

# Consultation on the placement and scheduling of cosmetic interventions advertising

Committee of Advertising Practice and Broadcast Committee of Advertising Practice's proposal for new rules

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## 1. Executive summary

**The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (BCAP Code) are consulting on proposals to introduce new rules prohibiting cosmetic interventions advertising from being directed at those under the age of 18 years.**

CAP and BCAP understand that at present, there are no legal restrictions on the advertising of cosmetic interventions to children and young people under the age of 18. Medical doctors are the only group of practitioners within the cosmetic interventions sector to be subject to a mandatory age-based placement and scheduling restrictions on cosmetic interventions advertising by their statutory professional standards governing body. Other groups of practitioners would only be subject to voluntary placement and scheduling restrictions if they became members of specific voluntary practitioners' registers.

CAP and BCAP are aware of ongoing public health and political concerns about the potential harm of cosmetic interventions advertising on children and young people. Senior NHS and public health figures raised concerns with the ASA about the potentially harmful impact of cosmetic interventions advertising following an ASA investigation into an ad for a cosmetic surgery provider. CAP and BCAP understand, through engagement with those stakeholders, that their concerns were based on the inherent risks and potential complications of cosmetic intervention procedures, and the potential detrimental impact on children and young people when placed alongside body image pressures and mental health.

Existing body of evidence and published reviews consist of numerous studies that examined different influencing factors and motivations for individuals in their consideration to undergo cosmetic interventions. Notwithstanding, CAP and BCAP are not aware of evidence that examines the potential harmful impact of cosmetic interventions advertising on young people (in particular those under the age of 18), specifically in relation to the scheduling and placement of those ads.

While individuals, including under-18s, may consider undergoing cosmetic interventions for a variety of reasons, CAP and BCAP also understand stakeholders' concerns surrounding the insecurities and body image pressures that children and young people may experience, and that they might face undue pressures from those ads, when those body image related stresses might be better addressed by other means.

The Advertising Standards Authority (ASA), which administers the CAP and BCAP Codes, already considers complaints concerning the potential harm arising from ads for cosmetic interventions to children and young people by assessing their content under general rules that prohibit socially irresponsible or harmful advertising. The introduction of age-based targeting restrictions on these ads would likely provide adequate protection to children and young people whilst ensuring that cosmetic interventions can still be legitimately advertised to those aged 18 or above, and harmonise the standards of ad targeting restrictions across the cosmetic interventions sector.

CAP and BCAP therefore wish to explore, through public consultation, whether regulatory change is necessary to ensure that under-18s' exposure to ads for cosmetic interventions is appropriately limited.

CAP is consulting on the following rule:

*Marketing communications for cosmetic interventions must not be directed at those aged below 18 years through the selection of media or context in which they appear.*

*'Cosmetic interventions' means any intervention, procedure or treatment carried out with the primary objective of changing an aspect of a patient's physical appearance. This includes surgical and non-surgical interventions, both invasive and non-invasive. This does not include cosmetic products as defined in Regulation (EC) No 1223/2009. See Advertising Guidance: Cosmetic Interventions.*

BCAP is consulting on the following rule:

*These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:*

...

*Cosmetic interventions, procedures or treatments carried out with the primary objective of changing an aspect of a patient's physical appearance. This includes surgical and non-surgical interventions, both invasive and non-invasive. This does not include cosmetic products as defined in Regulation (EC) No 1223/2009. See Advertising Guidance: Cosmetic Interventions.*

This consultation provides examples of ads for cosmetic interventions that would be subject to the proposed rules; for example, ads for breast augmentation, rhinoplasty (an operation to change the shape or size of the nose) and dermal fillers (substances injected into skin to, for example, fill lines and wrinkles and add volume to areas such as lips or cheeks). It also sets out examples of ads for cosmetic products that would not be subject to the proposed restrictions, such as ads for creams, makeup and hair products (including colourants).

