

Evaluation of responses to Question 6 – Application to different media

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

Also, if relevant, please include information and data on why a particular media should be considered exempt from the scope of a new rule. CAP expects that respondents making a case for media exemptions will be able to demonstrate robustly the disproportionate impact on the media in question.

CAP proposed that new restrictions apply to all non-broadcast media within the remit of the CAP Code, including online advertising.

	Respondent making points <u>in favour</u> of CAP's proposal	Summary of significant points	CAP's evaluation:
6.1.1	ABGPHT, AoS/CASH, BDA (Dental) BGCBC, BC, CFC, CFT, DPPW, FEC, HoM, JOFF, RSPH, SG, SW, TCBC, WCRF, Which?	Respondents believed that the rules should apply to all non-broadcast media. They emphasised the importance of ensuring the rules applied to online media. Several respondents considered that exemptions could be exploited by advertisers.	See Regulatory Statement section 4.8.2.

6.1.2	CRUK, CVUHB, NEDPH, NHS (Sco)	Respondents called for the rules to apply to all non-broadcast media covered by the CAP Code.	See Regulatory Statement section 4.8.2.
6.1.3	CVUHB, PHDW	Respondents considered the internet presented significant opportunities for marketers to target children, for instance, through competition, product discounts, advertorials and advergames. They considered the latter to be particular concern.	See Regulatory Statement section 4.8.2.
6.1.4	FDF	Respondent supported application of the new rules across the scope of the current CAP code, including online advertising. They noted some children had access to smartphones and tablets at a young age, and that CAPs own analysis showed that online advertising spend had increased.	See Regulatory Statement section 4.8.2.
6.1.5	BSDA	Respondent said the soft drinks industry had made a voluntary commitment not to advertise HFSS soft drinks to children under 16 across all media channels, including online, in January 2016. They therefore supported CAP's proposals to restrict HFSS advertising in all non-broadcast media.	See Regulatory Statement section 4.8.2.
6.1.6	DUK	Respondent considered that it was important to have a consistent level of protection across all media.	See Regulatory Statement section 4.8.2.
6.1.7	NHS (Sco)	Respondent stressed the importance of consistency to avoid areas of challenge.	See Regulatory Statement section 4.8.2.
6.1.8	ASDA, DUK, PHDW	Respondents pointed out that consistent protection across all media would create a level playing field for industry.	See Regulatory Statement section 4.8.2.

6.1.9	IAB, IPA	Respondents pointed to the media neutral basis of the CAP Code and considered that there was no obvious reason to grant specific exemptions.	See Regulatory Statement section 4.8.2.
6.1.10	ASDA, IPA	Respondents said the new rules should apply to all non-broadcast media to ensure maximum regulatory impact	See Regulatory Statement section 4.8.2.
6.1.11	CoBA, ISBA	Respondents supported the proposal but raised concerns over potential difficulties for online advertisers caused by limitations to audience measurement in some circumstances.	See Regulatory Statement section 4.7.
6.1.12	PHE	Respondent supported the proposal, especially in relation to online advertising. They cited evidence from their review in support. They maintained that many different types of marketing could all influence preferences or consumption. The respondent said their review found that online advertising (including HFSS products) had grown significantly in recent years, along with children's exposure.	See the evaluation of point 1.a.1.47 (Question 1a).
6.1.13	CRUK	Respondent said there should be no exemptions. They cited PHE's review in support.	See the evaluation of point 1.a.1.47 (Question 1a).
6.1.14	CVUHB, PHDW	Respondent cited evidence to support their perspective from the WHO on the effect of marketing on children.	See the evaluation of point 4.a.1.10 (Question 4a).
6.1.15	CEDAR, FEC, IPM, Nestle	Respondents said children's changing media habits were a reason to apply restrictions to all media. Several pointed to data on the shift toward online media away from TV and the growth of platforms, such as Youtube.	See Regulatory Statement section 4.8.2.
6.1.16	SPHSU	Respondent believed it essential that the placement restriction on HFSS product advertising be applied to all non-broadcast media. They said their qualitative study demonstrated the wide range of media through which they recalled seeing advertising for HFSS products; including websites (e.g.	See Regulatory Statement section 4.8.2.

