

CAP and BCAP Consultation

Responding to the findings of the GambleAware Final Synthesis Report

Issued: 22 October 2020



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[Annex A](#) – Consultation annex: supporting information

Note: the annex is available separately through the links and on the consultation page.

1. Summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (the BCAP Code) are consulting on changes to their rules and guidance on gambling and lotteries advertising.

CAP and BCAP place the protection of young and vulnerable people at the heart of the advertising rules and their work. Reflecting this, the Codes have long contained strict, category-specific restrictions around gambling and lotteries ads which are designed to significantly limit children's exposure to gambling ads and ensure they are responsible. CAP and BCAP have an ongoing commitment to continually review the available evidence on the potential harm arising from gambling advertising and to update its rules and guidance where there is an evidence-based case to do so.

This consultation responds specifically to key findings in GambleAware's [recent research](#) on the impact of marketing and advertising. CAP and BCAP must consider these findings in the light of legislation that controls gambling in the UK, including the Gambling Act 2005 (as amended) (from here 'the Gambling Act 2005'). The GambleAware research provides evidence which suggests that the creative content of gambling and lotteries advertising compliant with the UK Advertising Codes has more potential, than previously understood, to adversely impact under-18s and vulnerable adults.

Consultation proposals

On the basis of this finding, CAP and BCAP propose to revise its rules and guidance to further restrict the creative content of gambling and lotteries ads to limit their potential to appeal to and adversely impact under-18s and vulnerable adults.

- Gambling and lotteries advertising is presently prohibited from appealing particularly to under-18s; in other words, including creative content that is likely to appeal more to under-18s than to adults. CAP and BCAP propose a more restrictive rule: to prohibit creative content that appeals 'strongly' to under-18s¹. 'Strong appeal' is distinct from 'particular appeal' because it does not rely on a comparison with the likely appeal of a piece of content to adults. The consultation invites respondents' views on the basis of the proposal and how it would operate in practice; including, how to effectively define content of 'strong appeal' to under-18s.
- CAP and BCAP propose to reduce the likelihood of gambling and lottery advertising appealing irresponsibly to vulnerable adults, principally, adults with problem gambling-related issues². They propose to do this by making several amendments to their guidance, [Gambling advertising: responsibility and problem gambling](#), which would effectively prohibit:
 - 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;

¹ See section 6.4 below.

² See section 6.6 below

- presenting gambling as a way to be part of a community based on skill;
- implying that money back offers create security;
- 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).

Controlling UK gambling advertising

As the UK's advertising regulator, CAP and BCAP are committed to playing their part in minimising harm from gambling within the context of their remit ensuring that gambling and lottery advertising remains responsible and any advertising restrictions respond proportionately to the evidence base. The overarching aim is to prevent children, young persons and other vulnerable people from being harmed or exploited by gambling advertising.

In setting the advertising rules, CAP and BCAP work under the framework of the Gambling Act 2005. This legislation provided a more liberalised regime for gambling advertisements. When it came into force in 2007, it removed advertising prohibitions in place for many gambling products and, for the first time, allowed those products to be advertised on TV. With the development of new online platforms, emergence of cross-media advertising and the proliferation of internet-connected consumer devices gambling's availability, accessibility and visibility has increased.

Advertising regulation plays its part in the system of operator licensing and product standards that are the ultimate responsibility of the Gambling Commission. The Commission takes care of product safety to minimise the possibility of gamblers coming to harm.

The UK Advertising Codes already include strict rules controlling gambling and lottery ads, which can only be placed around media content attracting an exclusive or predominantly adult audience. Scheduling, placement and targeting rules work in conjunction with strict controls on the creative content of gambling and lottery advertising to ensure that they contain nothing to suggest that gambling or participating in a lottery can:

- be a solution to financial concerns;
- take priority over family and friends;
- boost self-esteem or a way to gain control; and
- appeal more to under-18s than to adults.

GambleAware's research

GambleAware's research is the first dedicated body of evidence looking at circumstances in the UK; it is a significant addition to our understanding of gambling-advertising related harms. CAP and BCAP's assessment of the new evidence reveals important findings that support their proposals for change. However, the evidence does not, in the view of CAP and BCAP, radically change the picture of the impact gambling and lottery advertising has on under-18s and vulnerable adults.

Although the research points to the need for more action to control the content of gambling and lottery advertising, CAP and BCAP consider it does not justify more far-reaching interventions; for example, those that aim to reduce the amount of gambling and lottery advertising.

The GambleAware research includes many findings that support the effectiveness of present controls. Notably, it finds that engagement with and positive views of gambling advertising among under-18s and other vulnerable groups are limited. Over a period when online marketing spend has increased considerably and the range of internet connected consumer devices has revolutionised ease of access to gambling, the overall trend in underage participation in any gambling activity (for example, gambling with friends, fruit machines and scratch cards) has declined significantly since 2011 and adult problem gambling rates have remained stable.

Alongside the proposals for regulatory change, the consultation also invites further input and scrutiny of CAP and BCAP's restrictions on the scheduling, placement and targeting of gambling advertising³. The Committees consider that their approach remains proportionate and effective in striking an appropriate balance between commercial freedoms and the need to limit under-18s' exposure to gambling advertising. The consultation will provide an opportunity to further test this position asking respondents for evidence related to the existing policy and potential alternatives suggested by GambleAware.

The consultation also includes proposals for several technical updates to the Codes to ensure they properly reflect changes in the underlying legislation and improve the background information provided to Code users⁴.

Government review of the Gambling Act

In [December 2019](#), Government confirmed that “it will carry out a review of the Gambling Act, with a particular focus on tackling issues around online loot boxes and credit card misuse”. At the time of this consultation's publication, the full scope of Government's review is not known. If the scope or any other matters related to Government's review of the Gambling Act 2005 have, or are likely to have, a material impact on the good running or integrity of this consultation, CAP and BCAP reserve the right to suspend or amend the consultation or otherwise act to respond to that impact.

The consultation closes at 5pm on 22 January 2021.

³ See section 7 below

⁴ See section 8 below.

2. Introduction to the self-regulatory system

2.1. Committees of Advertising Practice

The Committee of Advertising Practice (CAP) is the self-regulatory body that authors the [UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#) (the CAP Code). The Broadcast Committee of Advertising Practice (BCAP) is the self-regulatory body responsible for maintaining the [UK Code of Broadcast Advertising](#) (the BCAP Code) under contract with the Office of Communications (Ofcom). Ofcom contracts out its statutory function relating to the setting, reviewing and revising of broadcast advertising, to BCAP.

The CAP Code and the BCAP Code (together, 'the UK Advertising Codes') set rules for advertisements in the UK and the overwhelming majority of other advertisements that target UK consumers. Compliance with the rules is mandatory. The Codes are enforced independently by the Advertising Standards Authority (ASA).

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. Self-regulation is accepted by the Department for Business, Energy and Industrial Strategy and the Courts as a first line of control for non-broadcast advertising in providing protections for consumers and the industry.

2.2. UK Advertising Codes

The UK Advertising Codes are based on common principles. They seek to protect consumers, while upholding the right of responsible marketers to advertise, ensuring that marketing communications respect the principles of fair competition generally accepted in business. They also ensure advertisements are socially responsible and that harmful marketing communications are prohibited.

The CAP Code is the rule book for non-broadcast marketing in the UK applying to the disciplines of advertising, promotional marketing and direct marketing. A key underlying principle of the Code is media neutrality; the rules apply to marketing communications across all non-broadcast media from the longer established, like newspapers and magazines, to new and emerging online media platforms, like social media and native advertising.

The BCAP Code applies to Ofcom-licensed television and radio broadcast services. Compliance with the Code is a licence condition along with the requirement for broadcasters to ensure they have adequate procedures in place to ensure advertisements comply before they are broadcast.

2.3. Advertising Standards Authority

The ASA is the independent body responsible for administering the UK Advertising Codes ensuring that the regulatory system works in the public interest. The ASA receives and investigates complaints about marketing communications from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council and published on the ASA's website. If the ASA Council upholds a complaint, the marketing communication must be withdrawn or amended. CAP, BCAP and the ASA work together to conduct compliance work, pro-active monitoring and research to enforce the ASA Council's decisions across sectors in order to maintain a level playing field for advertisers.

