

CAP Consultation on food and soft drink advertising to children: Individual responses G-M

38 – Healthier Features

Healthier Futures (formerly Tobacco Free Futures) is a social enterprise based in the North West of England with a mission to help people live longer, happier, healthier lives. We are experts in tackling health inequalities and our aim is to change the way children, families and communities think about their health. Healthier Futures has a strong track record of partnership working with a wide range of UK and international stakeholders including the UK Department of Health and Public Health England. More details about our work can be found here: <http://www.healthierfutures.org/>

Healthier Futures is in discussions with the Obesity Health Alliance (OHA) to become an active member of the Alliance. Healthier Futures fully endorse the response from the Obesity Health Alliance which they have written and shared with us for use as set out below.

This document outlines the aligned response of the Obesity Health Alliance Steering Group to the CAP Consultation on non-broadcast advertising of HFSS products to children. We encourage member organisations to submit their own responses to the consultation using (and building where applicable) on the key points below.

General statement

The Obesity Health Alliance is a coalition of over 30 charities, medical royal colleges and campaign groups who have joined together to fight obesity.

Constant exposure to unhealthy food and drinks on TV, radio, the internet, social media, in magazines, and for some even at school makes it very difficult to children and their families to make healthy choices and greatly influences the food they eat. Currently one in five children in England is overweight or obese before they start primary school, and by the time they leave, this increases to almost one in three. Obese children are more likely to be obese as adults, which in turn increases their risk of developing serious physical health conditions such as Type 2 diabetes, cancer, stroke and cardiovascular disease and associated mental health problems. These conditions have a devastating human impact and also place a huge financial burden on our already stretched health service. This is why we need tough and far reaching action to protect children from harmful advertising and to give them the best possible chance of a healthy future. While we welcome the opportunity for consultation on this area, the Government has rightly declared that childhood obesity is a national emergency so we need a game changing approach to tackle it.

Consultation Questions

1. Restrictions on HFSS product advertising

(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes. Children are also eating too much sugar, salt and saturated fat.ⁱⁱⁱ We know that eating too much can lead to weight gain and obesity.

Research shows that marketing greatly influences the food children choose to eat,ⁱⁱⁱ and also increases the amount of food they eat.^{iv} Marketing is a pivotal factor in the obesogenic environment, and tackling children's obesity can't be done effectively without restrictions on marketing to children. We don't currently have effective rules to protect children from exposure to HFSS marketing.

We believe that a child's right to a healthy start in life should not be traded off against commercial freedoms to promote unhealthy food and drinks.

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

Yes, but with clear reforms.

There is evidence showing the impact brand advertising has on children's consumption. Not only do advertisements for certain branded products make children more likely to prefer and purchase that particular product, it also encourages consumption of similar products.

We believe the guidance needs tightening to offer better protection to children. For example the current guidance is vague in specifying how advertising featuring a range of products from one brand is categorised when one or more would be classed as HFSS. We want to see specific guidance on how to enforce the statement that 'a strapline, celebrity, licensed character, brand-generated character or branding synonymous with a specific HFSS product' would be deemed HFSS.

Therefore further work should be carried out to ensure that the BCAP guidance is clear and takes into consideration recent evidence around brand advertising.

2. Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Yes. In addition we believe the current nutrient profiling work should be updated to reflect the latest evidence on recommended levels of free sugar intake. We welcome the current PHE-lead review of the current nutrient profile model to take into consideration changes to dietary guidance since its creation. The new model should be adopted for all non-broadcast marketing as well as broadcast.

3. Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

No. These rules should continue to apply to all food and soft drink advertising directed at children.

However, we recognise the potential for marketing to be used to promote healthy lifestyles. As such we welcome the possibility excluding fruit and vegetable products with no added sugar, fat or salt only. The rules should not be relaxed to include non HFSS products as some products categorised as non HFSS still have significant levels of sugar, salt and fat. The rules should only be relaxed for only the healthiest products, rather than healthier products.

4. Introducing media placement restrictions

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes. Children's media consumption has changed significantly in recent years with children accessing media via tablets and smartphones. The rule should restrict placement of HFSS product advertising across all forms of media including social media, advertising in cinemas, on posters, in print, online and advergames. This will bring rules in line with those governing broadcast media and protect children from exposure to HFSS marketing.

(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?

The media placement restriction should cover children under 16 to bring it into line with broadcast regulations.

5. Defining the audience

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

We do not believe this mechanism provides sufficient protection to children as it is based on percentage, rather than volume of children in the audience. This means media which is universally popular with both adults and children would not meet the threshold.

We also have concerns over how the threshold would be implemented due to lack of robust and reliable data available on the audience consuming digital media – for example a child may be watching online videos signed into their parent's YouTube account which would identify them as an adult and serve advertising content accordingly.

6. Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes. We believe there should be no exemptions to any type of media. We also support the extension of regulation to cover areas currently outside of CAP's remit—e.g. packaging, licensed and equity characters.

About Heart of Mersey

Heart of Mersey (HoM), part of Health Equalities Group is England's largest regional heart health charity working across the North West to reduce the risk of cardiovascular disease and related conditions such as cancer, diabetes and stroke. Heart disease and stroke prevention are major contributors to preventable illness, premature mortality and health inequalities.

HoM was first established in 2003 due to the disproportionate early death rates from heart disease and stroke in Merseyside. The key risk factors of adult smoking, 'healthy eating' and physical activity were worse than the England average and life expectancy for both men and women were lower.

All of the above remain the same in 2016 and, whilst death rates from cardiovascular disease have fallen, they are still worse than the England average. The biggest single factor which has led to the reduction in premature heart disease has been the fall in smoking. However, prevalence remains high, and this together with poor diets, are key contributors to continuing health inequalities across Merseyside.

As evidence shows that choices that influence lifestyles in early years can impact through the life course, Heart of Mersey is keen to do everything possible to enable children and young people to enjoy healthier diets both in primary school and through their teenage years.

In addition, Heart of Mersey works with 12 local authorities in the North West to deliver Food Active, a healthy weight campaign. This experience helps to inform our response.

Introductory statement

At an event on the 15th July 2016 at County Hall, Lancashire County Council, Preston, Food Active along with 42 supporters including academics, Directors of Public Health, public health professionals, nutritionists, students and community group members agreed to endorse the following statement from The Children's Food Campaign:

"Children should be protected from the marketing and promotion of less healthy food and drink across all forms of media, wherever it is placed and whenever it is they see it. This includes a 9pm watershed for junk food adverts on TV, as well as comprehensive rules with no exceptions across non-broadcast media and platforms. Ideally, it should be the Government – through, for instance, its Childhood Obesity Strategy – which sets the ambitious policy goals for the Committee of Advertising Practice and other relevant bodies/regulators to then align their rules to meet. These should always be seeking to match international best practice, and adhere to World Health Organisation recommendations."

Heart of Mersey recognises that there are high levels of disease due to poor diet. The proportion of the population affected by obesity continues to rise and of particular concern, is the increasing rate of overweight and obesity amongst infants and children. This is particularly prevalent in lower socio-economic groups. Within the North West, nearly 22.9% of the Reception year children measured in 2011/12 were overweight or obese. By Year 6, the rate of overweight and obesity doubled to 33.8%¹.

There continues to be regional inequalities in oral health with almost 64% more five-year-olds suffering from the tooth decay in the North West of England than in the South East. Across the UK approximately 46,500 children and young people under 19 were admitted to hospital for a primary diagnosis of dental caries in 2013–14 which makes dental caries by far the most common reason for children aged between five and nine to be admitted to hospital². Food and drink high in sugar play a harmful role in tooth decay.

Consultation questions

Q1) Restrictions on HFSS product advertising

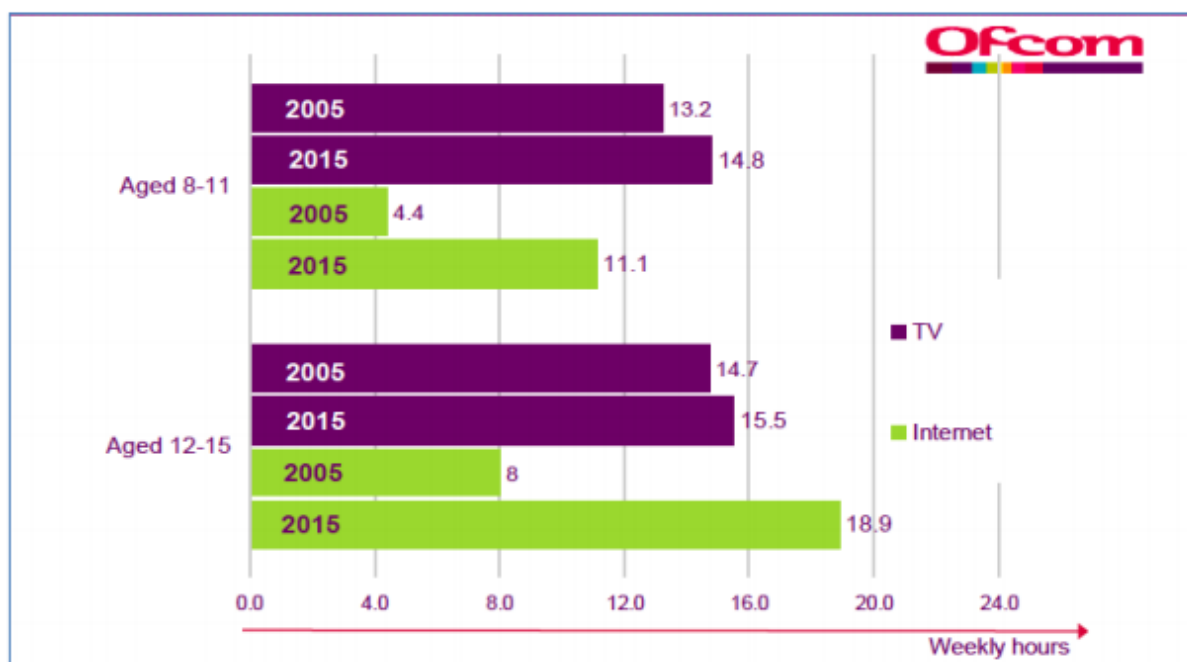
(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes. Heart of Mersey supports the Children's Food Campaign (CFC) which has long been calling for tougher restrictions on the marketing of less healthy food and drink to children, on TV, online and beyond. Their research, briefings and monitoring reports all consistently show how prevalent this form of marketing is, and how the current rules are neither adequate nor robustly enforced.

Current marketing rules fail to protect children from junk food marketing online and across other forms of media. Adverts promoting junk food are targeted at children online that are not permitted on children's television. As CFC have shown, brand characters, brand marketing, and product packaging featuring games and competitions are not included in the regulations. Similarly, in-school marketing, sponsorship deals and in-store placement of products are other areas not covered by the existing rules.

The amount of screen time children are exposed to has increased since 2005, children aged 8-11 years have increased their TV viewing times from 13.2 hours per week to 14.8 hours per week, and those aged 12-15 years have increased their viewing time from 14.7 hours to 15.5 hours per week. Whilst TV screen time have seen a modest increase, online screen time has been shown to have increased at a much greater rate with 8-11 year olds spending 11.1 hours online in 2015, opposed to be 4.4 hours in 2005, and an increase of 10.9 hours per week for 12-15 year olds, from 8 hours in 2005 to 18.9 hours in 2015³.

Table 1: Ofcom (2015)³



A Europe wide study showed that 11-16 year olds spend their time online visiting social network sites, instant messaging, YouTube and gaming⁴. Tactics employed by online marketers allow them to collect data on those using internet devices and market accordingly, and whilst Online Behavioural Advertising is not permitted for under 13 year olds, online apps can collect this data with ‘verifiable parental permission’⁵. Research suggests that parents scan online websites and apps for violent and sexual content, but have little awareness of junk food marketing aimed at their children, and the effects this can have on them developmentally (HFSS brands building an identity and ‘relationship’ with the child), socially (brands employing tactics such as ‘tag a friend’ to connect with peers) and biologically (children are impulsive and more responsive to HFSS ads than adults)⁶.

Therefore there needs to be increased regulation on the ways in which companies can market to children both on TV and online, including clearer guidance for parents on how data is collected.

HFSS brands are increasingly making use of influencers (e.g. vloggers and musicians) to produce and distribute marketing content, not all of it as clearly labelled as advertising as is required. In addition, misleading health or nutrition claims online and on packaging – alongside images of happy children eating the products – skew the information parents are relying on when making purchasing decisions.

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

Children's knowledge of unhealthy food and drink increases their obesity risk. Children's recognition of branded food logos increases with age and compared with other children, those who recall branded unhealthy food and drink have stronger preferences for such products.

As part of her presentation at the Food Active event, Dr Boyland explained that whilst food adverts (as a % of all ads) decreased in 2010 on children's channels, proportionally non-core foods still most heavily advertised. Core foods form the five food groups of fruit, vegetables, cereals, meat and alternatives, and milk and alternatives, and 'extra' or non-core foods are everything else. This can be explained by food companies altering product presentation to meet nutrient profiling restrictions - e.g. McDonalds 'Happy meals'⁷.

This suggests that the existing BCAP guidance is not strong enough. The definition of advertising needs to be widened to include all forms of commercially-sourced messages which include brand names or brand-related images.

Q2) Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Yes, the FSA/Ofcom nutrient profile model should be adopted immediately for assessing whether a food or drink marketed in non-broadcast media is high in fat, sugar and/or salt and considered 'less healthy' and thus should not be advertised to children.

Q3) Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

No. We support the CFC's position in that we are very concerned that by allowing any non-HFSS product to be advertised to children using celebrities and licensed characters, there would be many products just under the threshold score for HFSS which would choose to exploit such advertising techniques.

As the CFC note, there is a case for loosening the restrictions on use of licensed characters and celebrities for demonstrably healthier products such as fruit and vegetables.

Q4) Introducing placement restrictions

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes. Currently there are too many loopholes available to junk food manufacturers and there is a need for a clear and definitive ruling on the placement of HFSS product advertising, on TV, online and elsewhere (sporting events etc.).

Teen mobile media users are roughly three times as receptive to mobile advertising as the total subscriber population: just over half of teen mobile media users considered themselves open to mobile advertising⁸.