The placement and scheduling of ads refers to the media in which the ads can appear and, in relation to broadcast media, when during the day those ads can be broadcast. The proposed rules would prohibit marketers from directing non-broadcast ads for cosmetic interventions at under-18s through the selection of media or context in which those ads appear or are placed, including online media, social media platforms, and influencer marketing on social media. Broadcast ads for cosmetic interventions on both television and radio would be prohibited from being scheduled to appear during or adjacent to programmes commissioned for, principally directed at or likely to appeal to audiences below the age of 18.

CAP and BCAP will undertake further work to assess the potential harm relating to body image from advertising and the impact on consumers' mental health, which is likely to include, within its scope, advertising for cosmetic interventions, weight control and dieting products, weight-reduction regimes and establishments. That piece of work will also consider whether specific content restrictions should be introduced to mitigate any harms that are not already and adequately addressed by the current rules. This consultation focuses specifically on CAP and BCAP proposals to introduce age-based restrictions on the placement and scheduling of cosmetic interventions advertising.

**The consultation will close at 5pm on 22 October 2020. For more information on how to respond, please see section 7.**

## 2. Introduction to the UK advertising regulatory system

### 2.1 The Committee of Advertising Practice (CAP)

CAP is the self-regulatory body that creates, revises and enforces the CAP Code. The CAP Code covers non-broadcast marketing communications, which include those placed in traditional and new media, promotional marketing, direct marketing communications and marketing communications on marketers' own websites. The marketer has primary responsibility for complying with the CAP Code and ads must comply with it. Ads that are judged not to comply with the Code must be withdrawn or amended. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from rulings by the Advertising Standards Authority (ASA), or further sanctions including the denial of media space.

CAP's members include organisations that represent advertising, promotional and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those organisations agree to comply with the Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including Directive 2005/29/EC (on misleading advertising). Self-regulation is accepted by the Department for Business, Energy and Industrial Strategy and the courts as a first line of control in protecting consumers and the industry. Further information about CAP is available at [www.asa.org.uk](http://www.asa.org.uk).

### 2.2 The Broadcast Committee of Advertising Practice (BCAP)

BCAP is the regulatory body responsible for maintaining the UK Code of Broadcast Advertising (the BCAP Code) under agreement with the Office of Communications (Ofcom). Ofcom has a statutory duty, under the Communications Act 2003, to maintain standards in TV and radio advertisements. In 2004, Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in recognition of CAP and the ASA's successful regulation of non-broadcast marketing for over 40 years, and in line with better regulation principles.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to adhere to the standards set out in the BCAP Code.

BCAP members include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC). Under Section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule-making is transparent, accountable, proportionate, consistent and targeted where action is needed, in accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them.

Further information about BCAP and the AAC is available at [www.asa.org.uk](http://www.asa.org.uk).

### **2.3 The Advertising Standards Authority (ASA)**

The ASA is the independent body responsible for administering the CAP and BCAP Codes and ensuring that the self-regulatory system works in the public interest. The Codes require that all advertising is legal, decent, honest and truthful.

The ASA assesses complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's rulings are published on the ASA's website and made available to the media. If the ASA Council upholds a complaint about an ad, it must be withdrawn or amended.

An Independent Review Procedure exists for interested parties who are dissatisfied with the outcome of a case. CAP conducts compliance, monitoring and research to help enforce the ASA Council's decisions.

Information about the ASA is available at [www.asa.org.uk](http://www.asa.org.uk).

### **2.4 Funding**

The entire system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making. Information about Asbof and Basbof is available at [www.asbof.co.uk](http://www.asbof.co.uk) and [www.basbof.co.uk](http://www.basbof.co.uk).

### 3. Regulatory framework of the BCAP Code

#### 3.1 Communications Act 2003

The [Communications Act 2003](#) (the Act) sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements. The most relevant standards objective to this consultation is:

[319\(2\)\(h\)](#) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.

The Act requires Ofcom to set and, from time to time, review and revise, a Code containing standards for the content of broadcast advertisements carried by TV and radio services licensed under the Broadcasting Acts [1990](#) and [1996](#). Ofcom has contracted out the setting of advertising standards to BCAP under the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#). That function is exercised in consultation with and agreement of Ofcom.