3. Consultation background

3.1. Overview

The risks associated with gambling merit dedicated protections under the UK Advertising Codes. Rules control the scheduling, placement and targeting of gambling ads and restrict their creative content to protect children (0-15 years), young people (16-17 years) and other vulnerable groups. In particular, the rules prevent advertisements that are likely to encourage or condone underage participation or problem gambling-related behaviours.

GambleAware is [an independent body](#) operating a framework agreement with the Gambling Commission to deliver the [National Strategy to Reduce Gambling Harms](#). Its [Final Synthesis Report: The impact of gambling marketing and advertising on children, young people and vulnerable adults](#), published in March 2020, provides a UK-centric body of evidence for the first time. As evidence-based regulators, CAP and BCAP have committed to responding to recommendations arising from the evidence.

This section summarises key background to this consultation document. It should be read in conjunction with [Annex A](#) (*Consultation annex: supporting information*), which provides technical detail on the self-regulatory system and how gambling advertising in the UK is controlled, including a summary of CAP and BCAP's rules and guidance.

3.2. Policy challenge: concerns about gambling advertising

Gambling markets have developed considerably since 2007 when the Gambling Act 2005 entered into force delivering a new framework for regulating gambling in Great Britain. The new framework allowed for the advertising of gambling products that had, prior to that point, effectively been banned from being advertised to the public. This more liberalised regime for gambling advertisements, together with the development of new online platforms, emergence of cross-media advertising and the proliferation of internet-connected consumer devices have helped to increase gambling's availability, accessibility and visibility.

These factors have raised significant concerns amongst some politicians, civil society organisations and members of the public. Concerns relate to the protection of children and young people, who cannot legally participate in all or most forms of commercial gambling activity, and adults vulnerable to problem gambling. Recent data suggests 0.5% of adults in the UK are categorised as problem gamblers⁵.

Common concerns about gambling advertising include:

- the potential for gambling advertising to endorse, encourage or otherwise facilitate problem gambling;
- children and young people's exposure to, and how they are affected by, gambling advertisements and wider commercial marketing messaging;
- the role of online media in dramatically shortening the consumer journey between online advertisement and gambling participation (in other words separated by a few clicks only);

⁵ Gambling Commission (2020), [Gambling participation in 2019: behaviour, awareness and attitudes](#), p. 14.

- links between gambling and popular activities (principally, the commercial involvement of gambling operators with sports); and
- whether gambling advertising results in the “normalisation” of gambling in society.

3.3. Regulating gambling advertising in the UK

Based on a public policy position that properly regulated gambling may be regarded as a legitimate leisure activity, the Gambling Act 2005 removed advertising prohibitions previously in place for many gambling products. For the first time, many gambling operators could advertise products such as sports betting, casino and online gaming on TV and radio and their freedom to do so in other media was significantly extended. The Act also recognised the potential for harm arising from gambling; in particular, to under-18s and other vulnerable groups. It created a regulatory framework under the auspices of the Gambling Commission to mitigate such harms. Its key objectives required the protection of “children and other vulnerable persons from being harmed or exploited by gambling”.

Under this framework, CAP and BCAP developed gambling-specific rules in the UK Advertising Codes. Their [2006 consultation](#) outlined the rationale for the formulation of the rules:

The proposed rules establish general principles that apply to all gambling sectors and activities, regardless of the legal age of play, to ensure that all advertisements are socially responsible and that no advertisement harms or exploits children and young persons or vulnerable adults.

Those rules have been in force since the Gambling Act 2005 came into effect in 2007. They balance the rights of gambling operators to advertise their products as a legitimate leisure activity with the need to protect children, young persons and other vulnerable groups from gambling advertising-related harms.

The UK Advertising Codes seek to achieve this balance through scheduling and placement restrictions, which appropriately limit under-18s’ exposure to gambling ads, and rules controlling the creative content of gambling ads. Marketing communications for gambling must not:

- be addressed to under-18s (either directly or by using means of targeting that result in under-18s comprising a significant proportion of the audience);
- include content of ‘particular appeal’ to under-18s or feature anyone who is, or appears to be, aged younger than 25 in a significant role;
- contain anything that is likely to exploit vulnerable groups such as those with problem gambling issues (for example, by encouraging solitary play); and
- take advantage of or otherwise exploit individuals’ particular circumstances (for example, presenting gambling as a means to resolve financial concerns or address issues of self-esteem).

The Gambling Commission issues [Licence conditions and codes of practice](#) (LCCP), with which all licensed gambling operators must comply. It is a requirement of the LCCP that gambling operators must comply with the UK Advertising Codes⁶.

⁶ See [Annex A](#) section 2 and Gambling Commission, [Licence conditions and codes of practice - July 2020](#) (section 5, ‘Marketing’).

3.4. Effectiveness of the present framework

In 2014, CAP and BCAP carried out [a comprehensive review](#) of the evidence base⁷ relating to the impact of gambling advertising in the UK. This drew in large part on the findings of an evidence review⁸ commissioned by the Responsible Gambling Trust (now GambleAware). CAP and BCAP concluded that the available evidence did not suggest that advertising, which is compliant with the UK Advertising Codes is likely to cause harm. Advertising may play a role in persuading individuals to gamble, but advertisements compliant with the UK Advertising Codes are unlikely to do so in a way that encourages or condones harmful behaviour. CAP and BCAP also considered that areas of risk for under-18s, highlighted in the academic literature, were adequately mitigated by the protections afforded by the existing rules and guidance; notably, protections limiting their exposure to and appeal of gambling advertisements.

This work was followed by further reviews of the evidence relating to the [impact of gambling advertising on adults](#) in 2018 and the [impact of gambling advertising on children and young people](#) in 2019. These led to the development of two new guidance documents, which included tougher standards on the acceptability of content that is likely to condone or encourage problem gambling behaviours. However, the evidence reviews – focusing on the evidence emerging since 2014 – did not fundamentally call into question the approach of the regulatory framework combining restrictions on the scheduling, placement and targeting of ads with creative content rules to control irresponsible messaging in ads.

Alongside the evidence base for gambling advertising's impact, CAP and BCAP are aware of other indicators that may be taken into account in assessing the effectiveness of the wider regulatory framework, of which the control of gambling ads forms a part:

- Problem gambling rates have remained broadly consistent, including over a period when online marketing spend has increased exponentially and the range of internet connected consumer devices has revolutionised ease of access to gambling. The latest data suggests 2.7% of adults in the UK are considered 'low-risk' gamblers, a further 0.8% are classed as 'moderate-risk' gamblers and 0.5% were categorised as problem gamblers⁹. These rates have remained broadly the same since the introduction of the Gambling Act 2005 and the more liberalised regime for gambling advertisements it introduced from 2007.
- 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)¹⁰.

⁷ Section 8 of the review discusses harm related to problem gambling (p. 29) and section 9 discusses harm to children and young people (p. 38).

⁸ Binde (2014), [Gambling advertising: A critical research review](#).

⁹ 'Low-risk' means gamblers who experience a low level of problems with few or no identified negative consequences. 'Moderate-risk' means gamblers who experience a moderate level of problems leading to some negative consequences. See Gambling Commission (2020), [Gambling participation in 2019: behaviour, awareness and attitudes](#), p. 14.

¹⁰ Gambling Commission (2019), [Young People and Gambling Survey 2019: A research study among 11-16 year olds in Great Britain](#), pp. 10-12

- Children’s exposure to TV ads for gambling represents 2% of the overall number of TV ads they see; on average, children see between 2-3 gambling ads per week¹¹.
- The ASA’s nascent use of online monitoring technology has revealed incidences when gambling operators have, in breach of the advertising rules, failed to target their ads away from child websites and child audiences. To date, the evidence suggests that these breaches are exceptional and result from some operators’ inadequate compliance procedures. These are initial observations only and the ASA is committed to keeping this area under review and developing its use of technology to identify ads in breach of the UK Advertising Codes¹².

3.5. Evolving evidence base and GambleAware’s new insights

GambleAware’s [Final Synthesis Report](#) is the first, wide-ranging and significant body of research focusing on gambling advertising in the UK¹³. The research involved a range of methodologies and focused on those aged 11-24, and vulnerable adults¹⁴. The [executive summary](#) provides a brief and detailed overview of the findings and, on the basis of the findings, the rationale underpinning recommendations for regulatory change. The Report also makes additional recommendations, which are directed variously at industry, academics and researchers.

