

# CAP Consultation on food and soft drink advertising to children: Individual responses A-B

## 1 – Action on Sugar and Consensus Action on Salt and Health

### Introduction

Action on Sugar is a group of specialists concerned with sugar and its effects on health. It is working to reach a consensus with the food industry and Government over the harmful effects of a high sugar diet, and bring about a reduction in the amount of sugar in processed foods. Action on Sugar is supported by 23 expert advisors.

Consensus Action on Salt and Health (CASH) is a group concerned with salt and its effects on health, supported by 25 expert scientific members. CASH is successfully working to reach a consensus with the food industry and Government over the harmful effects of a high salt diet, and bring about a reduction in the amount of salt in processed foods as well as salt added to cooking, and the table. To date we have been successful with many supermarkets and food manufacturers choosing to adopt a policy of gradually reducing the salt content of their products, and a Government-financed campaign to raise awareness of the effects of salt on health.

### General Statement

The food and drink we now consume is the biggest cause of premature death and disability in the UK and represents a huge burden on the NHS. Too much salt raises our blood pressure, which is the second cause of death after smoking. Too much saturated fat puts up our cholesterol which is another major cause of death, as is lack of fruit and vegetable consumption. In addition, the very large amounts of calories from fat and sugar in foods that only give a transient feeling of fullness or satiation not only cause tooth decay, but are also responsible for the worldwide obesity and type 2 diabetes pandemic. In the UK, 67% of men and 57% of women are either overweight or obese. More than a quarter of children are also overweight or obese – 26% of boys and 29% of girls.

Constant exposure to unhealthy food and drinks on TV, radio, the internet, social media, in magazines, and for some even at school makes it very difficult to children and their families to make healthy choices and greatly influences the food they eat. All forms of advertising to children and adolescents should not be allowed for unhealthy food and drink. There is no justification for banning the advertisements of tobacco when unhealthy food and drink are a much bigger cause of death and disability in the UK. While we welcome the opportunity for consultation on this area, the Government has rightly declared that childhood obesity is a national emergency so we need a game changing approach to tackle it.

### Summary response to CAP consultation questions

**Q1a = Yes:** The CAP Code should be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS).

**Q1b = 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.

**Q2 = Yes:** The Department of Health nutrient profiling model to identify HFSS products should be adopted immediately. That model should also be updated to reflect current nutrition guidance (e.g. new revised free sugars recommendation) and to close loopholes.

**Q3 = No:** Existing prohibitions on the use of promotions and licensed characters and celebrities to market food and drink to children should only be loosened for demonstrably 'healthier' products, but not for all non-HFSS products, and not for brands which include any prominent HFSS products.

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

**Q4b = Aged 18 and younger:** Should be the audience that media placement restrictions apply to; although we note that option was not given in the consultation. Of the two options given, we support aged 15 and younger.

**Q5 = No:** The 25% audience measure for the purpose of restricting HFSS product advertising provides insufficient protection to children. Additional measures to more broadly define the 'particular appeal' of marketing to children (including content, marketing techniques and placement) should be introduced.

**Q6 = 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.

### **Key points in response to CAP Consultation**

We believe that the Committee of Advertising Practice rules should be harmonised across all forms of media (including in cinemas, on posters, in print, online and advergames), using the current restrictions on broadcast advertising of HFSS products to children under 16 as a starting point, but going further (Q1a) (Q2) (Q4a&b).

The proposals under consultation by CAP are likely to be too weak to be effective in adequately restricting children's exposure to the marketing of HFSS products. This particularly applies to the proposals on brand advertising (Q1b), on the use of licensed characters and celebrities to promote non-HFSS products to children (Q3); on not extending the age children are protected to under 18 (Q4b); on only defining an advert as having 'particular appeal' to children if children make up more than 25% of the audience (Q5); and in inviting the advertising and food industry to apply for exemptions and delays to implementation of the rules (Q6). We have particular concern over the practical and fair application in non-broadcast media of the proposed 25% measure (Q5).

Instead, in order for children's exposure to HFSS non-broadcast marketing to be minimised, the CAP rules should be updated to incorporate:

- A 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 – for the purposes of governing child-directed marketing – the labelling and packaging of food and drink.
- The tightening of restrictions on the techniques that can be used to engage with children, including plugging the 'loopholes' that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children's advertising.
- A "particular appeal" test which extends beyond child-directed advertising to include advertising likely to be seen by children under 18, and focuses on the probability that a child may see the commercial messaging.
- The adoption and the tightening of the current nutrient profiling model that governs what can be advertised.
- Transparent monitoring and effective sanctions for transgressions.

## **Context – the right of children to health and protection**

Children have the right to participate in social life and to have their voices heard, but also have rights to health and to have their best interests considered. Children should be able to participate safely online and go about their daily lives without being subject to targeted marketing for products that have been demonstrated to have a negative effect on their health and well-being.

In May 2010 the World Health Organisation endorsed Resolution WHA63.14, the aim of which is to restrict the marketing of unhealthy food and non-alcoholic drinks to children and adolescents to reduce the prevalence of overweight, obesity and 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 of the commission 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”* (Bull note 31).

Kraak et al (Bull) conclude: *“no company has yet restricted the marketing of unhealthy food and drink products comprehensively – i.e. in all settings, for all practices, and across all media platforms – to children”*. Hence why the regulator, in this case 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 updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?*

**Yes.** We have long been calling for tougher restrictions on the marketing of less healthy food and drink to children, on TV, online and beyond. 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 (the likes of 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 HFSS 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. HFSS 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.

*(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.

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

## **Q2 – Selecting a nutrient profiling model**

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

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

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

### **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

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

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

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

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

### **Q4 – Introducing placement restrictions**

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

**Yes**, CAP should introduce such a rule.

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

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

*ii) aged 15 or younger?* **Yes – but preference is actually for aged 18 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:** Any marketing that is particularly appealing to kids 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 not 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 to 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.

## **Definitions**

### **“Healthy food”**

Healthy food should be defined as fruit and vegetables, and minimally processed products without added salt or sugars, that score low on the nutrient profile criteria. This is distinct from non-HFSS food and drink, which is any product which scores below the threshold which would make it ineligible to be advertised to children.

### **“Product advertising”**

Should be defined in non-broadcast terms to include:

- placing an advertisement in a document or publication that is available to the public or a section of the public;
- placing an advertisement in a film, video, social media or other digital platform that is, or is intended to be, seen or heard by the public or a section of the public;
- displaying, screening, playing or otherwise communicating an advertisement so that it can be seen or heard in or from: a public place; public transport; a school; a hospital; retail premises; or a cinema or theatre.

### **“Directed to children”**

An unhealthy food advertisement should be considered to be ‘directed to children’ if assessment of any one of the following factors indicates that children are an intended or probable recipient of the advertisement:

1. The circumstances in which the advertisement was published, broadcast, displayed or otherwise communicated, including:
  - a) the location, timing, mode and/or placement of the publication, broadcast, display or communication; and
  - b) the nature of any media product (e.g. television program, film, website, publication) in, on, during, or in association with which the advertisement was published, broadcast, displayed or communicated.
2. The nature of the advertisement.
3. The nature of the food product advertised.

## 2 – The Advertising Association (AA)

### Introduction

The Advertising Association (AA) welcomes the opportunity to respond to the Committee of Advertising Practice (CAP)'s proposals for further restrictions on the advertising to children of food and soft drink products in non-broadcast media.

The AA promotes the role, rights and responsibilities of advertising and its impact on individuals, the economy and society. We bring together companies that advertise, their agencies, the media and relevant trade associations to combine strengths and seek consensus on the issues that affect them. Through engagement and evidence-based debate we aim to build trust and maximise the value of advertising. A full list of our members can be found online.

Due to the size and scope of our membership, it has not been possible to achieve a consensus position on all of the questions posed by the consultation. However we firmly support the approach taken by CAP to develop proportionate rules in light of a significant social issue. Advertising is a significant contributor to the UK's economy, businesses and society, and the strength of its self-regulatory system plays a key role in its success.

### 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. Although we are not aware of any change in the evidence base on advertising and obesity, in the face of significant changes to children's media habits, it is right that the Codes are updated.

Obesity is widely recognised as a significant societal challenge, which will require the combined efforts of many actors, across government, industry and civil society. Although advertising is only a small part in a very complex equation, advertising self-regulation can continue to play its part in tackling obesity by acting to reduce children's exposure to HFSS advertising.

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

Clear guidance on identifying brand advertising that is likely to promote an HFSS product is essential for industry – however some of our members have indicated that they would like more clarity than the existing BCAP guidance offers, and we would support further engagement with industry on developing that guidance.

#### Q2 – Selecting a nutrient profile model

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

Yes. On balance, the DH nutrient profiling model is well-established in advertising self-regulation, and well understood across the industry. It is the most practical and credible option.



We are aware that Public Health England is currently reviewing the DH nutrient profiling model. If the model is changed, we would expect CAP to consult on its potential adoption to the Codes.

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

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

Yes. Applying these rules to advertising for HFSS products only supports the objective of reducing children's exposure to HFSS advertising, while potentially encouraging food and drink manufacturers to increase their promotion of options lower in fat, salt or sugar.

**Q4 – Introducing placement restrictions**

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

Yes. Introducing placement restrictions for HFSS product advertising is critical to reducing children's exposure to HFSS advertisements.

**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.

### 3 – Aneurin Bevan Gwent Public Health Team (ABGPHT)

#### Introduction

The following response has been prepared by Aneurin Bevan Gwent Public Health Team (ABGPHT). ABGPHT work locally as part of an integrated public health system in Wales, supporting the NHS, local government and others to achieve a healthier, happier and fairer Wales. It is our role to provide the public health knowledge, scientific expertise and intelligence to lead change and enable public services to focus on delivering health improvement and reducing inequality. According to the latest report from the Child Measurement Programme in Wales, a fifth of all children aged 4-5 years in Gwent, that is 1,163 children, are overweight or obese. Working with Local Authority, Third Sector and NHS partners ABGPHT have recently produced Fit for Future Generations: A childhood obesity strategy for Gwent to 2025 and we respond to this consultation as part of the action we are taking to enable children living in Gwent to be a healthy weight and fulfil their full potential in life. Based on the best evidence we have available to us, we believe that new and more robust advertising restrictions, could make a small but meaningful contribution to tackling childhood obesity.

