

CAP Consultation on food and soft drink advertising to children: Individual responses Q-Z

76 - Royal College of Paediatrics and Child Health (RCPCH)

Introduction

The Royal College of Paediatrics and Child Health (RCPCH) welcomes the opportunity to respond to the CAP consultation on food and drink advertising to children; overall we are pleased with the proposals put forward.

The RCPCH believes that it is children themselves who will be most positively impacted by the introduction of the proposed new restrictions, with the significant reduction in exposure of children to HFSS food and drink marketing likely to play a major part in reversing the current worrying trend, thereby safeguarding the health of our nation's children. Similarly, parents will be positively impacted by these restrictions, as they will be less likely to be put under pressure by their children to purchase HFSS foods if the children have reduced exposure to them in the first place.

Childhood obesity is a growing problem for paediatricians, who increasingly have to deal with medical complications associated with the condition. Obesity places a huge burden on the NHS, which currently spends about £6m per year on treating medical conditions linked to obesity and overweight. If advertising restrictions were to play their part in reversing trends and creating a less obesogenic environment for children, paediatricians, as well as the wider health economy, would also be positively impacted.

It is possible that the food and drink advertising industries may argue that restrictions on HFSS product advertising would adversely impact their businesses, and we acknowledge that this may be the case to some degree. However, obesity in this country has reached crisis levels and some of our most vulnerable citizens – children – are undoubtedly being harmed by the obesogenic environments in which they live, contributed to in no small part by the advertising of unhealthy foods and drinks. The food industry must therefore take some responsibility and play their part in tackling this problem.

Response to consultation questions

Question 1 - Restrictions on HFSS product advertising

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

Yes, the RCPCH agrees that the CAP should be updated to introduce tougher restrictions on the advertising of products HFSS.

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

Yes, in principle, however we would welcome further clarification on what could be permitted as an advertisement that encourages purchase of a HFSS item, but would not be considered to contain a 'direct response mechanic'.

Question 2 - Selecting a nutrient profiling model

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

Yes, we agree that the Department of Health's technical guide on nutrient profiling could be used to differentiate HFSS products from non-HFSS products.

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

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

We agree that restrictions on creative content should apply to all HFSS products as absolute priority, however with the exception of fresh fruits and vegetables, non-broadcast marketing communications for all food and soft drinks products aimed at children should not include promotions or licensed characters if the creative content of the marketing communication is aimed at children aged 11 years or younger.

In terms of licensed characters, we understand that the current restrictions do not apply to advertiser-characters (such as, for example, the Coco Pops monkey). We would like to see further research undertaken into the impact of such advertising on children, as such characters are often just as recognisable, and thus potentially influential, to children as licensed characters or celebrities.

Question 4 - Introducing placement restrictions

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

Yes, we agree with the proposals for CAP to introduce a new rule prohibiting the placement of HFSS product advertising in media targeted at or likely to appeal particularly to children.

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

The RCPCH would advocate for these restrictions to apply to all children aged 15 years or younger.

Question 5 - Defining the audience

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

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

The RCPCH does not consider this to be an appropriate mechanism to protect children, as it would not cover programming which has equal appeal for both adults and children and considers the most appropriate approach be to implement a complete ban on advertising of foods high in saturated fats, sugar and salt before 9pm.¹

We would recommend that if a threshold were to be used that it be lowered to 5% as this will go some way to help safeguard against issues with audience data, which could incorrectly categorise a child viewer as an adult if they were accessing digital media using a parent and/or carer's device and account.

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?

The RCPCH agrees with the proposals to place a restriction on all non-broadcast media, including online. Restrictions on online advertising are particularly pertinent given recent research commissioned by CAP and carried out by Family Kinds & Youth, which indicated some uncertainty about the extent to which children can identify online marketing. We would therefore welcome CAPs proposals to act in this field. As a first step we would suggest that there be a particular focus on social media such as Facebook. Facebook is not a website aimed at children, but many use it frequently.

About the RCPCH

The RCPCH is a UK organisation which comprises over 15,000 members who live in the UK, Ireland and abroad and plays a major role in postgraduate medical education, as well as professional standards.

Key responsibilities:

- Set syllabuses for postgraduate training in paediatrics
- Oversee postgraduate training in paediatrics
- Run postgraduate examinations in paediatrics
- Organise courses and conferences on paediatrics
- Issue guidance on paediatrics
- Conduct research on paediatrics

The RCPCH is also a steering group member of the Obesity Health Alliance

The Royal Society for Public Health (RSPH) is an independent, multidisciplinary charity dedicated to the improvement of the public's health and wellbeing. We have a membership of over 9000 members working in public health and healthcare management.

Our vision is that everyone has the opportunity to optimise their health and wellbeing, and we seek to achieve this through our qualifications, conference and training programmes and policy and campaign work.

One of the most pressing public health issues we are facing is the epidemic of childhood obesity. Having released our own childhood obesity policy paper in late 2015 calling for the restriction of junk food advertising to children online and on social media, and more recently, the Child's Obesity Strategy, putting forward solutions from young people themselves, we are very pleased to provide a response to this consultation.

Work of the Royal Society for Public Health

'Tackling the UK's childhood obesity epidemic' policy paper

In November 2015, we released a policy paper that looked at ways in which we could tackle the growing number of our children that are leaving primary school obese and going on to become obese teens and adults. The paper featured a wide-range of 'calls to action' that included: introducing an hour of physical activity for primary school children, ending junk food advertising at sporting and family events and **restricting junk food advertising to children online and on social media**. This last call to action is most relevant to this consultation and one that we wish to focus on.

The 2006 Ofcom ban on junk food advertising around children's programming on TV was a very positive step in the right direction. However, there is the issue of ads still being shown around programmes viewed by whole families where children-specific rules and regulations may not apply as they are not the primary target audience. Also, with the proliferation of the internet, particularly among young people, rules and restrictions are in desperate need of being updated to be relevant to how children are accessing information. Internet ads must be brought in line with other forms of advertising.

Almost 3 in 5 children (59%) are thought to have used social media by the age of 10, routinely ignoring age limits to sign up. Junk food advertisers have been keen to exploit this by signposting to their websites on social networking sites aimed at children, with 75% of websites advertising HFSS products. This new bombardment of our children and young people needs to be addressed. Our own research has shown that 75% of UK adults would support stronger regulation in this area.

'The Child's Obesity Strategy: How our young people would solve the childhood obesity crisis'

In late June 2016, we released our 'Child's Obesity Strategy'. The report was written with the help of young people themselves telling us the solutions they believed would solve the childhood obesity crisis. It's the first time that young people have been consulted on the matter and their views put forward in this way.

The report contained many recommendations covering a wide-range of issues that included better food labelling, making takeaways more of a treat, supermarkets promoting and rewarding healthier options and advocating healthy activities during school and leisure time. However, restrictions on advertising was a reoccurring theme amongst the children we worked with. They told us that they want greater restrictions on fast food advertising through channels such as social media and websites as three quarters have seen unhealthy food adverts via these platforms and over half had ordered a fast food takeaway using their phone. They feel under siege from adverts when they are browsing and socialising online, a vast amount of which are promoting HFSS products.

Another issue raised was bus tickets featuring junk food deals printed on the back of them. Many children across the UK use bus services and we would like to see the nature of what can be printed on tickets regulated to ensure that this isn't yet another avenue for which unhealthy foods can be pushed on children.

Restrictions on HFSS product advertising

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

Yes – the current rules state that: "Advertisements must not condone or encourage practices that are detrimental to children's health." The evidence is clear that when HFSS food is consumed too often by children it is detrimental to their physical and mental development. We should be limiting its exposure to children through advertising as much as possible to de-normalise unhealthy food.

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

Yes

Selecting a nutrient profiling model

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

Yes – the Department of Health's nutrient profiling model is the best mode available of identifying HFSS products.

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

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

No – existing rules are sufficient.

Introducing media placement restrictions

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

Yes – we would strongly support restrictions on media placement, particularly on websites and social media aimed at young people. Our work has consistently shown us that young people are under a constant stream of bombardment from junk food advertising, especially online. New restrictions in this area should consolidate rules across all forms of media.

- f) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children:
 - i) Aged 11 or younger?

No – advertising of HFSS products target children older than this as well and the age range should reflect this.

- ii) Aged 15 or younger?

Yes – Children are highly open to influence right the way through their teens. We need to be restricting media placements that appeal to children across the board to ensure consistency. We know that 20% of 8-11 years olds own a smart phone (with access to the internet and adverts) and this figure jumps to 65% for 12-15 year olds. The vast number of children with internet access in their pocket all day every day most certainly means we need to be regulating the media placements they are exposed to. We wouldn't dream of exposing children to cigarette or alcohol advertising on the internet and social media aimed at them – there is no reason HFSS products should be any different given the obesity epidemic we are currently facing – with 1 in 5 children now leaving primary school obese and sugary drinks accounting for 30% of 4-10 years olds' daily sugar intake.

Defining the audience

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

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

No – the 'particular appeal' test would be difficult to implement for non-broadcast media. We would like to see CAP devise and test the efficacy of a new means by which to measure.

Application to different media

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

Yes – this is potentially the most important point of this consultation for us. Our work on childhood obesity and work with young people themselves has highlighted that this area of regulation is woefully behind the curve given its influence over the decisions of young people. While the internet is a fantastic place for children to learn and explore it has become a platform for junk food advertisers to hound children with adverts for unhealthy HFSS products. We wouldn't allow this to continue via any other form a media aimed at children - online via websites and social media should be no exception.

Key recommendations and conclusions

- The Royal Society for Public Health is largely supportive of the proposed policy recommendations put forward by CAP. **The prohibiting of placement of HFSS product advertising in media targeted at or likely to appeal particularly to children must include online media, including websites and social media.**
- Obesity does not just stop when a child reaches a certain age. **We would like to see the new rules applying to media that is targeted at children under 16.** Although it is important to focus efforts on children when they are as young as possible to engrain healthy habits, it is also important to set rules for adverts that are targeted at the widest age-range of children possible so as to have maximum positive impact on their health and wellbeing.

Introduction

The Scottish Government welcomes this consultation and the opportunity to respond to it.

Scotland's approach to tackling poor diet has been lauded internationally. Yet, its Scottish Dietary Goals have not been met, in part due to a culture where food high in fat, salt and sugar, often heavily promoted, is consumed in excessive amounts. As a result, Scotland faces increased rates of obesity and ill health conditions such as type 2 diabetes and certain cancers.

The Scottish Government therefore welcomes that CAP acknowledge the positive role that advertising restrictions will play in helping to address this, however, we are more optimistic about the beneficial impact than the report suggests.

The scale of the problem is significant in Scotland. Just under one in twenty have diabetes, of which 88.2% is type 2. We have an obesity epidemic - in 2014, 65% of adults aged 16 and over were overweight, including 28% who were obese. Around one in six (17%) children aged 2 to 15 were at risk of obesity, with a further 14% at risk of overweight. ¹The cost to the Scottish NHS of type 2 diabetes alone is estimated to be £1bn alongside £2.37bn to the wider economy. ²

While the consultation understandably focuses on children, the Scottish Government does not see these issues in isolation. Today's children are tomorrow's adults and healthy behaviours instilled now through the hard work of teachers, parents and the young people themselves often last a lifetime. This is in the face of increasing amounts of advertising for foods high in fat, salt and sugar.

Accordingly, we believe that need to see a complete change in the culture around food advertising. This means a shift from HFSS to non-HFSS foods and a move away from the association some food adverts place on indulgence, especially for discretionary foods. It also requires further protections to be put in place to reduce child exposure to HFSS food advertisements.

This consultation is a significant and welcome step in the right direction in changing that culture, not just for children but adults too. However, it does not go far enough and in some instances the manner in which it is proposed that these restrictions are implemented, is flawed. We suggest that CAP carefully consider these points when taking forward some of the measures outlined in this consultation.

Basic Principles and Themes

The following basic principles have been applied in response to the consultation:

- a. **Consistency** – there is a need for the same restrictions on advertising to apply irrespective of the medium that is used.
- b. We should not underplay the **evidence** – much of the cited evidence by CAP is underplayed, possibly because it is qualitative or not specific enough to answer the questions it wants answered. However, the evidence linking obesity and poor diet to the commercial environment is clear and extensive and should not be dismissed so readily.
- c. **Children and adults** – while this consultation focuses on children, the Scottish Government has been keen to advocate a whole-population approach to diet and obesity. Parents are also subject to advertising with consequences for their health and that of their children. Children frequently eat the same food their parents buy and eat.
- d. **Proportionality** – the cost of poor diet and its related conditions is extensive and long-term if young people fall into poor habits due to the obesogenic environment. When set against the potential loss of revenue from the under-16s market, the health and economic costs of poor diet is much higher.
- e. **Nutrient Profiling Model (NPM)** – Public Health England have undertaken to review of the NPM. Any new advertising restrictions must follow this new model as it is based on what the evidence tells us we should be eating. Our dietary goals have already been revised (earlier in 2016) to take this latest evidence into account.
- f. **Industry Self-Regulation** – There is an inherent tension in self-regulation but we must recognise the value that the power and creativity of advertising and marketing could bring to rebalancing our food culture away from a focus on HFSS food and drink.