Key findings of particular relevance to CAP and BCAP’s role in setting standards for gambling advertisements, can be summarised as follows.

- There is a significant amount of gambling advertising and there has been an evident increase in the volume of and spend on gambling advertising in recent years. Sport is an important context in which exposure to gambling advertising is likely to occur.
- Whilst there is little evidence of direct targeting, children, young people and vulnerable adults self-reported high levels of exposure to gambling advertising.
- Respondents identified various types of creative content, used in gambling advertising, which appealed to them, including, celebrity endorsements, use of characters (for example, animated characters or the use of animals), humour, memorable songs and catchphrases, offers (for instance, free bets or odds boosts), messaging relating to skill and depictions of winners.
- Qualitative research found some evidence of individual ads prompting gambling participation that had not been intended or considered by participants prior to being presented with the gambling ad. Though exposure did not always translate into engagement, it did increase awareness of gambling.
- Advanced statistical analysis shows that for people aged 11-24, who did not currently gamble, exposure to advertising was significantly associated with a likelihood to gamble in the future, after controlling for demographic and other factors.
- The relationship between advertising and current gambling behaviour is multifaceted. Within the statistical analysis, factors which were significantly associated with current

¹¹ ASA (2020), [Children’s exposure to age-restricted TV ads: 2019 update](#), p. 15.

¹² This [article](#) gives an update on the latest progress with the ASA’s work using ad tech to improve enforcement on sensitive product category ad targeting.

¹³ GambleAware (2020), [Final Synthesis Report The impact of gambling marketing and advertising on children, young people and vulnerable adults – Written by Ipsos MORI on behalf of GambleAware](#), (from here “FSR”).

¹⁴ The GambleAware research defined “vulnerable adults” as people living in constrained economic circumstances, people with limited capacity to understand information, people already experiencing problems with gambling, and people with experience of mental health problems. See GambleAware FSR, section 2.1; p. 13.

gambling included peer gambling, engagement with marketing activities from gambling operators, brand awareness, parental gambling and age.

3.6. Developing a regulatory response

In 2019, following GambleAware's publication of an [Interim Synthesis Report](#), CAP and BCAP [wrote to the Gambling Commission](#) committing to respond to the project's final outputs. Having now assessed the Final Synthesis Report, CAP and BCAP consider there is a case for regulatory action. The new evidence suggests that any adverse impact of gambling advertising is likely to be of a low order, but it does suggest that elements of gambling advertisements in the UK, which comply with the current restrictions in the UK Advertising Codes, *could* contribute to gambling advertising-related harm.

The following sections of the consultation documentation include an assessment of the evidence, its regulatory implications and resultant proposals to strengthen restrictions on gambling advertisements.

- **Section 6** – The case for considering new restrictions on the creative content of gambling advertising – this includes proposals for changes to the UK Advertising Codes to strengthen protections for under-18s and vulnerable adults.
- **Section 7**– The case for considering new restrictions on the scheduling, placement and targeting of gambling advertisements – this includes a discussion of the GambleAware recommendation relating to the '25% test', by which CAP ensures non-broadcast ads for gambling, alcohol and other age-restricted ads, served to mixed-age audiences, are prohibited if more than 25% of the audience under 18.
- **Section 8** – Proposed technical changes to the introductory parts of the gambling sections to ensure they are up to date with the underlying legal framework and to improve clarity for users of the UK Advertising Codes.

To coincide with the publication of this consultation document, CAP and BCAP have again [written to the Gambling Commission](#) to provide an update on progress on wider regulatory activities relating to the GambleAware research findings and recommendations. This includes useful context to the proposals for change in this document, including information on the ASA's proactive use of ad tech to enforce rules designed to limit exposure among under-18s; it's exploration as to whether the same limits on exposure can be extended to vulnerable adults; and, regulatory activities relating to eSports betting advertising. Much of this activity has been ongoing since the publication of the Interim Synthesis Report.

4. Consultation objectives and scope

4.1. Objectives

CAP's general policy objective is to set standards to ensure that all non-broadcast marketing communications covered by the CAP Code are legal, decent, honest and truthful and prepared with a due sense of social and professional responsibility.

BCAP seeks to meet the standards objectives set out in [Section 319](#) of the Communications Act 2003 (as amended). That includes ensuring that:

- persons under the age of 18 are protected;
- material likely to encourage or incite the commission of crime, or lead to disorder is not included;
- generally accepted standards are applied to broadcast advertising content to provide adequate protection for the public from offensive and harmful material;
- the inclusion of advertising that may be misleading, harmful or offensive is prevented; and
- there is no undue discrimination between advertisers.

On a practical level, both CAP and BCAP intend their rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that the rules are easily understood, easily implemented and easily enforced.

CAP and BCAP's policy aim is to set standards – through its rules and associated guidance – that ensure all advertisements, including gambling advertisements, are socially responsible and that no advertisement harms or exploits children and young persons or vulnerable adults. The consultation's objective is to invite stakeholders' scrutiny of and views on CAP and BCAP's proposals for regulatory change. Respondents are encouraged to submit evidence, wherever possible, to support their responses to the consultation.

Separately, the consultation invites scrutiny of the proposed technical changes to the background and introductory parts of the gambling and lotteries sections to improve clarity for users of the UK Advertising Codes.

4.2. Scope

The primary evidence base considered by CAP and BCAP in this consultation centres on GambleAware's [Final Synthesis Report](#) and [associated pieces of research](#) (see list of links in the first drop down menu). CAP and BCAP have also had regard to the Gambling Commission's annual reporting: [2019 Young People & Gambling](#); and [Gambling participation in 2019: behaviour, awareness and attitudes](#).

The proposals for change focus on the Gambling and Lotteries sections of the UK Advertising Codes¹⁵ and CAP and BCAP's formal guidance on the advised interpretation of the gambling advertising rules, which the independent ASA has regard to (but is not bound by) when it applies the rules: [Gambling advertising: responsibility and problem gambling](#); and [Gambling advertising: protecting children and young people](#).

¹⁵ CAP Code [section 16](#) (Gambling) and [section 17](#) (Lotteries), BCAP Code [section 17](#) (Gambling) and [section 18](#) (Lotteries), and the relevant rules within BCAP Code [section 32](#) (Scheduling).

References to “gambling” in the consultation should be understood to refer to all forms of gambling product, including lotteries, and spread betting as defined in financial services legislation.

In terms of the types of gambling product and marketing communications within scope, the consultation concerns marketing communications for activities: betting, gaming, lotteries, spread betting and other, more novel activities like ‘skins betting’¹⁶, including wider brand promotional activity likely to result in the promotion of a licensed gambling product. However, it does not cover commercial activities that are outside the scope of the UK Advertising Codes¹⁷; principally, sponsorship arrangements and communications in editorial content, public relations material and at point of sale. Several of these commercial activities feature, to a greater or lesser extent, in the GambleAware research.

The UK Advertising Codes’ define “children” as those aged 0-15 years and “young people” as those aged 16 or 17 years of age. Readers should note the GambleAware research refers to “children and young people” as those aged 11-24. CAP and BCAP have sought to address the potential for confusion arising from the different definitions of “young people” at relevant points in the consultation document.

4.3. Understanding ‘gambling advertising-related harm’

It is important to acknowledge that the risks, harms and mitigations associated with gambling advertising differ from those associated with actual participation in gambling. The act of gambling can, in the absence of appropriate safeguards, be harmful to individuals, particularly those whose circumstances put them at risk of problem gambling. Statutory restrictions on the age of play for many gambling products acknowledge a key aspect of gambling-related harm: the significant risks associated with underage participation. Advertising may persuade individuals to gamble, but advertisements compliant with the UK Advertising Codes must not do so in a way that is likely to encourage or condone harmful behaviour.

The Gambling Commission is responsible for licensing gambling operators and ensuring the provision of their products to customers is compatible with the Gambling Act 2005’s requirements that ensure children and young people, and other vulnerable groups are protected. The UK Advertising Codes set standards to prevent harm arising from the advertising of products that have met these requirements.

