

Adalsys Ltd. response to BCAP

Code Policy Team
Broadcast Committee of Advertising Practice
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London WC1V 6QT

BCAPcodereview@cap.org.uk

Dear Sirs,

The BCAP Code Review - Consultation on the proposed BCAP Broadcast Advertising Standards Code

We refer to the above consultation.

We have seen a copy of the response being given in respect to this consultation by the Association of Interactive Media & Entertainment ("AIME") and would confirm that we are in agreement with its contents.

We fail to understand how this consultation can be regarded as being consistent with the principles of good regulation as enunciated by the UK Government's Department for Business Innovation and Skills.

There is no transparent justification for a consultation which seeks to reclassify certain types of service as teleshopping. Many of these services are already very substantially regulated under a combination of Ofcom's Broadcasting Code and the PhonepayPlus Code of Practice and an additional tier of regulation will only serve in our view to make the regulatory process more opaque and **less accountable**.

Regulators should aim to **simplify and modernise existing regulations**. This consultation does quite the opposite. The regulatory burden proposed by BCAP would add yet a further layer of regulation to that which already exists.

Many of the businesses affected are prime drivers of new technologies which employ many thousands of people whose jobs would be put at risk by the BCAP proposals. The premium rate industry alone is estimated to generate revenues in the order of millions of pounds per annum yielding to the Exchequer valuable tax revenues which stand to be lost.

There has been a palpable lack of **transparency** regarding the motivation for this consultation. Ofcom has itself not concluded its own consultations into the use of premium rate services in programmes and it does seem to us to be a case of "putting the cart before the horse" to have a consultation of this nature before Ofcom has concluded its own deliberations **and before** members of the public as well as affected business interests have been given a reasonable opportunity to comment on the same.

Indeed, only this week, Ofcom have announced yet another consultation, this time into proposed changes to the Ofcom Broadcasting Code concerning TV and Radio.

Good regulation should be **proportionate**. It cannot be **proportionate** to bring forward proposals which will wreck many a good business and destroy jobs etc, where in respect to the highly popular consumer driven services affected, there is **no evidence** of consumer harm and the legal

justification for reclassifying certain services including psychic and adult, as teleshopping, remains open to challenge in the courts.

We believe that certain of the information contained in the BCAP consultation is factually incorrect eg: the reference to “around 200 complaints” in paragraph 22.43 and in other instances information is not set in its correct context, the cumulative effect of which is that the reader is given a misleading impression of the actual evidence eg the reference to “drunken female presenters” in paragraph 22.43. It does not behove a regulator to select only those facts which suit its cause (or that of another agency to whom it is accountable, Ofcom) or to set those facts out in a way that misleads.

We support regulatory initiatives that are **consistent** and **targeted at cases where action is needed.** We cannot see that the process surrounding this BCAP consultation has been consistent. The practical effect of the BCAP proposals in respect to the free to air psychic and adult broadcast genre's will be to cause them great damage. Targeting these broadcast activities is not a response to a compelling “need”, rather it is quite clearly a reaction by BCAP to pressure being brought to bear on them by Ofcom. It is all the more extraordinary that such targeted activity should be taking place given that Ofcom have not themselves concluded their own consultation process into PRS – how can it be possible to sensibly and reasonably postulate a “cure” before the need for a cure has been established?

Recent events in the UK and globally, have demonstrated the need for governments and those in position of authority to take urgent action in order to restore public confidence in their integrity. We cannot see how those of BCAP's proposals which would have the effect of banning certain popular genre's of free to air broadcast do anything but damage such confidence.

Yours faithfully,

Alex Perez
CEO Adalsys LTd.

RESPONSE OF THE ADVERTISING ASSOCIATION TO THE BCAP CODE CONSULTATION ADDENDUM – SCHARR REVIEW

The Advertising Association is the only body representing all sides of the advertising and promotional marketing industries, worth £18.6 billion in 2008. Its membership represents advertisers, agencies, media and support services in the UK. Further information about the Advertising Association is available at: <http://www.adassoc.org.uk/>

The Advertising Association is a member organization of BCAP. The Advertising Association supports the conclusions arrived at by BCAP in respect of the SchARR Review and the analysis that supports them. The Advertising Association has responded to Question 158 accordingly.

Question 158

Given BCAP's policy consideration, do you agree that the evidence contained in the SchARR Review does not merit a change to BCAP's alcohol content or scheduling rules? If your answer is no, please explain why you consider the SchARR Review does merit a change to BCAP's alcohol advertising content or scheduling rules.