		Youtube), social media, billboards, magazines, public transport, cinema and leaflets.	
6.1.17	SPHSU	Respondent said new restrictions should reflect current media consumption practices and trends. They said increasing evidence demonstrated the negative impact non-broadcast advertising has on children's health and wellbeing. They said online environments were a space for advertising to be placed without restrictions. The respondent pointed out children lived in a ubiquitous digital environment, where mobile devices and continual internet access were the norm.	See Regulatory Statement section 4.8.2.
6.1.18	SPHSU	Respondent believed advergames were one of the most problematic forms of online advertising targeted at children. They cited evidence of the potential influence the emotional and subconscious mind and children's inability to readily distinguish an advergame from any other type of online game. Exposure was found to be protracted and could aid in increasing positive preferences for products.	CAP notes the evidence cited by the respondent; advergames will be covered by the new restrictions. See the evaluation of point 1.a.1.72 (Question 1a).
6.1.19	Mars, RCPCH, SPHSU	Respondents considered that younger children in particular were vulnerable as they did not always recognise online marketing as advertising. RCPCH pointed to the findings of the review commissioned by CAP to support their point.	See the evaluation of point 1.a.1.72 (question 1a).
6.1.20	NEDPH	Respondent said new restrictions would be consistent with NICE recommendations (NICE guidelines, PH25, 2010).	CAP notes the NICE recommendations on advertising.
6.1.21	LBH	Respondent said they operated a 400m exclusion area for new takeaway businesses. They were considering their remit over advertising sites, sponsorship and online advertising revenue. They welcomed further guidance from CAP.	See Regulatory Statement section 4.7.

	Respondent making points <u>against</u> CAP's proposal	Summary of significant points	CAP's evaluation:
6.2.1.	PAST	Respondent said, although they understood and supported the aims of media neutrality, they did not support HFSS product restrictions to all non-broadcast media.	See Regulatory Statement section 4.8.2.

	Respondent making other relevant points	Summary of significant points	CAP's evaluation:
6.3.1	ABGPHT, ACAD2, AoS/CASH, BASCD, BC, BDA (Dental) BGCBC, CFC DPPW, FF, HF, HoM, JOFF, LHHS, NS, OAS, OGDBA, OHA PHD, PHDW, PUB1, SW, TCBC, UKHF, WCRF, Which?, WOF/ASO	Respondents said there should be no exemptions and the rules should be applied to several media outside the scope of the Code; brand characters (licensed and equity), packaging, labelling, in-school marketing, in-store placement, display at points of sale and sponsorship (including of events and programmes).	See Regulatory Statement section 4.8.3. See also the evaluation of point 3.3.2 (Question 3) in relation to brand equity characters
6.3.2	OGDBA, NS, WOF/ASO	Respondents called for the new restrictions to cover food-branded toys, merchandise and household items.	The CAP Code's remit centres on advertising and the disciplines of direct and promotional. It does not regulate products.
6.3.3	DUK	Respondent called for the new restrictions to cover product-based techniques including packaging, food colour and shape, use of promotions on packs.	See Regulatory Statement sections 4.8.3 and 4.8.4.
6.3.4	BDA (Dietetic)	Respondent called for the new restrictions to cover billboards, competitions, advergames, packaging and labelling of products, marketing in schools, shops, supermarkets and	See Regulatory Statement sections 4.8.3 and 4.8.4.