Through the evidence reviews carried out since 2014 (see section 3.4 above), CAP and BCAP have developed an approach to understanding gambling advertising-related harms building on the Gambling Act 2005’s licensing objective of protecting children and young people, and other vulnerable persons from being harmed or exploited.

¹⁶ Skins are in-game digital items used within some of the most popular video game titles. They provide cosmetic alterations to a gamer’s weapons, avatar or equipment and are valued by reference to their rarity, aesthetics, utility and popularity. Some websites have been using these skins as a currency for illegal gambling and there is a risk that children may be gambling. See [this](#) Gambling Commission article on advice for parents.

¹⁷ The BCAP Code applies to Ofcom licensed TV and radio the scope of the CAP Code is set out [here](#). See also [Annex A](#), section 3.3.

For children and young people, gambling advertising-related harm involves:

- directly influencing children or young people (who are legally prevented from gambling) to participate in gambling;
- affecting attitudinal change that could result in participation later in life (either while the individual is underage or when they become of an age to gamble legally); or
- influencing longer-term attitudes that could result in irresponsible or harmful gambling behaviour when an individual comes of age and can gamble legally.

For adults, CAP and BCAP's approach recognises that there are groups, which research and treatment specialists have identified as being vulnerable to problem gambling behaviour; and, individuals, who can be circumstantially vulnerable (exceptionally or periodically) at particular points in their life. Gambling advertising-related harm involves advertisements that:

- encourage or condone problem gambling or risky gambling behaviours¹⁸;
- adversely influence other vulnerable persons (for example, those exhibiting impaired judgement when it comes to gambling, mental health concerns, substance abuse or low financial acumen); or
- take advantage of or otherwise exploit individuals' particular circumstances (for example, presenting gambling as a means to resolve financial concerns or address issues of self-esteem).

4.4. Assessing the case for new restrictions on gambling advertising

In analysing GambleAware's research for evidence of gambling advertising-related harm, CAP and BCAP have had regard to:

- their established understanding and evaluation of the evidence base; and
- the existing regulatory framework, including the rules and guidance already in place to mitigate harms likely to result from gambling advertising.

In particular, CAP and BCAP must take into account robust evidence that identifies a new area of gambling advertising-related harm, or a new perspective or insight on an already known harm (for example, that a particular factor has a greater adverse impact than previously understood). CAP and BCAP have [published advice](#) on their approach to assessing evidence when considering a case for regulatory change.

Ultimately, in deciding to impose new restrictions, CAP and BCAP must give due consideration to Article 10 of the [European Convention on Human Rights](#) (ECHR) concerning freedom of expression. Article 10(1) of the ECHR protects the right to commercial freedom of expression – here, the right of gambling advertisers to advertise their products in the media covered by the UK Advertising Codes – but to a lesser degree than political, religious or cultural expression.

¹⁸ GambleAware [defines problem gambling](#) as: "behaviour related to gambling which causes harm to the gambler and those around them. This may include family, friends and others who know them or care for them, such as those they work with. If someone is struggling to control their gambling behaviour it can cause stress, depression, anxiety, or they may fall behind at work and worry about money. If someone's gambling is causing any of these effects, it is considered problem gambling."

Advertising restrictions must be necessary in a democratic society for one of the legitimate aims listed in Article 10(2), including the protection of health or morals, and/or the protection of the reputation or rights of others. Due regard must be given to whether there are less restrictive alternative means of achieving that aim. The greater the impact of the restriction – on free speech or loss of revenues, for example – the greater the need for robust evidence to justify it. There is therefore a need to assess the potential economic impact of any proposed measure, as it might affect advertisers and media owners, against potential regulatory benefits.

5. Assessment of the new evidence base

5.1. CAP and BCAP's general view of the GambleAware findings

The GambleAware Final Synthesis Report is a valuable contribution to the evidence base. It adds to understanding of gambling advertising's impact on individuals. However, the findings are nuanced with different themes and emphases emerging.

Overall, CAP and BCAP consider the evidence does not suggest that, under the current controls on gambling operators and their advertising, that UK gambling advertising is inherently harmful or a significant cause of harm. The most prominent findings – on the appeal of creative content to vulnerable groups and the association between exposure to gambling advertising and intentions to gamble among some under-18s – suggest, at most, a modest impact¹⁹. Many of the findings align with an existing understanding of the evidence base and several provide further support for the effectiveness of the UK Advertising Codes in controlling gambling advertising.

The evidence base must also be considered in the context of the regulatory framework established by the Gambling Act 2005. In particular, CAP and BCAP note the Final Synthesis Report raises a concern that gambling advertising “normalises” gambling²⁰. It was a foreseeable and understood consequence of the Gambling Act 2005 that gambling would become ‘normalised’ including by becoming more visible to members of the public, certainly in contrast to legislation that preceded it, which sought to suppress unnatural demand for gambling e.g. by prohibiting or heavily restricting its advertising. CAP and BCAP have noted the potential for ‘normalisation’ and related expressions to be used in a variety of ways and, therefore, the potential for the term to be misunderstood. They have [published a statement](#) that outlines what CAP and BCAP understand by the term and how they view normalisation in relation to advertising of the types of products that stakeholders more commonly comment on.

As a legitimate leisure activity subject to a strict product licensing regime, gambling operators can promote products provided their advertising complies with the UK Advertising Codes. Where advertising ‘normalises’ irresponsible or potentially harmful gambling behaviour, CAP and BCAP's role is to implement restrictions to prevent or mitigate the potential for harm to occur and the ASA's role is to apply them in circumstances where the restrictions have not been adhered to.

5.2. Findings that evidence the effectiveness of the present regulatory framework

There has been an increase in the volume of gambling advertising and, owing in part to the availability of internet-connected consumer devices, overall exposure to gambling advertising has almost certainly increased. This broadly reflects data from Gambling Commission reporting on consumer, and children and young people's experiences, attitudes and behaviours that CAP and BCAP have considered when reviewing the evidence base in 2014 and, more recently, in 2018 (a review of evidence on the [impact of gambling advertising on adults](#)) and 2019 (a review of evidence on the [impact of gambling advertising on children and young people](#)).

¹⁹ Sections 6 and 7 below set out detailed assessments of the significant new evidence relating to the content of gambling ads, and their scheduling, placement and targeting.

²⁰ GambleAware FSR section 7.3.1.

The research includes a variety of findings that evidence the effectiveness of the present regulatory framework for controlling gambling advertising and help to qualify some of GambleAware’s headline findings.

- **Underage participation** – The rate of underage participation in licensed gambling activities is an important indicator of wider, gambling-related harm. The quantitative research found that 23% of those aged 11-17 had participated in gambling during the last month. The majority of this was private betting (for example, among friends) – activities that are not advertised – or legal play of lotteries and bingo products²¹. This accords with the picture presented in Gambling Commission reporting of participation trends over the past decade²².
- **Targeting** – GambleAware’s online avatar study found no evidence of gambling companies *specifically* targeting under-18s²³. A recent avatar study [commissioned by the ASA](#) revealed a similar picture, but it did reveal incidences when gambling operators have, in breach of the advertising rules, failed to target their ads away from child websites and child audiences. To date, the evidence suggests that these breaches are exceptional and result from some operators’ inadequate compliance procedures. These are initial observations only and the ASA is committed to keeping this area under review and developing its use of technology to identify ads in breach of the UK Advertising Codes²⁴.
- **Engagement** – The qualitative research found little evidence of immediate gambling activity prompted by exposure to gambling advertising²⁵. Engagement in gambling, in general, was also found to be low²⁶. Although reported exposure rates were similar across the age ranges, 11-17s (78%) were more likely than 18-24s (57%) to say they had *not* engaged with any gambling advertising in the last month. Participation in gambling requires an individual to take several positive steps, simply engaging with a gambling advertisement – especially, online – does not require such positive effort.
- **Attitudes and impact** – Many respondents had negative views of gambling advertising and gambling in general²⁷ and the qualitative part of the research revealed that many respondents paid little attention to it²⁸.

5.3. Findings that present a case for regulatory change

In the view of CAP and BCAP, the Final Synthesis Report includes two key findings that present a case to consider regulatory change. The quantitative part of the research found a significant association between the reported exposure to advertising of under-18s who were non-gamblers and their intention to gamble; researchers considered this an indicator of their “susceptibility” to gambling. The qualitative part of the research provides several

²¹ GambleAware FSR sections 3.2. and 3.2.2.