#### 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 profile model**

*Should the CAP Code adopt the 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**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, 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-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 100,000'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.

## 4 – Asda

### Introduction

As a major retailer, at Asda we recognise that we have an important role to play in helping our customers to eat better and live more healthy lives, and we work constructively with other stakeholders across the public, private and third sectors to promote good health. By offering quality and healthy options at accessible prices, as well as providing information and advice, our aim is to make it easy for our shoppers to make healthy choices.

Although Asda does not advertise directly to children, we recognise that this is an issue of concern to our shoppers and we welcome the opportunity to respond to CAP's consultation on introducing new restrictions of the advertising of food and soft drinks to children in non-broadcast media.

### 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)?*

We recognise the personal and societal cost of the high rates of childhood obesity in the UK. Although advertising of food and soft drinks to children is only one small part of a very complex problem, it is a cause for concern amongst our customers and we recognise the case for change as proposed by CAP, subject to the process of consultation and a balanced assessment of the available evidence. As a responsible retailer, we are committed to playing our part in helping to improve the nation's diet. In the context of the UK Government's Childhood Obesity Strategy, we would like to see any new restrictions on advertising to be part of wider measures to address the underlying factors influencing children's health, including education, physical activity and socioeconomic inequality.

As the consultation notes, it is important to balance the evidence of advertising's impact on children's diet with the right of adult consumers to see advertising of interest to them, and the right of businesses to advertise products responsibly. Asda does not advertise directly to children. Our advertising is predominantly price-based, often presents a balanced basket of shopping, and is always directed at our adult customers. We believe, therefore, that the majority of our marketing and advertising practices will be unaffected by the new restrictions and we are committed to working with our suppliers to ensure that we continue to apply the highest responsible advertising standards.

Nevertheless, we have some concerns over the practical implications of change and application of the CAP proposals, particularly on media like outdoor advertising, in-store or online, where it can be difficult to assess the age profile of the audience. Non-broadcast media exists in a vastly more complex and ever-changing environment than traditional broadcast media, and children's media habits are increasingly sophisticated. The ASA and CAP annual report 2015 reveals that the number of internet cases dealt with is more than double the second most prolific medium, television, clearly demonstrating that the changing landscape of advertising regulation continues to be dominated by online ads.

In this context, businesses will require absolutely clarity over the scope of the proposed restrictions, the forms of non-broadcast media that are included and how it will be established whether advertising is appealing to children. CAP must be clear on what is expected of advertiser and media owners in determining the age profile of their audiences, especially in complex media. We strongly believe that early guidance should be produced to support the new provisions, with detailed coverage of the practical application issues. This guidance must be available soon after the final decision has been taken and must not be left open to interpretation. Businesses would also benefit from access to a pre-approval or pre-clearance service, similar to that which exists for broadcast advertising, to provide trusted advice and assess compliance with nutrient profiling which will help to alleviate the burden of responsibility on businesses.

We recognise that labelling is outwith the scope of CAP and this consultation. We would welcome, however, greater consistency between claims made in advertising and those made on-pack. There are examples of cases where a complaint regarding a manufacturer's claim has been upheld by the Advertising Standards Authority (ASA) but the claim remains on pack several years later. A pack shot used online or product placement used in an advert becomes part of the advert and therefore creates a liability issue for retailers who are subject to the CAP and BCAP codes. We would encourage CAP, the ASA and Trading Standards to work in partnership to improve consistency and reduce the disconnect between how the law is applied in store and online, giving businesses confidence in the practical application of labelling and advertising restrictions.

Following the outcome of the consultation, businesses must be given a sufficient notice period to implement new procedures to ensure compliance with the new restrictions.

*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. While recognising that non-broadcast media is more complex and therefore not directly comparable, we believe there would be benefit for consumers and businesses of consistency with the BCAP guidance.

## **Q2 – Selecting a nutrient profile model**

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

We recognise that the DH nutrient profiling model is well-established. There are issues with the model, however, which need to be addressed before it is used as the basis for extending any advertising restrictions. CAP should await the outcome of the current Public Health England (PHE) review, due in 2017, before implementing the proposed changes.

The DH nutrient profiling model currently used presents issues around 'healthy' categorisation. For example, it is possible to develop a product for children that has lower nutritional standards than its adult counterpart, but will pass the scoring criteria.

A relatively recent report by the World Health Organisation (WHO) considered the UK's DH model, but ultimately adopted a combination of the Norwegian and Danish models which are category specific. WHO cited the fact that these are considered easier to adapt or modify than models based on scoring.

Added sugar is missing from the DH model but would be useful to include in light of the PHE advice to reduce the dietary percentage of free sugars to no more than 5% of energy intake.



Additionally, underpinning the DH model are vague rules which do not differentiate between healthy and unhealthy foods, and fail to cover some key marketing techniques such as the use of brand characters. For example, the code states that “Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children”, but what constitutes “condoning and encouraging” or “poor habits” is open to interpretation.

The PHE review is likely to lead to changes in the nutrient profiling scheme that will impact on the type and number of products likely to be classified as HFSS. It would therefore be reasonable to wait until the review is complete before implementing the proposed changes to the CAP Code.

### **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

Yes, subject to a robust evidence base and the process of consultation.

We believe that allowing non-HFSS products more scope to advertise could have the potential to encourage promotion of healthier products to children. We also recognise that there is a benefit for consumers and industry of consistency with the BCAP Code.

The proposed change would require clear nutritional criteria and strict guidance for advertisers, however, to ensure consistency and to protect responsible businesses. There is a risk of unintended consequences, for example that products with relatively high levels of sugar could be promoted to children, and it is in everyone’s interests for such loopholes to be avoided.

### **Q4 – Introducing placement restrictions**

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

As described above, we recognise the case for change, subject to the outcome of the consultation process and a robust and balanced assessment of the available evidence.

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

*i) aged 11 or younger?*

*ii) aged 15 or younger?*

We would expect this decision to be based on expert assessment of the evidence produced during the consultation process. We recognise the benefits for industry of consistency with the BCAP Code. Indeed, we believe that CAP should aim for wider consistency and address the discrepancies between the targeted age for the restriction applicable to licensed characters and that in the general provisions in the Code.

We do recognise that there are significant practical considerations that must be taken into account, not least the difficulty in separating children’s media habits from those of young people. The ASA and CAP Annual report 2015 reveals that 96% of 12-15 year olds had access to the internet and they spent more time online than watching television. Unlike broadcast advertising, there is no watershed for online or printed content and this poses a very complex problem for advertisers.

Businesses require maximum certainty over the scope of the restrictions, the forms of non-broadcast media that are included and how it will be established whether advertising is appealing to children of the specified age group. There is an urgent need for a clear definition of 'media likely to appeal particularly to children', which presents a challenge beyond that of identifying 'media directed at children'. CAP must be clear on what is expected of advertisers and media owners in determining the age profile of their audiences, especially in complex media.

Particular consideration needs to be given to online advertising, including own websites, third party websites and affiliate websites. Internet content can be shared and reposted in new locations multiple times, outwith the control of the advertisers. Content that is several years old can be presented as current.

It can also be very difficult to determine the age profile of the audience of some printed publications. While supermarket magazines like Asda's Good Living clearly has an adult readership, other titles, such as some fashion or celebrity magazines, may appeal predominantly to younger or teenage readers even though their title and content initially appears to be aimed at an older audience.

Outdoor advertising is another area of complexity. A billboard may be located on a travel route to a school, for example, and therefore the age profile of the audience could vary throughout the day, with children making up more than 25% of the audience for only a short period of time.

In purely practical terms, audience data held by publications and media owners may not align with the specified age limit. Advertisers may use different audience profile segmentation, for example ages 1-4; 5-9; 10-14; 15-19, making it difficult to assess the appeal to a specified age.

Unlike broadcast media, there is no pre-approval or pre-clearance service available for responsible businesses to consult to check compliance with nutrient profiling, and we would request that CAP gives consideration to how such a service could be established before the advertising restrictions are extended.

The proposed changes require detailed, practical guidance for advertisers, who bear the burden of proof of compliance with the Code. Businesses will require absolutely clarity over the scope of the proposed restrictions, the forms of non-broadcast media that are included and how it will be established whether advertising is appealing to children.

## **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?*

Yes, the 25% measure would seem to be appropriate for the purpose of restricting HFSS product advertising. The rule is already in place for alcohol advertising and therefore businesses are familiar with the concept and have established processes and procedures to ensure compliance.

As described in answer to question 4, however, it can be very difficult to evaluate the make-up of an audience, for example in-store or outdoor, and particularly online. Affiliate marketing, which is used extensively in the retail sector, makes the issue even more complex. We have to strike the correct balance between the evidence of advertising's impact on children's diet with the right of adult consumers to see advertising of interest to them, and the right of businesses to advertise products responsibly. This poses the potential for a significantly increased burden of risk on responsible advertisers in assessing whether or not the media is compliant with the Code.

Businesses need clarity on what is expected in terms of determining the age profile of an audience, especially in relation to complex media like online. We require a standardised system of measurement and age profiling, used across industry, to ensure a level playing field for advertisers. There is a need for a clear definition of 'media likely to appeal particularly to children', which presents a challenge beyond that of identifying media 'media directed at children'.

#### **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. It is desirable for restrictions to apply across the board to ensure commercial fairness and deliver maximum regulatory impact. We are opposed to any exemptions that would remove the level playing field and risk unintended consequences or loopholes.

Subject to the required clarity on the scope of the restrictions and the application of the 25% measure, we believe this should allow for responsible communication to adult customers.

## 5 – Association of Convenience Stores (ACS)

### Introduction

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Committee of Advertising Practices consultation on food and soft drink advertising to children. ACS represents 33,500 local shops across the country including Spar UK, Nisa Retail, Costcutter and thousands of independent stores.

Retailers sell a range of grocery products and provide a number of services to their local communities. There is a significant variety of products offered in-store, chilled foods are one of the more popular categories in the convenience sector, representing 13.4% of sales, followed by canned and packaged grocery (7.4%) and fruit and vegetables, which represent 6.3% of sales. Convenience stores also offer essential community services including Post Offices, free to use ATMs, bill payment services and parcel collection.