## 4. Policy background

### 4.1 General policy objectives

CAP and BCAP's general policy objective is to set standards to ensure that all marketing communications are legal, decent, honest and truthful and prepared with a due sense of social and professional responsibility. CAP and BCAP intend their Codes to be based on the enduring principles that marketing communications should be responsible, respect the principles of fair competition generally accepted in business and should not mislead, harm or offend. It seeks to maintain an environment in which responsible advertising can flourish. The rules are intended to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that they are easily understood, easily implemented and easily enforced.

### 4.2. Law and practitioners' guidance

The provision of surgical cosmetic interventions, such as rhinoplasty (nose reshaping) and liposuction, are subject to complex legal requirements relating to the capacity to consent of the patient or individual seeking the treatment or procedure. A number of non-surgical cosmetic interventions (for example, teeth whitening<sup>1</sup>, sunbeds<sup>2</sup>, tattooing<sup>3</sup>, and cosmetic piercing<sup>4</sup>) are not legally available to under-18s, with exceptions in some circumstances. The regulation of surgical and non-surgical cosmetic interventions, and who can administer them, can vary depending on the treatment, procedure or product being administered. Additionally, advertising for cosmetic interventions is not legally prohibited from targeting people aged 17 or younger.

The General Medical Council (GMC)<sup>5</sup> has published guidance<sup>6</sup> for doctors who offer cosmetic interventions, which are defined as “*any intervention, procedure or treatment carried out with the primary objective of changing an aspect of a patient's physical appearance. This includes surgical and non-surgical procedures, both invasive and non-invasive.*” The guidance allows for the provision of such treatments to children or young people in some circumstances, but explicitly requires that marketing activities must not target children or young people, through their content or placement. The guidance states:

#### ***Treating children and young people***

**32** *If providing treatment to children, you should be familiar with the detailed advice in [0–18 years: guidance for all doctors](#), which includes the key points set out in this section of guidance. You should take particular care if you consider providing cosmetic interventions for children or young people – you should make sure the environment for practice is appropriate to paediatric care, and work with multidisciplinary teams that provide expertise in treating children and young people where necessary.*

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<sup>1</sup> Cosmetic Products Enforcement Regulations 2013.

<sup>2</sup> Section 2 of Sunbeds (Regulation) Act 2010 imposes duty on a person who carries a sunbed business to prevent bedbed use by children.

<sup>3</sup> Section 1 of Tattooing of Minors Act 1969 prohibits the tattooing of a person under the age of 18 except when performed for medical reasons by a duly qualified medical practitioner or by a person working under his direction.

<sup>4</sup> Section 95 of Public Health (Wales) Act 2017 prohibits a person in Wales from performing, or making arrangements to perform, an intimate piercing, in Wales on a person under the age of 18.

<sup>5</sup> <https://www.gmc-uk.org/>

<sup>6</sup> <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/cosmetic-interventions>

**33** *You must only provide interventions that are in the best interests<sup>12</sup> of the child or young person. If a young person has capacity to decide whether to undergo an intervention, you should still encourage them to involve their parents in making their decision.*

**34** *A parent can consent to an intervention for a child or young person who does not have the maturity and capacity to make the decision, but you should involve the child in the decision as much as possible. If you judge that the child does not want to have the cosmetic intervention, then you must not perform it.*

**35** *Your marketing activities must not target children or young people, through either their content or placement.*

This is also supported by guidance<sup>7</sup> published by the Royal College of Surgeons<sup>8</sup> on professional standards for all surgeons who perform cosmetic surgery.