Yes. The Advertising Association agrees that the evidence contained within the SchARR Review does not merit a change to BCAP's rules on the content and scheduling of alcohol advertisements.

10 July 2009

RESPONSE OF THE ADVERTISING ASSOCIATION TO THE CONSULTATION ON THE PROPOSED BCAP BROADCAST ADVERTISING STANDARDS CODE

The Advertising Association is a federation of trade bodies and organizations representing the advertising and promotional marketing industries, including advertisers, agencies, the media and support services in the UK. It is the only body that speaks for all sides of an industry that was worth around £19 billion in 2007.

The Advertising Association is a member organization of BCAP. The Advertising Association is fully supportive of the proposals made by the Committee in its consultation paper and the rationale behind them. The Advertising Association has responded to the questions posed in the BCAP consultation paper accordingly.

19 June 2009

Section 1: Compliance

Social responsibility

Question 1

Given BCAP's policy consideration, do you agree that rule 1.2 should be included in the proposed BCAP Code? If your answer is no, please explain why. **Yes.**

Other Questions

Question 2

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Compliance Section are necessary and easily understandable? If your answer is no, please explain why. **Yes.**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Compliance rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No.**

iii) Do you have other comments on this section? **Yes.**

Typos etc

Location: Principle, third sentence

Proposal: Replace "are the ultimate responsibility" with "are ultimately the responsibility"

Rationale: Sense

Location: Background

Proposal: Replace "CAP" with "BCAP"

Rationale: More logical for references to be made to BCAP than CAP in this Code.

Location: Background

Proposal: Replace "BCAP guidance" with "BCAP Guidance"

Rationale: Consistency

Location: Radio, fourth bulletpoint

Proposal: Replace “health and beauty” with health as well as beauty”

Rationale: Clarity

Location: Radio, eleventh bulletpoint

Proposal: Replace “controversy including” with “controversy, including”

Rationale: Necessary punctuation

Section 2: Recognition of Advertising

TV advertisement content prohibitions

Question 3

i) Given BCAP’s policy consideration, do you agree that rule 2.1 should replace present TV rules 2.1.2 (b) and 2.2.2 (c), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP’s policy consideration, do you agree that rule 2.3 should replace present TV rule 2.2.2 (d), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Extra consideration of rule 2.1.2(a)

Question 4

Given BCAP’s policy consideration, do you agree that rule 2.2 should replace present TV rule 2.1.2 (a), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Editorial independence: television

Question 5

i) Given BCAP’s policy consideration, do you agree that present TV rule 2.2.1 should not be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP’s policy consideration, do you agree that present TV rule 2.2.2 (a) should not be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Impartiality of station presenters and newsreaders

Question 6

i) Given BCAP’s policy consideration, do you agree that radio rule 18, section 2, should not be included in the proposed Code? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP’s policy consideration, do you agree that radio station presenters who do not currently and regularly read the news should be exempted from the rule that restricts presenters from featuring in radio advertisements that promote a product or service that could be seen to compromise the impartiality of their programming role? If your answer is no, please explain why. [Yes](#).

Other questions

Question 7

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules on the Recognition of Advertising are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Advertising rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here or in Section 32 on Scheduling and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle, first paragraph

Proposal: Replace "the annex" with "Section 32 (Scheduling)"

Rationale: Correct cross-reference

Location: Rule 2.1, first sentence

Proposal: Consider replacing "obviously" with "readily"

Rationale: Clarity

Location: Definitions, "Editorial content"

Proposal: Replace "in 2.1" with "in Rule 2.1"

Rationale: Consistency

Section 3: Misleading

[Puffery and subjective claims](#)

Question 8

Given BCAP's policy consideration, do you agree that rules 3.4 and 3.5 should be included in the Code? If your answer is no, please explain why. [Yes](#).

[Significant division of informed opinion](#)

Question 9

Given BCAP's policy consideration, do you agree that rule 3.13 should be included in the Code? If your answer is no, please explain why. [Yes](#).

[Prices claims "from" or "up to"](#)

Question 10

Given BCAP's policy consideration, do you agree that rule 3.23 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Estimates of demand

Question 11

i) Given BCAP's policy consideration, do you agree that rule 3.27 should be included in the Code? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that rule 3.28.2 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Recommended Retail Prices (RRPs)

Question 12

Given BCAP's policy consideration, do you agree that rule 3.39 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Subliminal techniques

Question 13

Given BCAP's policy consideration, do you agree that the rule on subliminal advertising is relevant to radio and should, therefore, be apply to radio as well as TV advertisements? If your answer is no, please explain why. [Yes](#).