Social media platforms and marketers report that social media marketing has a powerful capacity to *amplify* marketing effects, increasing target audience reach, ad memorability, brand linkage and likeability compared to TV alone. In France and the US, direct return on investment for online Coca-Cola and Cadbury campaigns is reported to have been about 4 times greater than for TV (e.g., in a Coca-Cola campaign in France, Facebook accounted for 2% of marketing cost but 27% of incremental sales)⁶.

Exposure to 'homepage ads' on desktop or laptop on Facebook (advertising that appears to the side of the main feed, and typically includes an option for the user to engage with the brand e.g. 'become a fan') increased ad recall, brand awareness and purchase intent (age of participants not given), effects that were enhanced dramatically by adding social context (evidence that a friend had engaged with, and was thus 'endorsing', the brand⁹). This demonstrates the influence of Internet users over the perceptions and behaviours of others in their social network.

The disingenuous manner in which HFSS food is marketed to children means that choice is being distorted. This needs to be addressed urgently to respect children's rights and to protect this vulnerable group.

(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

i) aged 11 or younger? **No** ii) aged 15 or younger? **Yes – but preference is actually for aged 17 and under.**

We support the CFC's submission (and others) who state that WHO recommendations and the UN Convention of the Rights of the Child define a child as anyone under 18. Therefore that should be age definition which is used to give the best protection to all children.

There is ample evidence to rule out under 12s as a sufficient definition. Children aged 12 and above are substantially influenced by junk food marketing due to their greater independence and higher levels of media consumption. In addition, newer forms of digital and social media food marketing practices are often difficult, even for older children, to recognise and resist.

Research shows for 13-17 year olds in the UK: 73% follow brands they like; 62% click on ads; and 57% make in-app or in-game purchases, and whilst they tend to be media literate they are still susceptible to advertising and marketing¹⁰. During the Food Active event, Tatlow-Golden reported that one in five food/drink retail websites features products either directly targeted at, or appealing to, teens, almost all of which are HFSS (including Coca-Cola, Galaxy, Ben & Jerry, Club Orange, McVities, Lucozade, Walkers, Kitkat, Red Bull, Pringles, Tayto, Glenisk Yogurts, Volvic water). They focus on fun, entertainment, celebrities and competitions/promotions. As such teens are vulnerable⁶.

Q5) Defining the audience

Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

No. The 25% measure offers insufficient protection to children, and would be almost impossible to implement or enforce effectively for many forms of non-broadcast media.

BARB data is available and is universally recognised as giving accurate figures on audience demographics. BARB 120 index is based on the proportion of children in the audience rather than actual viewing figures, so if a programme is also popular with adults it is unlikely to reach **120** on the index even if over a million children are watching.

Measures such as this allow children to be exposed to the marketing communication, when the aim of the restrictions – and of WHO’s recommendations – is to minimise children’s exposure to HFSS advertising. For programmes popular with both children and adults, these measures will expose many 1000,000s of children to adverts which should predominantly be viewed only by those 18 years and older.

Table 2. Which? Consultation Response (2006)¹¹

Programme	Numbers of children watching (000s)	Viewing Index
1. Ant & Dec's Saturday Night Takeaway	1154.5	88.78
2. Coronation Street	814.5	48.64
3. Emmerdale	545.5	42.85
4. The X Factor Results	516.6	71.60
5. The X Factor	511.7	76.63
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27. Spongebob Squarepants	170.3	268.69



There are no similar data sets for non-broadcast media. What data there is on audience breakdown online, for instance, is often partial, proprietary and inaccurate when it comes to age profiles. We are also concerned that CAP would rely on advertiser-provided figures and would have little way of independently verifying them.

Q6) Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes, the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

About ISBA

We are the representative body for UK advertisers, our membership includes brands, the public sector and not of profit organisations. ISBA is a member of both CAP and BCAP.

QUESTION 1 Restrictions on HFSS product advertising

(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes

However obesity and diet are complex issues which will be relatively unaffected by these proposed rule changes.

However with the changing nature of digital media and how children view audio visual content ISBA strongly supports a harmonisation of the nutrient profiling rules across all media.

Note: In seeking this rule change we do not believe that the rule should represent a complete ban where a retailer's food setting within an ad includes a small number of HFSS products and those products are not the prime focus of the ad. Similarly there may be circumstances where an advertiser includes the range of products, one of which is HFSS.

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

No, although they are a starter to providing clearer guidance to advertisers and to ASA complaints executives. The principle behind the BCAP Guidance is one that ISBA supports; advertisers cannot use non product brand ads to circumvent the rules.

However the existing Guidance notes are in need of expanding. ISBA does not believe that the rules are an open invitation to prohibit brand advertising, other than in the strict sense that the advertisement appears to be aimed at promoting a named and identifiable HFSS product.

QUESTION 2 Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Yes. Advertisers already use the model for TV advertising; using two different models would add to costs without any compensating benefits for business.

ISBA agrees with the CAP reasoning for reviewing the use of the model if a revised Government nutrient profiling model produces significant changes to the number and types of products able to advertise, or in the costs of using the model.

QUESTION 3 Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

Yes. ISBA supports the CAP proposal. In adopting the proposed rules food and soft drinks will be differentiated for the first time in the non-broadcast codes allowing advertisers to promote non HFSS products to make a contribution to the balancing of the nation's diet.

QUESTION 4 Introducing placement restrictions

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes, ISBA supports the proposal based on reducing children's exposure to HFSS advertising.

(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?

ISBA members do not have a uniform position of the age that should be applied. There is however no suggestion that children younger than 12 should be targeted. Some advertisers already apply a 16+ approach to buying media for their advertisements. This is done on a voluntary basis.

QUESTION 5 Defining the audience

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

Yes.

QUESTION 6 Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes; although the accuracy of audience measurement online may result in some serious difficulties for both advertisers and the ASA. So too is the assessment of outdoor audience which may well vary according to time of day and the time of year. A cautious interpretation of the rule would be welcomed.

Introduction

The IPA is the professional body for advertising, media and marketing communications agencies based in the United Kingdom. We have approximately 300 agency brands within our membership.

As a not-for-profit membership body, the IPA's role is two-fold: (i) to provide essential core support services to its corporate members who are key players in the industry; and (ii) to act as the industry spokesman.

The IPA is a member of CAP.

Responses to Consultation Questions

1. Restrictions on HFSS product advertising

(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

The IPA agrees that restrictions on the advertising of HFSS products to children should be introduced into the CAP Code. Although CAP's consultation document explains that there is no significant new evidence on non-broadcast advertising's effect on children which might present a clearly evidence-driven basis for regulatory change, the IPA acknowledges the public policy imperative to try to deal with the public health and economic impacts of obesity, particularly considering how children interact with the commercial world now through their use of new media.

As the consultation document further explains, obesity is a "multifactorial issue" and so requires a contribution from various sectors, including advertising.

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

It would be useful for CAP to produce guidance to help agencies identify whether or not a brand advertisement is likely to be interpreted by the ASA as promoting an HFSS product. We would suggest, however, that if the existing BCAP guidance were to be adopted, it should be updated and made clearer.

2. Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) model to identify HFSS products?

The IPA agrees with CAP's comments in the consultation document that any nutrient profiling model must be proportionate, straightforward to use and credible. It would be sensible to adopt the Department of Health nutrient profiling model if only for consistency across non-broadcast and television media.

3. Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

The IPA agrees that these content rules should be applied to non-broadcast advertising for HFSS products only. Advertisers should be able to promote so-called healthier products using the three advertising mechanisms included in the rules, rather than be subject to a complete prohibition (except for only fresh fruit and vegetables) as currently. This is particularly important considering, as the consultation document acknowledges, the need to limit the detrimental economic impacts of any placement restrictions.

4. Introducing placement restrictions

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

If the CAP Code is to be updated to include restrictions on the advertising of HFSS products (as per question 1 above), then the IPA would support the introduction of a rule restricting the placement of such advertisements in order to help reduce children's exposure to them.

(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

- i) aged 11 or younger?
- ii) aged 15 or younger?

Children aged 11 or younger are acknowledged as particularly vulnerable because, as the consultation document explains, their understanding of the commercial world and advertising is still evolving and they are also in the process of forming food preferences and developing their dietary choices. Further, the evidence base establishing advertising's likely effect on children's food preferences focuses disproportionately on younger children, meaning there is less evidence of its effect on older children. Introducing the same age category in respect of the placement of HFSS product advertisements as is used in respect of the creative content rules would also ensure consistency within non-broadcast advertising.

The alternative option of applying the restriction to children aged 15 or younger would, however, align with the equivalent TV broadcast rules.

5. Defining the audience

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

Since the 25% measure has been used in respect of other product advertisements in non-broadcast advertising, the IPA agrees that it would be sensible to apply it for the purpose of restricting HFSS product advertising.

6. Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Applying any restriction to all non-broadcast media would support media neutrality and enable the restriction to have the maximum impact.

Question 1 - Restrictions on HFSS product advertising

(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Whilst there is little evidence to show that advertising has a meaningful impact on children's food preferences, we accept that there is an obligation on the industry to act and to be seen to act responsibly given the wider societal concerns regarding childhood obesity. We would therefore welcome some restrictions on the way HFSS products are advertised to children.

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

It would be sensible to have a uniform approach across the Codes, however we think clarity is needed between what would constitute a brand ad with relevant examples versus a product ad

Question 2 - Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Yes, we agree this should be adopted. We would like to identify how the adoption of the DH profile will be advised.

Question 3 - Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

The IPM would fully support this rule being applied to HFSS products only as we believe it will allow more creative ways for the industry to promote healthier food options to children. The IPM would like further clarity on how CSR style promotions will be covered in this ruling e.g. McDonalds community based activity around grass roots football or activity based promotions involving an HFSS brand/charity.

Question 4 – Introducing media placement restrictions

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

The IPM supports the introduction of a placement restriction as a proportionate approach to reducing children's exposure to HFSS product advertisements.

(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

i) aged 11 or younger?

ii) aged 15 or younger?

The IPM membership were unable to reach a consensus on this point. Poll of 25 senior industry marketers with direct legal or compliance roles voted 40% U11 / 60% U12.

Question 5 - Defining the audience

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

This measure has worked effectively in other sectors (i.e. alcohol and gambling) and therefore it would be sensible to adopt the same measure for the purposes of these rules.

Question 6 - Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Given changing habits of how children consume advertising including increasingly online, it would make sense to apply the placement restrictions across all media within the remit of the CAP Code including online.

43 – The Institute of Public Health in Ireland (IPH)

The remit of the Institute of Public Health in Ireland (IPH) is to promote cooperation for public health between Northern Ireland and the Republic of Ireland in the areas of research and information, capacity building and policy advice. Our approach is to support Departments of Health and their agencies in both jurisdictions, and maximise the benefits of all-island cooperation to achieve practical benefits for people in Northern Ireland and the Republic of Ireland.

IPH welcomes the opportunity to submit to the CAP consultation on food and drink advertising to children. Both the Republic of Ireland and the United Kingdom are signatories to the UN Convention on the Rights of the Child which state that children should be entitled to the highest attainable standard of health and to protection from exploitation (United Nations, 1989). The World Health Organization (WHO) and the Government of South Australia, 2010) ethos is for a ‘health in all policies’ approach to decision-making; this recognises the role that all sectors have to play in creating conditions conducive to healthy living and choices.

Poor quality diet and overweight/obesity are significant threats to public health across Ireland and the United Kingdom. One in four children in the Republic of Ireland is either overweight or obese (Heinen et al, 2014). In Northern Ireland, 21.2 per cent of Primary 1 children and 27.8 per cent of Year 8 children measured in 2014/2015 were considered overweight or obese (Public Health Intelligence Unit, 2016). IPH is particularly concerned by the health inequities dimension to overweight/obesity and its associated burden of disease. It is adults and children in the lowest socio-economic groups who are impacted most by this disease burden (WHO, 2013).

IPH has an extensive portfolio of work in this area. This includes: the *Obesity Hub*¹ an online resource providing access to the best international evidence on obesity; submissions² to the Broadcasting Authority of Ireland on advertising of high in fat, salt or sugar (HFSS) foods to children; and also includes the first Health Impact Assessment (HIA) of a sugar sweetened drinks tax³ for the Republic of Ireland that had the intention of addressing overweight and obesity.

IPH is concerned by the partial self-regulating nature of advertising standards in the UK. There are conflicts of interest inherent in such mechanisms (University of Liverpool et al, 2015) and *self-regulation is unlikely to lead to wholesale change in the balance of what food is marketed to children* (Adams et al, 2012:5). However, working with industry as part of a regulatory mix is an essential component of ensuring measures work.

Restrictions on HFSS product advertising

1 (a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

IPH welcomes the CAP consideration of tougher restrictions on the advertising of HFSS products. Children and young people across the UK and Ireland are exposed to the same media, both broadcast and non-broadcast. IPH has a remit for public health across the island of Ireland and therefore welcomes the protection of our young people from exposure to unhealthy products being marketed across borders. Aside from our concerns about overweight and obesity, there are other health impacts of HFSS product consumption, in particular dental health.

To fully address dietary issues across the UK and Ireland, a suite of measures is required. *A Fitter Future for All*, Northern Ireland's obesity prevention framework, intends to reduce overweight and obesity by 2022 through increasing the percentage of people eating a healthy, nutritionally balanced diet and to increase the percentage of the population meeting physical activity guidelines. Aznar et al (2016) have recently recommended that a comprehensive childhood obesity strategy is needed that would include addressing food advertising and promotion, sugary drink taxation, and product reformulation. There is no one measure that will resolve the problem, rather addressing food advertising and promotion is one element of a necessary regulatory mix (University of Liverpool et al, 2015).

However, food preferences are influenced by marketing and advertising (Story et al, 2004; Cairns et al, 2009; Kelly et al, 2010; NICE, 2010; WHO, 2010; 2013) and if they were not, it is unlikely that industry would waste considerable resources on these measures, as evident by figures provided in Annex 7 of the consultation document. In support of this, the WHO (2013) states that online advertising expenditure in 2010 for the UK was €10 billion, while 65 per cent of 5-7 year olds, and 85 per cent of 8-11 year olds in the UK in 2011 are accessing the internet through home computers. Overall, it is estimated that children in the UK present a marketing opportunity worth £99 billion (Safefood, 2015). The UK has the highest expenditure on internet marketing when compared to 16 other countries (Safefood, 2015). Where industry have raised questions about the evidence base (as in the pre-consultation phase), the precautionary principle should be used. Therefore, restricting children and young people's exposure to HFSS product advertising in non-broadcast media is welcomed.

