



14 May 2009.

Dear Sirs,

The Radio Advertising Clearance Centre (RACC) was part of the BCAP Executive's "Code Review Working Groups" over a period of 18 months or so, which led to the culmination and publication of the draft proposed Code for broadcast advertisements on 26 March. In addition, RACC represented the radio industry as its advertising clearance body on the Committee of BCAP, which subsequently reviewed and approved the work of those Working Groups. RACC does not, therefore, intend to comment in detail on new or amended radio advertising policy arising from the proposed draft Code and also does not feel it is appropriate to respond to the 157 questions of BCAP's consultation document.

However, in the interests of clarity and, in some cases, consistency for Code users, RACC would like to highlight cosmetic suggestions for change, relating both to the format and organisation of the Code rules and to the text of some of the Code rules.

RadioCentre, commercial radio's trade body, will be submitting a separate consultation response on behalf of its members, commercial radio broadcasters.

RACC confirms that it has no objection to making this response public.

RACC suggestions for change

1. Contents:

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- RACC suggests Section 21 Betting Tipsters fits better after Section 18 Lotteries (with subsequent re-numbering of Sections);
- RACC suggests the inclusion of page numbers to the right-hand side which correspond with the various Sections and the Rules they comprise;
- If there is agreement with point 12 below, RACC suggests deletion of current Section 31, thereby amending Section 32 'Scheduling' to become Section 31.

2. Introduction:

- In clause (c), the cross-reference could be expanded to "See Section 2: Compliance, Radio" for clearer reference;
- RACC suggests that a sentence is inserted in current draft clause (f) which clarifies that Clearcast and the RACC offer pre-transmission clearance of television and radio advertisements respectively;
- RACC suggests that current draft clauses (e) and (f) are exchanged because the Code regulates, first and foremost, broadcast media, not broadcast advertisers – it is broadcasters that face sanctions for Code non-compliance, not advertisers;
- In clause (g), RACC suggests the inclusion of the word "(Broadcast)" in the sentence "The ASA Council (Broadcast)'s interpretation of the Code is final", for accuracy.

3. Section 1: Compliance

- In 'Background', RACC suggests the following amended sentence, for clarity to broadcasters: "Broadcasters must ensure that all advertisements are cleared before broadcast, either by themselves or via their clearance bodies";
- RACC suggests a minor tidying-up, for consistency, of the "Special Categories" list as follows **(suggested amendments shown in bold)**:

Consumer credit, investment and complex financial products and services;

Gambling **(includes betting tipsters and lotteries)**;

Alcoholic products;

Medical and health and beauty products and treatments;

Food, nutrition and dietary products, supplements and services;

Slimming products, treatments and establishments,

Adults shops, stripograms, escort agencies and **telecommunications-based** sexual entertainment services;

Introduction and dating services;

Services offering individual **advice on consumer or personal problems**;

Environmental claims;

Matters of public controversy including matters of a political or industrial nature;

Faith, Religion and Equivalent Systems of Belief;

Charities;

Films, DVDs, video, computer and console games that have an 18-certificate or rating;

Distance selling;

Private Investigation Agencies;

Pornography.

- Rule 1.2: RACC feels that this rule (the “social responsibility” rule) would fit better in the face of the Code, in a dedicated Section and recommends it is moved to Section 4 Harm & Offence (as new rule 4.2). This will achieve faster and clearer referencing for Code users of an important and new rule.

4. Section 3, Misleading

- For easy reference, RACC suggests the sub-heading 'Subliminal advertising' at Rule 3.8.

5. Section 10, Prohibited Categories

- RACC advises that the cross-references referred to are replaced with the actual unacceptable or restricted categories of advertising for user-friendliness and faster, clearer referencing for Code users.

6. Section 11, Medicines etc

- RACC suggests deletion of the word “BCAP” as in the sentence “The ASA or BCAP may seek a medical opinion...” if this requirement is confined to ASA’s complaint investigation powers;
- Rule 11.2: RACC suggests “or their clearance bodies” should be added after the word “broadcasters” and also the phrase “and/or” in place of “and” in the requirement for “generally accepted scientific advice and independent expert advice” (i.e. both criteria are not always needed simultaneously);
- RACC feels that there is unnecessary duplication between rule 11.9 and Section 26 and suggests that the requirements are amalgamated into one single rule.

7. Section 13, Food etc

- RACC recommends that the term “advertising industry stakeholders” is replaced with “industry stakeholders” or even “practitioners” on the basis that the Code is owned by broadcasters as well as advertisers.

8. Section 19, Alcohol

- RACC queries whether low-alcohol drinks need to state clearly their alcohol content. We do not think this is clear from the second paragraph under ‘Definitions’;
- In rule 19.14, RACC suggests that the phrase “must not normally show” is amended to “must not normally portray” as “portray” is pertinent to both radio and television media and is consistent with other, similar Code requirements.

9. Section 20, Motoring

- RACC queries whether rule 20.3 prevents factual statements by cars such as “0-60mph in under 6 seconds” in isolation (where no safety features are mentioned alongside acceleration power).

10. Section 23, Telecommunications-Based Sexual Entertainment Services

- In rule 23.1, RACC recommends the addition of "...are acceptable only if they are centrally-cleared", for clarity.

11. Section 30, Pornography

- In rule 30.1, RACC recommends the following re-wording: "within the recognised character of pornography (including R18-rated material or its equivalent) are acceptable only if they are centrally-cleared, for clarity.

12. Section 31, Other Categories of Radio Advertisements That Require Central Copy Clearance

- As the advertisement categories highlighted in rules 31.1.1 – 31.1.4 do not have any specific rules dedicated to them (e.g. copy content requirements), RACC suggests that this Section is deleted and the four categories are listed under 'Special Categories' in Section 1, Compliance.

13. Section 32, Scheduling

- As rules 32.1 – 32.4.7 and rules 32.17.1 – 32.17.7 comprise the rules for radio advertisement scheduling, RACC suggests that section 32.17 is placed directly beneath rules 32.1 – 32.4.7 so that those using the Code for radio ads only can find the scheduling requirements in one place;
- RACC suggests the following addition to rule 32.2.5: "but see exemptions in rule 15.14", for clarity;
- In rule 32.17.2, RACC suggests that "divination or the supernatural" is amended to read "psychic and occult practices", for consistency;
- In rule 32.17.3, RACC suggests that "sexual material, sex shops, stripograms or similar" is amended to read "adult shops, stripograms, escort agencies and telecommunications-based sexual entertainment services", for consistency;
- In rule 32.17.5, RACC suggests that "pregnancy advice services" is added;
- RACC suggests that a new rule is added as 32.17.8 for "films, DVDs, videos, computer and console games that have an 18-certificate rating";
- RACC suggests that rule 32.18 is moved to section 32.2 as rule 32.2.7.

14. Appendix 1, paragraph 13

- RACC recommends the addition of "excluding individual spot advertising" in (d), for clarity.

Yours faithfully,

Yvonne Kintoff

14 May 2009

Yvonne Kintoff

Head of Advertising Clearance

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Response to the BCAP Consultation on the draft Broadcast Advertising Standards Code

Background

1. RadioCentre is the industry body for Commercial Radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), RadioCentre's membership comprises the overwhelming majority of UK Commercial Radio stations, who fund the organisation. RadioCentre is governed by a board of eight directors, representing a cross section of the industry and including all the major Commercial Radio groups.

2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

Introduction

3. RadioCentre was part of the BCAP Code Review Working Group, sitting alongside colleagues from Global Radio and the RACC. RadioCentre also sits on the board of BCAP. RadioCentre would like to acknowledge the thorough and detailed work that has been undertaken by BCAP in preparing the new draft Code.

4. We support the broad objective of BCAP's code review to create a common approach to describing the advertising rules across TV and radio. We believe that the review process has demonstrated that this objective is broadly deliverable. However, we caution against extending this principle too far, and in particular would be concerned by any attempts further to harmonise the actual rules for the two media.

5. Amongst other media, radio has many unique characteristics; characteristics which have resulted in there being separate rules for radio, television, press etc, in many regulatory environments. In relation to advertising, radio's non-visual nature means that it faces particular challenges in seeking to relay detail (making it particularly important that complex warning messages are not required). But the medium also has advantages, including its high levels of trust with listeners and the resulting low complaints rate.

6. Radio is also characterised by a stream of programming, rather than a series of programmes, and therefore separation between advertising and editorial messages can be less obvious than for TV. Crucially, however, Ofcom's recently published consultation on revisions to the Broadcasting Code¹ highlights that any apparent lack of separation is not reflected in consumers' understanding of actual separation, with Ofcom noting that listeners are increasingly aware of the different types of commercial messages included within radio programming.

7. We therefore contend that, whilst consumers, broadcasters and advertisers should be able to understand in similar language where similar rules exist for TV and radio advertising, it must also be explicitly understood by all the relevant parties that, in many cases, there are clear reasons for each medium to have distinct rules.

8. This submission should be read alongside those of individual RadioCentre members (who outline matters of particular relevance to their stations) and that of the RACC (whose response is helpfully more technical in nature).

Adverts which are reminiscent of editorial

9. We acknowledge that, in drafting new rules concerning adverts which are reminiscent

of editorial, BCAP has sought to find a practical means of implementing the requirements of AVMS in a manner appropriate for TV and radio. However, we are concerned that, as presently drafted, and without detailed guidance as to the specific manner in which the rules (in particular rules 2.1 and 2.3) would be interpreted for radio, there is a danger of radio adverts or Sponsorship & Promotions treatments falling foul of them.

10. The specific nature of radio, where output is characterised as a continuous stream of live output, rather than clearly segmented programmes, means that editorial and advertising are naturally less distinct than on TV. We are therefore particularly concerned that these new rules could restrict the execution of presenter-read adverts and other Sponsorship & Promotions elements of programming, particularly in the context of possible relaxations to the Ofcom Broadcasting Code.

11. Our concerns regarding these rules are also prompted by a recent ASA judgement² against London's LBC 97.3 which we contend failed to take account of the characteristics of radio as outlined above. In order to minimise the risk of similar findings occurring, we recommend that BCAP publishes clear radio-specific guidance to accompany these new rules.

12. RadioCentre and RACC will also seek a meeting with the ASA to discuss this ruling and any precedent which it may set.

New rule on protection of the environment

13. We have two concerns about the proposed new rule: *"advertisements must not condone or encourage behaviour grossly prejudicial to the environment"*.

14. The imposition of this rule on radio is the result of making rules consistent between TV and radio. We noted earlier that we do not accept as a point of principle that radio and TV should always have the same rules. Subject to acceptance of our concern about the provenance of this change, we are content that such a new rule should be required of radio.

15. However, we are concerned that there needs to be detailed guidance as to interpretation of the rule, since there will inevitably be a considerable amount of subjectivity in the assessment as to what constitutes *"grossly prejudicial"*. We seek clarification as to this guidance and request that any adjudications should be backed up by *"the significant consensus of scientific opinion"*.

Amended rules on distance selling/new rule for introduction and dating services

16. The new rules proposed in these areas represent a significant burden of responsibility on broadcasters, particularly in relation to checking the business practices of distance sellers and the safety advice provided by dating services.

17. We note that the rules on distance selling reflect legislation and stem from a television-led concern (Auctionworld), not a radio one. We are concerned about any increase in regulatory burden, especially for smaller stations, and have therefore

²<http://>

asked the RACC to verify with BCAP and the ASA that its proposed safeguards (including amendments to its standard checklists) will be sufficient for compliance.

Motoring

18. We note and accept the new rules that: *"Motoring advertisements must not demonstrate power, acceleration or handling characteristics except in a clear context of safety. References to those characteristics must not suggest excitement, aggression or competitiveness"* and that *"Motoring advertisements must not refer to speed in any way that might condone or encourage dangerous, competitive, inconsiderate or irresponsible driving or motorcycling. Factual statements about a vehicle's speed or acceleration must not be presented as a reason for preferring the advertised vehicle. Speed or acceleration claims must not be the main selling*

message of an advertisement."

19. However, we seek clarification that factual statements about acceleration performance will continue to be accepted, even if they are not accompanied by mention of safety features.

RadioCentre

June 2009

The Remote Gambling Association Ltd, 6th Floor, High Holborn House, 52-54 High Holborn, London WC1V 6RL

BCAP Code Review

Code Policy Team

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18 June 2009

Dear Sir,

BCAP CODE REVIEW CONSULTATION

- 1. We are grateful for the opportunity to comment on those parts of the code which relate to the advertising of gambling products. Our association represents remote gambling operators and, as you are aware, it is this sector of the gambling industry more than any other which has made use of the relatively new ability to advertise on television following implementation of the Gambling Act 2005.**
- 2. Although few changes are being proposed in this area in the consultation paper, Questions 110 and 157 both invite comments on the generality of the code and within that context there are a number of issues that we would like to raise not just about the code but, just as importantly, how it has been interpreted and applied. For this reason the bulk of our response falls under that heading and those questions.**
- 3. More generally, we continue to be happy to stand behind the intent and spirit of the rules and we do not underestimate the many difficulties faced by the ASA in addressing gambling advertising, but advertising is hugely important to the remote gambling sector and there is a general view that**

the ASA's approach since September 2007 has been overly conservative in a way that does not reflect the position of gambling within wider society.

4. We have highlighted below our basic concern about subjectivity in parts of the decision making process. This has manifested itself in several ways to the extent that there is an impression that on occasion the Council has taken a moral view about gambling which goes beyond the protections called for within the gambling regulations themselves.

Question 105

Given BCAP's policy consideration, do you agree in principle that National Lottery and SLA lottery broadcast advertisements should be regulated by the same rules? If your answer is no, please explain why.

Yes.

Consistency; age of appeal of content

Question 106

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to increase the restriction on age of appeal for broadcast National Lottery advertisements from 16+ to 18+? If your answer is no, please explain why.

