BCAP Payday Loans Consultation Regulatory Statement

Consultation on the introduction of scheduling restrictions for television advertising of high-cost short-term credit

CAP

Legal, decent, honest and truthful

Contents

1. Executive summary

The advertising of high-cost short-term credit (HCSTC) has attracted concern across society, including parliamentarians, media, consumer protection bodies and the public, particularly as the use of HCSTC became more prevalent during the economic downturn. The Broadcast Committee of Advertising Practice (BCAP) has closely monitored these concerns to ensure that it provides proportionate levels of protection for consumers, particularly the vulnerable, while allowing advertisers to reach a legitimate adult audience.

Following public consultation, and an extensive and carefully-considered review process leading up to it, BCAP has decided not to introduce scheduling restrictions on the advertising of HCSTC. However, BCAP has decided that a further review of the content of HCSTC ads is needed to ensure that its rules remain fit for purpose in light of the current market[1] and regulatory framework. This statement sets out:

- the basis of BCAP's decision;
- an overview of the existing regulatory framework which governs HCSTC advertising;
- the background to BCAP's decision to consult;
- a summary of the responses received and BCAP's analysis of them;
- and BCAP's next steps.

BCAP has carried out a careful and comprehensive consultative process, which included a call for evidence and a public consultation, which despite identifying areas that needed further research, did not find robust evidence of harm that a scheduling restriction specifically might help to lessen or prevent. A summary and analysis of this evidence is set out in section 3.

BCAP considers that, at the time of publication, it has not seen evidence that the additional limitations on advertisers' rights to reach a legitimate adult audience and the right of that audience to receive ads for HCSTC are necessary and proportionate. Consequently, the introduction of scheduling restrictions would not meet BCAP's policy objectives of maintaining rules that are transparent, accountable, consistent and targeted where needed. BCAP has used its principles on evidence-based policy in assessing the evidence provided to it.

BCAP received information during its consultation that some HCSTC lenders have implemented voluntary measures the aim of which is to prevent HCSTC ads appearing around programmes of particular appeal to children and young people. BCAP's own pre-consultation research (see section 8 of the consultation document) suggested that imposing a scheduling restriction might have a modest effect on the distribution of HCSTC ads in the broadcast schedule because HCSTC advertising were not appearing in high volume in programmes of particular appeal to children.

[1] BCAP notes that in a speech delivered at the Credit Summit on 7 April 2016, FCA Acting Chief Executive Tracey McDermott noted that significant changes that have been made in the HCSTC market (including changing business models, training of staff to deal with struggling customers and improvements in assessing whether loans are affordable to customers) have led to a reduction in business generated. In each of the last three years, the number of loans originated by payday firms has decreased: from 6.3 million in the first half of 2013, to 4.2 million for the same period in 2014, to 1.8 million for 2015: https://www.fca.org.uk/news/consumer-credit-regulation-the-journey-so-far

BCAP received responses to its consultation, both from those advocating scheduling restrictions and those opposing their introduction, that addressed the content of advertising and techniques used; these do not relate to scheduling rules but BCAP considers they merit further regulatory enquiry.

BCAP's content review of HCSTC advertising on TV was carried out in 2014 and looked at a sample of ads across 2013; it did not find substance in perceptions that some HCSTC ads inappropriately appealed to children or were aimed at encouraging children to ask their parents to take out HCSTC, and did not, therefore, consider that changes to its rules were needed to capture potentially harmful content that fell outside of them. Respondents to the consultation have argued that the HCSTC market and particularly its advertising content have become more responsible in recent times, particularly since the advent of further statutory regulation by the Financial Conduct Authority (FCA). Other respondents have challenged the findings of BCAP's content review and argued that the content of ads remains irresponsible.

BCAP's original content review examined ASA rulings and content treatments from a sample of ads; on the advice of the Advertising Advisory Committee (AAC), BCAP will carry out a further content review, which will gather evidence on borrowing behaviour (including through original research) to allow it to examine whether there are advertising techniques that might promote irresponsible lending behaviour in ways which exploit vulnerabilities, and which can be addressed through guidance. The review will assess whether BCAP's content rules and the guidance it shares with the Committee of Advertising Practice remain fit for purpose in light of this examination. BCAP is publishing the terms of reference for the review at the same time as this regulatory statement.

2. Background

2.1 Call for advertising restrictions on HCSTC

The use of HCSTC has increased since the onset of the economic downturn. Concerns about the impact of this product, in particular on the financially vulnerable, have led to calls for further regulatory oversight of the sector, including of its advertising. This has included calls for a ban on HCSTC ads appearing around TV programmes aimed at children, the introduction of a 9pm TV watershed ban and additional restrictions on the content of these ads.