1 (b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

IPH agrees with the uniformity of using BCAP guidance for the new and amended rules as a sensible approach, assuming that BCAP guidance has been found to be a comprehensive method based on previous experiences. However, IPH notes that 13.9, 13.10, 13.11 relate only to HFSS product advertising to pre-primary and primary school age children, and in the context of potentially raising the age (4(b)) to aged 15 or younger for media placement restrictions, IPH believes that these clauses should also include older children.

Selecting a nutrient profiling model

2 Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

IPH supports the use of the UK Department of Health's nutrient profiling model to identify HFSS products. This model is also used by the Broadcasting Authority of Ireland and would facilitate a uniform approach across the two jurisdictions where, as mentioned, children and young people are exposed to both UK and Ireland broadcast and non-broadcast media. However, IPH believes this model should be subject to regular review to ensure an up-to-date evidence base underpins the model. Should more robust models be implemented in other jurisdictions in the future, these models should be considered as alternatives (for example, the WHO Europe nutrient profiling model) in both the UK and Ireland.

Existing prohibitions on the use of promotions and licensed characters and celebrities

3 There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

IPH welcomes this innovative approach however we would cautiously recommend restricting this to HFSS products only. The concern is that HFSS products could be advertised under this wider creative banner via loopholes, as identified in the BCAP guidance. Marketing is no longer restricted to product awareness; it is now a multifaceted approach including brand awareness, customer relationships and co-product advertising (Cairns et al, 2009). Therefore, there is the potential that more healthy foods and drinks that meet the criteria for the wider creative content band could be used to promote HFSS products. For example, IPH notes that diet versions of soft drinks may not be excluded from regulations using the Department of Health's nutrient profile model and could be used as a vehicle for raising brand awareness and encouraging sugar sweetened drinks consumption. This is of concern given that sugary drink consumption is clearly a government priority as identified in the March 2016 Budget.

Introducing media placement restrictions

4 (a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

IPH would welcome restrictions on the placement of HFSS product advertising as appropriate, for example, children and young people may not constitute the direct or even significant proportion of the audience for billboard media however children and young people are certainly exposed to these forms of advertisements. In order to address the increasingly sophisticated methods to access children and young people through non-broadcast media, IPH welcomes advertising restrictions on the placement of HFSS products. Young people are unable to fully recognise the intent of marketing and do not demonstrate a critical understanding of advertising until they are in their pre-teen years (Story et al, 2004; Aznar et al, 2016). In addition, Aznar et al (2016:33) states that:

Children are nowadays exposed to HFSS advertising through many different media and is often not recognised as advertising. Indeed promotional tools like sponsorship, product placement and advergames are designed to disguise their commercial intent and get under the viewer's cognitive radar.

In addition, in non-broadcast media there is less control over who is viewing advertisements than broadcast media which parents may have greater control over. For example, although certain social media sites may state that there is an age limit, there is no way of enforcing this.

4 (b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

- i) Aged 11 or younger?
- ii) Aged 15 or younger?

Where these are the only bands being considered, IPH would endorse a restriction relating to children age 15 or younger. This age band is in line with the Ofcom regulations relating to advertising restrictions for food and beverages during TV programmes which appeal to children. In the Republic of Ireland, IPH has recommended that broadcast advertising restrictions of HFSS foods and drinks apply to people aged under 18 (where the audience is expected to comprise 50 per cent or more of people under the age of 18) for a less complex approach. In addition, older children are more likely to have disposable income independent of their parents and therefore have greater access to HFSS products than younger children who rely on 'pester power'. Older children are also more likely to have greater exposure to non-broadcast media.

Defining the audience

5 It is often straightforward to identify media targeted at children. Where media has a broader audience, CAP used a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products.

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

While this is a useful measure, it has often been shown that children and young people are exposed to media outside of the expected targeted audience, for example with television programming children often watch family programming rather than, or as well as, children’s programming (Adams et al, 2012; WHO, 2013). This is even more likely in the case of non-broadcast media. Publications, movies-at-home, games and other online resources do not have monitored age restrictions and can be accessed at any time, unlike television which has watersheds.

It can be difficult for parents to monitor what their children are seeing when using personal internet-accessible devices, and many of the marketing techniques used would not be immediately obvious without ongoing monitoring. Therefore IPH would endorse a wider test than the 25% particular appeal test.

Application to different media

6 Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

IPH endorses the restriction of HFSS product advertising to all non-broadcast media. Children and young people are exposed to a barrage of marketing messages, in particular online. Spotify and YouTube were particularly mentioned in a recent study (Aznar et al, 2016) with young people as sites where they are exposed to adverts. Children at a particular stage in their cognitive development may be aware they are being marketed to, and they may also have knowledge of what is unhealthy. However although children are increasingly aware and knowledgeable about their exposure to HFSS product advertising, these marketing tools have simultaneously become more sophisticated. Methods such as subtle devices within advergaming, where the buttons are branded, or where users are encouraged to provide personal details and to refer friends to these sites or where children are encouraged to devise their own advertisements circumventing regulations, are reminders of how the tobacco industry has similarly attempted to circumvent international codes and promote their products through parallel branding and alternative marketing (see Hafez et al, 2006; Hendlin et al, 2010). In light of the constantly changing environment, it is essential that any advertising codes are regularly monitored and reviewed for effectiveness and have the ability to quickly respond if industry attempts to circumvent restrictions.

44 – Internet Advertising Bureau (IAB)

Introduction

- 1 The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising in the UK. It represents over 1200 businesses engaged in all forms of online and mobile advertising, including media owners and advertising technology businesses.
- 2 The IAB's five key objectives are to:
 - Prove the value of digital media by delivering 'best in class' industry research and breaking down barriers to advertising spend;
 - Enable a trustworthy and responsible medium through cross-industry standards and self-regulation;
 - Educate and inspire marketers through intensive learning programmes and thought-leading events;
 - Improve ad trading efficiency through measurement guidelines and creative standards; and
 - Advocate for an optimum policy and regulatory environment for the market to continue to thrive.

Further information is available at www.iabuk.net.

Proposals to introduce restrictions on HFSS product advertising to children in the UK CAP Code

1(a). Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

- 3 IAB UK and our members are committed to promoting responsible advertising practices, including when it comes to marketing to children.
- 4 Both the CAP and BCAP Codes are robust. However we agree that there is a need to review the CAP Code to explore whether new restrictions are necessary and appropriate in the context of concerns about children's diets and health.
- 5 **The IAB therefore supports the principle of amending the CAP Code in order to align it more closely with existing industry good practice such as the [EU pledge](#) and the provisions in the BCAP Code.**
- 6 It should be borne in mind that any new restrictions are unlikely, in themselves, to deliver a significant impact. Research suggests that obesity is influenced by a variety of factors, as highlighted in the consultation document:

'These factors act indirectly, as well as directly, making it overly simplistic to regard each as playing a separate role....

Importantly, Livingstone also cautioned against relying on the extent to which individual factors can be determined to influence preferences, knowledge and behaviour.'

CAP Consultation: food and soft drink advertising to children, paras. 36.5.3.-36.5.4

7 As the consultation paper also identifies:

'Advertising is acknowledged to have some effect on immediate food preferences, but this is relatively small, particularly when compared to factors like parental and peer influences and the decline in physical activity rates.'

CAP Consultation: food and soft drink advertising to children, para. 12.2

- 8 While the evidence does not demonstrate that there is a direct link between online advertising of HFSS products and excess weight or obesity in children, advertising clearly does have some influence on children's food and drink preferences. If a multi-faceted approach is needed, then we believe that the online advertising industry can and should play a role in helping to address the issue. By introducing restrictions on advertising HFSS food and drink to younger children the industry can contribute by not undermining or appearing to contradict other measures aimed at addressing diet and weight issues among children. It is difficult, however, to identify how advertising can support a wider, multi-faceted approach in the absence of the publication of the Government's obesity strategy.
- 9 It is important, however, that any changes reflect the evidence base and take into account the limited extent to which restrictions to non-broadcast advertising may be able to influence a change in children's behaviour and diets, and thereby their health. This is particularly relevant in the context of question 4.

1 (b). Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

- 10 The existing BCAP guidance could be a useful basis for CAP guidance on identifying brand advertising that promotes HFSS products, and consistency is desirable for advertisers and consumers. CAP should take into account any feedback received on the BCAP guidance, and consult its members on new draft guidance in the usual way.
- 11 IAB UK and its members would welcome clarification from CAP, for the avoidance of doubt, that other types of promotional activity that brands may undertake, such as sponsorship, are out of scope of any new rules and guidance.

Selecting a nutrient profiling model

2. Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

- 12 IAB UK does not have a view on the selection of a nutrient profiling model but consistency with BCAP requirements seems desirable and sensible from both an advertiser and consumer point of view.

Existing prohibitions on the use of promotions and licensed characters and celebrities

3. There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

- 13 If new rules are introduced that distinguish HFSS/non-HFSS food and drink products in non-broadcast advertising, we believe it would be consistent to amend the existing rules in respect of promotions and licensed characters and celebrities so that they apply to advertising for HFSS products only.

Introducing media placement restrictions

4(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

- 14 We support the introduction of a placement rule restricting HFSS product advertising to younger children, subject to our response to questions 4(b) and 5 below.

4 (b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

i) aged 11 or younger?

ii) aged 15 or younger?

Children aged 11 or younger

- 15 We believe that the proposed restriction should apply to those aged 11 or younger. This is in line with the existing voluntary [EU food pledge](#) and would be, in our view, a change that reflects the evidence and focuses restrictions proportionately on the audience that is most likely to benefit from them.

- 16 The consultation acknowledges that there is not strong evidence of a direct link between non-broadcast advertising and excess weight or obesity: 'evidence of a significant direct effect is absent; advertising only tangentially affects the childhood diet and obesity issue.' (para. 42.3).

- 17 The consultation also identifies the limitations of the available evidence, both methodologically and in terms of scope, and that there are significant gaps in the evidence base in relation to online advertising.

‘... since the rules were strengthened, CAP considers that no significant new evidence on non-broadcast advertising’s effect on children has emerged, which might present a clearly evidence-driven basis for regulatory change...’

CAP Consultation: food and soft drink advertising to children, para. 12.2

- 18 However, we accept the argument put forward in the consultation paper that it is justifiable to look beyond the available evidence of the effect of non-broadcast food and drink advertising on children when considering whether a change is needed, and to consider wider social issues and costs. But we also agree with CAP that in exploring this issue, regard must be had to ‘what level of restriction would have an appropriate balance of impact to effectively meet CAP’s policy aim.’ (*para. 47.3*).
- 19 Younger children have been shown to have less-developed critical capacities for understanding and evaluating marketing and are generally considered to be more vulnerable and open to influence than older children.
- 20 The CAP Code already distinguishes between children aged under 16 and those aged under 12 in terms of advertising food and drink, and contains stricter rules for advertising to younger children by prohibiting the use of promotional offers and celebrities and licensed characters popular with children).
- 21 In addition, the advertising industry already recognises and takes steps to minimise the potential impact of HFSS product advertising on children. Food industry practice currently goes further than the CAP Code via the aforementioned [EU pledge](#) through which food companies representing 80% of European food advertising spend (including the likes of McDonalds, Unilever, Nestle, Mars and Coca-Cola) have committed to not advertise their products to children under the age of 12 years unless the product meets certain EU nutritional criteria. A similar initiative exists in the US and in 2014 the [Consumer Goods Forum](#) committed to stopping ads for ‘junk food’ (i.e. products that fail to meet certain nutrition criteria) to children under 12 by 2018.¹ Some advertising platforms also have policies in place that prohibit advertising to under-13s.
- 22 The online advertising industry has also implemented a self-regulatory framework for behavioural, or interest-based, advertising. The European Digital Advertising Alliance (EDAA) has established the [EU Framework for Online Behavioural Advertising \(OBA\)](#), which sets out what constitutes good practice in relation to OBA and includes a set of principles that participating companies that use OBA data to deliver ads must adhere to. One of the key principles ([Principle IV.A](#)) relates to audience segmentation and requires businesses to agree to not create OBA audience segments in order to target children aged 12 and under.

- 23 In practice, therefore, much of industry – with advertisers leading the way – is working to (or developing) self-imposed restrictions relating to advertising to children that in some areas are stricter than those found in the CAP Code. It seems sensible to address the apparent disconnect and bring the Code into line with existing good practice.
- 24 Taking into account this wider context we believe that there is a social responsibility case to be made when it comes to younger children whose critical capacity is not fully developed. **We therefore support the introduction of new rules to restrict advertising of HFSS products to under 12s.**

Children aged 15 or younger

- 25 We do not believe that there is a sufficiently strong basis on which to argue for a wide, broad-scope prohibition for all children under 16.
- 26 The consultation does not draw out evidence relating to the 12-15 age group, though it notes that ‘there is still evidence of a link between advertising and older children’s food preferences’ (*para 47.9*). It acknowledges that there are gaps in the evidence base relating to older children, and that much of the evidence that is available is drawn from research into advergames (which are less likely to be played by older children):

‘Importantly, the evidence base establishing advertising’s likely effect on children’s food preference focuses disproportionately on younger children. In relation to TV, Livingstone (2006) noted that the experimental evidence then available pointed most strongly to the effect being predominantly for children aged 2-11. The Institute of Medicine review (McGuinnis et al (eds.), 2005), considered in Livingstone (2006: 5), found that there was insufficient evidence about advertising’s influence on purchase requests, beliefs and short term consumption in 12-18 year olds to draw regulatory conclusions.

This picture has not changed significantly; only around a quarter of the evidence identified by the PHE review relates to children over the age of 12. For instance, the evidence in relation to advergames, which made up the majority of the evidence directly relevant to non-broadcast media, covered an age range of 5-12 years (PHE, 2015: 26). This is similar to the profile of the selected literature included in the WHO Europe review (2013: 26-27).’

*CAP Consultation: food and soft drink advertising to children,
paras. 47.6-47.7*

- 27 We note that various theoretical arguments were put forward as part of the pre-consultation as to why restrictions should apply to all under-16s (or even under-18s) and would like to address some of those here.