The Joint Council for Cosmetic Practitioners (JCCP)<sup>9</sup> operates a Professional Standards Authority (PSA) approved voluntary register of both medical and non-medical practitioners, and the Cosmetic Practice Standards Authority (CPSA)<sup>10</sup> comprises an expert group that sets standards for practitioners who provide non-surgical interventions. Joint guidance<sup>11</sup> produced by those two bodies contains provisions for marketing and advertising which reflect the requirements of the CAP and BCAP Codes. It also contains a specific provision on targeting advertising of those interventions away from children and young people:

### ***Treating young people***

**33)** *It is not appropriate to provide non-surgical cosmetic interventions to children under 16 years of age unless there are specific, medical indications. You may, however give non-surgical treatments to young persons aged 16 and 17 years with their consent (if they are competent to give it, or with the consent of a parent or the Court).*

**34)** *If indicated, you must only provide interventions that are in the best interests of the young person. If a young person has capacity to decide whether to undergo an intervention, you should still encourage them to involve their parents in making their decision.*

**35)** *Your marketing activities must not target children or young people, through either their content or placement.*

...

### ***Communicating information about your services***

**48)** *When advertising your services, you must comply with the rules in the Advertising Codes which are authored by the Committees of Advertising Practice (CAP) and enforced by the Advertising Standards Authority and you must follow guidelines issued*

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<sup>7</sup> <https://www.rcseng.ac.uk/library-and-publications/rcs-publications/docs/professional-cosmetic-surgery/>

<sup>8</sup> <https://www.rcseng.ac.uk/>

<sup>9</sup> <https://www.jccp.org.uk/>

<sup>10</sup> <http://www.cosmeticstandards.org.uk/>

<sup>11</sup>

<https://www.jccp.org.uk/ckfinder/userfiles/files/Final%20JCCPCPSA%20Code%20of%20Practice%202020.pdf>

by the JCCP/CPSA. CAP provides extensive guidance on how to comply with its Codes via its website and also offers a free, bespoke, pre-publication advice service on individual ads. More information about CAP and the ASA is available via their website.

**49)** *You must make sure the information you publish is factual, verifiable and does not exploit patients' vulnerability or lack of medical knowledge.*

**50)** *Your marketing must be responsible. It must not minimise or trivialise the risks of interventions and must not exploit patients' vulnerability. You must not claim that interventions are risk free.*

**51)** *If patients/clients will need to have a medical assessment before you can carry out an intervention, your marketing must make this clear.*

**52)** *You must not mislead about the results you are likely to achieve. You must not falsely claim or imply that certain results are guaranteed from an intervention.*

**53)** *You must not use promotional tactics in ways that could encourage people to make an ill-considered decision, such as 'Buy one, get one free' or time limited offers.*

**54)** *You must not provide your services as a prize.*

**55)** *You must not knowingly allow others to misrepresent you or offer your services in ways that would conflict with this guidance.*

Save Face<sup>12</sup>, another PSA-approved register of accredited medical practitioners (doctors, nurses/midwives, dentists and prescribing pharmacists) who provide non-surgical cosmetic interventions requires members to undergo an accreditation process against its standards. Those standards<sup>13</sup> include provisions relating to marketing and communications, some of which reflect the requirements of the CAP and BCAP Codes. It also requires that members' marketing activities must not target children or young children through either content, context or placement:

### **Standard C3 Marketing and Communications**

**C3.1** *Practitioners/clinics must comply with the CAP Code, Published by Committee of Advertising Practice (2013), available here.*

**C3.2** *Practitioners/clinics must Market services responsibly, without making unjustifiable claims about interventions, trivializing the risks involved, or using promotional tactics that might encourage people to make ill-considered decisions.*

**C3.3** *Patients will need to have a medical assessment before you can carry out an intervention, your treatment information and terms and conditions must make this clear. (50)*

**C3.4** • *Your marketing must be responsible.*  
• *It must not minimize or trivialize the risks of interventions and must not exploit patients' vulnerability.*

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<sup>12</sup> <https://www.saveface.co.uk/>

<sup>13</sup> <https://www.saveface.co.uk/save-face-standards/>

- *You must not claim that interventions are risk free. (49)*

**C3.5** *You must not use promotional tactics in ways that could encourage people to make an illconsidered decision. (52)*

**C3.6** *You must not provide your services as a prize. (53)*

**C3.7** *You must not knowingly allow others to misrepresent you or offer your services in ways that would conflict with this guidance. (54)*

**C3.8** *Your marketing activities must not target children or young people through either content, context or placement. (35)*

### **4.3 Cosmetic interventions ads under the CAP and BCAP Codes**

ASA investigations into cosmetic interventions advertising are usually considered under the CAP and BCAP Code rules listed below. The application of those rules in such cases is supported by the [CAP Advertising Guidance on Cosmetic Interventions](#).