Local shops serve a wide range of customers, varying in age, social group and profile. The average age of a convenience store customer is 46 years old, the age group most likely to visit a convenience store is 55yrs + (36%) followed by 35-54yrs (34%), 25-34yrs (16%) and 16-24yrs (14%). The advertising methods that our members use are mainly in store and target adult shoppers however retailers also rely on direct mail leaflet advising and increasing on social media platforms, mainly Facebook (23%) and Twitter (20%). From discussions with members, the only advertising they use which particularly targets children are promotions around seasonal events. Seasonal promotions used by retailers would mainly be in-store or point-of-sale advertising which sits outside the remit of the code.

Convenience store retailers have a role to play in the obesity debate and the industry wants to align with the Government ambitions to reduce childhood obesity. Convenience retailers are already following consumer trends, by increasing and promoting healthier ranges in-store. In ACS' Voice of Local Shops survey of 1,210 independent retailers, 37% of retailers stated that they run more promotions on healthier products now than compared to three years ago, while 33% said they had increased the range of fruit and veg in their store compared to five years ago. In 2014, fruit and vegetables was the fastest growing category, its sales value increasing by 8.4%, and remains a prominent sales category in the convenience sector.

There is a significant variety in the products offered in different types of store, depending on their size, location and ownership type. For example, while 41% of independent retailers said their store sells more fruit and vegetables than it did five years ago, 35% responded that they did not sell fruit and vegetable in their store. Independent retailers tend to operate in smaller format stores compared to multiple retailers. 61% of independent retailers will operate in locations up to 999sq ft compared to 17% of multiples who trade in smaller format stores. This demonstrates that not all convenience stores carry the same product range and the smallest operators are not targeting consumers looking to do a weekly shop.

CAP outlines on its website their commitment to good regulation: "Together, CAP and the ASA are committed to regulating in a way that is transparent, proportionate, targeted, evidence-based, consistent and accountable." ACS believes that any proposed changes to extend placement restriction on HFSS products must be based on evidence. CAP should not respond to political pressure around obesity but should introduce advertising restrictions that are based on evidence that shows that further restrictions would help to reduce childhood obesity in the UK.

ACS is willing to work with CAP on future changes to advertising regulations, to support them to understand the impact on retailers and how best to communicate changes to retailers. Please see below for ACS' response to the relevant 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)?*

ACS believes that any proposed changes to extend placement restriction on HFSS product advertising to non-broadcast media must have supporting evidence to justify the change. The consultation document notes that the proposed change is not based on any new evidence or the impact of HFSS advertising on children:

*"CAP's case for change is not driven by new understanding of the level of food and soft drink advertising's effect on children's behaviour. There is a link, but for the most part, it is short-term and relatively small when compared to factors like parental influence. The evidence arising since 2007, when CAP last strengthened the rules, has not fundamentally changed this picture."*

We question whether it is necessary to change the rules without significant new evidence showing that changes to non-broadcast media will make a fundamental difference to young people's health choices.

The consultation document notes that the proposed change is supported by advertising's effect in its wider context, including the scale of the obesity problem, developments in online advertising and children's changing media habits. Since the changes are not based on evidence, we urge CAP to pause until the Government have published their Childhood Obesity strategy. This may include new evidence, insight, and direction of travel in terms of changing young people and wider consumer behaviour which would ultimately result in more informed restrictions (if any) on the advertising of HFSS products.

*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?*

ACS is concerned about the use of the existing BCAP guidance for non-broadcast media as the code does not provide absolute clarity about what brand advertisements are associated with HFSS products. The BCAP guidance states: *"BCAP acknowledges that differentiating an HFSS product advertisement from a brand advertisement is not always easy."*

The code also does not provide clarity on what extent advertising would be limited if it features a range of products, where one is a HFSS product. The BCAP guidance states: *"the problem is especially stark if the brand is inextricably linked with a distinct product and the brand name is featured on other distinct products."*

We acknowledge that the guidance states that the scenarios included are not exhaustive but we do not believe they provide enough clarity for retailers about advertising. For example, here are two examples given in the guidance about advertising product ranges:

<b>Regarded as an advertisement for HFSS product</b>	<b>Unlikely to be regarded as an ad for a HFSS product</b>
<i>An advertisement refers to or features a brand name synonymous with specific with HFSS product. That name could be featured on other products or products variants but it is inextricably linked to a specific HFSS product.</i>	<i>An advertisement refers to or features a brand name. That name is synonymous not with a specific HFSS product but with a range, or ranges, of products that are sold under that name</i>

This example does not provide retailers with clarity about what can appropriately be featured on their advertising. There are many brand names that sell both HFSS products and diet ranges or ranges they have reformulated. If this type of advertising was restricted, it would negate the objectives of existing Government policy, such as the soft drinks levy, to encourage consumer behaviour change to lower sugar/ diet soft drinks ranges.

If this guidance is to be applicable to non-broadcast media, then it must provide greater clarity on this point. It is not sufficient to include a footnote that states: “For the purposes of this guidance, ‘synonymous with’ should be taken to mean “very strongly associated with” a specific HFSS product.” We believe that this guidance would be especially difficult for independent retailers (which make up 75% of the convenience market) to interpret when they are developing their store advertising, direct mail shots or promotions for their social media platforms. CAP must consider how it would account for communicating and advising retailers on the introduction of BCAP guidance.

## **Q2 – Selecting a nutrient profile model**

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

There is an ongoing debate regarding which definition should be used to determine a HFSS product. One of the recommendations from Public Health England was for the Government to provide a clear definition on HFSS products. The Government have also been advised to review the existing Department of Health nutritional model profile.

We support the continued use of the existing Department of Health nutrient profile model to identify HFSS products. However, we recommend that CAP wait for the publication of the Government’s Childhood Obesity strategy and the publication of new medical evidence about the definition of HFSS products and the impact that advertising has on children’s food choices.

As stated in the consultation document, CAP are committed to “an evidence based approach to policy making”, therefore, we believe in order to fulfil its commitment, CAP must wait for new evidence to be published or commission its own primary research to justify extending restrictions of the placement of HFSS product advertising to non-broadcast media.

## **Q4 – Introducing placement restrictions**

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

Our response to this question is dependent on the evidence presented on the impact of advertising on reducing childhood obesity.

Very few of our retailer members' advertisements target children. The large majority of retailers' promotions are in-store and largely target adult consumers from their local community. As shown by the types of shoppers identified in ACS' Local Shop Report; the average age of a convenience store customer is 46 years old, the age group most likely to visit a convenience store is 55yrs + (36%) followed by 35-54yrs (34%), 25-34yrs (16%) and 16-24yrs (14%).

However, retailer advertisements that do target children tend to relate to seasonal events, such as Halloween, Easter and Christmas. For example, in-store advertisement and signage for HFSS products may promote trick or treating activities at Halloween or Easter egg hunts at Easter. However, as highlighted above, the majority of retailer advertisements are not in the remit of the CAP code.

Any changes to introduce HFSS placement restrictions in non-broadcast media must be well communicated to retailers.

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

*i) aged 11 or younger?*

*ii) aged 15 or younger?*

As stipulated in the CAP code:

*"For the purposes of this section, "children" are people of 15 and under and "young persons" are people of 16 or 17",*

Therefore, we believe that if a media placement restriction is introduced, it should cover only media that would appeal to children aged 15 or younger. This will provide consistency with the CAP and BCAP code, and provide simplicity for retailers.

## **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?*

Retailers take advantage of a wide range of non-broadcast media including in-store advertising, posters outside of store, leaflets and adverts in local newspapers. ACS is concerned that while other non-broadcast media such as websites or magazines are reasonably straightforward to identify their audience, establishing the audience of advertising used by retailers is much harder to determine.

Our primary concern is that while the majority of advertisements by retailers do not target children, they could be viewed by children. For example, out-of-store advertisements and advertisements displayed in store windows will be viewed by the public. In 2014, it was estimated that 18.8% of the UK population were aged 0-15 years old. To our understanding, if the 25% measure is used for the purposes of restricting HFSS products, advertisements such as posters in public locations promoting HFSS would be permitted, as on average less than 25% of the public would be presumed to be children. However, if the location of the advert display is near a school premise, would this be considered to be targeting children?

Moreover, leaflets which include HFSS products may also be restricted if CAP introduces a rule to restrict the placement of HFSS advertisements. The majority of retailers use leaflets to advertise promotions in-store, which are then delivered into homes. Leaflets have the same problem as posters or promotions that are displayed to the public. While they do not intend to target children, they have the potential to be viewed by children. We call on CAP to clarify how a leaflet would be determined to have “particular appeal” to children? Would this be determined by content of the leaflet or the age of population or household members?

We have the same concerns that retailer’s adverts of social media platforms may also be affected. Many retailers use social media platforms, including Facebook and Twitter to promote products and promotions in their store. While some social media sites, including Facebook, have a minimum age of 13 to become a member of the site, often children can still view the website content. Again, typically retailers do not target children through their advertising and as such social media adverts are not targeted at them, but could still be viewed by children.

ACS calls on CAP to clarify whether adverts in these locations would be restricted and how the “particular appeal” test would work for advertisements in public places, leaflets delivered to home, and adverts on social media platforms.

If CAP decides to proceed to extend the restrictions of HFSS product advertising to non-broadcast media, we urge CAP to ensure clear guidance on what locations constitute particular appeal for children is produced for retailer use.

#### **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?*

As stated throughout our response to the consultation, we are wary that it will be harder to implement the placement restriction, as it is more difficult distinguishing the age profiles of users of non-broadcast media.

While we understand that other non-broadcast media aimed at children (e.g. children’s magazines) are straightforward to understand the age profile of their users, it would be difficult for a retailer to identify the age profiles of their consumers.



## 6 – The Association of Directors of Public Health (ADPH)

### Introduction

The Association of Directors of Public Health (ADPH) is a Company Limited by guarantee with charity status registered in England and Wales and is the representative body for Directors of Public Health (DsPH) in the UK. The Association is hosted by the UK Health Forum.