VAT-exclusive prices

Question 14

Given BCAP's policy consideration, do you agree that rule 3.18 should be included? If your answer is no, please explain why. [Yes](#).

Tax-exclusive prices

Question 15

Given BCAP's policy consideration, do you agree that rule 3.19 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Price offers that depend on other commitments

Question 16

Given BCAP's policy consideration, do you agree that rule 3.22 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Use of the word "free"

Question 17

i) Given BCAP's policy consideration, do you agree that rule 3.25 should be included in the Code? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that rule 3.26 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Geographical restrictions

Question 18

Given BCAP's policy consideration, do you agree that rule 3.28.3 should apply to TV and radio advertisements? If your answer is no, please explain why. [Yes](#).

Imitation or replica of competitor's trade mark

Question 19

Given BCAP's policy consideration, do you agree that the proposed amendment in 3.43 correctly reflects the BPRs 4(i) requirement? If your answer is no, please explain why. [Yes](#).

Animal testing

Question 20

Given BCAP's Policy consideration, do you agree that rule 5.2.7 should not be included in the Code? If your answer is no, please explain why. [Yes](#).

Advertisements for solicitors and advertisements for conditional fee arrangements which claim, 'no win no fee'.

Radio advertisements by or on behalf of solicitors

Question 21

Given BCAP's policy consideration, do you agree that it is not necessary to include in the BCAP Code the requirement for advertisements by or on behalf of solicitors to comply with the Solicitors Code of Conduct? If your answer is no, please explain why? [Yes](#).

Radio advertisements for conditional fee arrangements which claim 'no win, no fee'

Question 22

Given BCAP's policy consideration, do you agree that it is not necessary to maintain, in BCAP's proposed Code, a rule that requires advertisements for conditional fee arrangements which claim 'no win, no fee' to suitably qualify if the client is (or may be) required to pay any costs or fees (including those of the other party), such as insurance premiums or disbursements? If your answer is no, please explain why. [Yes](#).

Other questions

Question 23

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules in the Misleading Section are necessary and easily understandable? If your answer is no, please explain why? **Yes.**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Misleading rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No.**

iii) Do you have other comments on this section? **Yes.**

Typos etc

Location: Principle, first paragraph, second sentence

Proposal: Replace "For example, the 'Children' and 'Medicines' Sections" with "For example, Section 5 (Children) and Section 11 (Medicines, Medical Devices, Treatments and Health)"

Rationale: Ease of cross-referring

Location: Principle, Cross-reference

Proposal: Replace "Appendix X" with "Appendix 3"

Rationale: Appendix now has a designation

Location: Rule 3.2, second sentence

Proposal: Replace "unclear, unintelligible, ambiguous or untimely manner" with "ambiguous, unclear, unintelligible or untimely manner"

Rationale: Clarity

Location: Rule 3.3

Proposal: Replace "purposes of 3.2" with "purposes of Rule 3.2"

Rationale: Consistency

Location: Rule 3.3.5

Proposal: Replace "likely to reasonably expect" with "likely reasonably to expect"

Rationale: Clarity

Location: Rule 3.4

Proposal: Give serious consideration to defining "puffery" in the overarching "Definitions" section to the Section 3 (Misleading), not least so that the meaning is aligned with the interpretation contained within the Comparisons Principle on page 222 of the Code Review Document

Rationale: Utility and consistency

Location: Rule 3.4, Cross-reference

Proposal: Replace "8.2 requires" with "Rule 8.2 requires"

Rationale: Consistency

Location: Rule 3.11

Proposal: Consider replacing "to the consumers who see" with "to consumers who may see"

Rationale: Clarity

Location: Rule 3.11, Cross-reference

Proposal: Replace "rule 3.11" with "Rule 3.11"

Rationale: Consistency

Location: Rule 3.12x

Proposal: None. Note is taken of the intention to allocate a designation to this Rule in due course. It will be important to check that this does not throw out cross-references elsewhere in the Code.

Location: Rule 3.13

Proposal: Replace “their claims” with “claims made therein”

Rationale: Clarity: the claims are those of the advertiser.

Location: Rule 3.18

Proposal: Consider adding “value added tax (VAT)” to definitions in Prices section.

Rationale: Of potential assistance to all readers of Code, including foreign readers.