Yes. If the concern amongst policy makers about underage gambling is a serious one then they should accept that the National Lottery is in many ways an entry level form of gambling and it is well established in academic circles that the younger people are when they begin gambling, the greater the prospect that they will become problem gamblers in later life. Even if the level of problem gambling in Britain is relatively low, logic still dictates that all forms of gambling that are advertised should have the same rules applied to them.

We are of course aware of contrary arguments put forward by both the National Lottery and DCMS, but in our view it is irrelevant whether or not they are raising money for good causes and many of the lottery games offered on the National Lottery website are very much like the online gaming products offered by our members and have nothing in common with the main lottery draws.

We would also draw your attention to the approach of the Gambling Commission in relation to betting offices, where it is a requirement that, although admittance is restricted to over 18s, a Think 21 policy should be adopted. This is an example where a statutory regulator has told the regulated sector to provide checks over and above the legal age for gambling. Lifting the restriction on age of appeal for broadcast National Lottery advertisements from 16+ to 18+ would be to adopt a similar approach.

Consistency; age at which a person may be featured gambling in a lottery advertisement

Question 107

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to apply rules 18.6 and 18.7 to all broadcast lottery advertisements? If your answer is no, please explain why.

The rules applying to gambling advertising prevent anyone who appears to be under 25 from appearing in the advertisements. We believe that this is an overly conservative approach, but while it is in place the rationale should surely be that it ought to apply to all forms of gambling.

Consistency; other lottery rules

Question 108

Given BCAP's policy consideration, do you agree that the rules included in the Lottery Section of the Code are in line with BCAP's general policy objectives (see Part 1 (4) of this consultation document) and should be applied to broadcast advertisements for the National Lottery as they presently are to broadcast advertisements for other lotteries? If your answer is no, please explain why and, if relevant, please identify those rules that should not be applied to advertisements for the National Lottery.

Yes, the National Lottery is in competition with other forms of gambling and should be regulated in a comparable way and not under a different set of rules. From a regulatory perspective there is no rationale for treating the National Lottery differently from any other form of lottery. For other reasons the government has conferred a special status on the National Lottery, but these should have no bearing on the way that its advertising is regulated.

Participating in a lottery in a working environment

Question 109

Given BCAP's policy consideration, do you agree that lottery advertisements should be able to feature participation in a lottery in a working environment? If your answer is no, please explain why.

No. We believe that the current rules would preclude other gambling operators from featuring gambling in a working environment and it is unclear why lotteries should be treated any differently. Presumably the policy objective here is not to encourage people to gamble while

they are working and that must hold true for lotteries as much as any other gambling products. Again this is especially true when an increasing number of lottery products are available online. There is a case for reviewing whether a restriction of this kind should apply to any gambling products or whether there could be flexibility in its application (for instance, in clearly humorous situations), but while it is in place it should apply across the piece.

Other questions

Question 110

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Gambling and Lotteries are necessary and easily understandable? If your answer is no, please explain why?

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

As mentioned above there are several issues about the code that we would like to raise as part of this consultation exercise even though they involve areas where the ASA has not proposed any changes. For ease of reference we have grouped these under specific headings:

Subjectivity

We fully appreciate that all rules and regulations, irrespective of whether they are statutory or non-statutory, will always be open to interpretation, but we believe that the current levels of subjectivity are hindering the transparency and consistency of decision making.

This is an area where we feel it would be beneficial for us to discuss the broader issues at a meeting because it raises related questions such as training, the use of specialist caseworkers, and the real and financially serious problems that have occurred because of the different interpretations put on the codes by the ASA and Clearcast.

Potential for ASA to offer pre-clearance advice

Following on from the above, we are anxious to explore ways that will flag up potential problems earlier in the development phase of advertisements and give greater comfort to advertisers.

We accept that the ASA could never give cast iron assurances about the compatibility of particular broadcast advertisements or campaigns, and nor would we seek to have it eat into the work of Clearcast, but there is a case for suggesting that the ASA could provide a complementary advice service for a reasonable fee.

It already provides something of this kind for non-broadcast adverts and, apart from the existence of Clearcast, we would argue that there is no reason in principle or practice why a similar system could not be devised for broadcast adverts. This would be especially useful in identifying any evolving trends or sensitivities in what is still a new area of broadcast advertising. At a time when there are downward pressures on advertising budgets and the value of advertising slots there is a responsibility on all parties to minimize any wastage of resources.

Producing campaigns is an expensive and time consuming business and the investments of both are irrecoverable if significant post-production changes have to be made or, even worse, if whole advertisements have to be scrapped. The sooner that potential problems can be identified, then the more the risk of this happening can be averted. That would be mutually beneficial.

The answer to this may not be straightforward, but it would be disappointing if the ASA did not at least accept that the idea merited further consideration.

External appeals process

Without in any way seeking to detract from the work of Sir John Caines as the Independent Reviewer, we would urge the ASA to consider the establishment of a fully independent appeals process. Decisions made by the ASA which lead to the cessation of an advertising campaign effectively impose major financial burdens on the advertisers involved. The severity of such penalties, particularly when they are part of a system of self regulation which is not underpinned by statute, should be balanced by proportionate safeguards and one that is common in many other fields is a right of appeal to an independent third party.

At present there are very limited grounds for the Independent Reviewer to refer cases back to the Council and even then he can only request that they review their decision. In assessing complaints the 'substantially flawed' test used sets a very high barrier to overcome and the focus is very much on process rather than whether the decision was a fair and reasonable one.

Again we hope that this is something that the ASA will not dismiss out of hand even if it has been considered in the past.

5. In conclusion, we appreciate that these regulatory issues are far from straightforward and that the ASA will not be able to reconcile all of the views expressed to it, but we hope you will agree to meet us before reaching any final decisions.

Yours faithfully,

Clive Hawkswood



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19 June 2009

re: BCAP and CAP Code Reviews: A Response to the Consultations

Reproductive Health Matters is an international publications project whose aim as a charity is: *"To advance education for the public benefit concerning all aspects of the reproductive health and reproductive rights of women worldwide, in particular by the production of regular publications in this field."* We produce an international, twice-yearly, peer reviewed journal covering all aspects of reproductive and sexual health, which is translated into seven languages in addition to English, produce publications for others in the field, including the World Health Organization, and organise seminars and conferences. In the 17 years of our existence, we have motivated and published an extensive body of literature in this field from around the world that explores women-centred perspectives and how to improve national policy and practice in ways that benefit both women and men, and children. We also support women's right to access and use contraception, to safe pregnancy and motherhood, and to safe, legal abortion globally. We participate actively in Voice for Choice, the UK coalition to defend and extend women's right to choose abortion.

The following is our response to three questions in the consultation document on changes to the BCAP Code, and a comment on one paragraph of explanatory text, some of which also apply to the CAP Code:

Question 61

Given BCAP's policy consideration, do you agree that, unless prevented by law, it is not necessary to maintain the present prohibition on the use of health professionals in TV advertisements for products that have nutritional, therapeutic or prophylactic effects and in radio advertisements for treatments? if your answer is no, please explain why.

Response:

We are opposed to the advertising of medicines and other treatments on television and radio, and in print. We have seen at firsthand the effect of such advertisements in the United States, where this has long been permitted.¹ The public are led by such advertisements to believe that they may be suffering from a condition that has not been identified and encouraged to discuss with their doctor whether they might have the condition and benefit from the product or treatment. We believe such advertisements encourage people to feel afraid that they are ill or under-nourished when they are not, and are therefore unethical and should be banned.

In this context, we believe it is a serious conflict of interest for any health professional to participate in selling products and treatments as described in Question 61. We believe this contributes to a culture in which health care becomes a consumer product, which in turn encourages private health care and private health insurance, all of which we oppose.

Secondly, we believe such advertisements encourage people to believe that in order to obtain certain products and treatments, they must purchase them, when in fact they may be available on the NHS if and when they are required. This could apply to products and treatments related to sexual and reproductive health, such as condoms, contraceptives, treatment for sexually transmitted infections such as herpes, vaccination against human papillomavirus, donor insemination and other assisted conception treatments. We therefore urge that any such advertisements broadcast or published in the UK should be required to state, where it is the case, that these products and treatments are available free from the NHS.

Question 62

¹ Hull SC, Prasad K. Reading between the lines: direct to consumer advertising of genetic testing in the USA. *Reproductive Health Matters* 2001;9(18):44048.

i) 'Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?'

ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code?

Response:

Yes, we agree that it is necessary to maintain a rule specific to post-conception advice services and to that end, rule 11.11 should be included in the proposed BCAP Code.

We consider it extremely important that post-conception pregnancy advice services be required to make it clear whether or not they refer women directly for abortion as pregnant women may approach them specifically seek such referral. The failure to make this clear creates an obstacle to accessing a legal abortion, and can cause unnecessary delay and even harm to women in a vulnerable state who are seeking help, who have the expectation that they will be given this information.² A requirement that services state whether they refer women directly for abortion supports the concept of "truth in advertising" and makes it more difficult for women to be misled.

Moreover, there should be a requirement that this information is displayed prominently in any advertisement, not just in tiny print where it can easily be missed.

It is also important that the code recommends what language should be used for this statement, in order to prevent services whose aim is to convince women not to have an abortion from using vague or confusing statements that obfuscate the point. The statements could for example be: "This service *will / will not* refer women directly for an abortion if they request such referral."

This requirement should apply to both the broadcast code and to the non-broadcast code as well, and we are copying this paper to the CAP consultation to make this point.

² Ingham R, Lee E, Clements SJ, Stone N. Reasons for second trimester abortions in England and Wales. *Reproductive Health Matters* 2008;16(31 Supplement):18-29.

We do not agree that advertisements for pre-conception advice services should continue to be regulated through the general rules only, because some services provide both pre- and post-conception services, and we think the same rules should apply to both. Some anti-abortion organisations and advisory/counselling services actively oppose use of certain contraceptive methods, including emergency contraception. We are concerned that some pharmacists have been claiming to have a conscientious objection to filling prescriptions for contraceptives (following a trend in the USA)³ even though, unlike with abortion, no law or regulation entitles them to do so as contraception is an entirely legal health care service in the UK and has been for decades.

Opposition to emergency contraception is widespread among anti-abortion advisory and counselling services so we recommend that a special regulation should also be required for those advertising pre-conception advice services as regards emergency contraception and other contraceptive provision. Anti-abortion organisations and advice services erroneously but persistently describe emergency contraception as abortifacient. This is in spite of the fact that scientific evidence, national health policy and expert opinion on what constitutes contraception and what constitutes abortion are agreed that emergency contraception is not abortifacient. Emergency contraception is effective only prior to pregnancy establishing itself, not afterward. In this case, services could be required to state: "This service *does / does not* prescribe contraception and emergency contraception, which is [also] available free from GPs, family planning clinics and NHS Direct."

These responses are based on our belief that all patients must be able to make free and informed decisions about accessing advice and counselling as well as health and medical care.

Unregulated crisis pregnancy counselling organisations operate widely in the UK, outside the standards contained in the Department of Health's Register of Pregnancy Advice Bureaux. We believe they should be regulated, and that by requiring them to acknowledge in their advertisements and promotional material the bias in their counselling, women will be better protected.

Question 147

'Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at, or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why.'

³ Beal MW; Capiello J. Professional right of conscience. Journal of Midwifery and Women's Health 2008;53(5):406-12.

Response:

Yes, we agree that present restrictions on television advertisements for condoms should be relaxed. Condoms are the only form of protection available for practising safer sex that effectively prevent both unwanted pregnancy and transmission of HIV and other sexually transmitted infections such as chlamydia and gonorrhoea, which can cause infertility if untreated, and human papillomavirus, which can cause cervical cell abnormalities and cervical cancer. The promotion of consistent and correct condom use is therefore an important form of public health education, and should be permitted on television and other media at times when those who would benefit from using them are most likely to be the viewers.⁴

We do not believe that children will be harmed in any way by becoming aware of condoms and their value through accurate public health education before they reach the age where they are likely to be having sexual relations. Indeed, we believe that appropriately designed education on matters of sexuality should be started in schools at a young age, including about condoms. However, the promotion of condoms on television to adolescents and adults should take a different form, and therefore should be aired next to programmes likely to appeal to adolescents and adults rather than those likely to appeal to children under 10.

Paragraph 11.37

We agree entirely with the first two sentences of this paragraph, and we regret that there is apparently no way to stop organisations, journalists and programme makers from broadcasting and publishing misleading and irresponsible programmes, advertisements and articles about public health issues, including sexual and reproductive health issues. We have seen the kind of fear-mongering and harm this does when visiting schools and colleges and talking to women seeking services who have not also had access to accurate information. For many years, fear of contraceptive use was based on unfounded claims about terrible side effects; this still operates in many parts of the world. Today, it operates as regards false and misleading claims of negative adverse effects of abortion, such as that it causes breast cancer or infertility, which it does not, or terrible mental health problems, which it also does not, or that abortion methods that went out of date 50 years ago because they were replaced by safer methods are still being used in the UK.

We disagree that family planning and abortion information and counselling cause serious offence to viewers or listeners in this country; there is no evidence to support such a claim. Use of contraception among those who are sexually active and seeking to avoid unplanned pregnancy is almost at saturation level in the UK. Most people

⁴ See the full journal issue of *Reproductive Health Matters* 2006;14(28) on condoms and their value from a global perspective.

with religious values are supportive of and use contraception, and the great majority also understand and support the right to seek a safe, legal abortion. We believe that a small, vocal minority of those who are opposed to both contraception and abortion make these claims to give validity to their wish to ban both, but never offer evidence of such offence among the public. It is possible to be personally opposed to abortion but also recognise that it will happen in spite of such views and support the right of others to safe services.

We therefore do not feel that policy or regulations on advertising contraceptive and abortion services or information should be based on concerns that they may be offensive.

Many thanks for the opportunity to respond on these important matters.

Yours faithfully,

A handwritten signature in black ink that reads "Marge Berer". The signature is written in a cursive, flowing style.