2.2 BCAP's regulation of HCSTC advertising

BCAP is committed to ensuring that the BCAP Code and any associated guidance on HCSTC advertisements is sufficiently comprehensive to prevent HCSTC ads from leading to harm, particularly by exploiting the vulnerable, for example families who are facing difficult financial circumstances or children or young people.

BCAP rules 1.2 (on social responsibility) and 5.9 (against ”pester power”) – see Section 4.3 of the consultation document for details of these – are the most relevant rules that address concerns that BCAP has received about the content of HCSTC ads. Since 2013, the ASA has received 609 complaints relating to 270 discrete TV ads for HCSTC. These can be broken down as follows:

2013

- 292 complaints relating to 145 discrete TV ads were received;
- 284 were not taken forward after an initial assessment concluded that the ad was unlikely to breach the BCAP Code;
- seven were formally investigated for breaches of content rules, with 7 upheld or upheld in part;
- and one was informally resolved.

2014

- 142 complaints relating to 75 discrete TV ads were received;
- 136 were not taken forward after an initial assessment concluded that the ad was unlikely to breach the BCAP Code;
- four were formally investigated for breaches of content rules, with three upheld or upheld in part, and one not upheld;
- and two were informally resolved.

2015

- 147 complaints relating to 44 discrete TV ads were received;
- 146 were not taken forward after an initial assessment concluded that the ad was unlikely to breach the BCAP Code;
- one was formally investigated for breaches of content rules, which was not upheld;
- and none was informally resolved.

2016 (January to May inclusive)

- 28 complaints relating to 6 discrete TV ads were received; and
- all were not taken forward after an initial assessment concluded that the ad was unlikely to breach the BCAP Code.

2.3 Legal provisions on HCSTC advertising

Since July 2014, the FCA has required all HCSTC ads to carry a warning highlighting the financial risks that can arise from HCSTC. HCSTC taken out on or after 2 January 2015 has been subject to a tripartite cost cap imposed by the FCA (initial cap of 0.8% on interest and fees per day; a £15 cap on default fees; and a total cost cap of 100%). Other longstanding finance legislation prevents people aged 17 or younger from being sent documents inviting them to borrow money.

A detailed record of BCAP's existing regulation of HCSTC advertising, including the policy objectives underpinning it, and the legal provisions on HCSTC can be found in Section 4 of the consultation document.

2.4 Scheduling restrictions

BCAP is concerned to ensure that scheduling restrictions are not seen as an automatic response to societal concerns about advertising of products without an assessment of whether the evidence base suggests that advertising of those products has the potential to cause harm. Scheduling rules are a tool with a specific purpose: to limit, but not entirely eliminate, exposure of a particular audience, typically children and young people, to advertising for products that should not be directed at them. They are complemented by strict content rules to ensure that the advertising that children and young people do see is not of particular appeal to them and will not cause them harm. In this way, BCAP seeks to balance the need to protect children and young people from harm with the right of adult viewers to see advertising for products of relevance and interest to them. Currently, the Code does not include any scheduling restrictions that limit the advertising of financial products in and around programmes of particular appeal to children or young persons. A detailed analysis of the policy objectives for scheduling restrictions, their practical operation, and their legal basis is set out in Section 6 of the consultation document.

2.5 BCAP's decision to consult

BCAP's decision to consult arose from a comprehensive, careful and structured process, involving input from key stakeholders throughout and made up of the following stages:

- A Review into the effectiveness of the BCAP Code's content rules to protect children from HCSTC advertising which concluded:

    - that there was not a need for changes to the BCAP Code rules in this respect; and

    - that light-hearted, jovial advertising treatments had the potential to trivialise the seriousness of taking out loans, and that such treatments can and have breached the social responsibility rules.

The Review resulted in joint guidance on trivialisation being published by CAP and BCAP.

- An extension of the Review to allow BCAP to consider the scheduling of HCSTC ads in light of new research carried out by the Children's Society into the effects of HCSTC advertising. BCAP called for submissions of new evidence to help it assess whether there was a need for scheduling restrictions on HCSTC ads. BCAP's call for evidence found little robust evidence of advertising-related harm, but the information provided warranted further consideration via a public consultation.

- Announcement of a public consultation on scheduling restrictions. Broadcasters were, at the time of consultation (and continue to be), required to exercise responsible judgements on the scheduling of ads and to avoid unsuitable juxtapositions between ads and programmes, including children's programmes. Through consultation, BCAP sought to determine whether the potential harm and risk factors identified during the content review and call for evidence, were appropriately addressed by the combination of content rules and guidance that exists, or if restrictions on the TV scheduling of HCSTC ads were necessary and proportionate for BCAP to meet its regulatory objectives to prevent harmful ads from appearing in the broadcast schedule. BCAP proposed three options (see section 9 of the consultation document): no change; under-16s restrictions; and under-18s restrictions.