Location: Rule 3.22

Proposal: Replace “depends on another” with “depends on that of another”

Rationale: Clarity

Location: Rule 3.24

Proposal: Replace “consumers must make to take advantage” with “into which consumers must enter to take advantage”

Rationale: Clarity

Location: Rule 3.28

Proposal: Replace “at the advertised price” with “at the price stated”

Rationale: Clarity

Location: Rule 3.28.3

Proposal: Replace “products, for example, geographical” with “products – for example, geographical”

Rationale: Clarity – breaks out the example from the Rule

Location: Rule 3.29

Proposal: Replace “sample of it to promote” with “sample of it in order to promote”

Rationale: Clarity

Location: Rule 3.30

Proposal: Replace “deprive consumers” with “deprive consumers”

Rationale: Correct formatting – word spacing

Location: Rule 3.34

Proposal: Replace “representative feature of” with “representative feature or features of”

Rationale: Sense

Location: Rule 3.39

Proposal: Delete “(RRP)”

Rationale: Only one reference is made in the BCAP Code to the term recommended retail price, so it would appear unnecessary to provide an acronym for the term in this Rule.

Location: Rule 3.41

Proposal: Replace “product, advertiser or advertisement or a trade mark, trade name” with “product, advertiser, advertisement, trade mark, trade name or other distinguishing mark”

Rationale: More logical punctuation

Location: Rule 3.42

Proposal: Consider replacing “a competitor product or service” with “a competing product or service”

Rationale: Clarity

Location: Rule 3.47

Proposal: Replace “the advertiser, or other entity referred to in the advertisement, is” with “the advertiser, or any other entity to which it refers, is”

Rationale: Clarity

Location: Rule 3.49, second sentence

Proposal: Consideration needs to be given to clarify the second sentence of Rule 3.49 as it appears to suggest that some responsibility is placed on the consumer in respect of the guarantee, which is surely not the intent.

Location: Rule 3.50

Proposal: Replace “that advertiser” with “that the advertiser”

Rationale: Omission of necessary definite article

Location: Rule 3.51

Proposal: Retain the version of the Rule (5.2.9a) within the existing version of the BCAP Codes

Rationale: Some readers of the proposed Code may not understand for what the acronym EEA stands, whilst the current version of this Rule within the radio and television rules avoids the use of a double negative.

Section 4: Harm and Offence

Crime and anti-social behaviour

Question 24

Do you agree that rule 4.7 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Protection of the environment – radio

Question 25

Do you agree that proposed rule 4.10 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Harm

Question 26

Taking into account its policy consideration, do you agree with BCAP's proposal not to include in the proposed Code the present radio Harm rule (rule 10, section 2 of the present Radio Code)? If your answer is no, please explain why. [Yes](#).

Other questions

Question 27

i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Harm and Offence section, are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Harm and Offence rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle, third sentence

Proposal: Replace “scheduling (see Part 2: Scheduling).” with “scheduling. See Section 32 (Scheduling).”

Rationale: Consistency

Location: Rule 4.3

Proposal: Replace “safety hazard, for example, to those listening” with “safety hazard – for example, to those listening”

Rationale: breaks out the example from the Rule

Location: Rule 4.9

Proposal: Consider whether Rule 4.9 should also apply to radio.

Rationale: Consistency

Section 5: Children

Exploitation of trust

Question 28

Given BCAP’s policy consideration, do you agree that rule 5.7 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Expensive products of interest to children

Question 29

i) Given BCAP’s policy consideration, do you agree rule 5.14 should be applied to advertisements broadcast on all Ofcom-licensed television channels and not only those broadcast to a UK audience? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP’s policy consideration, do you agree rule 5.14 should define an ‘expensive’ product of interest to children to be £30 or more? If your answer is no, please explain why. [Yes](#).

iii) Given BCAP’s policy consideration, do you agree rule 5.14 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Competitions

Question 30

i) Given BCAP’s policy consideration, do you agree that rules 5.15 adequately replaces rule 11.8, section 2, of the Radio Code? If your answer is no, please explain why. [Yes](#).

ii) Given its policy consideration, do you agree with BCAP’s proposal to introduce a rule that prohibits advertisements for a promotion directly targeted at children if they include a direct exhortation to buy a product? If your answer is no, please explain why. [Yes](#).

- iii) Given BCAP's policy consideration, do you agree that rule 5.15 should apply to television and radio advertisements? If your answer is no, please explain why. [Yes](#).
- iv) Given BCAP's policy consideration, do you agree that rule 5.15 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Children as presenters in advertisements

Question 31

Given BCAP's policy consideration, do you agree that these present rules should not be included in the Code? If your answer is no, please explain why. [See responses to Question 31\(i\), 31\(ii\), 31\(iii\) and 31\(iv\) below](#).

