

CAP and BCAP Consultation - Responding to the findings of the GambleAware Final Synthesis Report

Response from Camelot UK Lotteries Limited 22 January 2021

1. Introduction

- 1.1. As operator of The National Lottery, Camelot's objective is to maximise returns to National Lottery Good Causes through selling tickets in an efficient and socially-responsible way. Camelot's strategy is to encourage lots of people to play but to spend only relatively small amounts.
- 1.2. We welcome the CAP and BCAP consultation and support the ambition to protect consumers and ensure that protection of young and vulnerable people is at the heart of the advertising rules for the gambling and lotteries sectors.
- 1.3. We also welcome the continued distinction between lotteries and gambling provided by the discrete chapters within the CAP advertising codes. The National Lottery is distinct from gambling by its purpose, regulation and design and the maintenance of this distinction is key to its ability to raise funds for Good Causes. As then Lotteries Minister Tracey Crouch said in 2018 "...it is important that we maintain a clear distinction between the national lottery and other forms of gambling, as set out in section 95 of the Gambling Act 2005...The national lottery was established in 1993 to support good-cause projects across the UK. It enjoys a unique status. It is not regulated as gambling, a distinction further protected by section 95 of the 2005 Act..."¹
- 1.4. In addition, lotteries and gambling have different risk profiles and The National Lottery in particular, fulfils a unique purpose in society. It was launched to fund Good Causes in areas such as the arts, sports and heritage, ensuring that these important areas of life were adequately funded when they "could never compete with the demands of health, education or defence"².

2. Greater clarity required on 'strong appeal'

- 2.1. We recognise the societal concerns about gambling and understand that there is an argument that changes are necessary in relation to product advertising. Of course we will do everything we can to be compliant with the new parts of the code (if they take effect) but we are very concerned that the new strong appeal test will lead to a genuine lack of certainty for advertisers and, as the operator of The National Lottery, we are worried as to the effects for both The National Lottery brand and its Good Causes.
- 2.2. We are therefore asking, given the subjective nature of the strong appeal test that, at a minimum, advertisers are provided with much greater clarity regarding the tests the ASA will be using when it comes to enforcement of the strong appeal test. We would welcome examples in the guidance as to how a lottery advert can safely market its products and represent what it stands for without fear of a complaint that a part of its advert may have strong appeal to children.

3. Further distinction required within the Lotteries code

- 3.1. While the distinction between lotteries and gambling is acknowledged through the two separate codes, we would argue that there should be a further distinction *within* the Lotteries code. We believe that the guidance should include a clear acknowledgement of the difference between 'product' advertising (where there is a call to action to play a National Lottery game) and Good Cause advertising (where there is no direct call to action to play).

¹ [https://hansard.parliament.uk/commons/2018-03-20/debates/3605a061-819d-47d3-b582-71c2d8725be6/DraftGamblingAct2005\(OperatingLicenceConditions\)\(Amendment\)Regulations2018](https://hansard.parliament.uk/commons/2018-03-20/debates/3605a061-819d-47d3-b582-71c2d8725be6/DraftGamblingAct2005(OperatingLicenceConditions)(Amendment)Regulations2018)

² <http://www.johnmajorarchive.org.uk/2015-2/sir-john-majors-speech-on-25th-anniversary-of-camelot/>

- 3.2. In respect of National Lottery Good Causes, we have specific requirements to communicate the good that National Lottery funding brings to society. Given that mass participation is at the heart of the National Lottery model, with millions of players and thousands of Good Cause projects, advertising is a crucial tool to ensure mass awareness. The proposed changes to the code, and especially the subjective nature of them, could hinder us in achieving that objective.
- 3.3. A particular and very immediate concern from a National Lottery perspective is the “caution needed in the use of all sports”. One fifth of all National Lottery funding is distributed to grassroots and elite sport every year, and beneficiaries are strongly encouraged to recognise that they have received National Lottery funding including through the use of The National Lottery logo.³ This includes Olympic and Paralympic funding, and with the upcoming Tokyo Games, there will inevitably be times when sports personalities will make references to National Lottery funding, and will thank National Lottery players. Further, National Lottery Good Causes advertising serves as important recognition of the unique and fundamental role that National Lottery funding plays in elite sport and the success of Team GB and ParalympicsGB.
- 3.4. In addition, The National Lottery logo is often visible at venues that have received National Lottery funding. For example, the Final Synthesis Report written by Ipsos MORI on behalf of GambleAware highlights an image of a sportscotland pitch-side banner which acknowledges National Lottery funding alongside gambling adverts for companies such as Ladbrokes and bet365.⁴ This does not recognise the fundamental differences between these two activities and we believe that the code must be clear in making this distinction.
- 3.5. As currently drafted it seems to us unclear whether or not a Good Causes advert which, for example, features the recipients of a National Lottery grant but also includes an active Olympian with connections to the Good Causes could, in certain circumstances, pass the strong appeal test. This is potentially very damaging for National Lottery Good Causes and creates uncertainty for all stakeholders who have a duty to recognise Good Cause funding or feature the National Lottery logo.

4. Use of The National Lottery brand by a range of stakeholders

- 4.1. It is important to note that The National Lottery brand is used more widely than just by Camelot as the operator. Whilst we manage the game portfolio and are responsible for marketing the games and are stewards of the brand in a commercial sense, there are a number of other parts of the National Lottery ‘family’ - including the distribution bodies, the Gambling Commission as regulator, DCMS as the sponsoring Government department and beneficiaries of National Lottery funding - with whom we share this asset, and who have an obligation to use the brand in the course of acknowledging National Lottery funding. As described above in section 3.2, the awareness of the link between play and purpose is a central facet of the enduring success of The National Lottery and one that must be protected.

5. Exemption from strong appeal for Good Cause advertising

- 5.1. We believe that the proposals as drafted, without a clear distinction between ‘product’ versus ‘Good Causes’, could lead to reduced effectiveness of National Lottery communications in the broadest sense, at a cost to returns to Good Causes. Such a blanket approach to the codes’ application across both lotteries and gambling could lead to unintended consequences whereby Good Causes money raised by The National Lottery, which has a very good track record with respect to its advertising and ensuring it does not appeal to children, would be detrimentally impacted. For these reasons our request is that the strong appeal test has no application for National Lottery Good Causes advertising (with no call to action to buy a National Lottery product). We genuinely see this

³ <https://www.sportengland.org/press-pack/logo-and-brand-toolkit>

⁴ https://www.begambleaware.org/media/2160/the-effect-of-gambling-marketing-and-advertising-synthesis-report_final.pdf Page 31

advertising as unique and worthy of protection given the extraordinary societal role the National Lottery Good Causes play.

6. Additions to the responsibility and problem gambling guidance

- 6.1. Specifically in relation to the proposed additions on trivialization, there is a requirement for Camelot as operator to promote The National Lottery and raise money for Good Causes. This includes reporting and depicting winners which helps to drive win belief, which in turn leads to sales, fulfilling our duty to maximise returns to Good Causes. In order to do this responsibly, we ensure that in communicating any stories of winners who opt to take publicity the circumstances of the win are represented in a factually accurate manner.

7. Implementation period

- 7.1. Finally, we ask that there is a reasonable implementation period for any changes to the Lotteries chapter of the code. It is imperative that Camelot has sufficient time to properly plan not only its advertising but consumer facing activity (including around the Olympic and Paralympic Games in Tokyo planned for summer 2021) in order to ensure compliance with any new provisions.

8. Conclusion

- 8.1. We recognise the societal concerns about gambling and understand that there is an argument that changes in relation to product advertising could be effective.
- 8.2. However, given the subjective nature of the strong appeal test we ask that, as a minimum, advertisers are provided with much greater clarity regarding the tests the ASA will be using when it comes to enforcement of the new test. We would welcome examples in the guidance as to how a lottery advert can safely market its products and represent what it stands for without fear of a complaint that a part of its advert may have strong appeal to children.
- 8.3. We believe there should be a distinction *within* the Lotteries code to acknowledge the difference between 'product' advertising (where there is a call to action to play a lottery game) and good cause advertising (where there is no direct call to action to play). We ask that the strong appeal test does not apply to good cause advertising (with no call to action to buy a lottery product).
- 8.4. We call for a reasonable implementation period for any changes to the code, to allow sufficient time to properly plan in order to ensure compliance with any new provisions.

**Response from Drummond Central for:
ASA Consultation on stricter rules for gambling ads**

As an advertising agency with a gambling client, we have reviewed your consultation on proposals for changes to the rules. We won't be responding directly on the other points raised within this query, we look forward to seeing further information and guidance on these points. However, there is one area of great danger that is a priority we feel should be addressed. This is in relation to:

Point 4: The new restriction would have significant implications for gambling advertisers looking to promote their brands using prominent sports people and celebrities, and also individuals like social media influencers.

We are confident that the rule of 'over 25s cast only' will be sufficient when combined with the other additional rules being considered. This will give a robust strategy for ensuring creative appeals to an over 18 audience and gives confidence that this is sufficient in governing the overall audience appeal.

The use of the word "Celebrity" leaves a considerable amount of ambiguity. The scale of "Celebrity" is not only completely subjective but as is the definition. In society a "Celebrity" can be a wide range of people, one of which could be actors. A person whose profession is acting would not want to be referred to as a "Celebrity". If a company was to have an advert that required a lead performer addressing the camera, the production would naturally require that actor to have previous acting experience. To put this into working context, the actor may have been seen by some in a drama but to others is completely unknown. What if the lead takes a role in a TV show that is an overnight success, would the advertising creative then contravene the code and have to be removed?

The inclusion of defined professions is understandable whereas the use of "Celebrity" is merely a person's interpretation. The inclusion of this term leaves for misinterpretation and confusion possibly resulting in costly production issues.

Actors are essential in creative within Gambling and any other sector. There needs to be the flexibility to allow adverts to feature spokespeople and figureheads. A rule whereby you can't have a spokesperson talking to camera would weaken creativity in the sector. It is paramount creative executions remain interesting and credible to the right target audience.

As responsible gambling messaging by brands increases it's of the utmost importance that this is communicated through advertising that is deemed authentic, honest and trustworthy. This reinforces the argument that creativity in the sector must be upheld.

Committee of Advertising Practice (CAP) Consultation Response

Consultation Issued: 22nd October 2020
Consultation Closes: 22nd January 2021

The following response sets out Entain's views on the proposed changes to the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) Codes. For each of the Consultation questions, the document sets out firstly, the relevant Consultation question, secondly, the proposed changes, if applicable, and finally our response to the corresponding question.

Consultation Question 1

Question 1 a)

- a) Do respondents agree with the proposed amendments (set out in section 6.4.1) to CAP rule 16.3.12 (gambling) and BCAP rule 17.4.5 (gambling)? If not, please state why including details of any alternative approach(es) to achieving CAP and BCAP's policy aims.

Question 1 a) – Proposed Changes

Section 6.4.1 Proposed changes to the UK Advertising Codes – The following amendments (coloured and italicised), mirroring the restriction placed on TV ads for alcohol (BCAP Code rule 19.15.1), are proposed to the text of CAP rule 16.3.12 (gambling) and BCAP rule 17.4.5 (gambling):

Marketing communications / advertisements for gambling must not [...] be likely to be of **strong particular** appeal to children or young persons, especially by reflecting or being associated with youth culture. **They must not include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.**

Where the subject of a gambling product is inherently of strong appeal to under-18s (for example, certain sports generally held to be popular with under-18s), the content of the marketing communication / advertisement may depict that subject, but it must not feature a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.

Question 1 a) Answer

We are conscious of the risks of appeal to youth culture within marketing communications, and actively take steps to ensure that our marketing communications do not include such content.



Certain sports have a strong appeal across all ages, such as; football, basketball, rugby, etc. with their following comprised of fans both of a legal age to gamble and those under the age of 18. It would be particularly challenging for gambling operators to quantify if a prominent sports personalities' example 'is likely to be followed by those under the age of 18' as this could be very loosely interpreted, and it would be extremely difficult, without specific criteria, to effectively train staff. We would require clear guidance from CAP outlining which specific metrics or other measures this assessment would be based on.

We would welcome more clarity and greater detail on which sports would be deemed to have strong appeal to children or young persons. Similarly; we would like to understand if specific sports that may be classed as 'extreme sports' but also feature in the Olympics (e.g. snowboarding, BMX, skateboarding, sport climbing, surfing, freestyle skiing) would be deemed as having a 'strong appeal' to young people; this is particularly pertinent for the 2020 and 2024 Olympics where new extreme sports have been added.

The promotion of sports such as boxing, would be very difficult without the use of the sports personalities, as for example, the events are typically titled with their names. In instances such as this, would we be restricted from featuring images of the boxers on our marketing materials, if boxing or the personalities are deemed to have a 'strong appeal' to young people?

We would argue that the current guidance relating to the use of only sports personalities and celebrities over the age of 25 in our advertising, provides a good level of mitigation to ensure that the appeal of such individuals to young persons is minimised. Furthermore, additional guidance would be useful in order to determine the risk of using personalities with affiliations to particular sports that are no longer actively participating in the sport in a professional capacity, e.g. retired [football players](#), athletes etc.

Given the very nature of the gambling products we offer, that is providing customers the opportunity to bet on sports, we do not agree with applying a "strong" appeal restriction to sports betting given the lack of clarity and ambiguity with such a measure.

Question 1 b)

b) Do respondents agree with the proposed amendments (set out in section 6.4.1) to CAP rule 17.13 (lotteries) and BCAP rule 18.5 (lotteries)? If not, please state why including any alternative approach(es) to achieving CAP and BCAP's policy aims.

Question 1 b) – Proposed Changes

The following amendments (coloured and italicised) are proposed to the text of CAP rule 17.13 (lotteries) and BCAP rule 18.5 (lotteries):

Marketing communications / advertisements for lotteries must not [...] be likely to be of **strong particular** appeal to children³⁹ or young persons⁴⁰, especially by reflecting or being associated with youth culture. **They must not include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.**

Where the subject of a lotteries product is inherently of strong appeal to under-18s (for example, good causes involving certain sports generally held to be popular with under-18s), the content of the



marketing communication / advertisement may depict that subject, but it must not feature a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.

Question 1 b) Answer

Please refer to response in Question 1 a) above.

Question 1 c)

- c) Do respondents consider the intended application of the rules proposed in questions 1(a) and 1(b) and the guidance to support their application (set out in sections 6.4.2 and 6.4.3) are broadly proportionate to the intended purpose of preventing gambling ads from appealing 'strongly' to under-18s? If not, please state why.

Question 1 c) – Proposed Changes

Section 6.4.2.

Defining 'strong appeal' – CAP and BCAP propose to use existing BCAP guidance on alcohol TV advertising as a basis for defining 'strong appeal' in detail. The guidance supports BCAP's rule preventing TV ads for gambling from appealing 'strongly' to under-18s, which has been in place since 2006. This consultation explores, and invites respondents to comment on, how provisions from the guidance could apply to gambling-related advertising content. CAP and BCAP commit to producing dedicated guidance on the basis of consultation outputs, which they intend to publish alongside the outcome of the consultation. CAP and BCAP are not obliged to consult on the development of guidance but consider it appropriate to invite respondents' comments on this occasion.

The following table sets out the existing guidance on 'strong appeal':

	BCAP alcohol guidance on 'strong appeal'
a)	Personalities. Avoid those who are likely to have a strong appeal to the young; for example, pop stars, sportsmen and sportswomen who command particular admiration of the young, television personalities, youth-orientated performers and any person who is likely to have strong influence on the behaviour of the young.
b)	Avoid themes that are associated with youth culture; for example, disregard for authority or social norms, teenage rebelliousness, mocking or outwitting authority be it parental or otherwise, immature, adolescent or childish behaviour or practical jokes and any behaviour that seeks to set those under 18 apart from those of an older age group. c) Teenage fashion or clothing mostly associated with those under 18.
c)	Teenage fashion or clothing mostly associated with those under 18.
d)	Avoid music or dance that is likely to appeal strongly to under-18s. But an advertisement that, for example, features an old recording that, perhaps as a result of its use in the advertisement, becomes popular with the young once again, will not necessarily be challenged. Announcements of alcohol-sponsored events may be made but the emphasis must be on the event, not the alcohol
e)	Language commonly used by the young but rarely by an older generation; for example, slang or novel words.
f)	Cartoons, rhymes or animation. Avoid those likely to have strong appeal to children and teenagers. Mature themes are likely to be acceptable



g)	Caution is needed in the use of all sports. In addition, certain sports have a strong appeal to the young, for example, skateboarding or “extreme sports”; they should be avoided.
h)	Avoid puppets or cute lovable animals that are likely to inspire strong affection in the young, adolescent or childish humour must be avoided

Section 6.4.3.