Marge Berer

Editor, Reproductive Health Matters

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BCAP Code Review Consultation
Code Policy Team
Broadcast Committee of Advertising Pracice
Mid City Place
71 High Holborn
London WC1V 6QT

June 22nd 2009

Dear Sir or Madam

We enclose a hard copy of our submission to the BCAP Code Review Consultation, as promised in our email to you, which we sent on Friday 19th June at 2.15pm, with the Word document attached.

Thank you for inviting responses to your Code Review.

Yours faithfully

Sarah de Nordwall Claire Mullarkey

Sarah de Nordwall and
Claire Mullarkey
Right to Life
0208 992 7657

Responding to Question 62ii

Given BCAP's policy considerations, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

No, we do not think that that rule should be included in the proposed BCAP Code for several very important reasons.

1) Family Planning centres, that refer women for abortion, are portrayed, as a result of Clause 11.11, as offering the 'full service.' We are concerned that this impression is misleading and could even be dangerous to women for several reasons:

a) Abortion providers are not obliged by law to offer Informed Consent.

Informed Consent must include providing information which:

- Is given in a form comprehensible to the patient
- Involves explanation of the nature of the procedure
- Mentions existence of alternatives
- Mentions all possible risks

The Royal College of Psychiatrists is calling for improved "good practice" amongst Abortion providers. Surely reform should come before further widespread promotion on TV?

The Royal College of Psychiatrists in March 2008 stressed that women should not be allowed to have an abortion until they are counselled on the possible risk to their mental health. They state on their website that they recommend 'a full systematic review around abortion and mental health.'

'The Royal College of Psychiatrists recognises that good practice in relation to abortion will include informed consent.

Consent cannot be informed without the provision of adequate and appropriate information regarding the possible risks and benefits to physical and mental health.

This may require the updating of patient information leaflets approved by the relevant Royal Colleges, and education and training to relevant health care professionals, in order to develop a good practice pathway.'

Also, it should be noted that, those who already have a past psychiatric history are **more likely** to suffer from adverse consequences of an abortion, rather than finding the abortion to be therapeutic (Zolse and Blacker 1992 British Journal of Psychiatry)

The British Journal of Psychiatry (2008) Fergusson, Horwood, Boden conducted a very robust study of 500 women studied to the age of 30: they found that the women who had had abortions, had rates of mental disorder that were about 30% higher than women who actually had their babies.

This clearly challenges the grounds on which 97.6% of abortions are carried out in this country – namely the risk to a woman’s mental or physical health.

The above study also pointed out that abortion compared with a live birth is statistically linked to an increased risk of alcohol and drug misuse (BJP 2008).

As BCAP aims to prepare advertisements “*with a sense of responsibility to consumers and to society*”, it seems counter-productive to allow an industry in need of review, to promote itself so widely on TV at this time.

Women themselves are speaking out and saying that they are not being made aware of the dangers of abortion. The BCAP is in danger of contributing to this culture of misleading women, with this clause. The following examples illustrate this clearly;

Two organisations calling for informed consent have been set up by women who have suffered severely as a result of their abortion experiences. They are British Victims of Abortion and The Pro-Informed Choice movement.

British Victims of Abortion (BVA) was started in the UK by Margaret Cuthill who had two abortions. She did not realise to what extent the abortions were the cause of the trauma and difficulties she experienced in daily life. Once she had recognised her problem, she set up BVA with other women who suffered the same experience.

For other stories and the type of help required by many women after abortion (sometimes many years after) you can see the British Victims of Abortion website: (<http://www.bvafoundation.org/default.asp>).

The ‘Pro Informed Choice Movement’ is a coalition of women who do not feel that the current system met their needs to enable them to make an informed choice.

The movement is led by “Reannon”. She reports the anger she felt at being told her child was not a baby and then seeing its perfect form “delivered” on the toilet. She remembers thinking – ‘this was not the way I had wanted to bring my first child into the world’. A nurse, seeing her distress, gave her a card with numbers about counsellors she could talk to. She was astounded that this was so readily available

and **could have been given to her before the abortion**. She felt utterly betrayed by a service that had downplayed the possible effects on her emotional and mental health. She added that the staff seemed indifferent to the fact that many girls returned in great anger after their abortions.

Reannon was dismayed when she found that information leaflets she had later produced at no cost to the clinic, concerning counselling options for girls in a similar situation to herself, had not been displayed. In reality there appeared to be no motivation to respond to the real and felt needs of clients.

Her DVD 'Reannon's Journey' is available from Pregnancy Crisis Norfolk (01613 616580). It provides her story and that of five other women. Women such as these often feel that government bodies have little interest in hearing their experiences.

We would like to alert the BCAP, who would be responsible under the new code, for allowing advertisements for abortion, that Post Abortion Syndrome, as well as extensive grief, are part of many women's (perhaps delayed) experience of abortion, and that advertisers who are promoting abortion and stand to make money from it, are unlikely to be including the full facts to women.

b) There is a grave lack of information given about possible physical effects to the mother and to future babies

In an article in Obstetrical and Gynaecological Survey (2002), (Thorp, Hartmann, Shadigian) recommended in addition, that 'women contemplating their first induced abortion early in reproductive life, should be informed of two major long-term health consequences –

- (i) their risk of subsequent preterm birth & very low-birth weight due to damage sustained to the immature cervix as a result of the abortion procedure
- ii) the loss of the protective effect of a full term delivery on their lifetime risk of breast carcinoma.'

They argue that failure to supply this information is a direct threat to maternal autonomy, diminishing a woman's ability to give informed consent.'

c) It is claimed that Advisory services that do not refer for abortion, present a risk to women. This is untrue.

Indeed, they will always refer women to their GPs, if they decide to have an abortion. There is therefore no material delay if the woman wishes to go ahead with the abortion.

There is no requirement in the new BCAP Code for pregnancy advice services who do not offer full Informed Consent, to state this in their advertising. This clause 11.11 therefore amounts to a

stigmatisation of the caring service offered by pregnancy advice centres that do not carry out or refer for abortion.

We are concerned that this clause will give women, who are in a state of panic or fear and who feel, at first, that abortion is the only solution, a disincentive to go and receive the full and informative advice necessary for informed consent. There are also other kinds of help and assistance available at centres who do not refer directly for abortion, that they will then be deprived of: these are described below.

As Reannon mentioned in her Pro-Informed Choice talk, she was absolutely adamant that she wanted the abortion at first, so much so that she was afraid of revealing any doubts at all to the doctor. This abortion she then had and came deeply to regret, as described in detail above. She would never have approached a service that did not refer for abortion. However, looking back she now knows that she would have received counselling and offers of assistance that would have helped her avoid the most agonising experience of her life.

Advice centres who do not refer for abortion, do offer the full counselling and caring service required for Informed consent, plus more assistance to cope with a decision relating to bringing a disabled child into the world. They will often offer material assistance if the woman requires it. We repeat they will always refer girls who want to go ahead with abortion to their GPs.

This clause aims to make women fear, or at the very least, be wary of advice services that do not refer for abortion. It would be much more appropriate for the protection of women that any additional clauses, qualifying the nature of advice, stated that Pregnancy Advice Services offering abortion **do not offer the quality of advice necessary for Informed Consent.**

It is important that woman are not encouraged to seek advice only in places where the abortion mentality has become so entrenched that reluctance to abort is treated with something amounting to contempt in certain circumstances.

For instance women at scans in hospitals often report being pressurised into “choosing” abortion, when their baby is diagnosed with an illness. This would not happen in an advisory service offering a full caring service. Help and contacts would be given, rather than a sense of guilt at wanting to bring a disabled child into the world. One very specific example of this is described in full in Sarah Williams’ astonishingly moving book “The Shaming of the Strong”. It took a great deal of courage for her to stand against the abortion mentality of certain medical professionals and to carry her child to term an experience that turned out to be profound and healing for all those involved. The abortion mentality denies many the experience of a lived compassion that takes them far beyond their imagined potential. Medical literature makes it clear that some couples who have a disabled infant aborted, afterwards consider that they have failed in protecting that child.

The BCAP in promoting clause 11.11, is adopting a specific ideology that stigmatises advisory services that do not offer abortion, and is creating a sense of false alarm about the risk to women of attending such services.

Allowing such misleading myths to be perpetuated by this clause 11.11 would be a serious injustice and would put women at risk, as illustrated throughout this document. The experiences of such women as Reannon, who was not – and is not - pro-life, but wanted to know more about what her abortion would entail, should speak volumes to those entrusted with the care of women. Her voice was not heard, and is not being heard now. This clause as it stands will help produce more tragedies such as Reannon's.

The Code that governs BCAP's principles is quoted on the website as saying that "these codes of practice create a level playing field for all advertisers". The above examples illustrate that this clause is likely to be construed by consumers in a misleading way such that pregnancy advice services not offering abortion will appear to be offering a lesser service, whilst the abortion offering services will appear to be offering the "full service". We have illustrated however that this is not so.

The level playing field for advertisers in this arena of pregnancy advice is also unlikely to be established for 2 other reasons: firstly the clinics and centres offering abortion are well funded and make money either privately or through being contracted to provide abortion. Pregnancy advice services that do not offer abortion have no such money making machinery at their disposal and will be more likely not even to enter the playing field at all – level or otherwise. To therefore present to the public so biased a view of the nature of these clinics, without genuinely offering airtime to differing services or views, amounts to a material discrimination against balancing views, services and arguments.

If the BCAP really is committed to not misleading the public and to not allowing people to be harmed then the determining factor is not just that advice service refers for abortion or not – the real discriminating factor should be the quality of advice and assistance available to the women. The clinic must mention the possible side effects and examine clearly the nature of the act involved. Many women state that they did not know what their abortion would involve and were explicitly told that their unborn child was not a child. The possible side effects were played down. This clause 11.11 acts as a diversionary tactic to draw attention away from the nature and consequences of abortion. The BCAP is committed to high standards when it comes to advertising medicinal products. Abortion is a medical procedure. "4.20 – Side effects – Advertisements for medicinal products must not suggest that the effects of taking the product are unaccompanied by side effects."

Advertisers of pregnancy advice services that do not offer abortion (should they ever find the funds to advertise, which is unlikely) must be allowed to state that they offer a more thorough counselling service which includes truthful acknowledgement of possible side effects. The advertisements for Family Planning Clinics that offer abortion do not speak honestly and clearly about side effects yet they

claim that they offer balanced and unbiased advice. This is not true. The BCAP will be in breach of its code if these advertisements for clinics go ahead with no mention of side effects, whilst they include a clause calculated to deter women from going to services that will help them reflect on the full truth of the situation, whilst not at all preventing them from securing an abortion via a doctor if that is what the woman decides after informed reflection.

Abortion is not just another product. It involves an irrevocable decision about the death of one's own unborn infant. To insist that the only fact that needs to be made explicit is whether a service refers for abortion or not is actually to distract the public from this very real fact.

- 2) **The BCAP is committed to not leading people into harm's way. However, if the aim of advertisements for abortion services is to address teenage pregnancy, then it is likely that those being targeted by the advertisements are the ones most at risk of damaging consequences.**

Zolse and Blacker (1992 BJP) in "The Psychological complications of Therapeutic Abortions" state

*"Certain groups are especially at risk from adverse **psychological side effects** - these include ... younger women and those with poor social support.."*

As stated before this younger age group are also more at risk of **sustaining physical side effects**, as illustrated in point 2 b above which states –

'women contemplating their first induced abortion early in reproductive life, should be informed of two major long-term health consequences –

- (i) their risk of subsequent preterm birth & very low birth weight and
- ii) the loss of the protective effect of a full term delivery on their lifetime risk of breast carcinoma.'

Again, will the BCAP instead of insisting on Clause 11.11, require that pregnancy advice centres who are advertising their services, also mention possible side effects of the procedures on offer, since they know that clinics offering abortion are reluctant to acknowledge them because of their ideological positioning.

- 3) **It is claimed by Abortion supporters that TV ads will "de-stigmatise abortion". This will trivialise its seriousness and put people at risk. Is this the BCAP's role, to socially engineer the universal acceptance of abortion?**

The CEO of Marie Stopes, Dana Hovig, said in an interview recently about abortion "there is still a stigma, and if it can go on television then it will help de-stigmatise it."

However, is it really social disapproval that is the problem with abortion?

On the contrary, social approval of the case for abortion is widespread, but the understanding of its risks is not. Why is the BCAP taking on the role of social engineering? Is it any part of the BCAP's role to be normalising the destruction of human life in the womb, even to a late stage? We will also be writing to Ofcom in order to discuss with them the political nature underpinning the support of this clause and campaign.

Men like Dana Hovig try to present concern about abortion as "a dose of hysteria". They present themselves as offering nothing but the facts and add that anyone who questions this presentation of their claims is somehow "pro" the death of women. None of these assumptions is backed up by fact, reliable statistics or common sense.

If these are the views of those who are proposing to advertise, it seems highly unlikely that they will present the realities of abortion to women.

Again the clause gives the impression that the only risk is the apparent delay that may (or may not, in fact) result from going to a centre that does not offer abortion.

This impression is misleading and therefore potentially harmful to women, who may therefore avoid a service that would give them the opportunity to hear medical facts that are very necessary to their decision-making process. If the BCAP could be shown to have been complicit in prejudicing women against the use of such services, they could be held to be morally responsible for the lack of information that was received prior to a perhaps disastrous abortion procedure. Are the BCAP willing to take on this responsibility?

4) Advertising will benefit commercial providers of abortion, but not necessarily women.

The BCAP must be aware that the type and quality of advice, including medical advice, on offer in clinics that do not offer abortion, will be of the kind that often does not highlight possible side effects. The BCAP will be sending women (by condoning these advertisements) to those who will benefit commercially from the ending of their unborn child's life. Is this moral?

Through the condoning of these advertisements the BCAP is putting women in harm's way and discouraging them subtly through the use of clause 11.11 from using services which might be greatly beneficial to them. These are the very services who would not be making money from their services and who will probably not be able to advertise at all.