- i) TV rule 7.3.4 [Yes](#).
- ii) Radio rule 11.11 a), section 2 [Yes](#).
- iii) Radio rule 11.11 b), section 2 [Yes](#).
- iv) Radio rule 11.12, section 2 [Yes](#).

Children's health and hygiene

Question 32

Given BCAP's policy consideration, do you agree that rule 11.10 b) of Section 2 of the present Radio Code should not be included in the proposed Code? If your answer is no, please explain why. [Yes](#).

Question 33

Given BCAP's policy consideration, do you agree that rule 5.4 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Other questions

Question 34

- i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Children section, are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Children rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? [No](#).
- iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle, second paragraph, second sentence

Proposal: Replace "with Part 2: Scheduling." with "with Section 32 (Scheduling)".

Rationale: Consistency

Location: Rule 5.2

Proposal: Replace “scheduled (see Part 2: Scheduling).” with “scheduled. See also Section 32 (Scheduling).”

Rationale: Consistency

Location: Rule 5.3

Proposal: Replace “This rule is” with “Rule 5.3 is”

Rationale: Consistency

Location: Rule 5.8

Proposal: Replace “to be ridiculed, inferior to others, less popular, disloyal or have let someone down” with “to be regarded as ridiculous, inferior to others, less popular, disloyal or as having let someone down”

Rationale: Renders Rule coherent, which it is not presently.

Location: Rule 5.12, second sentence

Proposal: Replace “see Section 15: Distance selling Section” with “see Section 8 (Distance Selling)

Rationale: Provides correct cross-reference in a consistent format

Rule 5.14, first sentence

Proposal: Replace “the product or service’s price or, if it is not possible to include a precise price, an approximate price.” with “that product or service’s price, or if it is not possible to include a precise price, an approximate one.”

Rationale: Clarity (words underlined purely to render more obvious where amendments are proposed)

Section 6: Privacy

Generic advertising for news media

Question 35

Given BCAP’s policy consideration, do you agree that the proposed Code should not require ‘generic advertising for news media’ to be immediately withdrawn if a complaint is registered that a TV advertisement of that type has featured an individual without his or her prior permission? If your answer is no, please explain why. [Yes](#).

Other questions

Question 36

i) Taking into account its general policy objectives, do you agree that BCAP’s rules, included in the proposed Privacy section, are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Privacy rules that are likely to amount to a significant change in advertising

policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [No](#).

Typos etc

Location: Principle, third sentence

Proposal: Replace “not imply that that individual” with “that the person concerned”

Rationale: Clarity

Location: Rule 6.2, first sentence

Proposal: Replace “soundalikes” with “mimicry”

Rationale: Whilst the term “soundalike” it comes across as jargon, whereas “mimicry” does not.

Section 7: Political and Controversial Issues

Reflecting the Act

Question 37

i) Given Ofcom’s practical application of the present rule, do you agree that it is appropriate to reflect 321(3) of the Communications Act 2003 in BCAP’s proposed rule on Political and Controversial Issues? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Political and Controversial Issues rules that you consider are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Rule 7.2.3

Proposal: Replace “Government department” with “Government Department”

Rationale: Standard form

Location: Rule 7.2.4 (Note)

Proposal: Replace “referendums” with “referenda”

Rationale: Referenda is the plural form of referendum

Location: Rule 7.2.4 (Note)

Proposal: Replace “public controversy and” with “public controversy; and,”

Rationale: Consistency of punctuation in Note

Location: Rule 7.3, first sentence

Proposal: Replace “Trade Union advertisements” with “advertisements by trade unions”

Rationale: Renders consistent with second sentence of Rule 7.3 and standard form.

Location: Rule 7.3, second sentence

Proposal: Replace “Trade Unions” with “trade unions”

Rationale: Standard form

Section 8: Distance Selling

Substitute products

Question 38

Given BCAP's policy consideration, do you agree that rule 8.3.4 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Cancellation within seven days

Question 39

Given BCAP's policy consideration, do you agree that rule 8.3.6a should be included in the Code? If your answer is no, please explain why. [Yes](#).

Prompt delivery

Question 40

Given BCAP's policy consideration, do you agree it is reasonable to extend the period within which orders must be fulfilled from 28 to 30 days? If your answer is no, please explain why. [Yes](#).

Protection of consumers' money

Question 41

Given BCAP's policy consideration, do you agree that present radio rule 21.1 f) of section 2 is unnecessarily prescriptive in the light of BCAP's proposed rule 8.3.1? If your answer is no, please explain why. [Yes](#).

