

## SECTION 16: CHARITIES

**Question 99: Given BCAP’s policy consideration, do you agree that it is proportionate to replace the requirement for advertisements that include reference to a charity to include, in that advertisement, a list of charities that may benefit from donations with proposed rule 16.6.2, which allows a generic identification to be given where several organisations will benefit, if the advertisement makes clear where the audience can obtain a list of the charities that will benefit? If your answer is no, please explain why.**

<i>Responses received in favour of BCAP’s proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP’s evaluation of those points and action points:</i>
Advertising Association; An organisation; An organisation;	1. No significant comments received.	1. N/A
Charity Law Association	2. The Charity Law Association believes that the proposed wording must ensure compliance with the revised requirements of the Charities Act 1992 (as amended by Charities Act 2006). In particular, reference must be given to the “notifiable amount” which is defined as being either the actual amount of remuneration or sum received (if that is known at the time when the statement is made), or otherwise the estimated amount of the remuneration or sum to be received, calculated as accurately as is reasonably possible in the circumstances. It might be helpful for proposed Rule 16.5.2 to reflect more fully the requirements of Section 60 of Charities Act 1992 (as amended).	2. BCAP agrees the proposed rule should make reference to the actual amount or a reasonable estimate of the figure likely to be donated to the relevant charities. BCAP has amended the rule to state:  16.6.2 identify the charity that will benefit <u>and state the actual amount or a reasonable estimate of the money that will be donated</u> , for example “£1 per sale” or “10% of the purchase price”, and where more than one charity is involved, the advertisement may give a generic identification but should be accompanied by a statement listing the charities and the proportions in which they will benefit.

	<p>In addition the audience must be able to obtain the information on the charities that will benefit at no/very low cost. A website would seem to be the easiest option, but possibly there should be an alternative means to obtain the information for those who do not have easy access to the internet. Any telephone line to provide the information should either be free or at no more than local rate. Perhaps the Code should address these points.</p>	<p>BCAP will consider the need to support the rule with guidance in due course.</p> <p>Advertisements frequently include a website address for the audience to gain further information. BCAP considers Ofcom's media literacy audits in 2008 show the proportion of people who have the internet, a mobile phone and digital television at home has increased from 39% in 2005 to 53% in 2007. BCAP considers of those people that do not have access to the internet at home, free internet access can be obtained via public libraries for example.</p>
<p><i>Responses received against BCAP's proposal:</i></p>	<p><i>Summaries of significant points:</i></p> <p>3. No significant responses received</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>3. N/A</p>
<p><b>Question 100:</b></p> <p><b>i) Given BCAP's policy consideration, do you agree that the present TV and radio prohibitions on charity-based promotions in medicine advertisements should be deleted? If your answer is no, please explain why.</b></p> <p><b>ii) Given BCAP's policy consideration, do you agree that 16.7 (encouraging indiscriminate, unnecessary or excessive purchases of medicinal products) should be included in the new code? If your answer is no, please explain why.</b></p>		
<p><i>Responses received in favour of BCAP's</i></p>	<p><i>Summaries of significant points:</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p>

<p><i>proposal from:</i></p> <p>Advertising Association; Proprietary Association of Great Britain; An organisation;</p>	<p><b>4.</b> No significant comments made</p>	<p><b>4.</b> N/A</p>
<p>Charity Law Association</p>	<p><b>5.</b> (i) It is clear that commercial relationships between manufacturers of products and charities can lead to preference to purchase one product compared to another. Charities generally need to be very careful with regard to the types of promotion they support: for example, a cancer charity simply would not for reputation reasons participate in a promotional venture with a tobacco company. For these reasons, we believe that this issue should be, effectively, self-regulating: charities will form a view for themselves as to whether they would wish to enter into a promotion with a pharmaceutical company. While it is easy to see that there are several downsides in a charity engaging in any such promotional venture with a pharmaceutical company, nevertheless we believe that the position will effectively self-regulate: this is particularly supported by the fact that any joint promotional ventures can only be taken with the benefit of an agreement with the charity itself, so the charity would be on notice and have the ability to take a policy view as to whether the promotion should be supported.</p>	<p><b>5.</b> BCAP welcomes the comments from the Charity Law Association.</p>