Interpretation – CAP and BCAP’s proposals to prevent gambling and lottery advertisements (together ‘gambling advertisements’) from appealing ‘strongly’ to under-18s focus principally on imagery, themes and characters. They are not intended to restrict simple text or audio references to, for example, sports, good causes, teams or individuals generally held to be popular with under-18s. It is CAP and BCAP’s intention that the ASA would assess the test of ‘strong appeal’ in line with the points of guidance set out above, including provisions on certain characters appearing in ads. Assessments are likely to rely on various aspects of characters’ general appearances and how they behave. For example, child orientated animated characters are presently restricted under the ‘particular appeal’ test; a ‘strong appeal’ test would be likely to extend the restriction to other types of characters.

For alcohol advertising, which is subject to the ‘strong appeal’ restriction, the ASA upheld against the use of a [parrot puppet \(2014\)](#) and [‘Kevin’ the Carrot \(2018\)](#), but not against ‘Henry’ the Fox (2014) and [several animated frogs \(2017\)](#). Assessment of a personality’s appeal will take into account their general profile among the public and with under-18s in particular. The ASA would likely consider the context the personality is best associated with (for example, as a sportsperson or entertainer) and their likely under-18 following.

This may also include metrics such as a personality’s following on social media.

In relation to personalities, the ASA has only once assessed a TV ad for alcohol against the restriction on ‘strong appeal. It did not find the ad, [featuring David Beckham \(2015\)](#), in breach because the ASA was of the view that he had retired as a player and had been based in the USA for several years and his appearance in the ad was, therefore, unlikely to have ‘strong appeal’ to under-18s. The ASA would likely to adopt broadly the same approach to assessing the ‘strong appeal’ to under-18s of characters that have an existence outside the context of the advertisement; principally, licensed characters from TV and film, but also more longstanding, traditional characters such as Santa Claus.

CAP and BCAP Consultation 25 Overall, respondents should note that, recognising the implications of public concerns over gambling advertising and the Gamble Aware findings, the ASA will take a strict line in its approach to the application of any new test of appeal. Respondents should also note the existing CAP and BCAP gambling rules include provisions banning the inclusion of personalities or characters who are or appear to be under 25; these rules remain unaffected by the proposals on ‘strong appeal’⁴¹.

Question 1 c) Answer

As with our response to question 1 a), it would be challenging to determine whether a personality has a strong appeal to children or young people, primarily if the assessment is based on factors other than metrics. The current CAP and BCAP codes, already guide gambling operators away from specific points set out in BCAP’s Alcohol Guidance Table in relation to the current ‘particular appeal’ test. Further guidance would be welcomed that is specific to a ‘strong appeal’ test for gambling following the findings of the Gamble Aware study if the proposed changes are to be adopted.



We would like confirmation from CAP on whether the proposed ‘strong appeal’ restrictions and guidance will be equal across all age restricted products (e.g. gambling & alcohol) where this is enforced. If any additional or more stringent measures will be included in the criteria to assess ‘strong appeal’ in relation to gambling adverts when compared to alcohol advertising, we would seek to obtain justification for this.

The ‘strong appeal’ test is currently only applied in the CAP/BCAP codes to alcohol and following the CAP Consultation, gambling may also come into scope. Other age restricted products including, e-cigarettes, weight control / slimming products, tobacco products and High in Fat, Salt and Sugar (HFSS) foods remain only bound to the ‘particular appeal’ test (must not be likely to appeal to/be of particular appeal to those under 18 years old or under 16 years old where applicable). We would argue that a unified approach across all age restricted products should be taken by CAP when assessing the content of marketing and its potential appeal to children (either the ‘strong appeal’ test or the existing ‘particular appeal’ test).

As discussed in Section 6.4.3 of the Consultation above, ASA rulings on the use of certain animated characters and puppets have varied in previous years with relation to broadcast alcohol advertising. These rulings were ultimately based on a variety of characteristics inclusive of likeness to children’s toys and features related to children, humour used, colour schemes and relevance to an adult audience. Further guidance would be welcomed to understand if the same level of risk is maintained with regards to ‘strong appeal’ if adverts are placed behind the Watershed (as outlined in the Industry Group for Responsible Gambling (IGRG) Code) and predominantly adult humour and themes are used alongside animated or puppet characters.

Question 1 d)

d) Do respondents agree with the proposal (set out in section 6.4.4) to exempt from the rules, proposed in questions 1(a) and 1(b), certain content inextricably linked to licensed gambling activity or the good causes that benefit from lottery funds? If not, please state why.

Question 1 d) - Proposed Changes

Section 6.4.4

Exemption for certain content depicting the subject of a licensed gambling activity or the good causes that benefit from lottery funds BCAP guidance on TV ads for alcohol, preventing ‘strong appeal’ to under-18s, states at point (g): Caution is needed in the use of all sports. In addition, certain sports have a strong appeal to the young, for example, skateboarding or “extreme sports”; they should be avoided.

Unlike alcohol products, some gambling products are inherently linked to activities that are of ‘strong appeal’ to under-18s; for instance, lotteries good causes and bets on the outcomes of sports matches, TV shows and eSports tournaments. Football is an obvious example of a sport generally held to be popular with under-18s. It is not of ‘particular appeal’ to under-18s (in other words appealing more to under-18s than to adults). It appeals equally across different age ranges. Applying a ‘strong appeal’ test to football and other subjects, which are held to be popular with under-18s and inextricably linked



with the licensed gambling activity would effectively prevent the advertisement of those licensed activities.

The Gambling Commission is responsible for licensing gambling operators and ensuring their provision of products is compatible with the Gambling Act 2005's requirement to ensure children and young people remain protected. The ASA could not reasonably prevent the advertising of products that have met these requirements.

CAP and BCAP therefore propose an exemption for certain content that depicts subjects, which are held to be popular with under-18s and inextricably linked with the licensed gambling activity or good causes benefitting from lottery funds.

a) It is proposed that the 'strong appeal' rule would not apply to:

i. the activity which is the subject of the licensed gambling activity (for example, football and eSports) in general terms;

ii. generic depictions of these subjects (for example, balls and other sporting equipment, stadia or depictions of players and play) provided that they are not presented in a manner that might 'strongly' appeal to under-18s (for example, using cartoon-style graphics);

iii. content that specifically identifies a subject of the licensed gambling activity (for example, the logos of an eSports game, sports team, sports tournament, or other event);

iv. depictions of good causes benefitting from lottery funds (for example, holiday activities arranged for disadvantaged children) or references to lottery prizes; and

v. material relating to an advertiser's brand identity (for example, logos or livery).

b) For the avoidance of doubt, the proposed exemption would not cover advertising featuring of a person or character whose example is likely to be followed by those aged under 18 years or who has a 'strong appeal' to those aged under 18: doing so would be banned by the proposed new rule. Moreover, if an ad took advantage of one or more of the exemptions (i)-(v), the ad could not include any other factor which, judged in whole and in context, would be likely to render the ad of 'strong appeal' to under-18s.

Question 1 d) Answer

We would agree with the proposed exemptions if the 'strong appeal' restrictions are agreed and are implemented by CAP. At present, we believe the proposed 'strong appeal' restrictions are too broad and are not adequately supported with sufficient guidance from CAP. Furthermore, we challenge the proposal that only gambling products and alcohol would be subject to these restrictions whilst other age restricted products (where the product and its advertising could be potentially harmful to young people) would remain bound only by the 'particular appeal test'.

The current 'particular appeal' restrictions, coupled with ever increasing regulatory obligations regarding age targeting of non-broadcast advertising (e.g. IGRG Code), in our view are sufficient to minimise the exposure of young people to gambling advertisements.

The new 'strong appeal' restrictions in our view are potentially too expansive and could have detrimental effects on some of our most well-established brand identities in the industry. For



example, Foxy Bingo use the “Foxy” character in all advertising and promotional material. The Foxy brand is a well-established, fifteen-year-old brand. Under the proposed changes would the Foxy character and use of associated images be covered under exemption (v) above? If so, specific parameters governing exemptions should be clearly defined.

Question 1 e)

- e) Do respondents agree the rules proposed in questions 1(a) and 1(b) should not apply to advertisements restricted on the basis of robust age-verification measures (set out in section 6.4.5), which, for all intents and purposes, exclude under-18s from the audience? If not, please state why.

Question 1 e) Proposed Changes

Section 6.4.5

Targeting based on age-verification – A critical consideration relating to the proposal is the mitigating effect of using highly robust targeting measures to exclude under-18s from receiving a gambling advertisement. The ASA has an established position in this respect relating to the ‘particular appeal’ test. Gambling ads that are of ‘particular appeal’ to under-18s and that are ‘freely accessible’ will breach the rules. However, if highly robust targeting methods are used to the effect of excluding, for all intents and purposes, all under-18s from the audience, the content of the ad can appeal particularly to under-18s (given this age group’s absence from the audience). Of note, the ‘particular appeal’ test is not applied in these circumstances as there are no under-18s in the audience, to whom this restriction is designed to protect. So, if the proposal is implemented, the ‘strong appeal’ test would also not apply in these circumstances. To meet the requirement, marketing data would have to be drawn from sources compliant with the Gambling Commission’s age verification requirements; for example, an operator’s own customer data or certified marketing lists from third party suppliers. Although other approaches could not be prohibited, the ASA would expect the marketer to demonstrate that verification had been carried out to standards consistent with those that the Gambling Commission requires; for example, data based on financial information relating to the possession of a credit card, is likely to be sufficient. In terms of the media exempted, advertisements on a website or app behind a robust member sign-in wall, direct marketing (via email or SMS) or content targeted to age-verified individual’s social media accounts would not be subject to the ‘strong appeal’ rule as under-18s are, for all intents and purposes, unlikely to form any part of the audience.

Question 1 e) Answer

We agree that the new rules proposed for both gambling and lotteries relating to the introduction of a ‘strong appeal’ test should not apply to advertisements that run on channels with robust targeting measures (based on age verification) that exclude all under 18s from the audience.

We would request that further clarification is provided around the use of ‘robust age targeting’ and the existing CAP 25% Test (non-broadcast advertising to mixed audiences) in relation to advertising content that may be assessed under the proposed ‘strong appeal’ rules.

Section 6.4.5 of the CAP Consultation states advertisements / content *‘targeted to age-verified individuals social media accounts would not be subject to the ‘strong appeal’ rule’*. We would seek clarification to understand if this is content targeted directly to social media accounts of our existing



age verified customers. Additionally, we would request that CAP consider if the current age targeting controls provided by Facebook, and associated Facebook platforms such as Instagram, are sufficient in targeting a predominantly adult audience, when combined with the IGRG Code requirement to target paid social adverts to individuals aged 25 and over. Independent studies by Nielsen have shown that Facebook age targeting is 97% accurate and Instagram 92% accurate compared to an industry average of 71%.¹ Would this be deemed sufficient control under the exemption?

Consultation Question 2

Question 2 a)

Do respondents agree with CAP and BCAP's proposed additions to the Gambling advertising: responsibility and problem gambling guidance? If not, please state why.

Question 2 a) – Proposed Changes

6.6.1. Proposed guidance revisions

Based on insights from the GambleAware findings, CAP and BCAP propose several amendments to the guidance. The proposals are based on several of the findings included in Final Synthesis Report section 6.2.344.

The main focus for changes will be guidance section 4, 'Social responsibility, harm and gambling behaviour'. This includes provisions that prevent condoning or encouraging problem gambling behaviours, approaches that trivialise gambling (for example, by giving the impression that the decision to gamble may be taken lightly), undue pressure on the audience to gamble (for example, exhortations to "Bet now") and giving erroneous perceptions of the level of risk involved.

CAP and BCAP propose to add new provisions to cover the following issues identified in their assessment of the GambleAware research:

- In guidance section 4.2 on erroneous perceptions of risk and control, proposed additions to the guidance would prohibit:
 - presenting complex bets in a way that emphasises the skill, knowledge or intelligence involved to suggest, inappropriately, a level of control over the bet that is unlikely to apply in practice;
 - presenting gambling as a way to be part of a community based on skill; and
 - implying that money back offers create security (for example, because they give gamblers the chance to play again if they fail or that a bet is 'risk free' or low risk).

¹ Source: Nielsen Digital Ad Ratings, UK from 07/01/2016 through 12/31/2019



- In guidance section 4.3 on impulsiveness and urgency further examples of problematic approaches are proposed to be added (for example, time limited offers emphasising the need to participate before the odds change and ads that place emphasis on the immediacy of an event).
- In guidance section 4.4 on trivialisation, proposed additions would prohibit:
 - humour or light-heartedness being used specifically to play down the risks of gambling; and unrealistic portrayals of winners (for example, winning first time or easily).

In guidance section 6.2 on financial concerns additional examples are proposed to be added to urge caution when depicting a winner: the implication that someone won easily or approaches that take advantage of people's hopes of winning themselves (in other words replicating the success).

Question 2 a) Answer

We do not agree with the proposed additions to the guidance as outlined in Section 6.6.1 of the CAP Consultation document for reasons set out below. Further guidance would be welcome with regards to Section 4.4 on trivialisation, as this is something that has proven to be challenging to interpret in current ASA guidance. Additionally, clarification on the definition of 'complex bets' would also be beneficial. Please refer below to our specific comments relating to the proposed additions to the guidance document, Gambling Advertising: Responsibility & Problem Gambling².

o presenting complex bets in a way that emphasises the skill or intelligence involved to suggest, inappropriately, a level of control over the bet that is unlikely to apply in practice

We would request that CAP provide further guidance on this point. Specifically, a definition of 'complex bet' and an example scenario that would be deemed to breach this new requirement, for example does this include 'ACCAs' or are CAP referring to bets such as 'full cover bets' e.g. yankee, lucky 15 etc. We would require a definition of 'complex bets' in order to fully assess any current marketing content that may be relevant to this new guidance.

o presenting gambling as a way to be part of a community based on skill;

We would seek further clarification on what CAP constitutes as 'skill' in this context and furthermore, what would be deemed to be a 'community' and on what criteria this would be determined. Some operators offer poker via a proprietary in-house platform; within the poker client there is the facility for players to post comments in a basic chat facility, however, this is not moderated by a host and does not typically constitute a 'chat room' type functionality. Historically, there has been much debate regarding if poker constitutes a game of chance or a game of skill, and the degree to how much the skills of the poker player can be used to influence the outcome of a game of chance. We would require confirmation if CAP in this context classifies poker as a skill-based game which would ultimately change the way poker is regulated given that as a solely skill-based game it would not be considered gambling under the Gambling Act 2005 definitions.

Some poker products offer functionality whereby players can create and manage their own private poker rooms for selected players such as their friends. Further guidance from CAP would be required in order to understand if such a product would be in breach of the proposed new guidance (Section

² <https://www.asa.org.uk/resource/gambling-advertising-responsibility-and-problem-gambling.html>
<https://www.asa.org.uk/uploads/assets/uploaded/bb5292af-96f3-4c28-94a031dbfdfe3d8.pdf>



4.2 Gambling Advertising: Responsibility & Problem Gambling), *‘presenting gambling as a way to be part of a community based on skill’*.

Bingo is particularly linked with a sense of ‘community’ amongst players; typically, bingo rooms provide the ability for players to interact through a moderated chat facility, which resembles that of an online chat room environment. The proposed prohibition under the new guidance, specifically states *‘a community based on skill’*, bingo however, is considered a combined game of both skill and chance in a retail environment and purely a game of chance as a digital product; we would therefore, argue that this prohibition does not specifically apply to bingo. We would look to gain assurance from CAP that bingo on this basis would not be included under this proposed prohibition. The CAP Pre-Consultation document dated 12th June 2020 stated the following in relation to proposed prohibitions in Section 4.2 *‘presenting gambling as a way to be part of a community (e.g. **one based on skill**)’*. We would recommend that CAP review both sets of draft text (CAP Pre-Consultation and Consultation documents) on this point and clarify, how exactly the prohibition will apply and how it will be drafted in the final guidance document. If the community element in its current context to bingo players is deemed by CAP to be causing harm, we would also seek to understand the basis on which CAP believes a ‘sense of community’ in this respect is harmful to players.

o implying that money back offers create security;

We would look to gain further assurance that CAP is not proposing a prohibition on the provision of money back offers in totality, only the proposition of such offers in a manner that implies to players that these bets provide ‘security’ or are ‘risk free or low risk’.