- 28 *Restrictions should apply to older children because they currently have higher levels of excess weight or obesity.* This implies that advertising is – in part – a cause of this problem and therefore part of the solution. As outlined earlier in this response, the evidence does not support this argument.
- 29 *Older children should be included in any restrictions because they are more vulnerable to peer pressure and other social influences.* This may be the case, but it is not clear whether or how advertising restrictions could have any meaningful impact on these factors.
- 30 *Definitions of ‘children’ used elsewhere should be automatically applied to advertising to children.* There is no single definition of ‘children’ in either the CAP or BCAP Codes – the
- 31 CAP notes that proportionality must be taken into account in the case for change and this includes the nature of the potential harm to children. It is reasonable and proportionate to take a different approach to regulating HFSS product advertising than to regulating other types of advertising or to other areas of regulation and child protection; one that takes into account the context, the specifics of the issue and the evidence.
- 32 *There should be restrictions on placement of ads in media aimed at older children based on the risk that younger children may see that media.* The same argument applied by CAP in the consultation to the possibility of restrictions in adult-oriented media holds true for media aimed at older children:

‘It is clear that children do not simply consume media that is directed only at them, but often form part of audiences more diverse in age. However, aiming restrictions at media targeted specifically at children protects the right of adult viewers in general media to see ads for products of interest to them. The proposed approach serves to proportionately focus new restrictions on where they are likely to have to the most impact.’

CAP Consultation: food and soft drink advertising to children, para. 48.2

- 33 The CAP Code should not aim to restrict media more widely than is appropriate in order to address the particular issue or protect the particular audience group in question. The CAP (and BCAP) Code, through placement restrictions, does not aim to (and would not be able to, practically speaking) absolutely prevent children seeing advertising for particular products; its purpose is to minimise the risk that children might see such advertising as far as is reasonably possible by closely restricting how advertising can be targeted and where it can be shown (as reflected by the 25% provision in the proposed new rule relating to audience composition, and in other CAP Code rules such as those that apply to tobacco and alcohol advertising).

- 34 Therefore we do not believe it would be reasonable or proportionate to apply advertising restrictions beyond the age group in question (which in our view, should be under-12s). Wider restrictions could potentially also impinge on advertisers' rights to advertise to older audiences by ruling out media aimed at or consumed by older teens (e.g. those up to 18).

Summary

- 35 Given that the role of non-broadcast advertising as a factor in children's (particularly older children's) weight/obesity has not been differentiated or quantified, and therefore the potential positive impact of restrictions is unknown and unquantifiable, CAP should exercise caution in introducing prohibitions.

36 Taking that into account, we do not believe that either the evidence or the wider context justifies restricting advertising of HFSS products to all children aged under 16.

- 37 Having said that, if restrictions for the under 12 age group are introduced, the case for an under-16 restriction can be reviewed at a later date if more evidence emerges, or if it is shown that applying restrictions to only those aged under 12 is either problematic (e.g. because younger children are accessing media aimed at older children) or effective (and therefore desirable to extend to older children). CAP could then consider the case for extending the restriction.

Defining the audience

5. It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products.

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

- 38 Existing CAP rules use the 25% measure and it makes sense to adopt the same approach to any new restrictions for HFSS product advertising.
- 39 There are likely to be additional costs and practical challenges, however, for advertising intermediaries managing the placement of ads in identifying 'permitted' media placements online. While there are existing 25% rules for advertising age-restricted products, some online platforms and publishers do not have experience of applying this measure (because, for example, they don't allow advertising of age-restricted products) and will not necessarily have standardised data available about their audiences. There are also currently no regulatory media placement restrictions in the UK based on an under 12 or under 16 category (although there will be some precedent set by the advertisers signed up to the EU pledge).

- 40 There is no one single way of measuring online audiences, and no BARB equivalent for online media. Some businesses will use industry standard audience measurement data such as that provided by, for example, Nielsen or Flurry analytics. The OBA self-regulatory good practice principles (as described in paragraph 22 of this response) prevent the use of OBA data to target children under 12 (which means, in practice, that online advertising businesses participating in the framework do not hold personal data, such as age, about this audience). The [Information Commissioner's Office's 'Personal information online Code of Practice'](#) states that 'Some form of parental consent would normally be required before collecting personal data from children under 12... You may even decide to obtain parental consent for children aged over 12 where there is greater risk. This has to be determined on a case by case basis.'
- 41 In line with the data protection and OBA good practice described above, many online advertising businesses have policies in place that mean that they do not collect personal data (such as age) from younger children. In practice, therefore, platforms and publishers will not be able to identify the age of their child users or audiences with sufficient accuracy. Marketers will instead need to demonstrate that 75% or more of their audience is over the specified age.
- 42 If, however, there are difficulties with reliably measuring audience age to an appropriate degree of confidence, this could mean having to adopt an overly cautious approach (e.g. using an 'over 18' category – as currently applies to alcohol, for example – rather than 'over 12/16') which could disproportionately restrict advertising of HFSS products (which are not intrinsically harmful or age-restricted at the point of sale).
- 43 On that basis, if restrictions are to be introduced, the online advertising industry would want to discuss audience data and measurement with CAP and the ASA so that there is a clear understanding on both sides about what data is available, the nature of that data, and what would be reasonably expected to be produced in the event of an investigation.**

Application to different media

6. Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

- 44 The CAP Code should be media-neutral and we see no reason why online advertising, or advertising in any other non-broadcast media, should not be considered in scope for any new restrictions on HFSS product advertising.

45 – Irish Heart Foundation

In the context of your current consultation on advertising food and drink to children on non-broadcast media, we wanted to send you a copy of research which the Irish Heart Foundation launched in June.

The research titled 'Who's Feeding the Kids Online?', was undertaken by child psychologist and researcher Dr Mimi Tatlow-Golden. The research identified sophisticated digital marketing techniques directed at children in Ireland by the top food and beverage brands and how little parents know about the efforts being made to influence their children. The research report can be accessed at:

http://www.irishheart.ie/media/pub/advocacy/web_whos_feeding_the_kids_online_report_2016.compressed.pdf

We hope that our Irish-based research will add to the evidence-base developed as part of your public consultation.

As is the case in the UK, currently broadcast advertising of food and drink HFSS is banned during children's programming in Ireland. We believe this new research provides a strong case for the need to make the regulation of broadcast and non-broadcast advertising consistent in Ireland.

We believe that

Children should be protected from marketing and promotion of junk food across all forms of media

There should be a 9pm watershed for junk food adverts on TV

Government should set ambitious policy goals for CAP in the Childhood Obesity Strategy

JOFF agrees with CFC and believes that CAP rules should include ALL forms of media.

The CAP rules should be updated to incorporate the following:

- a remit which includes – for the purposes of governing child-directed marketing – the labelling and packaging of food and drink.
- a definition of advertising that is widened to include all forms of commercially-sourced messages which include brand names or brand-related images.
- the tightening of restrictions on the techniques that can be used to engage with children, including plugging the ‘loopholes’ that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children’s advertising.
- a “particular appeal” test which extends beyond child-directed advertising to include advertising likely to be seen by children under 16, and focuses on the probability that a child may see the commercial messaging.
- the adoption and the tightening of the current nutrient profiling model that governs what can be advertised.
- transparent monitoring and effective sanctions for transgressions.

Detailed Response to CAP consultation questions

Q1) Restrictions on HFSS product advertising

(a) Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes JOFF believes that tougher retrictions are necessary to protect children. All the evidence and research that the Children's Food Campaign has gathered shows that current guidelines are neither tough enough or enforceable. Particular attention needs to be given to Online and new forms of media. There are loopholes which allow junk food to be targeted at children online which would not be allowed on Broadcast TV. Esp in the area of use of Brand Characters, products featuring competition and games.

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

The existing BCAP guidance is not strong enough. The definition of advertising needs to be widened to include all forms of commercially-sourced messages which include brand names or brand-related images.

Examples (presuming the "particular appeal to children" test has been met) of advertising that would be allowed under the proposed tightening of the BCAP and CAP rules that we are proposing:

- Brand characters could only be used if all products which used those characters were non-HFSS.
- An ad featuring a brand but not the products would only be allowed if all varieties of that brand were non-HFSS.
- If an ad focused primarily on a competition / a giveaway and only featured one (non-HFSS) variety in the ad, it would only be allowed if all varieties available were non-HFSS. The same for all kids' meals too.

Q2) Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Yes, the FSA/Ofcom nutrient profile model (now also referred to as the DH model) should be adopted immediately for assessing whether a food or drink marketed in non-broadcast media is high in fat, sugar and/or salt and considered 'less healthy' and thus should not be advertised to children.

Public Health England has just started conducting a review of the current nutrient profile model for broadcast advertising, to check if it is still fulfilling its purpose and to incorporate new dietary recommendations on sugar reduction and fibre intake. Assuming that the result of the review is a strengthened model, then this revised model should be adopted for non-broadcast too. In the meantime, the current model should be adopted.

Q3) Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

No. We are very concerned that by allowing any non-HFSS product to be advertised to children using celebrities and licensed characters, there would be many products just under the threshold score for HFSS which would choose to exploit such advertising techniques. These products may not be 'less healthy' as defined by the nutrient profiling model, but might be high in sugar and/or with sugar, salt and saturated fat levels formulated to come in just under the thresholds. It is common to find branded products reformulated or new variations created which score 9 or 10 on the nutrient profile model before taking into account fibre and protein.

However, there is a case for loosening the restrictions on use of licensed characters and celebrities for demonstrably healthier products such as fruit and vegetables.

In addition, the restrictions on the use of media characters, mascots and celebrities should extend to point-of-sale/purchase, packaging, in-store promotion, toy giveaways and competitions. The same should also apply to equity brand characters.

Q4) Introducing placement restrictions

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes, CAP should introduce such a rule.

(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

i) aged 11 or younger? **No** ii) aged 15 or younger? **Yes**

At a minimum, the definition of children should cover children younger than 16 years of age. Children aged 12 and above are substantially influenced by junk food marketing due to their greater independence and higher levels of media consumption. In addition, newer forms of digital and social media food marketing practices are often difficult, even for older children, to recognise and resist.

Consideration should be given to extending the definition of 'children' to children younger than 18 years of age, as recommended by WHO. This would be the position that JOFF would favour

Q5) Defining the audience

Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media.

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

No. The 25% measure offers insufficient protection to children, and would be almost impossible to implement or enforce effectively for many forms of non-broadcast media.

It would still allow up to 25% of children to be exposed to the marketing communication, when the aim of the restrictions – and of WHO's recommendations – is to minimise children's exposure to HFSS advertising. That 25% could also be 25% of a very large number, especially for something which was particularly popular online for instance, and thus potentially 100,000s of children could see the advert whilst it still being allowed.

In addition, the 25% audience indexing measure is only practical to be applied to television, as BARB data is available and is universally recognised as giving accurate figures on audience demographics. There are no similar data sets for non-broadcast media. What data there is on audience breakdown online, for instance, is often partial, proprietary and inaccurate when it comes to age profiles. We are also concerned that CAP would rely on advertiser-provided figures and would have little way of independently verifying them.

Q6) Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes, the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.

I am writing on behalf of the **Law and Non-Communicable Diseases Unit, or Law and NCD Unit**, which is based in the School of Law and Social Justice at the University of Liverpool and which conducts research into how legal instruments can be used as tools for the prevention of NCDs and more specifically on how effective, evidence-based policy interventions can be designed to control them. Broadly, our research interests cover tobacco and alcohol control, obesity prevention, health inequalities, addiction issues, air pollution, the relationship between public health law, trade and human rights, and the role of law in public health practice. Within these broad themes, our members have expertise in a number of more specialised areas, and in particular the protection of children from the marketing of unhealthy foods. Beyond our body of academic publications¹ and other academic activities in this field, we have participated in several major policy initiatives intended to promote the implementation of the WHO Recommendations on the marketing of foods and non-alcoholic beverages to children (2010)²: most notably, I was a member of the European funded project STANMARK on trans-Atlantic evidence for setting standards for marketing to children (2010-2012),³ I co-authored the WHO Framework for implementing the Set of recommendations on the marketing of foods and non-alcoholic beverages to children (2012),⁴ I co-authored a report for the French National Institute of Health Promotion and Education on the impact of food marketing on children (2014),⁵ I organised a range of training workshops for the WHO, governments and non-government organisations worldwide on the implementation of the WHO Recommendations, and I was a member of the Ad Hoc Working Group on Science and Evidence in charge of assisting the WHO Commission on Ending Childhood Obesity (2014-2016).⁶

The Law and NCD Unit welcomes the opportunity to contribute to this consultation, which we hope will lead to a stronger, more comprehensive regulatory framework for the protection of children from high in fat, sugar or salt (HFSS) food marketing in the UK.

Before we respond to the specific questions CAP has asked as part of its consultation (II), we would like to make a few preliminary remarks in order to contextualise our answers (I).

I. Preliminary remarks

For an evidence-based approach:

Firstly, we welcome that CAP would like its rules “to respond appropriately to the evidence of advertising’s influence on children’s food preferences and diet” (on page 4). A significant body of evidence has accumulated over the years on the harmful impact of HFSS food marketing on children, and it should determine what the most appropriate course of action should be. The evidence which constituted the foundation of the 2010 WHO Recommendations⁷ has since been complemented by a range of more recent studies which all point to the fact that the promotion of HFSS food to children does impact on their preferences, purchase requests, consumption patterns and ultimately caloric intake. Several studies relating to non-traditional media, and in particular the Internet, have been carried out by my University of Liverpool colleagues from the Institute of Psychology, Health and Society, and in particular Dr Emma Boyland – who has also responded to this consultation – and Professor Jason Halford.⁸ Furthermore, the evidence relied on must be accepted by the scientific community as independent and robust, and should therefore be validated by peer-review. This was regrettably not the case of the Family Kids and Youth so-called “literature review” which CAP commissioned, and I share the concerns which Emma Boyland has expressed in this respect in her response to this consultation. Overall, I would suggest that CAP’s starting point is over simplistic in its assertion that: “there is evidence to establish that there is an impact on children’s food preferences, but the level of that impact is likely to be very small in absolute terms and certainly in comparison to other factors like parenting and education. In CAP’s view the academic evidence of advertising’s effect on children’s behaviour does not alone establish a case for tougher advertising restrictions” (on pages 46 and 47).