	<p><b>6.</b> Care is also needed, in particular as regards the efficacy of the medicine concerned. It is important that any such advertisement features the charity promotion as a subsidiary to the promotion of the effects of the medicine itself.</p>	<p><b>6.</b> The advertising of medicines is controlled by a combination of statutory measures (with both criminal and civil sanctions), enforced by the MHRA, and self-regulation through Codes of Practice for the pharmaceutical industry, administered by trade associations. Advertising in this sector is strictly controlled and ads for medicinal products must include specific information, for example, the indication, name of the product active ingredient etc.</p>
	<p><b>7.</b> (ii) Subject to (i) above we agree with the broad thrust of rule 16.7. We would refer to the response given at question 99 above with regard to the proposed method of calculation of the contribution and the need to ensure compliance with Charities Act 1992 (as amended).</p>	<p><b>7.</b> BCAP considers it is unnecessary to repeat the requirements of rule 16.5.2 in rule 16.7. BCAP considers a cross reference to rule 16.5 may aid users of the Code:</p> <p><b>16.7</b>  Advertisements for medicinal products may offer to donate money to charity but must not be likely to encourage indiscriminate, unnecessary or excessive purchases of medicinal products. Advertisements must state the basis on which the contribution will be calculated. <u>(See rule 16.5)</u></p>
<p><i>Responses received against BCAP's proposal:</i></p>	<p><i>Summaries of significant points:</i></p> <p>8. No significant responses received.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>8. N/A</p>

**Question 101: Given BCAP's policy consideration, do you agree that it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client's consent, and the client's name will be promptly deleted on request? If your answer is no, please explain why.**

<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Advertising Association; An organisation; An organisation; Charity Law Association</p>	<p><i>Summaries of significant points:</i></p> <p>9. Agree it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client's consent and the client's name will be deleted on request.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>9. N/A</p>
<p><i>Responses received against BCAP's proposal:</i></p>	<p><i>Summaries of significant points:</i></p> <p>10. No significant responses received.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>10. N/A</p>
<p><b>Question 102: Given BCAP's policy consideration, do you agree that the present TV and radio prohibitions on comparisons in charity advertisements should be deleted? If your answer is no, please explain why.</b></p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Advertising Association; An organisation; An organisation;</p>	<p><i>Summaries of significant points:</i></p> <p>11. No significant responses received.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>11. N/A</p>
<p>Charity Law Association</p>	<p>12. Broadly agree that restrictions with regard to comparisons in charity advertisements can be deleted, but make the following comments:</p>	<p>12. BCAP agrees. The law does not directly prohibit charity advertisements from including comparisons with other bodies, including other</p>

- It is simply not possible in many circumstances to compare charities on any form of commercial “like for like” basis. The range of services and support provided by charities is bespoke in its nature and charities will have a wide range of different measures by which their efficiency and effectiveness can be identified. While the general view within the sector is that, for these reasons, comparisons are unlikely to be helpful; it is hard to see why the code should necessarily single out charities for special treatment in this regard.
- The removal of the ban on comparative advertising will no doubt help maintain the consumer’s trust in and perception of the charity sector. A concern is that there is an air of inevitability surrounding the possibility of ‘tit for tat’ comparative advertising between major charities. Such behaviour would undoubtedly affect the view of the sector in the consumer’s mind and could adversely impact on donations. Having said that there would no doubt be consequential benefits for consumers in terms of the provision of further information enabling a more reasoned and informed choice about their donation. In addition charity advertisers which perform more efficiently and effectively will no doubt benefit. On balance, the benefits of deleting the current ban outweigh the potential problems which comparative advertising may

charities. Those rules likely prevent misleading comparisons, because accurate, like-for-like comparisons might be difficult for a charity or a broadcaster to establish, and those rules likely help maintain the public trust in and perception of the charity sector; ‘tit-for-tat’ charity comparison advertising might bring the sector into disrepute and adversely impact donations. BCAP has weighed up, on the one hand, the protection the rule affords and, on the other hand, the freedom of charity advertisers to compare themselves favourably with other bodies, including other charities. BCAP considers its proposed Code includes extensive rules that prevent misleading claims in general and unfair comparisons in particular (see Section 3: Misleading of the proposed Code), which ensure that charity advertisements that include comparisons with other bodies do not mislead the audience. BCAP considers its proposed new rule, 1.2, ‘Advertisements must be prepared with a sense of responsibility to the audience and to society’ and detailed rules that ensure charity advertisements are not irresponsible ensure that the charity sector would not be brought into disrepute by charity comparison advertisements.