Through condoning these advertisements and the mentality implied by clause 11.11 the BCAP is also showing disregard for the concern of GPs who are becoming increasingly reluctant to make abortion easier.

The views of GPs

There is no guarantee of safe abortion for women, if their physical, mental, emotional and spiritual health is taken fully into account.

General Practitioners, who are the group required primarily to care for girls in the aftermath of an abortion experience, are expressing concerns about the possibility of making the availability of abortion easier. A survey of GPs reported in GP Newspaper, 13 Feb 2009 showed that:

- a) More than a third of GPs who responded to the survey said they would refuse to work in a surgery or polyclinic that offered abortions.
- b) Sixty-one percent did not believe that local practices should be offering Early Medical Abortions (EMAs) at all.
- c) Dr Sarah Jarvis, Royal College of General Practitioners spokeswoman for women's health, warned that abortions would be 'trivialised' if they became available in primary care. Dr Jarvis evidently objects to the further trivialisation of abortion which is precisely what de-stigmatisation involves in this case. *"I have already seen an increase in the number of women coming forward for abortions. Many are now using it as a method of contraception. I certainly would not want to offer my patients medical abortions."*
- d) Half of the GPs wished to see the current 24 week limit for abortion lowered, with 1 in 10 calling for it to be cut to 15 weeks or less.
- e) 75% of GPs do not want to see the number of doctor's signatures needed for an abortion cut from two to one.

These concerns reflect GPs' clinical experiences and should not be brushed aside by the agendas of pro-abortion pressure groups, some of which benefit financially from abortion and the promotion of contraception.

Why is the BCAP Code promoting the views of pro-abortion groups (such as the Independent Advisory Group's) and simply ignoring those of others?

- 5) **The BCAP are not meant to be a tool for the promotion of Governmental ideology. What about the level playing field required to protect young people from propaganda? The Code claims that the BCAP aims to be honest and decent. The placing of pro-abortion clinics in prime time TV without the presence of counter-arguments on air, amounts to the blatant**

promotion of abortion and its normalisation in the minds of viewers, who have turned on their TVs to be entertained and informed not manipulated.

This could result in the BCAP directly supporting a social engineering initiative that aims not just to promote abortion but to stigmatise those offering other caring services.

The clause 11.11 highlights an illusory danger, whilst real dangers are ignored.

Failing to warn people of real dangers is an important omission. Although this clause appears merely factual, its presence indicates a desire to deceive, by presenting implicitly a reason not to attend a particular service. This is how it may be read in the minds of those seeing it. The service offering abortion will then be in a position to obtain the result desired by the government which is the lowering of teenage births at the expense of the already living child in the womb and the woman who may suffer the consequences.

The BCAP are therefore becoming complicit in a policy promoted by the government which has already failed to produce the desired result of lowering teenage conceptions. In fact the policy as we will now illustrate has not only failed but is bringing about more of the problems it aimed to resolve. The BCAP will be supporting this failed and destructive policy, if this clause is not removed and replaced instead with authentic information about the dangers and realities of abortion.

We illustrate these points below:

The Department of Health Campaign of promoting abortion and contraception among teenagers including under age children, has in effect, contributed to the on-going sexualisation of the young.

According to a UNICEF report, 'An Overview of Child Wellbeing in Rich Countries' (2007), almost 40% of UK children of 15 under, are sexually active. This is almost double other nations in Western Europe, where the rate is between 15% and 28%. Dr Trevor Stammers, an international authority on teenage pregnancy, has reported repeatedly that 80% of unplanned pregnancies in teenagers occur in couples using contraception.

- **More than 50% of Teenage pregnancies already end in abortion**

Current figures show that already 50% of all teenage pregnancies in the UK end in abortion (Office for National Statistics). As minors are named as amongst the high risk clients for abortion in reliable studies, it hardly seems advisable to emphasise abortion as a solution on TV, especially as minors are likely to be the ones most susceptible to influence.

- **Repeat Abortions are becoming more prevalent**

It is misleading to present abortion as a solution to teenage pregnancy. Abortion affects only live births, not teenage conception rates. Pregnancy advisory services claim that they have the opportunity to

introduce more contraceptive advice to pregnant teenagers or teenagers after abortions. Why then did the number of 2nd abortions amongst minors also rise last year as shown by the latest official government figures?

The latest figures available in Wales (Welsh Assembly Government Statistics) show that of the 8,765 legal abortions last year in Wales, 2,400 of the women had had a previous abortion. That's more than 1 in 4.

- **In every age category abortions have risen**

Abortions in every single age category from under 16 to over 35 rose over the last 5 years. Why then does the Government insist in believing that more contraception is the answer, when there has never been more free contraception available and so widely used?

- **Sexually Transmitted Infections (STIs) amongst teenagers are the highest in Western Europe**

As shown in the UNICEF Report, the UK also has the highest rate of Sexually Transmitted Infections (including diseases such as Syphilis and Gonorrhoea) among teenagers of any country in Western Europe.

- **Advertising abortion clinics and more contraception, merely produces more of the culture that is fuelling the problem**

From a young age, people viewing these TV adverts will be encouraged to regard early sexual activity as a "given" and even feel pressurised to conform to this culture – either themselves or by allowing their children to do so. However, this pressure to conform does not seem to be producing the happy "safe sex" depicted in 'glossy' magazines and some TV shows. This is increasingly being shown to be the case among girls, many of whom (according to Trevor Stammers and others) regret their early sexual experiences.

A study by Hallfors et al (2005, American Journal of Preventative Medicine) entitled "*Which comes first in adolescence – Sex and drugs or depression?*" questioned 13,000 children aged 13-15 followed by a 2nd questionnaire a year later.

A higher incidence of depression, drug and alcohol use was noted amongst sex experimenters. It also showed the vulnerability of girls to this culture. There were nearly 5 times more girls than boys who suffered from depression if they had had multiple sexual partners.

This confirms the UNICEF report which demonstrated that children in the UK were more sexualised and more unhappy than nearly all children in a study of 21 "rich countries".

An article in The Independent (14 Feb 2007) commented on the report stating that:

“The UK easily outstripped all other countries when it came to bad and risky behaviour. British children were more likely to have been drunk or had sex than those of any other country. The UK also had the second highest teenage fertility rate. British teenagers were much more likely to have been involved in a fight in the past 12 months than other nationalities and more likely to have been bullied.”

Far from this contracepted “safe sex” culture, helping girls to “take control” of their lives, more and more of them are feeling pressurised into early sexual encounters and into abortions that they do not really want. Many claim that they felt they had “no choice” to have their abortion, as no support was offered to them because their partners, boyfriends or parents were keen on the abortion. So much for choice and autonomy!

How different this is from the new mythology of “safe sex”, exemplified in a recent Brook advertisement whose tag line is “Have fun, be careful”. Children need to be told that there really is more to it than that. The Brook tag line appears to promote sexual activity without commitment, affection, or long term happiness. Is it beyond our society to provide a fuller vision than this

7) Why is the BCAP offering support for a failed family planning policy adopted by the Government?

The fact that abortion ads are being proposed at all, is yet another proof of the failure of the Government’s strategy to force contraceptive advice on increasingly younger children. More contraception use amongst youngsters leads to more abortion and more STDs, as the numbers of children becoming sexually active increases. Their fertility is high and their compliance in using contraception efficiently is relatively low. The UNICEF report noted that incidence of drunkenness in British teens was also rising. Therefore clubbing, drinking and “having fun” (meaning having sex) as presented in the Brook advertisement, is unlikely to contribute to an efficient use of condoms.

The entire direction of this policy springs from degrading and simplistic assumptions – namely that children should be encouraged to have sex as long as it is “contracepted” and therefore deemed to be “safe”.

Surely the more helpful response is to put resources into an education that begins with understanding the nature of one’s own dignity and the possibilities of one’s own freedom.

Advertising should be used not to encourage more young people to take the risk of aborting their unborn children, but rather to raise the status of a sexual relationship in their minds, so that they have more respect for themselves and others, including the children they are still preparing to bring into the

world. Such attitudes are far from the “dogmas” of “dinosaurs” as Dana Hovig calls them. Such aspirations are what will help young people today emerge from hopelessness and depression.

The facts above speak for themselves.

TV advertising that normalises abortion in this way will entrench a culture that needs to be understood and challenged, not blindly accepted and promoted.

8) **The Policy considerations reveal that the thinking behind the clause embraces a casual approach to the disposal of human life. However, the BCAP in its commitment to do no harm should consider that this creates a culture that has many victims:**

Women suffer– Women are often abandoned by men at the time of a pregnancy and abortion is offered as a solution to them. The ready availability of abortion could be seen to have actually increased a culture of male irresponsibility, which leaves women more vulnerable. Women may be seeing these advertisements at a time when they are feeling very vulnerable and abortion might then look to them like a solution, in which society is colluding, by supporting such a view on TV. At the very time when they might need to hear words of encouragement, receive offers of support and consider thorough information about the risks discussed above, they will instead be presented on TV with only one side of the story. Women and their gift of motherhood are again being downgraded.

Men suffer- Other people’s rights are affected by a culture of abortion. Men who wish to support and parent a child they have fathered, find themselves without rights in the present situation. They have no power to choose whether their child is born. The advertising on TV of abortion as a woman’s right continues to marginalise the role of men in parenting. It is not surprising that increasingly many men regard pregnancy as the women’s problem.

Disabled people suffer - The expectation is being created that a scan that reveals a defect in a child should lead to an abortion. The term Therapeutic Abortion is even used to disguise the destructive nature of the intention. Although only 1% of abortions in this country are done because the child is disabled (a statistic which reveals how much abortion of healthy babies is going on for social reasons) it is clear that disabled people are at risk from the abortion mentality.

Groups such as RADAR – a national network of disability organisations and disabled people are opposed to abortion on the grounds of disability. They say that it undermines the basic human rights of people with disability.

The pressure to abort increases as abortion is de-stigmatised –Narrative evidence from parents who are expecting a baby with a disability, shows that an attitude is prevalent in the medical profession, that a parent either wants or “should want” to “get rid of it”. This attitude is even seen as compassionate. On the DVD “Reannon’s Journey” the story of Alison is recounted. She had decided to give her baby up for adoption, but during the scan found that the child might have a disability. At all her appointments,

she was asked repeatedly whether she had considered abortion. She said that in the face of this pressure, it was only the strength of her faith, that convinced her not to.

As a result of this attitude, little counselling is given, at first, by the medical profession, pre-birth, as to how to care for a disabled baby after it is born. Sarah Williams in her book “The Shaming of the Strong” also cites the pressure that she and her husband were under. Less confident people might have succumbed and lived to regret it.

The unborn child - It is unknown what levels of pain the foetus may experience during the abortion process. However, *“the balance of evidence at the present time indicates that the structures subserving the appreciation of pain, are present and functioning before the tenth week of pregnancy.”* Peter McCullagh MD, DPhil, MRCP and John Mclean, former Examiner in Anatomy, Royal College of Surgeons.

In the same paper ‘Foetal Sentience’, they note, that in Australia, the Animal Experimentation Codes of Practice state that the foetus of any given species is to be given anaesthetics when being used in experiments, in utero. Unborn animals in Australia therefore have more rights than unborn babies in Britain.

However, issues of pain aside, it is not more moral to end a life just because no pain is inflicted. The existence of pain, is merely a reminder of the suffering of a fellow human. The human nature of the unborn child is not in doubt, possessing as he or she does, the same human DNA in every cell as he or she will have for the whole of his or her life. Two human parents can only produce a human offspring.

The advertising of abortion clinics helps to promote a eugenic mentality within society, in which the disposal of the unwanted is treated as a norm.

The notion of the intrinsic value of human life is profoundly important. On this principle, a civilised society is founded. Without it every one of us is in danger of being seen as existing at the whim of others. We can then be disposed of when others consider us as lacking in value and the power to resist. The value of a person should not come from how others value him or her. Each person is valuable whether others value them or not.

9) **“Advertisements offering abortion should come with a health warning”, The Big Questions**

When the above statement was made on the Big Questions, BBC this year by Jonathan Bartley it received a very positive response from a very mixed audience. The general public represented in that audience did not seem to be complacent about the risks and realities of abortion. These risks need to be pointed out at the same time as the advertisements go on air, in the same way as advertisements for

cigarettes carry warnings. Advertising sways the vulnerable more than the self assured and so it is precisely those vulnerable women who need to know the variety of the counselling available to them and also they need to know about the existence of organisations that can help them if their abortion causes more mental and emotional suffering than they had been led to expect.

Many women are very unwilling to return to the clinic where they had their abortion in order to give feedback or seek help because they are so angry and upset, therefore they need to know about other people and organisations that can help them. The BCAP Code could include such stipulations in their code review. Point 4.6 of the Code that refers to Mandatory information for medicinal products must include information that enables the user to make use of the product safely. Therefore those attending advice centres with a particular agenda (ie which support and promotes abortion) need to be told that this is the case and that this will influence the scope of the help and advice they will receive there.

We feel that clause 11.11 is warning people of the lamb and leading them to the lion!

The warnings should include the fact that abortion is not a risk free procedure and can lead to illness, infertility and in rare cases can occasionally end in death. It always ends in the death of the unborn child except in the rare instance of abortion survival in which a baby does not die as a result of the abortion. We have spoken to abortion survivors and their very existence challenges people's perception that an unborn baby is not even human. We should not be encouraging people to view abortion clinics as a safe place where all their problems relating to unexpected pregnancy will be solved quite simply, when reports have recently shown that procedures in an abortion clinic were not even in place for following up whether patients had taken the prescriptions they needed.

- Marie Stopes, is an organisation supporting the changes in advertising regulations, and who would benefit commercially from the change in advertising rules. It must be noted that the day after these regulations became public, Dr Peter Paku, a gynaecologist, conducted a termination at Marie Stopes International clinic in Leeds, (which led to the death of a 15 year old girl) told an inquest that patients leaving without their medication was a regular problem at the family planning clinic.