It seeks to improve and protect the health of the population through collating and presenting the views of DsPH; advising on public health policy and legislation at a local, regional, national and international level; facilitating a support network for DsPH; and providing opportunities for DsPH to develop professional practice.

The Association has a rich heritage, its origins dating back more than 150 years. It is a collaborative organisation working in partnership with others to maximise the voice for public health.

### Response

The Association of Directors of Public Health (ADPH) welcomes the Committee of Advertising Practice (CAP) proposals for further restrictions on the advertising to children of food and soft drink products in non-broadcast media. The CAP consultation states that, “High rates of childhood obesity in the UK are widely considered to be an urgent challenge to children’s quality of life, to health services and to the economy.” The extent of the challenge is demonstrated by the fact that 19.1% of children in Year 6 (aged 10-11) in England are obese, and a further 14.2% are overweight, 9.1 % of children in Reception (aged 4-5) in England are obese and another 12.8% are overweight.

Obese children are more likely to be ill, be absent from school due to illness, experience health-related limitations and require more medical care than normal weight children. Overweight and obese children are also more likely to become obese adults, and have a higher risk of morbidity, disability and premature mortality in adulthood. In addition to the health and wellbeing implications, the cost to the UK economy of overweight and obesity was estimated at £15.8 billion per year in 2007, including £4.2 billion in direct costs to the NHS.

ADPH therefore support the CAP’s proposed policy recommendations to prohibit the placement of High Fat Sugar or Salt products in media targeted at or likely to appeal particularly to children, this is a positive step forward in helping to reduce children’s awareness of these foods. We would welcome these restrictions being extended to include broadcast media.

It should be noted that while preventing children developing a taste for HFSS foods is crucial in tackling childhood obesity, overall calorie intake is important too. Obesity levels are rising in line with the oversupply of available calories, and while HFSS play an important part in the increase in food energy supply, messages about overall calorie intake do need to be considered. The CAP needs to consider how so-called “healthier” foods are advertised, as over-supply of “healthy” food can still lead to increases in weight.

## Response

I am American, but belong to ASO (UK Association for the Study of Obesity). You may take my comments with a grain of salt... Proposals to improve children's health are laudable. However, good intentions do not justify questionable science. No one would argue that sugar sweetened beverages are good for anyone and likely all of us, including children, would be healthier drinking water instead of SSB. However, the data showing that sugar causes obesity are slimmer and often are not so well done, or the effect is clinically small. Nevertheless, it probably is a good idea to reduce advertising of SSB to children. The evidence for reducing salt and fat are even shakier. For salt, there are many papers that do not show a detrimental effect and for some, a low salt diet actually was associated with a higher mortality. Just because the government and some interest groups say something is so, does not make it so. The recommendation to eat less fat may be shaky as well. Numerous studies show that full fat yogurt, milk, and other dairy products are associated with lower weights than are low fat dairy products.

Why should we care if these well intentioned proposals are correct or not? The intention is good so that puts us on the side of the angels. There are two problems. None of these proposals are likely to reduce obesity (or hypertension) in the general population, or even in obese children and adults. If parents are extremely diligent about not allowing their children to drink SSB, the effect is likely to be quite small on an individual child. This promotes distrust of the government and nutritionists and may result in other more important recommendations being ignored. Secondly, such a campaign will cost large amounts of money for a very small effect. It would be more effective to spend this money, or have governments and companies spend this money, on funding basic research into the more important causes of obesity for which we might eventually be able to do something significant.

I do not have any conflicts of interest and have never had funding from SSB or other sugar companies nor from anything having to do with salt.

## 8 – Bel UK

### Introduction

Bel UK is a subsidiary of the Bel Group covering the UK and Irish market. Bel UK imports and markets Bel products within this territory, representing notorious branded cheeses such as Mini Babybel, The Laughing Cow, Leerdammer, Boursin and Port Salut.

The Bel Group is the world market leader in branded cheese portions, present in 130 countries around the world, leading in the top 10 in its market segment.

Bel UK has been present on the UK market for over 90 years. We strongly believe that a healthy lifestyle and diet should be at the heart of responsible communication, and we are committed to support initiatives to reduce the incidence of obesity in children in particular.

Bel UK welcomes the possibility of voicing its view on proposed developments to advertising controls. We wish to highlight however that there is no evidence of a direct link between advertising to children and childhood obesity. We strongly believe that encouraging a healthy diet and healthy lifestyle underpins the success of any program to reduce obesity and responsible advertising is one of many levers to achieve this. For this reason, it is important that cheese should be allowed to have a place in advertising to children. It is proportionally the most calcium dense products, consumed in small portion, with satiety properties, which can support weight management.

This consultation is based on the current DH model, which we know is under review. We believe that this consultation should take place once the new DH model is finalised.

### Response

<b>QUESTION 1 - Restrictions on HFSS product advertising</b>
<p><b>(a) Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?</b></p> <p>We believe in responsible advertising on all media and support a fair and proportionate system to ensure the protection of children from irresponsible advertising. The Bel Group is a signatory of the EU pledge and all our advertising fully respects the engagements we have made. We believe the CAP code should be aligned on the EU pledge (No advertising of products to under 12s, except for products which fulfil nutrition criteria. For the purpose of this initiative, "advertising to children under 12 years" means advertising to media audiences with a minimum of 35% of children under 12 years).</p> <p><b>(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?</b></p> <p>We believe this rules penalizes smaller operators in the market where their brands are extrinsically linked to a single product or small range of products, where large operators can support large brand portfolio allowing them to put forward their brands, including a large amount of HFSS products.</p>

**QUESTION 2 - Selecting a nutrient profiling model**

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

Bel UK markets various forms of cheese in small portions. The current model is based on 100g. Our products are never consumed by more than 40g portions. The mechanics of the HFSS evaluation don't allow our products to reduce their overall score to represent the benefit of our products in the diet, in particular protein and calcium.

We strongly believe that cheese consumed in appropriate quantities can be part of a health balanced diet, and can support the maintenance of a healthy weight.

For these reasons, we believe that the current DH model is not suitable in its current form to create an advertising environment which does not encourage eating behaviors which promote obesity.

We are in support of the EU Pledge model as it is based by categories and takes into account nutrients currently perceived as positive (Fibre, vitamins and minerals). The parameters of this model also promote reformulation, whereas the current DH model blocs even low fat cheeses from advertising.

We are aware that the DH model is under review and would welcome the possibility of revisiting this question once the new DH model is finalised.

**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?**

We are not in favour of this development if the DH nutrient profile remains in its current form as we believe that the current model disproportionately excludes dairy products, for an age group where calcium consumption is vital for lifetime health.

**QUESTION 4 - Introducing placement restrictions**

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

We believe that restriction on placement of products which have a bad effect on children's health should be introduced.

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

**i) aged 11 or younger?**

**ii) aged 15 or younger?**

We support the position of the EU pledge, so support option i).

**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?***

*We are concerned that the accuracy of such measurement on other media than TV is more difficult to achieve and feel this leave too much room for interpretation, in particular on the internet.*

**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?**

We believe that with an effective Nutrient profiling model this would be appropriate as advertising can reach children on all media.

## Response

### 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. It is likely that industry will exploit new and emerging media and information channels to directly or indirectly influence sales of HFSS products. Clever, softly nuanced marketing and advertising that plays at the edge of guidance and law is highly likely and any code should be made more rigorous and attempt some level of future proofing.

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, the Honey Monster for example, brand marketing, and products 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.

*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 the code is currently fit for purpose though it may need a review to see if sufficient future proofing is in place to offset likely new emerging products and/or marketing techniques. This code offers some level of organisational credibility and may be seen as a neutral guide across many different agencies that may use the guide.

### Q2 – Selecting a nutrient profile model

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

Yes. However the EU pledge model may offer some extra guidance to manufacturers in producing products that would be acceptable within any new guidance? In an ideal world guidance would be a compilation of the most useful aspects of each profiling model but the DH model does offer a technically suitable guide and may offset any exclusion from wider EU developments or challenges around adopting a model for a community the UK is no longer part of and cannot influence.

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, and then this revised model should be adopted for non-broadcast too. In the meantime, the current model should be adopted.

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

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*



Whilst it is essential that HFSS products are not endorsed by licensed characters or celebrities, or specifically promoted towards children, it would be beneficial to use these methods to encourage them to choose healthy options. The restriction should not exclusively apply to HFSS products as this could lead to some products receiving endorsement that are not deemed appropriate for children. Licensed characters, celebrities and targeted promotions should be exclusively available for products that health professionals actively want to encourage children to consume, e.g. fruit and vegetables. If this criteria was to change, strict rules and guidance would be needed to ensure that this was the case.

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 a rule restricting the placement of HFSS products to bring it in line with the broadcast media rules. The evidence is clear that the consumption of HFSS contributes to poor health outcomes in children and is contributing to the rising tide of childhood obesity. The changing role of online media and the increasing exposure of children to this form of advertising means that it is imperative that CAP introduces the new rules promptly.

*(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.*

The restrictions should cover all children aged 16 or younger to ensure that all young people have the benefit of the new restrictions. Obesity and consumption of HFSS food and drinks do not stop becoming a problem once a child reaches 11 years old. Consumption of fizzy drinks is especially a pertinent issue in teenagers and the advertising of soft drinks to teenagers needs to be restricted. Also once teenagers reach high school after 11 years old, they have a much greater freedom to choose their own food, and therefore it's important that they are not being encouraged into unhealthy options. If advertising was only restricted for under 11's, it may well encourage the marketing companies to actively target teenagers as they can't target under 11's, protecting younger children but disadvantaging teenagers.

BCAP rules currently define children younger than sixteen years of age that should be the minimum age which the CAP rules apply to.

#### **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. The way children are using media is continuously changing, with more children now owning portable devices such as tablets. Children will be exposed to advertising through games and apps on these devices. As the viewing behaviours of children begin to change it may become more difficult to determine what percentage of children are accessing different types of media and what number of children see the advertisement as a result of this. Whilst it is deemed important to protect the rights of adults to find out about new products, HFSS products have negative effects on the health of adults as well as children. It would be appropriate to have a percentage lower than 25% as any benefit gained from adults not being exposed far outweighs the effects of an adult being able to find out about new products.