The relevant consultation questions and proposed answers are shown overleaf.

Although the Code defines a child as anyone under 16, consideration should be given as to whether this should be extended to under 18s. In Scotland, as well as the rest of the UK, a child is defined as anyone under the age of 18.

QUESTION 1 - RESTRICTIONS ON HFSS PRODUCT ADVERTISING

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

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

Restrictions on HFSS product advertising

- CAP proposes to update the CAP Code to include rules dedicated to the advertising of HFSS products.
- CAP proposes to apply the new and amended rules to brand advertising that has the effect of promoting an HFSS product, mirroring present guidance used for TV advertising

Reply

We agree that the CAP Code should be updated to introduce tougher restrictions on the advertising of HFSS products. We are content that the existing BCAP guidance is used to identify brand advertising that is 'synonymous' with HFSS products although we are concerned that the definition of 'synonymous' is a subjective one.

For any cases brought to bear, we suggest that ASA requires access to any consumer market testing of brands to determine their associations.

QUESTION 2 - SELECTING A NUTRIENT PROFILING MODEL

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

Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model.

Selecting a nutrient profiling model

- CAP proposes to use the Department of Health nutrient profiling model to differentiate advertising for HFSS products from that for non-HFSS products.

Reply

We agree, noting that CAP reserves the right to put out to consultation the use of any revised Nutrient Profiling Model (NPM). The SG recognises that the current NPM has worked well but that the thresholds used in the model are no longer consistent with recent scientific evidence.

QUESTION 3 - EXISTING PROHIBITIONS ON THE USE OF PROMOTIONS AND LICENSED CHARACTERS AND CELEBRITIES

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

The current rules on creative content are the prohibitions on the use of promotions (rule 15.14) and of celebrities and licensed characters popular with children (rule 15.15). Please explain your reasons.

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

- CAP proposes to amend existing rules on the creative content of food and soft drink advertising – prohibiting licensed characters, celebrities popular with children and promotions directed at children aged 11 and younger – to apply only to HFSS product advertising allowing greater opportunities for healthier foods to be advertised to children.

Reply

We agree with the principle of making it easier for children to access healthier products and the Scottish Dietary Goals do show a lack of consumption in certain areas.

However, a product that is non-HFSS is not necessarily one that should be promoted. It may be that such a product carries very little nutritional benefit and that other healthier products should take precedence.

A further concern lies around the potential commercialisation of children, especially the under-12s. This is already accepted by most of the food industry who have signed up to the EU Pledge and will not market any of their products to those under 12.

Whilst the Code defines a child as anyone under 16, consideration should be given as to whether this should be extended to include under 18s. In Scotland, as well as the rest of the UK, a child is defined as anyone under the age of 18.

If CAP is minded to amend the existing rules in any case then we would suggest that implementation is delayed until after the Nutrient Profiling Model has been reviewed by Public Health England. This is because:

- We do not want products that do not meet the new criteria but do meet the old criteria to slip through. This could lead to children being advertised what current evidence suggests is an HFSS product, even if the NPM has not yet been revised; and
- It would not benefit the food and drinks industry to now be allowed to advertise certain products, only for that position to be reversed in 2017 when the NPM review is due to conclude.

QUESTION 4 - INTRODUCING PLACEMENT RESTRICTIONS

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

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

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

Introducing media placement restrictions:

- CAP proposed to introduce a new rule prohibiting the placement of HFSS product advertising in media targeted at or likely to appeal particularly to children.
- CAP will explore through consultation whether the new rule should prohibit HFSS advertising in media targeted at or of particular appeal to children under 12 or under 16.

Reply

We agree that a new rule restricting the placement of HFSS product advertising should be introduced.

We believe that these restrictions should be applied to media targeted at or of particular appeal to children under the age of 16. Consideration should also be given as to whether this should be extended to include children under the age of 18.

We believe that a further consultation is unnecessary and would delay implementation when the case for introduction is already clear on the following grounds:

1. **Consistency** - Implementation of the above would bring advertising of HFSS foods on non-broadcast media into line with the BCAP code.
2. **Extent of Obesity Crisis** – We cannot have a relaxed rule for under 16s when current figures show that the risk of obesity increases with age among all children in Scotland (from 13% at age 2-6 to 18% at age 7-11 and 21% at age 12-15), with similar patterns for boys and girls. [Source: Scottish Health Survey, 2015, see below].
3. **Increased exposure of under 16s to advertising** – As children get older and develop their cognitive skills, they are granted additional independence which leave them more exposed to advertising messages. However, increasingly it is recognised that protections to this group are more important than ever, e.g. the recent shift by some companies to look at policies not to market to under-16s. The CAP paper recognises an inability in this group to recognise adverts for what they are, especially online.
4. **Proportionality** – The loss of revenue from sales to the 12-15 age group is relatively small compared to the health costs associated with behaviours established and entrenched at this age.
5. **25% Threshold Issue** – We feel that the 25% threshold is too high for an audience that is only under 12s. Applying this threshold to an under 16 audience would provide a more accurate representation of media likely to appeal to children.

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6. **Inefficacy of Online Age Protections** – While most websites including the major social media platforms carry age restrictions, these are easily bypassed by a generation more skilled with digital devices than their parents [Source: Advertising Education Forum]. Introducing a higher age threshold would offer additional protection to the under 12s.
7. **Minimal Benefits**- An argument for relaxing restrictions for the 12-15 age group are that they would learn and benefit from positive marketing messages. However, as most food advertising and promotions are for HFSS foods these benefits are significantly outweighed. [Source: Food Standards Scotland, *The Scottish Diet: It Needs To Change*, 2015].

Figure 6E
Children's BMI, by age, 2014 (Boys)

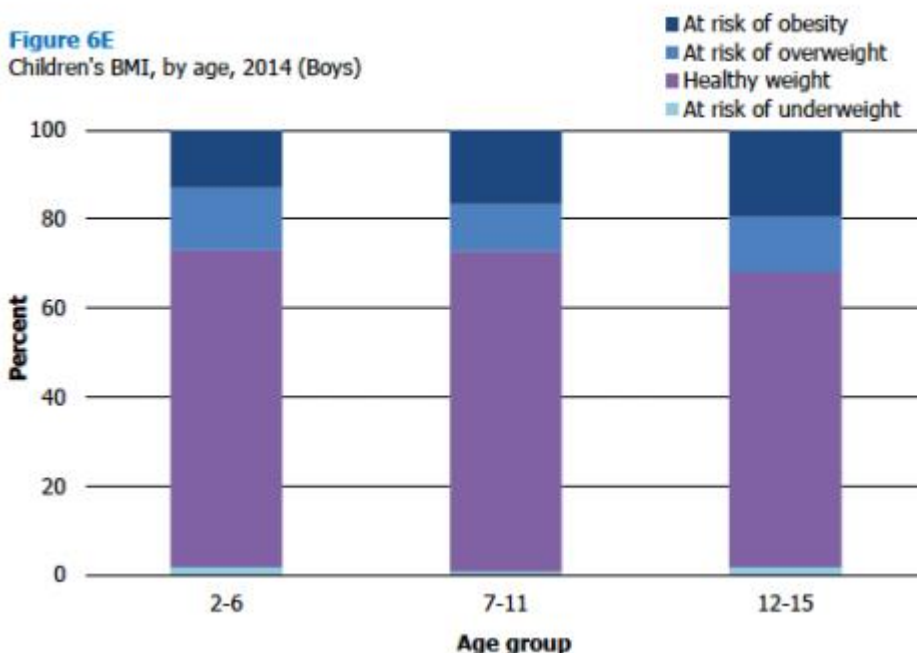
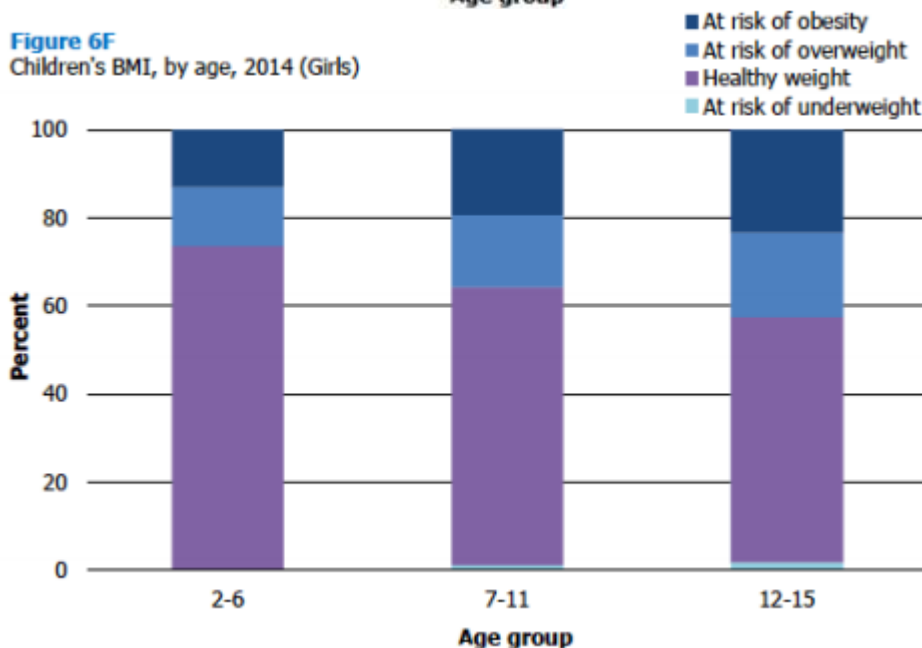
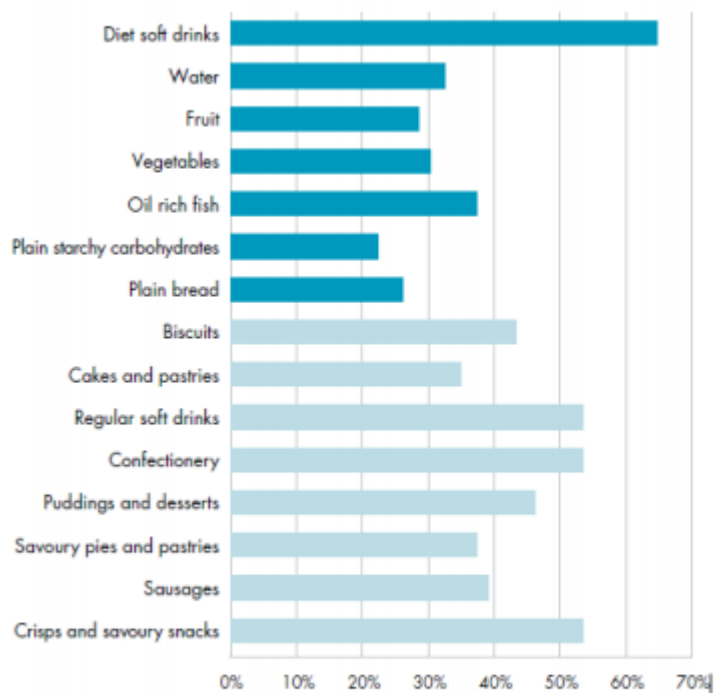


Figure 6F
Children's BMI, by age, 2014 (Girls)



Proportion of retail purchase (volume sold) on promotion in Scotland (2013/14)^a



^a Kantar WorldPanel, 2013/14 data.

QUESTION 5 - DEFINING THE AUDIENCE

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

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

Defining the audience

- CAP proposes to apply the rule limiting the placement of HFSS product advertisements to non-broadcast media where more than 25% of the audience are understood to be under 12 or, subject to the outcome of the consultation, under 16.