The CAP Advertising Guidance, which was updated in response to the Keogh Review<sup>14</sup>, includes advice on misleading claims, claims about qualifications, before and after photographs, production techniques, prescription only medicines (POM), Botox, promotions, endorsements and testimonials, responsibility and targeting. In relation to targeting, the guidance urges caution when advertising on social media websites. Where marketers hold information about the age of the potential recipients, they are advised to take that factor into account when considering advertising through text messages and email. The guidance states the following:

#### ***Targeting***

*38. Particular care must be taken when advertising on social media websites which might be of particular appeal to younger audiences.*

*39. SMS and electronic mail marketing communications should not be sent to people too young to receive them or to receive an advertised treatment.*

Complaints to the ASA about ads for cosmetic interventions tend to cite three main issues: the risks of treatments are downplayed in those ads; concerns that these ads promote a narrow beauty ideal; and concerns that those ads place undue pressure on young people to conform to a particular ideal, at a time when they are already under considerable pressure to conform to certain looks. Some also raise concerns about misleading claims in those ads, such as efficacy claims or pricing claims, as well as the advertising of Botox which is a POM.

At present, the Codes do not contain specific placement or scheduling rules that prevent ads for cosmetic interventions from being targeted at children or young people. Complaints about

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<sup>14</sup> Bruce Keogh, [Review of the Regulation of Cosmetic Interventions](#) (the Keogh Review), 2013. Research commissioned as part of the Keogh Review found that technology had changed how those procedures were marketed and the pervasiveness and accessibility of images, advertising and celebrity endorsements had encouraged changes in attitudes and growth of the industry. Technology had changed how the procedures were marketed, with social media being cited as a key driver, particularly among younger people. However, recommendations made in the Review relating to advertising and marketing did not include a recommendation for age-based advertising restrictions.

those ads which raise concerns about potential harm in relation to those under the age of 18 have mostly been considered under the general social responsibility and harm rules, which are set out below. Most of those cases involve an assessment of the content of the ads.

The ASA exceptionally upheld complaints about a TV ad by [The Hospital Group](#) in 2014, concluding that its scheduling should have been restricted to post-9pm. The ad featured three characters who were depicted as being unhappy with their appearance. Their physical transformation was accompanied by an instant and dramatic change in their emotional wellbeing. The ASA considered many young teenagers were likely to identify with negative feelings about their physical appearance as depicted by the characters in the ad, and that the ad was likely to reinforce harmful feelings that those who did not have 'perfect' physical appearance should aspire to a particular ideal of beauty and change their appearance. On the scheduling restriction point, the ASA was concerned that children and young teenagers were likely to interpret the ad differently to adult viewers and therefore a scheduling restriction should have been in place to minimise the risk of children and young teenagers seeing the ad.

Rules relevant to complaints about ads for cosmetic interventions include:

### **CAP Code (non-broadcast marketing communications)**

- 1.3** Marketing communications must be prepared with a sense of responsibility to consumers and to society.
- 3.1** Marketing communications must not materially mislead or be likely to do so.
- 3.7** Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.
- 3.11** Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.
- 4.1** Marketing communications must not contain anything that is likely to cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of race, religion, gender, sexual orientation, disability or age. Compliance will be judged on the context, medium, audience, product and prevailing standards.

Marketing communications may be distasteful without necessarily breaching this rule. Marketers are urged to consider public sensitivities before using potentially offensive material.

The fact that a product is offensive to some people is not grounds for finding a marketing communication in breach of the Code.

- 12.1** Objective claims must be backed by evidence, if relevant consisting of trials conducted on people. Substantiation will be assessed on the basis of the available scientific knowledge.

Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA, VMD or under the auspices of the EMA, or for a CE-marked medical device. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.