The inquest was also told that the clinic had no system in place requiring nurses to recheck a patient's notes after they had been discharged, to make sure that all instructions had been followed and prescriptions issued (The Times 27 March 2009).

Young people are the victims of the type of advertising that has promoted aspirations towards idealised and irresponsible versions of sexual activity that were labelled as freedom, but have led to the abortion clinic. Post Abortion Syndrome is a reality for many, as is infertility caused by STDs and also in some cases, by abortion.

Surely the BCAP would be better advised at this time to consider how the culture of its advertising generally is contributing to the lifestyle choices that are leading to the problems that the government is trying to solve through contraception and abortion. The government and perhaps even the BCAP could well be called to account for increased rates of post abortion syndrome.

11) **We need to listen to those who have suffered and who work with those who suffer, before promoting simplistic and potentially disastrous “solutions” on TV. This is the only way the BCAP can honour their commitment to do no harm.**

A frequent observation made by post abortion councillors is that at some point during the abortion conveyor belt system many girls had actually wanted to change their minds, but had felt unable to because they were fearful of inconveniencing the facilitators of their abortion by backing out once the consultations, paperwork and arrangements for the operation had commenced.

What does this say about the psychological status of such girls? The reluctance to withdraw from such a momentous act which will affect the remainder of their lives, because they don't wish to cause an inconvenience, is surely a significant indication of their extreme vulnerability and highlights the utter dearth of adequate communication and duty of care towards these confused and frightened women.

It is yet another reason why we should ask carefully whether a woman is really making a free choice, when she is asking for an abortion.

Many women who abort in haste and repent at leisure, need more from society than TV adverts that sell abortion as a solution to their problems.

As Professor Phillip Ney (Professor of Psychiatry, University of Calgary) says

“The grief following abortion can be complicated and prolonged because

- *one does not get to see and hold the dead body*
- *the baby has been dehumanised*
- *the death was contributed to by the mother*
- *society does not encourage a woman to talk about the grief following an abortion,*
- *professionals are either uninterested or incapable of helping women who consult them following an abortion*

- *and as the abortion is supposed to be a non-event, the mother does not allow her mind to grapple with the problem.”*

‘From clinical and research observations, I have concluded that abortion is the most deeply damaging trauma that can happen to any human. Abortions are particularly damaging when happening to women who have already been hurt by mistreatment in childhood or in adulthood. Obviously, if the damage is this deep, then the treatment also must be extensive... Since I have worked in treatment with some of these women, I can attest to the truth of their pain and their courageous struggles’ (And Still They Weep’ SPUC Educational Trust 1996).

The proposed stigmatisation (through clause 11.11) of pregnancy advice centres that offer balanced advice and are aware of the possible effects of abortion, would be detrimental to women.

In the face of this evidence and the testimony of our informed reasoning, we would ask the BCAP not to contribute to a culture that denies the reality of grief after abortion.

We would invite the BCAP not to play a part in normalising the destruction of unborn life, whilst implicitly discouraging them away from the advice centres that might offer them the very support they need.

Responding to question 147

Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no please explain why.

No. We do not think this should happen because we believe this will lead more children into more harm and not protect them. Why do we think this?

Normalising the use of condoms by children is promoting sexual activity to children, without presenting the reality of its physical, emotional, psychological, social and spiritual implications. It will lead the children into harm and be profoundly counter-productive.

- 1) The policy considerations reveal that the thinking behind the decision is faulty, shallow and misleading.**

The BCAP restricts the showing of advertisements of high fat food products, matches and even vitamins, because they recognise that such products require a certain maturity, in order to assess the risks of their use. Condom use by children however, is to be portrayed as a healthy choice, protecting them from the negative consequences of sex, which are deemed to be STDs and pregnancy.

The Policy Considerations quote Baroness Gould as saying that advertising Sanitary Products de-stigmatised them and so condoms could be de-stigmatised too in the same way:

“the lesser degree of restriction placed on sanitary protection products has helped normalise those products.. (so) advertising now associates them with healthy and active lifestyles”.

Right to Life would like to point out that such an argument fails to mention that the nature of these two products is significantly different, as are the consequences of choosing to use them. One is about hygiene, related to a naturally occurring bodily process. The other is about the prevention of the creation of a human being. That is not a hygiene issue. It is an ethical choice with moral, psychological, relational and cultural implications.

Condom-use, is therefore to be identified unambiguously with “healthy lifestyle choices” for children.

Is this really telling children the full story about the nature of the sexual life and its possibilities?

Children making a choice to engage in illegal underage sex, (whilst having been convinced that they are protecting themselves, infallibly, from all harmful consequences, just through the use of a condom,) is hardly a decision of the same status as that of choosing to use a sanitary protection product. Far from protecting children from harm, this could well be leading them into it.

The “Have fun, be careful” imagery of the Brook (non-broadcast) advertisement is a current example. Is underage sex just “fun”? Will condoms protect young people from all the issues that underage sex brings with it or will the promotion of condoms around children’s programming promote an ideal of underage sex that motivates more children to experiment, so leading to more of the very problems the advertisements would be trying to address?

2) Statistical evidence and common sense illustrate that these advertisements will lead to abortion rates rising

Advertising condoms as the answer to ‘consequence-free’ sex, ignores some very significant statistics. As we have previously stated, Dr Trevor Stammers, a worldwide authority on teenage pregnancy, has warned repeatedly that 80% of teenagers who become pregnant are using some form of contraception.

Even used by adults, the condom has a failure rate of 14%, when used “typically”. (Henry J Kaiser Family Foundation, ‘Condoms- fact sheet’ May 2001) . This is likely to be higher in typical use by teenagers, especially if they have been drinking alcohol.

The reality therefore, is that, at the very least, 14% of sexually active teenage girls whose sexual partners ARE using a condom, could be faced with the trauma of an abortion dilemma or the abortion clinic itself.

The rising numbers of 2nd abortions speaks volumes about the connection between the promotion of contraception and the necessary prevalence of abortion to “mop up” the “contraceptive failures.”

Will the advertisements mention – as mandatory information – the likely failure rate of the condoms?

If not, the BCAP will be responsible for at least 14% of the teenagers who respond to their advertisements by obtaining and using condoms, finding themselves in an abortion dilemma, unexpectedly.

Promoting sex with a condom as “safe”, gives young people a false and dangerous sense of security around having even casual sex. The reality is that many more of these experiences lead to pregnancy than they expect. How can that not be construed as leading children into harm?

3) More condom promotion in fact leads to higher not lower levels of STDs

Evidence clearly shows that greater promotion of contraception has encouraged more underage sex, therefore leading to more STDs because they do they provide protection from all STDs. Even when used consistently, the condom only reduces the risk of HIV to 85-90%. It provides even less protection against human papillomavirus (HPV), which is the leading cause of cervical cancer.

Early sexual experience leads directly to a much higher risk of cervical cancer because the immature cervix is unable to resist the virus in the same way as the mature cervix.

It is therefore wholly irresponsible for these adverts to promote condom-use as ‘safe sex.’

The fact is that we have the highest rate of Sexually Transmitted Diseases among children in Western Europe. Having sex younger, which tends to lead to having more sexual partners, has also contributed to the rising numbers of STDs.

Since the government’s Teenage Pregnancy Strategy was introduced, (a strategy prominently based on greater access to contraception) teenage STDs have escalated from 100 cases per 10,000 people in 2000 to 160 per 10,000 in 2007 (almost two thirds higher).

Will these advertisements warn children about the risks of STDs even when they ARE using condoms? The BCAP is committed to honesty. Will the advertisements mention that condoms do not give protection from all STD’s and then state which those are? Will they emphasise that some STD’s have no apparent symptoms and yet can lead to infertility? The BCAP is committed to not leading viewers of its advertisements into harm.

4) Condom promotion for children, misleads them about the nature and consequences of sex and leads them into emotional vulnerabilities for which they are not prepared.

If the advertisements continue to promote the type of message that Brook created that only speaks of “fun” and “being careful” as though that was all that needed to be thought about, they will surely be said to be misleading at the very least. Young children of 10 do not have the personal or social, philosophical or psychological maturity to examine the messages in these simplistic appeals. They will amount to a direct exploitation of children and their burgeoning desires, which will make money for those selling condoms (directly to young people or to the Government) but will lead many young people to regrettable experiences and also to the abortion clinic, which the BCAP is helpfully offering to advertise as well, to mop up the “contraception failures” .

5) More condom promotion leads to a banal and demeaning culture for children

The anxieties associated with being used for sex, and then abandoned for another sexual partner, will surely be increased when experienced at a tender age. Teenage anxieties are acute enough without aggravating them with unnecessary sexual complications. Sex is a pair-bonding experience that is not intended by mother- nature to be continually torn apart.

There is evidence of increasingly brutalising sexual behaviour amongst the young such as “daisy changing” (in which young girls are encouraged to have sex with several boys, one after the other) and also the trend of sending compromising photos of young girls taken on mobile phones to others. These are sometimes posted on the internet. This amounts to a kind of sexual abuse of children by children and can be seen as a consequence of a commercial and “entertainment” environment that ruthlessly exploits the appeal of sex to younger and younger children. The BCAP code should be challenging this culture amongst its advertisers, not adding to it under the guise of attempting to mitigate some of its worst effects.

6) Condom promotion, leading to a promiscuous culture in the young, could lead to more depression and alcohol and drug abuse for children

In the American Journal of preventative Medicine a study by Hallfors et al in 2005 showed Higher incidences of depression, drug and alcohol use amongst sex experimenters. It also showed the increased vulnerability of girls to this culture. There were nearly 5 times more girls than boys who suffered from depression if they had had multiple sexual partners.

The emotional fall-out and the lowering of expectations amongst young people are only two of the tragic cultural consequences of the increasingly brutalised environment that has been created for our children and will now be promoted as utterly normal, through these TV and radio advertisements, if these proposals go ahead.

7) This could also be seen to be promoting promiscuity, which is against the BCAP’s own code.

The type of culture that this behaviour creates can be seen to be banal and demeaning, as illustrated above, even amongst those who are several years older than the children who are to be targeted in the present campaign. The BCAP must take into account the foreseeable cultural consequences of its advertising messages if it is to remain congruent with its principles of responsibility towards viewers.

8) The advertisements could also be seen to be encouraging illegal activity.

The proposal of advertising condoms to children as young as ten, shows a blatant disregard for the legal age of consent of 16 years old and appears to be a case of the politics of despair and cultural inertia.

Advertisements would be in danger of presenting the idea that illegal uncommitted underage sex is merely part of a “healthy and active lifestyle” as long as a condom is being used. Many of these children may even be unaware that sex at such an age is illegal.

- Will the advertisements mention that sex under the age of 16 is illegal?
- Will they discriminate between sex that the children in the advertisements are having with other children and sex they may have with adults?
- Will the advertisements mention that sex with an adult could lead to the adult being prosecuted?

This surely is mandatory information for the legal use of the product. How will the BCAP claim not to be leading children into harm if these points are not mentioned?

9) Is it possible that the ground is being prepared for the abolishing of the age of consent?

The social consequences of a new consensus over the “inevitability” of increasingly large numbers of underage children engaging in sexual relationships, could be that the ground is being prepared for the age of consent to be abolished altogether.

If sex between children is to be made “safe” by the use of a condom, what is to stop adults soon having sex with children legally as long as they use condoms? If such a reduced view of sex is to triumph, in spite of all the statistical and narrative evidence that would suggest that there really is more to it than that, then what is to prevent any sex at all being promoted as fine, as long as it is being done “safely” with a condom?

In the name of “health”, a great change could be wrought in the minds of the very young. It will be hard for them to consider sexuality on a more profound and meaningful level. True dialogue and reflection and time for real maturity are being replaced by product and agenda promotion.

10) These advertisements could be exploited as the grooming of children for sex by paedophiles

The grooming of children for sex by paedophiles is a serious offence. If the BCAP Code is allowing children’s sexual activity to be normalised on television, it is possible that paedophiles could use these advertisements as reasons why children should be having sex with them, as long as they are using a condom. The ‘Have Fun, Be Careful’ ‘ethic’ would surely apply here, standing as it does, so entirely outside any moral framework.

11) Condom promotion amongst the young leads to earlier sexual experiences which are fuelling the problem and not creating happiness and fulfilment in the young

The government in its promotion of abortion and contraception has done more than any other government body in Europe to create a culture of sexualization amongst the young.

Children are very influenced by the programmes they see. The characters in the ads who will appear to be like them, will present role models for them. Underage sex is therefore likely to appear aspirational. If other young children like them are seen as having sex without a hitch and only having to remember to put on a condom, then why not them too?

They are being “taught” a specific view about sex, which ignores reverence, marriage and the gift of their fertility, that is very far away from the one they might like to hold when they are old enough to reflect more deeply. By that time however, it will be too late. They may have given themselves away many times in demeaning circumstances and even become infertile or developed cervical cancer due to premature sexual experience. All of this will have come to them because it was seen to be endorsed by the BCAP code, which although well intentioned, is in fact, profoundly wrong-headed and counterproductive for the well being of children and adults alike.

12) The primary importance of parental care is being undermined

Advertising is an inappropriate way to give children such messages. Advertisements are by definition not scheduled and balanced programmes, that parents can look out for, in order to find time to discuss these issues with their children. Advertisements will aim to sell a product, as well as a lifestyle, and this is unacceptable in the light of children’s vulnerabilities and lack of experience in these matters.

When the advertisements appear, parents will not be able to shield their children from them if they do not wish them to be influenced in this way. It is nothing short of a deprivation of parental care by media outlets. This proposal in the code bears all the signs of being a one dimensional and misguided attempt at social engineering. The association in the mind of children with sex and condoms means that they learn from an early age that sex is about “using” another person without giving yourself fully to them.