Reply

We do not agree to this proposal. Instead we suggest that a different test is devised for each medium, following recommendations from a working group and/or consultation. The following reasons apply:

1. **Inadequacy** – This rule is also applied to broadcast media to assess whether a programme has a particular appeal to children. We contend that this fails to incorporate popular programmes with a high child audience where the proportion might be lower than 25%. Such programmes may have a higher child audience than bespoke children's programmes and is why Scottish Ministers have consistently called for a 9pm watershed extension. This loophole also applies to non-broadcast media for the same reasons – e.g. a social media platform may have a child audience below 25% but still carry a significant number of children, e.g. 49% of under-13s use Facebook.³
2. **Not specific enough** – Non-broadcast media cover a broader range than broadcast media – essentially only TV and radio. The way and extent that young people access non-broadcast media varies significantly so to apply a 25% test across all media may result in treatment that is disproportionately harsh for some and too lenient for others. A bespoke measurement for each medium would also tackle the variability and difficulty in how an 'audience' is measured.
3. **Level is insufficient** – We would question the 25% level, especially if this applied only to under 12s. Taking cinema as an example, most films assessed through FAME as 'family' films would fail this test if applied to under 12s but meet it if applied to under 16s.⁴

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?

Application to different media

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

Reply

Agree. Applying the restrictions to all media will ensure consistency and fairness. This approach will also ensure that there are no loopholes within the CAP code that can be exploited resulting in potential exposure to HFSS food advertising to children.

Additionally, we recognise that certain forms of promotion such as in-store marketing and sponsorship are not covered by the CAP code and cannot therefore be covered by this consultation. However, this approach will act as a spur for these forms of marketing to fall into line, either through voluntary mechanisms or as a result of legislative action.

Sugarwise

Sugarwise, a social enterprise, is the international certification body for food and drink low in free sugars. The Sugarwise test (UK Patent Application No. 1610123.0) is the only method for independently determining free sugars content using laboratory testing, without a reliance on information supplied by the manufacturer.

The focus of Sugarwise is on free sugars (and not fat or salt) referencing World Health Organisation and SACN guidelines in setting the standards for low free sugar food and drink. The position presented here therefore restricts itself to discussion of the marketing of food and drink high in free sugars (H-FS). This reflects Sugarwise expertise and is where consensus is greatest.¹

As a kite mark Sugarwise is positive rather than negative, incentivising good behaviour over penalising bad. The objective is to build - for low free sugar products (L-FS) – greater awareness, availability, and demand among consumers.

Summary response to CAP consultation questions:

Q1a Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?

Q1a = Yes – the CAP Code should be updated to introduce tougher restrictions on advertising products high in free sugars ("H-FS").

Q1 (b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?

Q1b = Yes – the existing broadcast guidance on identifying brand advertising should be adopted at once so there is harmonisation across different media. However, tougher rules should be adopted for both broadcast and non-broadcast brand advertising and these should then be incorporated into a new and improved guidance document.

Q2 Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

Q2 = No – the DH nutrient profiling model does not differentiate between free sugars and total sugars, or between healthy and unhealthy fats. A small bag of almonds or a fruit based snack would fail the DH guidelines. While our understanding is that the guidelines will be updated to reflect current advice on fats and to incorporate free sugars the guidelines as they stand are not fit for purpose.

In the meantime, the very simple Sugarwise (SW) standards on sugar could be adopted.² The kite mark provides independent evaluation of products low in free sugars that is in line with World Health Organisation guidelines. Products high in free sugars would not be promoted.

Using the SW standards facilitates consistency internationally, for example in China and the United States, in a sector (of food and drink) that is dominated by international brands.

Initially we were reticent to suggest that our standards be adopted, but having considered the data and evidence, it would be our best recommendation.

This position is a compromise. It gives us a nutrient profiling model that encourages reformulation in the area there is consensus of greatest need, and immediately enables almonds, olive oil and other high healthy fat products (and products based on these) to be marketed to all age groups. When the DH profiling model comes into line with current nutritional advice that then could be adopted.

Q3 There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

Q3 = Yes – existing prohibitions on the use of promotions and licensed characters and celebrities to market food and drink to children should now be applied to H-FS products only and loosened for all non-High Free Sugar (non H-FS) products.

If HFSS criteria are adopted there must be stronger guidance on sugar. Initially products should score **low** for sugar in the DH nutrient profiling model (if this model is adopted) - rather than just below threshold. Ideally they should be **low in free sugars** as per the Sugarwise criteria. As parents and children seek out foods in all categories including chocolates, cakes, biscuits and soft drinks, favourable presentation of choices low in free sugars (L-FS) across all categories, as well as encouraging the sourcing of these products by retailers will likely have a significant impact on free sugars intake and consequently health.

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

Q4a = Yes - CAP should introduce a rule restricting the placement of H-FS product advertising

Q4 (b) If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger? ii) aged 15 or younger?

Q4b = We think that H-FS media placement restriction should be applied to all age groups; although we note that option was not given in the consultation.

Of the two options given, we support aged 15 and under.

Q5 Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

Q5 = A more practical means of restricting H-FS advertising is to restrict advertising in all age groups in a similar way to how tobacco advertising has been restricted. Again having to choose our answer would be yes – with the proviso that further measures to define the 'particular appeal' of marketing to children (content, media and placement) be introduced.

Q6 Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?

Q6 = Yes – the placement restriction on H-FS product advertising should be applied to all non-broadcast media, including online advertising, without exemptions. This also should include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship.



In addition to this, 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 these are higher in fat and salt.

This policy should apply until there is **choice** in food and drink low in free sugars in all of the categories where people buy food. Options opening up in all categories would always enable parents and others to make the better of two choices. Once options are 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 this initial milestone.



FOOD FOR THOUGHT: Rend Platings and celebrity chef Jamie Oliver this week

Fighting for sugar labels

A MOTHER from Cambridge argued the case for healthy food alongside Jamie Oliver at the Parliamentary Health Committee this week.

Rend Platings, from Coldhams Lane, suggested to MPs on Monday and Tuesday that low-sugar products should receive a certificate marking them as healthy.

The mother-of-one said clear labels on food or drink could act as an incentive for companies to create fewer products leading to health complications.

She told the News: "I'd like my daughter to have a longer life than me. For the first time, because of diet, experts say she will have a shorter life. I will not just accept that."

Mrs Platings launched not-for-profit company Level International this week, which will campaign for the scheme to be introduced.

To get the label, businesses will have to fall in line with World Health Organisation guidelines, which state that sugars should make up just five per cent of a person's daily calorie intake.

Mrs Platings plans for packages

NICK WILLOUGHBY

[@NICKAWiloughby](#)

to be marked in the same style as the Fair Trade brand, which marks ethically-sourced products.

At the same meeting, Jamie Oliver urged MPs to be "big and bold" in adopting a 'sugar tax' on fizzy drinks, which has been estimated to raise more than £1 billion a year.

Mrs Platings said she was speaking from a different angle, however.

"I'm not arguing against [Mr Oliver's proposals], but I'm arguing for a carrot and stick approach. There should be a carrot for the people who make the healthy products."

MPs suggested to Mr Oliver the government had written off a sugar tax, but the celebrity chef claimed David Cameron was looking at evidence.

He said: "The discussions that I've had have not implied that that is written off."

"The discussions I've had are robust... Mr Cameron is reviewing everything."

Above: "Carrot and Stick Approach" Needed to Promote Choices Low in Free Sugars

Key points in response to CAP consultation:

Sugarwise believes that the Committee of Advertising Practice rules should be harmonised across all media (including in cinemas, on posters, in print, online and games), in such a way as to encourage development and promotion of food and drink options low in free sugars in all the categories where children normally consume sugar.

There should be a recognition that impulse purchases may be made in snacking in all categories (bars, ice creams, crisps, chocolate etc) and that highlighting better options within these would make a significant difference to people's free sugar consumption.

Examples follow of products that could be marketed to children adopting SW guidelines on free sugars immediately but not DH guidelines.



Mango "Ice Cream"

This frozen mango "ice cream" has no free sugars but would rank **high** on the DH nutrient profiling for sugar. Covering this with nuts would fail it on fat profiling as well, despite that it is clearly a healthier option, its promotion would be prohibited.

The DH nutrient profile for sugar requires urgent amendment to refer to free sugars in line with public health guidelines.

Free sugars are associated with numerous health issues in both children and adults. Isolating sugar (initially sugar and free sugars subsequently) makes sense as there is broad consensus of its negative impact on health, as there was with tobacco.

Placing the same restrictions on other HFSS foods (such as almonds) would not be met with the same consensus and would, we hold, be cumbersome and counterproductive, for all age groups including children.

Further, to do so on all HFSS would discourage the reformulation and promotion of items in all the food and drink categories that are low in free sugars (though comparatively high in fat or salt) making it unlikely that low free sugar options are offered across categories. For example, in snacking, chocolate or cereal bars that have no added sugars or free sugars. Such products may be high in fat or salt but are, compared to others within the same category, demonstrably better choices in terms of both dental health and other detrimental effects associated with free sugar consumption. They may also often have healthy fats.

Parents and children will continue to buy foods in categories where there will continue to be no low free sugar options unless there becomes a promotional, financial, tax or other advantage in providing these.



Children's Fruit Snack in Major Retailer

These 20g bars are low calorie, nutritionally equivalent to a piece of fruit, and have only trace free sugars.

They are fun products targets to children that would provide more fruit and fibre yet in DH profiling would count as high in sugar, and as a bar they would not be permitted in children's lunch boxes.

The ability to positively promote such items in order to differentiate these from less healthy products within the category would make a substantial difference to children's free sugar consumption.

The CAP rules should be updated to incorporate:

- a focus on sugar, the area of greatest health concern initially adopting the SW sugar guidelines as an interim measure and consequently the DH guidelines when updated to be in line with the WHO recommendations on free sugars
- definition of advertising that is widened to include all forms of commercially-sourced messages which include brand names or brand-related images.
- a remit which includes the labelling and packaging of food and drink.
- the adoption of the current nutrient profiling model that governs what can be advertised restricting this to the sugar criteria (that must be "low" with greater flexibility for fat and salt) to tackle the greatest challenge in all categories, and to encourage reformulation in all categories.
- transparent monitoring and effective sanctions for transgressions.



Context – Encouraging Options Low in Free Sugars

In May 2010 WHO endorsed [Resolution WHA63.14](#), the aim of which is to restrict the marketing of food and drink high in saturated fats, trans fats, free sugars and salt to children and adolescents to reduce the prevalence of diet-related ill-health.

Following its adoption, WHO released recommendations which asked national governments “to implement policies to restrict the marketing of unhealthy food and drink products in settings where children spend time”. In 2016, WHO’s [Report](#) on ending childhood obesity emphasised that “the settings where children and adolescents gather and the screen-based offerings they watch, should be free of unhealthy foods and sugar-sweetened beverages”.

It is understood that no company has restricted the marketing of unhealthy food and drink to children in all settings, for all practices, and across all media platforms. So the regulator, CAP, is right to step in and provide the rules which will make them do so.

A note on the evidence base for action:

“A robust evidence base accumulated between 2003 and 2013 demonstrated how the extensive and persistent exposure to the powerful marketing of unhealthy food and drink products could affect the preferences and purchasing requests of children. Rigorous reviews have documented how often the sophisticated and integrated marketing communications of the food and drink industries continue to influence the dietary behaviour of young people and contribute to energy-dense and nutrient-poor diets, increased risks of unhealthy weight gain and negative health outcomes.” ([Bull World Health Organ 2016; 94:540-548](#))

Detailed Response to CAP consultation questions

Q1) Restrictions on HFSS product advertising

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

Yes. Our research, briefings and monitoring reports all consistently show how prevalent this form of marketing is, and how the current rules are neither adequate nor robustly enforced.

Current marketing rules fail to protect children from junk food marketing online and across other forms of media. The rules are vague, inconsistently applied and don't distinguish between products low in free sugars and unhealthy products.

There are loopholes which allow adverts promoting junk food to be targeted at children online that wouldn't be shown on children's television. The rules also fail to cover a number of common marketing techniques that are targeted at children. For example, brand characters (eg., Chewie the Chewits dinosaur, Honey Monster, the Nesquik rabbit), brand marketing, and product packaging featuring games and competitions are not included in the regulations. In-school marketing, sponsorship deals and in-store placement of products are other areas not covered by the existing rules.

Online branding geared towards children and websites and apps containing child-friendly games and activities are particularly prevalent amongst confectionery brands. Licensed characters are another huge area where children are exposed to H-FS marketing. Far greater amounts of sweets and chocolate, cakes, sugary cereals, yoghurts and drinks than markedly healthier options feature tie-ins with Minions, Star Wars, Peppa Pig and other cinema and TV hits popular with children. H-FS brands are also increasingly making use of influencers (e.g. vloggers and musicians) to produce and distribute marketing content, not all of it as clearly labelled as advertising as is required. In addition, misleading health or nutrition claims online and on packaging – alongside images of happy children eating the products – skew the information parents are relying on when making purchasing decisions.