		sports events.	
6.3.5	IPH, RCPCH	Respondents believed there should be a particular focus on social media, such as Facebook, Spotify and Youtube; online environments which had been found to be places where children were exposed to advertising. RCPCH pointed out that Facebook was not a website aimed at children but many children nevertheless used it.	The new rules will apply to advertising in social media that is directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consists of direct solicitations of donations as part of their own fund-raising activities (CAP Code, Scope of the Code, I h). For more information on how CAP will assess the targeting of advertising in social media, please see Regulatory Statement section 4.7.
6.3.6	MoL	Respondent considered that the placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions. They said that should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.	See Regulatory Statement sections 4.8.3 and 4.8.4.
6.3.7	LBL, LBH, MoL	Respondent believed the use of all non-broadcast media by young people was high. They said young people in London were also exposed to HFSS advertising in public sector buildings, on public transport and at public events. The respondent considered that it would be beneficial if the scope of the restrictions could be expanded further.	See the evaluation of point 1.a.1.31 (Question 1a).
6.3.8	LNCDU	Respondent cited the WHO recommendations on an approach to curb HFSS marketing across all media.	See the evaluation of point 1.a.1.19 (Question 1a).
6.3.9	CEDAR	Respondent considered that evidence demonstrated all forms of food marketing had an effect on children, including promotions, label based branding and in-store placement. The restrictions should therefore apply to all forms of marketing.	See Regulatory Statement sections 4.8.3 and 4.8.4.

6.3.10	SPHSU	Respondent said young people in their focus group study also recalled exposure to marketing in places not covered by the code including instore price promotions, restaurant competitions, and product packaging. They expressed concern that HFSS products could continue to be targeted through such promotional activities.	See Regulatory Statement section 4.8.3.
6.3.11	CRUK	Respondent said children were targeted with HFSS advertising online as it had been restricted on TV. They cited a review of the influence of social media for the European Commission, which found that children were exposed to marketing through online games, mobile application and social media sites. The respondent added that the various marketing techniques used were not always transparent to the child consumer, yet they had a significant effect on children's behaviour.	See the evaluation of point 1.a.1.72 (question 1a).
6.3.12	CRUK	Respondent encouraged CAP to engage with the evidence base and look wider than their literature review on research on online food and beverage marketing to children, which we have significant concerns with. They said it was unclear if the review has been peer-reviewed. They were also concerned that it made a number of what they considered "short-sighted conclusions", including that "there is however a lack of evidence to show the long term effect of advergames of children's eating habits". The respondent pointed out that, as advergames were a recent phenomenon, it was impossible to show long term impact at the time. They did, however, agree with the statement: "put simply, it may be that people are trying to sell us things without us recognising that this is what they are doing".	As detailed in sections 36 and 40 of the consultation document, Regulatory Statement section 4.1.6 and throughout the wider evaluation materials, CAP engaged with and based its decisions on the evidence of food and soft drink advertising's effect on children. This included the literature scoping review CAP commissioned from FK&Y, Clarke and Svaenes (2014). That review was intended to scope out the evidence base for the impact of online advertising on children. CAP considers that it fulfilled its role giving a much broader picture of the evidence; for instance, it identified considerably more material than the PHE literature review, Ells et al (2015). It identified the evidence base in relation to children's critical understanding that has been the basis of further dedicated work to create guidance and is one of the factors in CAP's decision to introduce new rules here.
6.3.13	IPH	Respondent said children were at a stage in their cognitive development where they might not be aware they were being marketed to. They also said, although children were	See the evaluation of point 1.a.1.72 (question 1a).