Personal calls from sales representatives

Question 42

Given BCAP's policy consideration, do you agree that present TV rule 11.2.3 (a) and (b) and present Radio rule 21.1 j) (i)-(ii) of section 2 should not be included in the Code? If your answer is no, please explain why. [Yes](#).

Sending goods without the authority of the recipient

Question 43

i) Given BCAP's policy consideration, do you agree that present TV rule 11.2.2(g) should not be included in the Code? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that 8.3.7 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Other questions

Question 44

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Distance Selling are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle, second sentence

Proposal: Replace "These rules complement" with "The Rules in this Section complement"

Rationale: Consistency

Location: Principle, third sentence

Proposal: Replace "with the Regulations." with "with those Regulations cited above."

Rationale: Clarity

Location: Definitions, first sentence

Proposal: Replace "The rules in this Section" with "The Rules in this Section"

Rationale: Consistency

Location: Definitions, third sentence

Proposal: Replace "especially Section 6: Misleading (Availability)." with "especially those Rules within Section 3 (Misleading) relating to the availability of products and services."

Rationale: Correction of cross-reference, consistency and clarity

Location: Rule 8.3.3

Proposal: Replace "pre-clearance of and investigation of" with pre-clearance and investigation of"

Rationale: Clarity

Location: Rule 8.3.6

Proposal: Replace "give a refund" with "give a refund"

Rationale: Formatting

Section 9: Environmental Claims

New rules for television

Question 45

i) Given BCAP's policy consideration, do you agree that it is justifiable to take the approach of the present Radio Code and provide detailed rules on environmental claims in a dedicated section of the BCAP Code? If your answer is no, please explain why. **Yes.**

ii) Taking into account BCAP's general policy consideration, do you agree that BCAP's rules on Environmental Claims are necessary and easily understandable? If your answer is no, please explain why? **Yes.**

Life cycle of the product

Question 46

Do you agree that, provided the claim is thoroughly explained and does not mislead consumers about the product's total environmental impact, it is reasonable to allow a claim about part of an advertised product's life cycle? If your answer is no, please explain why? **Yes.**

Other Questions

Question 47

i) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No.**

ii) Do you have other comments on this section? **Yes.**

Typos etc

Location: Rule 9.4, second sentence

Proposal: Replace "over that of the advertiser's previous product or service or competitor products or services and" with "over either that of the advertiser's previous product of service or competing products or services, and"

Rationale: Clarity and necessary punctuation

Location: Rule 9.8

Proposal: Serious consideration should be given to breaking up this 58 word rule into smaller constituent parts.

Rationale: Clarity

Section 10: Prohibited Categories

The acquisition or disposal of units in collective investment schemes not authorised or recognised by the Financial Services Authority

Question 48

i) Given BCAP's policy consideration, do you agree that unregulated collective investment schemes should be a prohibited category of broadcast advertisement, with the caveat that, if a broadcaster can demonstrate compliance with COBS 4.12, BCAP may grant an exemption? If your answer is no, please explain why. [Yes](#).

ii) Do you agree that rule 10.1.9 should be included in the new BCAP Code? If your answer is no, please explain why. [Yes](#).

Betting tips

Question 49

i) Given BCAP's policy consideration, do you agree that the ban on TV and radio advertisements for betting tips should be relaxed? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's specific policy objectives to protect under 18s and the vulnerable and to prevent misleading and irresponsible claims in betting tipster advertisements, do you agree that BCAP's proposed rules are necessary and easily understood? If your answer is no, please explain why. [Yes](#).

Private investigation agencies

Question 50

i) Given BCAP's policy consideration, do you agree that the ban on TV advertisements for private investigation agencies should be relaxed? If your answer is no, please explain why. [Yes](#).

ii) Given its specific policy objective, do you agree that BCAP's proposed rule 29.2 is necessary and easily understood? If your answer is no, please explain why. [Yes](#).

Question 51

Given BCAP's policy consideration, do you agree that proposed rule 29.1 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Commercial services offering individual advice on personal or consumer problems

Question 52

i) Given BCAP's policy consideration, do you agree that the ban on TV advertisements for commercial services offering individual advice on consumer or personal problems should be relaxed? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's specific policy objectives, do you agree that BCAP's proposed rule 26.2 is necessary and easily understood? If your answer is no, please explain why. [Yes](#).