The BCAP needs therefore to be providing substantial mandatory information even to ensure that these advertisements are honest. However, there is no mandatory information that they could provide that would prevent these advertisements leading children into harm.

They need to be aware that this culture is demeaning to children and even with all the mandatory information available will have begun the process of betraying their childhood.

These ads will change the culture of children’s television in the UK, which has until now been acknowledged as among the best in the world.

Our children already know more about condoms, abuse, disease and fear of each other as sexual predators, than nearly any other generation and yet this information and experience is not leading them to be happier.

Indeed the UNICEF study quoted above showed that Britain’s children ranked last on indicators of happiness and yet were the most sexualised in a survey of 21 rich countries.

What have policy makers learnt from this? To give them more of the same. The BCAP can resist this trend.

13) Evidence of the reluctance of TV channels in the USA* to accept condom ads (even for adults) because other advertisers do not want to advertise their products next to a condom ad, would indicate that this is a political and not a commercial reason for this change in regulation in the code.

Why is the BCAP collaborating a blatantly ideological manoeuvre? Why can the review not ask for a fresh approach?

The government’s desire to introduce long acting contraceptive jabs and their willingness to spend millions on injections for 12 year old girls to protect them from certain of the viruses associated with the cause of cervical cancer, illustrates that they are aware of the limitation of condoms. Advertising condoms however, rather than stressing that underage sex leads to many dangers that condoms cannot

save children from, is a project doomed to be costly to government and destructive for children. Again, the BCAP has all the evidence before it to help it resist such a disastrous trend.

*See page 8 of <http://www.kff.org/kaiserpolls/3135-index.cfm> [Daily Health Reports Special Issue Condom Advertising on Television](#)

It would be an immense relief if the BCAP would choose not to be a part of the problem.

- 14) **The BCAP has an opportunity to send out quite different messages about sex and aspirations by reviewing the standards of its advertisements that normalise and idealise the glamour of casual and promiscuous sexual relationships.**

Relationship education and an understanding of the nature and possibilities of our dignity could be a pleasant surprise to many young people and would greatly enhance their well-being both mental and physical. It is not the BCAP's responsibility to provide this information but it is their responsibility to do no harm and to review the messages of existing advertisements to see if the culture that is being created is leading children and adults alike into an irresponsible and falsely idealised sense of sex, that denudes it of meaning and authentic content, whilst still leaving them with the negative consequences of STDs and pregnancies that have not been prepared for.

Advertising has exploited the natural desire for sexual fulfilment more than any other medium, in order to attract people to products that in fact have nothing to do with sex. Examining the morality of this approach to product sales is the only thing that will contribute to the transformation of a culture that does not exploit the yearnings and vulnerabilities of young and old alike. Advertising condoms to children or even thinking about proposing to do so, is merely a blatant admission of the disastrous direction in which the tonality of much advertising has already led.

It is not an act of responsibility to consider putting out these advertisements it is an admission of utter failure and a total dereliction of all cultural duty to do no harm.

- 15) **There appears to be no other country proposing such a move. On what robust study or evidence was such a suggestion made?**

Was it merely the Government's Independent Advisory Group on Sexual Health and HIV of whom Baroness Gould is the Chair? She was the person who equated the de-stigmatisation of sanitary products with condoms. Was it also the survey reported on the Brook website, to which 87 youngsters responded, which claims that it has informed the proposed changes (<http://www.brook.org.uk/content/Default.asp>).

We need to be much clearer about why this is being brought about, before children are assaulted by what could amount to “peer pressure”, constructed and endorsed by adults from “above” through the world of TV. There needs to be a much broader consensus before such important cultural decisions are made.

There is no logic to this policy other than that of an agenda of sexualisation, that ignores all the indicators of common sense and all the statistics concerning STD’s, abortion, mental illness and the distressing signs of brutalising trends amongst the young.

Television helps to set the tone; it furnishes the imaginations and aspirations of the young. Let’s do something better with that power, than the promotion of condoms to children.

We call on the BCAP to live up to its principles and to protect children from harmful messages that will lead them into ill-thought-out dangers and repeated disappointments, which amount to an utter betrayal of their childhood.



**The Royal College of Midwives
15 Mansfield Street, London, W1G 9NH**

The Royal College of Midwives' response to the Consultation on proposed changes to the UK Non-Broadcast and Broadcast Advertising Codes

The Royal College of Midwives (RCM) is the trade union and professional membership organisation that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives and for midwives. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education, and influence for and on behalf of midwives. We actively support and campaign for improvements to care services and provide professional leadership for one of the most established of all clinical disciplines.

The RCM welcomes the opportunity to respond to this consultation and our comments on a number of the specific proposals are set out below. Please note that the first set of comments relate to proposals for both the broadcast code review and the non-broadcast code review.

Infant and Follow-on Formula

Non-Broadcast Code Review – Question 56

Broadcast Code Review – Question 85

The RCM believes that exclusive breastfeeding for at least the first six months of life and continued breastfeeding during the first year of an infant's life is the most appropriate method of infant feeding. As with other areas of maternity care, the RCM's aim is to promote informed choice and support women in their chosen method of infant feeding.

The RCM is supportive of the advertising codes including specific rules relating to infant formula and follow-on formula. However, for the reasons set out below, the RCM believes that current restrictions on advertising should go further and also ban the advertising of follow-on formula to the general public.

The RCM is concerned that proposed rule 13.8.1 (*'Advertisements must not confuse between infant formula and follow-on formula'*) will be difficult to enforce. Specifically, the RCM is concerned that many of the infant formula manufacturers use brand recognition tactics to get around the law, which can cause confusion for the public. For example, current TV advertisements for follow-on formula are difficult to distinguish from those for formula milk, and can result in confusion for the public and some health professionals. These advertisements do not breach the law as such, but the packaging and brand names used tend to be identical to those used for infant formula. This can build an impression in parents' minds that the products being advertised are suitable for infants of a younger age. For example, a MORI poll conducted on behalf of UNICEF UK and the National Childbirth Trust in 2005 found that 75% of mothers thought they had seen advertisements for infant formula.⁵

Such concern about advertising follow-on formula has also been raised by the Government's Scientific Advisory Committee on Nutrition (SACN) who have previously suggested that it should be subject to the same advertising restrictions as infant formula.⁶ The RCM also notes that the UK is a signatory to the Innocenti Declaration on Infant and Young Child Feeding⁷ which urges all governments to fully implement the International Code on the Marketing of Breast Milk Substitute and subsequent World Health Assembly resolutions in their entirety as a minimum requirement.

In the situation that advertising for follow-on formula continues, we would like to recommend that the rules around the use of babies in advertisements be strengthened - to prohibit the use of babies in follow-on formula advertisements. This can also confuse the public as to the target market for such products, as it is frequently difficult to discern the age of the baby in these adverts.

⁵ UNICEF UK Baby Friendly Initiative, Briefing Paper 2009

⁶ Scientific Advisory Committee on Nutrition (SACN), Comments on the Infant Formula and Follow-on Formula Draft Regulations 2007, accessed online: http://www.sacn.gov.uk/pdfs/position_statement_2007_09_24.pdf

⁷ The Innocenti Declaration on Infant and Young Child Feeding (2005) first adopted in 1990 and reaffirmed in 2005; declares that actions are necessary to ensure the best start to life for children, to achieve the millennium development goals and the realisation of human rights of present and future generations.

In addition to the issue of public confusion, it should also be noted that there does not appear to be robust evidence that the use of follow-on formula provides benefits to babies. In particular, the Department of Health does not include follow-on formula in the Healthy Start Scheme as research has not found clear benefits for its use as an alternative to breast milk or infant formula milk.⁸

Finally, we would like to note that RCM has in place a robust internal policy that guides the consideration and inclusion of advertisements for infant formula in its *Midwives* journal. This includes a requirement that all materials must unequivocally state at the beginning of each advertisement/information that breast milk is the superior method of infant feeding and that all materials should not use pictures or text which may idealize the use of breast milk substitutes. The advert must contain the social and financial implications of formula feeding and should be in the context of information to midwives rather than product promotion.

From 2010 this policy will be strengthened further, with the *Midwives* journal no longer accepting any advertisement for formula milk. The RCM's evidence-based journal 'Evidence-Based Midwifery' already does not accept any formula milk advertising.

Use of Health Professionals

Broadcast Code Review – Question 61

The RCM has strong concerns regarding the proposal to relax rules on the use of health professionals in advertisements, particularly in relation to removing the current restriction of advertisements for those products which have nutritional, therapeutic or prophylactic effects. Specifically, we are concerned that the presence of health professionals in such advertisements could lead to the public inferring that there are health or therapeutic benefits from a particular product, or that health professionals consider such products to be of use - even if there is no evidence or research cited that demonstrates such benefits. The current proposed rules do not appear to address this issue adequately; as public inference of benefits or health professional support could occur through the presence alone of professionals in the advertisement, without any explicit endorsement or statement of financial interest. The use of health professionals in advertisements also risks undermining the trust that the public tends to have in them, especially if such trust leads to the public making decisions to purchase products which may not have any proven benefit.

It should also be noted the relaxation of the rules could place health professionals in a position that could be difficult or in conflict with their Professional Code of Conduct. Specifically, the Nursing and Midwifery Council Code of Conduct for nurses and midwives states that, amongst other things:

⁸Department of Health, Delivering Health Start: A Guide for health professionals, 2006

- *You must ensure any advice you give is evidence based if you are suggesting healthcare products or services*
- *You must not abuse your privileged position for your own ends*
- *You must ensure that your professional judgment is not influenced by any commercial considerations*
- *You must not use your professional status to promote causes that are not related to health*

Family Planning Centres

Broadcast Code Review – Question 62

The RCM has no objections to proposed relaxation of rules which will allow family planning and post-conception pregnancy advice services to advertise on television or radio. Equally, the RCM supports the creation of a specific rule that will require those centres advertising post-conception advice services to make it clear whether the service does not refer women directly for abortion. It is essential that women are able to make an informed decision about the pregnancy advice services they wish to access and use. The current proposals should allow women to be informed in advance of the type of services that are available and those which are most suitable to their needs.

Condoms

Broadcast Code Review – Question 147

The RCM supports the proposal to relax current restrictions on television advertisements of condoms. The high levels of sexually transmitted diseases and the high teenage pregnancy rates, both indicate the need for safer and more informed sexual activity, especially amongst young people. If an increased awareness of condoms can increase their usage, it may result in long-term public health benefits.

The Royal College of Midwives

June 2009

The RSPCA request that its submissions

**relating to use of animals within advertising in the
CAP and BCAP Codes and reference to its draft
RSPCA Performing Animals Guidelines remains
confidential as this is not the final document and
RSPCA do not want it made public at this time.**

the

RSPCA Comments on the BCAP Code Review

Clarification of RSPCA's position

The RSPCA welcomes the opportunity of providing comments on the CAP Code Review. The RSPCA is one of the largest animal welfare charities in England and Wales, whose charitable purposes are to promote kindness and to prevent or suppress cruelty to animals.

The RSPCA believes that those who keep animals must have the facilities, time, financial means and level of interest necessary to ensure a satisfactory standard of care for, and a long-term commitment to their animals (RSPCA policy 3.1.1). The RSPCA advocates that all animals should be acquired by the prospective owner for the place where they were born or from an RSPCA animal centre (or other reputable rescue organisation)(RSPCA policy 3.2.1). On this basis, the Society does not believe any mechanism that encourages impulse buying or distance selling (such as over the Internet) is a good means for acquiring an animal. The review of the CAP Codes is a real opportunity to:-

(1) Clarify the requirements for advertising animals for sale by commercial traders

- (2) An opportunity to provide up to date advice on best practice on the use of animals within advertising by including reference to the newly re-written RSPCA guidance on the use of animals within advertising. This document is aimed at anyone who intends to use animals in any type of production, be that TV, advertising, theatre, live events or still photography. The RSPCA Performing Animals Guidelines promotes good practice and legal obligations, such as those contained in Animal Welfare Act 2006. The attached document is a draft copy, the final document to be launched later this year.
- (3) Consider the impact of the revised Codes on charities.
- (4) Consider reviewing not only the Codes themselves, but also the procedure governing advertising complaints. The RSPCA has read Lewis Silkin's submission and agrees with its contents and the proposal for a new system of regulation based on the US style.

1. Sale of Animals

The RSPCA welcomes the extension of scope of the CAP Codes to now include advertisements appearing in paid for search listings, preferential listings on price comparison sites, viral advertisements and commercial classified advertisements (Code 1.1(d)).

The RSPCA is a member of PAAG (Pet Advertising Advisory Group) who have met and previously discussed concerns surrounding advertisements for animals for sale with the ASA. Such adverts appear in a range of different sectors and the specific issues relating to such advertising is not adequately included within the present Codes and can result in consumers being misled for example, to the true identity of the seller (business' masquerade as individuals) and the nature of the animal being advertised. Enclosed is data from Trading Standard's which shows the type of complaints and breed of animal.

Every year, the RSPCA estimate that tens of thousands of animals are sold via classified adverts. Animals advertised for sale include birds, primates, and reptiles.

Scope

Although the scale of live animal sales over the Internet has yet to be fully quantified, research suggests it is extensive in the UK. For

example, several surveys have been conducted by the International Fund for Animal Welfare (IFAW) solely on the sale of endangered species that have the highest level of protection (Appendix 1 listing) under the Convention on International Trade in Endangered Species of Flora and Fauna (CITES). Their 2008 survey ranks the UK second out of eight countries in terms of number of Internet adverts for endangered species. They also found a surprising volume of adverts for endangered birds, with 212 recorded over the course of three months. Adverts for non-endangered bird species are likely to be several orders of magnitude higher. Adverts for live primates, tortoises and snakes were also recorded.