For a comprehensive implementation of the WHO Recommendations:

Rather, I understand existing evidence as supporting the view that a ban on HFSS food marketing to children should not be restricted to some programmes on television advertising. The WHO Recommendations recognise the importance of adopting a comprehensive approach to food marketing to children, tackling both the exposure to and the power of marketing as the two components of its effectiveness. They call on governments to set clear definitions so as to eliminate the loopholes which have been identified in existing regulatory frameworks, including: the age group for which restrictions shall apply; the communication channels, settings and marketing techniques to be covered; what constitutes marketing to children according to factors such as product, timing, viewing audience, placement and content of the marketing message; and what foods fall within the scope of marketing restrictions (i.e. what constitute HFSS food). The calls on governments to implement the WHO Recommendations have been reiterated on several occasions, not least in the WHO Global Action Plan on the Prevention and Control of NCDs for 2013-2020, which the World Health Assembly unanimously approved in May 2013, and most recently in the final report of the Commission on Ending Childhood Obesity which Member States of the World Health Assembly unanimously endorsed in May 2016.⁹ At European level, one can find similar commitments in the 2013 Vienna Declaration on Nutrition and NCDs in the Context of Health 2020 and in the WHO EURO Action Plan for implementation of the European Strategy for the Prevention and Control of NCDs 2012-2016. It is therefore surprising to see that the CAP consultation does not engage more thoroughly with the content of the WHO Recommendations; though it mentions them.

The best interest of the child as a primary consideration:

The WHO Recommendations are also important for their emphasis that governments should protect public health and avoid conflicts of interest. It is true that the WHO Recommendations are not legally binding. However, they should inform the interpretation of other instruments of international law which are by contrast legally binding, and in particular the UN Convention on the Rights of the Child which all States in the world apart from the United States of America have ratified and which requires in Article 24 that States should “recognize the right of the child to the enjoyment of the highest attainable standard of health”. It is true that rights are not absolute and do not exist in a vacuum. However, when assessing competing interests, such as the private interests of food industry operators, States have an obligation to strike a balance and ensure that “in all actions concerning children, the best interests of the child shall be a primary consideration” (Article 3(1)). The Committee on the Rights of the Child have been explicit in their clarification that the best interest principle must be given considerable weight in any decision-making process and should not be placed on the same level as all other considerations.

The compatibility of stricter national rules with European Union law:

As the relationship between European Union law and UK law currently stands, it is possible for the UK to restrict further the marketing of HFSS food to children. In particular, Directive 2010/13 on audiovisual media services directive being a measure of minimum harmonisation, it does not preclude the adoption at national level of more restrictive provisions than Article 9(2). The proposal that the Commission published on 25 May to revise the Directive would not change this relationship.¹⁰ Rules on online marketing could therefore be implemented in the UK.¹¹

II. Responses to the specific questions asked in the CAP consultation

In line with the WHO Recommendations, we would advocate for as broad a coverage as possible for the rules which are being proposed. We would also argue very forcefully that any HFSS food marketing to children should be banned, including via sponsorship of sports, cultural or other events popular with children, via displays at points of sale or via any other means (packaging, labelling) or in-school marketing. However, we have limited our responses to the questions that have been asked. This should not be read as suggesting that we consider that these rules are a panacea. They constitute one step in the right direction.

Q1) Restrictions on HFSS product advertising

Should the CAP code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes, we think it should. As mentioned above, the WHO Recommendations call for a comprehensive approach to the marketing of HFSS food to children. The evidence gathered in the UK on the effectiveness of the ban on HFSS food marketing in and around children's programmes does indeed suggest that investments have shifted or could shift from regulated to unregulated television programmes, and from regulated to unregulated media – and in particular from television to online media. The effectiveness of the rules and, in turn, the effective protection of children from the negative impact of HFSS food marketing, therefore require that the ban should be extended to these other media, and in particular the Internet.

Should the CAP use the existing BCAP guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

No, it should not. This guidance does not adopt a sufficiently comprehensive approach. For example, it does not apply to brand equity characters, even though such characters do impact on children's food preferences.¹² Rather, we would invite the CAP to consider using the WHO Recommendations, as interpreted by the 2012 WHO Framework Implementation Report, which are more comprehensive in their coverage and aim to avoid such loopholes.

Q2) Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Yes, it should. Not only will this facilitate the application of the rules – as the same products will be subject to marketing restrictions either on television or online, but it would better contribute to the implementation of the WHO Recommendations at national level. Once again, the WHO Recommendations clearly state that governments should lay down the key policy parameters, and in particular determine which food can or cannot be promoted to children. However, it is important to ensure that the model, which must remain independent and evidence-based, is reviewed as and when necessary.

Q3) Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

These rules should be extended to online marketing, but their scope should also include equity brand characters. As discussed above, equity brand characters do impact on children's food preferences. Leaving them outside the scope of the rules therefore provides a strong incentive for industry operators to use such characters instead of licensed characters, which in turn entails a high risk that advertisers use equity-brand characters more extensively than they previously did.¹³ The current loophole is difficult to justify from a public health point of view and goes against the obligation resting on the UK to ensure that "the best interests of the child shall be a primary consideration".

Q4) Introducing placement restrictions

Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes, it should. This would allow for a more comprehensive and therefore more effective approach to HFSS food marketing to children and restrict the opportunity for investment-shift from a regulated to an unregulated media. It would also increase the level playing field between different media. This is all the more warranted in light of existing evidence, as mentioned above.

If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children

- i) aged 11 or younger? No, it should be broader.**
- ii) aged 15 or younger? Yes, it should.** This would also allow for a better level playing-field and offer more effective child protection. The rationale would be the same as the one Ofcom adopted to justify the restrictions it has imposed on HFSS food advertising in and around children's programmes.

Q5) Defining the audience

Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

No, this is not sufficiently protective of children. The use of percentages does not indicate how many children – in absolute numbers – are actually exposed to a given advert. It is necessary to ensure that children are protected, notwithstanding audience thresholds. Otherwise, we would be saying that if 24% of children are watching, which may be a considerable number of children in absolute terms, then these children would not be protected. Furthermore, I would also like to highlight what my colleague Emma Boyland has pointed out: the consultation does not sufficiently set out how this threshold would be effectively enforced. As she notes, "the best approach for defining the audience depends on the data available... If verifiable exposure metrics are available, then any promotion likely to be viewed by greater than 1000 individuals under the restricted age (16/18 years) should be subject to restrictions. Alternatively, if such metrics are unavailable or unreliable, another appropriate approach would be to base restrictions on the likely appeal of the marketing communication to children using criteria such as the persuasive techniques used¹⁴, the location/placement of the ad, the nature of the advertised item...". A rule must have sufficiently robust enforcement mechanisms in place to be effective.¹⁵

Q6) Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non--broadcast media within the remit of the Code, including online advertising?

Yes, undoubtedly. Once again, the WHO Recommendations call for a comprehensive approach to HFSS food marketing to children. Not only should online advertising be covered, but the restriction should extend to all other forms of marketing, including labelling and packaging, display at points of sale, sponsorship arrangements, in-school marketing...

Overall, I very much hope that the CAP will review its assessment of existing evidence of the relationship between HFSS food marketing and children's food preferences, purchase requests and consumption patterns and will therefore adopt broad rules restricting online HFSS food marketing.

Lewisham Public Health (Council) Response to Committee of Advertising Practice (CAP) Consultation: food and soft drink advertising to children

Q1. Restrictions on HFSS product advertising

- a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?
- b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

We support the introduction of tougher restrictions on the advertising of HFSS. Evidence to date shows that acute exposure to food advertising increases food intake in children. PHE recent evidence review *Sugar Reduction: The evidence for action Annexe 3: A mixed method review of behaviour changes resulting from marketing strategies targeted at high sugar food and non-alcoholic drink* highlights the relationship between childhood obesity and advertisement of HFSS.

The use of the BCAP guidance would need to align with the outcome of Q3 (use of promotions and licenced characters and celebrities) in the consultation.

Q2. Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

It would be helpful if the CAP is aligned with the most up to date evidence. The nutrient profile guidance was published in 2011 and there have been recent updates to government guidelines. PHE review of the DH nutrient profiling model is due to be completed in 2017. It may be helpful for the CAP code to remain flexible; this will ensure that it can be adapted to reflect any updates to nutrient profiling or nutritional guidelines which may be released in the future.

Q3. Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please consider CAP's recommendation in section 46 when answering this question.

Restricting the rules to HFSS product advertising only would provide a greater opportunity for healthier food to be advertised to children, however, it is important to note that if the current rules were limited to HFSS this would miss a high number of products which fall just below the threshold for HFSS, but, are still higher in sugar and fat than daily intake

requirements. The number of products to which this would be relevant to will increase because of the national work going on to reformulate food and drink.

The current rules should also be extended to apply to young people aged under 16.

Q4. Introducing placement restrictions

- a) Should CAP introduce a rule restricting the placement of HFSS product advertising?
- b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?

We support introducing a rule restricting the placement of HFSS product advertising. The consultation report indicates a non-broadcast HFSS spend at £178m in 2015 with 'children's exposure occurs at a level of some significance'. PHE recent evidence review *Sugar Reduction: The evidence for action Annexe 3: A mixed method review of behaviour changes resulting from marketing strategies targeted at high sugar food and non-alcoholic drink* highlights the relationship between childhood obesity and advertisement of HFSS. This provides strong evidence for the case to introduce rules restricting the placement of HFSS product advertising.

Evidence shows that young people in their early teens are vulnerable to marketing and advertisements (Cairns 2015). Therefore if the rules were restricted to under 11 year olds this would enable companies to target highly vulnerable young people aged 11 plus with product advertisements.

Q5. Defining the audience

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

Young people in London are susceptible to a wide range of advertisements in public places such as on bus routes or walking to and from school these would be missed by the proposed criteria. If the CAP Code was limited to the proposed 25% measure these would be missed.

Q6. Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Use of all non-broadcast media by young people is high. Young people in London are also exposed to HFSS advertisement in public sector buildings, on public transport and at public events therefore it would be beneficial if the scope of the restrictions could be expanded further.

The local context

In the 2014/15 National Child Measurement Programme (NCMP), 14.0% of reception year children were recorded as overweight and 12.0% of reception children were recorded as obese in City and Hackney. Hackney is the 11th most deprived borough in England and there are considerable inequalities in health and income.

Underlying our public health programming is the fact that obesity is complex and multifactorial condition with a strong link to deprivation. We know that many of our residents struggle to maintain healthy lifestyles. Cost is a particular barrier and our more deprived residents are sensitive to price changes and influenced by in store offers. While there is scope for individual action, a systems approach is also necessary to tackle the “obesogenic environment” that makes it harder for individuals to eat well and fit physical activity into their daily lives. We are working to address this wider environment through an Obesity Strategic Partnership that includes representatives from the NHS, Planning, Transport, Regeneration, Education and Environmental Health. The remit of this group is to work on the wider influences on obesity. We welcome any support with the wider determinants of obesity that are not within our local influence, for example restrictions on national marketing and advertising of products high in fat, salt or sugar (HFSS). We would also particularly welcome clear non-broadcast brand and product advertising guidelines and guidance that can help develop local policies around sponsorship, advertising and council owned advertising sites.

In Hackney, we provide individual level preventative health care that includes NHS health checks, child and adult weight management, nutrition and cookery skills and support access to fruit and vegetables. As well as providing targeted support, we also want to make the healthy choice the easy choice for all of our residents. HFSS advertising, sponsorship and celebrity tie-ins makes this harder for our families and especially our younger people to maintain healthy habits. From our work in schools and with young people’s groups we find that our young people and parents are concerned about the advertising of energy drinks (especially those with an age limit of 16 years old) and sports drinks as these are high in sugar and often contain caffeine.

We are impressed at the evidence review that CAP has completed. We would like to offer our support to some of the proposals and to offer local insight from data and evidence that we have collated, including feedback from residents and practitioners. In general, we welcome any clarifications and restrictions that can help us develop local responses to obesity and inform local policies to address the obesogenic environment.

Summary response:

Q1a = Yes – the CAP Code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar.

Q1b = No – the existing broadcast guidance on identifying brand advertising is not strong enough.

Q2 = Yes – the Department of Health (DH) nutrient profiling model should be used. This should be flexible based on increasing evidence or industry reformulation.

Q3 = No – The current rules should also be extended to apply to young people aged 15 and under.

Q4a = Yes - CAP should introduce a rule restricting the placement of HFSS product advertising.

Q4b = aged 15 and younger. We would suggest this goes up to 18 years old and younger which supports our work with children and young people.

Q5 = No – The 25% rule would not seem to cover the range of advertisements that our urban and mobile young people are exposed to.

Q6 = Yes – We know our young people are digitally savvy and access many forms of non-broadcast media and we would like to see the placement of restrictions on HFSS extended to these non-broadcast media.

Q.1 Restrictions on HFSS A) Yes B) No	London Borough of Hackney's Response
Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?	<p>In Hackney we have a range of programmes to prevent and treat obesity in young people from 0-19 years old. We are aware that our healthy eating messages can be undermined by often contradictory and confusing messages in the advertising arena. Exposure to advertising and messaging makes it harder for our families to make healthier choice and develop healthy habits.</p> <p>Our young people need help in understanding what products will affect their health. They also need support in seeing beyond the influence tactics used by advertising, including multi-channel methods, sports stars and celebrities and engaging animal characters or mascots.</p> <p>We run regular soft drinks education workshops for young people in schools, community events and youth centres. We find similar themes coming up across all ages:</p> <ul style="list-style-type: none">• The majority of young people we speak to feel that sports drinks, energy drinks and milk drinks are advertised in misleading ways• Sports tie-ins give a 'health halo' to products. Young people respect sports people and think that products are healthy when attached to a sports personality.