The proposed new prohibitions are likely to have a direct impact on common offer mechanics such as ‘Fail to Finish’ in horseracing and ‘Back-up Bets’ in football; similarly, multiple bet selections such as ACCAs that offer ‘ACCA Insurance’ may also be at risk. ‘Money back offers’ are promotional mechanics in widespread use across the gambling industry and that are widely recognised by customers. We would seek to further understand how CAP would determine that these offers imply security and the basis on which this would be assessed; would for example the name ‘Back up Bet’ in isolation be viewed as implicitly implying the bet provides a level of security to the customer?

We would ask further guidance from CAP in order to determine if current advertising campaigns for the aforementioned product offerings across the industry could be viewed as implying that these ‘money back offers create security’ for the customer.

o humour or light-heartedness being used specifically to play down the risks of gambling;

Further explanatory guidance from CAP would be welcome relating to both Section 4.4 (Trivialisation) and Section 4.5 (Problem Gambling Behaviours) of the Gambling Advertising: Responsibility & Problem Gambling document where the use of humour and light heartedness is referenced. Sections 4.4. and 4.5 (Gambling Advertising: Responsibility & Problem Gambling), and the requirements of these specific sections have proven difficult to correctly interpret, particularly with respect to the content of broadcast TV and video-on-demand adverts.

We would welcome clear direction from CAP with respect to the use of humour / light heartedness in adverts, so that we can adequately strike the balance between developing novel, innovative and engaging adverts as a provider of entertainment services, whilst ensuring compliance with our regulatory obligations. For example, Gala Bingo’s current campaign “Bingo like a Boss” is based on all humorous scenes featuring the main character such as playing a guitar riff with her feet or cutting her boyfriend’s hair into an outrageous style. Under the proposed changes would such obvious use of



humour be prohibited? It is essential that operators would have clear guidance in order to effectively develop new campaign concepts in line with CAP requirements moving forwards if the changes were imposed.

o unrealistic portrayals of winners (for example, winning first time or easily).

On unrealistic portrayals of winners (for example, winning first time or easily); we would seek further clarification from CAP around what is included in the 'portrayals of winners', for example does this relate solely to actual individuals that have won (e.g. winner's stories) which in some cases could be people who are first time winners, or, would this also include for example promotional videos that show slot gameplay?

Question 2 b)

Do respondents consider that there are additional provisions, which might be added to better meet CAP and BCAP's objective of ensuring that its guidance protects vulnerable adults from ad content with the potential for gambling advertising-related harm? If so, please set out the reasons, including reference to the evidence base, further information and examples as necessary.

Question 2 b) Answer

We have no further points to raise regarding additional provisions at this time.

Consultation Question 3

Question 3 a)

a) Do respondents agree that evidence, identified by the GambleAware research, of an association between exposure to gambling and "susceptibility" to gambling for people aged 11-17 are, at most, modest and do not present a sufficiently robust basis to merit restricting further the media in which, and the audience to which, gambling advertisements may be served? If not, please state why setting the basis upon which you believe the GambleAware evidence merits further regulatory interventions and what those interventions should be.

Question 3 a) Answer

We agree with CAP that the findings of the Gamble Aware research do not warrant further restrictions on gambling advertising at this time. Susceptibility to gambling could be based on multiple different factors and further quantifiable evidence should be sought before applying further restrictions. In addition, as noted in the Consultation section 7.3, further longitudinal studies should accompany the initial research in order to ascertain if those deemed "susceptible" did in fact go on to gamble or, indeed, develop problem gambling behaviours.

Question 3 b)

b) Respondents are invited to submit further evidence, which suggests that exposure to gambling advertising can, in and of itself, result in gambling advertising-related harms? Respondents to this question are encouraged to have regard to the CAP and BCAP guidance on their approach to evidence-based policy making.



Question 3 b) Answer

We have not conducted any additional research in this area to date and do not wish to submit evidence at this time.

Question 3 c)

c) Although CAP considers the GambleAware evidence does not present a case for change to the '25% test' (subject to its evaluation of responses to this consultation), do respondents consider there is a better way for CAP to meet its policy objective of balancing, on the one hand, necessary advertising freedoms for gambling operators and, on the other hand, necessary protection for under-18s? Respondents are invited to consider the full range of restrictions that apply to gambling advertising and, where available, provide evidence to support their submissions, particularly, that which bears out the regulatory benefits of an alternative approach.

Question 3 c) Answer

We believe that the current CAP '25% test' and 'particular appeal' test, coupled with other age targeting restrictions as set out in other regulatory codes of practice (e.g. IGRG Code 6th Edition) are sufficient to afford adequate protection to under 18's.

Section 7 (Scheduling, Placement & Targeting Restrictions) of the CAP Consultation states in relation to the 25% Test for non-broadcast advertising *that 'CAP consider the test operates effectively to restrict media likely to be of 'particular appeal' to under 18s by identifying when they are over represented in an audience relative to their make up in the overall population.'* As an operator we currently enforce the 25% test on all channels with a mixed audience where we target our adverts or content. This is particularly relevant to certain forms of advertising on social media platforms, such as advertising via influencers (organic traffic flow through a third-party social media account). In any instance, we collect demographic audience data to ensure that under 18s are not over-represented in the audience i.e. less than 25% in total. Where possible, we seek to have the majority of the audience aged 25 and over.

Our Great Britain (GB) License Conditions require that we comply with the IGRG Code for Socially Responsible Advertising, which includes clear provisions relating to the targeting of advertising on social media platforms. As per the IGRG provisions, we currently target paid social advertising to individuals aged 25 and over (e.g. Facebook paid advertising) and adhere to 18+ age gating for organic content on YouTube. We would appeal that given CAP's position on the effectiveness of the 25% Test and the IGRG Code 25+ targeting requirement, that current the targeting of paid social advertising is sufficient enough to ensure adverts are targeted to a majority adult audience and that the proposed 'strong appeal' test should not apply where these provisions are adhered to.

The CAP Consultation has proposed that the 'strong appeal' test be implemented into both CAP Rule 16.3.12 (Non-Broadcast Media) and BCAP Rule 17.4.5 (Broadcast Media). We would seek further guidance on the Targeting, Scheduling and Placement requirements of Broadcast adverts (this is not covered in Section 7 of the CAP Consultation) where the content may be assessed by CAP under the 'strong appeal' test. We would like to understand if the 'strong appeal' test is applicable to adverts adhering to the IGRG Code Provisions 31 and 32 (Television Advertising – Watershed).

Consultation Question 4



Question 4 a)

a) Do respondents agree with the proposed amendments to the introductory sub-section of the CAP Code's gambling rules? If not, please say why including any suggested wording that would better meet this part of the consultation's objective.

Question 4 a) – Proposed Changes

8.3. Proposed technical changes to CAP Code section 16

The table in this section sets out CAP's proposed amendments to the introductory text of its gambling rules in the first column with the proposed changes and the second the existing wording for comparison.

CAP Code section 16 – Gambling	
Proposed introductory text	Existing introductory text to be replaced
Principle The rules in this section are designed to ensure that marketing communications for gambling are socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited.	Principle The rules in this section are designed to ensure that marketing communications for gambling products are socially responsible, with particular regard to the need to protect children, young persons under 18 and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.
Background "Gambling" for the purposes of this section covers: <ul style="list-style-type: none">• gaming, betting and other activities defined as gambling by the Gambling Act 2005 (as amended); and• spread betting as defined in financial services legislation. Rules on marketing communications for lotteries are set out separately in Section 17.	Background The term "gambling" means gaming and betting, as defined in the Gambling Act 2005, and spread betting. For rules on marketing communications for lotteries, see Section 17.
The legal framework for gambling in Great Britain, including the requirements for licensing gambling operators, is set out in the Gambling Act 2005 (as amended). The Gambling Commission regulates commercial gambling and permits gambling on the basis that the licensing	The legal framework for gambling in Great Britain, including the requirements for licensing operators, is set out in the Gambling Act 2005 (as amended).



objectives to keep gambling safe, fair and crime out, are met.	
<p>To advertise in Great Britain, and to advertise remote gambling in Northern Ireland, gambling operators must comply with the relevant licensing requirements set out in statutes. The ASA will refer marketing communications for unlicensed operators to the Gambling Commission. The Gambling Commission's Licence Conditions and Codes of Practice make it a direct requirement on licensed operators to ensure their marketing communications comply with the UK Advertising Codes.</p> <p>The Gambling Act 2005 and Gambling (License & Marketing) Act 2014 apply to Great Britain and Northern Ireland for remote gambling.</p> <p>Specialist legal advice should be sought when considering advertising any gambling product in Northern Ireland, the Channel Islands or the Isle of Man. The ASA will cooperate with the relevant authorities to address complaints relating to these jurisdictions.</p>	<p>The Gambling Act 2005 does not apply outside Great Britain. Specialist legal advice should be sought when considering advertising any gambling product in Northern Ireland or the Channel Islands.</p>
<p>Spread betting may be advertised as an investment under the Financial Services and Markets Act 2000 (as amended) (FSMA), the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) and other Financial Conduct Authority (FCA) rules and guidance (see Background, Section 14, Financial Products). A "spread bet" is a contract for difference that is a gaming contract, as defined in the glossary to the FCA Handbook.</p>	<p>Spread betting may be advertised as an investment under the Financial Services and Markets Act 2000 (as amended) (FSMA), the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) and other Financial Conduct Authority (FCA) rules and guidance (see Background, Section 14, Financial Products). A "spread bet" is a contract for difference that is a gaming contract, as defined in the glossary to the FCA Handbook.</p>
<p>Scope</p> <ul style="list-style-type: none"> Unless otherwise stated, the rules in this section apply to marketing communications by: gambling operators licensed in Great Britain that are likely to have the effect of promoting gambling; and firms authorized to provide spread betting products. 	<p>The rules in this section apply to marketing communications for "play for money" gambling products and marketing communications for "play for free" gambling products that offer the chance to win a prize or explicitly or implicitly direct the consumer to a "play for money" gambling product, whether on-shore or off-shore.</p>



This includes marketing by third parties (for example, affiliate marketers) acting on an advertiser's behalf.	
Although they do not apply to marketing communications for non-gambling operators, the ASA may draw on the principles established in the rules to assess whether ads for products likely to encourage gambling (for example, betting tipsters) meet the standards required by the general social responsibility provisions of the Code (see Section 1).	
The rules are not intended to inhibit marketing communications by non-gambling operators that aim to counter problem gambling provided they are responsible and unlikely to promote a brand or type of gambling. Safer gambling messaging and marketing by gambling operators must comply with the rules.	These rules are not intended to inhibit marketing communications to counter problem gambling that are responsible and unlikely to promote a brand or type of gambling.
Unless they portray or refer to gambling, this section does not apply to marketing communications for nongambling leisure events or facilities, for example, hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as, but separate from, gambling events or facilities.	Unless they portray or refer to gambling, this section does not apply to marketing communications for nongambling leisure events or facilities, for example, hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as, but separate from, gambling events or facilities.
For the purposes of this section, "children" are people of 15 and under and "young persons" are people of 16 or 17.	For the purposes of this section, "children" are people of 15 and under and "young persons" are people of 16 or 17.

Question 4 a) Answer

The proposed changes to "Scope" applying to on-shore or off-shore operators we do not believe is relevant in this context. The existing introductory text relating to Great Britain licensed operators would cover both on-shore and off-shore operators and so does not need to be explicitly called out. We would also not see the need to define "play for free" or "play for money" gambling products as all gambling related advertising would fall under the scope of CAP codes.

Question 4 b)

b) Do respondents agree with the proposed amendments to the introductory sub-section of the BCAP Code's gambling rules? If not, please say why including any suggested wording that would better meet this part of the consultation's objective.

Question 4 b) – Proposed Changes



8.4. Proposed technical changes to BCAP Code section 17

The table in this section sets out BCAP's proposed amendments to the introductory text of its gambling rules in the first column with the proposed changes and the second the existing wording for comparison. BCAP Code section 17 is available via this link. Additionally, As outlined in the proposal, the 'Rules for all advertising' and 'Rules for gambling advertising' sub-section headings will be removed.

BCAP Code section 17 – Gambling	
Proposed introductory text	Existing introductory text to be replaced
<p>Principle</p> <p>The rules in this section are designed to ensure that gambling advertisements are socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited.</p>	<p>Principle</p> <p>The rules in this section are designed to ensure that gambling advertisements are socially responsible, with particular regard to the need to protect under18s and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.</p>
<p>Background</p> <p>The legal framework for gambling in Great Britain, including the requirements for licensing gambling operators, is set out in the Gambling Act 2005 (as amended). The Gambling Commission regulates commercial gambling and permits gambling on the basis that the licensing objectives to keep gambling safe, fair and crime out, are met.</p>	<p>Background</p> <p>The legal framework for gambling in Great Britain, including the requirements for licensing operators, is set out in the Gambling Act 2005 (as amended).</p>
<p>To advertise in Great Britain, and to advertise remote gambling in Northern Ireland, gambling operators must comply with the relevant licensing requirements set out in statutes. The ASA will advertisements for unlicensed operators to the Gambling Commission. The Gambling Commission's Licence Conditions and Codes of Practice make it a direct requirement on licensed operators to ensure their advertising complies with the UK Advertising Codes.</p> <p>The Gambling Act 2005 and Gambling (License & Marketing) Act 2014 apply to Great Britain and Northern Ireland for remote gambling. Specialist legal advice should be sought when considering advertising any gambling product in Northern Ireland, the Channel Islands or the Isle of Man.</p>	<p>The Gambling Act 2005 does not apply outside Great Britain. Licensees should ensure that specialist legal advice is sought when considering advertising any gambling product or service in Northern Ireland or the Channel Islands.</p>



The ASA will cooperate with the relevant authorities to address complaints relating to these jurisdictions.	
Spread betting may be advertised as an investment activity under the Financial Services and Markets Act 2000 (as amended) (FSMA), the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) and in accordance with the Financial Conduct Authority (FCA) Handbook. Spread betting may be advertised on specialised financial stations or channels, in specialised financial programming or on interactive or additional television services (including text services) only (see rule 14.5.4). A "spread bet" is a contract for differences that is a gaming contract, as defined in the glossary to the FCA Handbook.	Spread betting may be advertised as an investment activity under the Financial Services and Markets Act 2000 (as amended) (FSMA), the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) and in accordance with the Financial Conduct Authority (FCA) Handbook. Spread betting may be advertised on specialised financial stations or channels, in specialised financial programming or on interactive or additional television services (including text services) only (see rule 14.5.4). A "spread bet" is a contract for differences that is a gaming contract, as defined in the glossary to the FCA Handbook.
The rules are not intended to inhibit advertisements by non-gambling operators that aim to counter problem gambling provided they are responsible and unlikely to promote a brand or type of gambling. Safer gambling messaging and marketing by gambling operators must comply with the rules.	These rules are not intended to inhibit advertisements to counter problem gambling that are responsible and unlikely to promote a brand or type of gambling.
Please refer to Section 32: Scheduling for rules on the scheduling of gambling advertisements.	Please refer to Section 32: Scheduling for rules on the scheduling of gambling advertisements.
Definitions "Gambling" for the purposes of this section covers: <ul style="list-style-type: none"> gaming, betting and other activities defined as gambling by the Gambling Act 2005; and spread betting as defined in financial services legislation. Rules for lottery advertising are set out separately in Section 18.	Definitions The term "gambling" means gaming and betting, as defined in the Gambling Act 2005, and spread betting. For rules on lottery advertisements, see Section 18.
Unless otherwise stated, the rules in this section apply to advertisements by: <ul style="list-style-type: none"> gambling operators licensed in Great Britain that are likely to have the effect of promoting gambling; and 	The rules in this section apply to advertisements for "play for money" gambling products and advertisements for "play for free" gambling products that offer the chance to win a prize or that explicitly or implicitly direct the consumer to a "play for money" gambling product, whether on-shore or off-shore.



<ul style="list-style-type: none"> • firms authorized to provide spread betting products. <p>This includes marketing by third parties (for example, affiliate marketers) acting on an advertiser's behalf.</p>	
<p>Although they do not apply to advertisements for non-gambling operators, the ASA may draw on the principles established in the rules to assess whether ads for products likely to encourage gambling (for example, betting tipsters) meet the standards required by the general social responsibility provisions of the Code (see Section 1).</p>	
<p>Unless they portray or refer to gambling, this section does not apply advertisements for non-gambling leisure events or facilities, for example, hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as, but separate from, gambling events or facilities.</p>	<p>Unless they portray or refer to gambling, this section does not apply to advertisements for non-gambling leisure events or facilities, for example, hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as, but separate from, gambling events or facilities.</p>

Question 4 b) Answer

Please see response to Question 4 a) above.