²² See section 3.4 above.

²³ GambleAware FSR section 5.2.4.

²⁴ In 2019, the ASA carried out a monitoring and enforcement exercise using avatar technology similar to that used in GambleAware’s research. The findings are summarised in [this](#) article.

²⁵ GambleAware FSR section 7.2.1.

²⁶ GambleAware FSR section 5.3.1.

²⁷ GambleAware FSR section 6.2.1.

²⁸ GambleAware FSR section 5.3.1.

significant insights on the appeal of advertising content both to under-18s and vulnerable adults.

A determining factor supporting the case for regulatory action is that the findings emerge from research that is the first significant body of evidence based on the impact of gambling advertising in a UK context. In other words, the findings are based on gambling advertising controlled under the UK Advertising Codes, by operators licensed and regulated by the Gambling Commission.

Assessment of the case for regulatory change, proposals and consultation questions

6. Content restrictions

6.1. Overview

The GambleAware research presents a case for new restrictions to control the creative content of gambling advertising. In response, CAP and BCAP propose new rules and guidance; a stricter test of appeal to under-18s and tougher guidance on advertising content that is likely to have a detrimental impact on vulnerable adults.

6.2. GambleAware conclusions and recommendations

The Final Synthesis Report makes this case for reducing the appeal of gambling advertising:

rules in place to reduce the appeal of gambling advertising currently assume that there are a set of specific features that children and young people find more appealing than adults do. Current regulations require clarification in areas such not using sports stars under the age of 25 or child-like images in new sectors such as eSports. However, this research suggests that appeal should be extended to other common features, and particularly adverts that emphasise fun, a sense of reduced risk, and financial reward. Furthermore, these features may play on the susceptibilities of children, young people and vulnerable adults – especially where understanding of risk is poor. The appeal of adverts may not always elicit an immediate gamble; however, the appeal of adverts is successful in eliciting emotional responses that in turn are likely shape attitudes to gambling and the chance that an individual will consider gambling in the future²⁹.

This is followed by a recommendation that regulators reconsider the effectiveness of the ‘particular appeal’ restriction, through which CAP and BCAP prohibit the creative content of gambling advertisements from appealing more to under-18s than to adults. The Final Synthesis Report recommends CAP and BCAP:

Consider whether ‘particular appeal’ remains a useful definition for protecting children and young people from the potentially harmful impacts of gambling advertising, given that advertising content that appeals to adults may appeal to younger audiences too. Regulators could consider the extent to which features beyond child-friendly images and language are likely to also generate significant interest to children and young people – even if they are not the intended target audience – and how best to accommodate this alongside other aspects of the ad, such as likely exposure³⁰

²⁹ GambleAware FSR section 1.3.1

³⁰ GambleAware FSR section 8.2.2

6.3. Assessment of the case for new restrictions

The UK Advertising Codes restrict creative content to prevent gambling ads from appealing more to under-18s than to adults. They also prohibit creative content that is likely to condone or encourage problem gambling behaviours or otherwise exploit adults vulnerable to problem gambling³¹.

- The current test of appeal for under-18s is whether a gambling ad taken as a whole and in context is likely to appeal more to under-18s than to adults. An ad can do this, for example, by referencing in a significant way characters, animation, themes, cultural reference or settings that are likely to appeal ‘particularly’ to under-18s. In practice, this means that overtly child-oriented content – the ASA has ruled, for instance, against the use of pirates, princesses and ‘cute’ animals – is unacceptable. The ASA has also ruled against the use of licensed characters like superheroes from film and television.
- It is legitimate to direct gambling advertising at adults but rules and corresponding guidance prevent creative content that is likely to condone or encourage problem gambling behaviours, or otherwise exploit adults vulnerable to problem gambling for example by trivialising gambling and giving erroneous perceptions of the level of risk involved.

The GambleAware qualitative research, backed by insights from content analysis, identified gambling ads considered likely to appeal to under-18s and vulnerable adults. It concluded that there were a wide range of themes and features of advertising that attracted the attention of these participants³².

Qualitative research provides an understanding of an audience’s more immediate reactions to advertising, including reactions to particular content, themes or messaging. This does not provide a longer-term perspective on the impact of those reactions, but it does indicate the potential for changes in attitudes to and intentions towards gambling. CAP and BCAP relied on similar studies when developing new guidance on protecting vulnerable people in 2018 and under-18s in 2019³³. Importantly, these findings are based on audience reactions to UK advertising, which is understood to be compliant with the current UK Advertising Codes.

- For under-18s, attraction to types of content ranged from celebrities who attract a significant under-18 following and specific characters, to more general themes, such as depictions of ‘fun’ or use of bright and engaging colours. The report raised the concern that content appealing across age ranges, makes it difficult to distinguish content likely to appeal to under-18s. The evidence picture is augmented by the finding on an association between exposure and “susceptibility” of some under-18s to gamble (see CAP and BCAP’s assessment in section 7.3 below).

Over the years, ASA complaint handling and CAP proactive monitoring have found a significant number of gambling advertisements to be in breach of the rules, because

³¹ See [Annex A](#), sections 4 for a summary of CAP and BCAP’s content restrictions.

³² GambleAware FSR section 6.2.3

³³ See CAP and BCAP’s *Regulatory statement: gambling advertising guidance – Responsibility and problem gambling*, section 3.4 (p. 9) and *Regulatory statement: gambling advertising guidance – Protecting children and young people*, section 5 (p. 14).

they were judged to appeal particularly to under-18s; in other words, the advertisements appealed more to under-18s than to adults. It is not unusual for regulated parties in a rules-based system to seek to test the limits of the rules, especially in a system designed, in part, to restrict creative expression. However, when evidence suggests the ‘particular appeal’ rule, or other rules, have been breached on a significant number of occasions, it is important for CAP and BCAP to consider the likelihood of further breaches and the risks posed to the protected groups; in this case, children (0-15) and young people (16 and 17)³⁴.

- For vulnerable adults, the picture is more complex. The qualitative study sample included 18-24 year olds to whom advertisers can legitimately direct advertising, including through the creative content of the advertisements. Accordingly, CAP and BCAP have sought to place weight on the findings, insofar as they relate to adults, only where they relate to vulnerable adult groups. Several points of regulatory concern remain. The research identified ads that may appeal problematically to vulnerable adults: ads that emphasise the skill involved in gambling or present a related sense of a skill-based community; ads that play down or trivialise risks (for instance, through the use of humour); and, ads that emphasise time limits (for instance, encouraging participation before odds change on a bet)³⁵. The impact of promotional incentives on problem gamblers as identified in the literature review and in some of the qualitative findings³⁶ are considered to strengthen the need for additional restrictions to address the harms identified.

Overall, in the view of CAP and BCAP, these findings suggest that further measures may be necessary to better limit the adverse impact of particular forms of creative content found in gambling advertising and thereby protect against the potential for gambling advertising-related harms.

6.4. Protecting under-18s: adopting a ‘strong appeal’ test

CAP and BCAP consider there is an evidence-based case to further mitigate the possibility of gambling ads appealing unduly to under-18s. This would be likely to be achieved by mirroring the restriction placed on TV ads for alcohol (BCAP Code rule [19.15.1](#)), which bans creative content from appealing ‘strongly’ to under-18s.

Gambling advertising is presently prohibited from including content that is likely to appeal more to under-18s than to adults in other words the ‘particular appeal’ restriction. CAP and BCAP propose to extend the restriction to include creative content that appeals ‘strongly’ to under-18s. ‘Strong appeal’ is distinct from ‘particular appeal’ because it does not rely on a comparison with the likely appeal of a piece of content to adults.

Supported by insights from the GambleAware research, CAP and BCAP consider there are likely to be a significant number of gambling ads in the UK, which include content not presently prohibited by the ‘particular appeal’ test but that are still likely to appeal unduly to under-18s. Preventing creative content from appealing ‘strongly’ to under-18s would have significant implications for the content of gambling advertisements, in particular, on the

³⁴ This [advice article](#) provides a summary of ASA casework on the ‘particular appeal’ issue.

³⁵ GambleAware FSR section 6.3.2

³⁶ GambleAware FSR section 3.3.3

depiction of particular sports, which play an important role in many children and young people's lives.