	<ul style="list-style-type: none"> • There is good awareness of brands and young people can list where they see adverts/sponsorship. <p>We know that our young people interact with media brands in ways that we don't fully understand and young people are more susceptible to advertising.</p> <p>The evidence base is strong and growing. Recent reports from Public health England and the World health Organisation show that acute exposure to food advertising increases unhealthy food intake in children and is a risk factor for obesity.</p> <p>We are currently undertaking local research into where young people see adverts for food and drink and how they think this affects what they buy. We will be happy to feed this local evidence into any further consultations.</p> <p>Locally we agree with research by the British heart Foundation and Sustain which suggested that an improved regulatory system could reduce the harms to children from unhealthy diets.</p> <p>We are concerned with reports by the Children's Food Campaign and Action against Sugar showing evidence of gamification of advertising, false messaging and sponsoring of vloggers/musicians and events.</p> <p>We would like to see some clarity on HFSS, looking at possible loopholes that may be exploited.</p>
<p>(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?</p>	<p>There are new product lines available for children to buy and increasingly sophisticated messages for advertising foods. We agree that the current evidence base on the influence of social media is not robust enough and welcome further research in this area. The WARC data in your evidence review suggest that the food industry are prepared to pay for social media advertising so are likely to have their own evidence base.</p> <p>We feel that the BCAP isn't robust enough based on changing products and ways of advertising, for example celebrities using Instagram to promote products.</p> <p>We would like to see definitions and wider restrictions on 'brand advertising', for example the Chewits branded dinosaur whose site links to a vintage advert and giveaways to encourage people to sign up to multiple platforms like Twitter/Facebook.</p>

Q.2 Selecting a nutrient profiling method – Yes

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products? Please explain your reasons

We would like guidelines to align with the best available evidence. DH, SACN and PHE provide regular evidence updates that set out policy and messaging. Over time, there may be changes to nutrient profiling and future industry reformulation and we would like CAP to be flexible to these.

Q.3 Existing prohibitions on the use of promotions and licensed characters and celebrities- No

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only? The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons. Please consider CAP's recommendation in section 46 when answering this question-

We are concerned about celebrity endorsements for 'less healthy' foods, for example foods that fit just below the threshold for HFSS. If there is industry reformulation in response to any new restrictions, this may result in current HFSS falling below the thresholds and being open to celebrity endorsement. We welcome any guidance that encourages endorsements of explicitly healthy foods, such as fruit and vegetables.

As is detailed in our response to question 4b), we welcome age brackets being extended from 'aged 11 and under' to under 18's.

Q.4 Introducing media placement restrictions

A) Yes

B)ii aged 15 and younger

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising? (b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?

A) The PHE evidence review (annex 3) highlights a relationship between childhood obesity and HFSS.
We would like more clarity on 'product advertising' and 'media placement' definitions.
There may be loopholes that could be exploited if these are not clearly defined.

B) We would value any restrictions on sponsorship, celebrity tie-ins, or brand tie-ins. We understand from the evidence review that CAP has found that older teenagers are less susceptible to advertising. We don't feel this is the case, although alongside this we acknowledge the increased impact of interventions and investment in earlier years

There is no option to select under 18's. Our local commissioning of services for children and young people includes all those up to their 19th birthday. In line with the [WHO guidelines](#), we would like to see 18 and under applied as the

	relevant age range for restrictions. However, in response to this specific consultation question we favour age 15 and under.
Q. 5: Defining the audience- No	
It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?-	<p>Our young people access schools, parks, shopping centres, sporting and leisure facilities in Hackney and across London, and use a variety of public transport systems and walking/cycling routes. There are many billboards, bus stop adverts and train/bus adverts that young people are exposed to on a daily basis. The CAP code (25%) does not appear to take account of this broad exposure.</p> <p>We are also unsure how advertisers will accurately calculate viewing figures and how family shows such as the X- Factor are included. These may not be covered by 25% audience share.</p>
Q.6 Application to different media- Yes	
Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?	<p>As a council we would welcome support and guidance on non- broadcast media advertising of HFSS foods and drinks, especially when these are near schools.</p> <p>We currently operate a 400m exclusion area for new takeaways and are considering our remit with advertising sites, sponsorship and online advertising revenue. We would welcome guidance from CAP on non-broadcast media for HFSS foods and drinks.</p> <p>As previously mentioned our young people are exposed to many adverts due to living and travelling in a densely populated region.</p> <p>As previously mentioned we would like clarity in brand advertising, for example offers like: Cadbury's days out.</p>

50 – London Healthier High Streets

The London Healthier High Streets Network is a public health led network of public health specialists representing London boroughs.

The Network welcomes the consultation and the opportunity to comment on the advertising of food and soft drink products to children. Child obesity is of serious concern for London boroughs. Some of the highest national child obesity rates are in London.

There is strong evidence that the advertising of products high in fat, salt or sugar (HFSS) influences the consumption of such foods and 'normalises' unhealthier eating. We strongly believe that the advertising of HFSS food should be prohibited from targeting children (defined as under 18). We believe that tougher regulations are needed and that these regulations should apply not just to broadcast but also to non broadcast advertising (including online, in-store, indoor, outdoor and street visible advertising).

Specifically, our responses to the consultation questions are:

Q1. a) Yes. We strongly believe that the CAP Code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar.

b) No. We believe that the existing guidance is not strong enough. There has to be tougher regulations regarding the brand advertising and not just a specific HFSS product of the brand.

Our comments on strengthening a) and b) concern broadcast as well as non broadcast advertising eg online, in-store product placement, display windows and window posters, bus stands and other street level visible advertising.

Q2. Yes. The Department of Health nutrient profiling model should be adopted. This model needs to be updated to reflect more recent best practice guidance.

Q3. No. We support the continued prohibition of licensed characters and celebrities to market food and drink to children. Additionally, we would like to see the restriction extended to in-store and street visible promotion.

Q4. a) Yes. We believe that the placement advertising of all HFSS products must be regulated.

b) Restrictions should apply to media directed at 15 or younger. We would like to extend this to under 18.

Q5. No. The 25% CAP code can practically only be applied to television advertising. All marketing of HFSS food directed at children should not be allowed whether broadcast, online, in store or street level visible advertising.

Q6. Yes, the placement restriction of HFSS advertising must be applied to all non broadcast advertising including online, in store and other indoor and outdoor advertising.

We believe that the advertising of HFSS products directed at children are a strong factor in influencing how they eat and what they eat. The Healthier High Streets Network strongly believes that tougher regulations are necessary so that a healthier choice will be the easier choice – and that

this should be applied to both the traditional and as well as virtual (online) high street. The Network and members are happy to be invited to provide further comments and evidence should that be required.

51 – Lucozade Ribena Suntory (LRS)

LRS is delighted to respond to CAP's latest consultation on proposals for further restrictions on the advertising to children of food and soft drinks products in non-broadcast media.

About LRS

Lucozade Ribena Suntory (LRS) markets some of the nation's best-loved and most trusted soft drinks brands. We account for 7.9% of the UK market, directly employ 826 people across the country and support 24,000 jobs in our wider supply chain.

We take the trust that consumers have in our brands seriously and are committed to delivering the highest quality drinks and standards. We agree with the Committee of Advertising Practice that current levels of obesity in the UK are too high and significant action is needed to address the issue.

We take our responsibility towards public health seriously and have been steadily reformulating and transforming our portfolio in response to consumer demand. In 2013 we removed over 1,000 tonnes of sugar and 4bn calories from Lucozade Energy and Ribena - and in 2015 we pledged to deliver a 20% calorie reduction across our portfolio by 2025 or sooner.

Our Responsible Marketing Code

LRS is committed to marketing our products responsibly and playing our part in helping consumers, of all ages, make informed choices. Our unique responsible code of marketing was created to shape the company's marketing behaviours, and goes above and beyond the UK industry norm. In particular:

- We do not advertise any products or target marketing communications to any children under 12 years of age. We will not sponsor events or celebrities that are likely to be of particular appeal to children under 12.
- We do not directly market HFSS categorised products to those under the age of 16.
- Any sponsorship which appeals to 12-16 year olds must encourage physical activity and promote a balanced and healthy lifestyle.
- These rules apply online and offline, to television and all other forms of communication. They go further than those operated under UK legislation and the Committee of Advertising Practice.

In addition to compliance with local laws and regulations, we require all our employees, partners and agencies to adhere to this code.

Responses to consultation questions

1) Restrictions on HFSS product advertising

(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)? (b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

LRS does not directly market HFSS categorised products to those under the age of 16 and we do not distinguish between broadcast and non-broadcast advertising. Any LRS sponsorship which appeals to 12-16 year olds must also encourage physical activity and promote a balanced and healthy lifestyle. We regularly review all of our external communications to ensure they comply with these principles, as well as external self-regulatory codes and industry best practice.

As LRS already goes further than what is required by both codes, we would support CAP in further strengthening restrictions on HFSS product advertising to bring the rest of industry in line with BCAP guidance.

2) Nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

The DH nutrient profiling model is well established, robust, and currently used to identify HFSS products in broadcast media, so it would make sense for the same model to be applied to non-broadcast media.

Public Health England is currently carrying out an inquiry into the model. We agree that if CAP adopts the DH model and any changes are made as a result of the PHE review, then an additional consultation should be called to discuss its implications.

3) Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

Unlike many in the food and drink industry, we already restrict the advertising of all our products, not just those high in fat, salt or sugar, to children under the age of 12. We also do not sponsor events or celebrities that are likely to be of particular appeal to children under 12.

We recognise that if this rule was amended to apply to HFSS products only then there could be greater flexibility to creatively advertise healthy food and drink products to children aged 11 and younger. Should CAP amend this existing rule then we would review our company's responsible marketing code in light of this.

4) Introducing media placement restrictions

(a) Should CAP introduce a rule restricting the placement of HFSS product advertising? (b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?

As children in the two age brackets identified are more likely to consume media and advertising through online channels, LRS would of course support CAP in introducing restrictions on the placement of HFSS products in this area. As mentioned before, we do not distinguish between broadcast and non-broadcast advertising, and would welcome a more robust system.

We believe the media placement restriction should cover media directed or likely to appeal to children aged 15 or younger. Lowering the threshold to those aged 11 and below would undermine efforts made by companies like LRS, and would weaken the existing BCAP and CAP codes that define a child as being under 16.

5) Defining the audience

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

Unlike broadcast advertising which uses TV ratings to define the audience, it will be very difficult for CAP to accurately define an audience in non-broadcast media. However, if such a “particular appeal” test is introduced and applied, it is important that the definition of the audience is created in partnership with industry and policy-makers to ensure it effectively works. It will also need to be regularly reviewed to reflect the changing nature of the internet and social media.

6) Application to different media

Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

As outlined, LRS’s responsible marketing code goes further than current guidance, and already applies to online and offline advertising, to television and all other forms of communication. We acknowledge the challenges involved with this pledge in relation to digital platforms and we will continue to review our digital campaigns to assess how best to tackle those challenges. We would therefore support CAP applying the placement restriction to all non-broadcast media within the remit of the code.

Since 1932 Mars has been producing much loved brands in the UK. Employing nearly 4,000 Associates across several sites in the UK. We manufacture confectionery, food, and chewing gum products, with brands including MARS®, SNICKERS®, GALAXY®, MALTESERS®, UNCLE BEN'S®, DOLMIO®, and ORBIT®. Mars in the UK is part of Mars, Incorporated, a family-owned company and one of the world's leading branded manufacturers. How we work at Mars is guided by our Five Principles: Quality, Responsibility, Mutuality, Efficiency and Freedom. We are committed to marketing our products responsibly and in 2007 were the first food company to announce a global commitment to stop advertising food, snack and confectionery products to children younger than 12 years old. The full content of our Marketing Code is available at: http://www.mars.com/docs/default-source/default-document-library/mmc_handbook.pdf?sfvrsn=0

Mars, Incorporated welcomes the opportunity to contribute to the consultation by the Committee of Advertising Practice on food and soft drink advertising to children. As our positions on some of the issues under consultation go further than the currently established industry consensus, we would welcome the opportunity to meet and answer any questions you may have.

1. Responses to Questions 1 to 6 of the Consultation Document

Restrictions on HFSS product advertising

Question 1(a): Should the CAP Code be update to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

- 1.1. Mars strongly supports this proposal. We believe that it is right to protect children under 12 years old from all HFSS advertising as the scientific evidence suggests that they cannot identify and understand advertising's persuasive intent before this age. Mars is committed to responsible marketing and its own responsible Marketing Code (MMC) is one of the most restrictive in the food industry.

1.2. Mars is one of the only businesses to commit to not undertake any marketing activities to children under 12 years old. We monitor the compliance with our Code strictly through an annual internal audit as well as through the independent audit of our compliance with the EU Pledge, a voluntary initiative by leading food and beverage companies to change the way they advertise to children and endorsed and supported by the World Federation of Advertisers.

We have had consistently high levels of compliance with our Marketing Code and it is regularly reviewed to ensure that our commitments align with developments in the external environment.

1.3. It is Mars' ambition to be a world-leader in responsible marketing. We recently created global guidelines for the responsible use of brand advertising, which include a scientifically-based point of view of what constitutes child appeal in marketing in greater detail, a "prism" of child appeal. Based on the academic literature examining the way children respond to marketing content and techniques, as well as the elements of child-targeted marketing across various media, the child appeal prism suggests that the child appeal of a product is based on a combination of elements which work together to attract a child's attention, preference and ultimate consumption of a product. In other words, when developing products intended for children, companies are intentional in the way that they design every aspect of the product and its communication so that it is optimally targeted to the child. We are currently assessing our own marketing of and product ranges to ensure that they do not constitute child appeal in any way.

An overview of the child-appeal prism is attached to this submission, for further detail on its content and evidential basis.

- 1.4 Whilst we have researched and produced what we believe is a ground-breaking understanding of child appeal, we believe fundamentally regulators must look at market data in order to 'sense check' whether perceptions about marketing's 'effect' are in fact borne out through actual consumption of the product.
- 1.5 Mars' products are targeted at adults and gatekeepers and, based on consumption data from the UK, are overwhelmingly consumed by adults. Children under 16 make up less than 25% of Mars' individual consumers.
- 1.6 We believe our science-based approach to understanding child appeal should be applied industry-wide in order to ensure that children under 12 years old who are not cognisant of what constitutes advertising are not inappropriately influenced. We also believe that changes in marketing policy should be correlated with a direct impact on consumption when a correlation between the techniques used and consumption can be demonstrated by market data.

Question 1(b): Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

- 1.7 As above. Mars supports this proposal as it believes children under 12 years old should not be marketed to, irrespective of whether a specific product is being promoted. That is why Mars' responsible marketing code commits not to undertake any marketing activities to children under 12 years old. Mars believes that it is time for the rest of the industry to make the same commitment. We would be supportive of having the new and amended rules applied to restricting wider brand advertising which is targeted at children under 12 as opposed to product advertising only – this is an important difference that could inadvertently allow for the continuation of marketing to children under 12 years old.