By e-mail to:

21 January 2021

Dear

Please find below Flutter Entertainment's response to the CAP Consultation 'Responding to the findings for the GambleAware Final Synthesis Report' published in October 2020.

Consultation question 1

- a) Do respondents agree with the proposed amendments (set out in section 6.4.1 above) to CAP rule 16.3.12 (gambling) and BCAP rule 17.4.5 (gambling)? If not, please state why including details of any alternative approach(es) to achieving CAP and BCAP's policy aims.

Flutter Entertainment is one of the UK's largest gambling businesses, incorporating the well-known brands Paddy Power, Betfair, Poker Stars and Sky Betting and Gaming. As such, we recognise our responsibility to maintain a corporate culture which puts consumer welfare firmly at its heart. We share CAP's objective of ensuring that gambling advertisements remain responsible in order to prevent children, young people and vulnerable people from being harmed by them. However, we do not believe that this change is necessary and further, we believe it will ultimately prove to be a significant step *away* from clarity rather than toward it.

CAP and the ASA have published six commitments to 'good regulation', including a requirement to "*keep regulatory burdens to a minimum*". CAP will be aware that compliance with the Advertising Codes was written into the Gambling Commission's 'Licence Conditions and Codes of Practice' in October 2018. As a result, breaches of the Codes could leave operators open to the risk of enforcement action from their principal regulator. The range of enforcement powers available to the Commission include significant fines, additional licence conditions and possibly even the revocation of a personal management or operating licence. As such, in seeking to ensure ads are "*legal, decent, honest and truthful*", CAP must regulate in a logical, transparent and evidence-based manner. There is no denying that the industry has made historical mistakes in this area. In 2017/2018, ASA had cause to take action against several breaches of the Codes directly related to the subject of 'particular appeal to children'. However, the subsequent publication and refining of guidance, and the creation of a library of case law by way of those ASA rulings, has meant this rule is now widely understood and the rate of complaints has decreased dramatically. In fact, its ruling register confirms that ASA received only one complaint regarding 'particular' appeal to children in the last year. This undoubtedly indicates a dramatic improvement in standards and provides evidence against the need for more onerous regulation in this area.

The gambling industry has taken huge strides in self-regulation in recent history. 2020 has seen the AdTech Working Group voluntarily introduce several new wide-reaching measures, mandated through incorporation into the IGRG Code. It has also set up the AdTech Forum, a permanent commitment to continuous improvement in harnessing the capabilities offered by advertising technology. The voluntary whistle-to-whistle advertising ban was introduced in 2019. In its last quarterly review, CAP acknowledged that gambling ads identified in children's media online had dropped "*significantly*". In its own 2019 'exposure report', CAP reported that the number of children seeing sportsbook gambling ads had fallen to a record low of 0.3 ads per week³. Given that the whistle-to-whistle rule was only introduced in August 2019, we can reasonably expect 2020's exposure report to evidence further reduced exposure to gambling ads. Against this backdrop, CAP's desire to move towards a more restrictive regulatory regime for an industry which, for the most part, is meeting and often *exceeding* the expected standard appears disproportionate.

ASA's ruling register provides only a very small handful of examples of the 'strong appeal' rule being applied in the alcohol industry. In all of these cases, ASA has drawn a conclusion which we believe could have been reached just as conclusively by applying the 'particular appeal' rule. In fact, when the guidance supplied to the alcohol industry for 'strong appeal' is compared directly to guidance previously published to assist the gambling industry in applying the 'particular appeal' rule, there appears to be only one area not already directly addressed. The missing area of guidance is "*caution is needed in the use of all sport. Certain sports have strong appeal to the young, for example, skateboarding or "extreme sports"*". It would appear that the only material change will be how ASA intend to adjudicate going forwards and this is currently very unclear.

¹ <https://www.asa.org.uk/uploads/assets/uploaded/3b890275-f52c-4e15-94fc91d5308fff8.pdf>

² <https://www.asa.org.uk/news/our-latest-monitoring-sweep-to-tackle-age-restricted-ads-on-children-s-websites-and-youtube-channels.html>

³ <https://www.asa.org.uk/uploads/assets/729cae41-cac1-4920-8e536bfb0b503253/bc19eec3-84a8-4e4a-9d6e7fb0d2484498/ASA-TV-Ad-Exposure-Report-2019-Update.pdf>

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Registered in Dublin, Ireland no. 16956

The Advertising Codes are inherently subjective. While Flutter understands that an entirely prescriptive approach would be impractical, this does create a reliance on very clear guidance and case law reached by way of ASA investigations. Both appear to be somewhat lacking for the 'strong appeal' rule when applied to the alcohol industry. The current culture of gambling industry compliance with the 'particular appeal' rule is the result of several guidance documents and ASA rulings across a number of years. Introducing a new – and less clearly defined – rule will have the effect of reintroducing confusion and uncertainty. Marketing campaigns are extremely significant investments for operators and, as previously set out, the consequences of failing to comply with the Advertising Codes can be severe. CAP's proposal will have the effect of introducing a high degree of regulatory uncertainty, with operators being unsure for some time that their ads are compliant, despite making every effort to comply. This confusion will undoubtedly lead to consumers being served ads which operators cannot be certain comply with the Codes – an unfortunate consequence of a lack of clarity and a regulatory approach that will only be clear following a prolonged period of 'trial and error'.

While we understand that CAP may wish to create consistency in the rules for age-restricted products, we believe that the gambling industry is already disproportionately affected by existing rules shared with the alcohol industry. We have addressed this in more detail under question 1(d) below.

- b) Do respondents agree with the proposed amendments (set out in section 6.4.1 above) to CAP rule 17.13 (lotteries) and BCAP rule 18.5 (lotteries)? If not, please state why including any alternative approach(es) to achieving CAP and BCAP's policy aims.*

N/A

- c) Do respondents consider the intended application of the rules proposed in questions 1(a) and 1(b) and the guidance to support their application (set out in sections 6.4.2 and 6.4.3 above) are broadly proportionate to the intended purpose of preventing gambling ads from appealing 'strongly' to under-18s? If not, please state why.*

As previously set out, we do not believe that the guidance provided is currently sufficiently clear. Additionally, we do not believe the simple transposition of guidance prepared for the alcohol industry takes into account the disproportionate effect such guidance would have on the gambling industry. We also believe the introduction of this new rule and supporting guidance will create a high degree of regulatory uncertainty for a prolonged period.

- d) Do respondents agree with the proposal (set out in section 6.4.4 above) to exempt from the rules, proposed in questions 1(a) and 1(b), certain content inextricably linked to licensed gambling activity or the good causes that benefit from lottery funds? If not, please state why.*

Flutter welcomes CAP's understanding that it may not unreasonably infringe on an advertisers right to promote products which meet the requirements of the Gambling Act (2005) and are pleased to see that some exemptions have already been considered. However, those exemptions appear to be very narrow indeed. CAP's proposed exemptions make no provision for featuring sports personalities and only extend to:

- "the activity which is the subject of the licensed gambling activity (for example, football and eSports) in **general terms**;*
- ii. **generic depictions** of these subjects (for example, balls and other sporting equipment, stadia or depictions of players and play) provided that they are not presented in a manner that might 'strongly' appeal to under-18s (for example, using cartoon-style graphics);*
- iii. content that specifically identifies a subject of the licensed gambling activity (for example, the logos of an eSports game, sports team, sports tournament, or other event⁴)."*

Gambling is inherently linked to sport. This is not a concern the alcohol industry shares and alcohol consumption is incompatible with participation in sport. Alcohol products are very easily advertised outside of the context of sport. The strong appeal rule, when applied to the gambling industry, would severely hamper our ability to advertise products we are permitted and licensed to sell. Furthermore, the requirement for people who feature in alcohol ads to be, or appear to be, over the age of 25 is rarely a problem for alcohol brands. For sports betting brands, this requirement is already a more significant restriction, as many top sportspeople are under 25. As a result, gambling advertisers are already more severely impacted by the current restrictions than other regulated industries operating under similar rules. While we support the rationale behind existing Code requirements, the transposition of the 'strong appeal' rule from the alcohol industry appears to disregard the disproportionate impact such a rule would have on the gambling industry.

While the proposed exemptions imply that logos of a sports team or event may be used in place of imagery used currently, advertisers also need to consider the implications of intellectual property law and image rights. This means that, unless such imagery can be used appropriately i.e. with the permission of third party rights holders and (generally) the payment of a licence fee,

⁴ <https://www.asa.org.uk/uploads/assets/f939d3c2-42cf-4c2f-82901b688554fdea/CAP-gambling-Oct2020-consultation-document.pdf>

advertisers are left with very little creative freedom at all. CAP do not appear to have considered direct exemptions for individuals or sports which are the subject of the bet offered. (In line with existing exemptions for the 'under 25 rule' in section 3.1.14 of the CAP Code.) As a result, sports betting operators may only be able to advertise products they are permitted and licensed to sell through simple text or audio references alone. (For example, the odds of a Premier League footballer to score.) Such a measure would undoubtedly severely restrict our ability to advertise at all, leaving no room for any level of creative freedom. Further, we would ask CAP to clearly set out why the widely accepted watershed of 9pm is not seen as a sufficiently suitable method of targeting broadcast content to consumers who are likely to be over 18.

We ask that, if the change to strong appeal is to go ahead, CAP considers much wider exemptions which permit the creative freedom which should be allowed for socially responsible advertising of products deemed appropriate for sale under the Gambling Act.

- e) *Do respondents agree the rules proposed in questions 1(a) and 1(b) should not apply to advertisements restricted on the basis of robust age-verification measures (set out in section 6.4.5 above), which, for all intents and purposes, exclude under-18s from the audience? If not, please state why.*

Flutter agrees that any such changes should not be applied to advertising responsibly and appropriately targeted to recipients verified to be over the age of 18 in line with existing exemptions in place for the 'particular appeal' rule.

Consultation question 2

- a) *Do respondents agree with CAP and BCAP's proposed additions to the Gambling advertising: responsibility and problem gambling guidance? If not, please state why.*

While we believe that it is never the intention of any regulated operator to do so, Flutter strongly supports CAP's objective of ensuring children, young people or vulnerable people are not harmed or exploited by gambling advertisements. We welcome the clarity provided in the proposed additions and entirely support their inclusion in CAP/BCAP guidance. There are only a handful of areas where we believe more clarity may still be necessary.

Humour

CAP propose new guidance on humour or light-heartedness being used to downplay the risks of gambling. We understand that this is not intended as a ban on gambling ads being humorous at all - there is no evidence that humour in general should be a concern and such action would be disproportionate. Gambling products are entertainment products and the industry should be permitted to advertise them in an entertaining way providing this is done in a socially responsible and compliant manner. As such, we would ask that CAP provides a greater degree of clarity here, specifying which types of depiction may be a concern.

Community based on skill

We would welcome more clarity regarding what a 'community based on skill' is. CAP should specifically consider the challenges presented to operators who offer a Poker product which is, at least in part, a game of skill and which requires a 'community' of players to play. Given that poker contains *both* elements of chance and skill, we would ask CAP to confirm that accurate portrayals of the degree of control which can be exercised by a Poker player will not be affected by this guidance. We would be grateful for further (product specific) clarity.

Rules already exist which prohibit depictions suggesting that solitary gambling is preferable to social gambling. Focusing this proposed change on problematic depictions in advertisements such as 'gambling as a way to meet new people' or 'replacing social interaction' may be clearer.

- b) *Do respondents consider that there are additional provisions, which might be added to better meet CAP and BCAP's objective of ensuring that its guidance protects vulnerable adults from ad content with the potential for gambling advertising-related harm? If so, please set out the reasons including reference to the evidence base, further information and examples as necessary.*

As outlined above, we believe more specificity may be required in some areas.

Consultation question 3

- a) *Do respondents agree that evidence, identified by the GambleAware research, of an association between exposure to gambling and "susceptibility" to gambling for people aged 11-17 are, at most, modest and do not present a sufficiently*

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Directors: G. McGann (Chairman), D. Gadhia (Deputy Chair) (Canada), P. Jackson (Chief Executive Officer) (UK), J. Hill (Chief Financial Officer), M. Cawley, Z. Byng-Thorne (UK), N. Cruickshank (UK), I. Dyson (UK), A. Higginson (UK), P. Rigby (UK), M. Turner (Canada), R. Flint (UK), A.F. Hurley (U.S.), D. Lazzarato (Canada)

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robust basis to merit restricting further the media in which, and the audience to which, gambling advertisements may be served? If not, please state why setting the basis upon which you believe the GambleAware evidence merits further regulatory interventions and what those interventions should be.

We agree that there appears to be a very limited evidence base to support further change in this area. We also agree that alternative measures such as setting a numerical limit on the overall number of number of under-18s in an audience would be impractical. It is important to note that one of the key objectives of the industry AdTech Forum is to ensure that the industry responds quickly to developments available to advertisers and promotes the need for technological advancement. As such, BGC members are already committed to proactively embracing developments enabling us to better target our advertisements using known or inferred data.

It is worth noting that the qualitative and quantitative studies produced by ScotCen use a definition of susceptibility which includes those who stated they would “probably not” gamble in the next year along with those who stated that they “definitely” or “probably would”. Only those who stated that they “definitely would not” gamble are defined by ScotCen as “not susceptible”. This means that those who stated they would “probably not” gamble in the next year are classified as *equally* as susceptible as those who probably or definitely would, despite the very clear distinction between the two. GambleAware have yet to complete any follow up analysis on the *actual* gambling behaviours of these respondents in order to verify the accuracy of this data. Additionally, the ScotCen survey does not allow us to understand specific gambling intentions. As a result, it does not clarify whether the activities respondents intended to engage in were actually age-restricted gambling activities rather than activities which are currently permitted under the Gambling Act. Given that the sample sizes were also relatively modest; it does not appear that the GambleAware report findings present a sufficiently robust evidence base to support regulatory change.

We also understand that the detailed responses to the ScotCen study were not available at the time the consultation document was published. However, we have now been able to review this detail. 83% of survey respondents stated that they would probably not gamble in the next 12 months. Just 0.9% of respondents stated that they definitely would. Given CAP’s commitment to keeping regulatory burdens to a minimum, we would ask that it reviews this new information and reconsiders whether this evidence base is sufficient to justify any of the changes currently proposed.

- b) Respondents are invited to submit further evidence, which suggests that exposure to gambling advertising can, in and of itself, result in gambling advertising-related harms? Respondents to this question are encouraged to have regard to the CAP and BCAP guidance on their approach to evidence-based policy making.*

CAP will be aware of the annual ‘Young People and Gambling’ report commissioned by the Gambling Commission. It is possible that some respondents to this consultation may cite the 2020 report as evidence of gambling-related harm. However, we would ask CAP to be mindful that the report does not disclose the rate of gambling by activity. The highly robust verification methods used by Gambling Commission licensed operators mean that the vast majority of survey results will derive from playing the National Lottery (which is currently permitted at age 16, although this age restriction will rise to 18 in 2021), gambling with friends or the use of category D machines such as those featured at amusements parks.

- c) Although CAP considers the GambleAware evidence does not present a case for change to the ‘25% test’ (subject to its evaluation of responses to this consultation), do respondents consider there is a better way for CAP to meet its policy objective of balancing, on the one hand, necessary advertising freedoms for gambling operators and, on the other hand, necessary protection for under-18s? Respondents are invited to consider the full range of restrictions that apply to gambling advertising and, where available, provide evidence to support their submissions, particularly, that which bears out the regulatory benefits of an alternative approach.*

Flutter believe the existing restrictions are proportionate and fit for purpose as evidenced by the data gathered through the course of CAP’s last quarterly review of online advertising for age-restricted products. Further, we would remind CAP of the important role the AdTech Forum will play in ensuring the industry remains at the cutting edge of new advances in advertising technology and its willingness to embrace change voluntarily and swiftly as new capabilities emerge.

Consultation question 4

- a) Do respondents agree with the proposed amendments to the introductory sub-section of the CAP Code’s gambling rules? If not, please say why including any suggested wording that would better meet this part of the consultation’s objective.*

Flutter supports the proposed amendments.

- b) Do respondents agree with the proposed amendments to the introductory sub-section of the BCAP Code’s gambling rules? If not, please say why including any suggested wording that would better meet this part of the consultation’s objective.*

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Flutter supports the proposed amendments.

We trust the above is of assistance to the consultation process. We would be happy to discuss this response or engage further with CAP throughout the process and would like to stress our continued commitment to upholding the aims stipulated in the CAP and BCAP Codes and the licensing objectives of the Gambling Commission.