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

No. Children's knowledge of unhealthy food and drink increases their obesity risk. Children's recognition of branded food logos increases with age and compared with other children, those who recall branded unhealthy food and drink have stronger preferences for such products (notes 12-15 of Bull).

Many ads and other marketing aimed at children focus primarily on promoting a corporate brand or 'family' of products. This is particularly problematic when most products within that brand/range are – or are perceived as being – H-FS, and thus are not appropriate to market to children.

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

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

Brand characters could only be used if all products which used those characters were L-FS.

An ad featuring a brand but not the products would only be allowed if all varieties of that brand were L-FS.

If an ad focused primarily on a competition / a giveaway and only featured one (L-FS) variety in the ad, it would only be allowed if all varieties available were L-FS. The same for all kids' meals too.

Sugarwise believe that existing broadcast rules for children are not strong enough, and do not suitably protect children from advertising and marketing for high free sugar products.

Sugarwise think that tougher rules are needed and should be incorporated for both broadcast and non-broadcast media. However, these need not be extended to foods high in fats such as almonds.

Q2) Selecting a nutrient profiling model

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

No, the FSA/Ofcom nutrient profile model (now also referred to as the DH model) is **not fit for purpose** currently and should therefore not be adopted for assessing whether a food or drink marketed in non-broadcast media is considered 'less healthy' and thus should not be advertised to children.

Public Health England, aware of the inadequacies of the current model particularly as these relate to free sugars, has just started conducting a review of the current nutrient profile model for broadcast advertising, to see if it is still fulfilling its purpose and to incorporate new dietary recommendations on sugar. Assuming that the result of the review is a strengthened model, then this revised model should be adopted for non-broadcast media. In the meantime, the SW model should be adopted.



Another Example

Bar comprised only of fruit and nuts and without any free sugars would be HFSS under DH criteria but not under SW criteria

Q3) Existing prohibitions on the use of promotions and licensed characters and celebrities. There are existing rules (prohibitions on the use of promotions and of celebrities and licensed characters popular with children) in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?

Yes. By allowing products low in free sugars to be advertised to children using celebrities and licensed characters, would encourage reformulation in an area where there are currently virtually no choices low in free sugars. It is important however that the focus is on free sugars and the threshold is set at a low free sugar level as per SW criteria and not just below threshold of total sugars as per the DH criteria. There is a case for loosening the restrictions on use of licensed characters and celebrities for demonstrably healthier products such as fruit, vegetables and SW kitemarked or compliant products that open up choice in all categories.

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

Q4) Introducing placement restrictions. Should CAP introduce a rule restricting the placement of HFSS product advertising?

Yes, CAP should introduce such a rule but for H-FS only

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

i) aged 11 or younger?

ii) aged 15 or younger?

WHO recommendations and the UN Convention of the Rights of the Child define a child as anyone under 18. Therefore, that should be age definition which is used to give the best protection to all children.

However, we also recognise that current BCAP rules define children as younger than 16 years of age. That should be the minimum which the CAP rules apply to.

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

Q5) Defining the audience

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

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

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

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

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

The model CAP are proposing is used for restricting alcohol and gambling advertising to under 18s. However, CAP have not evaluated the effectiveness of these rules in non-broadcast media. The experiences and anecdotal evidence of Alcohol Concern and other organisations working in this field strongly suggest that these rules are not effective, especially in regards to the targeting of teenagers. Furthermore, food and drink is a different proposition, as they are not prohibited from sale to under 18s, unlike alcohol and gambling.

Alternative proposal

A more practical means of restricting H-FS advertising is to restrict advertising in all age groups in a similar way to how tobacco advertising has been restricted. Again having to choose our answer would be yes – with the proviso that further measures to define the 'particular appeal' of marketing to children (content, media and placement) be introduced.

Following Children's Food Campaign, we would use three criteria to judge whether communications can be seen as child directed: (i) product appeal (ii) marketing content and (iii) marketing placement. Starting from a product stand point before reviewing the other criteria we have outlined the following questions:

- Is the advertisement designed to attract the attention of children?
- Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears?

The relationship between the three criteria can then be used to determine whether a marketing communication is directed at children, and whether it should be restricted or not. If there is doubt, the overall impression it gives must also be taken into account.

Essentially, to be approved the H-FS marketing communication must not:

- Be designed in a way that appeals to children.
- Be broadcast or distributed in a place where, or at a time when children are normally reached.

Marketing communications run more risk of being considered as directed at children:

- The more the goods appeal to them
- The more childlike the content of the communications is
- The more the place or means of broadcast or distribution is likely to increase the odds of reaching children

This type of approach is being explored or advocated in countries as diverse as Australia, Brazil, Canada, and Chile; and recommended by an emerging consensus of academics and public health professionals.

Q6) Application to different media

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

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



Example: online promotion of food low in free sugars by The Food Doctor.



These products, such as the Food Doctor healthy snacking ranges of seeds and bars, and "Peppa Pig" raisins, among many others are higher in healthy fats and natural sugars than the DH profile would allow. However, these and many other products, provide options in snacking that are low in free sugars.

It is imperative that whatever regulation is put in place does not impact negatively upon the promotion of products like these that are low in free sugars.

According to Public Health England a reduction in free sugars to 5% of daily calories within 5 years could save over 77,000 lives and 6 Million cases of dental decay along with £14 Billion to the NHS. Free sugars are the biggest challenge confronting us today. We therefore urge CAP to adopt a carrot and stick approach providing incentives for all parties to engage with low free sugar food and drink.

At Tesco our customers have asked us to help them live more healthily. We are proud of our record on promoting healthier choices, such as being the first retailer to remove sweets from all checkouts and the introduction of an own label health range. We were a founding signatory to the Public Health Responsibility Deal (PHRD) and are leading the way in reducing sugar from soft drinks. Our commitment comes from our customers, who tell us that they want to be encouraged and supported in making healthier choices; not have their choices dictated to them.

The importance of simple and clear guidance

We recognise that the way children receive information is changing, as set out in the consultation evidence base. As guidance has sought to keep pace with this, the rules around advertising to children have become more complex. We would welcome simple and clear guidance that brings existing rules together in one document, and we would support moves to create consistency in the guidance across broadcast and non-broadcast channels. Moreover, this guidance should contain consistent definitions around what is classified as an HFSS product, how a child is defined and how included and excluded media channels have been ascertained. What matters more than the definitions are the outcomes.

Adopting the Nutrient Profile Model to identify HFSS products

Updates to the CAP Code to include rules dedicated to HFSS products should reflect wider industry efforts to reformulate products beyond what has already been achieved through the PHRD. The current nutrient profile model is widely used throughout industry to define HFSS products. Tesco uses the model not only on its advertising decisions, but also in our wider strategic considerations. It is used to identify customer healthy product purchasing habits, as part of our efforts to support customers to make healthy choices. The model would be a useful and known tool to use that would give us confidence in being able to ascertain HFSS products. The decision to adopt the model must be taken in context of its review by Public Health England. Changes to the model could have implications for industry, and its use by Tesco, and changes to the model must be incorporated in the Code. Generally, we are supportive of the current model being updated to reflect the latest science and evidence.

In targeting promotions and licensed characters on particular products it is important to have a consistently applied definition for HFSS products. To support this, expectations around the extent to which licensed characters can be used need to provide clarity for retailers.

Applying new provisions to products aimed at children only

Retail is a highly competitive market. Changes to the advertising rules should be proportionate and create a level playing field for all retailers. We believe that there are sufficient safeguards within the existing rules relating to HFSS product advertisement generally but we welcome the approach set out in the consultation that additional safeguards should apply to HFSS product advertisement aimed at children only.

We feel that the age at which the restrictions apply should be clearly set out in the guidance. Currently restrictions apply to different ages, such as for rules around licensed characters and those set out in the general provisions of Section 5 of the Code. If multiple ages continued to exist this will need to be reflected in the guidance to provide clarity and give retailers confidence in implementing the guidance correctly.

81 – The Nut Association (TNA)

The Nut Association (TNA) represents companies or individuals involved in the UK nut industry. TNA shares the concerns of other stakeholders expressed in the consultation document about children and young people growing up overweight and obese and developing largely preventable health problems as a consequence. The personal and societal costs of this are immense. We agree that better food choices contributing to higher nutritional quality eating patterns are essential for children and young people which they can sustain into a healthy adulthood. In this context, nuts and nut butters are part of the solution, not part of the problem. Encouraging regular consumption of these nutrient dense foods would improve nutritional quality of diets and aid in weight management where needed. The USDA nutrient database for nuts and nut butter composition shows the profile for individual nuts and nut butters and is the reference point for research studies mentioned in this response. <https://ndb.nal.usda.gov/>

Nuts and health

“Nuts” in this response means peanuts (botanically legumes) and culinary tree nuts (botanically seeds or dried fruits) which are considered together because of their strong nutritional and usage similarities. In terms of practical nutrition, peanuts and tree nuts together with nut butters and pastes made from them are a coherent group of plant foods. It is generally acknowledged that more plant food consumption is desirable because of their health promoting and disease reducing potential: “Plant foods such as vegetables, fruits and berries, nuts and seeds, and whole-grain cereals are rich in dietary fibre, micronutrients, and potential bioactive constituents. There is strong scientific evidence that natural fibre-rich plant foods contribute to decreased risk of diseases such as hypertension, cardiovascular diseases, type-2 diabetes, and some forms of cancer.” [Nordic Nutrition Recommendations, 2012. <http://norden.diva-portal.org/smash/get/diva2:704251/FULLTEXT01.pdf>

Considerable scientific evidence points to nuts being part of “prudent” dietary patterns, as opposed to typical “Western” ones which are characterised by overconsumption of refined carbohydrates and added sugars, saturated fats and low fibre foods. The rationale for this is clear: “Nuts (tree nuts and peanuts) are nutrient dense foods with complex matrices rich in unsaturated fatty and other bioactive compounds: high-quality vegetable protein, fiber, minerals, tocopherols, phytosterols, and phenolic compounds. By virtue of their unique composition, nuts are likely to beneficially impact health outcomes. Contrary to expectations, epidemiologic studies and clinical trials suggest that regular nut consumption is unlikely to contribute to obesity and may even help in weight loss .” [Ros, E. 2010 “Health Benefits of Nut Consumption”. *Nutrients* 2, 652-682.]

Overweight in children and young people and the higher risks of later obesity that it brings, is an increasing concern. We live in what has been termed an “obesogenic environment” characterised by sub-optimal nutrition and inadequate physical activity. Better nutritional choices, which need to be affordable, simple and easy to make by families should be identified and promoted. The evidence shows that choosing nuts and nut butters is part of this approach to weight management: “There is clear evidence to conclude that fibre-rich foods (e.g., whole grains, vegetables, fruits, berries, legumes, nuts, and seeds), and perhaps also dairy products, are associated with reduced weight gain.” [Nordic Nutrition Recommendations, 2012. <http://norden.diva-portal.org/smash/get/diva2:704251/FULLTEXT01.pdf>

Advertising and media

Advertising and other media messaging need the ability to help both young people and their parents understand the benefits of choosing nuts and nut butters in place of foods of less nutritional quality, especially where those have high levels of added salt, fat or sugar. At the moment this is not possible in terms of messages aimed at children and young people. An ironic example of what needs to be changed is the fact that peanut butter under the current regulations cannot be promoted to children in the UK because of its fat content. In stark contrast, in parts of the world where nutritional crises occur, peanut paste-based Ready to use Therapeutic Foods such as Plumpy'Nut and Medika Mamba containing a high level of healthy fats, protein and other nutrients from peanuts are recognised by UNICEF, the European Commission and NGO bodies as essential for rescuing and restoring the health of severely undernourished children. [<https://en.wikipedia.org/wiki/Plumpy%27nut>]

A growing number of families in the UK are non-animal protein eaters for cultural, belief or choice reasons. It goes without saying that nuts and nut butters as significant protein and other macronutrient sources are particularly important in achieving quality family nutrition for vegetarian and vegan groups. Children in such families should be able to benefit from media messages about nuts which encourage better nutrition habits for themselves now and in later life.

Nuts and nutrition policies for children and young people

The 2013 School Food Plan for England, written independently and adopted by Government, recommends that nuts are regularly available in two ways in schools.