Secondary medicinal claims made for cosmetic products as defined in the appropriate European legislation must be backed by evidence. These are limited to any preventative action of the product and may not include claims to treat disease.

- 12.3** Marketers offering individual treatments, especially those that are physically invasive, may be asked by the media and the ASA to provide full details together with information about those who supervise and administer them. Practitioners must have relevant and recognised qualifications. Marketers should encourage consumers to take independent medical advice before committing themselves to significant treatments, including those that are physically invasive.

### **BCAP Code (broadcast advertising)**

- 1.2** Advertisements must be prepared with a sense of responsibility to the audience and to society.
- 3.1** Advertisements must not materially mislead or be likely to do so.
- 3.9** Broadcasters must hold documentary evidence to prove claims that the audience is likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.
- 3.12** Advertisements must not mislead by exaggerating the capability or performance of a product or service.
- 4.2** Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.
- 11.1** **Radio Central Copy Clearance** – Radio broadcasters must ensure advertisements subject to this section are centrally cleared.
- 11.2** If they are necessary for the assessment of claims, broadcasters must, before the advertisement is broadcast, obtain generally accepted scientific evidence and independent expert advice.
- 11.9** **Services including Clinics, Establishments and the like Offering Advice on, or Treatment in, Medical, Personal or other Health Matters** – Advertisements are acceptable only if the advertiser can provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of their skills and competencies and suitable professional indemnity insurance

covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

## 5. CAP and BCAP's decision to consult

There are currently no legal restrictions on the advertising of legally available cosmetic interventions to under-18s; only medical doctors, and no other groups of cosmetic interventions practitioners, are subject to mandatory age-specific placement and scheduling restrictions on ads for those interventions. The GMC guidance containing that restriction on cosmetic interventions advertising, referred to above, builds on the GMC's core ethical guidance for all registered doctors, Good Medical Practice<sup>15</sup>, which includes ethical principles surrounding patients' vulnerabilities and lack of medical knowledge in relation to advertising<sup>16</sup>. Other groups of practitioners in this sector are not subject to similar mandatory restrictions imposed by a statutory professional standards body.

CAP and BCAP are aware of ongoing public health and political concerns<sup>17</sup> about the potential harm of cosmetic interventions advertising on children and young people. Senior NHS and public health figures raised concerns with the ASA, during the course of an investigation into an ad for a cosmetic surgery provider, about the potentially harmful impact of cosmetic interventions advertising<sup>18</sup>. CAP and BCAP understand, through engagement with those stakeholders, that those concerns were premised on the inherent risks associated with those procedures, and also the potential detrimental impact of those ads on children and young people when placed alongside body image pressures that could be prevalent through online and social media interactions, posing a risk to their mental health.

There is a body of evidence and published reviews that have examined different influencing factors and motivations for individuals in their consideration to undergo cosmetic interventions. There are also numerous studies and reviews that assess women's, children's and young people's body image perceptions and pressures, including the impact of social media usage. However, CAP and BCAP are not aware of evidence that examines the potential harmful impact of cosmetic interventions advertising on young people (in particular those under the age of 18), specifically in relation to the scheduling and placement of those ads.

CAP and BCAP recognise that individuals, including under-18s, may undergo, or wish to undergo, cosmetic procedures to change their appearance for a number of reasons; for example, to help improve self-confidence or self-esteem, to emulate a certain look or body shape, as a means to deal with a changing body, because of a medical need, to help with a symptom or effects associated with a condition, or as part of the transitioning process. However, CAP and BCAP understand the concerns surrounding the vulnerabilities of children and young people, whose bodies are still growing and who may already be facing a certain level of insecurities about their bodies: children and young people might experience undue pressure from exposure to cosmetic interventions advertising and contemplate those interventions as the primary means to address body image pressures, notwithstanding the potential risks and complications associated with those procedures.