Yours sincerely,

Flutter UK&I Division

CAN Mezzanine
2nd Floor, 49 - 51 East Road,
London
N1 6AH
Tel: 0300 999 3407

By email

21 January 2021

Dear Regulatory Policy Team,

Fundraising Regulator's response to CAP and BCAP's consultation on stricter rules for gambling ads

About the Fundraising Regulator

The Fundraising Regulator is the independent non-statutory regulator of charitable fundraising undertaken by or on behalf of charitable, philanthropic and benevolent organisations in England, Wales and Northern Ireland. We also regulate fundraising in Scotland carried out by charities primarily registered in those three countries. Our role includes maintaining and developing the UK-wide Code of Fundraising Practice (the code) and investigating complaints from members of the public about fundraising practice where these cannot be resolved by the charities themselves.

The mission of the Fundraising Regulator is to carry out its independent and non-statutory regulatory role in a way that:

- protects the public, donors and potential donors, not least those who may be vulnerable, from unacceptable fundraising practices.
- enhances public trust and confidence in the charitable sector generally and with particular regard to charitable fundraising.
- supports the sector to understand and carry out its responsibilities in engaging with the public, creating a positive donor experience.
- ensures consistent fundraising standards across the UK.

We work in partnership with other regulators and representative bodies in the charitable and fundraising sectors to build public confidence and ensure consistent fundraising standards across the UK.

Our Interest

Many charities and charitable causes use lotteries and other gambling-based fundraising (including raffles, tombolas, sweepstakes and some other activities) to raise funds to support the delivery of their charitable aims. We regularly receive questions from both fundraisers and members of the public about gambling-based fundraising activity. In 2019-2020, lotteries constituted the third most asked about method of fundraising for our enquiries service.

The Code of Fundraising Practice sets out the responsibilities that apply to all charitable fundraising in the UK. Two areas in particular cover fundraising standards relevant to the matters arising in the current consultation:

- Section 9 ([Fundraising communications and advertisements](#)) and
- Section 12 ([Lotteries, prize competitions and free draws](#))

Where appropriate, the code refers to the additional legal and regulatory requirements expected by relevant bodies (including the Committee of Advertising Practice, the Broadcast Committee of Advertising Practice and the Gambling Commission).

The Gambling Commission is responsible for ensuring all gambling activity meets the requirements of the Gambling Act 2005. The Fundraising Regulator's commitment to working towards best practice standards in the area of gambling-based activity is set out clearly in our joint Memorandum of Understanding with the Gambling Commission:

https://www.fundraisingregulator.org.uk/sites/default/files/2019-10/Gambling-Commission-MOU_Redacted.pdf.

Our Response

We understand the proposed exemptions outlined in part (a) of section 6.4.4. to mean that the advertising of lotteries and other gambling-related fundraising activity for charitable causes is exempt from the proposed 'strong appeal' rule. Part (b) of section 6.4.4. goes on, however, to state that the exemption would '*not include any factor which ... would be likely to render the ad of "strong appeal" to under-18s*' (p. 26), which would seem conversely to indicate that the proposed 'strong appeal' rule still applies to ads which meet the exemption criteria outlined in part (a) of the same section.

Whilst we welcome the consideration of the specific ways in which charities operate, advertise and benefit from lottery fundraising, there may be a need to offer clarification on part (b) of section 6.4.4. This qualification of the proposed exemptions may cause confusion for the sector and the public, and how this exception affects the proposed exemption for good causes may require further explanation in order to avoid any confusion.

Finally, we welcome the proposal to enhance protections for vulnerable adults in section 6.6. As set out in [sections 1.3.8 and 1.3.9](#) of the Code of Fundraising Practice, we expect that any fundraising activity (including the advertising of that activity) must not exploit those in vulnerable circumstances (due to, for example mental health, age, disability and financial difficulty) who may not be able to make an informed decision.

If you would like to discuss any of these points in more detail, please do get in touch. In the meantime, I look forward to our organisations continuing to work together closely in future.

Yours sincerely,

Written evidence submitted by James Grimes, founder of The Big Step

My experiences of gambling harm

Like many other young people across the UK as a child I was absolutely fascinated by football. It consumed every area of my life and as a teenager I was playing, coaching or watching it on a daily basis.

During these formative years, football was giving me something else. It was introducing my teenage brain to gambling brands through shirt sponsorship, pitch side hoardings, TV advertising and posters encouraging football bets at my local bookmakers.

The most simplistic way I can describe what happened to me is that I did not find gambling, gambling found me. Through the love of my favourite sport, I was softly nudged towards taking part in this seemingly normal and innocent activity promoted everywhere I looked.

The Gambification of football worked on me; I placed my first bet at the age of 15 on my lunch break with a few older looking friends. It's safe to say the age verification measures weren't as thorough as they are now, and I was able to place bets regularly at my local bookmakers and through faking parents accounts online.

In my case, there is no glamour story of a 'big first win' that pathed the way for an incessant need to replicate that 'hit'. Instead there was a quick, miserable spiral into addiction that consumed all walks of my young life.

In hindsight, these years of my life were crucial in intervening with or exacerbating my subsequent gambling addiction. Unfortunately, the constant promotion of gambling, direct and indirectly, ensured it was the former.

I was already in debt by the time I reached university and could not go one day without gambling, nor watch sport without having a bet on. The temptation wasn't just pushed via sport, but also through direct marketing of online casino games and the accessibility on harmful products such as FOBT's.

The escalation from £5 football accumulators to gambling all of my student loan away on roulette was dangerously rapid. I have to emphasise that there was no checks on my affordability or wellbeing from any gambling company. The impact on my education and career prospects was severe; I attended just six university lectures in three years, with my addiction ensuring I spent most days online gambling or inside a bookmakers.

There were times when I tried to stop gambling, only to be lured back in by a cascade of advertising promotions, free bet offers and bonuses. These seemed to be most visible during football, which was becoming a barrier to any form of recovery.

For seven years after university, gambling completely devastated my life. I was deeply addicted to the whole product of online gambling. The most heart-breaking example of the power of the addictive products I was using is when visiting my terminally ill Dad in hospital, I was at his bedside playing online roulette. It created a complete emotional disconnection and changed the way I behaved and thought.

Not only did gambling take £100,000 from me, I also lost two jobs and tenancy at two houses. But the practical consequences that I still live now are the thing that I look back at with the least regret. Gambling took so much more from me than money. It took my happiness, my motivation, my self-worth, my decency, my self-respect and it took my freedom.

I stopped gambling in 2018 after an excessive and destructive episode that took me to the brink of suicide. I never lose sight of the fact there is a gambling related suicide every working day in the UK and I am so fortunate because that so easily could have been me.

I take full responsibility for my recovery, which has given me a second chance at life. However, I was completely and utterly failed by many gambling companies, who showed no responsibility in protecting me from gambling exposure as a child.

The Big Step

Football was my introduction to gambling and 14 years later, it continues to do the same for so many young people.

The 'gamblification' of the beautiful game has reached saturation point. At the time of writing, only four Premier League clubs do not have an official gambling partner or sponsor. The consequence of this is that a gambling brand is visible up to 89% of the time on 'Match of the Day'.

This level of exposure is proven to cause brand recall, brand loyalty and eventually, consumer intent. By portraying gambling as a legitimate leisure activity through its association with football, the online gambling industry has been able to parasitically infiltrate sport whilst raking in £5 billion profit in the last year alone.

The normalisation of gambling through advertising and sponsorship has contributed to a generation of young fans, like me, thinking that they must have a bet to watch the sport they love. With 55,000 children addicted to gambling and many more at risk, the long-term damage to the youth of today is too much to contemplate.

This is the reason In April 2019, I founded 'The Big Step'. Initially a fundraising walk for 'Gambling with Lives', the intention was to visit football clubs with gambling sponsors or partners to raise awareness of gambling harms and to encourage these clubs to review their gambling relationships.

During our first 124 mile walk in June 2019, we received incredible public support and was inundated with messages of people who have suffered from gambling harm and who ultimately agreed with us. Knowing that there was widespread acknowledgement of our message was enough fuel to turn The Big Step into a full time campaign and turn our attention to the regulation that is allowing this harm to occur through football.

That's why in February 2020, we concluded a 100 mile walk by handing a signed letter to Downing Street asking the government to end gambling sponsorship & advertising in football. We built on this in September 2020 by launching our online petition calling for the same to coincide with our third walk. Our most recent event was 130 miles and was covered nationally by BBC Breakfast, BBC Sport and many other media platforms ahead of the forthcoming Gambling Act review.

Our message is being heard far & wide and I'd like to think we have had a small influence in changing the public narrative, which increasingly supportive of restrictions on gambling's harmful grip on football. During the last eighteen months, on behalf of The Big Step, I have spoken to over twenty

football clubs and the English Football League. The response I get is that gambling sponsorship is not desired but completely unavoidable due the obscenely higher amounts it can offer lower league clubs. Football is largely blind to gambling harm in its community and clubs who take gambling money are numb to the fact that a large percentage of their gambling income comes from a small percentage of players, usually off the back of harm.

We've also partnered with football clubs like Tranmere Rovers and Swansea City (both explicitly rejecting gambling sponsorship) to deliver our public-health focused awareness pilot.

I've been fortunate enough to testify in front of the APPG on Gambling Related Harm, the Secretary of State at DCMS and to the Gambling Commission.

Most importantly, we've spoken to and involved many people directly and indirectly impacted by gambling related harm. The story is common; gambling advertising in sport was either the gateway for gambling addiction or encouraged addiction and made it incredibly difficult for those addicted to stop.

Recommendations

Gambling advertising & sponsorship in sport is overwhelmingly unpopular. A Football Supporters Association survey showed that only 13% of fans are happy to have a gambling shirt sponsor. Recently, Survation polling indicated that:

- A third of fans put off buying their team's shirt if it has a gambling sponsor
- Two-thirds say there is too much gambling advertising.
- Nearly half back a ban on gambling-based shirt sponsors.

Regulation that prevents gambling's infiltration of sport would both be a vote winner and protection children from being exposed to gambling advertising.

The Big Step is not anti-gambling, but is anti-gambling harm. We do not want to impinge on anyone's freedom to have a bet, but the long-term public health of young people must be a priority and therefore **gambling should be tolerated, but not promoted.**

We should not wait to see if gambling advertising exposure causes gambling harm. The evidence is already there and any gambling-based regulation should be based on the precautionary principle.

Our proposals:

- Not permit gambling sponsorship of sports clubs or sports league.
- Not permit gambling advertising in stadiums, around the pitch or on club merchandise.
- Not permit gambling advertising during TV broadcasts of sporting events, at any time.
- Not permit gambling promotion through sports clubs social media platforms.
- Not permit any endorsement of gambling by sportspeople or celebrities.
- Not permit sports clubs signing gambling partnerships and therefore prevent direct gambling marketing to it's fanbase.
- Promote sports clubs adopting a public health approach to preventing and reducing gambling harms. This includes appropriate health messaging about the risks of gambling and actively signposting towards treatment & practical tools.

References

<https://doi.org/10.17605/OSF.IO/F6BU8> - 89% of Match of the Day has a gambling brand visible

<https://thefsa.org.uk/news/clubs-must-do-more-on-gambling-risks-survey/> - 13% of fans happy with a gambling based shirt sponsor

<https://www.survation.com/football-fans-believe-theres-too-much-gambling-sponsorship-in-the-game/> - Survation polling on football fans 2020

The Big Step links and coverage

Web: www.the-bigstep.com

Twitter: @the_bigstep

Facebook: @thebigstepdotcom

July 2019 event: <https://www.itv.com/news/granada/2019-06-17/football-clubs-urged-to-take-big-step-and-review-their-gambling-sponsorship>

Feb 2020 event: <https://www.bbc.co.uk/sport/football/51638731>

Sep 2020 event: <https://www.bbc.co.uk/sport/football/54308851>

Announcement of partnership with Tranmere Rovers:

<https://www.tranmererovers.co.uk/news/2020/april/tranmere-rovers-form-team-to-combat-gambling-threat/>

Announcement of partnership with Swansea City: <https://www.swanseacity.com/news/swansea-city-team-anti-gambling-campaign-group-big-step>

GAMESYS RESPONSE TO THE ASA CONSULTATION

Consultation question 1

a) Do respondents agree with the proposed amendments (set out in section 6.4.1 above) to CAP rule 16.3.12 (gambling) and BCAP rule 17.4.5 (gambling)? If not, please state why including details of any alternative approach(es) to achieving CAP and BCAP's policy aims.

Section 6.4.1 extract	Gamesys responses and comments
<p>The following amendments (coloured and italicised), mirroring the restriction placed on TV ads for alcohol (BCAP Code rule 19.15.1), are proposed to the text of CAP rule 16.3.12 (gambling) and BCAP rule 17.4.5 (gambling): Marketing communications / advertisements for gambling must not [...] be likely to be of <i>strong particular</i> appeal to children³⁷ or young persons³⁸, especially by reflecting or being associated with youth culture. <i>They must not include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.</i></p> <p><i>Where the subject of a gambling product is inherently of strong appeal to under-18s (for example, certain sports generally held to be popular with under-18s), the content of the marketing communication / advertisement may depict that subject, but it must not feature a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.</i></p> <p><i>CAP / BCAP has produced guidance on the application of the strong appeal test.</i></p>	<p>We do not agree with the suggestion that the proposed amendments are necessary to be made in order to protect those under the age of 18 from being exposed to gambling ads. We believe that the suggested changes are excessive and could hinder genuine advertising efforts, which do not pose any risks to those aged under 18. The suggestion that advertisements which include "a person or character whose example is <i>likely</i> to be followed by those aged under 18" may also be going too far with its presumption of the likelihood of any potential following. If any additional restrictions on persons or characters were to be implemented, it should be based on tangible evidence of under-18s' following instead. Otherwise, it would be extremely difficult to assess the likelihood of a character's example being followed by under-18s. We would like to understand the factors that would be considered and would expect to see clear guidance on how operators should make such assessments.</p>

b) Do respondents agree with the proposed amendments (set out in section 6.4.1 above) to CAP rule 17.13 (lotteries) and BCAP rule 18.5 (lotteries)? If not, please state why including any alternative approach(es) to achieving CAP and BCAP's policy aims.

Section 6.4.1 extract	Gamesys responses and comments
<p>The following amendments (coloured and italicised) are proposed to the text of CAP rule 17.13 (lotteries) and BCAP rule 18.5 (lotteries): Marketing communications / advertisements for lotteries must not [...] be likely to be of <i>strong particular</i> appeal to children³⁹ or young persons⁴⁰, especially by reflecting or being associated with youth culture. <i>They must not include a person or character whose example is likely to be followed by those aged under 18</i></p>	<p>This is inapplicable to Gamesys' advertising offering as we do not operate any lotteries.</p>

years or who has a strong appeal to those aged under 18.

Where the subject of a lotteries product is inherently of strong appeal to under-18s (for example, good causes involving certain sports generally held to be popular with under-18s), the content of the marketing communication / advertisement may depict that subject, but it must not feature a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.

CAP / BCAP has produced guidance on the application of the strong appeal test.

c) Do respondents consider the intended application of the rules proposed in questions 1(a) and 1(b) and the guidance to support their application (set out in sections 6.4.2 and 6.4.3 above) are broadly proportionate to the intended purpose of preventing gambling ads from appealing 'strongly' to under-18s? If not, please state why.