- as part of “other non-dairy, iron-rich sources of protein, such as eggs, beans, pulses, soya products and nuts and seeds [which] should be provided as a protein option every day for non-meat eaters and at least twice a week for all children.” (p 134)
- as snacks outside meal times, along with seeds, fruit and vegetables that do not have added fat, salt or sugar (p 135)

The Government-endorsed current health promotion campaign in England, Change 4 Life, already encourages a “small handful of unsalted mixed nuts” as a healthy savoury snack idea. With a focus on healthy snacking in schools, Change for Life also encourages teachers to promote “Snack Swaps”. Its 2015 teacher’s guide to “fun ways to help kids make healthier snacks” gives two nut “snack swap” examples:

- swap biscuits for plain, unsalted nuts.
- swap chocolate for low fat, lower sugar yoghurt sprinkled with fruit or nuts.

There is recent clinical evidence that school-based programmes which encourage pre-teenagers at risk of weight problems to consume peanuts and peanut butter snacks, substituting for less healthy snacks, can contribute to weight management and improve overall dietary quality (significantly higher intakes of vitamin E and magnesium and consumption more servings of vegetables than non-peanut eaters) [Moreno, P. 2013. Nutrition Research 33(7): 552–556; Moreno, P. 2015. Journal of Applied Research on Children 6(2): 15.]

The US adopted “Smart Snacks in Schools” standards in 2014. These recommend peanuts for healthy snacking because they have “zero empty calories” while being nutrient and energy dense foods. <http://www.fns.usda.gov/healthierschoolday/tools-schools-focusing-smart-snacks>

Nutrition Australia also published school snack standards in 2014. These state: “Nuts are natural power-packs of nutrients like vitamins, minerals, antioxidants, healthy fats, protein and fibre, which help children grow, develop and learn. Examples of nuts include almonds, Brazil nuts, cashews, chestnuts, hazelnuts, macadamias, pecans, pine nuts, pistachios and walnuts. Peanuts are technically a legume, but they are commonly referred to as a nut as they have a similar nutritional composition.” As for nuts in schools, this is encouraged, because “Plain or dry-roasted nuts are rated GREEN according to the National Healthy School Canteens Guidelines, which means they are a nutritious foods that should be on the canteen menu every day.” [Nuts, Health and Kids, 2014]

The Dietary Guidelines for Americans underpin the design and implement food and nutrition programmes including the USDA’s National School Lunch Program and School Breakfast Program, which feed more than 30 million children each school day. The most recent US dietary recommendation highlight foods like nuts and nut butters because they are high protein packages that include healthy fats and nutrients like dietary fibre, potassium, folate, vitamin E, thiamin (B1), and magnesium. The rationale is that nutrient dense foods such as nuts help maintain good nutrition and calorie balance. These recommendations acknowledge research showing that frequent peanut and tree nut eaters do not gain weight when following a healthy diet and replacing less healthy fats and snacks with nuts. [2015-2020 Dietary Guidelines for Americans, 8th ed, 2015]

Nuts and nutrient profiling

During 2004-2005, the UK Foods Standards Agency (FSA) developed a nutrient profiling model as a tool for categorising foods on the basis of the quality of their nutrient content. This was for the use of the UK communications regulator Ofcom to help it in its work to tighten controls on the advertising to children of foods high in saturated fat, salt or sugar. As a result of the views during consultation on the model of the Scientific Advisory Committee on Nutrition (SACN) and the British Nutrition Foundation, the FSA board agreed in the final version of the nutrient profile scoring system to include nuts within the category of fruit and vegetables: “nuts to be scored in the same way as fruit and vegetables, in recognition of the contribution of nuts to a healthy balanced diet.” This was agreed by the FSA Board meeting on 13 October 2005. It followed the recommendation of its expert group that “nuts, which are whole, roasted, chopped, grated and ground should count.”

During 2006-2007, the European Food Safety Authority (EFSA) considered nutrient profile modelling in an EU context. In 2008 the European Commission adopted a position on nutrient profiles which grouped nuts together with fruits and vegetables, as recommended by EFSA, reflecting the earlier work of the UK’s FSA. In the EU’s nutrient profiling expert discussions, nuts –specifically identified as peanuts and tree nuts - were clearly categorised with fruit and vegetables in respect of their nutrient content.

The way forward

As CAP will be aware, nutritional guidelines around the world are moving away from focusing on individual nutrients – fat content in particular – to considering the overall nutrient quality of a food and the contribution it can make as part of a healthy overall eating pattern. That is the approach we would like the CAP also to take in formulating its new position on what food and drink is allowed to be advertised to children and young people.

TNA as the representative of the UK's peanut and tree nut sector, believes that any new regulations should recognise the research underpinning the recommendation of nuts (peanuts and tree nuts) as desirable foods for the development of children and young people (always assuming there are no food allergy issues of course). Reflecting positive nutrient profiles for nuts, these foods should not be excluded in any revised regulations regarding the advertising of foods to children and young people.

The following response has been prepared by Torfaen County Borough Council and the Aneurin Bevan Gwent Public Health Team. We work closely together on a number of issues that affect the health and well-being of our population, and this is further strengthened by the recent implementation of the Well-being of Future Generations (Wales) Act 2015 and the setting up of statutory public services boards (PSB). The Torfaen PSB brings many partners together, all of whom have a role to play in the care and well-being of children; the Council as a constituent partner of the PSB and the PSB as a whole support the local programme - *Fit for Future Generations: A childhood obesity strategy for Gwent to 2025*.

Response to CAP consultation questions

Q1) Restrictions on HFSS product advertising

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

Yes. The Gwent Childhood Obesity Strategy, *Fit for Future Generations* calls for disruption to obesogenic social norms which includes calling for tougher restrictions on the marketing of less healthy food and drink to children, on TV and online. Research, briefings and monitoring reports consistently show how prevalent this form of marketing is, and how the current rules are neither adequate nor robustly enforced to protect children (*World Health Organisation Bulletin, 2016; 94:540-548*).

Children and young people's media habits are changing. Children and young people now spend as much time on the internet as watching television, and use of computers being much more prevalent in children as young as three and four.

Mobile phone use amongst children has increased dramatically in recent years and the rise of smart phones means that on-line access is even easier and more attractive (Ofcom, Children and parents: Media use and attitudes report, 2015). It is important that the CAP code keeps up to date with these social and technical developments.

The current marketing rules fail to protect children from junk food marketing online and across other forms of media. The rules are vague, inconsistently applied and don't distinguish between healthy and unhealthy products. There are loopholes which allow adverts promoting junk food to be targeted at children online that wouldn't be able to be shown on children's television. The rules also fail to cover a number of common marketing techniques that are targeted at children. For example, brand characters (for example, Chewie the Chewits dinosaur, Honey Monster, the Nesquik rabbit), brand marketing, product packaging featuring games and competitions are not included in the current regulations. Furthermore, in-school marketing, sponsorship deals and in-store placement of products are other areas not covered by the existing rules.

Online branding geared towards children and websites and apps containing child-friendly games and activities are particularly prevalent amongst confectionery brands. Far greater amounts of sweets and chocolate, cakes, sugary cereals, yoghurts and drinks than markedly healthier options feature tie-ins with Minions, Star Wars, Peppa Pig and other cinema and TV hits popular with children. HFSS brands are also increasingly making use of influencers (e.g. bloggers and musicians) to produce and distribute marketing content, not all of it as clearly labelled as advertising as is required. In addition, misleading health or nutrition claims online and on packaging – alongside images of happy children eating the products – skew the information parents are relying on when making purchasing decisions.

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

No – the existing broadcast guidance on identifying brand advertising is not strong enough; tougher rules should be adopted for both broadcast and non-broadcast brand advertising.

Children's knowledge of unhealthy food and drink increases their obesity risk. Children's recognition of branded food logos increases with age and compared with other children, those who recall branded unhealthy food and drink have stronger preferences for such products (*World Health Organisation Bulletin, 2016; 94:540-548*).

Many advertisements and other marketing aimed at children focus primarily on promoting a corporate brand or 'family' of products. This is particularly problematic when most products within that brand/range are – or are perceived as being – HFSS, and thus are not appropriate to market to children.

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

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

- Brand characters could only be used if all products which used those characters were non-HFSS.
- An advertisement featuring a brand but not the products would only be allowed if all varieties of that brand were non-HFSS.

- If an advertisement focused primarily on a competition / a giveaway and only featured one (non-HFSS) variety in the ad, it would only be allowed if all varieties available were non-HFSS. This would apply to all children's meals too.

Q2) Selecting a nutrient profiling model

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

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

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

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

No. We are very concerned that by allowing any non-HFSS product to be advertised to children using celebrities and licensed characters, there would be many products just under the threshold score for HFSS which would choose to exploit such advertising techniques. These products may not be 'less healthy' as defined by the nutrient profiling model, but might be high in sugar and/or with sugar, salt and saturated fat levels formulated to come in just under the thresholds. It is common to find branded products reformulated or new variations created which score 9 or 10 on the nutrient profile model before taking into account fibre and protein. However, there is a case for loosening the restrictions on use of licensed characters and celebrities for demonstrably healthier products such as fruit and vegetables. In addition, the restrictions on the use of media characters, mascots and celebrities should extend to point-of-sale/purchase, packaging, in-store promotion, toy giveaways and competitions. The same should also apply to equity brand characters.

Q4) Introducing placement restrictions

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

Yes, CAP should introduce such a rule.

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

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

WHO recommendations and the UN Convention of the Rights of the Child define a child as anyone under 18. Therefore that should be the age definition which is used to give the best protection to all children.

However, we also recognise that current BCAP rules define children as younger than 16 years of age. That should be the minimum which the CAP rules apply to.

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

Q5) Defining the audience

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

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

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

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

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

The model CAP are proposing is used for restricting alcohol and gambling advertising to under 18's. However, we are concerned that CAP have not evaluated the effectiveness of these rules in non-broadcast media. The experiences and anecdotal evidence of Alcohol Concern and other organisations working in this field strongly suggest that these rules are not effective, especially in regards to the targeting of teenagers. Furthermore, food and drink is a different proposition, as they are not prohibited from sale to under 18's, unlike alcohol and gambling. We support the alternative proposal suggested by the Children's Food Campaign, which is outlined below:-

Alternative proposal

Any marketing that is particularly appealing to children is child-directed, and should be classified as such based on its overall impression, irrespective of the media platform or venue, or the percentage or total numbers of children exposed.

There is precedent already from the Advertising Standards Authority for this approach. In certain complaints, they must judge whether an advert appeals to children and have an ad hoc list of marketing techniques and cues which help them to decide this. As yet they have now compiled this into a formal set of criteria; and neither have they passed this on to CAP. Both should happen.

We suggest using three criteria to judge whether communications can be seen as child directed: (i) product appeal (ii) marketing content and (iii) marketing placement.

Starting from a product stand point before reviewing the other criteria we have outlined the following questions:

- For whom are the advertised goods or services intended? Do they appeal to children?
- Is the advertisement designed to attract the attention of children?
- Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears?

The relationship between the three criteria can then be used to determine whether a marketing communication is directed at children, and whether it should be restricted or not. If there is doubt, the overall impression it gives must also be taken into account.

Essentially, to be approved the HFSS marketing communication must not:

- Be designed in a way that appeals to children.
- Be broadcast or distributed in a place where, or at a time when children are normally reached.

Marketing communications run more risk of being considered as directed at children:

- The more the goods appeal to them
- The more childlike the content of the communications is
- The more the place or means of broadcast or distribution is likely to increase the odds of reaching children

This type of approach is being explored or advocated in countries as diverse as Australia, Brazil, Canada, and Chile; and recommended by an emerging consensus of academics and public health professionals.

Q6) Application to different media

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

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

83 – UK Faculty of Public Health

We are pleased to confirm that the UK Faculty of Public Health fully supports and endorses the response made to the CAP consultation on food and soft drink marketing to children, and would be grateful if CAP could acknowledge this endorsement.

FPH makes the following further clarifications in relation to the CFC response.

If advertising is restricted because of 'particular appeal' to children, then the advertisers or sellers of space / time for advertising can use the argument that something isn't of 'particular appeal' to children if it's something that everyone, regardless of age, finds appealing. This has been used too many times in tobacco advertising in the past for us to let it pass unnoticed here.

FPH suggests that HFSS advertising should be restricted where it falls into AT LEAST ONE of the following criteria:

- It is of particular appeal to children OR;
- At least X00,000 children would be exposed to it OR;
- Children make up at least 25% (or other % to be agreed upon) of the audience

Similarly, FPH is wary of the phrase 'presuming the "particular appeal to children" test has been met' because this means that if Donald Duck appeals to adults as much as to children, it would be OK to use it. So the key phrase is, rather, 'appeals to children' not 'is of particular appeal to children'.