		increasingly aware and knowledgeable about their exposure to HFSS product advertising, those marketing tools had simultaneously become more sophisticated. They said it reminded them of how the tobacco industry had tried to circumvent the rules on marketing.	
6.3.14	FF	Respondent considered that new restrictions were needed to protect children and adults from the purposeful association of HFSS brands and HFSS products with an otherwise healthy lifestyle.	CAP has general rules (15.11 and 15.12) to protect children from food and soft drink advertising that condones or encourages poor nutritional habits, an unhealthy lifestyle or disparages good dietary practice. CAP has also adopted new guidance (see Regulatory Statement section 4.2) to ensure that the new HFSS restrictions apply to brand advertising that has the effect of promoting a specific HFSS product. CAP has not seen a substantive case to suggest that these rules should be extended to adults (see the evaluation of point 1.a.1.47 (Question 1a))
6.3.15	SG	Respondent recognised that certain forms of promotion such as in-store marketing and sponsorship were not covered by the CAP code. Respondent believed the approach would act as a spur for those forms of marketing to fall into line, either through voluntary mechanisms or as a result of legislative action.	The sole focus of this consultation process is the restriction of HFSS product advertising in media within the remit of the CAP Code. It is for other stakeholders and regulators to decide if the outcomes of this consultation process hold relevance to other commercial environments.
6.3.16	FSS	Respondent supported the proposal but urged CAP to further examine and report on any mechanisms that could be put in place by CAP or any other body to extend parallel standards to in-store promotion and marketing.	Further to CAP's evaluation of point 6.3.15 (above), it is not appropriate for CAP to act in relation to commercial practices beyond the remit of the CAP Code.
6.3.17	NHS (Sco)	Respondent considered that other areas outside the scope of the Code might also benefit. They believed CAP's decision would set and precedent and clear guidance for areas such as in-store promotions and encourage responsible advertising.	See the evaluation of point 6.3.15 (above).

6.3.18	PHK	Respondent considered that the restriction should be applied to HFSS product advertising across all media including ones currently not included within CAP's remit such as brand characters and packaging which children were likely to develop strong preference for. They considered that labelling, in school marketing and in store placement, tickets and sponsorship should all be 'next step' consideration.	See Regulatory Statement section 4.8.3.
6.3.19	LBH	Respondent asked for clarity around the status of brand advertising, for example, offers like, Cadbury's days out.	The new and revised rules work on two levels. Firstly, the new placement restriction (rule 15.18) prohibits advertising for HFSS products from being directed at children under 16 through the selection of media. This will significantly reduce the opportunities for HFSS product advertising to be directed at children prohibiting it in children's media and media with particular appeal to children. Additionally, the revised content rules will apply to HFSS advertising in other media that, although not directed at children by the selection of media, has particular appeal through its content.
6.3.20	SW	Respondent said retailers should be able to promote products low in free sugars in all categories of food and drink including cakes, biscuits, chocolates and ready snacks with point of sale and online signage, along with advertising in other media, even if they were higher in fat and salt. They said the policy should apply until there was choice in food and drink low in free sugars in all of the categories where people bought food. Options opening up in all categories would always enable parents and others to make the better of two choices. The respondent considered that, once options were available low in free sugars, stricter criteria could be introduced for fat and salt, in line with the public health guidelines following the achievement of the initial milestone.	See the evaluation of point 2.2.19 (Question 2).
6.3.21	BC	Respondent considered that the example of tobacco regulation demonstrated how tougher rules on non-broadcast advertising led tobacco companies to use packaging as the	Further to Regulatory Statement section 4.8.3, product packaging is outside the remit of the CAP Code.

		primary method of advertising. They pointed out that many cartoon characters already appeared on the packaging of high sugar cereals.	
6.3.22	CFT	Respondent believed that, when weighed against the need to protect and improve children’s health and the WHO recommendations on the need to reduce exposure, along with the financial cost of conditions linked to obesity for health services, the economic impact for advertisers and brands of applying restrictions to all non-broadcast media (whether for children’s media, advertisers or brands) should not be a consideration for CAP.	As outlined in sections 14 and 15 of the consultation document, CAP must balance the need to protect children with the right of commercial freedom of expression. The new restrictions must be – and, in CAP’s view, are – a proportionate means of achieving a legitimate policy aim.
6.3.23	Dairy UK	Respondent stressed the importance of an approach which respected the right of adult consumers to receive responsible advertising for products that might be of interest to them.	In accordance with section 14 of the consultation document, CAP has taken appropriate account of this factor in coming to its decision.
6.3.24	Ferrero	Respondent considered that the protection of children should not deprive adults unnecessarily of the benefits of advertising, which included the funding of channels or media.	See the evaluation of point 6.3.23 (above).
6.3.25	PHE	Respondent considered that online advertising was a rapidly evolving form of media. They were concerned that CAP had not explained how the new rules would be applied to the different forms of social media. They also expressed concern about how the rules would be future-proofed for such a dynamic form of media.	The ASA will enforce the rules in line with its procedures (see the ASA website for further information). The new rules will apply to advertising in social media that is directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities (CAP Code, Scope of the Code , 1 h). CAP extended the Code’s remit in 2011. The online remit has worked well adapting to the many challenges inherent to the online sphere. CAP considers that the new rules create a robust framework limiting HFSS advertising to protect children across all non-broadcast media. Consistency is key benefit and is in line with better regulation principles. If challenges to this approach emerge, CAP will respond to ensure that its rules on food and soft drink advertising to children continue to meet their regulatory aims. For