3. Consultation responses

3.1 Responses received by BCAP

The consultation received 12 significant responses (with an additional 21 responses from MoneySavingExpert followers and 123 identical responses from Children's Society supporters), with respondents calling for either maintaining the status quo or introducing under-18s restrictions; no respondents called for under-16s restrictions. The two major responses based on significant pieces of research were from the Consumer Finance Association (the CFA) and the Children's Society (CS,), calling respectively for maintaining the status quo, i.e. no scheduling restrictions, and the introduction of a pre-9pm band or under-18s scheduling restrictions. A summary of all the responses received during the consultation and BCAP's detailed analysis of these can be found in the evaluation table; copies of the full responses received can be found here.

3.2 Arguments made to support scheduling restrictions

Arguments made for the introduction of scheduling restrictions identified several broad factors. These are set out below, along with BCAP's general evaluation of them. The detail of these arguments and BCAP's evaluation of them can be found in the evaluation table.

Normalisation

Research was presented to show that children are impressionable and that their 'money habits' are developed at a young age. It was suggested that these children are often being exposed to HCSTC ads featuring inappropriate content, which suggests that HCSTC is a normal way of managing money. This has been referred to, as a general concept, by respondents as "normalisation" (for the purposes of this regulatory statement, BCAP uses the term "normalisation" to mean a way of managing money that is generally considered as being acceptable).

Concerns have been raised that, like gambling and alcohol, payday loans are not legally available for people aged under 18, and that, similarly to gambling and alcohol advertising, advertising of HCSTC risks normalising behaviour which may be harmful to children in adult life.

Respondents have argued that children should receive financial education from their school and their parents, and the apparent high frequency of HCSTCadvertising undermines this, and provides an alternative form of "education" which promotes HCSTC as a normal way to manage finances. They have pointed to research that suggests that this normalises positive attitudes to what can be a very high-risk product. The goal of scheduling restrictions in part should be to reduce the frequency with which children are exposed to these messages.

It is not straightforwardly a policy imperative for BCAP to prevent HCSTC from being seen as normal. Insofar as HCSTC is offered in compliance with the FCA cost cap, it is a legally available product. However, BCAP considers that it is obliged, under its regulatory objectives, to set standards to prevent the normalisation of irresponsible use of HCSTC in advertising; the suggestion that such use is normal, carries the potential for harm and, as such, the ASA is very likely to find ads that depict irresponsible use of HCSTC in breach of BCAP's rules on social responsibility.

BCAP's content review noted that the depiction of use of HCSTC in advertising can be both responsible (for example loans being used in emergencies to pay for bills) and irresponsible (for example loans being used to go on a shopping trip). Unless the normalisation is of irresponsible use, normalisation in advertising is not problematic unless the use of the product is inherently harmful. Some respondents maintain that the content of HCSTC continues to be irresponsible. BCAP's further content review will seek to examine whether this is the case.

Pester power

"Pester power" describes the phenomenon of children putting pressure on their parents to buy products for them or their family. BCAP rule 5.9 seeks to prevent "pester power". The aim of BCAP's content review was to ensure that the BCAP Code is sufficiently comprehensive to prevent HCSTC advertisements from exploiting the vulnerable - particularly families who are facing difficult financial circumstances - and to assess their propensity to appeal irresponsibly to children, including by encouraging "pester power". BCAP considers that it has not seen robust evidence of "pester power" in advertising for HCSTC from respondents during the consultation; however, the issue will be examined again during BCAP's further content review.

Use of advertising content that appeals to children

Respondents cited research into the appeal of advertising content to children and whether children would consider using HCSTC in the future. Although the research appeared to show that children did find the content of some ads appealing, it also showed that a significant number of children would not consider using HCSTC in any circumstances, including in emergencies. This suggests children are perhaps aware of the potential harm arising from HCSTC or at least would not consider using the product, and that if a significant number find some HCSTC ads appealing in some way then that may not indicate more than an incidental entertainment value, rather than stimulating interest in the product itself as has been implied. Respondents cited research into brand recall. While HCSTC advertising might cause children to recognise brands or have awareness of HCSTC, such findings on their own do not suggest a causal relationship with an identifiable harm.