Selecting a nutrient profiling mode

Question 2: Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

- 1.8 In principle, Mars does not agree with the use of nutrient profiling because we do not believe that advertising to children should be permitted at all, regardless of what product is being advertised. Nutrient criteria should therefore not be necessary given that all children under 12 years old would be protected.
- 1.9 For adults, Mars does not agree with the principle of "good" and "bad" food. We believe that consumers should be enabled to make informed choices about the products they consume. Therefore, rather than categorising food as "good" or "bad", we would prefer to see better education that chocolate and other HSSF foods are treats and certainly are not replacements for main meals.

- 1.10 If a nutrient profiling model needs to be applied, Mars believes that the more stringent WHO nutrient guidelines propose a more effective means of allowing people to make informed, healthier choices. This is because the public debate in the UK requires a stricter nutrient profile criteria to be used when allowing the marketing of foods to children and it would therefore allay some of the concerns NGOs have about the DH criteria. Mars would not be against BCAP aligning with it as well.

Existing prohibitions on the use of promotions and licensed characters and celebrities

Question 3: There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

- 1.11 Mars does not agree with this proposal on the grounds that it does not believe that advertising to children should be permitted, regardless of what product is being advertised.
- 1.12 Where characters are used this should be done responsibly, in line with the aforementioned child appeal prism. Given the overwhelming evidence, we know that the influence of characters and celebrities on children's food consumption varies, depending on their characteristics and the type of product they are associated with. We believe that marketing activities using licensed characters and celebrities are of particular concern as they borrow their equity and memory structure for the purposes of selling a product. For this reason, Mars does not use licensed characters and celebrities intended to appeal primarily to children under 12 years old in our marketing activities, due to children's existing relationship and affinity with these characters. Therefore, Mars does not support the use of characters and celebrities that appeal primarily to children under 12 years, especially with products whose consumption comes from more than 25% children under 12 years old.
- 1.13 We believe that the CAP code (and the BCAP code if it is revised) should focus on a marketing technique that singularly drives the greatest consumption of HFSS foods amongst children – toys and incentives. Mars' review of academic and market evidence indicates that toys and purchasing incentives have the greatest influence on child appeal and that the use thereof should be restricted. We are currently assessing our own range to ensure no toys or purchase incentives are used and we believe the rest of the industry should make the same commitment.

Introducing media placement restrictions

Question 4(a): Should CAP introduce a rule restricting the placement of HFSS product advertising?

- 1.14 Mars agrees with this proposal. However, Mars questions how media is defined as "particularly appealing" to children. For example, as watersheds are incompatible with the 24-hour digital media world that we live in, Mars would suggest that media appeal is based upon likely audience reach rather than arbitrary time cut-offs.

Question 4(b): If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?

- 1.15 Scientific research proves that children aged 11 and under are not cognisant of what constitutes advertising and rules should therefore focus on media with a high proportion (25%) of viewers aged 11 and under.

1.16 We believe that the scientific consensus on these points is clear.¹ In summary:

- Before four or five years old, children regard advertising as entertainment.
- Between four and seven, children begin to be able to distinguish advertising from non-advertising content.
- The majority of children have generally grasped the intention of advertising to persuade by the age of eight.
- After eleven or twelve years old, children can articulate a critical understanding of advertising.

1.17 Being a leader when it comes to setting standards of responsible marketing, we recognise the current pressures faced by the industry and actively monitor the external landscape. The evolution of the media landscape in the past 10 years and the development of new forms of marketing have challenged the evidence based on an assessment of TV advertising. While there is a general agreement that the identification and understanding of the persuasive intent of online marketing communications is more difficult than for traditional advertising, it does not undermine 12 years old as an appropriate age threshold. This position is further corroborated by CAP's own evidence review in the UK, in "Children's critical understanding and the recognition of advertising", which states "there is a reasonably strong case that, after this stage [12-16 years], children have adult-like levels of persuasion knowledge and understanding".

1.18 Our Mars Marketing Code is based on scientific evidence and therefore uses 12 years old as the age threshold for responsible marketing. However, in the UK, Mars does not purchase any broadcast or non-broadcast advertising space for children under 16 years old and we would not be opposed to the CAP Code being aligned with the BCAP Code age threshold for the purposes of regulatory consistency.

Defining the audience

Question 5: Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products.

1.19 Mars is supportive of defining marketing targeting and particular appeal based on a threshold of 25% of the audience being under 12 years old. This measure is aligned with our own responsible marketing Code and is, in our view, a proportionate quantitative measure for media child targeting.

Application to different media

Question 6: Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

- 1.20 Mars strongly supports this proposal. We believe that it is right to protect children under 12 years old from all advertising HFSS as the scientific evidence suggests that they cannot identify and understand advertising's persuasive intent before this age. Mars is committed to responsible marketing and its own responsible marketing Code is one of the most restrictive in the food industry.
- 1.21 Mars is one of the only food businesses globally and in the UK to commit to not undertake any marketing activities to children under 12 years old. We monitor the compliance with our Code strictly through an annual internal audit as well as through the independent audit of our compliance with the EU Pledge. We have had consistently high levels of compliance with our Code and it is regularly reviewed to ensure that our commitments align with developments in the external environment.

53 – Mayor of London

Consultation question	Mayor's short response	Mayor's detailed response
Q1) Restrictions on HFSS product advertising		
<i>a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?</i>	Yes	<p>The CAP Code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS). The evidence to date shows that acute exposure to food advertising increases food intake in children.</p> <p>I would ask you to consider:</p> <ul style="list-style-type: none"> PHE Recent evidence review (annex 3) highlights the relationship between childhood obesity and advertisement of HSFF. (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470174/Annexe_3_Marketing_evidence_review.pdf) Emma Boyland 'Advertising as a cue to consume: A systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising on intake in children and adults'. Boyland, E. J., Nolan, S., Kelly, B., Tudur-Smith, C., Jones, A., Halford, J. C. G., & Robinson, E. (2016). American Journal of Clinical Nutrition, 103(2), 519-533. doi:10.3945/ajcn.115.120022.
<i>(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?</i>	No	Whilst in favour of harmonising rules across all forms of media, the existing broadcast guidance on identifying brand advertising is not strong enough. I would encourage tougher rules to be adopted for both broadcast and non-broadcast brand advertising.
Q2) Selecting a nutrient profiling model		
<i>Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?</i>	Yes	The Department of Health nutrient profiling model to identify HFSS products should be adopted as soon as possible. That model should also be updated to reflect current nutrition guidance and to be flexible and response to changes that might emerge in the future.
Q3) Existing prohibitions on the use of promotions and licensed characters and celebrities		
<i>There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?</i>	No	<p>Existing prohibitions on the use of promotions and licensed characters and celebrities to market food and drink to children should be loosened for demonstrably 'healthier' products i.e. non-processed food stuffs such as fruit and vegetables. They should not be loosened for all non-HFSS products, and certainly not for brands which include any prominent HFSS in their product range.</p> <p>It is important to note that if the current rules were limited to HSFF this would miss a high number of products which fall just below the threshold for HSFF, but, are still higher in sugar and fat than daily intake requirements suggest. Further, the number of products to which this would be relevant to will increase because of the national work going on to reformulate food and drink.</p>
Q4) Introducing placement restrictions		
<i>(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?</i>	Yes	CAP should introduce a rule restricting the placement of HFSS product advertising.
(b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:		
<i>i) aged 11 or younger? ii) aged 15 or younger?</i>	Yes – aged 15 or younger	<p>Aged 15 or under should be the audience that media placement restrictions apply to. Of the two options given, I support aged 15 and under.</p> <p>I would again highlight the recent PHE evidence review (annex 3) which shows the relationship between childhood obesity and advertisement of HSFF. This provides strong evidence for the case to introduce rules restricting the placement of HFSS product advertising.</p> <p>Further, evidence shows that young people in their early teens are vulnerable to marketing and advertisements. Therefore if the rules were restricted to under 11 year olds this would enable companies to target highly vulnerable young people aged 11 plus with product advertisements. Emma Boyland et al's research (<i>Advertising as a cue to consume: A systematic review and meta-analysis of the effects of acute exposure to unhealthy food and non-alcoholic beverage advertising on intake in children and adults</i>), which I mentioned earlier, also contributes to this evidence base.</p>
Q5) Defining the audience		
<i>Where media has a broader audience, CAP uses a "particular appeal" test – where more than 25% of the audience are understood to</i>	No	The 25% audience measure for the purpose of restricting HFSS product advertising provides insufficient protection to children in London. Young people in London are susceptible to a wide range of advertisements in public places such as on bus routes or walking to and from school these would be missed by the proposed criteria.

<i>be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?</i>		
Q6) Application to different media		
<i>Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?</i>	Yes	<p>The placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.</p> <p>This is in the context that use of all non-broadcast media by young people is high. Young people in London are also exposed to HFSS advertisement in public sector buildings, on public transport and at public events therefore it would be beneficial if the scope of the restrictions could be expanded further.</p>

54 – McDonald's

We welcome the opportunity to respond to the Committee of Advertising Practice's consultation on new food and drink advertising rules.

McDonald's has a long tradition of innovative advertising and we are committed to acting responsibly in all our marketing practices. We believe that advertising can play a role in generating positive change and that self-regulation is the most effective means of ensuring responsible marketing practices. We also understand parental concern about some of the advertising to which their children may be exposed and we want all our practices to meet or exceed their expectations

We listen closely to our customers and for many years we have made numerous changes based on their diverse and evolving tastes and dietary needs. We believe that through increased menu choice and variety, consumer-friendly nutrition information, responsible advertising, and promoting physical activity we can be part of the solution to fight against obesity, in particular amongst children.

We have self-imposed tighter restrictions on our food and drink advertising than the current CAP code stipulates. We only ever advertise food and drink items to children that are not classified as HFSS by the DH's current nutrient profiling model. We aim to encourage children to choose more fruit and vegetables through our marketing.

This is just one aspect of the work we do to tackle obesity. We have also increased menu choice by adding options such as fruit and vegetables onto our menu and we have a program of reformulation for key nutrients of concern. We work hard to give our customers all the information they need to make the right choice for them. As part of this, we were the first of our industry to introduce calorie menu board labelling to all of our restaurants.

We recognise increasing public concern around diet, nutrition and obesity and we know we have a joint responsibility to play our part in this, along with government, industry and civil society. We also know that the way children consume media has changed, and it is important that the regulatory framework reflects that.

Question 1: Restrictions on HFSS product advertising

- a) *Should the CAP code be updated to introduce tougher regulations on the advertising of products high in fat, salt or sugar?*

Yes. McDonald's has practiced voluntary restrictions beyond the CAP code since 2010 and also signed up to the EU Pledge in 2012. This means all of our Happy Meal advertising to children (under the age of 12) includes fruit or vegetables and drinks with only naturally occurring or no added sugar. Carbonated soft drinks made with artificial sweeteners are also excluded from Happy Meal advertising. We use our licensed and our brand characters on TV to encourage balanced food choices, wellbeing or educational or fun but responsible messages.

- b) *Should CAP use the existing BCAP guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?*

Yes. We would welcome this consistency across broadcast and non-broadcast media and the greater clarity it would bring.

Equally, clear guidance to industry on how advertising of this kind is identified is important so that businesses can continue to advertise their brands in the right way.

Question 2: Selecting a nutrient profiling model

Should the CAP Code adopt the DH nutrient profiling model to identify HFSS products?

Yes. The current nutrient profiling model works and is understood by industry.

However, if the nutrient profiling model were to change, this would need to be reviewed by CAP to ensure it is fit for purpose before implementation.

Question 3: Existing prohibitions on the use of promotions and licensed characters and celebrities

There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

Yes. This would ensure that this age group is not exposed to HFSS advertising, while also allowing for the promotion of non-HFSS food and drink options to this age group.

At McDonald's, we have experience of using marketing to encourage children to choose more fruit and vegetables, such as the fruit portions in our Happy Meals.

We have used licensed and our brand characters on TV to encourage balanced food choices, wellbeing or educational or fun but responsible messages.

Question 4: Introducing placement restrictions

a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes.

b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

- a. Aged 11 or younger?*
- b. Aged 15 or younger?*

15 or younger.

Question 5: Defining the audience

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

Yes. This measure is well understood and would work effectively.

However where possible it would be helpful to have clarity on accepted audience measurement tools by channel with examples to avoid misinterpretation of the rules.

Question 6: Application to different media

Should CAP apply the placement restriction to HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes.

Title of consultation
CAP Consultation: food and soft drink advertising to children. Introducing new restrictions on the advertising of food and soft drink products to children
Name of the consulting body
Committee of Advertising Practice
Link to consultation
https://www.cap.org.uk/News-reports/Consultations/Open-consultations/CAP-food-consultation-2016.aspx#.V4kGe6LeMwI
Why did the MRC/CSO Social and Public Health Sciences Unit (SPHSU) contribute to this consultation?
Exposure to marketing of foods high in fat, sugar and salt (HFSS) contributes to children's dietary preferences and intakes, impacting on risk-factors for long-term health outcomes such as non-communicable diseases (e.g. obesity, diabetes, heart disease and cancer). The SPHSU has a huge amount of expertise in researching and explaining the drivers of social determinants of health. More specifically we have expertise in obesity research and have recently conducted a study to determine children's experiences, perceptions and beliefs about exposure to HFSS product marketing and views on regulation. Preliminary research findings inform this response and therefore may be useful in informing CAP decision-making.
Our consultation response
<p>The MRC/CSO Social and Public Health Sciences Unit is responding to the following areas outlined by the Committee:</p> <ol style="list-style-type: none"> 1) Restrictions on HFSS product advertising 2) Selecting a nutrient profiling model 3) Existing prohibitions on the use of promotions and licensed characters and celebrities 4) Introducing placement restrictions 5) Defining the audience 6) Application to different media <p>Our Response</p> <p>Executive Summary</p> <p>We are committed to improving the health of children and in highlighting the social determinants that harm child health and promoting policies that protect children's health. We believe that progress on childhood obesity will only be made if policy makers act to protect children from unhealthy food and drink advertising. This means restricting HFSS product advertising.</p> <ul style="list-style-type: none"> • We believe that as it stands the BCAP guidance is flawed. It still allows for brands who sell a product range that predominantly includes foods HFSS to advertise when children are the likely audience. We are concerned that a similar situation is likely to arise in relation to non broadcast advertising.