			more information on how CAP will assess the targeting of advertising in social media, see Regulatory Statement section 4.7.
6.3.26	FSS	Respondent asked CAP to consider the development of approaches tailored to each specific medium given the diverse range of media involved.	CAP considers that such an approach is neither warranted nor viable. Media neutrality is a key principle of the CAP Code. Better Regulation principles encourage consistency unless circumstances present a strong case for a differentiated approach. CAP is satisfied that that is not the case. The rules adopted create a robust framework for HFSS advertising to protect children across all non-broadcast media. Moreover, devising a tailored approach to each medium would be prohibitive from a practical perspective. It could lead to unfairness towards different media and confusion among advertisers and practitioners in trying to understand the regulatory requirements for advertising in different media.
6.3.27	FDF	Respondent asked CAP to review the application of the new rules after one year.	CAP usually reviews the implementation of significant rule changes and guidance 12 months after it comes into force.
6.3.28	BC	Respondent said children were spending more time online than ever before. It was crucial the rules covered such media. They also urged CAP to carry out regular reviews to keep up with the latest media products being targeted at children.	See the evaluation of point 6.3.25 and 6.3.27 (above).
6.3.29	IPH	Respondent believed it was essential that the rules were regularly monitored and reviewed. They urged CAP to respond quickly if industry attempted to circumvent restrictions.	The rules are enforced by the ASA. It will make decisions on complaints about individual advertisements. These will include any precedent rules in how the rules should apply, for instance, to a new marketing technique. It is an important premise of the CAP Code that the rules apply in spirit as well as in the letter (CAP Code, Compliance , rule 1.2).
6.3.30	NMA	Respondent said national and local news media which did not target such advertising at children and young people and were not considered to do so under the tests currently applied by CAP should not be subject to the proposed restrictions. They said, if the test was changed, an exemption for such media	CAP has adopted the proposal in line with other placement restrictions in the CAP Code.

		should be considered.	
6.3.31	ACS, Danone, Nestle, PPA	Respondent expressed concerns about how the new restrictions would identify media covered. Although they agreed with CAP's proposal, they did so subject to their concerns expressed in responses to Question 5.	See Regulatory Statement section 4.7.
6.3.32	PPA	Respondent asked for further information on how the new restrictions would apply to magazine cover mounts.	A promotion to incentivise the purchase of a magazine would not be considered an advertisement for an HFSS product, unless the promotion was run jointly with an HFSS product advertiser.
6.3.33	DPPW	Respondent was concerned that many websites and social media outlets self-published creating difficulty in enforcing ASA judgements. They pointed out that the ASA had no agreement for enforcement of breaches for food-related issues with a statutory backstop in the same way it had for general consumer protection issues with trading standards. They believed there needed to be a similar agreement reached for food issues.	CAP is confident that the self-regulatory system has the capacity to ensure that ASA decisions are enforced: it does not rely on having a statutory back-stop for the system to work, and that form of recourse is only proportionate in certain circumstances, not all. The ASA has an effective range of sanctions at its disposal (see the ASA website for further details). There is no indication in the food sector, or indeed other industry sectors, of widespread non-compliance.