

Vulnerable people

How CAP and BCAP protect vulnerable people

Foreword

The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the [UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#) (the CAP Code). The CAP Code covers marketing communications across all non-broadcast media including on marketers' own websites.

The Broadcast Committee of Advertising Practice (BCAP) is the regulatory body responsible for maintaining the [UK Code of Broadcast Advertising](#) (the BCAP Code) under agreement with the [Office of Communications](#) (Ofcom).

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services).

The CAP and BCAP Codes are enforced by the Advertising Standards Authority (ASA) which investigates complaints and publishes [rulings](#) on complaints about individual ads each week in addition to conducting proactive work in relation to particular regulatory issues.

This document provides a short guide on how the self-regulatory system protects vulnerable people.

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1. Introduction

Vulnerability is a theme that runs through the work of the self-regulatory system for advertising, and is protected under the Codes. It can derive both from membership of a particular group sharing certain characteristics (for example, children) or as a result of particular circumstances (for example, a recent bereavement or financial problem). The sources of protection for vulnerable people under the self-regulatory system can be summarised as follows:

1. CAP and BCAP maintain self-regulatory rules to protect vulnerable people, which fall into two categories: content rules designed to minimise the potential for ads to cause harm to those with vulnerabilities; and scheduling (in the case of broadcast) and targeting (in the case of non-broadcast) restrictions which seek to ensure that vulnerable groups are not disproportionately represented in the likely audience for certain ads.
2. The ASA's Strategy commits the self-regulatory system to being active on issues that cause social concern, particularly in relation to concerns about public health, children and those with financial vulnerability.
3. Evidence-based policy that identifies a vulnerability and suggests ways in which rules can prevent it being exploited.
4. The law reflected in the Codes provides protections for and duties to protect those with vulnerabilities.

The rest of this document provides more details on the four sources of protection set out above.

2. Self-regulatory protections provided by the CAP and BCAP Codes and associated guidance

- CAP and BCAP maintain self-regulatory rules to protect those who are vulnerable, including sections in both Codes devoted to the protection of children. These rules fall into two broad categories: content rules designed to minimise the potential for ads to cause harm to those with vulnerabilities; and scheduling (in the case of broadcast) and targeting (in the case of non-broadcast) restrictions which seek to ensure that vulnerable groups are not disproportionately represented in the likely audience for certain ads.
- Rules in both Codes on harm and offence, children, promotional marketing, medicines, weight control and slimming, financial products, food, gambling, alcohol, e-cigarettes and tobacco contain examples of content and targeting restrictions that are designed to protect those who are vulnerable.
- The scheduling restrictions contained in section 32 of the BCAP Code protect vulnerable people by ensuring that certain groups are not disproportionately represented in audiences for certain ads; for example, protecting children from seeing ads for products that are unsuitable for them or the audience of religious programming seeing ads that might cause offence.
- The ASA, in casework, and CAP and BCAP, in drafting Code rules and guidance, will always take account of the likely audience of ads and the available evidence on potential harm to identifiable groups within that audience.
- An example of CAP and BCAP supplementing the protection for vulnerable people that their rules provide is their [joint guidance](#) on the trivialisation of high-cost short-term credit in ads. This guidance cautions advertisers against promoting their products as a long-term supplement to irregular, low income. Any treatments that suggest use of the loans outside the above parameters are likely to be (and have been) found to be irresponsible by the ASA.

3. ASA Strategy

- The ASA's Strategy commits the self-regulatory system to being active on issues that cause social concern, particularly in relation to concerns about public health, children and those who are financially vulnerable.
- To help identify the regulatory 'issues that matter most', in line with the Strategy, the ASA and CAP use a priority assessment tool, which assesses regulatory project ideas against three broad categories of questions: impact on people, market impact and institutional impact.
- The 'impact on people' category assesses the extent to which a marketing practice affects different vulnerable groups, including a series of questions that explore the impact on people who are financially vulnerable. The combination of the processes above and the organisation's proactive monitoring means that the self-regulatory system provides regular and comprehensive assessment of the protection it can provide for vulnerable people.

4. Evidence-based policy-making

- CAP and BCAP keep their Codes under review and welcome new evidence on where they may need to offer additional protection, where existing protections may no longer be necessary or proportionate or where other regulatory action might be warranted. This means that CAP and BCAP may add to the protections provided to vulnerable groups as evidence of a need for protection arises.

5. The law

The law reflected in the Codes provides protections for and duties to protect vulnerable people, and some of the key pieces of legislation can be summarised as follows:

The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs)

- Regulation 2(5) of the CPRs provides:
 - (5) In determining the effect of a commercial practice on the average consumer—*
 - (a) where a clearly identifiable group of consumers is particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, and*
 - (b) where the practice is likely to materially distort the economic behaviour only of that group, a reference to the average consumer shall be read as referring to the average member of that group.*
- The European Commission's guidance on the Unfair Commercial Practices Directive (which the CPRs implement in the UK) also refers to other potential vulnerabilities, such as health problems, membership of a minority group, poor credit history and gender.
- The CPRs, and the European Commission's guidance, are considered by the ASA in all cases involving misleading advertising.

The Equality Act 2010

- The Equality Act 2010 prohibits discrimination on the basis of certain “protected characteristics”, which are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The inclusion of named protected characteristics is implicitly based on the fact that those sharing protected characteristics are vulnerable to discrimination.
- The Equality Act's provisions are not directly reflected in the Codes but the CAP Code does make reference to protected characteristics in its rules on offence.

The Communications Act 2003

- Under the Communications Act, Ofcom (and BCAP, via its delegated statutory duties) is required to take into account the needs of persons with disabilities, elderly, those on low incomes, under-18s and those holding religious beliefs.

The Gambling Act 2005

- The Gambling Act 2005 includes protection of children and “other vulnerable persons” as one of its licensing objectives: it does not define the term “vulnerable people”. The ASA therefore assesses ads on a case-by-case basis to determine whether the vulnerability of groups within the audience is relevant to a decision on whether an ad has breached the Code.
- CAP’s guidance states that marketers should exercise caution when preparing campaigns and should consider how they might affect vulnerable groups to ensure that marketing communications do not contain content likely to cause harm.
- The ASA will have regard to the vulnerability of particular groups when considering complaints. The most notable group is younger men (aged 18-34). The ASA might consider this factor to be relevant when considering complaints under rules such as 16.3.10 (gambling as a rite of passage) that are in large part focused on protecting young men.
- The ASA will also have regard to vulnerabilities affecting individuals, groups of whom may be disproportionately represented in an audience. These include economic constraints, limitations on the capacity to understand information, mental health and propensity to display risky patterns of gambling behaviour (e.g. loyalty card holders or late-night gamblers).