- A clear nutrient profiling model must be put in place. Evidence shows that industry models are not robust in distinguishing suitably between healthy and unhealthy products when compared with independent models.
- We believe it is imperative that rules are in place around creative content. We do not believe however that the age restrictions go far enough, and we are concerned about the impact of celebrities on young people aged 12-15 years (and beyond). In our focus group study, young people readily named famous actors, singers, sport personalities and vloggers that they admired and followed. Many young people admitted that they would deliberately choose a product that appeared to be endorsed by a favourite celebrity and that they would need to pay a premium for such products. We have concerns about the use of licensed characters as they may be attractive to children. We do not support the relaxing of the licensed characters unless for unprocessed foods and vegetable producers and not for companies who sell HFSS products as their main sales.
- We believe that there is a need to introduce strict placement restrictions to protect children up to the age of 15 years and these children also need to be protected from programmes and products even when the target audience makes up less than 25% of the audience. We know that 'official' age restrictions are not always followed and a precautionary approach would be prudent.
- Finally, we believe that it is essential that the placement restriction on HFSS product advertising is applied to all non broadcast media within the remit of the Code. Young people spoke with us about a wide range of media through which they recalled seeing advertising for HFSS products. There is now increasing evidence demonstrating the negative impacts non-broadcast advertising has on children's health and wellbeing. It is important this is tackled so that companies cannot simply change where they 'place' their advertisements in order to continue to promote their products. Also worth highlighting is the fact that young people in our focus group study also detailed being exposed to marketing in places not covered by the code including in-store price promotions, restaurant competitions, and product packaging. We are particularly concerned that these will remain mechanisms through which children and young people can be targeted with advertising for products HFSS.

Background

The MRC/CSO Social and Public Health Sciences Unit (SPHSU), University of Glasgow is a large research Unit consisting of researchers from a wide range of disciplines (sociologists, anthropologists, psychologists, epidemiologists, geographers, political scientists, public health physicians, statisticians, information scientists, trial managers and others). The Unit receives funding from the Medical Research Council and the Chief Scientist Office in the Scottish Government Health and Social Care Directorates, as well as grant funding from various UK, EU and global funding bodies. Our aim is to promote human health by the study of social, behavioural, economic and environmental influences on health in order to improve population health and reduce social inequalities. One of the research programmes in the Unit (Informing Healthy Public Policy) was given funding to conduct horizon scanning research with the aim of ensuring policy-makers have timely research evidence (such as for evidence calls). This research is to ensure the Unit is at the forefront of promoting the timely translation of scientific knowledge to influence policy and practice by communicating the results and implications of research to policy audiences.

The SPHSU researchers (Hilton, Chambers, White) who have conducted this exploratory rapid response study bring together expertise in: understanding emerging public policy debates, childhood obesity, child nutrition, NCD-related product regulation, industry marketing and advertising, including the online food and beverage marketing environment aimed at children.

In preparing this response, we have carried out 15 focus groups with young people aged between 12-15 years (total n=65) recruited from areas of high, mixed and low deprivation in Central

Scotland. Ethics approval was obtained from the University of Glasgow (College of Social Science) and full parental consent was gained. Once recruited, young people were invited to attend a focus group and were asked a range of questions (including: how they spent their free time, recollections of and opinions on food and beverage advertising, and opinions on proposed regulations and restrictions). They were also shown examples of popular HFSS food and drink advertising to stimulate discussion. The focus groups were digitally audio-recorded and transcribed verbatim, before data was thematically analysed for informing our evidence response.

This response also draws upon findings from a systematic review carried out by Chambers and colleagues [1] on the impact of advertising regulations for products HFSS and a review of the current evidence base on the impact of online marketing for products HFSS to children.

1a. Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Yes. Many of the young participants in our focus group study were concerned about the level of advertising and considered it does affect the choices children make about products HFSS. These young participants were attracted to branding and considered they were the target of considerable marketing particularly in the online environment where they spoke about spending much of their free time.

In the wider literature it is clear that UK children eat diets far removed from those currently recommended for good health. Sugar intake is particularly high in children, with 15.6% of 11-18 year olds energy intake being derived from added sugars [2]. The main sources of sugar intake in UK children's diets comes from sugar sweetened beverages, followed by cereals, cakes and biscuits, all of which are extensively advertised products [2]. The World Health Organisation [3] recently recommended that added sugar should make up no more than 5% of daily energy intake, highlighting how far children are in the UK from eating diets likely to lead to optimal health. At a UK level, a move to a diet in line with this recommendation is estimated as having the potential to save the NHS £500 million per year, with additional wider economic benefits [4]. Dietary intake plays an important role in observed health inequalities. Children living in areas of the highest deprivation in Scotland are more likely to eat a diet high in sugar, and low in fruit and vegetable intake than their counterparts living in areas of low deprivation, accounting for much of the inequalities in obesity and dental decay between children living in these areas [5,6].

Current non broadcast advertising codes are lax in comparison with those surrounding broadcast advertising, and evidence suggests that the two need to be more closely aligned to protect children. Indeed, there has been criticism that restrictions around broadcasting do not go far enough, with evidence that current restrictions have not reduced children's advertising exposure [7] and calls for a 9pm watershed to be introduced [8]. A recent Cancer Research UK survey has highlighted that 74% of the public support such a restriction [9].

The Food and Drink Federation have suggested that advertising literacy education may act to counter the negative influence of advertising for products HFSS [10]. Our systematic review has highlighted that there is currently very little high quality evidence to support the benefits of advertising literacy training in children and young people in relation to products HFSS [1]. This is a gap that could be useful to explore further.

b. Should CAP use the existing Broadcast Committee of Advertising Practise (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

From our focus group study we believe that as it stands the BCAP guidance is flawed. It still allows for brands who sell a product range that predominantly includes foods HFSS to advertise when children are the likely audience. This issue was discussed by young people in response to viewing an advertisement from a fast food chain for carrots. Many of them suggested that the advert served to raise the profile of the brand further, 'pretending' to promote healthy foods deliberately to reduced public criticism of the brand which largely manufactures and sells unhealthy HFSS products. They argued that it was unlikely to improve children's diets, as the default option within the chain's restaurants was for fries. Further a few participants considered this advert was particularly targeted at very young children less able to differentiate about the brand and they thought such advertising to be harmful in setting up early food patterns. Both BCAP and CAP guidance should be changed to prevent advertising targeted at children and young people by brands whose product range is predominantly for foods HFSS.

2. Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

A comprehensive nutrient profiling model must be put in place. Evidence shows that industry models are not robust in distinguishing suitably between healthy and unhealthy products when compared with independent models. In a systematic review of the evidence, seven studies funded by industry were positive about the success of the self-regulatory initiatives [1]. Nevertheless, six out of seven studies did not use an independently defined measure of nutritional quality. Brinsden & Lobstein [11] found that government nutritional profiling models were more restrictive than industry led schemes, with Denmark's code the most restrictive. The Department of Health (DH) nutrient profiling model allows foods to be classified in a way that is largely consistent with dietary recommendations, however, it has been criticised for allowing too many less healthy foods to be advertised [12].

Unfortunately no gold standard for nutrient profiling exists in relation to advertising to children [12], with a recent systematic review calling for more validation studies to authenticate the application of NP models [13].

In some groups, young people raised the issue that salt, sugar and fat content were not the only criteria with which to judge whether a product was healthy or not, using the example of diet soft drinks. They raised concerns about the impact of sweeteners.

There's always aspartame as well. Like, when they were saying that Diet Coke was zero fat, zero sugars and stuff like that, like, it still has aspartame, which actually has an effect on your brain.

I think the way they do the cut-off point for if something's unhealthy or healthy, I think if it's, like, something makes a food unhealthy – if it's, like, high in fat, high in sugar, high in salt – but it's not unhealthy if it's low in that. It's healthy because of the nutrients in it, rather than it being low in salt, which doesn't exactly make it healthy.

Therefore, a system which also takes product categories into account is suggested.

3. There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

We believe it is imperative that rules are in place around creative content. We do not believe

however that the age restrictions go far enough, and we are concerned about the impact of celebrities on young people aged 12-15 years (and beyond). In our focus group study, young people readily named famous actors, singers, sport personalities and vloggers that they admired and followed. Many young people admitted that they would deliberately choose a product that appeared to be endorsed by a favourite celebrity and that they would need to pay a premium for such products.

If you put [Taylor Swift] on a box of Cherry Cola Tic-Tacs, I will be wanting to buy those.

It is clear from our study that like children, young people are also heavily influenced by advertising and seemed perhaps more susceptible to big brand influence linking to a demonstration of some level of sophistication and prestige among their peers.

Because like our sort of age has such an online presence, like say if like a model or whatever was advertising something, I'm like ten times likely to buy it, even if I don't actually like the taste I'm just like, "Oh I saw Gigi Hadid was advertising that."

We have concerns about the use of licensed characters as they may be attractive to children. We do not support the relaxing of the licensed characters unless for unprocessed food and vegetable producers and not for companies who sell HFSS products as their main sales. Young people expressed a concern about the use of licensed characters as they believed that this was likely to influence younger children. In some groups, young people argued that brand characters should also be included in rules as they were deemed particularly attractive to younger children who may identify with those characters. Whilst young people recognised that few healthy products were advertised in comparison with products HFSS, and that this balance should be redressed, they also expressed concern over advertising for healthier products by brands known for selling a product range that was predominantly HFSS. They pointed out that the advertisement might get someone to a certain location to purchase a product, but that their choice would be highly unlikely to be a healthy one on arrival.

No one goes to McDonald's for carrots.

Yeah, like, just advertise your burger, no one wants to go buy overpriced carrots from McDonald's.

4a. Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes. Two systematic reviews of the evidence have found that strong regulation is more likely to have an impact on reducing the potential harm from advertising for products HFSS. In these reviews, this came in the form of clear statutory regulations in comparison with industry self-regulation [1,14].

b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:

- i) Aged 11 or younger?**
- ii) Aged 15 or younger?**

In focus group discussions, young people said they spent substantial amounts of their spare time at home online. Social media provided a way to keep immediate connections with friends, to share and exchange information with a range of people (including unknown persons) and amuse themselves for long periods. These focus groups were made up of friendship groups and it was clear from some participants that social media advertising was 'annoying' with a few participants

talking of using software to stop nuisance advertising; whilst for others advertising was something they liked and actively shared with friends, for example, by sharing photographs of certain foods. When not at home, young people were likely to spend their limited 'pocket money' on sweets, games or to buy fast food. Some spoke of fast food restaurants that they visited as also those that they had recalled seeing advertising for. Many young people aged 12-15 years said that they were directly influenced by advertising to buy products HFSS. They discussed the features of advertising that attracted them. This included humour, attractive and eye-catching content, and information about new products in an established range. They said they would discuss and share this type of advertising with friends.

In addition, in the focus groups, young people reported a lack of parental oversight of their online activity in line with findings by Mascheroni and Olafsson [15].

My mum never goes through my phone or anything. She never asks to see what I'm doing.

I'd say probably most parents work and then if they have like younger kids as well it's sort of a bit of a chore if you're having to like check that they're not like watching something.

We believe this highlights why there is a need to protect all children under the age of 15 years.

5. It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a 'particular appeal' test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP code use the 25% measure for the purpose of restricting HFSS product advertising?

One of the main criticisms of the current broadcast regulations are that the largest number of young people watch television outside of defined 'children's programming', that is when 25% of the audience are under 16 years of age [7]. The viewing of family programming, such as Xfactor and Britain's Got Talent, are opportunities for companies to advertise products HFSS to a significant number of children and young people. We are therefore concerned that similar opportunities will arise in non broadcast media. For example, whilst it is unlikely that 25% of Facebook users are under 16 years of age, nearly all young people that we interviewed had a Facebook account.

Care must also be taken in terms of 'official' age restrictions on social media platforms. Many of the young people we spoke with either had social media accounts currently, despite being under 13 years of age, or had previously when they were under this age. In fact a few young people spoke about being particularly attracted to video games (Call to Action) aimed at older teenagers.

6. Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Yes. We believe it is essential that the placement restriction on HFSS product advertising is applied to all non broadcast media within the remit of the Code. Young people spoke with us about a wide range of media through which they recalled seeing advertising for HFSS products. This included websites (eg Youtube), social media, billboards, magazines, public transport, cinema and leaflets. TV watching in its traditional form was not a medium through which young people in our study tended to engage, with a preference for 'play again' and Netflix. Nevertheless, with one study estimating that children aged 2-11 view an average of 26,000

television advertisements per year, with approximately 40% coming from programming whose audience is not primarily children [16], TV is still a place for advertising.

In addition to current broadcast restrictions, there is a need to restrict non-broadcast advertising to reflect current media consumption practices and trends. There is now increasing evidence demonstrating the negative impact non-broadcast advertising has on children's health and wellbeing [17].

It is important that non broadcast advertising is adequately regulated to ensure that companies cannot simply change where they 'place' their advertisements in order to continue to promote their products. The online environment is currently one of those alternative placements. Children live in an ubiquitous digital environment, where mobile devices and continual internet access is the norm [17]. Personal and social experiences are now ingrained with mobile technology, social media networks, instant messaging and interactive games. It differs drastically from traditional broadcast advertising, due to the intimate nature between the marketer and consumer that can be achieved through advertising digitally. This makes it a powerful medium for companies to advertise and there is a real risk to children and young people being exposed to these advertisements.

Advergaming is considered to be one of the most problematic forms of online advertising targeted at children, given their potential to target the emotional and subconscious mind [18]. Advergaming can be extremely difficult for children to differentiate from entertainment [19]. Children cannot readily distinguish an advergame from any other type of online game [20], and they are likely to engage with them for a lengthy period of time, on average 10-15 minutes [17]. Advergaming can aid in creating a positive preference for brands. This positive preference increases and becomes stronger the more children play the games. The activity also results in a higher preference for the products HFSS advertised [21-24].

Finally, it is worth highlighting that young people in our focus group study also detailed being exposed to marketing in places not covered by the code including instore price promotions, restaurant competitions, and product packaging. We are particularly concerned that these will remain mechanisms through which children and young people can be targeted with advertising for products HFSS.