Although both are categorised as "gambling", CAP and BCAP note the distinctions in the legal framework governing gambling activities like betting and gaming, and lotteries. Based on this, the Codes have separate sections for the two categories of product. In line with the policy rationale underlying CAP and BCAP's [2006 consultation](#) on the introduction of dedicated gambling rules and in recognition of the fact that the GambleAware evidence relates to lotteries to a significant extent, CAP and BCAP propose to introduce a 'strong appeal' restriction, with appropriate exemptions (set out in sections 6.4.4 and 6.4.5 below), to each of the gambling and lotteries sections of the UK Advertising Codes.

In recognition of the fact that some gambling products are inextricably linked to a particular activity, which may itself have 'strong appeal' to under-18s (for example, a football match or an eSports event), the proposals include an exemption to allow a gambling advertisement to feature the subject of the licensed gambling activity; this is explained in greater detail later in this section. It is also the case that the 'strong appeal' restriction would not apply in circumstances where under-18s are effectively excluded from the target audience, just as the 'particular appeal' test is not applied in those circumstances as there are no under-18s in the audience, to whom those restrictions are designed to protect. Again, this is explained in greater detail later in this 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 children³⁷ or young persons³⁸, 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.

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

³⁷ Those aged 0-15.

³⁸ Those aged 16 and 17.

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.

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

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.

³⁹ Those aged 0-15.

⁴⁰ Those aged 16 and 17.

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.

As well as establishing a stricter test of appeal for all types of ad content, the BCAP alcohol guidance focuses on several types of content of appeal identified in the research; for instance, personalities (like certain celebrities and sports people). It also covers other features of advertising identified in the research such as music.

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 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.

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);

⁴¹ CAP rules 16.3.14 (Gambling) and 17.15 (Lotteries) and BCAP rules 17.4.6 (Gambling) and 18.6 (Lotteries).

- 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.

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.

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.

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 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.

⁴² Marketers obtaining data for marketing purposes (e.g. in the form of marketing lists or through the collection of data in online environments must comply with the General Data Protection Regulation (GDPR), which is enforced by the Information Commissioner's Office. Where relevant UK Advertising Codes reflect provisions of the GDPR; in 2018, CAP [consulted on changes](#) to its rules to reflect the coming into force of the GDPR.

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.

6.5. 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.
- 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.
- 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.
- 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.
- 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.

6.6. Protecting vulnerable adults: stricter responsibility guidance

[CAP and BCAP Guidance on Gambling advertising: responsibility and problem gambling](#) includes a series of provisions that elaborate on CAP and BCAP’s rules protecting vulnerable adults and audiences in general. Its primary focus is the UK Advertising Codes’ gambling sections, but it affords the ASA discretion to apply its provisions to inform the interpretation of the similar rules in the lotteries sections⁴³.

CAP and BCAP guidance plays a key role in informing the ASA’s interpretation of the rules, although the ASA is not bound by guidance and, in rare and exceptional circumstances only, it may deviate from it. Guidance also sets industry and practitioner expectations of marketing approaches that are likely to be unacceptable. The underlying objective is to ensure that advertising is compliant before it is published or broadcast.

It is accepted that guidance will develop over time as the ASA makes rulings applying the rules in different advertising scenarios; lessons from those rulings are incorporated into the guidance. Also, as in this case, periodic reviews of the emerging evidence can inform

⁴³ See [Annex A](#), section 4 for a summary of the rules and guidance.

guidance development (for example, where new evidence provides insights to better bear out the rules should be interpreted).

This consultation assesses GambleAware evidence relevant to issues of appeal to vulnerable groups and invites further input from respondents to inform revisions to CAP and BCAP existing guidance on responsibility and problem gambling. The Committees will publish the revised guidance alongside the outcome of the consultation having evaluated further submissions by respondents. CAP and BCAP are not obliged to consult on guidance, but consider it appropriate to do so on this occasion.

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).
- 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 trivialization, 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).

⁴⁴ This part of the GambleAware FSR draws on the ScotSen research, [The Effect of Gambling Marketing and Advertising on Children, Young People and Vulnerable People: Qualitative Research Report](#), commissioned by GambleAware as part of its research project; the relevant findings are in sections 3.4 and 3.5 of that report.

- 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).

6.7. 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.
- 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.

7. Scheduling, placement and targeting restrictions

7.1. Overview

The GambleAware Report finds that exposure to gambling advertising is high across all age groups, and restrictions on the scheduling, placement and targeting of gambling advertisements have a limited impact. This includes the ‘25% test’ restriction, through which CAP ensures non-broadcast ads for gambling, alcohol and other age-restricted ads, served to mixed-age audiences, are prohibited where more than 25% the audience are under 18.

The Final Synthesis Report contends that sheer exposure to gambling advertising can have an impact on attitudes towards the prevalence and acceptability of gambling, and, in turn, “susceptibility” to gamble in the future. The report subsequently recommends a reconsideration of CAP’s ‘25% test’ restriction.

For reasons set out in this section, CAP considers the evidence on which this finding is based falls considerably short of suggesting that the rules need to be updated to restrict further the media in which, and the audience to which, gambling advertisements may be served.

Any regulatory benefits arising from strengthening rules on the scheduling, placement and targeting of gambling ads in order to reduce all age groups’ exposure to gambling ads are, at best, uncertain. It is therefore unclear what commensurate and proportionate regulatory benefits would be generated by such an intervention.

CAP considers the policy to allow gambling ads to be served to predominantly adult audiences only (with adults comprising at least 75% of the audience), remains appropriate and proportionate. This policy accepts that children and young people will see gambling advertisements, but, when they do, CAP and BCAP’s rules prohibit the creative content of those ads from engaging the under 18 audience.

Responding to the Final Synthesis Report’s specific recommendation for change, CAP considers the ‘25% test’ restriction continues to be appropriate. It nevertheless invites respondents to submit other evidence, which suggests that exposure to gambling advertising can, in and of itself, result in gambling advertising-related harms.

7.2. GambleAware conclusions and recommendations

The Final Synthesis Report makes this case for reducing exposure to gambling advertising:

exposure to advertising is high across all age groups with gambling advertising predominantly found in public places rather than specifically child-friendly places. This suggests that current rules to restrict exposure have a limited impact, including the ‘25% rule’ aimed at excluding advertising from media with an audience consisting of a 25% or more of children and young people. The research suggests that sheer exposure to gambling advertising can have an impact on attitudes towards the prevalence and acceptability of gambling, and in turn the susceptibility to gamble in the future. Furthermore, the rise of new forms of gambling marketing through social

media have increased the ways in which children, young people and vulnerable adults can engage with gambling brands, often innocently, in such a way as to develop brand loyalty⁴⁵.

This is followed by a GambleAware recommendation, directed at regulators, to:

Consider whether the '25% rule' remains an appropriate criterion for deciding which gambling ads can be legitimately marketed to a mass audience. Based on the findings from this research, further discussion is required to test the assumption that limited harm is caused from exposure to advertising where children and young people make up no more than 25% of the likely audience; and whether this threshold should be reduced and/or expressed as an absolute number rather than a percentage⁴⁶.

7.3. New GambleAware evidence

The GambleAware research identified evidence of an association between non-gamblers' reported exposure to gambling advertising and their "susceptibility" to gamble in other words their intention to gamble in the next 12 months. This association included non-gamblers in the 11-17 age group⁴⁷. The link between exposure to gambling and significant attitudinal change to gambling for people aged 11-17 raises obvious concerns, even if the evidence falls short of finding that, in practice, exposure leads directly to participating in gambling at the time or in the future.

There are additional limitations to the findings. The finding is 'an association' and, as the Final Synthesis Report acknowledges, caution is necessary in attributing causation. Also, the measure, used by researchers, to determine whether respondents intend to gamble in the next 12 months is highly sensitive. Respondents answering that they would 'probably not' gamble in the next 12 months were categorised as 'susceptible' to gamble in the future. In terms of cumulative and longer-term impacts, the GambleAware evidence base does not include a longitudinal dimension, so it is not known whether respondents did, in practice, gamble in the next 12 months. (Gambling Commission research indicating that gambling participation by those aged 11-16 has declined from 22% to 11% over the past decade appears to challenge the association between more exposure to gambling ads and the likelihood that children go on to gamble in the following 12 months⁴⁸). The Final Synthesis Report also found no similar association among current gamblers across the sample. Findings also highlighted other factors associated with "susceptibility" to gamble, like the influence of parents and peers on shaping knowledge and behaviour⁴⁹.