This is dealt with very well but only much later on (middle of the final page, p10):

Essentially, to be approved the HFSS marketing communication must not:

- Be designed in a way that appeals to children.
- Be broadcast or distributed in a place where, or at a time when children are normally reached.

CAP must not introduce changes that do not deal with this issue adequately.

Finally, FPH would use the term "healthy" as opposed to the relative term "healthier". For example, a cheeseburger with reduced fat cheese could arguably meet the criteria of "healthier" when this is clearly unhealthy.

In addition to use of licences characters or celebrities, they should not be able to associate themselves with sport related activities (e.g. McDonalds sponsoring the Olympics).

About the UK Health Forum

The UK Health Forum (UKHF), a registered charity, is both a UK forum and an international centre for the prevention of non-communicable diseases (NCDs) including coronary heart disease, stroke, cancer, diabetes, chronic kidney disease and dementia through a focus on up-stream measures targeted at the four shared modifiable risk factors of poor nutrition, physical inactivity, tobacco use and alcohol misuse. UKHF undertakes policy research and advocacy to support action by government, the public sector and commercial operators. As an alliance, the UKHF is uniquely placed to develop and promote consensus-based healthy public policy and to coordinate public health advocacy.

UKHF is a member of the Obesity Health Alliance. We appreciate the opportunity to respond to this draft strategy.

Summary

The UKHF has a long history of calling for tougher restrictions on the marketing of less healthy food and drink to children, on TV, online and beyond.^{1,2,3} We are pleased that the Committee of Advertising Practice (CAP) has accepted the need to take action, and to harmonise the rules across all forms of media, using the current restrictions on TV advertising as a starting point.

However, it is our view that this consultation is not at the same level of commitment as the bold action we saw earlier this year with the Government's announcement of a sugary drinks levy. CAP has missed obvious opportunities to build on the leadership the UK has shown by introducing the Ofcom restrictions on TV advertising of unhealthy food by putting the protection of children's health above food and advertising industry profits in other media. It is disappointing that CAP continues to consult on key policy aspects – such as whether the rules should apply to under 13s or under 16s – where there is already near unanimous consensus; whilst then refusing to consult on closing some of the loopholes in the existing rules or areas of marketing missing from the current remit. CAP's begrudging acceptance of the need to take even limited action does not augur well for the Advertising Standards Authority's (ASA) determination to enforce these new rules. The ASA already fails to grasp how manufacturers and agencies are flouting the spirit and often the letter of existing advertising rules.

Questions

QUESTION 1 - Restrictions on HFSS product advertising

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

Yes

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

No. The existing broadcast guidance on identifying brand advertising is not strong enough; tougher rules should be adopted for both broadcast and non-broadcast brand advertising.

QUESTION 2 - Selecting a nutrient profiling model

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

Yes. And also adopt an agreement to automatically implement a revised version following the forthcoming Department of Health-Public Health England review of the FSA/Ofcom nutrient profile model.

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

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

No. This should be kept as is. However, a possibility of loosening restrictions for demonstrably healthier products such as fruits and vegetables and/or green traffic light labelled products could be considered.

QUESTION 4 – Introducing placement restrictions

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

Yes.

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

i) aged 11 or younger?

No.

ii) aged 15 or younger?

Yes. Aged 15 or younger should be the audience that media placement restrictions apply to; although there is a case for increasing to the under 18s too. This would be consistent with the Ofcom HFSS rules for television.

QUESTION 5 - Defining the audience

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

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

No. This offers insufficient protection to children and is very difficult to implement or enforce for non-broadcast and is difficult to monitor transparently. Any marketing that is particularly appealing to children is child-directed, and should be classified as such based on its overall impression, irrespective of the media platform or venue, or the percentage or total numbers of children exposed. UKHF suggests using three criteria to judge whether communications can be seen as child directed: product appeal; marketing content; and marketing placement. This type of approach is being explored or advocated in other countries including Australia, Brazil, Canada, and Chile.

QUESTION 6 - Application to different media

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

Yes. There should be no media exemptions. Additionally, to meet the objectives of this Code review, the CAP Code should be extended to apply to areas currently outside of its remit (e.g. packaging, licensed and equity characters, in-school marketing, in-store placement and sponsorship).

About World Cancer Research Fund International

World Cancer Research Fund International leads and unifies a network of cancer prevention charities with a global reach. We are the world's leading authority on cancer prevention research related to diet, weight and physical activity. We work collaboratively with organisations around the world to encourage governments to implement policies to prevent cancer and other non-communicable diseases (NCDs).

We advocate for the wider implementation of more effective policies that enable people to follow our Cancer Prevention Recommendations¹. The evidence shows that effective policies will reduce the chances of people developing cancer and other NCDs.

Our NOURISHING policy framework and accompanying database of food policies from around the world contains implemented policies which aim to promote healthy diets to reduce obesity and nutrition-related NCDs. Among the included policies are mandatory and voluntary policy actions to restrict food marketing to children (<http://www.wcrf.org/int/policy/nourishing-framework/restrict-food-marketing>).

More information on World Cancer Research Fund International can be found at <http://www.wcrf.org/> and www.wcrf.org/NOURISHING.

About World Cancer Research Fund UK

World Cancer Research Fund UK belongs to the network of cancer prevention charities led by World Cancer Research Fund International.

For the past 25 years, World Cancer Research Fund has been the UK's leading charity dedicated to the prevention of cancer through diet, weight and physical activity. We fund research, provide health advice and deliver health information programmes² to empower people to follow our Cancer Prevention Recommendations¹ to reduce their risk of developing a preventable cancer.

Our analysis of global research shows that a third of the most common cancers are preventable through a healthy diet, maintaining a healthy weight and regular physical activity.

More information on World Cancer Research Fund UK can be found at <http://www.wcrf-uk.org/>.

GENERAL POSITION

We welcome CAP's consultation in view of the Report of the World Health Organization's Commission on Ending Childhood Obesity (2016) and the forthcoming UK government's Childhood Obesity Strategy. CAP's role and its marketing regulations should be considered in the wider context of a societal response to alarming rates of childhood obesity and its consequences: currently one in five children in England are overweight or obese before they start primary school, and by the time they leave, this increases to almost one in three.³ Obese children are more likely to be obese as adults, which in turn increases their risk of developing serious health conditions such as type 2 diabetes, cancers, stroke and cardiovascular diseases. These conditions have a devastating human impact and also place a huge financial burden on the NHS.

While we advocate for a comprehensive policy package with government involvement to tackle such a multi-faceted and complex issue as childhood obesity, we would like to stress the importance of marketing restrictions given the significant contribution of food marketing to the obesogenic environment children live in. A child's right to health should not be traded off against commercial freedoms to promote unhealthy food and drinks.

KEY POINTS

- The definition of advertising is not sufficient. It should include all commercially-sourced marketing messages across all forms of media and platforms, wherever and whenever it is placed. In particular, an adequate definition should include celebrity-endorsement and sponsorship as well as brand advertising using brand equity characters, advergames, apps, logos, brand names and brand-related images in any media.
- Marketing rules should be harmonised across broadcast and non-broadcast media, and no exemptions should apply.
- Ideally, children under age 18 should be protected from all marketing communications promoting unhealthy foods and non-alcoholic beverages but, at a minimum, the age definition of "child" should be 16 and under.
- A "particular appeal" test should extend beyond child-directed advertising to include marketing messages *likely* to be seen by a significant number of children under 18 (ideally; otherwise 16), i.e. the focus should be the probability that a child may see the commercial messaging. Data used to determine the likelihood of a child seeing marketing communications on HFSS food and beverages should be collected and provided by an independent organisation.
- A more stringent nutrient profiling model that governs what can be advertised is necessary.
- Ideally, it should be the Government – for instance, through its Childhood Obesity Strategy – which sets ambitious policy goals to be met by the rules of the Committee of Advertising Practice and other relevant bodies/regulators. In addition, rules on food marketing should always seek to match international best practice, and adhere to World Health Organization recommendations⁴.
- A transparent monitoring process as well as effective sanctions for violations of the CAP rules are essential to enforce the rules.

CONSULTATION QUESTIONS

Question 1: Restrictions on HFSS product advertising

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

Yes.

Children are constantly exposed to marketing of unhealthy food and beverages across all media. Integrated marketing communication of food and beverage companies greatly influence not only children's food preferences and choices,^{5 6} but also the amount they eat,⁷ thus contributing to a diet of nutrient-poor and energy-dense foods which increases their risk for overweight and obesity and related negative health outcomes. Additionally, the influence of marketing on children's dietary behavior makes it very difficult for their parents to navigate the task of teaching them healthy dietary habits.

Despite clear evidence of the harm of child-directed marketing of junk food, no company has a comprehensive policy on restricting marketing communications to children.^{5 6} Hence, regulation to protect children from undue commercial interests through a regulator such as CAP is essential to guarantee children's right to health.

However, the current CAP rules are not effective in protecting children because they are vague, inconsistently applied and don't distinguish between healthy and unhealthy products. Loopholes exist which allow junk food marketing which would not be allowed on TV. In addition, the rules fail to cover a number of common marketing techniques targeting children, such as brand equity characters (e.g. the Nesquik rabbit or Ronald McDonald), sponsorship, advergames, apps, licensed characters, celebrity-endorsement (including using influencers such as musicians and bloggers to produce and distribute marketing content which often is not clearly labelled as advertising) and on-pack communications (e.g. featuring competitions and games).

Therefore, the current rules must be tightened.

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

No.

The existing BCAP guidance is not strong enough because it does not include all forms of commercially-sourced messages, namely brand marketing, including brand names or brand-related images. This is worrying, given that many marketing messages aimed at children focus primarily on promoting a corporate brand or 'family' of products. This is particularly problematic when most products within that brand/range are – or are perceived as being – HFSS, and thus are not appropriate to be marketed to children.

Brand marketing is worrisome because evidence shows that children who recall branded unhealthy foods and drinks have a stronger preference for them than children who don't recognise brands.⁸ Therefore, it is necessary to broaden the definition of advertising to be included in CAP to include all commercially-sourced messaging (brand names, logos or brand equity characters).

Question 2: Selecting a nutrient profile model

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

Yes.

The Department of Health nutrient profiling model should be adopted to assess which food and drinks should not be marketed to children. Evidence shows that industry-developed nutrient profiles are significantly less effective than government-led nutrient profiling schemes.⁹

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

Ideally, the thresholds would be further strengthened such that diet soft drinks (low and zero calorie) couldn't be promoted.

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

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

No.

Young children are particularly vulnerable to marketing: they are not able to distinguish between commercial messaging and factual information.¹⁰ In addition, they form emotional bonds with brand equity characters, licensed characters and celebrities as if they were their friends which influences their food preferences and choices.¹¹ Therefore, no marketing of any sort should be directed at the age group of 11 and younger to avoid exploitation of younger children's credulity and particular vulnerability.

Furthermore, we are concerned that a distinction between HFSS and non-HFSS foods for marketing purposes would undermine the aim to protect children from any marketing of unhealthy food and beverages. Just like HFSS foods, non-HFSS products are often unhealthy. Non-HFSS products are classified as 'healthier' because their fat, sugar and salt content is below the thresholds which would make them a HFSS food or beverage. However, many of these non-HFSS products contain high levels of fat, sugar and salt and only qualify as non-HFSS because their fibre and protein content is positively taken into account. Even those products which qualify as non-HFSS without factoring in their positive fibre and protein content oftentimes contain an amount of fat, salt and sugar which we deem too high to be promoted to children through any medium.

In other words, many non-HFSS products are not healthy despite the classification as 'healthier' foods and beverages – they are just not as bad as HFSS products. Therefore, non-HFSS products should not be promoted using celebrities or licensed characters.

However, we recognise the potential for marketing to be used to promote healthy lifestyles. As such we welcome the possibility to exclude fruit and vegetable products from a marketing ban to young children under two conditions:

1. the fruit and vegetable product has *no added sugar, fat or salt only*; and
2. the licensed characters and celebrities used are not identifiable with HFSS foods or non-HFSS ('healthier') foods and beverages.

To clarify the first condition, the rules should not be relaxed to allow marketing of any non-HFSS product because many of these non-HFSS foods and beverages still contain significant levels of sugar, salt and fat. The rules should *only* be relaxed for the *demonstrably healthiest* products, and not for 'healthier' products.

To clarify the second condition, the rules should not be relaxed even for fruit and vegetable products with no added sugar, fat or salt if the celebrity or licensed character used to promote these products can be associated with a corporate brand or product family of mostly HFSS foods and/or non-HFSS foods just below the threshold ('healthier' products).