25% could be 25% of a large number, for example Ant and Dec's Saturday night takeaway is an extremely popular programme with children and has huge viewing figures, but wouldn't be deemed as coming under the guidance. This is a loophole that advertising companies will exploit to get their products marketed to under-16s.

#### **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?*

All non-broadcast media should be included in the code, with no exemptions. Any exemptions would only lead to opportunities for the advertisers to try and exploit. This should also include media currently outside of CAP's remit, including brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship. As seen in the tobacco industry, stricter rules on non-broadcast media can lead to the food packaging to become the primary method of advertising. Many cartoon characters and Disney characters are currently on the packaging of high sugar breakfast cereals. Children are spending more time online than ever before, therefore online advertising would be a crucial part of any new CAP restrictions, including advertising that appear on online gaming and mobile phone and iPad Apps. There would also need to be written into the code regular reviews to keep up with the latest media products being targeted at children.



## 10 – Blaenau Gwent Local Authority

### Introduction

Blaenau Gwent Local Authority are working closely with Aneurin Bevan University Health Board and other public sector partners to tackle childhood obesity. According to the latest report from the Child Measurement Programme in Wales (2016), 19% of children aged 4-5 years in Blaenau Gwent are overweight or obese. Blaenau Gwent Local Authority has endorsed Fit for Future Generations: A childhood obesity strategy for Gwent to 2025 and we respond to this consultation as part of a broad range of action that we are taking to enable children living in Blaenau Gwent to be a healthy weight. We believe that new and more robust advertising restrictions could make a meaningful contribution to tackling this important health issue.

### Response

#### 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 profile model**

*Should the CAP Code adopt the 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**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, 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 -2s 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.

## Introduction

This consultation is important and timely, and I welcome the opportunity to contribute. The recent report of the World Health Organisation's Commission on Ending Childhood Obesity (ECHO), made clear and comprehensive recommendations (after consulting with 118 Member states) for the reduction of children's and adolescents' intake of foods and non-alcoholic beverages high in saturated fats, free sugars and salt (HFSS) to limit excess weight gain. A core recommendation was to reduce children's and adolescents' exposure to marketing for these foods.

I have previously expressed my many criticisms of the non-peer reviewed Family Kids and Youth 'literature review' (2014) commissioned by CAP, but I think it is pertinent to reiterate the key points here as they relate to the current consultation:

1. The review repeatedly referred to a lack of information about children's use of and engagement with online marketing activities, with criticisms of academic researchers for not doing enough or for the research being out of date very quickly, and used this to justify stalling on further policy progress. For example, page 32 "more sophisticated research on traffic data is needed to establish how many children visit these websites and how long they engage with the content" and page 48 "While exposure to advergames has been found in experimental studies to lead to positive brand attitudes and a preference for the brand it remains unclear exactly how popular there (sic) games are and therefore how widespread effect (sic) these games have." This particular sentence is problematic on a number of levels (beyond the grammatical). i) Why is the advertising industry not finding out how widespread the practice is? Or more precisely, why are they able to retain this information and not be transparent with it? ii) The popularity of the technique has nothing to do with regulating the effects. Not very many children get shot on the streets of Britain. Does that mean we should have no regulation against such behaviour? Why is industry data on children's use of these activities not being disclosed to inform this debate (if you are actually serious about proportionate advertising to children....)?

2. There was no attempt to engage with the WHO guidelines (they are mentioned on Page 14 but not engaged with at all) or to show how they might be relevant to regulation of advertising in the UK. They should impact policy. The 2010 WHO recommendations (and now the ECHO report) specifically call on governments to act on food marketing to children as a key policy issue, therefore this should be a key issue for CAP.

3. Whilst I agree partially with the authors that there is a lot of content analysis, compared to other form of evidence, I suggest the important policy implication from this is not that it doesn't prove anything, it is that the rapid growth of digital marketing is undermining the policy goal of reducing children's exposure to the marketing of HFSS foods, irrespective of any debates about effect size of that exposure.

## Response

### 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.** Our research has shown that internet food marketing exposure, like TV, promotes significantly increased caloric intake in children. Other studies have shown that even 10-12 year old children cannot consistently recognise simple static web advertisements as being advertising, and identifying marketing is likely to be even more difficult in social media where boundaries between marketing and other content are further blurred. If children do not even realise when they are being advertised to, then this activity is clearly exploitative.

We have evidence that it provokes food intake, and although there may be fewer studies focusing on digital marketing than on TV, you stated in the previous review that "... in such a rapidly changing environment, we clearly cannot wait until we have all the evidence". Therefore, this regulation needs to follow principles. Children's diets are a national issue. Advertising has a role to play – that is (or should be) undisputed. TV advertising for junk food has been restricted and some parties would like to restrict it further. It makes no sense that this can simply migrate to another channel and that a new evidence base has to be produced every time a new channel appears. Regulation on media cannot be based on the evidence of the effectiveness of different forms of media. When it comes to children they need to be based on a precautionary principle. Junk food is not good for kids – so keep regulation media neutral (ie same rules for all media).

Current alarming rates of childhood obesity breach rights to health, e.g. children's rights to development and enjoyment of the highest attainable standards of health as articulated in the UN Convention on the Rights of the Child (UNCRC; UN, 1990). This consultation, and the resulting action, provides an opportunity to defend their rights.

*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 guidance is not strong enough. It needs to be expanded to include all forms of commercial messages (any branded content such as that featuring brand names, logos, and brand equity characters etc.). We have shown that brand equity characters influence children's taste preferences and choices, and given that they predominantly promote HFSS items, this has negative implications for diet and health.

## **Q2 – Selecting a nutrient profile model**

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

**Yes.** CAP should also commit to automatically accepting the revisions of this model following the current review, and any future revisions as more evidence is available to inform the model. CAP should also seek to strengthen the thresholds within the model if necessary, to ensure that low/zero calorie soft drinks and 'healthier' fast food meal bundles are excluded from promotions also as we have evidence to show that this does not promote healthier choices and simply drives desire for food from that brand or other brands in the same category.

## **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

**No.** As demonstrated in the aforementioned study, children also respond to the brand and brand category advertising so relaxing these rules would pave the way for more advertising of 'intermediate' foods featuring promotional techniques to engage children. Too few truly healthy foods are advertised and are ever likely to be advertised (lack of commercial imperative and budget constraints for public health campaigns) to make this a positive step for health.

#### **Q4 – Introducing placement restrictions**

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

**Yes.** This would be consistent and appropriate given the evidence already stated.

*(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.**

This would be consistent with the Ofcom HFSS rules for television and with current BCAP rules. Even better would be to define a child as anyone under the age of 18 years, as stated in the WHO recommendations and the UNCRC report.

#### **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.** Given that the aim of restrictions should be to reduce children's exposure to unhealthy food marketing, the important metric is the number of children viewing the content, not the proportion. 25% of a large audience is a lot of children. Furthermore, it is not adequately set out in the consultation document how this would be effectively monitored or enforced. This is a crucial point, given the nature of many forms of non-broadcast media, particularly social media. The best approach for defining the audience depends on the data available (highlighting the current lack of transparency in this area). If verifiable exposure metrics are available, then any promotion likely to be viewed by greater than 1000 individuals under the restricted age (16/18 years) should be subject to restrictions. Alternatively, if such metrics are unavailable or unreliable, another appropriate approach would be to base restrictions on the likely appeal of the marketing communication to children using criteria such as the persuasive techniques used, the location/placement of the ad, the nature of the advertised item etc.

#### **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.** This should be applied across media without exemptions. CAP should also seek to extend the remit to include other non-broadcast media not currently covered, such as brand characters, product packaging, labelling, in-school marketing, in-store placement, sponsorship and online branded entertainment.



I implore CAP to adhere to the WHO recommendation on food marketing to children and to take this opportunity to develop robust rules to protect children from persistent food marketing that encourages poor dietary habits, particularly in this new digital era.

## 12 - The British Association for the Study of Community Dentistry (BASCD)

### Introduction

BASCD is the UK's professional association for the science, philosophy and practice of promoting the oral health of populations and groups in society.

BASCD welcomes the opportunity to consult on the "CAP Consultation: food and soft drink advertising to children. Introducing new restrictions on the advertising of food and soft drink products to children" document."

### Comments on document

We note that dental caries (tooth decay) is only mentioned twice in the whole document (pages 15, 20). Sugar is one of the risk factors for dental caries. the Scientific Advisory Committee on Nutrition (SACN) in their report on carbohydrates and health found that in children and adolescents frequent consumption of sugar-containing foods and drinks are associated with a greater risk of dental caries in both deciduous and permanent teeth. Tooth decay accounts for nearly 30,000 children's admission to hospital each year for operations to remove decayed teeth. This is the most common reason for children's admissions. These statistics and Public Health England's publication "Delivering Better Oral Health" (DBOH) should be referenced <https://www.gov.uk/government/publications/delivering-better-oral-health-an-evidence-based-toolkit-for-prevention>

Also none of the supporting evidence, in sections relating to the impact on children's health, includes information pertaining to diet, oral health, dental caries and dental erosion. In particular the effect of sugar sweetened beverages and also more "healthy" (in terms of obesity) artificially sweetened carbonated drinks which have been linked to dental erosion. Please see Delivering Better Oral Health which can be viewed at <https://www.gov.uk/government/publications/delivering-better-oral-health-an-evidence-based-toolkit-for-prevention>

There is a suggestion early on in the commentary that the influence of non-broadcast media in children's food selection is limited (bottom page 13/top page 14) – yet the later evidence chapters contradict this.

Whilst CAP is mandatory, it is self-regulatory; in this self-regulatory process does ASA involve Public Health or Dental Public Health. BASCD would be concerned about the self-regulatory aspect of CAP.

Throughout the CAP consultation document runs the implied assumption that it is the responsibility of the public health community to demonstrate with high quality research the harmful effects of any advertising approach. When we have a national obesity strategy there would be a presumption that any advertising of HFSS products would be potentially harmful, and that it will be the responsibility of the manufacturer / advertiser to demonstrate that their advertising approach was not harmful to children. Much in the same way that it is the pharmaceutical industry's responsibility to demonstrate convincingly that their drugs are safe before they go on the market.