In support of their policy objectives, CAP and BCAP must take into account the vulnerabilities and protection of children and young people, as they do, for example, in advertising policy areas such as alcohol, gambling, food or drink that are high in fat, salt or sugar. The Codes

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<sup>15</sup> <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice>

<sup>16</sup> [https://www.gmc-uk.org/-/media/documents/guidance-for-all-doctors-who-offer-cosmetic-interventions---published-version\\_pdf-69113414.pdf](https://www.gmc-uk.org/-/media/documents/guidance-for-all-doctors-who-offer-cosmetic-interventions---published-version_pdf-69113414.pdf)

<sup>17</sup> <https://hansard.parliament.uk/commons/2019-07-23/debates/919E1A70-B3FE-46BF-85FE-93CCFF3B47EF/BodyImageAndMentalHealth>

<sup>18</sup> <https://www.telegraph.co.uk/news/2018/07/22/mental-health-duty-care-tv-advertisers-health-chiefs-demand/>



offer protection for children (under-16s) and young people (those aged 16 or 17) in two principal ways: restrictions on the content of the ads, and placement or scheduling restrictions. The ASA has typically considered complaints about cosmetic intervention advertising in relation to children and young people by assessing the content of those ads under general social and responsibility rules, although it has, exceptionally, also considered the placement and scheduling of those ads.

Given the above factors, as well as the inherent risks and possible complications associated with those interventions, CAP and BCAP wish to explore, through public consultation, whether it is justified to limit children and young people's exposure to advertising for cosmetic interventions by introducing restrictions on the placement and scheduling of those ads.

## 6. Proposed changes and relevant questions

In responding to this consultation, CAP and BCAP welcome evidence that illustrates both the benefits and/or harm from the advertising of cosmetic interventions to children and young people. CAP and BCAP are also interested in receiving responses from media owners and broadcasters about the likely economic impact if age-based placement and scheduling restrictions on cosmetic interventions advertising were introduced.

CAP invites respondents' views on the following:

1. Whether the introduction of an age-specific placement restriction on non-broadcast advertising for cosmetic interventions in the CAP Code is necessary and proportionate? Please provide your rationale and any relevant evidence in support of your answer.
2. If your answer to Question 1 is 'Yes', do you agree with CAP's proposed wording for a new rule in Section 12 Medicines, medical devices, health-related products and beauty products of the CAP Code? Please explain your reasons in your response.

*Marketing communications for cosmetic interventions must not be directed at those aged below 18 years through the selection of media or context in which they appear.*

*Cosmetic interventions mean any intervention, procedure or treatment carried out with the primary objective of changing an aspect of a patient's physical appearance. This includes surgical and non-surgical interventions, both invasive and non-invasive. This does not include cosmetic products as defined in Regulation (EC) No 1223/2009. See Advertising Guidance: Cosmetic Interventions.*

BCAP invites respondents' views on the following:

3. Whether the introduction of an age-specific scheduling restriction broadcast advertising for cosmetic interventions in the BCAP Code is necessary and proportionate? Please provide your rationale and any relevant evidence in support of your answer.
4. If your answer to Question 3 is 'Yes', do you agree with BCAP's proposed wording for a new rule in Section 32 Scheduling of the BCAP Code. Please explain your reasons in your response?

*These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:*

...

*Cosmetic interventions, procedures or treatments carried out with the primary objective of changing an aspect of a patient's physical appearance. This includes surgical and non-surgical interventions, both invasive and non-invasive. This does not include cosmetic products as defined in Regulation (EC) No 1223/2009. See Advertising Guidance: Cosmetic Interventions.*

Given that there is not currently a legal definition of ‘cosmetic interventions’, the scope of the proposed rules could potentially be unclear. The following reference to Regulation (EC) No 1223/2009<sup>19</sup> on cosmetic products has been included in the proposed wording to narrow its scope:

*Regulation (EC) No 1223/2009 defines cosmetic products as "any substance or mixture intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance and/or correcting body odours and/or protecting them or keeping them in good condition."*

The proposed rules are therefore not intended to apply to ads for cosmetic products such as creams, emulsions, lotions, face masks, makeup, hair products (including colourants), sunless tanning products, etc.