Disapproval of the product

Respondents cited research into views on HCSTC as a product; particular emphasis was given to findings that certain proportions of adults considered that HCSTC and its advertising should be banned. While BCAP is aware of calls from stakeholders for a category ban, these fundamental reservations about HCSTC as a product are a matter that falls within the remit of government and the FCA.

HCSTC is not available to under-18s

Respondents cited research into exposure of children and young people to HCSTC ads. BCAP does not consider that seeing an ad always carries risk of financial detriment or over-indebtedness. Inevitably, children and young people sometimes comprise a significant minority within a large TV audience. Seeking to limit exposure is implicitly premised on the notion that exposure to any HCSTC advertisement, of itself, causes harm. To adopt the perspective that exposure equates to harm is contrary to the notion that content restrictions, which prohibit inappropriate / irresponsible appeal to children and young people, can form an effective part of the regulatory framework. BCAP does not consider that such a position is coherent or proportionate.

Respondents referred to scheduling restrictions already in place for other product categories not available to under-18s, arguing that because HCSTC is also not available to under-18s, they should not see its advertising. BCAP does restrict the advertising of products that are age-restricted, for example alcohol and gambling. However, there are two further factors directly relevant to alcohol and gambling advertising being subject to scheduling restrictions: the potential for under-18s to want to consume or use the products; and their accessibility to under-18s (for example, alcohol being available in the home, and the use of over-18s to place bets on behalf of under-18s). In contrast, HCSTC strict measures are in place to ensure that HCSTC is not offered to under-18s. BCAP seeks to set rules which are proportionate. This requires balancing the need to protect under-18s with the need to avoid a significant intrusion on adult viewing that would disproportionately limit advertisers' ability to reach a legitimate audience for their products. Any exclusion of HCSTC advertising from programmes of broader appeal that are watched by an adult audience that did not aim to prevent a specific type of harm would run counter to this principle.

3.3 Arguments made against scheduling restrictions

Arguments made for maintaining the status quo, i.e. not making HCSTC ads on TV subject to scheduling restrictions, identified several broad factors. These are set out below, along with BCAP's general evaluation of them. The detail of these arguments and BCAP's evaluation of them can be found in the evaluation table.

<u>HCSTC is already strictly regulated by the FCA</u>

Respondents referred to the fact that the HCSTC sector has been subject to additional FCA regulation recently; such regulation includes the introduction of a tripartite cost cap, rules limiting the use of continuous payment authority and requirements on lenders to offer forbearance to customers who are in financial difficulty and struggling to repay loans. FCA regulation does not of itself preclude BCAP from considering the need for scheduling restrictions on financial products: BCAP's statutory duty (under the Communications Act 2003) to prevent the inclusion in broadcast of advertising that harms, offends or misleads applies just as much to financial advertising as it does to other categories of advertising.

<u>Measures and changes to the market put in place to protect consumers by HCSTC lenders</u>

Respondents referred to the shift from traditional single repayment loans to flexible, instalment loans with multiple repayments, and stringent eligibility requirements for consumers. BCAP considers that these may provide protection to consumers but do not remove the possibility of harm arising from advertising; most financial products have protections in place, such as eligibility criteria, but BCAP has a duty to prevent harmful advertising, particularly to vulnerable people. Respondents also referred to voluntary industry arrangements which attempt to ensure that HCSTC ads are not scheduled in or around children's programmes. BCAP welcomes any initiative that aims to make advertising practices responsible but BCAP must make its own assessment of whether scheduling restrictions of this kind are necessary rather than a desirable sign of advertisers' good faith, having due regard to its regulatory policy objectives.

<u>Changes to the content of advertising</u>

As set out above, respondents argued that the HCSTC market has changed as a result of FCA regulation. In addition to the direct changes made by the FCA regulation (for example to interest rates), the regulation resulted in a change in advertising techniques and, it is contested, a review of current ads would show that these are responsible. BCAP has considered these observations and its further content review will look into this area. Further, the existence of content rules and ads that comply with these rules does not of itself establish that scheduling rules are not justified.

The use of HCSTC is a very small proportion of general borrowing

Respondents cited research that found that use of HCSTC is not widespread and that it represents a very small proportion of the total market for consumer credit. However, BCAP has a regulatory objective to prevent vulnerable consumers, even where they constitute a minority, and therefore cannot rule out implementing protections on the basis of a product not being widely used.

On balance and after careful consideration of all submissions, BCAP does not consider that the evidence base suggests that introducing scheduling restrictions is necessary and proportionate.

4. Next steps

BCAP will carry out a further review to examine whether its rules and guidance on the content of HCSTC are fit-for-purpose. The terms of reference for this review have been published at the same time as this regulatory statement and the outcome of this review will be announced in early 2017.

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