### Page 4

The first paragraph should include a sentence or two on children's oral health as a significant public health issue, its link with diet, its costs to society and the NHS.

1st bullet – language is confusing

3rd bullet doesn't make sense when read first – it took reading the whole document to see the implications.

The new CAP recommends taking the existing rules away from non-HFSS foods – this could be problematic for “foods” on the borders of the definition and also as focus is obesity – might be problematic for foods causing decay/erosion.

## **Page 5**

The first paragraph – last sentence “There is no robust evidence that CAP is aware of to suggest that children's exposure to non-broadcast advertising has a similar level of influence.” – that doesn't mean that it's not having an effect, also non-broadcast media is only one piece of the jigsaw, in terms of marketing information which is available/ accessed by children – need to think about the cumulative effects.

## **Page 8, para 2.2**

Mislead consumers – BASCD has particular concerns about portion size – e.g. breakfast cereals in the media, industry has 30g portion yet cereals bowls marketed as overflowing (at least (120g).

BASCD is also concerned about the use of emotive/misleading language to market food and drink products, e.g. to sell breakfast cereal bars (unpublished work).

BASCD – concerns about the use of celebrities in the non-broadcast media in advertorials and also in general editorial content (Jessica Ennis hides the chocolate in her shopping trolley – Chapman magazine paper).

## **Page 10**

The list of items that CAP does not cover is interesting – packages and wrappers for children's magazines for instance have advertising and often contain sweets – Haribos, Chewitts, Maoams. Are some of these potential loopholes? Do they need to be covered?

## **Page 20**

Good to see that SACN is mentioned – as too is dental caries (n.b. it has been misspelt carries!). 5% total energy is going to be quite hard to achieve with the current UK diet. Food industry marketers need to work with initiatives like Action on Sugar (<http://www.actiononsugar.org/>)

## **Page 23**

Section 26 – misnomer title – as paragraphs relate to England only – suggest a subheading England following UK.

Where is Wales? – needs to be mention of Welsh child measurement programme, Wales dental epidemiology, Physical activity and nutrition networks.

<http://www.wales.nhs.uk/sitesplus/888/page/52135>

<http://www.cardiff.ac.uk/research/explore/research-units/welsh-oral-health-information-unit>

<http://www.wales.nhs.uk/sitesplus/888/page/44827/>

## **Page 25**

Oral health needs to be referenced on the bottom half of page 25.

## **Page 27**

31.1 Interesting – no mention of parents/children representatives as stakeholders.

Annex 4 doesn't mention any representatives from the dental community/dental public health.

## **Page 28**

Sections 32.8, 32.9 – no mention of oral health.

32.10 refers to socio-economic groups – inequalities is key for children's dental health issues.

## **Page 32**

34.7 Also children ignore age restrictions on social media e.g. may under 14 year olds use Facebook – they change their Date of Birth to become members.

## **Page 37**

36.7.3 - We see in many systematic reviews the charge that research is of " low to moderate quality " However there is a growing view in the public health community that the usual criteria in these reviews are unrealistic for complex public health issues. See for example Rugg-Gunn et al. British Dental Journal (2016) 220; 335-340 for a list of references.

## **Page 41**

36.12.2 – No single solution creates.... But BASCD would argue that this is part of the solution.

## **Page 42**

38.1 and 38.2 children's oral health needs to be eluded to.

CAP are playing down the influence of non-broadcast media, the evidence is limited, but you can't take these marketing techniques in isolation. The non-broadcast media is one element of a wider media environment.

## **Page 43**

39.2 There are also dental health initiatives, such as ChildSmile, Designed to Smile and Healthy School initiatives linked to prevent dental caries. Diet, especially the frequent consumption of sugary foods and drinks is a risk factor for dental caries.

39.4, 39.5 – BASCD would welcome this

40.2 – With regards to the last sentence, this doesn't mean there isn't a link!

## **Page 44**

40.7 An example of research on advertising and oral health is Morgan M, Fairchild R, Phillips A, Stewart K, Hunter L. A content analysis of children's television advertising: focus on food and oral health Public Health Nutrition, (2009), 12:748-755.

## **Page 47**

40.16 "...like parenting and education." So shouldn't the CAP proposals apply to parents then?

41.1 and 41.2 Oral health could be mentioned here.

41.6 "by not hindering wider efforts", surely CAP should be thinking "supporting" as opposed to hindering positive messaging to children over their dietary choices.

## **Page 48**

42. BASCD does not agree with this argument, this is one piece in the jigsaw – cumulative effects.

42.4 Does this provide a loophole?

42.5 With regards to the editorial content directed at children, please look at, K. J. Chapman, R. M. Fairchild and M. Z. Morgan. Food references in UK children's magazines – an oral health perspective. British Dental Journal 2014; 217: E20. DOI: 10.1038/sj.bdj.2014.1007

## **Page 51**

45.8 Free sugars and oral health should be eluded to.

## **Section 46**

BASCD would have concerns about reducing the restrictions on non HFSS foods – because of borderline foods and also those which have an impact on oral health (and maybe not on obesity) think diet sodas and erosion.

## **Page 52 – Section 47**

Why not 16 and under? – some products for example sports drinks are being consumed by early teens and are very popular with them – (even though the industry would say they are not marketing them to this age-group). This is the time when children are really becoming independent and need to have continued support in making some health food choices.

## **Page 53**

47.9 – last sentence – aren't CAP contradicting themselves? Doesn't this indicate that CAP should cover those 16 and younger.

## **Page 54**

Reservations about the 25% figure – depends on how many children are accessing the media – if the denominator is 100, then that's one thing, if the denominator is 100,000 – then that's 25,000 children who will have access to this. 25% seems to be quite high from a public health perspective.

## **Response**

### **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 need to have 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?*

No tougher rules should be adopted for both broadcast and non-broadcast advertising.

### **Q2 – Selecting a nutrient profile model**

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

Yes. BASCD would welcome the adoption of the DH nutrient profiling model. We agree that the recommendations emanating from SACN and WHO should underpin the CAP proposals and that the specific guidance relating to oral health should also be taken into account. See SACN Oral Health Chapter, Moynihan and Kelly 2014, and P.J. Moynihan and S.A.M. Kelly. Effect on Caries of Restricting Sugars Intake: Systematic Review to Inform WHO Guidelines. J Dent Res 93(1):8-18, 2014.

### **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

Unsure. BASCD has concern over the definition of HFSS – borderline foods, also foods which could lead to erosion might not be included in HFSS. Existing rules should only be relaxed for demonstrably healthier products which may not be all non-HFSS products.

Why not 16 and under? – some products for example sports drinks are being consumed by early teens and are very popular with them – (even though the industry would say they are not marketing them to this age-group). This is the time when children are really becoming independent and need to have continued support in making some health food choices.

### **Q4 – Introducing placement restrictions**

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

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

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

*i) aged 11 or younger?*

*ii) aged 15 or younger?*

If media placement restriction is introduced should cover children aged 15 or younger.

## **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. BASCD has reservations about the 25% figure – depends on how many children are accessing the media – if the denominator is 100, then that’s one thing, if the denominator is 100,000 – then that’s 25,000 children who will have access to this. 25% seems to be quite high from a public health perspective.

## **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 – no media exemptions. Also extend CAP Code to apply to areas outside remit such as packaging, licenced and equity characters, and close other loopholes.

## 13 – British Dental Association (BDA)

### Introduction

The British Dental Association (BDA) is the professional association and trade union for dentists practising in the UK. BDA members are engaged in all aspects of dentistry including general practice, salaried primary care dental services, the armed forces, hospitals, academia and research, and include dental students

We welcome the opportunity to respond to this consultation by the Committee on Advertising Practice. Dentists are at the front line of treating the effects of unhealthy diet in the form of free sugars, which cause tooth decay (caries). Tooth extractions due to caries are the leading cause of hospital admissions for children aged five to nine years; these cost the NHS £35 million per year. Survey data for England show that there has been a 10 per cent increase in the number, and 66 per cent increase in the cost, of hospital-based tooth extractions for children over the last four or five years, respectively. In 2014-15, almost 41,000 children in England underwent extractions under general anaesthetic. These figures do not take account of wider economic and social costs, or of the caries treated without need for extraction. We are extremely disappointed, therefore, that dental disease and its substantial effects have not been given greater consideration in the present consultation paper. This would be consistent with moves by both the Department of Health and the Treasury to recognise the significance of caries within the forthcoming Childhood Obesity Strategy and the proposals for the sugary drinks levy. We would urge CAP to raise the prominence of dental disease by discussing it in the Executive Summary and at relevant points throughout the paper.

The BDA supports the recommendations of the Scientific Advisory Committee on Nutrition and the World Health Organisation that free sugars should constitute no more than five per cent of daily calorie intake. Mean sugar consumption is currently three times this recommended level in school-aged children and teenagers (14.7-15.6 per cent of energy intake), and urgent action is required to reduce this in order to tackle the unacceptable but preventable burden of tooth decay, as well as the epidemics of diabetes and obesity that pose an increasing threat to public health.

Children are particularly susceptible to marketing, and the BDA maintains that they should be protected from the advertising and promotion of unhealthy food and drink by standardised rules across all forms of media (including in cinemas, on posters, in print, online and in advergames). A systematic review by the former Food Standards Agency concluded that, “food promotion influences children’s food preferences and their purchase behaviour”. The review also found evidence that, “the more food adverts [children] saw, the more snacks and calories they consumed”. Ofcom statistics indicate that a high proportion of children’s viewing is outside dedicated children’s programmes.

The BDA is a member of the Children’s Food Campaign (CFC) working group and supports the CFC’s position on the questions under consultation.

### Response

#### 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 CAP Code should be updated to introduce tighter 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?*

**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.

## **Q2 – Selecting a nutrient profile model**

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

**Yes** – the Department of Health nutrient profiling model to identify HFSS products should be adopted immediately. This model should also be updated to reflect current nutritional guidance and to close loopholes.

## **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

**No** – existing prohibitions on the use of promotions and licensed characters/ celebrities to market food and drink to children should be relaxed only for demonstrably “healthier” products, but not for all non-HFSS products, and not for brands that include any prominent HFSS products.