Question 53

Given BCAP's policy consideration, do you agree that proposed rule 26.1 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Pornography

Question 54

i) Given its policy consideration, do you agree with BCAP's proposal to relax the present prohibition on TV advertisements for pornography products and allow them to be broadcast on encrypted elements of adult entertainment channels only? If your answer is no, please explain why. [Yes](#).

ii) Given its specific policy objective, do you agree that BCAP's proposed rules are necessary and easily understood? If your answer is no, please explain why. [Yes](#).

iii) Given BCAP's policy consideration, do you agree that advertisements for R18-rated material should be permitted to be advertised behind encrypted elements of adult entertainment channels only but that the content of those advertisements themselves must not include R18-rated material or its equivalent? If your answer is no, please explain why. [Yes](#).

Offensive weapons and replica guns

Question 55

Given its policy consideration, do you agree with BCAP's proposal to strengthen the present prohibition on TV advertisements for guns by prohibiting advertisements for offensive weapons and replica guns? If your answer is no, please explain why. [Yes](#).

Question 56

Given its policy consideration, do you agree with BCAP's proposal to extend the present radio exception to the rule for references to clay pigeon shoots in advertisements only if they are promoted as part of a wider range of outdoor pursuits? If your answer is no, please explain why. [Yes](#).

Breath-testing devices and products that purport to mask the effects of alcohol

Question 57

Given its policy consideration, do you agree with BCAP's proposal to extend to radio the present TV ban on advertisements for breath-testing devices and products that purport to mask the effects of alcohol? If your answer is no, please explain why. [Yes](#).

Other Questions

Question 58

i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Prohibited Categories section, are necessary and easily understandable? If your answer is no, please explain why. **Yes.**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Prohibited Categories rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No.**

ii) Do you have other comments on this section? **Yes.**

Typos etc

Location: Rule 10.1

Proposal: Replace "of or specifically concerned with these" with "of, or specifically concerned with, these"

Rationale: Necessary punctuation

Location: Rule 10.1.3

Proposal: Replace "by rule 10.3)" with "by Rule 10.3)"

Rationale: Consistency

Location: Rule 10.1.4, second sentence

Proposal: Suggest the definition of "offensive weapons" be moved from the Rule to the start of Section 10 with its own set of "Definitions" listed beneath the Principle. Also propose that the definition would benefit from being amended as follows: replace "adapted to" with "adapted in order to"

Rationale: Utility and clarity

Location: Rule 10.1.4, third sentence

Proposal: Replace "outdoor pursuits" with "outdoor pursuits offered by the advertiser"

Rationale: Clarity

Location: Rule 10.1.6, second sentence

Proposal: Suggest the definition of "obscene material" be moved from the Rule to the start of Section 10 with its own set of "Definitions" listed beneath the Principle.

Rationale: Utility

Location: Rule 10.1.8, second sentence

Proposal: Suggest the definition of "pyramid promotional schemes" be moved from the Rule to the start of Section 10 with its own set of "Definitions" listed beneath the Principle. Also propose that the definition would benefit from being amended as follows: replace "scheme, not the sale" with "scheme, and not through the sale"

Rationale: Utility and clarity

Rule 10.1.9

Proposal: Replace "FSA" with "Financial Services Authority"

Rationale: Clarity as to the relevant FSA

Location: Rule 10.1, Cross reference

Proposal: Propose that the existing paragraph be reworded as follows: “Cross reference: Information about other unacceptable and restricted categories of advertising can be found in the following Sections: Section 5 (Children); Section 7 (Political and Controversial Matters); Section 11 (Medicines, Medical Devices, Treatments and Health); Section 14 (Financial Products, Services and Investments); Section 15 (Faith, Religion and Equivalent Systems of Belief); Section 24 (Homeworking Schemes); Section 25 (Instructional Courses); and, Section 30 (Pornography).

Rationale: Logical order and consistency

Location: Text above Rule 29.1

Proposal: Change font colour from blue to red for word “Rules”

Rationale: Consistency

Location: Rule 29.1

Proposal: Replace “29.1 – Radio central copy clearance” with “29.1 – Radio Central Copy Clearance”

Rationale: Consistency

Location: Rule 29.2

Proposal: Replace “credentials: for example, affiliation” with “credentials, for example: affiliation”

Rationale: Clarity

Location: Rule 29.2

Proposal: Replace “qualifications...services.” with “qualifications; systems in place for regular review of members’ skills and competencies; and, suitable professional indemnity insurance covering the services provided.”