	Section 6.4.2 extract - BCAP alcohol guidance on 'strong appeal'	Gamesys responses and comments
a)	Personalities. Avoid those who are likely to have a strong appeal to the young; for example, pop stars, sportsmen and sportswomen who command particular admiration of the young, television personalities, youth-orientated performers and any person who is likely to have strong influence on the behaviour of the young.	We believe that an additional restriction of the use of personalities who <i>"command particular admiration or are likely to have strong influence on the behaviour of under-18s"</i> is disproportionate to the intention of protecting under-18s from viewing gambling advertisements. While we appreciate the need to protect the under 18-year-old from being indirectly targeted by gambling ads as a by-product of the use of characters with a firm history of appeal to children, we believe that the existing protections afforded by the current wording of CAP rule 16.3.12 and BCAP rule 17.4.5 and supporting guidance already effectively prohibit operators from including celebrities <i>"associated with youth culture"</i> . We believe the wording is sufficiently broad to ensure that such characters do not feature in any gambling advertising. The mention of "personalities" seems overly inclusive as it could potentially capture a very broad range of public figures. If the suggested wording was to be incorporated in the current rules, in the absence of any rulings for gambling ads specifically, and the very few rulings covering the use of personalities and their appeal (such as the ruling relating to David Beckham in 2015 and Madonna in 2012) clearer guidance is needed. We would expect "personalities" to be clearly and carefully defined. We would also like to see a list of specific areas of the "celebrity" world it

		<p>would capture, as well as the types of media – categories of programmes, shows, books, films etc.</p> <p>Additionally, we should consider the paradox of ads turning common people into celebrities or personalities who appeal to children purely as a result of them being featured in the ads. Would we then have to consider dropping them from the campaigns or deciding not to use their services again and, if so, how would such newly found appeal be assessed other than subjectively?</p> <p>We also have a further concern here that personalities from BAME communities who originate from the worlds of the arts and who have a more urban culture-focused offering will effectively be excluded from ever being part of our industry due to their potentially more natural appeal to younger audiences.</p> <p>Moreover, we would like to raise the concern of what impact this rule will have on over 25s appearing in ads, if they are likely to have strong appeal to under 18s? Similarly, in what way will this rule impact the exemption on under 25s appearing in ads on websites, where they are the subject of the bet.</p>
b)	Avoid themes that are associated with youth culture; for example, disregard for authority or social norms, teenage rebelliousness, mocking or outwitting authority be it parental or otherwise, immature, adolescent or childish behaviour or practical jokes and any behaviour that seeks to set those under 18 apart from those of an older age group.	As before, we believe that the current wording of CAP rule 16.3.12 and BCAP rule 17.4.5, and supporting guidance already effectively prohibit operators from incorporating themes “ <i>associated with youth culture</i> ” - that exact wording aiming to stop it is already in place.
c)	Teenage fashion or clothing mostly associated with those under 18.	We believe that this suggestion goes too far in attempting to protect the under 18-year-olds. Our concern is that the restriction on the use of fashion may be seen to curb a fully inclusive and diverse representation of Britain’s community in advertising. Urban culture is usually associated with Britain’s BAME’s communities and historically, many great artists come from these backgrounds. Urban culture (including music, fashion, art, etc.) is very popular in Britain, not only amongst young people and under-18s but also adults, equally. New guidance which prohibits an advertiser from using urban culture elements in most of its forms because

		<p>it is deemed to have a blanket appeal to under-18s because of its popularity will result in a less diverse representation of society and fewer opportunities for creativity promoting the inclusion of urban communities in all aspects of society. We would like to see the ASA encourage diversity without the potential threat of new rules indirectly curbing it.</p> <p>Additionally, the suggestion of the introduction of a ban on clothing associated with those under the age of 18 begs the question of what fashion items and brands would fall under this category. We could be faced with the issues of subjectivity leading to inconsequentiality of decisions and uncertainty of outcomes. How can one objectively decide which brands of clothing are mostly associated with those under the age of 18 as opposed to other age groups, such as all young people in their 20s or 30s? Have there been any rulings on this particular issue that would warrant the concern? In the absence of any evidence to base the categorisation on, we would have to rely on subjective assessments only, which, in our opinion, is not the most efficient way to protect those under the age of 18; the industry would benefit more from a set of objective standards as a benchmark for their creative choices.</p>
d)	<p>Avoid music or dance that is likely to appeal strongly to under-18s. But an advertisement that, for example, features an old recording that, perhaps as a result of its use in the advertisement, becomes popular with the young once again, will not necessarily be challenged. Announcements of alcohol-sponsored events may be made but the emphasis must be on the event, not the alcohol</p>	<p>Similarly here, we are of the view that these specific additions could be too restrictive and disproportionate to the intended purpose of preventing gambling ads from appealing 'strongly' to under-18s.</p> <p>Please see our comments at point c) above. We would also include a further concern that society and culture is ever changing and what is appealing one year or one month to an adult audience may quickly become appealing to a younger audience. Trends move very quickly and an operator that promotes a compliant annual campaign may end up running the risk of that campaign becoming non-compliant before it runs its course. An example we would like to point to is the 'retro' appeal of cartoons like Top Cat which are appealing to the youth of the 1970's but not today's youth. However, the ASA could argue that the theme is appealing to children</p>

		<p>nonetheless as the assessment of the appeal would be subjective. If any further qualifications were to be introduced, we would require transparency and clarification on the extent of this restriction, for example, whether it would apply not only music/dance, fashion but also other imagery, names, product, etc. We would require clarification on whether any other areas would be included, which we would expect to see captured in detailed guidance.</p>
e)	<p>Language commonly used by the young but rarely by an older generation; for example, slang or novel words.</p>	<p>In our opinion, this also goes beyond the strictly necessary measures needed to achieve the goal of preventing gambling ads from appealing 'strongly' to under-18s. Please see our comments at point (c) and (d) above.</p> <p>Additionally, our concern here is that language is also subject to nuances and trends and a lot of older slang re-emerges and is used by the young. It is an area that evolves very quickly and would require monitoring and very frequent reviews, which we are concerned could be very difficult, if not impossible to implement. We find ourselves in a position where we can't support the idea of blanket restrictions curbing language that does not appeal to under-18s only; the fact that certain expressions, novel words or slang are used by under-18s does not mean that those aged 18 or over do not use them or find them appealing. However, if the restrictions were to be introduced, we would require guidance on what is defined as usage by the "young" and who are the "older generation"? What is the benchmark for a generation to be considered old or young – are we considering 'boomers' and millennials old but any generation born past the 2000's as the young? We would like to know how the ASA plans to deal with these complications.</p>
f)	<p>Cartoons, rhymes or animation. Avoid those likely to have strong appeal to children and teenagers. Mature themes are likely to be acceptable.</p>	<p>We understand the risks and agree that gambling ads featuring child-oriented cartoons, rhymes or animation and imagery akin to that found in children's programmes, books and fairy tales would pose a threat to those under the age of 18. In compliance with the current regime, we take the necessary</p>

		<p>steps to never feature them in our advertising materials, fully appreciating the need for caution in this area. However, we believe that introduction of a blanket restriction to the effect of stopping us from including any cartoons, rhymes or animation is too broad for the aim it intends to fulfil. A lot of advertisements which use such modes of expression will not be even remotely appealing to children and they shouldn't be considered as such simply because they do not show real-life videos or stills. Due to the nature of the gambling product, animation forms a key part of how we advertise. Gambling products and games are animations in themselves. If we want to showcase the features or the products themselves, there is no way to depict them other than through the means of animation. Use and presence of cartoons or animated images will not always guarantee that children will find them attractive and will not always draw their attention. Our concerns with this section are as follows:</p> <ul style="list-style-type: none"> • There is no clear guidance on what animation would be captured and what 'mature themes' means. If this new restriction is enforced, a large portion of operators' currently compliant portfolio would become non-compliant per se, without applying any sort of test; either "particular appeal" or "strong appeal". • This also raises a further concern about a balance between limiting cartoons, rhymes or animations that are naturally child-appealing (e.g. cute animals, toys, fairy tales characters, school themes, etc.) which are already sufficiently prohibited by current rules, and including any type of cartoons, rhymes and animation not aimed at children (e.g. excerpts from games and other gambling tools, anime or manga aimed at adult audiences, workplace themes or holiday themes, etc.). What we fear could happen if this restriction is enforced without
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		<p>further consideration of the nuances it poses is that operators will be reluctant to include any such assets, severely limiting their creative output.</p> <ul style="list-style-type: none"> • We do not consider it sufficient that guidance would be provided only via ASA rulings once operators are found to be non-compliant. If we are working on establishing a solid framework to set a new era of ASA guidance, operators should be allowed clarity and transparency to be able to start off on a compliant front. <p>What we would like to see instead is comprehensive guidance notes with illustrative examples and definitions of the concepts the current rules cover. In our opinion, this would aid compliance with the current framework to better fulfil the goal of protecting those under the age of 18.</p>
g)	Caution is needed in the use of all sports. In addition, certain sports have a strong appeal to the young, for example, skateboarding or “extreme sports”; they should be avoided.	As stated previously, operators already exercise a necessary degree of caution, which is imposed on them by the current set of rules. In our opinion, that element of caution enables effective protection to be afforded to those under the age of 18. Our concern with this suggested edit is the lack of clarity around the treatment of virtual sports and whether these would be viewed similarly to, for example, video games which use avatars and/or skins. Additionally, there is an argument that extreme sports could in fact be much more appealing to adults than under 18-year-olds. If any further restrictions were to be introduced, we would require careful and detailed guidance on what is meant by “extreme sports”, including the rationale for their stricter treatment.
h)	Avoid puppets or cute lovable animals that are likely to inspire strong affection in the young, adolescent or childish humour must be avoided.	<p>Please see our comment above on point (f).</p> <p>As stated above, we recognise the dangers resulting from the use of cute lovable animals in gambling advertising and we fully support the current regime’s prohibition of their inclusion in creative materials. We believe that the current rules already safeguard against the use of such cute lovable animals</p>

	as well as adolescent or childish humour in advertising creative and there is no urgent need for further restrictions. Instead, we would advocate for further clarity on the existing restrictions and use of illustrative examples to aid compliance with the current set of rules. However, for the sake of argument, for any further restrictions to be implemented successfully, the industry would require clarity on concepts such as ‘adolescent or childish humour’; these concepts would require a careful definition. There is a rule already in place stating that people should not be shown behaving in a juvenile manner but further clarity on its scope and application would be essential.
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Section 6.4.3 extracts - Interpretation	Gamesys responses and comments
<p>CAP and BCAP’s proposals to prevent gambling and lottery advertisements (together ‘gambling advertisements’) from appealing ‘strongly’ to under-18s focus principally on imagery, themes and characters. They are not intended to restrict simple text or audio references to, for example, sports, good causes, teams or individuals generally held to be popular with under-18s.</p> <p>It is CAP and BCAP’s intention that the ASA would assess the test of ‘strong appeal’ in line with the points of guidance set out above, including provisions on certain characters appearing in ads. Assessments are likely to rely on various aspects of characters’ general appearances and how they behave. For example, child- orientated animated characters are presently restricted under the ‘particular appeal’ test; a ‘strong appeal’ test would be likely to extend the restriction to other types of characters. For alcohol advertising, which is subject to the ‘strong appeal’ restriction, the ASA upheld against the use of a parrot puppet (2014) and ‘Kevin’ the Carrot(2018), but not against ‘Henry’ the Fox (2014) and several animated frogs (2017). Assessment of a personality’s appeal will take into account their general profile among the public and with under-18s in particular. The ASA would likely consider the context the personality is best associated with (for example, as a sportsperson or entertainer) and their likely under-18 following. This may also</p>	<p>While we agree that it is of utmost importance to protect the under 18-year-olds from viewing gambling ads by ensuring that they are not exposed to cute, lovable and cuddly characters, we are concerned that extending the restriction to a blanket inclusion of imagery and characters, and less tangible concepts such as themes, would not necessarily aid the goal of protecting the under-18s any further but could instead have the unintended effect of hindering creative efforts. The assessment of characters’ behaviour, for example, appears to be a subjective test and could lead to inconsistencies, as evidenced by the disparity between the decisions referred – upholding the complaints against the use of a parrot puppet (2014) and ‘Kevin’ the Carrot (2018), but not against ‘Henry’ the Fox (2014), the actor dressed as a fox with a purple umbrella in the Foxy Bingo ad (2015) and several animated frogs (2017). If any such restrictions were to be introduced, it would require detailed creative guidelines and consistency of application.</p> <p>Additionally, we believe that it might be necessary for any such guidelines to be tailored specifically to gambling, instead of relying on the “strong appeal” test parameters devised specifically for alcohol advertising. Our concern is that gambling and alcohol are two dissimilar products with the only similarity being that they are both age-restricted. This, on its own, does not warrant identical treatment. Gambling</p>

include metrics such as a personality's following on social media. In relation to personalities, the ASA has only once assessed a TV ad for alcohol against the restriction on 'strong appeal. It did not find the ad, featuring [David Beckham](#) (2015), in breach because the ASA was of the view that he had retired as a player and had been based in the USA for several years and his appearance in the ad was, therefore, unlikely to have 'strong appeal' to under-18s.

The ASA would likely to adopt broadly the same approach to assessing the 'strong appeal' to under-18s of characters that have an existence outside the context of the advertisement; principally, licensed characters from TV and film, but also more long-standing, traditional characters such as Santa Claus.

Overall, respondents should note that, recognising the implications of public concerns over gambling advertising and the GambleAware findings, the ASA will take a strict line in its approach to the application of any new test of appeal.

Respondents should also note the existing CAP and BCAP gambling rules include provisions banning the inclusion of personalities or characters who are or appear to be under 25; these rules remain unaffected by the proposals on 'strong appeal'⁴¹.

would have to be compared to a product, with which it does not necessarily share any meaningful characteristics and evidence of potential risks may not be equally applicable to both and shouldn't guide the need for further restrictions in the same way. There is no clear link between the types of harm associated with gambling as opposed to alcohol which would justify applying the same threshold. The differing nature of the two products also calls for a non-uniform treatment. As stated above, animation forms a key part of how we as a business advertise. Gambling products and games are animations in themselves. If we intend to showcase our products (i.e. games), there is no way to depict them other than through the means of animation. This can't be compared to alcohol which is a real-life product and turning it into animation would not only seem unnatural or even spurious, but it would also arise of out creative intention rather than necessity.

Additionally, the way in which gambling and alcohol are advertised is different because of how they are seen from the perspective of consumers and how consumers avail of the products. The number of steps and hurdles that consumers face before they can access an online gambling product is much more restrictive than what a consumer has to undertake to purchase alcohol; the process of accessing gambling content is much stricter and the consumer journey is very different.

One additional point worth raising is that in relation to alcohol advertising, CAP Code doesn't seem to be as strict as BCAP Code because they apply two different appeal tests – CAP holds alcohol to a "particular appeal" standard while BCAP applies the "strong appeal" test. We struggle to understand why the standard to which gambling would be judged against could be even higher than that applied to alcohol advertising. Similarly, e-cigarettes are not held to the same standard as alcohol either. Therefore, we believe that the suggested changes to the rule rendering the restrictions for gambling advertising most severe is unjustified.

	<p>If further restrictions were to be implemented, we can see certain benefits to a new test, designed specifically for gambling ads being created, instead of relying on the “strong appeal” test which was tailored to alcohol advertising. It would provide gambling advertisers with clarity and certainty as to the standards they would be judged against. It might be more beneficial for the industry to have a clear and defined framework that operators can work within. Otherwise, the creative process could be limited to comparing gambling advertising to alcohol advertising and attempting to mimic them in the hope that they would not receive complaints. This could distort the image of gambling advertisements and lead to further problems, misleading advertising and general confusion.</p>
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d) Do respondents agree with the proposal (set out in section 6.4.4 above) to exempt from the rules, proposed in questions 1(a) and 1(b), certain content inextricably linked to licensed gambling activity or the good causes that benefit from lottery funds? If not, please state why.

Section 6.4.4 extract	Gamesys responses and comments
<p>6.4.4. Exemption for certain content depicting the subject of a licensed gambling activity or the good causes that benefit from lottery funds</p> <p>BCAP guidance on TV ads for alcohol, preventing ‘strong appeal’ to under-18s, states at point (g): <i>Caution is needed in the use of all sports. In addition, certain sports have a strong appeal to the young, for example, skateboarding or “extreme sports”; they should be avoided.</i></p> <p>Unlike alcohol products, some gambling products are inherently linked to activities that are of ‘strong appeal’ to under-18s; for instance, lotteries good causes and bets on the outcomes of sports matches, TV shows and eSports tournaments. Football is an obvious example of a sport generally held to be popular with under-18s. It is not of ‘particular appeal’ to under-18s (in other words appealing more to under-18s than to adults). It appeals equally across different age ranges. Applying a ‘strong appeal’ test to football and other subjects, which are held to be popular with under-18s and inextricably linked with the licensed</p>	<p>While we agree with this sentiment in principle, fully appreciating that there would be no other avenues to advertise these specific gambling products in the absence of the exemption, our concern with this section is whether there is a question of fairness or even anti-competitiveness arising out of such differential treatment. For example, those operators (like us) who do not have sportsbooks would have fewer creative options available to them due to our product portfolio. We may be limited to the use of creative and/or game tiles, which in themselves are animated, feature bright colours and themes that can be child friendly. Therefore, we are limited in the avenues available to us in terms of asset creation. Furthermore, if we wanted to run a promotion or campaign that isn’t for sportsbook but related to a sporting event, would we be able to use such sporting imagery (for example, referring to a Euros tournament or the Olympics with and using supporting creative) or will this “privilege” be effectively reserved for companies that hold sportsbooks? Operators like us, who are mostly casino and bingo led,</p>

gambling activity would effectively prevent the advertisement of those licensed activities. The Gambling Commission is responsible for licensing gambling operators and ensuring their provision of products is compatible with the Gambling Act 2005's requirement to ensure children and young people remain protected. The ASA could not reasonably prevent the advertising of products that have met these requirements.