On balance, BCAP considers the benefits of lifting the prohibition, for consumers and charities that are comparatively more efficient or otherwise more effective than other bodies undertaking similar activities, outweighs any benefit of

	<p>bring, particularly given the fact that the overarching rule 1.2 requires that any and all advertisements must be prepared with a sense of responsibility to the audience and to society.</p> <ul style="list-style-type: none"> <li>• This relaxation does have the potential to be damaging to the reputation of the charity sector as a whole. It is one thing for a charity to say (for example) 'we keep our administrative and fundraising expenses below 3% of the total fundraised'. It is another thing for charities to be seen to be "trading off" against each other, particularly if there is a risk that they may not have the full facts of another charity's fundraising expenses or effectiveness. However, there are clear benefits for the sector and for the public in charities being able to openly and honestly make such comparisons. Charity trustees would be aware of any reputational issues, in the event of their charity wishing to make comparisons, and would be required to act prudently and ensure that their claims had foundation.</li> </ul>	<p>maintaining the present rule.</p>
<p><i>Responses received against BCAP's proposal:</i></p>	<p><i>Summaries of significant points:</i></p> <p><b>13.</b> No significant responses received.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p><b>13.</b> N/A</p>

**Question 103: Given BCAP's policy consideration, do you agree that the present radio rule, 3.2.4, should be deleted? If your answer is no, please explain why.**

**3.2.4** if the advertisement states that payment may be made by credit or debit card, full details must be given of the donor's right to have any payment so made of £50 or more refunded

<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Advertising Association; An organisation; An organisation;</p>	<p><i>Summaries of significant points:</i></p> <p><b>14.</b> No significant responses received.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p><b>14.</b> N/A</p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>Charity Law Association</p>	<p><i>Summaries of significant points:</i></p> <p><b>15.</b> We note the proposed deletion and the difficulty in envisaging a scenario in which a third party, for example, a shampoo advertiser invites the audience to donate £50 to its nominated charity. We think this is possibly over-simplifying the range of scenarios in which the public can be invited to make donations, since the rules cover both commercial participators (such as shampoo manufacturers etc.) and also professional fundraisers (for example, organisers of charity balls, etc.). It is possible to see that the total value of goods which may be sold would exceed £50 and, in these circumstances, given the wording of Section 60(4) of Charities Act 1992 (as amended)</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p><b>15.</b> BCAP understands that provision is also aimed at traditional TV and radio charity appeals, given that Section 60 refers to professional fundraisers as well as commercial participators. The requirement for third party fundraising advertisements in a radio or TV appeal which say that payment may be made by credit or debit card to state there is a right to refund, is retained in section 60(4) of the Charities Act (as amended). The figure of £50 was increased to £100 with effect from 1 April 2009 by the Charities Act 1992 and 1993 (Substitution of Sums) order 2009. To reflect the law, BCAP considers the rule should be retained and applied to TV:</p>

	<p>and the fact that many advertisers may simply be unaware of these provisions, we wonder whether it would in fact be appropriate to retain the current radio rule 3.2.4.</p>	<p><b>16.4</b> If the advertisement states that payment may be made by debit or credit card, the donor's right to have any payment of £100 or more refunded must be stated.</p>
<p><b>Question 104:</b></p> <p><b>i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules included in the proposed Charities Section are necessary and easily understandable? If your answer is no, please explain why.</b></p> <p><b>ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Charities rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?</b></p> <p><b>iii) Do you have other comments on this section?</b></p>		
<p><i>Responses received from:</i></p> <p>Advertising Association; An organisation; Charity Law Association; An organisation;</p>	<p><i>Summaries of significant points:</i></p> <p><b>16.</b> Agree that BCAP's rules, included in the proposed Charities Section are necessary and easily understandable. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p><b>16.</b> N/A</p>