Primate sales were looked at in a 2005 survey by IFAW (Ref:IFAW (2005) Caught in the web: Wildlife trade on the Internet) - of 24 Internet sites found, 146 live primates were advertised for sale. A 2006 snapshot survey of classified adverts on two UK based websites (Soulsbury et al (2008) (Ref: Soulsbury, C,D, Iossa, G., Kennell, S & Harris, S. 2009. The Welfare and Suitability of Primates Kept as Pets. Journal of Applied Animal Welfare Science 12: 1-20) over four days found 49 primates for sale in 37 adverts. Another snapshot survey by the RSPCA in 2008 of five Internet sites, found at least 89 primates on sale in one day.

Not only are Internet sites providing opportunities for potential illegal wildlife sales, but as highlighted in IFAW's 2008 report, such adverts are providing the opportunity for "scam" sales of animals, most commonly birds, monkeys and bird eggs. This was found by IFAW, particularly on Web sites that run free classifieds with money being solicited from unsuspecting buyers who then receive no animal or refund.

With regard to domestic animals, in 2007 some research was done for PAGG which looked at the number and type of puppies advertised for sale on the Internet during one week looking just at Exchange and Mart and AdTrader. There were a total of 1056 puppies advertised for sale. This research is being repeated as part of the work we're not doing on the advertising of puppies for sale but is not yet complete.

Consumer Direct have seen an increase in the number of complaints it receives in relation to animal and pet purchases - it received 4627 complaints in 2008, compared to 3374 in 2007 and 2793 in 2006. Data received from Trading Standards around the country regarding complaints about adverts of animals for sale shows that from June 2005

- June 2006 there were 368 complaints, 226 of which were in relation to adverts for dogs, 90 for horse/pony adverts and 14 related to adverts for cats (a summary of this data is enclosed with this response).

The RSPCA therefore proposes the following amendments to the Code:-

- In relation to animal or pet sales, for businesses to provide their pet vending licence number in advertisements so that business' clearly identify themselves as such as well as the issuing local authority, so that the consumer can undertake his/her own checks
- To require the inclusion of "T" to denote a business/trader in adverts to help consumers differentiate "commercial classified advertisement" from "P" for "private classified advertisement" . This is already a requirement by some publications such as Exchange and Mart and Epupz. There is a real problem of commercial breeders of animals advertising as individuals and the RSPCA strongly believe that this should be a requirement of the Codes in relation to the sale of animals.
- To provide within the Codes or as an Advice Note, information concerning the legal sale of animals or pets.
 - (a) For example the Pet Animals Act 1951 prohibits the sale of mammals (which includes puppies and kittens) at too early an age.
 - (b) Certain species of animals are legally protected and documentation is required to keep or sell them. For example, under the Dangerous Wild Animals Act 1976 a licence is required to keep animals such as wild cats, venomous snakes, wandering spiders and some primates. Some animals protected by the Convention of International Trade in Endangered Species of Flora and Fauna (CITES) require a licence to keep or sell them commercially. Under the Wildlife and Countryside Act 1981, some bird species must be registered with Animal Health. Commercial sellers must ensure that the advert states and specifies what documentation is required.
 - (c) Particular breeds of dogs are outlawed under the Dangerous Dogs Act 1991 and it is an offence to sell or possess them, such as pit bull terriers and Japanese tosas. However these breeds continue to be advertised for sale using code works which the RSPCA and other animal welfare organisations know refer to

banned breeds. PAGG has is prepared a list of these commonly used terms which can be found at <http://paag.org.uk/buying-a-pet/dogs/dangerous-dogs/>.

- (d) The word "pedigree" in adverts can be used in a misleading manner as a "pedigree" animal is one by its breeding, is eligible for registration with a recognized club or society keeping a register of animals of that description. The RSPCA believe that members of the public unwittingly buy animals believing them to be Kennel Club registered when they are not. If advertised as "pedigree" then there should be a requirement for breeders to state the registration number in the advertisements.
- (e) The RSPCA believe that there is problem of puppies been born in different countries and imported into Britain for sale. Current UK rabies laws forbids the importation of any dog under 9 months old, except dogs coming from Eire and islands around the UK. The RSPCA suggest that breeders include country of origin in their advertising. The RSPCA have information concerning the import of puppies from Ireland, the figures are anecdotal (as there is no legal requirement for puppy imports to be logged) of around 1,000 puppies per week being imported from Ireland.
- (f) S6(4) of the Animal Welfare Act 2006 makes it a requirement for those who advertise dogs with docked tails for sale to hold the necessary veterinary certification. This should be included within adverts for such dogs.

By addressing the above concerns within the BCAP Code or by way of a specialist Guidance Note, this information will underpin the following provisions of the proposed new BCAP Code:-

- (1) Code 1.3.1 "advertisements must not state or imply that a product can be legally sold if it can not".
- (2) Code 3.1 "advertisements must not materially mislead"
- (3) Code 3.2 "advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner"

- (4) Code 3.3 "for advertisements that quote prices for an advertised product or service, material information [for the purposes of 3,2] includes: 3.3.1 the main characteristics of the product or service. 3.3.2 the identity (for example a trading name) and geographical address of the marketer and any other trader on whose behalf the advertiser is acting"
- (5) Code 3.11 "qualifications must be clear to the consumers who see or hear the advertisement only once"
- (6) Code 10.2 "no advertisement may indirectly promote an unacceptable product or service. For example, advertisements must not refer the audience to a website or a publication if a significant part of that website or publication promotes a prohibited product or service."

2. RSPCA Performing Animal Guidelines

The RSPCA has recently updated its Guidelines, which includes good practice for the use of animals within advertising, updating its previous guidance on the subject, which was referenced in the BCAP Code.

The RSPCA Performing Animal Guidelines is for the use of animals in events or productions including still photography, film, or television drama, advertisements, theatre, webcasts, multimedia and displays. As well as promoting good practice, the guidance includes information concerning the legal obligations towards animals, such as those under the Animal Welfare Act 2006.

The RSPCA request that reference to its guidance is included in both the BCAP (both tv and radio) and CAP Codes. Previous guidance in the BCAP Code was contained in Section 6: Harm and Offence, though with the advent of the Animal Welfare Act 2006, the issue is wider than that of cruelty and it may be more appropriate to have a dedicated section on animals in advertising.

An electronic copy of this document is included with our response and the RSPCA would welcome the opportunity to discuss the inclusion of the document, a weblink and a point of contact at the RSPCA for advice as to how to apply these guidelines or welfare concerns about animals used in advertising production.

3. Effect on Charities

The RSPCA would specifically draw the ASA's the Remote Gambling Association attention to its response in the BCAP Codes Consultation in question 102 concerning lifting the prohibition on comparative charity advertising. The RSPCA is not in support of lifting the embargo and would urge the ASA to consult with the Charity Commission before taking the proposal further. The RSPCA has also responded to the proposed amendments set out in question 99 and 32.

4. Review of the Procedure of handling advertising complaints

The RSPCA refer the ASA to a summary of the issues relating to the current system, which is included within the "other comments" section at question 157.

BCAP Consultation questions

1: Compliance

Social responsibility

Question 1

Given BCAP's policy consideration, do you agree that rule 1.2 should be included in the proposed BCAP Code? If your answer is no, please explain why.

New rule 1.2 states that “advertisements must be prepared with a sense of responsibility to the audience and to society. This rule supplements the existing rules and one observation is whether this over arching rule will be used to find against adverts that do not explicitly breach other rules?”

Other Questions

Question 2

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Compliance Section are necessary and easily understandable? If your answer is no, please explain why.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Compliance rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

Proposed Rule 1.3.1 states that “advertisements must not state or imply that a product can legally be sold if it can not” – as documented at the outset of the document there is a particular problem with the sale of animals, either of prohibited breeds or species and the RSPCA suggest that information setting out the legal requirements upon a business in the trade of advertising animals for sale for the benefit of consumers.

Section 3: Misleading

Puffery and subjective claims

Question 8

Given BCAP's policy consideration, do you agree that rules 3.4 and 3.5 should be included in the Code? If your answer is no, please explain why.

The RSPCA have the following observation to make:-

- (1) Rule 3.5 states that "subjective claims must not mislead the audience; advertisements must not imply that expressions of opinion are objective claims".

It is not clear whether "the expressions of opinion" in the proposal are those of the advertiser or those of another party that the advertiser might refer to in the advertisement. The existing wording of the Codes make it clear that it is the marketer expressing his or her own opinion. A problem could arise, for example, in the TB context, whether the views and expressions of a scientific body such as the Independent Science Group ("ISG") are regarded as an expression of opinion or an objective claim?

Significant division of informed opinion

Question 9

Given BCAP's policy consideration, do you agree that rule 3.13 should be included in the Code? If your answer is no, please explain why.

- (1) Rule 3.13 proposes to include "scientific opinion" in addition to "informed opinion" - that "advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists".
- (2) Clarification by the ASA of the terms "significant division" and "universally accepted" (the previous wording was "generally agreed") would be welcome.
- (3) In terms of adverts which are based on published scientific evidence - because of the process involved, which is based on publication, examination, debate and challenge, viewpoints may

change as further results/information is obtained and the process may well be interpreted or perceived as difference of opinion. Are those that hold a difference of opinion classed as a "significant division" and who judges whether this is the case?

- (4) There is also an amendment to the "principle" in this section that "the ASA will take into account the impression created by advertisements as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, not the advertiser's intentions" - this mirrors the wording of the CAP Code and we would question what is to be the test of "what consumers are likely to regard as objective and query whether this introduces an additional hurdle and who is to assess whether a claim might be regarded as objective?
- (5) In terms of claims, code 3.13 is new and reflects the proposed wording of the CAP Code that "advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists". Can the ASA clarify the meaning of "a significant division" and who judges this. The scientific process is based on publication, examination, debate and challenge. Results or viewpoints may change as further results/information is obtained. The process may well be interpreted or perceived as differences of opinion. Are those mavericks (which exist in every scientific field) representing a "significant division"? Because of the opaque nature of this part of the Code, the previous wording (on page 20 of the mapping document) concerning scientific research is clearer.

Animal testing

Question 20

Given BCAP's Policy consideration, do you agree that rule 5.2.7 should not be included in the Code? If your answer is no, please explain why.

Given the protection provided by the general requirement that advertisements must not materially mislead, the deletion of Rule 5.2.7 "Claims that a product has not been tested on animals are unlikely to be acceptable" is not a problem.

Other questions

Question 23

- i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules in the Misleading Section are necessary and easily understandable? If your answer is no, please explain why?
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Misleading rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?
- iii) Do you have other comments on this section?

The section on misleading advertising includes sections on product specific or audience specific rules that are intended to protect consumers from misleading advertisements i.e. "children" or "medicines", The RSPCA propose that the ASA consider including a dedicated "animals" section which addresses the portrayal of animals in adverts, their use in advertising (the guidance note produced by the Society referred to in Section 4 below) and issues surrounding misleading advertising.

The RSPCA would welcome entering into a dialogue with the ASA on inserting such a dedicated section into the Codes.

Section 4: Harm and Offence

Other questions

Question 27

- i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Harm and Offence section, are necessary and easily understandable? If your answer is no, please explain why.
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Harm and Offence rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

Yes - there is a change to Section Code 6.3 "use of animals in filming" which is to be replaced by Code 4.9 "television only "- "animals must not be harmed or distressed as a result of the production of an advertisement". The revised Code does not go far enough and the reference to the RSPCA's Guidelines for the Use of

Animals in Advertising has been deleted. Reference to this updated document should be reinstated and is included in respect of both tv and radio advertising.

The RSPCA request that reference to the RSPCA's Performing Animal Guidelines is included within the Codes for the following reasons: -

- Working with live animals is a huge responsibility and challenge and the RSPCA believe this to be a serious issue, which should be included within the BCAP and CAP Codes.
- The Guidelines are applicable to the use of animals in all mediums and the RSPCA hope that the ASA "recommend" them as promoting industry good practice as well as setting out any legal obligations towards animals in the production under the Animal Welfare Act 2006. Under the Act the owner, trainer or handler as well as production staff and the company could also hold some responsibility. Details of how to obtain copies of the guidelines to be made available to BCAP and CAP by the RSPCA. The RSPCA has a range of resources on its website to supplement these Guidelines and can provide advice on any welfare concerns.
- The RSPCA would suggest that its Guidance should be given more prominence in the Codes and not necessarily contained within the "violence and cruelty" section as the issue, since the advent of the Animal Welfare Act 2006, is wider than that of cruelty. Perhaps there can be a dedicated "animals" section within the Codes as proposed at question 23 above.

iii) Do you have other comments on this section?

[Children as presenters in advertisements](#)

[Other questions](#)

Question 34

- i) taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Children section, are necessary and easily understandable? If your answer is no, please explain why.
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Children rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

11.3.3 (1) "This does not however, prevent advertising simply showing for example, animals or children if these are the beneficiaries of the charity" has been deleted. The RSPCA request that this section be reinstated.

iii) Do you have any other comments on this section?

Section 16: Charities

Requirement to identify charities

Question 99

Given BCAP's policy consideration, do you agree that it is proportionate to replace the requirement for advertisements that include reference to a charity to include, in that advertisement, a list of charities that may benefit from donations with proposed rule 16.5.2? If your answer is no, please explain why.

For the sake of clarity, reference could be made in the Code to "general advertisements" so that it is clear this requirement is upon third parties rather than an obligation of the charity.

The requirements set out in Rule 16.5.2 generally reflects those of Part 2 of the Charities Act 1992 (as amended by the Charities Act 2006) and the Charitable Institutions (Fund-Raising) Regulations 1994. The essence of the current legislation is to try to ensure that potential purchasers are sufficiently informed about the value of the charitable contribution in order to make an informed decision about whether to donate or purchase the item in question.

Thus, whilst we wouldn't object to businesses including in their advertisements the above information as to how the donation/purchase will benefit the charity or charities linked to the promotion, there is a concern that if the wording of the proposed new CAP code does extend the requirements set out in the existing legislation, this could be perceived as onerous and put off companies and other third parties from working with charities on such promotions.