CAP and BCAP consider that the association identified between exposure to gambling advertising and "susceptibility" to gambling for people aged 11-17 is, at most, modest and, when considered in the light of GambleAware findings on the appeal of different types of content and messaging, it does not support the case that exposure to the multiplicity of different gambling advertisements is equally impactful. There is, therefore, little in the way of evidence to indicate that exposure to gambling advertisements is, in and of itself, likely to cause harm. Any regulatory benefits arising from measures to restrict further the media in

⁴⁵ GambleAware FSR section 1.3.1

⁴⁶ GambleAware FSR section 8.2.2

⁴⁷ GambleAware FSR section 7.4

⁴⁸ Gambling Commission (2019), pp. 10-12

⁴⁹ GambleAware FSR section 7.4.2.

which, and the audience to which, gambling advertisements may be served, in order to reduce exposure to all age groups are, at best, uncertain. It is therefore unclear what commensurate and proportionate regulatory benefits would be generated by such an intervention.

On this basis, CAP considers the '25% test' restriction remains a proportionate means of controlling the placement of gambling advertising in non-broadcast, one-to-many, mixed-age audience media to ensure that such advertising only appears to predominantly adult audiences (with adults comprising at least 75% of the audience).

Gambling advertisers have the freedom to promote their products in these predominantly adult media environments provided that the creative content of the advertisement is unlikely to harm children, young people and other vulnerable groups. The rules intend to strike a proportionate balance focusing restrictions on potential gambling advertising-related harm (for example, advertising directed at under-18s or containing content that condones or encourages problem gambling behaviours) while respecting legitimate commercial freedoms.

7.4. Assessment of the case for new restrictions

7.4.1. Basis for the '25% test' – Previous evidence reviews concluded that there is little basis to find that exposure to gambling advertising, which complies with the UK Advertising Codes' restrictions on creative content, is likely to be harmful to under-18s⁵⁰. CAP and BCAP consider that evidence presented in the Final Synthesis Report does not challenge this finding.

The UK Advertising Codes intend to prevent gambling advertising that is *likely* to cause harm. Scheduling, placement and targeting restrictions prevent marketers from inappropriately directing gambling advertising at an audience younger than the legal age of participation. However, neither the Codes, nor the Gambling Act 2005, explicitly prohibit children, young people or other vulnerable groups from seeing or hearing commercial messaging related to gambling. Gambling operators can direct gambling advertising, compliant with the UK Advertising Codes, at a legitimate adult audience, including to persuade that audience to participate responsibly in gambling.

The Gambling Commission is responsible for licensing gambling operators and ensuring the provision of their products to customers is compatible with the Act's requirement on the protection of children and young people, and other vulnerable groups. The UK Advertising Codes acknowledge that both under-18s and vulnerable adults will see gambling advertising in audiences predominantly composed of adults. In response, the UK Advertising Codes restrict the creative content of ads to ensure vulnerabilities associated with these groups are not exploited and the potential for gambling advertising-related harm is appropriately mitigated.

Alongside restrictions on the use of directly targeted advertising and prohibitions on placement in media for under-18s⁵¹, the '25% test' limits gambling advertising to

⁵⁰ CAP and BCAP reviewed the regulatory implications of emerging evidence in 2014 and again between 2018 and 2019; see links above.

⁵¹ The CAP Code includes media placement restrictions to prohibit advertising for products like gambling from appearing in on-to-many media for children (aged 0-15) and young people (aged 16-17). Media for children and young people are straight-forwardly identifiable, usually because they make the intended audience clear (for example, a teen interest

predominantly or exclusively adult media environments. The bar is set deliberately high, recognising that under-18s consume media that is not directed at them explicitly. Even when a large majority – up to 75 % – of the audience is adult, restrictions on gambling advertising still apply and gambling operators are denied access to advertise to that audience.

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. Under-18s account for around 21% of the population⁵². The 25% threshold represents an over-representation of under-18s of around 20%. CAP considers that this is a reasonable means of identifying media environments that are not predominantly for adults.

7.4.2. Alternative approaches – The GambleAware recommendation includes examples of alternative approaches: a reduction in the 25% threshold, the use of an absolute audience figure rather than a percentage, or a combination of the two.

The ‘25% test’ allows gambling ads to be targeted at a predominantly adult audience only (at least 75% of the audience must be adult), whilst ensuring they cannot be placed in media likely to appeal particularly to under- 18s (i.e. where under- 18s are over-represented in the audience relative to their make up in the overall population).

In terms of online media, reducing the test to, say, 20% where under-18s are represented in the audience roughly in proportion to their make up in the UK population as a whole, would result in a negligible amount of additional online media being caught by the restriction. Beyond general audience media, like family entertainment content, most media have a specific focus in terms of their audience demographic skewing towards the media’s target group rather than having an audience representative of the population. It is therefore not clear that a reduction in the test to 20% would have a significant impact on under-18s’ exposure.

Moving the bar further to, say, 10% or 5%, would likely identify a material amount of additional online media that would be caught by the restriction, with the effect of reducing under-18s overall exposure to gambling ads. However, given CAP and BCAP’s view that the association identified between exposure to gambling and “susceptibility” to gambling for people aged 11-17 is, at most, modest and the fact that strict controls on the appeal of content to under-18s limit its impact when exposure does take place, CAP considers any such reduction to 5% or 10% would be disproportionate both in terms of the impact on gambling operators’ advertising freedoms and necessary protection for under-18s.

Setting a numerical limit on the number of the under-18s in an audience (either as a replacement for the ‘25% test’ or in combination with it) is impractical given the significant differences between media audiences, how advertising appears and different approaches to measurement. For example, some media like video-on-

magazine or video sharing platform channel with content explicitly intended for a younger demographic). For advertising targeted using information about individuals to construct an audience, marketers are required to take steps to ensure that those known or likely to be under 18 are excluded from the audience. CAP’s guidance, [Children & age-restricted ads online](#), provides details of the requirements for advertisers using online platforms like social media networks and video sharing platforms.

⁵² Office of National Statistics (ONS), [UK population pyramid interactive](#), data from 2018.

demand or cinema include advertising, which appears to the audience watching at the point it is shown. Other media like websites or influencers' posts on a video sharing platform are available over a significant period of time for audiences to search for and consume the content.

The place of one-to-many media in the mix of people's media consumption has changed considerably with the growth of online platforms. Social media, video sharing platforms, websites and apps all support targeted advertising served to users based on known or inferred data at an individual level. As one-to-many advertising declines, it further calls into question the potential regulatory benefits – in terms of reduced exposure for under-18s – of change to the '25% test'.

7.4.3. Enforcement and impact – The '25% test' applies to one-to-many media with broader audiences. For instance:

- Media of general appeal across all or most age ranges (for example, family-oriented video content); or
- Media of appeal to young adults but may also be of appeal to young people and/or older children (for example, a health and fitness-related publication).

In its enforcement of CAP's media placement restrictions, the ASA requires marketers to demonstrate their compliance with the Code; they must hold sufficiently robust audience data to demonstrate the likely age composition of the audience⁵³. The more comprehensive the audience data is in demonstrating that under-18s comprise less than 25% of the audience, the greater confidence the gambling advertiser has in placing the ad in that environment. In the absence of sufficiently robust data, the ASA has the discretion to find the advertisement in breach of the '25% test'.

7.5. 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.

⁵³ CAP's guidance, [Media placement restrictions: protecting children and young people](#), sets out the requirements of the '25% test' in full detail and includes scenarios.

- 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.

8. Technical updates to the Codes

8.1. Overview

CAP and BCAP propose to amend the:

- introductory text of CAP Code [section 16](#); and
- introductory text and structure of BCAP Code [section 17](#).

The primary aim is to clarify the scope of application of the rules with reference to the underlying legal framework. The proposals are not intended to result in substantive changes in advertising policy.