CAP and BCAP therefore propose an exemption for certain content that depicts subjects, which are held to be popular with under-18s and inextricably linked with the licensed gambling activity or good causes benefitting from lottery funds.

a) It is proposed that the 'strong appeal' rule would not apply to:

- i. the activity which is the subject of the licensed gambling activity (for example, football and eSports) in general terms;
- ii. *generic* depictions of these subjects (for example, balls and other sporting equipment, stadia or depictions of players and play) provided that they are not presented in a manner that might 'strongly' appeal to under-18s (for example, using cartoon-style graphics);
- iii. content that specifically identifies a subject of the licensed gambling activity (for example, the logos of an eSports game, sports team, sports tournament, or other event);
- iv. depictions of good causes benefitting from lottery funds (for example, holiday activities arranged for disadvantaged children) or references to lottery prizes; and
- v. material relating to an advertiser's brand identity (for example, logos or livery).

b) For the avoidance of doubt, the proposed exemption would not cover advertising featuring of a person or character whose example is likely to be followed by those aged under 18 years or who has a 'strong appeal' to those aged under 18: doing so would be banned by the proposed new rule. Moreover, if an ad took advantage of one or more of the

would be put at a significant disadvantage. There is a need for clear guidance around this. We consider that a fair balance needs to be struck between different operators, the varying product portfolio and the creative freedoms given to them by the regulations. There is a very strong commercial detriment argument, whereby the advertising of operators without a sportsbook would not come across as strongly due to the limitations imposed on the available assets. The free pass on advertising of the suggested exempt licensed activities would most likely result in commercial damage to the operators without a sportsbook, through no fault of their own.

Additionally, it is worth noting that the Gambling Act review has prompted a separate debate around shirt sponsorships which could result in them being banned because of their mass appeal and presence of gambling advertising on the shirts and around football grounds. If the ASA were to make an exemption for content linked to activities that are of 'strong appeal' to under-18s; for instance, lotteries good causes and bets on the outcomes of sports matches, TV shows and eSports tournaments, this could build in an unintended contradiction into the framework and the schools of thought around gambling advertising.

Another concern for us and the industry is also the question of whether the list of exemptions is going to continue to evolve. Introducing a rigid list of initial exemption on its own may not reach the desired outcome of protecting the under-18-year-olds because the industry is constantly evolving.

<p>exemptions (i)-(v), the ad could not include any other factor which, judged in whole and in context, would be likely to render the ad of 'strong appeal' to under-18s.</p> <p>CAP and BCAP propose to use the consultation output to inform drafting of guidance to bear out the practical implications of the proposed exemption in relation to any 'strong appeal' restriction that may be introduced following this consultation.</p>	
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e) Do respondents agree the rules proposed in questions 1(a) and 1(b) should not apply to advertisements restricted on the basis of robust age-verification measures (set out in section 6.4.5 above), which, for all intents and purposes, exclude under-18s from the audience? If not, please state why.

Section 6.4.5 extract - Targeting based on age-verification	Gamesys responses and comments
<p>6.4.5. Targeting based on age-verification – An important consideration relating to the proposal is the mitigating effect of using highly robust targeting measures to exclude under-18s from receiving a gambling advertisement. The ASA has an established position in this respect relating to the 'particular appeal' test. Gambling ads that are of 'particular appeal' to under-18s and that are 'freely accessible' will breach the rules. However, if highly robust targeting methods are used to the effect of excluding, for all intents and purposes, all under-18s from the audience, the content of the ad can appeal particularly to under-18s (given this age group's absence from the audience). Of note, the 'particular appeal' test is not applied in these circumstances as there are no under-18s in the audience, to whom this restriction is designed to protect. So, if the proposal is implemented, the 'strong appeal' test would also not apply in these circumstances.</p> <p>To meet the requirement, marketing data would have to be drawn from sources compliant with the Gambling Commission's age verification requirements; for example, an operator's own customer data or certified marketing lists from third party suppliers⁴². Although other approaches could not be prohibited, the ASA would expect the marketer to demonstrate that verification had been carried out to standards consistent with those that the Gambling Commission requires; for</p>	<p>We agree that there is no need for any stricter rules to be applied to advertisements which are subject to robust age-verification measures, effectively allowing for a successful exclusion of those under the age of 18 from the audience pool; the current rules fulfil their goal of effectively protecting them from the risks associated with exposure to gambling ads. Our wider comment is that we need to appreciate that unless social media providers and other platform providers can guarantee (or at least improve their tools) that their age-gating and targeting tools operate effectively, it is likely that all betting and gambling companies could otherwise at some point fall foul of stricter requirements in the absence of appropriate exemption. We have the following comments in relation to this suggestion:</p> <ul style="list-style-type: none"> • We believe that the current approach of relying on the gambling ads recipients' age verification should remain in force without the transition to a 'strong appeal' test. • If the Gambling Commission is open to the idea of data based on financial info, for example, credit card possession, it would be important to understand what else they could accept, and whether they would consider Google and/or Facebook's age categorisation algorithms sufficient. Google puts all consumers into an age bracket based on

<p>example, data based on financial information relating to the possession of a credit card, is likely to be sufficient.</p> <p>In terms of the media exempted, advertisements on a website or app behind a robust member sign-in wall, direct marketing (via email or SMS) or content targeted to age-verified individual's social media accounts would not be subject to the 'strong appeal' rule as under-18s are, for all intents and purposes, unlikely to form any part of the audience.</p> <p>CAP and BCAP propose that this approach should continue to apply to the introduction of any rule prohibiting gambling advertisements from appealing 'strongly' to under-18s.</p>	<p>any and all data they can amalgamate, without disclosing what it actually is. This could include credit cards, browsing history, date of birth specified in Gmail accounts, Facebook friends who wished someone a 'happy 30th birthday' on a particular day and lots more.</p> <ul style="list-style-type: none"> • It would be interesting to know whether a 'robust member sign-in wall' of Google or Facebook or the App store would be sufficient, if the registration to that account has self-certified age declaration <i>and</i> its own un-disclosed means of verifying that age information. • The Ad Tech workstream contains requirements around making use of filters when they are available. We would like to know whether there could be any specific provisions around content and targeting which would cover the instances where a child views an advert which is not of strong appeal to them, on a platform which has imperfect targeting. This has historically been treated as a breach in some cases because the targeting was held to a higher standard than it could achieve in practice.
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Consultation question 2

- a) Do respondents agree with CAP and BCAP's proposed additions to the [Gambling advertising: responsibility and problem gambling](#) guidance? If not, please state why.

Proposed additions	Gamesys responses and comments
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Presenting complex bets in a way that emphasises the skill or intelligence involved to suggest, inappropriately, a level of control over the bet that is unlikely to apply in practice.

We would like to understand what types of gambling this would extend to. Sports betting or spread betting is not currently part of Gamesys' offering. However, we feel that it is necessary for "complex bets" to be defined. We would be keen to understand what is meant by "complex betting" because the definition could potentially extend to poker, casino games and Slingo games if the illusion of skill or control are to be included. We do not intentionally present complex bets in a way that emphasises any skill or intelligence involved but, depending on what the definition will encompass, we could potentially fall foul of referring to skill-based games. That could have an impact on how we market our games. We do not feel like the definition should be broad enough to include poker, casino and Slingo games but we would expect some clarity around this in order to know how to comply with the new rules.

Presenting gambling as a way to be part of a community based on skill.

We believe that the expression "community based on skill" requires more explanation. Could you please provide specific examples of how you would expect gambling to be presented for it to fall under this category? Is this a reference to the definition of "game of skill", differentiating games of chance? This could present a problem for us if a poker community is considered a community based on skill. Could you please provide us with guidelines on what would be captured? We do not believe that references to poker communities should fall foul of any new restrictions because they exist purely to enhance the players' experience rather than entice them or incentivise them to gamble in an inappropriate way. They should be treated in the same way as our bingo chat communities which are another example of how a community can enrich play in a fun yet responsible manner.

Implying that money back offers create security.

Our advertising materials do not directly state or imply that money back offers create security within our understanding of "security". We believe that "security" is another expression that would need to be carefully defined as the industry needs to understand what it would capture. Adequate social responsibility rules are already in place preventing gambling operators from including any suggestions in their advertising that players will not suffer economic detriment as a result of their gambling, but we are keen to understand the rationale for the proposition that more could be done to alleviate any growing concerns. We would like to ask for some examples of promotional mechanics that

Humour or light-heartedness being used specifically to play down the risks of gambling.

Unrealistic portrayals of winners (for example, winning first time or easily).

would potentially be prohibited. At Gamesys, we take the necessary precautions to ensure that we do not create any inaccurate perceptions of risk or, on the contrary, financial stability. While we do offer cashback on losses, it is common industry practice to do so and, if done responsibly, it does not create any false representation of financial security and does not affect players negatively. Offering deposit match is also a common industry practice but it is difficult to ascertain whether that would be considered as creating a false sense of security.

Gamesys' marketing materials sometimes take on a light-hearted quality with a certain level of humour present, if and when appropriate, in order to match our various brands' tone of voice. In line with the current regime, we take the necessary steps to ensure that any notes of humour or light-heartedness featured in our advertisements do not trivialise gambling or play down the risks of playing on our sites. We would appreciate some direction as to why this point is being called out specifically while it's something that already exists under the umbrella of social responsibility and trivialisation; is there any specific concern that the consultation aims to address? We believe that the current rules and guidance sufficiently prevent all scenarios of inappropriate enticement to gambling or suggestions that the decision to gamble should be taken lightly, successfully eliminating the ensuing risks of downplaying the dangers associated with gambling. If there are any specific examples of concern that the BGC believes are not already sufficiently covered under the existing rules, we would be willing to find out more.

At Gamesys, we employ effective measures to eliminate the risk of untrue portrayals of winners being featured in our advertising by ensuring that all mentions of real life wins and other statistics are true and readily proven. We keep records of historic wins and any claims referring to wins are in line with an established internal review process, which includes a substantiation exercise and checks on the mechanics and likelihood of wins. However, using terms such as "unrealistic" is too vague in our opinion. We do not believe that there is anything that should be covered by "unrealistic" that isn't captured by "false" already. If the rationale behind the change is to introduce more clarity, we believe that the current guidance should merely be updated to reiterate substantiation requirements in the context of

	<p>gambling and include illustrative examples rather than introduce new nomenclature that could create further confusion. It also has the potential of making the new restriction unintentionally wide because the definition of “unrealistic” is too broad and could capture claims that can be substantiated. Simply refreshing the meaning of the current rules would instead increase awareness of the current regulation. Examples such as ones explaining how to include a win amount from a certain sized stake on a particular occasion (such as “<i>a member won £xxx from a £/p xx stake on [name of game]</i>”) would make it easier for advertisers to understand how to comply with the rules. Similarly, it is unclear what winning “easily” is intended to encompass – we would like to ask for some more clarity and examples of potential claims that this would be aimed at. Is the intention to avoid mentioning max wins and wins based on max stakes or is the focus on the actual manner of winning, i.e. winning in the first spin/within the first two spins/at first try or winning a big amount with a very small stake? While our marketing materials do feature claims with illustrative examples of our members’ historic wins or depictions of actual game play, which sometimes include real footage of bonus rounds, we ensure that each such claim can be substantiated and does not exaggerate the chances of winning – a protection which we believe is afforded by the rules already in place. By not guaranteeing the amounts to be won or implying that it will be easy to attain them, it is already possible to meet what we believe is the main outcome of the existing protections. As such, we do not see the immediate need for a significant redraft because there does not seem to be a regulatory gap that needs to be addressed.</p>
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b) Do respondents consider that there are additional provisions, which might be added to better meet CAP and BCAP’s objective of ensuring that its guidance protects vulnerable adults from ad content with the potential for gambling advertising-related harm? If so, please set out the reasons including reference to the evidence base, further information and examples as necessary.

Gamesys suggested additional provisions	Gamesys reasons
<p><i>Provisions detailing:</i></p> <ul style="list-style-type: none"> • <i>Specific instructions on do’s and don’ts,</i> • <i>Definitions, and</i> • <i>Illustrative examples.</i> <p><i>More emphasis on targeting and filtering instead.</i></p>	<p>In line with our responses provided above, we do trust that the restrictions already in place protect the under-18s appropriately.</p> <p>We believe that the emphasis should be placed on increasing clarity and understanding of the current rules, through perhaps re-drafting the current rules through including more detailed instructions and illustrative examples, as well as enhancing and widening the accompanying guidance in the absence of a robust set of rulings to guide the advertisers.</p> <p>There is a need for greater clarity and consistency of the current framework to ensure that the advertisers fully comprehend the current level of restrictions and protections afforded to the under-18s. We should not be finding ourselves in a position where the best way to achieve such clarity is for the rules to be breached and rulings to be made; on the contrary we should aim to avoid it all costs and focus on being compliant. However, in order to be compliant, we need stricter guidance. This level of comfort must be achieved before the introduction of any new rules and further limitations in order to avoid further confusion and overcomplication of rules which are already complex.</p> <p>Greater emphasis should be placed on the advertisers and platform owners to ensure effective targeting and filtering measures are in place as a prerequisite to hosting gambling advertisements.</p>

Consultation question 3

a) Do respondents agree that evidence, identified by the GambleAware research, of an association between exposure to gambling and “susceptibility” to gambling for people aged 11-17 are, at most, modest and do not present a sufficiently robust basis to merit restricting further the media in which, and the audience to which, gambling advertisements may be

served? If not, please state why setting the basis upon which you believe the GambleAware evidence merits further regulatory interventions and what those interventions should be.

b) Respondents are invited to submit further evidence, which suggests that exposure to gambling advertising can, in and of itself, result in gambling advertising-related harms? Respondents to this question are encouraged to have regard [to the CAP and BCAP guidance](#) on their approach to evidence-based policy making.

Gamesys response to consultation question 3 a) and b) combined:

Having analysed the evidence identified by the GambleAware research, we have given the resulting findings and suggestions for improvement a lot of careful consideration. We fully agree that, based on the results of the research, the correlation between exposure to gambling and susceptibility to gambling for those aged between 11 and 17 is low and, as such, does not warrant further restrictions on the media in which gambling ads are served or the audiences which view them. We have also taken the liberty to dissect the findings in even more detail and provide additional comments, which were prompted by the encouragingly slim association of gambling ads with harm to young people. We would like to use the below extracts as evidence supporting our firm belief that the current rules and guidance sufficiently protect those under the age of 18 and other vulnerable people against the dangers of viewing gambling ads.

Evidence	Gamesys comments
<p>E1: Excerpt from the current ASA Consultation: “Underage participation by those aged 11-16 in any gambling activity has declined from 22% to 11% over the past decade; here, ‘gambling activity’ mainly relates to personal betting (for example playing cards with friends) and legal play of lotteries (for example, participating with the consent of parents/guardians).”</p> <p>E2: Excerpt from the Final Synthesis Report: Paragraph 1.2.4: <i>“The qualitative research did identify some instances of adverts that participants found appealing, including the use of music, colours, characters and celebrities that will have an obvious appeal to children and young people; or the presentation of insider knowledge/skill which was more appealing to high risk gamblers. However, it also demonstrated that children and young people are attracted to a wide range of other features that are not unique to their cohort”</i></p> <p>E3: Government Response to the House of Lords Gambling Industry Committee Report: Social and Economic Impact of the Gambling Industry Presented to Parliament by the</p>	<p>In terms of the 11-17 age bracket, we consider Esports and Esports gambling to be a much stronger threat than regulated gambling due to the evidence we have reviewed and knowledge of further trends for that age bracket. Combined with the ASA’s findings that underage participation has been declining significantly, we believe that “susceptibility” is indeed minimal or at most, modest, in a way that does not merit any further restrictions.</p> <p>Furthermore, the Government’s findings indicate that the rates of gambling by young children are very low. It is the parents/guardians who allow (knowingly or negligently) their children to gamble through the parents’/guardians’ devices and that is what contributes to the percentage of young children who are able to gamble at all. The Government seems to believe that the way forward is not further regulation for the gambling operators but further education for the parents/guardians instead.</p>

Secretary of State for Digital, Culture, Media & Sport by Command of Her Majesty
December 2020)

(<https://committees.parliament.uk/publications/3875/documents/38871/default/>)

Published 8 December 2020 - excerpts:

“63. Findings from the Gambling Commission’s Young People and Gambling Survey 2019 indicate low rates of online gambling participation, with 7% of children reporting they have ever gambled online. That survey also found that more children had used their parent’s account to gamble online with that parent’s permission (5%) than without (2%). This suggests that there is scope for parents and guardians to do more to ensure that children are not engaging in gambling activities which the law does not permit.”