Examples of “cosmetic interventions” that the proposed rules are intended to cover include: breast augmentation or uplift procedures, breast reduction, abdominoplasty (‘tummy tuck’), blepharoplasty (eyelid surgery), rhinoplasty (nose reshaping), rhytidectomy (face lift), labiaplasty, hair restoration surgery, dermal fillers, skin rejuvenation treatments such as injectable treatments, chemical peels, micro-needling, non-ablative laser treatments, laser or light treatments, micropigmentation (for example, permanent makeup tattoo), teeth whitening treatments. However, this is not an exhaustive list.

Additionally, the proposed restrictions are not intended to cover ads for weight-loss or dieting products or weight-reduction regimes or establishments.

Subject to the outcome of the consultation, CAP and BCAP would also propose further clarification to be made in the existing Advertising Guide on the marketing of surgical and non-surgical cosmetic procedures<sup>20</sup>, on the types of treatments and procedures that are likely to fall within the scope of “cosmetic interventions” to which the proposed restrictions would apply, and “cosmetic products” which fall outside the scope of the proposed rules.

Under the proposed rules, non-broadcast ads for cosmetic interventions would be prohibited from being directed at under-18s through the selection of media or context in which they appear, including online media, social media platforms, and influencer marketing on social media. This would mean cosmetic interventions advertising cannot be placed in media that are aimed at under-18s, and in media in which 25% or more of the audience profile is under-18s (see CAP guidance on [Children and age-restricted ads online](#)).

Broadcast ads for cosmetic interventions would be prohibited from being scheduled to appear during or adjacent to television and radio programmes commissioned for, principally directed at or likely to appeal to audiences below the age of 18 (for TV advertising, see BCAP guidance on [Identifying TV programmes likely to appeal to children](#)).

The proposed rules would allow CAP and BCAP to provide protection to children and young people by appropriately limiting under-18s’ exposure to cosmetic interventions advertising, whilst ensuring that those interventions can still continue to be advertised to those aged 18

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<sup>19</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R1223>

<sup>20</sup> <https://www.asa.org.uk/resource/cosmetic-interventions.html>

or over. The proposed rules would also complement guidance published by the GMC, JCCP and Save Face, and apply to practitioners who are not members to those organisations.

Respondents should note that the scope of this consultation is limited to proposals on age-based restrictions on the placement and scheduling of cosmetic interventions advertising. CAP and BCAP will separately undertake further work to assess the potential harm relating to body image from advertising and the impact on consumers' mental health, which is likely to include, within its scope, advertising for cosmetic interventions, weight control and dieting products, weight-reduction regimes and establishments. That piece of work will also consider if specific content restrictions should be introduced to mitigate any harms that are not already and adequately addressed by the current rules.

## 7. How to respond and next steps

CAP and BCAP are committed to considering all responses carefully and with an open mind. Responses have been invited from a cross-section of interested parties representing both consumers and industry.

The following summarises the consultation process and subsequent stages of CAP and BCAP's consideration of the proposed changes to the Code:

- the consultation will run for 6 weeks, closing at 5pm on 22 October 2020;
- CAP and BCAP will consider each response carefully and evaluate all significant points explaining the reasons behind the decisions they make; and
- the evaluation will be published on the ASA website when the outcome of the consultation is announced.

### How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5pm on 22 October 2020. Responses via email with attachments in Microsoft Word format are preferred to assist in their processing. Please send responses to: [cosmeticinterventions@cap.org.uk](mailto:cosmeticinterventions@cap.org.uk).

If you are unable to respond by email you may submit your response by fax to +44(0)20 7404 3404 or post to:

Regulatory Policy Team  
Committee of Advertising Practice  
Castle House, 37-45 Paul Street  
London EC2A 4LS

### Confidentiality

CAP and BCAP consider that everyone who is interested in the consultation should see the consultation responses. In its evaluation document, CAP and BCAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation and copies of original consultation responses will be published with the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed.

If you reply by email or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.


If part of a response is confidential, please put that in a separate annex so that non-confidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

## Contact us

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