Comparisons with other charities

Question 102

Given BCAP's policy consideration, do you agree that the present TV and radio prohibitions on comparisons in charity advertisements should be deleted? If your answer is no, please explain why.

No, the RSPCA does not agree that the present TV and radio prohibitions on comparisons in charity advertisements should be deleted for the following reasons:-

- Charities are not commercial enterprises promoting products or services and they should not be treated in a similar manner. There are several legal requirements on charities in terms of regulating fundraising already and any loosening of this regime, by way of the BCAP Codes is not in the interests of the general public, to whom this change is said to benefit.
- it may be damaging to the reputation of charities to engage in this form of advertising in the public arena
- in making comparative advertising claims, charities would have to comply with Code 3.33, which may be difficult and bring charities within the remit of marketing misleading advertising. Code 3.33 states that "advertisements must compare products or services meeting the same need or intended for the same purpose" – the area of operation and ambit of a charities objects vary enormously and would in practice, be difficult to compare like for like.
- the Charity Commission is the regulator of charities in England and Wales and should be consulted as to the impact of lifting the embargo

Other questions

Question 104

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules included in the proposed Charities Section are necessary and easily understandable? If your answer is no, please explain why.

No, Section 3, 2.5 of the BCAP Code relating to comparative charity advertising should not be deleted for the reason set out above.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Charities rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

Misleading

Question 138

Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rules 3.14 (a) and (d) into the proposed BCAP Code? If your answer is no, please explain why.

Rule 3.14 states that "before accepting advertisements, licensees must establish that those wishing to advertise conduct their business responsibly and can provide a level of service commensurate with the claims in their advertising."

This is a positive obligation, which would be beneficial to maintain in the Codes, especially within the context of animal advertisements and issues relating to.

Charities

Question 151

Given BCAP's policy consideration, do you agree that it is no longer necessary to restrict advertisements for charities from appearing adjacent to any appeal or community service announcement transmitted in program time? If your answer is no, please explain why.

Yes, we agree with the lifting of this restriction.

Section 33: Other comments

Question 157

Do you have other comments or observations on BCAP's proposed Code that you would like BCAP to take into

account in its evaluation of consultation responses?

- (1) As well as revising the Codes themselves, the process of looking at complaints by the ASA Council also needs consideration. The RSPCA wishes to lend its support to the proposals put forward by Lewis Silkin in their response paper which advocates the need for a new review procedure in relation to decisions concerning advertising.
- (2) Consideration should be given to the non-broadcast ASA Council to have regard to the decisions of the broadcast ASA Council and vice versa (as contained in Code 1.4(d) of the CAP Code) as well as its own decisions in the same or similar subject area as there is a need for consistency in decision making by the Councils.
- (3) In particular there is need for an overhaul of the appeal process from the decisions of the ASA Council, as very few cases are referred back to the Council by the Independent Reviewer. The advertiser has no other recourse, save for judicial review, which is rarely a realistic option given the cost involved and the hurdles for a successful judicial review, high.
- (4) Further, the ASA should be aware that there are wider ramifications for charities whose adverts are found to be in breach of the Codes, as the Charity Commission may wish to initiate its own investigation of the charities affairs.

The RSPCA welcomes further discussions with the ASA on any aspects of its Consultation response.

By e-mail only

RWE npower

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19 June 2009

Dear Sir/Madam,

The CAP Code Review: Consultation on the proposed CAP Code

Please find enclosed, with this letter, an appendix that sets out our thoughts and responses on the questions posed by the above document that relate predominantly to our principal area of activity - the supply of electricity and gas to consumers. They are provided on behalf of RWE npower and in particular the retail energy supply activities that we conduct under the npower brand.

The review of the CAP Code is clearly timely with the onset of new consumer law (in the form of the CPRs) and, within the energy sector, the forthcoming Green Supply Guidelines, facilitated by Ofgem, with the consequent impact on green supply claims in advertising. In the above context it is imperative that the self-regulatory framework of the Code maintains its position as the primary vehicle for overseeing compliance in this area.

This is important to ensure consistency and proportionality in the application of the rules, in line with the principles of better regulation, given the potential for others to interject - whether local authorities, Defra, etc.

I hope you find the comments a constructive contribution to the continuing evolution of the Code. Do not hesitate to contact me if you require any further clarification or would like to discuss any of the issues further.

Yours sincerely,

Paul Tonkinson
Economic Regulation

Section 1: Compliance

Question 1

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules, included in the proposed Compliance Section are necessary and easily understandable? If your answer is no, please explain why.

We duly note the coming into force of the CPRs in 2008 and the read across from them in relation to marketing communications. It is therefore right that the CAP Code is amended to take account of the CPRs and that the former should be the primary vehicle for ensuring, monitoring compliance with the latter in a marketing context. This will avoid any duplication of activity and effort, say by local authorities, and also limit the risk of potential double jeopardy for marketers from issues being pursued by different bodies or regulatory/legal frameworks.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Compliance rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

There is clearly a shift of emphasis and tone within the Code and its rules, principally from "shall" to "must", to reflect and be compatible with consumer law. Our internal review processes are geared up to cope with this, but again we would repeat that the risk of double jeopardy is mitigated by ensuring that the self-regulatory framework overseen by the ASA and CAP is the means of oversight and enforcement.

This ensures the consistent application of the rules, with advice but not interjection by other bodies, and a proportionate response based around the merits of each case, as now.

iii) Do you have other comments on this section?

No.

Section 2: Recognition of marketing communications

Question 2

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Recognition of Marketing Communications Section, are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Marketing Communications rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 3: Misleading

Clarity of qualifications

Question 3

Do you agree that rule 3.10 should be included in the Code? If your answer is no, please explain why.

We note the intention of the new rule to address the increasing number of media using marketing communications that appear only briefly and the need to ensure qualifications are clearly communicated. Such clarity will be measured on the basis of the communication being seen or heard only once.

Presumably there is a read across here to broadcasting media and we would just seek to ensure that there is consistency across the piece here in respect of the clarity of the qualification and the level of detail i.e. whether on a detailed level or cross referenced to where the further information is readily available from.

Exaggerated performance

Question 4

Do you agree that rule 3.11 should be included in the Code? If your answer is no, please explain why.

This appears to conflict with proposed rule 3.2:

'3.2

Obvious exaggerations ("puffery") and claims that the consumer is unlikely to take literally are allowed provided they do not affect the accuracy or perception of the marketing communication in a material way.'

Which prevails?

What is meant by "normal" use? Will guidance be issued on this?

Restrictions on availability

Question 5

Given CAP's policy consideration, do you agree with the revisions made to rule 3.28.3? If your answer is no, please explain why.

Yes.

Testimonials

Question 6

Given CAP's policy consideration, do you agree that rule 3.45 should be amended to require documentary evidence and contact details only? If your answer is no, please explain why.

Does the requirement to hold contact details place an obligation on the holder of a testimonial to maintain up-to-date contact details? It is possible that the provider of the testimonial could move without notifying.

Additional rights provided by guarantees

Question 7

Given CAP's policy consideration, do you agree that rule 17.2 should be deleted from the Code? If your answer is no, please explain why.

Yes.

The unavoidable cost of responding

Question 8

Given CAP's policy consideration, do you agree that marketing communications should not describe items as "free" if the consumer has to pay for packaging? If your answer is no, please explain why.

Yes.

Other questions

Question 9

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on misleading are necessary and easily understandable? If your answer is no, please explain why.

Yes they are, but briefly and as mentioned elsewhere it is important that the application of the rules is done on a consistent basis, particularly with the onset of the CPRs, through the self-regulatory framework that the ASA and CAP oversee.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration?

No, other than repeating the above, particularly with the shift

in emphasis from "should" to "must" in most elements of the rules.

iii) Do you have other comments on this section?

No.

Section 4: Harm and Offence

Flashing images

Question 10

Given CAP's policy consideration, do you agree that rule 4.7 should be included in the proposed CAP Code? If your answer is no, please explain why.

Yes, provided mirrors the requirements, tone, etc of the rules that apply to broadcast media.

Other Questions

Question 11

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Harm and Offence section, are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Harm and Offence rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 5: Children

Promotions that contain a direct exhortation to buy a product

Question 12

Given CAP's policy consideration, do you agree that rule 5.7 should be included in the Code? If your answer is no, please explain why.

Yes.

Marketing communications that contain a direct exhortation to buy products via a direct-response mechanism

Question 13

Given CAP's policy consideration, do you agree that rule 5.5 should be included in the Code? If your answer is no, please explain why.

Yes.

Section 6: Privacy

Question 15

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Privacy section, are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Privacy rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 8: Sales Promotions

Withholding prizes

Question 17

Given CAP's policy consideration, do you agree that rule 8.27 should be included in the Code? If your answer is no, please explain why.

No. There are circumstances when it may be appropriate to withhold a prize where this has nothing to do with the participant meeting criteria in the rules e.g. goods that have become unlawful to sell as a result of a change in the law, or as a result of a recognised fault or danger. The rule should provide that withholding of prizes will be justified where the promoter has reserved the right to substitute the prize with an alternative of equivalent value.

Promotions directed at children; the need for a closing date

Question 18

Given CAP's policy consideration, do you agree that rule 8.17.4.b should be included in the Code? If your answer is no, please explain why?

Yes.

Prizes and Gifts

Question 19

Given CAP's policy consideration, do you agree that rule 8.17.6 should be included in the Code? If your answer is no, please explain why.

Yes.

Section 8: Sales Promotions

Significant conditions exception: limited by time or space

Question 21

Given CAP's policy consideration, do you agree that rule 8.18 should be included in the Code? If your answer is no, please explain why.

Does CAP agree that making additional information available on a website only satisfies the requirement for being "easily accessible"? Does this rule mean that references in a marketing communication piece to restrictions, exclusions and limitations applying without actually setting out what they are would comply with rule 8.18?

Distinction between prizes and gifts: a significant proportion

Question 22

Do you agree that rule 8.19 should be included in the CAP Code? If your answer is no, please explain why.

Yes.

Supervising Prize Draws

Question 23

Given CAP's policy consideration, do you agree that rule 8.24 should be included in the Code? If your answer is no, please explain why.

Yes.

Auditing instant-win promotions

Question 24

i) Do you agree that the present requirement, in CAP rule 35.8, for a promoter to obtain an independently audited statement that all prizes have been distributed, or made available for distribution on a fair and random basis is disproportionate and should not therefore be included in the Code? If your answer is no, please explain why?

Yes.

ii) Given CAP's policy consideration, do you agree that rule 8.25 should be included in the Code? If your answer is no, please explain why.

Yes.

Judging of prize promotions

Question 25

Given CAP's policy consideration, do you agree that rule 8.26 should be included in the Code? If your answer is no, please explain why.

Yes.

Other questions

Question 28

i) Taking into account CAP's general policy objectives, do you agree that CAP's Sales Promotions rules are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Sales Promotions rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 11: Environmental Claims

Question 35

Given CAP's policy consideration, do you agree that rule 11.7 should be included in the Code? If your answer is no, please explain why.

We would not wish green products to be subject to a confusion of different guidance. We would therefore caveat the inclusion of 11.7 with similar comments to those made elsewhere in our response. These relate to ensuring that the self-regulatory framework is the primary vehicle to address relevant issues and for the principles of better regulation to apply in terms of the consistency and proportionality of the associated outcomes.

In this respect, the energy sector's Green Supply Guidelines, once

in place, will provide an important reference point for consideration of the extent of any environmental benefit, as will Defra's Green Claims Code and its associated guidance, to assist any assessments under the Code allied to its help/guidance notice on specific related topics i.e. green supply in the energy sector.

Other questions

Question 36

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on Environmental Claims are necessary and easily understandable? If your answer is no, please explain why.

The rules on Environmental Claims are necessary and should be separated out given the rise in such advertising and the wider implications of that advertising beyond a consumer's immediate transactional decision. The clarity around these rules is key, and in opting for general principles, backed up by more specific, up-to-date advice through Help/Guidance notes, the visibility of the latter is very important.

In addition while the currency of the specific Help/Guidance will be maintained by tapping into relevant reference points, such as those produce by Defra and the energy sector's Green Supply Guidelines, the review and pronouncement on relevant issues should be through the self-regulatory Code, rules and associated documents.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration?

We note the reference in Annex 2 to the document, of the need to take account of Government guidance in this area, i.e. the Green Claims Code and supporting guidance. We would note also that we will soon have energy sector specific green supply guidelines that we will need to take account of!

In this context it is important that this principle and "should", not "must", takes account of such guidance and is adhered to within and through the application of the Rules. This will ensure that the Code and its rules, and supporting guidance, are the primary focus for any review, with guidance from elsewhere being cited as reference points for a review of relevant matters.

iii) Do you have other comments on this section?

No.

No

Section 22: Other comments

Question 74

Do you have other comments or observations on CAP's proposed Code that you would like CAP to take into account in its evaluation of consultation responses?

The proposed paragraph (q) of the section as to what the Code does not apply to is worded incorrectly and this needs to be addressed.

We believe that the self-regulatory framework represented by the CAP Code has, through its application and flexibility, been effective for consumers and marketers. It has demonstrated the value of self-regulation in delivering targeted, consistent and proportionate outcomes in line with the key principles of better regulation.

The proposed Code shifts the emphasis within it to reflect the onset of new consumer law in the form of the Unfair Commercial Practices Regulations (CPRs), primarily through the use of "must not" rather than "should not" in terms of the application of the rules. We have commented on specific changes to the Rules above, in particular in the context of environmental claims and the busy space that has become in terms of both claims made and external guidance given.

However, aside from the above the basic structure of the Rules has not changed significantly and should provide a similarly sound basis to ensure the ongoing integrity of and therefore compliance of relevant advertising. All we would ask is that the ASA, CAP and the Code retains its primary position as the reviewer, arbiter of the issues that come before them, notwithstanding the presence of and/or guidance given by other bodies or frameworks.