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

Question 4: Introducing media placement restrictions

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

Yes.

The marketing environment has significantly changed since the advent of internet. Many children have unrestricted and unsupervised access to internet on computers, laptops, tablets and smart phones. In addition, they are exposed to advertisements in their physical environment (e.g. posters, print, cinema). Therefore, it is paramount that non-broadcast marketing contains rules on the placement of HFSS product advertising.

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

Ideally, the age definition should be in line with WHO recommendations and the UN Convention of the Rights of the Child. Both define a child as anyone under 18 years of age. Consequently, this should be the age definition used by CAP to protect all children in the best possible way.

However, we recognise that current BCAP rules define children as younger than 16 years of age. That should be the minimum age definition used by CAP to bring its rules in line with broadcast regulations. We note this option was not given in the consultation. We urge CAP to consider 16 and younger as the age definition, but out of the two options given, we support aged 15 and under as the absolute minimum.

There is ample evidence to rule out an age definition of 11 and under. Children aged 11 and above are substantially influenced by junk food marketing due to their greater independence and higher levels of media consumption.¹² In addition, newer forms of digital and social media food marketing practices are often difficult, even for children above 11, to recognise and resist.^{13 14} This issue is compounded by the curation of marketing content through digital intermediaries like Google and YouTube. Some children perceive such curated marketing content as legitimising brands, and have increased trust in the content of branded websites accessed through the intermediaries' sites.¹⁵

Question 5: Defining the audience

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

No.

The 25% measure provides insufficient protection to children as it is based on percentage, rather than volume of children in the audience. A 25% threshold would still allow huge numbers of children to be exposed to marketing of HFSS foods. In addition, a 25% measure would mean that media universally popular with both adults and children would not meet the threshold.

We also believe that the threshold would be almost impossible to implement and monitor transparently due to lack of robust and reliable data available on the audience consuming digital media. There are no similar data sets for non-broadcast media as there are for broadcast media. The data that does exist on audience breakdown online is often partial, proprietary and inaccurate when it comes to age profiles. For example a child may be watching online videos signed into their parent's YouTube account which would identify them as an adult and serve advertising content accordingly. Similarly, a child may lie about his/her age when creating a Facebook account, consequently seeing advertising directed at an older audience than the child's real age group. We are also concerned that CAP would rely on advertiser-provided figures and would have little way of independently verifying them.

The model CAP are proposing is used for restricting alcohol and gambling advertising to under 18s. However, CAP have not evaluated the effectiveness of these rules in non-broadcast media. The experiences and anecdotal evidence of Alcohol Concern and other organisations working in this field strongly suggest that these rules are not effective, especially in regards to the targeting of teenagers. Furthermore, food and drink is a different proposition, as they are not prohibited from sale to under 18s, unlike alcohol and gambling.

In short, a 25% threshold is highly problematic. The aim is to reduce exposure as much as feasible. Instead of a threshold, we recommend using a definition based on the likely appeal of the advertising to children, considering the following criteria (but not the percentage or total numbers of children exposed):

1. Product appeal to children: are the food and drink items intended for children, or do they appeal to them?
2. Marketing content: is it designed to attract the attention of children?
3. Marketing placement: is the location, timing, mode and/or placement of the marketing communication such that children may be exposed to it? Is the marketing placement such that children can normally be reached?

There is precedent from the Advertising Standards Authority for this approach. It is also being explored or advocated in countries as diverse as Australia, Brazil, Canada, and Chile, and recommended by an emerging consensus of academics and public health professionals.

Question 6: Application to different media

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

Yes.

The placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions.

Many of the newer marketing techniques that are used on non-broadcast media are not obviously identifiable as marketing. This lack of transparency is a direct violation of article 2.1 of the CAP Code. In addition, the lack of transparency when using social media for marketing purposes is also problematic because children are influenced by commercial communications which they cannot recognise as marketing.¹⁶ This issue is compounded by the fact that marketing is oftentimes curated by intermediaries such as Google and YouTube. As a result, brands are legitimised by these third parties in the eyes of some children, increasing the trustworthiness of the content accessed through these intermediaries' sites.¹⁷ Lastly, the proliferation of devices, including smaller ones such as smart phones, makes it harder for parents to control what their children see.

The placement restriction should also be extended to cover areas outside of CAP's remit, i.e. packaging, licensed and brand equity characters, in-school marketing (including fundraising sponsored by food and beverage companies, donations to schools, curricula material and reward programmes), point-of-sale marketing, and sponsorship.

The Welsh Government considers that promotion can impact on High Fat, Salt and Sugar (HFSS) food preference, purchase and consumption by children.

The Welsh Government considers current UK broadcast regulations are not strong enough to reduce children's exposure to unhealthy food advertising. We support the banning of advertising of such foods before the 9pm watershed. We will continue to pursue this.

The Welsh Government welcomes the Committee of Advertising Practice's intention to introduce restrictions on the non-broadcast advertising of food and soft drinks to children. It is recognised that there is a shift in children's screen time away from television. Digital marketing strategies are rapidly growing and are a potentially influential area, given the highly immersive and interactive nature of these approaches.

We recognise there is a paucity of evidence regarding the behavioural and health impacts of new digital marketing strategies, which differ in approach to most traditional marketing strategies. However, we are aware that research on averaging found it significantly influenced the intake of, or preference for, high sugar foods in school age children.

A review, published by Public Health England in October 2015, examined the most recent research evidence on the health and behavioural impacts of marketing strategies that target high sugar food and non-alcoholic drink. It considered that the evidence suggests:

- marketing strategies (including promotion) are likely to impact on purchases and consumption, with the evidence predominantly focused on children
- promotion activities such as averaging and sponsorship can influence purchase and intake of unhealthy or high sugar products

Findings from this review support evidence from previous systematic reviews to suggest that marketing is effective in influencing the purchase and consumption of unhealthy or high sugar foods. And most of the evidence focuses on children who are considered more vulnerable to the impact of marketing.

Although we accept that evidence could be stronger, we consider that the stakes are high enough to justify strong regulation across all forms of promotion of High Fat, Salt and Sugar foods to children.

Over a quarter of reception age children in Wales are overweight or obese.

Children and young people in Wales have sugar intakes around three times over the recommended maximum. From the National Diet and Nutrition Survey (December 2015), the main sources of added sugar (non-milk extrinsic sugars, NMES) was soft drinks contributing 29% to NMES intake for children aged 11 to 18 years and 13-14% for children aged 10 years and under 'Cereals and cereal products' contributing 24-29% and 'sugar, preserves and confectionery' contributing 20-23% to NMES intake in children.

In addition to the immediate health consequences of obesity and an unhealthy diet, early-life behaviours may track into adulthood and influence weight later in life, with estimates that around 70% of obese children or adolescents become obese adults.

It is therefore crucial that everyone with influence over these alarming statistics acts now. We therefore call on CAP to introduce the legislation to eliminate advertising of HFSS foods and drinks in all forms of non-broadcast advertising that may be viewed by our children and young people.

Which? is the largest consumer organisation in the UK with more than 1.4 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

Which? welcomes the opportunity to respond to the Committee on Advertising Practice (CAP) consultation on proposals to introduce new restrictions on the advertising of food and soft drinks to children.

We appreciate the Committee's intention to strengthen the Code in view of concerns about rates of childhood obesity and overweight. There are many aspects to the proposals that we support. However, the proposals should go further in order to effectively deal with the nature of advertising of foods high in fat, sugar and salt (HFSS) to children:

- We strongly support the introduction of tougher restrictions on the advertising of HFSS foods to children.
- We agree that brand advertising should be included within this – but revisions will need to be made to the BCAP guidance on brand advertising to address issues specific to non-broadcast and fully reflect the nature of brand advertising, including use of 'sub-brands'.
- We agree that the Department of Health nutrient profiling model should be used until the independent review recommended by Public Health England (PHE) has been completed.
- All restrictions should apply to children 15 and under in line with broadcast advertising restrictions and recognising that older, as well as younger children should be protected.
- This includes rules on use of promotions, celebrities and characters. But these rules also need to go further so that equity brand characters are included as well as user-generated characters initiated by companies and indirect as well as direct celebrity promotion and endorsements.
- We support the introduction of a rule restricting the placement of HFSS product advertising that covers media directed at or likely to appeal to children 15 and under. Reference to 'particular' appeal should be removed.
- We agree that a 25% of the audience measure is useful for determining what is 'targeted', but this needs to be supported by additional guidance on what type of techniques, imagery or other aspects of advertising are considered to appeal to children. There also needs to be a transparent way of verifying compliance across different non-broadcast media.

- We strongly agree that the restrictions on HFSS product advertising, along with the associated and updated guidance on brand advertising, should apply to all non-broadcast media within the remit of the Code.

In addition, we urge CAP to support the application of HFSS advertising restrictions to the non-broadcast media that fall outside of the scope of the Code, including packaging, point of sale promotions and sponsorship. This is particularly important given the integrated nature of food advertising to children which may cross some media that are within the scope of the CAP and others that are not.

Introduction

Which? welcomes the opportunity to respond to the Committee on Advertising Practice (CAP) consultation on proposals to introduce new restrictions on the advertising of food and soft drink products to children.

We are pleased that the CAP recognises that too many children in the UK are growing up overweight or obese and that it is a legitimate policy aim to place appropriate restrictions on advertising to help protect the health and well-being of children and not undermine progress towards improving the nation's diet.

A third of 10-11 year olds and a fifth of 4-5 year olds are overweight or obese¹. Two thirds of adults fall into this category. The causes are multi-factoral and many factors will shape the environment in which we make our food choices. The evidence shows that advertising does influence children's preferences and choices and it is therefore an important area for action.

Foods high in fat, sugar and salt (HFSS) are still advertised to both older and younger children in a variety of ways. This reflects the limitations of the current non-broadcast restrictions, for example in relation to age restrictions, as well as loopholes or very general rules within the current Code that are open to too much interpretation.

Which? therefore supports many aspects of the CAP proposals. However, we have set out several areas where they should go further to effectively address the way that HFSS foods are marketed to children and therefore ensure adequate protection.

General comments

The nature of non-broadcast advertising to children has evolved considerably since advertising restrictions were last reviewed and Ofcom restrictions brought in for broadcast advertising. Our research has found that HFSS foods are still marketed to children through a variety of media and techniques, which are becoming increasingly integrated and, in some cases, difficult for parents and guardians who are potentially less media aware or not the target of the advertising to keep track of.

Many aspects fall within the scope of the media covered by the CAP Code. It is therefore important that this review reinforces the need for comprehensive measures that ensure a responsible approach, in line with, rather than in conflict with Government advice on healthy choices. There are some media, such as sponsorship, packaging and point of sale promotions that also need to be addressed but which lie outside of the scope of the CAP Code and so need to be dealt with through other Government mechanisms.

Our recent research has found that some companies will use a mix of media, both new and more traditional, as part of their campaigns. This may for example include combining TV, packaging, on-line ads, apps, promotions via social networking sites, company web-sites and sponsorship. It is therefore important that the Code deals with this complexity.

CAP proposals and consultation questions

1. Restrictions on HFSS product advertising

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

We strongly support tougher restrictions on the advertising of HFSS products. The purpose of the restrictions should be to ensure that food marketing to children is in line with Government advice about healthier choices. We therefore support an approach that continues to permit the advertising of healthier choices to children provided that the model that is used to determine this is robust. Advertising does influence children's food preferences and choices and so it should be used to help rather than hinder efforts to improve the quality of children's diets and ultimately their longer-term health.

(b) Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules? Please explain your reasons. Please consider CAP's recommendations in Section 44 when answering this question.

We welcome CAP's proposal to address the issue of brand advertising as we consider that this is a potential loophole. Some brands are associated with HFSS foods, as has been recognised for broadcast advertising.

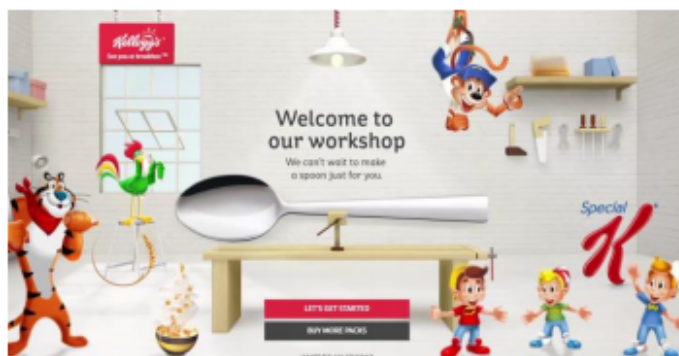
Examples of how this is currently used includes marketing by soft drink companies who's brand name is associated with its HFSS product and marketing of company 'sub-brands' which may include some healthier products, although the majority (and highest selling) products linked to the sub-brand are HFSS e.g. some breakfast cereals.