## **Q4 – Introducing placement restrictions**

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

**Yes** – CAP should introduce a rule restricting the placement of HFSS product advertising.

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

*i) aged 11 or younger?*

*ii) aged 15 or younger?*

**Aged 17 and under** – should be the audience to which media placement restrictions apply; we note that this option was not given in the consultation. Of the two options given, we support aged 15 and under.

## **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 per cent audience measure for the purpose of restricting HFSS product advertising provides insufficient protection to children. Numbers of children viewing “family entertainment” programmes are often high, even if the proportion of children in the audience is under 25 per cent. A 9 p.m. watershed for television advertising of HFSS products would help to address this. Additional measures to define more broadly the “particular appeal” of marketing to children (including content, marketing techniques and placement) should also be introduced.

#### **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.

The proposals under consultation are likely to be too weak to be effective in adequately restricting children’s exposure to the marketing of HFSS products. This particularly applies to the proposals on brand advertising (Q1b), on the use of licensed characters and celebrities to promote non-HFSS products to children (Q3); on not extending the age at which children are protected to under 18 (Q4b); on defining an advertisement as having “particular appeal” to children only if children constitute more than 25 per cent of the audience (Q5); and in inviting the advertising and food industry to apply for exemptions and delays to implementation of the rules (Q6). We have particular concern over the practical and fair application in non-broadcast media of the proposed 25 per cent measure (Q5).

The BDA supports the CFC’s proposals to update the CAP rules by incorporating the following measures, to minimise the exposure of children to non-broadcast marketing of HFSS products:

- a definition of advertising that is broadened to include all forms of commercially-sourced messages that include brand names or brand-related images
- a remit that includes – for the purposes of governing child-directed marketing – the labelling and packaging of food and drink
- the tightening of restrictions on the techniques that can be used to engage with children, including removing the loopholes that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children’s advertising
- a “particular appeal” test that extends beyond child-directed advertising to include advertising likely to be seen by children under 18, and focuses on the probability that a child might see the commercial messaging
- the adoption and the tightening of the current nutrient profiling model governing what can be advertised
- transparent monitoring and effective sanctions for transgressions.

## 14 – The Association of UK Dietitians (BDA)

### Introduction

The BDA calls for measures to protect children from the advertisement and promotion of food and drink high in fat, sugar and salt (HFSS products) across all broadcast and non-broadcast media. Non broadcast media includes all printed media that children may be exposed to (such as packaging, labelling, bill board posters, newspapers, comics, magazines) and all forms of online media such as social media, video, films, websites, online competitions and advergames.

Children and teenagers up to age of 16 are susceptible to the advertisement and promotion of high fat, sugar and salt food and drink (HFSS products) via broadcast and non-broadcast media. Children are less able than adults to spot marketing ploys and are more likely to fall into their traps. The marketing to children of energy dense HFSS products has been shown to influence children's food preferences, purchase behaviour and food consumption (CRUK, 2016). It also results in children 'pestering' their parents thus prompting the purchasing of unhealthy foods (CRUK, 2016).

Eating habits are established early in life, during the preschool years, and once formed track through childhood and into adult life. Therefore, children who consume large amounts of HFSS products in their childhood are likely to continue doing so in adulthood. Children require a nutrient dense diet that has sufficient energy to meet the needs of growth and physical activity. Excess energy intake from HFSS foods can result in obesity.

Childhood obesity is the greatest nutritional problem facing children in the UK today. There are currently 15% of all children in England categorised as 'obese' (PHE, 2016) and if not tackled early obesity is likely to continue into adult life (currently 25% of all adults in England (PHE, 2016). Obesity, and its associated diseases such as diabetes and some cancers, is not the only consequence of over consumption of HFSS products. Excess salt and fat intake can result in high blood pressure and cholesterol levels which contribute to the development of heart disease and stroke. The BDA eagerly awaits the government's Childhood Obesity Strategy and hopes that it will set out a raft of measures to address this issue which includes action to be taken to curtail advertising and promotion of HFSS products.

The BDA also calls for the creative promotion of healthy foods such as fruit, vegetables and minimally processed products that score low when assessed using the Department of Health nutrient profiling model.

The BDA welcomes the invitation to participate in this consultation and would like to offer the following response.

### Response

#### 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 BDA is calling for a set of more up to date and tougher restrictions on the marketing of food and drink high in fat, sugar and salt (HFSS products) to children aged up to 16 years via broadcast and non-broadcast media and in places that children frequent e.g. schools, supermarkets and sports events.

Young children and teenagers are vulnerable to advertising and marketing of HFSS foods for a number of reasons. Children and young teenagers do not yet possess the cynicism and discerning skills to 'see through' advertising. Advertising of HFSS products has been shown to influence children's food preferences, purchase power, food consumption and pestering of their parents (Cancer Research UK, 2016). Because of this, advertising of HFSS products contribute to the 'obesogenic' environment, a consequence of which is the more frequent consumption of HFSS foods by children which can result in obesity.

Childhood obesity is a recognised issue in the UK i.e. currently 15% of all children in England are 'obese' (PHE, 2016) and if not tackled early on can result in obese adults (currently 25% of all adults in England (PHE, 2016)). The BDA eagerly await the government's Childhood Obesity strategy and anticipate that it will set out a raft of measures to address this issue which includes action to be taken to curtail advertising and promotion of HFSS products. Eating habits developed during childhood tend to perpetuate into adulthood. Obesity, and its associated illnesses such as diabetes and some cancers, is not the only consequence of over consumption of HFSS products. Excess salt and fat intake can result in high blood pressure and cholesterol levels which contribute to the development of heart disease and stroke.

Due to the advent and adoption of new technologies by children (such as the internet, social media and online gaming) there are now more ways to advertise to children and the CAP code must adapt and apply restrictions to these media (this is a loophole in the current CAP Code.) The current CAP Code also fails to address the use of popular celebrities, brand characters or well-known cartoon characters (the Minions) to advertise HFSS products and brands that include HFSS products to children.

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

No, the BCAP guidance on broadcast advertising to children is not tough enough: Promotional offers in HFSS product adverts are only restricted to preschool and primary school children - i.e. the restriction does not apply to older children up to the age of 16. The BDA call for the restrictions in this part of the guidance to incorporate children up to the age of 16 years.

The guidance around the use of characters and celebrities is not strong enough. It applies only to HFSS product advertisements not to brand advertisements. It also fails to deal with the use of character and celebrities in advertisements to older children up to the age of 16 years.

The timing and scheduling of advertisements is important and needs to be tougher. The BDA agree that adverts for HFSS products should not be adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal to audience below the age of 16, but the BDA wants this to be extended to 'family viewing' programmes that children often watch such as Britain's Got Talent, Coronation Street and X Factor. NICE recommend a watershed of 9pm to protect children (NICE, 2010) and the BDA calls for this recommendation to be incorporated into the revised BCAP guidance and CAP Code.

## **Q2 – Selecting a nutrient profile model**

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

Yes, the BDA agrees that the Department of Health nutrient profiling model should be used to identify HFSS food and drinks. We acknowledge that this model is being updated to include the SACN recommendations for sugar and fibre and would wish to see the updated model being used when it becomes available.

## **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

No, the rules should apply also to the promotion of HFSS food and drink products that are placed at point of sale i.e. in supermarkets, in sports events and the rules should apply to brand advertisement where that brand contains HFSS products.

However, the rules should be such that popular characters and celebrities can be used to advertise 'healthier' foods such as fruit and vegetables and some minimally processed food and drink items with low salt and sugar content that score low on the nutrient profiling model. However, care must be taken during assessment as some foods such as nuts and pure fruit juice may be deemed a HFSS food product when assessed using the nutrient profiling model. This would mean that licensed characters and celebrities would not be able to advertise these products when in fact dietitians would not object to them being used judiciously. The BDA recommends that children replace processed HFSS products for sensible amounts of foods that may be high in sugar or fat but are nutrient dense (e.g. nuts and pure fruit juices) and would welcome the use of licensed characters and celebrities in adverts and campaigns promoting such products and foods.

## **Q4 – Introducing placement restrictions**

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

Yes, The BDA believes that CAP should extend the rules to non-broadcast product advertising i.e.

Print media: magazines, comics, newspapers, bill boards, food and drink packaging and labelling, adverts in film, video, vlogs, social media, websites, advergames. Digital media is an expanding market that is popular with tech savvy children. Marketers of HFSS products and brands exploit the new forms of digital media as they are developed. CAP need to keep up with the new forms of media and marketing methods and the BDA calls for a regular review of the CAP guidelines.

*(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 BDA would like to see the CAP rules applied to all children below and including 16 years of age. It goes without saying that preschool and primary school children do not possess the intellectual skills to see through advertising but it is also true that many young teenagers may not have acquired the maturity and discerning skills required to understand marketing ploys and when they are being 'sold to' especially considering the fact that brands and products are using more and more sophisticated methods of marketing – e.g. Competitions with attractive prizes and advergames.

## **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?*

The BDA calls for a lowering of this threshold to 20% or ideally 15% which would mean more children are protected from HFSS product marketing. However, the data from which these percentages are calculated are provided by the advertising industry and therefore have the potential to be biased. Therefore, we recommend that an independent data provider is used to help determine the audience figures and therefore the reach to children of the HFSS product adverts in broadcast and non-broadcast media.

The BDA also supports the 'alternative proposal' outlined in the consultation response by the Children's Food Campaign because children may lie about their age particularly to obtain access to websites, online social media and online gaming which would skew audience data. It may therefore be simpler to assess the adverts as being 'directed at children' based on set criteria rather than assessing whether the advert actually reaches a certain amount of children or not.

## **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 BDA believe that CAP should apply placement restrictions on HFSS product advertising to all non-broadcast media including: online advertising, billboards, competitions, advergaming, packaging and labelling of products, marketing in schools, shops, supermarkets and sports events.

In addition, the BDA calls for:

- An independent regulator as the production and enforcement of the CAP Code is conducted by the advertising industry.
- The immediate withdrawal of an advert / product placement as soon as it is called into question and also during the investigation stages. This would ensure that children are protected more robustly and effectively.

