaflets, LNB News 25/08/2015 38

*Guardian, 24 August 2015: It was revealed last week that the Department of Work and Pensions (DWP) revised a leaflet featuring two fictitious claimants, Sarah and Zac, who spoke positively about their experience on welfare. It was implied that Sarah and Zac were real people, yet following a freedom of information request from Welfare Weekly, DWP has admitted that the individuals were not real.*

### What regulation is there of material produced by government departments?

Marketing communications by central or local government, as distinct from those concerning party policy, are subject to the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code). Political advertisements, however, are exempt from the CAP Code--in other words:

'Claims in marketing communications, whenever published or distributed, whose principal function is to influence voters in a local, regional, national or international election or referendum.'

### Was the DWP under any obligation to clearly state that the vignettes were for 'illustrative purposes' only?

If the CAP Code applied to the DWP leaflets, the vignettes would be considered as testimonials. The CAP Code, r 3.45 provides that:

'Marketers must hold documentary evidence that a testimonial or endorsement used in a marketing communication is genuine, unless it is obviously fictitious, and hold contact details for the person who, or organisation that, gives it.'

Whether the CAP Code applies depends on one's interpretation of the CAP Code, para I(h), which states that the it applies to:

'Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.'

This could be something of a grey area, but it is clearly arguable that the leaflets were marketing communications by the DWP directly connected with the supply of service--benefits. If this is right--and it probably is--there was a breach of the CAP Code.

### Could the DWP face any actions in light of these fabricated stories?

It is likely that members of the public will complain to the Advertising Standards Authority (ASA). Whether the ASA would investigate any such complaints and issue an adjudication is doubtful, given that the leaflets have apparently been withdrawn.

### If the leaflet had been produced by a private company seeking to promote a product, what action would be taken against that company?

A complaint could equally have been made to the ASA on the same ground--that the testimonials were not genuine.  
*Interviewed by Jo Edwards.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of*



CLICK HERE FOR  
A FREE TRIAL OF  
LEXIS®PSL

[About LexisNexis](#) | [Terms & Conditions](#) | [Privacy & Cookies Policy](#)  
Copyright © 2015 LexisNexis. All rights reserved.