We agree that guidance will be needed in order to ensure that this aspect of the Code is understood and complied with. The brand advertising guidance developed for broadcast should be revised to ensure it includes examples specific to non-broadcast. As set out above, we also consider that the use of 'sub-brands' and of brand characters needs to be addressed.

The following image for Coca Cola TV, which is available on YouTube illustrates the need to ensure that the guidance is robust in relation to both broadcast and non-broadcast brand advertising and deals with the breadth of promotions and media that are now used.



The following example of a promotion (in the form of a game) also illustrates the importance of addressing branding using characters. This includes characters associated with HFSS products, but does not mention the products explicitly:



2. Selecting a nutrient profiling model

Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products? Please explain your reasons and, if applicable, the details of your preferred nutrient profiling model.

The Department of Health (DH) nutrient profiling model should be used, consistent with broadcast advertising restrictions, until the review of the nutrient profiling model recommended by Public Health England (PHE) has been concluded.

We agree with PHE that it is timely to independently review the model, particularly to bring it in line with Scientific Advisory Committee on Nutrition (SACN) recommendations, for example on sugar. The model does now appear too weak on some aspects and other models that may be more robust have evolved, including the WHO model. Until this review is concluded, we consider that the DH model remains the official one that is widely used and so on a practical basis should continue to be used until a new one is in place.

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

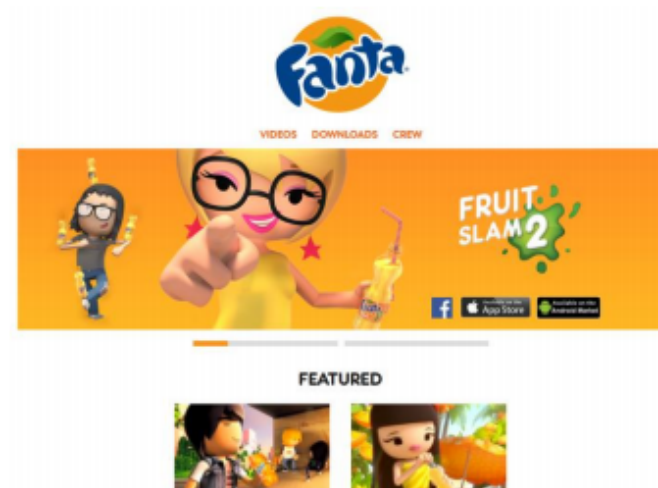
There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only? The current rules on creative content are the prohibitions on the use of promotions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

The restrictions should allow for the promotion of healthier products. A stricter approach should therefore be taken than merely restricting HFSS foods so that 'intermediate foods' as classified by the current model are still not advertised using these techniques.

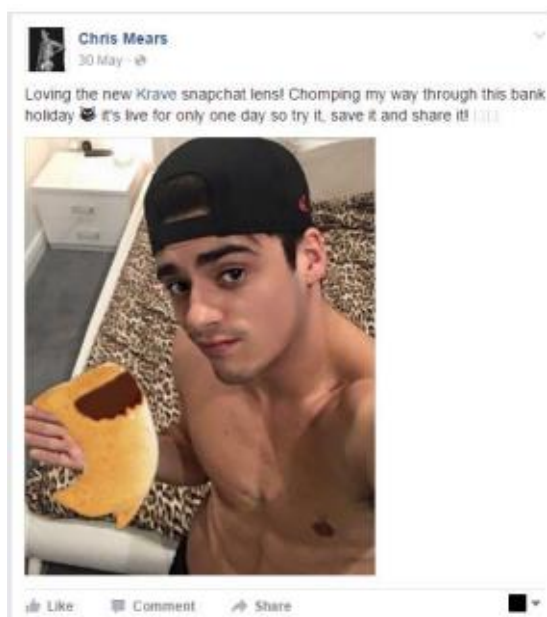
This part of the Code also needs to be strengthened in several other respects:

- Restrictions on the use of promotions, celebrities and characters need to go broader than 'licensed' characters to include equity brand characters developed by companies.
- These more comprehensive restrictions should apply to children 15 and younger (not just 11 and under). Please see our later comments on age restrictions in general.

In the case of promotions using characters, our research has found examples of characters that are used to advertise HFSS foods to older children. In line with the broadcast restrictions (and definition of a child more generally for advertising purposes), we consider that the restrictions need to address these practices too.



- It is important to more clearly define 'celebrities' and 'popular with children'. We have been concerned how football stars for example have still continued to be used to market some HFSS foods despite their appeal to children as well as to adults. This also applies to music stars. There has also been a growth of on-line bloggers who have celebrity status with children and it is important that these are covered by the restrictions.
- Indirect celebrity endorsements and promotion should also be addressed. With user-generated videos, the relationship between the celebrity and the advertiser may also be less obvious. This endorsement of Krave (30% sugar) on the Facebook page of Olympic diver and DJ Chris Mears using Krave's custom lens on Snapchat is one example.



- The trend of encouraging user-generated characters should also be included. Our recent research has also highlighted how companies may encourage children to develop or promote characters themselves. Vimto's 2016 Vimtoad campaign for example made use of Snapchat, using custom lenses to allow videos to be created. These videos could then be shared across other social media platforms such as Facebook and Twitter. This type of character also needs to be addressed within this section of the Code.



4. Introducing placement restrictions

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

We agree with the approach to introduce a rule restricting the placement of HFSS product advertising – but dependent on how this is defined.

The proposed wording for the Code includes reference to media targeted or likely to appeal particularly to children. We are concerned that this may leave a loophole in that HFSS foods will be marketed to children through media where large numbers of children will see the ad (e.g. social networking sites, video sharing sites etc), but which adults also use. The reference to 'particularly' should also be removed, so that it reads 'targeted or likely to appeal to children'. If it is retained, we are concerned that this will be used to circumvent this new rule by claiming that the ad is also of appeal to adults. This is likely to particularly be the case when determining what is of appeal to older children and it is important that they are also protected.

More robust guidance is also needed that goes beyond the restrictions described in question 4 to be explicit about what type of techniques, imagery or other aspects of the advertising are considered to appeal to children.

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

i) aged 11 or younger?

ii) aged 15 or younger?

Please explain your reasons. Please consider CAP's recommendations in section 47 when answering this question.

The restrictions in general, not merely in relation to the rule restricting the placement of HFSS advertising, should apply to children 15 and under. This would be consistent with broadcast advertising restrictions and would recognise that all children need protection.

5. Defining the audience

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

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising? Please explain your reasons. Please consider CAP's recommendation in section 48 when answering this question.

We consider that 25% of the audience is a useful measure to help determine what is 'targeted', but as set out above, this cannot be the only measure. The web-sites and other media that children are likely to use in the largest numbers (eg. YouTube, Instagram, Facebook) will also be used by large numbers of adults – so basing restrictions on the proportion of the audience is not enough. Additional guidance is needed on what is meant by targeting and 'of appeal to children' (rather than of 'particular' appeal) alongside the measure.

It is also important to ensure that there is a transparent way of verifying compliance with the 25% measure across the breadth of media.

6. Application to different media

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

Please explain your reasons. Please consider CAP's recommendation in section 49 when answering this question.

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.

We agree with the proposal that the new restrictions should apply to all non-broadcast media within the remit of the CAP Code, including on-line advertising, if they are to be effective and to have a meaningful impact. HFSS foods are advertised through a broad range of non-broadcast media which is constantly evolving and becoming increasingly integrated.

In addition, we urge CAP to support the application of HFSS advertising restrictions to the non-broadcast media that fall outside of the scope of the Code, including packaging, point of sale promotions and sponsorship.

Overview

This consultation is welcome and timely, in light of the Report of the World Health Organization's Commission on Ending Childhood Obesity (ECHO) and the expected UK government's Childhood Obesity Strategy. All measures should be considered in the societal response to the challenge of childhood obesity, and the deliberate exposure of children to the promotion of unhealthful food products is a clear candidate for intervention.

The World Obesity Federation (previously the International Association for the Study of Obesity and the International Obesity TaskForce) has long advocated for greater protection of children from inducements to unhealthy behaviour, producing the 2006 'Sydney Principles to Reduce Commercial Promotion to Children', and publishing (jointly with Consumers International) the influential 2007 report *Recommendations for an International Code on Marketing of Foods and Non-Alcoholic Beverages to Children* which preceded the World Health Assembly's 2010 *Set of recommendations on the marketing of foods and non-alcoholic beverages to children* and the 2012 *Framework for implementing the Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. World Obesity contributed directly to the text of the latter document and to the 2013 report of the WHO European Regional Office *Marketing of foods high in fat, salt and sugar to children: update 2012–2013*.

World Obesity has also been responsible for running two European-funded research projects: POLMARK on stakeholders' views on policies on marketing to children (2006-2008) and STANMARK on trans-Atlantic evidence for setting standards for marketing to children (2010-2012). These have led to a series of papers including peer-reviewed surveys of different nutrient profiling schemes, a systematic review of the evidence on the effectiveness of voluntary interventions to reduce marketing to children, and briefing papers and conference presentations promoting a child's right to enjoy a childhood free of commercial inducements to consume unhealthy products.

Response to the current CAP consultation

- The definition of advertising is not adequate for the current purpose if it does not include all commercially-sourced messages containing brand names or brand-related images, in any media. Thus all branded messages, including internet games with brands, logos or brand equity characters should be within compass of the current consultation.
- The purpose of the proposed review should be to strengthen measures aimed at reducing children's exposure to products high in fat, salt or sugar (HFSS) messaging, which means the new rules should clearly extend beyond child-directed advertising to include any HFSS messaging likely to be seen by significant numbers of children.
- The definition of a threshold for the proportion of the audience which is child-aged needs to be reconsidered so that the *probability* that a child may see the commercial messaging is the essential element of the definition. There is a lack of verification of the age of an internet site visitor and self-reported age is not an adequate metric for assessing media consumption patterns. Independently-collected metrics should be able to show that a site with HFSS messaging is unlikely to be seen by a child: i.e. a small fraction of the site visitors should be under 16y (e.g. less than 1%) and only a small number of children under 16y should be estimated to have visited the site (e.g. under 1,000/month in the UK).

Alternatively, a definition can be used which is not based on a threshold but on the likely appeal of a communication to children, based on the links, location, context and content.

- Transparent monitoring and effective sanctions for transgressions are essential.

Consultation questions

Q1) Restrictions on HFSS product advertising

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

Yes

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

No – the definition of advertising needs to be broadened to include all branded messaging (communications that includes brand names, logos or brand equity characters). As the International Chambers of Commerce Framework for Responsible Food Advertising (ICC 2012) states: ‘Marketing communications should not contain any statement or visual treatment that could have the effect of harming children or young people mentally, morally or physically. Children and young people should not be ... encouraged to engage in potentially hazardous activities or behaviour.’ We believe that the purpose of all forms of branded messaging is to increase attraction to the brand in order to change behaviour, in this case to influence the desirability and consumption of HFSS products.

Q2) Selecting a nutrient profiling model

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

Yes – and (i) commit to accept the revisions following the current review; (ii) strengthen the thresholds to exclude the promotion of low-calorie/zero-calorie soft drinks.

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

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

No – there is evidence that children under age 12 years are not necessarily aware of the presence of advertising when online, or able to distinguish advertising from non-advertising. To avoid a risk that the commercial messaging might ‘exploit inexperience or credulity’ (ICC 2012), no marketing of any sort should be directed at this age group.

Q4) Introducing placement restrictions

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

Yes

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

i) aged 11 or younger? **No**

ii) aged 15 or younger? **Yes** (and consistent with the Ofcom HFSS rules for television)

Q5) Defining the audience

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

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

No – this is an inappropriate approach to reducing children’s exposure and is difficult to monitor transparently. The aim is to reduce exposure as much as is feasible, achieved either by (i) using a verifiable exposure metric which can demonstrate that fewer than, say, 1% of site visitors are under age 16y and fewer than 1,000 visitors/month are under age 16y, or (ii) using a definition based on the likely appeal of a communication to children, based on the location, the links, the messages and the methods used.

Q6) Application to different media

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

Yes – and extend the definitions to apply to areas currently outside remit including branded messaging and entertainment (e.g. online branded games), food-branded toys and household items, product packaging, and licensed and equity characters.