- The punishment for breaching the CAP Code should be heavier and act as an effective deterrent to product manufacturers.
- A sufficiently regular review of the CAP code should be carried out so that any developments in and increases in the opportunities and methods for companies to market HFSS products are kept up with.
- An evaluation of the effects of introducing the tougher CAP Code that the BDA is recommending – to be conducted by an independent body. The results of which should be published and acted on at the regular reviews of the CAP Code.

## 15 – British Retail Consortium (BRC)

### Response

Thank you for giving us the opportunity to submit comments to the consultation on the introduction of restriction to the non-broadcast advertising of food and drinks to children.

The retail industry has, over a number of years, demonstrated their strong commitment to help consumers improve their health. This is done through a number of initiatives, including offering choice, clear labelling and reformulation programmes. Against this background, retailers accept the Committee of Advertisement Practice's objective to align the restrictions across all forms of advertising; TV, radio, digital and print media.

While alignment and consistency with the existing broadcast advertising rules is accepted, the complexity of the different forms of broadcast advertising should not be underestimated. This is a very competitive market; the new provisions must allow industry to continue to operate in a competitive environment by avoiding the imposition of disproportionate burdens.

Furthermore, any changes introduced through the new provisions should be written in such a way that enables businesses to confidently apply them in a consistent manner. Certainty of compliance is crucial. When the restrictions on the broadcast advertising to children were introduced ten years ago, retailers had a long list of practical questions. Many were resolved at the time, however some, for example the application of the OFCOM model to recipes, are still being discussed ten years on.

We strongly believe that guidelines must be developed to support the new provisions, covering some of the practical application issues. Below are a few examples that illustrate issues identified by our members during a brief discussion. BRC and its members will be willing to help develop that guideline document.

- Clarification on whether videos uploaded on websites are covered by the rules applicable to broadcast advertising or non-broadcast advertising.
- Uploaded videos of cooking programmes aimed at children where an own brand ingredient can be clearly seen, however the retailer has had no control over what is shown – uncontrolled product placement.
- Motif biscuit recipe card aimed at children cooking with parent for a specific occasion, e.g. Christmas, mother's day.
- Incidental inclusions – certain products are placed in the background, to set the scene for the advertising of a specific product. E.g. a full Christmas or Easter table setting with food shown, with no specific product highlighted.
- Posters in bus stops or advertorial in magazines of a branded good, which states it is available at certain retail stores. It should be clear in the guidelines that the responsibility for the compliance of these posters, when in scope, lays with the brand owner and not the retailers named in the advert.
- Application of the model to ingredients in a recipe versus final product. Whether the model applies to each ingredient and/or the final recipe is being discussed as part of the current review of the OFCOM model. Clarification is key for the purpose of non-broadcast advertising.
- In-store posters seen through the window in stores located in close proximity to schools. The guidelines must make clear that all store advertising is out of the scope.
- Cooking magazines, not marketed and aimed at children, which could contain content attractive to children.



Regarding the suggestion to use the existing OFCOM model, we agree with the statement that it is well established and understood, and therefore is the sensible option. BRC is part of the members in Public Health England's nutrient profile model reference group, responsible for the review of the OFCOM model. It is clear from early discussion that the existing model will change as a result of this review and therefore it is crucial that further consultation is undertaken on the impact of the use of the next model on non-broadcast advertising before it is applied.

Concerning the age, 12 or 16, at which the provisions should apply, we understand the benefits of consistency with the provisions on broadcast advertising and therefore the target audience to be 16 year olds; however, practically, it is especially difficult to identify the media that children above the age of 12 are consuming. We believe the existing media demographic tools are not as effective in identifying what are the publications, websites and other media consumed by 12- 14 year olds and above. As stated above clarity and consistency of application of the rules is crucial.

Finally, we understand there is a real difficulty in quantifying the exposure of children. Quantification in broadcast is well established but not in non-broadcast. This requires further consideration; will the 25% of children in an audience be used as the cut off? how will the children exposure on a bus route be quantified?

## 16 – The British Soft Drinks Association (BSDA)

### Introduction

The British Soft Drinks Association (BSDA) is the UK trade association representing the collective interest of producers and manufacturers of soft drinks including carbonated drinks, still and dilutable drinks, fruit juices and smoothies and bottled waters.

Since 2007 Ofcom has adopted strict rules around broadcast advertising of food and drinks deemed to be high in fat, sugar and salt (HFSS) to children under the age of 16. Soft drinks that fall into this category are not advertised on children's channels or during programmes made for or predominantly watched by children under 16.

However, as many children of this age-group experience advertising through social media and other online channels in January 2016 the soft drinks industry collectively agreed to a voluntary commitment not to advertise HFSS soft drinks to children under 16 across all media channels, including online.

Therefore we welcome this review and the opportunity to submit our response to the CAP proposals

### Q1 - Restrictions on HFSS product advertising

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

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

As outlined above many children now experience advertising through social media and other online channels so we would support strengthening the current CAP Code. However, as BCAP offers guidance, not rules, it is unclear how CAP would impose a brand advertising rule. As such BSDA requests that CAP provides clearer guidance before we can give a definitive answer to this proposal.

### Q2 – Selecting a nutrient profile model

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

If we are to extend the BCAP code criteria to other media it makes sense to adopt the existing FSA/DH Nutrient Profiling Model (a points based scheme) as used by OFCOM/BCAP.

However, as pointed out in Annex 6 Public Health England has been commissioned to carry out a review of the DH nutrient profiling model which is likely to lead to changes in the current scheme. As the review will not be completed until 2017 we agree with CAP's caveat that if the review seeks significant changes a further consultation will be sought by CAP before adopting a new profiling model.

### **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

We recognise that if this existing rule were amended to only apply to HFSS products then there would be greater opportunities for healthier food and drinks to be advertised to children. Nevertheless, the current rules for children aged 11 and younger have been in place since 2007 so it would be a step backwards for our industry to support this specific amendment.

However, if following the consultation CAP decides there is to be a regulatory change to the definition of children i.e. aged 15 or younger we would support that the new rules be applied to advertising HFSS products only.

### **Q4 – Introducing placement restrictions**

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

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

*i) aged 11 or younger?*

*ii) aged 15 or younger?*

BCAP and Ofcom have strict rules around broadcast advertising of food and drinks deemed to be high in fat, sugar and salt (HFSS) to children under the age of 16. As many children of this age group now experience advertising through social media and other online channels we would support alignment with BCAP rules restricting the placement of TV advertising and this new rule should apply to children aged 15 or younger.

### **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?*

BCAP currently uses the 120 index to restrict advertising HFSS products to under-16s. However, we understand that indexing data is not available in the same way for non-broadcast media so the percentage audience rule would seem appropriate in this instance.

### **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?*

In January 2016 the soft drinks industry collectively agreed to a voluntary commitment not to advertise HFSS soft drinks to children under 16 across all media channels, including online. Therefore we support CAP's proposals to restrict HFSS advertising to all non-broadcast media.

## Introduction

Britvic is the largest supplier of branded still soft drinks in Great Britain and the number two supplier of branded carbonated soft drinks in GB. Our brands include Robinsons, Tango and J2O, as well as those we bottle on behalf of PepsiCo, such as Pepsi, Lipton Ice Tea and 7UP. Proud of our British heritage, we were born out of the British Vitamin Products company (later known as Britvic), which began to develop soft drinks as a way of bringing an affordable source of vitamins to the people of the United Kingdom. 75 years later Britvic directly employs close to 2000 people within the UK and thousands more through our supply chain, making a significant contribution to the British Economy.

At Britvic we pride ourselves on the strength of our Global Marketing Code and are committed to high standards when it comes to protecting children. Introduced in 2015, this code means we never advertise to children under the age of 12 and no high sugar products are marketed to children under the age of 16. As such we welcome the proposed changes which would lead to greater alignment between the CAP code and our internal benchmark.

We currently spend three quarters of our marketing budget on low or no sugar products and are committed to using the power of our brands to encourage healthier lifestyles. To take an example, Fruit Shoot Mini Mudder encourages children to get active, muddy and explore their adventurous sides. Furthermore, as part of our health commitments and in response to changing consumer preferences, we have taken bold decisions including removing the added sugar versions of Robinsons and Fruit Shoot from UK shelves.

We are also committed to providing consumers, particularly parents, with all the information they need to make informed choices, through initiatives such as the voluntary front of pack scheme, which we were one of the first companies to introduce. We have implemented a hybrid scheme (colour coding and percentages towards Reference Intake's) on the majority of our GB products, and a monochrome format for our Irish products. This, when combined with our advertising policies, helps provide clear information for the purchaser.

## Response

Britvic welcomes the opportunity to respond to the CAP consultation on non-broadcast food and advertising to children and have focused our submission on the areas where we believe we can offer the most helpful views. These include:

- *"Restrictions on HFSS product advertising"*
- *"Existing prohibitions on the use of promotions and licensed characters"*
- *"Defining the audience"*
- *"Introducing media placement restrictions"*
- *"Application to different media"*

## **Q1 - Restrictions on HFSS product advertising**

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

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

We support extending the existing BCAP standards to non-broadcast advertising. This ensures that standards remain consistent for all businesses and meets with our own current advertising code by, for example, defining children as “persons below the age of 16”.

## **Q3 - Existing prohibitions on the use of promotions and licensed characters and celebrities**

*Should the existing rules relating to the creative content of food advertising directed at children aged 11 and younger, now be applied to advertising for HFSS products only?*

We never use characters to advertise to children on television and welcome proposals to restrict this where it can be shown to protect children and reduce the consumption of unhealthy food and drink. Any changes should ensure that products with added benefits, be they increasing water consumption or vitamins, can continue to be marketed freely.

## **Q4 – Introducing placement restrictions**

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

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

*i) aged 11 or younger?*

*ii) aged 15 or younger?*

We would support alignment with BCAP rules restricting the placement of TV advertising and that it should apply to children aged 15 or younger.

## **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?*

We actively support the principle of not advertising directly to children and would welcome the percentage audience rule to ensure children are not exposed to HFSS advertising.

**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?*

We support the application of the current CAP code to all non-broadcast media, including online advertising.