“69. A major piece of research commissioned by GambleAware looking at the effect of gambling advertising and marketing on children, young and vulnerable people was published this year. That study found that exposure to gambling advertising was not amongst the factors correlated most closely with gambling participation amongst 11-24 year olds. However, that research also provided insight into the characteristics of adverts that may appeal to children. In light of this research, the Committee of Advertising Practice (CAP), who oversee the codes on advertising content, is currently consulting on lowering the threshold at which an advert can be banned on the basis of its appeal to children.... Figures published by the ASA indicate that children saw an average of 2.5 gambling ads per week on TV in 2019, and that their exposure to sports betting advertising fell to just 0.3 adverts per week.”

“70. Studies looking at the impact of advertising on adult gambling behaviours have indicated that exposure to advertising may be linked to a greater propensity to gamble. However, the existing evidence base does not demonstrate a causal link between exposure to gambling advertising that complies with the current rules and problem gambling. The government will keep this under review and

has announced that it will consider evidence relating to gambling marketing and advertising as part of the Review of the Gambling Act 2005."

E4: Other independent studies:

Esports gambling in general is a prevalent issue as documented by several recent studies. One of the key studies done in this field is '**Macey, J. and Hamari, J. (2019) 'eSports, skins and loot boxes: Participants, practices and problematic behaviour associated with emergent forms of gambling', New Media & Society, 21(1)**'.

(<https://journals.sagepub.com/doi/10.1177/1461444818786216>)

Based on the aforementioned study, the researchers found that *"...spectators who are highly engaged in eSports participate in gambling, and gambling-like, activities at a higher rate (74.6%) than those who have either low (64.3%) or moderate (59.8%) levels of engagement. This lends weight to the findings of previous research which note correlations between eSports consumption and increased gambling activity (Macey and Hamari, 2018)."* The researchers further deduced that there is *"clear and meaningful evidence that increased eSports spectating is associated with increased participation in gambling activities related to video games."* The study showed that the number of young people who participated in gambling connected to video games and eSports was almost 75% for those aged 25 or under. This activity is facilitated by virtual items and is conducted via illicit and unregulated websites. Furthermore, the researchers urge for increased attention from regulators to review and control the non-stop proliferation of unregulated gambling activities into video games and eSports as part of mainstream culture, a phenomenon that will only keep growing.

E5: A study entitled 'Esport Betting and Skin Gambling: A Brief History, Journal of Gambling Issues vol.43 (several authors from Central Queensland University <http://jgi.camh.net/index.php/jgi/article/view/4059>) also delves into this issue and reaches a similar conclusion. Virtual game items known

as "skins" or "loot boxes" are being used as currency to place bets on E-sports and illegal third-party sites that host games of chance. Skins or loot boxes can on some platforms, be directly exchanged for real-world currency, through in-game marketplaces, third-party services or a combination. These elements are not properly regulated and are a lot more prevalent between online gamers as most young people can access video games much more easily than any regulated online gambling platforms.

Gambling Health Alliance response to CAP and BCAP Consultation **Responding to the findings of the GambleAware Final Synthesis Report**

The [Gambling Health Alliance](#) (GHA) is a coalition of 50 organisations and individuals with a shared interest in reducing the damage caused to health and wellbeing from gambling. The secretariat is provided by the [Royal Society for Public Health](#) (RSPH). The objective of the Alliance is to support policy-making to address the social, economic and cultural factors that contribute to gambling harm and the inequalities in health caused by it. We do this by highlighting gambling-related harm, engaging with policy makers, and promoting evidence that can be translated into reducing gambling harms.

We welcome the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) consultation to change the rules and guidance on gambling and lottery advertising in response to the GambleAware report. Exposure to gambling advertising normalises participation in gambling and gambling-like activity. We are pleased to respond to this consultation, and believe that the public health approach to reducing harm from gambling should include tighter restrictions for gambling advertising to de-normalise it, in order to protect young people and vulnerable individuals. We will call for tougher advertising rules for gambling products in our response to the Gambling Act Review; our full position statement can be found [here](#).

Recommendations

- Advertising with ‘strong appeal’ to children and young people should be prohibited.
- Ban all advertising associated with real and virtual sport.
- Restrictions should be based on appeal rather than age-verification processes.
- Lower the 25% test level to 5%.

1a) Do respondents agree with the proposed amendments (set out in section 6.4.1 above) to CAP rule 16.3.12 (gambling) and BCAP rule 17.4.5 (gambling)? If not, please state why including details of any alternative approach(es) to achieving CAP and BCAP’s policy aims.

Yes, we support the amendments to prohibit marketing communications and advertising for gambling that has ‘strong appeal’ to children and young people, as opposed to ‘particular appeal’. We believe this may be more effective at protecting young adults aged 18 to 24 who are often overlooked, as marketing and advertising with a ‘strong appeal’ may be more likely to also apply to this group too, than communications with ‘particular appeal’.

The public health approach to other issues such as smoking and obesity includes tighter advertising controls than we currently have for gambling products. Virtually all tobacco advertising is now prohibited in the UK, with most advertising and sponsorship being prohibited from February 2003 (for example on billboards and in printed publications) and a ban on tobacco sponsorship of international sport introduced from July 2005.¹ Similarly, the government’s latest obesity plan promised a ban on adverts for food high in fat, salt and sugar (HFSS) on TV and online before the

¹ <https://ash.org.uk/category/information-and-resources/advertising-promotion-sponsorship/>

9pm watershed,² and an additional consultation followed, exploring introducing a total ban of HFSS advertising online.

The World Health Organisation have recognised that a total ban on advertising “substantially reduce tobacco consumption and protect people, particularly youths, from industry marketing tactics. To be effective, bans must be complete and apply to all marketing categories. Otherwise, the industry merely redirects resources to nonregulated marketing channels. The tobacco industry strongly opposes such comprehensive bans because they are effective in reducing tobacco use.”^{3,4}

In the case of smoking and obesity, advertising restrictions are by no means a silver bullet to solving the problem, but these measures contribute to the wider harm reduction approach. Gambling advertising must be brought in line with this, particularly to protect children and young people. There is public support for this: Clean Up Gambling’s monthly tracker polling has consistently found 75-85% in favour of the statement ‘Children shouldn’t be exposed to gambling advertising at all’,⁵ which indicates the public would go further than ‘strong appeal to children’, possibly to ‘any appeal to children’ or at the very least ‘reasonable appeal to children’.

1b) Do respondents agree with the proposed amendments (set out in section 6.4.1 above) to CAP rule 17.13 (lotteries) and BCAP rule 18.5 (lotteries)? If not, please state why including any alternative approach(es) to achieving CAP and BCAP’s policy aims.

Yes, for the same reasons as stated in our answer to 1a we support the proposed amendments in relation to advertising lotteries.

1c) Do respondents consider the intended application of the rules proposed in questions 1(a) and 1(b) and the guidance to support their application (set out in sections 6.4.2 and 6.4.3 above) are broadly proportionate to the intended purpose of preventing gambling ads from appealing ‘strongly’ to under-18s? If not, please state why.

While we agree that the rules are proportionate, we raise the need for greater clarification of how they would work regarding advertising sports betting. Despite the ‘whistle-to-whistle’ advertising ban, sport and gambling are inextricably linked, and famous players are often used to market gambling firms. For instance, Wayne Rooney wears the number 32 for Derby County, and subsequently the club secured sponsorship from the betting firm 32Red.⁶ Similarly, in 2018 Anthony Joshua became William Hill’s global brand ambassador.⁷ One study found that because gambling sponsorship extends much beyond adverts in commercial breaks, the ‘whistle-to-whistle’ ban will have limited effect on gambling exposure.⁸

When RSPH researched young people’s relationship with gambling, its normalisation through sport was a common theme. A 16 year old male focus group participant from England told us: *“It [gambling advertising] is everywhere you look when you go to the football. It would probably look*

² <https://www.gov.uk/government/publications/tackling-obesity-government-strategy/tackling-obesity-empowering-adults-and-children-to-live-healthier-lives>

³ <https://www.who.int/tobacco/mpower/enforce/en/>

⁴ https://www.euro.who.int/__data/assets/pdf_file/0004/74722/E82993.pdf

⁵ <https://cleanupgambling.com/news/huge-public-support-for-online-gambling-reforms>

⁶ <https://www.derbytelegraph.co.uk/sport/football/football-news/wayne-rooney-number-derby-county-3700534>

⁷ <https://www.williamhillplc.com/newsmedia/newsroom/corporate-news/2018/anthony-joshua-becomes-william-hill-global-brand-ambassador/>

⁸ <https://www.sciencedirect.com/science/article/pii/S0033350620300512>

weird it all without it now".⁹ At the time we recommended that the Department for Digital, Culture, Media and Sport propose legislation preventing gambling operators from acting as title sponsors for sports clubs.

As many famous sports personalities and eSports players appeal to children and young people, we suggest that all gambling advertising associated with sport, both real and virtual, is banned. We are part of the Coalition Against Gambling Ads,¹⁰ and we support its campaign to end all gambling advertising, promotion and sponsorship. This is particularly pertinent within sport, because of its appeal to children and young people. RSPH's research showed how interlinked sport and gambling are for young people (in the month prior to the survey, one in ten respondents had been to a stadium sponsored by a gambling operator), and that the notion of 'strong' appeal powerfully applies to sport.

The research also raised the importance of consulting with young people directly to understand their perception of gambling and advertising. We suggest young people are involved with defining what constitutes 'strong appeal', in the context of the proposals being considered here, and then on an ongoing basis.

1d) Do respondents agree with the proposal (set out in section 6.4.4 above) to exempt from the rules, proposed in questions 1(a) and 1(b), certain content inextricably linked to licensed gambling activity or the good causes that benefit from lottery funds? If not, please state why.

We do not agree with exempting the logos of eSports games from the rules. The British eSports Association found that 35% of eSports players in the UK are aged 18 to 24,¹¹ and the majority (93%) of children in the UK play video games on average three hours a day.¹² These groups are intended to be protected from exposure to gambling advertising by the proposals set out in this consultation, yet excluding eSports could allow a significant number of children and young people to see appealing gambling advertising. We reiterate our suggestion that gambling advertising associated with virtual sport is banned.

1e) Do respondents agree the rules proposed in questions 1(a) and 1(b) should not apply to advertisements restricted on the basis of robust age-verification measures (set out in section 6.4.5 above), which, for all intents and purposes, exclude under-18s from the audience? If not, please state why.

We do not agree that the rules should not apply to adverts restricted on the basis of age-verification. Online age-verification is not robust enough to prevent under-18s accessing gambling activities. Our research found that nine in ten young people view buying a loot box as a form of gambling,¹³ and that one in ten young gamers had used their parent's debit or credit card to purchase loot boxes.¹⁴ While loot boxes in video games are currently not a form of gambling, using a parent's card and identification online is a potential loophole for under-18s to engage in gambling activity. Furthermore, because of the presence of advertising cookies, individuals will continue to receive gambling marketing after accessing that material online.

⁹ <https://www.rsph.org.uk/our-work/policy/gambling/skins-in-the-game.html>

¹⁰ <https://caga.uk/>

¹¹ <https://britishesports.org/news/new-reports-explore-the-size-of-uk-esports/>

¹² <https://www.childrenscommissioner.gov.uk/report/gaming-the-system/>

¹³ <https://www.rsph.org.uk/our-work/campaigns/lid-on-loots.html>

¹⁴ <https://www.rsph.org.uk/about-us/news/over-1-in-10-young-gamers-get-into-debt-because-of-loot-boxes.html>

In addition, this potential exemption provides no protection for young people over the age of 18 who may be vulnerable to gambling related harm. We suggest restrictions are applied on the 'strong appeal' basis rather than age-verification.

2a) Do respondents agree with CAP and BCAP's proposed additions to the Gambling advertising: responsibility and problem gambling guidance? If not, please state why.

Yes, we agree with the proposed additions.

2b) Do respondents consider that there are additional provisions, which might be added to better meet CAP and BCAP's objective of ensuring that its guidance protects vulnerable adults from ad content with the potential for gambling advertising-related harm? If so, please set out the reasons including reference to the evidence base, further information and examples as necessary.

No additional provisions identified.

3a) Do respondents agree that evidence, identified by the GambleAware research, of an association between exposure to gambling and "susceptibility" to gambling for people aged 11-17 are, at most, modest and do not present a sufficiently robust basis to merit restricting further the media in which, and the audience to which, gambling advertisements may be served? If not, please state why setting the basis upon which you believe the GambleAware evidence merits further regulatory interventions and what those interventions should be.

While the evidence suggests there is a 'modest' link between exposure to gambling and gambling susceptibility in 11 to 17 year olds, this is not a strong enough argument against introducing further restrictions. The Gambling Commission's Young People and Gambling Survey 2020¹⁵ provides results on the impact of advertising in young people. Table 1342 shows the number of young people in England and Scotland prompted to spend money on gambling after seeing marketing when they were not otherwise planning to. Of this sample of n=962, 7% reported yes, 84% no, and 8% don't know. In this sample of n=962, 19 suffered the most severe form of gambling-harm from own gambling. Half (51%) of problem gamblers and one-third (33%) of at-risk gamblers went on to spend money on gambling when they were not otherwise planning to. Thus, these results provide early evidence that young people who suffer harm from their gambling are more susceptible to gambling advertising.

Drawing a comparison with policies to reduce obesity, despite research showing a modest association between food promotion and behaviour,¹⁶ the Government has further tightened restrictions to limit children's exposure to adverts for HFSS food and drink.¹⁷ We suggest this precautionary approach is adopted here, and further restrictions are considered, such as recommendations outlined in response to questions 1c and 1d.

3b) Respondents are invited to submit further evidence, which suggests that exposure to gambling advertising can, in and of itself, result in gambling advertising-related harms? Respondents to this question are encouraged to have regard to the CAP and BCAP guidance on their approach to evidence-based policy making.

¹⁵ <https://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Levels-of-participation-and-problem-gambling/Young-persons-survey.aspx>

¹⁶ https://www.who.int/dietphysicalactivity/Evidence_Update_2009.pdf

¹⁷ <https://www.gov.uk/government/publications/tackling-obesity-government-strategy/tackling-obesity-empowering-adults-and-children-to-live-healthier-lives#fn:31>

NA

3c) Although CAP considers the GambleAware evidence does not present a case for change to the '25% test' (subject to its evaluation of responses to this consultation), do respondents consider there is a better way for CAP to meet its policy objective of balancing, on the one hand, necessary advertising freedoms for gambling operators and, on the other hand, necessary protection for under-18s? Respondents are invited to consider the full range of restrictions that apply to gambling advertising and, where available, provide evidence to support their submissions, particularly, that which bears out the regulatory benefits of an alternative approach.

The industry spend on advertising and marketing in the UK makes up about 7% of all advertising spend in the UK and about 10% of all online advertising spend.^{18, 19} At this level of advertising, achieving protection for under-18s is not possible unless the level of advertising is substantially reduced on top of changes to the content.

The 25% test does not balance advertising freedoms and adequate protection for under 18s. If 25% of an audience who are children are permitted to seeing adverts for gambling, that represents a significant proportion of under-18s who are seemingly acceptable collateral damage for the potential harms. We want to see an end to gambling advertising, but recognise that this would have to take place in increments, and therefore suggest the 25% threshold is reduce to 5% for now.

4a) Do respondents agree with the proposed amendments to the introductory sub-section of the CAP Code's gambling rules? If not, please say why including any suggested wording that would better meet this part of the consultation's objective.

Yes, we agree with the proposed amendments.

4b) Do respondents agree with the proposed amendments to the introductory sub-section of the BCAP Code's gambling rules? If not, please say why including any suggested wording that would better meet this part of the consultation's objective.

Yes, we agree with the proposed amendments.

For more information on this response please contact

gha@rsph.org.uk.

These recommendations reflect priority areas for action agreed by GHA members. Individual members may submit their own recommendations with their organisational priorities. A full list of GHA members can be found [here](#).

¹⁸ <https://www.begambleaware.org/media/1853/2018-11-24-rp-ga-gb-marketing-spend-infographic-final.pdf>

¹⁹ <https://www.talkgen.org/post/exposure-to-gambling-advertising-in-young-people>