8.2. Purpose of proposed changes

CAP and BCAP's general aim is to ensure the Codes are easily understood, easily implemented and easily enforced. This consultation presents an opportunity to update them to better align them with the underlying legal framework and to improve clarity, for instance, drawing on practical insights from ASA casework and findings of the GambleAware research assessed in developing this consultation. CAP and BCAP have also sought the input and technical advice of the Gambling Commission, Financial Conduct Authority (FCA), the Jersey Gambling Commission, the Alderney Gambling Control Commission, the Isle of Man Gambling Supervision Commission and the Northern Ireland Department for Communities.

The rationales for the proposed technical changes are set out in sections 8.2.1-8.2.4 below followed by the full text of the proposals, including comparisons with the existing text, in sections 8.3 and 8.4.

8.2.1. The introductory text in the 'Background' sub-sections of both Codes' gambling rules will be amended to include more information on their statutory underpinnings and how the Codes work within them. In particular, learnings from the eSports-related work responding to GambleAware's Interim Synthesis Report suggest it is important to be clearer on issues relating to the promotion of unlawful gambling including the Gambling Commission's statutory powers to control it, along with their general role as a backstop to the ASA system⁵⁴.

8.2.2. A 'Scope' sub-section will be added to the CAP Code rules and the 'Definitions' sub-section of the BCAP rules will be amended to simplify and harmonise the way the Codes explain the scope of application of their respective gambling rules.

- Reflecting the main statutory framework underpinning them, CAP and BCAP's gambling rules apply to marketing by gambling operators licensed in Great Britain likely to have the effect of promoting gambling; this encompasses advertising of specific products and general brand promotional activity even where products are not directly referenced. This approach is intended to replace the previous description of the scope which focused on types of products; described as 'play for money' and 'play for free' gambling products.

⁵⁴ See CAP and BCAP's [letter](#) to the Gambling Commission in April 2020 outlining the work done to assess the implications of GambleAware findings relating to eSports betting-related marketing on social media.

- A similar approach will be adopted for advertising by firms authorised by the FCA to offer spread betting products, both financial and sports-related.

8.2.3. The new CAP Code ‘Scope’ sub-section and amended BCAP ‘Definitions’ sub-section will also include a new provision allowing the ASA to apply principles from the gambling rules to advertising for non-gambling operators where it is likely to have the effect of promoting gambling. This clarifies CAP and BCAP’s intended application of the rules to advertisers like betting tipsters who advertise non-gambling services that have the inherent effect of encouraging people to gamble. Applying the gambling rules directly poses difficulties as the absence of a licensing requirement means the ASA could not rely on the Gambling Commission’s powers to act as backstop.

Additionally, for the BCAP Code, this proposed approach will replace the present structure of having ‘Rules for all advertising’ and ‘Rules for gambling advertising’ sub-sections within the list of rules bringing the two Codes into alignment.

8.2.4. Further amendments to the ‘Background’ sub-sections of both Codes’ gambling rules will clarify their territorial application. The Codes rely on the underlying framework of UK gambling legislation. The most important is the Gambling Act 2005, which covers gambling in Great Britain and remote gambling in Northern Ireland. However, the Codes apply to the UK, including Northern Ireland, and the Channel Islands and Isle of Man.

In practice, those operators licensed in the Channel Islands and Isle of Man are required by law to also hold a licence with the Gambling Commission, if they want to operate in Great Britain; any advertising to consumers in Britain must comply with the Codes. The ASA receives very few complaints about advertising by operators licensed in the Channel Islands and Isle of Man. However, the GambleAware research involving social media monitoring of eSports betting-related marketing identified examples of advertising by such operators to non-UK audiences. This is within the remit of the UK Advertising Codes but is not subject to the licensing requirements of the Gambling Act 2005⁵⁵.

Having sought advice from the licensing authorities in these territories noting that each has particular arrangements for licensing gambling and controlling its advertising, CAP and BCAP consider there is a need to make clear the application of the Codes to these advertising scenarios and that the ASA will liaise with the relevant licensing authority in how to address the complaint.

⁵⁵ The [letter](#) to the Gambling Commission of April 2020 provides a full summary of the work CAP and BCAP carried out to better understand the different scenarios involving operators based in UK territories covered by the UK Advertising Codes but not engaged in advertising directed at consumers in Britain.

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](#) in is available via this link.

CAP Code section 16 – Gambling	
Proposed introductory text	Existing introductory text to be replaced
<p>Principle</p> <p>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.</p>	<p>Principle</p> <p>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.</p>
<p>Background</p> <p>"Gambling" for the purposes of this section covers:</p> <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. <p>Rules on marketing communications for lotteries are set out separately in Section 17.</p>	<p>Background</p> <p>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.</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>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 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> <p>Unless otherwise stated, the rules in this section apply to marketing communications by:</p> <ul style="list-style-type: none"> • 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>This includes marketing by third parties (for example, affiliate marketers) acting on an advertiser's behalf.</p>	<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>
<p>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).</p>	
<p>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.</p>	<p>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.</p>
<p>Unless they portray or refer to gambling, this section does not apply to marketing communications 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 marketing communications 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>For the purposes of this section, "children" are people of 15 and under and "young persons" are people of 16 or 17.</p>	<p>For the purposes of this section, "children" are people of 15 and under and "young persons" are people of 16 or 17.</p>

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 under-18s 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.</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. 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>

<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>Please refer to Section 32: Scheduling for rules on the scheduling of gambling advertisements.</p>	<p>Please refer to Section 32: Scheduling for rules on the scheduling of gambling advertisements.</p>
<p>Definitions</p> <p>"Gambling" for the purposes of this section covers:</p> <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. <p>Rules for lottery advertising are set out separately in Section 18.</p>	<p>Definitions</p> <p>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.</p>
<p>Unless otherwise stated, the rules in this section apply to advertisements by:</p> <ul style="list-style-type: none"> 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>This includes marketing by third parties (for example, affiliate marketers) acting on an advertiser's behalf.</p>	<p>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.</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>

8.5. 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.
- 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.

9. Impact assessment

9.1. Overview

CAP and BCAP consider that the proposals set out in this consultation are proportionate to the likelihood of harm identified by the evidence and are unlikely to result in disproportionate economic impacts on advertisers or media owners.

9.2. Impact on advertisers

The proposed changes to CAP and BCAP's creative content rules on appeal to under-18s would affect the kinds of content that can appear in gambling advertising (as set out in section 6.4). Although the impact on the types of content that would be acceptable are significant (in other words to the extent they restrictive creative expression), CAP and BCAP consider they leave considerable room for advertisers to market their products responsibly. Recognising that licensed gambling products are legally available and subject to the regulatory framework of the Gambling Commission, CAP and BCAP have proposed a narrow exemption, allowing advertisers to use certain imagery relating inherently to the subject of a specific advertised product (for instance, a bet or lottery good cause).

The proposed changes to the guidance that seek to improve protections for vulnerable adults focus more narrowly on specific kinds of content (as set out in section 6.6). CAP and BCAP do not envisage that they will have a significant detrimental impact on advertisers.

Both the proposals are based on the development of existing standards, with which advertisers must already comply. CAP and BCAP do not anticipate, therefore, significant additional compliance costs resulting from rules proposed in this consultation. CAP and BCAP have committed to producing additional guidance on the interpretation of the new rules on appeal to mitigate any transition costs and ensure marketers have the support to quickly and effectively implement any new standards.

9.3. Impact on media owners

CAP and BCAP consider the impact on media owners, principally, in terms of revenues, to be limited. As noted above, the proposals affect the content of advertising not its scheduling, placement and targeting.

10. How to respond and next steps

10.1. Overview

CAP and BCAP are committed to considering all responses carefully and with an open mind. CAP and BCAP would particularly welcome responses from stakeholders with an interest or expertise in gambling risk factors.

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

- the consultation will run for 10 weeks (excluding the Christmas and New Year period), closing at 5pm on 22 January 2021;
- CAP and BCAP will consider each response carefully and evaluate all significant points explaining the reasons behind the decisions they make; and
- the evaluation will be published on the CAP website when the outcome of the consultation is announced.

10.2. How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5pm on 22 January 2021.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

Please send responses to: andrewt@cap.org.uk

If you are unable to respond by email you may submit your response by post to:

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

10.3. Confidentiality

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

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by email, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system. If part of a response is confidential, please put that in a separate annex so that nonconfidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

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