Rationale: Necessary punctuation and clarity

Location: Rule 30.1

Proposal: Replace “30.1 – Radio central copy clearance” with “30.1 – Radio Central Copy Clearance”

Rationale: Consistency

Location: Rule 30.4

Proposal: Replace “before 10pm or” with “before 10.00pm or”

Rationale: Consistency – see for example Rule 32.16

Section 11: Medicines, Medical Devices, Treatments, and Health

Services including clinics, establishments and the like offering advice on, or treatment in, medical, personal or other health matters

Question 59

Given BCAP’s policy consideration, do you agree that rule 11.9 should be included in the proposed BCAP Code? If your answer is no, please explain why. **Yes.**

Medicinal claims

Question 60

Given BCAP's policy consideration, do you agree that rule 11.4 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

The use of health professionals in advertisements

Question 61

i) Given BCAP's policy consideration, do you agree that, unless prevented by law, it is not necessary to maintain the present prohibition on the use of health professionals in TV advertisements for products that have nutritional, therapeutic or prophylactic effects and in radio advertisements for treatments? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that rules 11.6, 11.7 and 11.8 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Family planning centres

Question 62

i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only? [Yes](#).

ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis or psychotherapy

Question 63

Given BCAP's policy consideration, do you agree that rule 11.10, supported by rule 11.9, should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Remote personalised advice

Question 64

i) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 11.13? If your answer is no, please explain why. [Yes](#).

ii) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 12.3 in the Weight Control and Slimming Section? If your answer is no, please explain why. [Yes](#).

Radio: sales promotions in medicine advertisements

Question 65

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete radio rule 3.4.28? If your answer is no, please explain why. [Yes](#).

Anti-drugs and anti-AIDS messages

Question 66

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete the radio rule on anti-AIDS and anti-drugs messages from BCAP's proposed Code? If your answer is no, please explain why. [Yes](#).

Other questions

Question 67

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Medicines, Medical Devices, Treatments and Health Section are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Medicines, Medical Devices, Treatments and Health rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle, first paragraph, first sentence

Proposal: Replace "health claims (please see Section 13 for health claims made on foods) and" with "health claims – please see Section 13 (Food, Dietary Supplements and Associated Health or Nutrition Claims) for those made on food – and"

Rationale: Consistency

Location: Principle, first paragraph, first sentence

Proposal: Replace "the necessary high level of scrutiny" with "the high level of scrutiny they deserve"

Rationale: Clarity

Location: Principle, second paragraph, first sentence

Proposal: Replace "the products or services, which are" with "the products or services advertised, which are"

Rationale: Clarity

Location: Principle, second paragraph, second sentence

Proposal: Replace "must comply" with "must also comply"

Rationale: Clarity

Location: Medical advisory panels, first paragraph, second sentence

Proposal: Replace "For information, see 'Contact Us' at www.clearcast.co.uk" with "For information, see www.clearcast.co.uk"

Rationale: Structure of Clearcast website may change

Location: Medical advisory panels, second paragraph, second sentence

Proposal: Replace "For information, see 'Services' at www.racc.co.uk" with "For information, see www.racc.co.uk"

Rationale: Structure of RACC website may change

Location: Medical advisory panels, third paragraph

Proposal: Replace "the panels." with "the advisory panels."

Rationale: Clarity

Location: Background, first paragraph, first sentence

Proposal: Replace "of the Act." with "of that statute."

Rationale: Clarity

Location: Background, first paragraph, second sentence

Proposal: Replace "That includes Regulations made under the Act and" with "That includes secondary legislation made under the Medicines Act 1968"

Rationale: Clarity and the fact that the Medicines Act may provide for other forms of Statutory Instruments to be made than Regulations

Location: Background, second paragraph, first sentence

Proposal: Replace "Title VIII of the European Directive 2001/83/EC as amended by Directive 2004/27/EC concerns "The Advertising of Medicinal Products for Human Use") and has" with "Title VIII (The Advertising of Medicinal Products for Human Use) of the European Directive 2001/83/EC as amended by Directive 2004/27/EC has"

Rationale: Clarity

Location: Background, second paragraph, second sentence

Proposal: Replace "Regulation 9 of the Advertising Regulations" with "Regulation 9 of the Medicines (Advertising) Regulations 1994 (as amended)"

Rationale: Clarity – taken with the first sentence it is not clear which Regulation 9 of which set of Regulations is relevant

Location: Background, third paragraph

Proposal: Replace "this Code cannot" with "this Section cannot"

Rationale: Clarity

Location: Background, fourth paragraph, first sentence

Proposal: Replace "they apply also to advertisements" with "they also apply to advertisements"

Rationale: Clarity

Location: Background, fourth paragraph, second sentence

Proposal: Suggest insert speech marks around "on the Community code relating to veterinary medicinal products"

Rationale: Standard form when reference is made to the name of a Directive

Location: Background, sixth paragraph, third sentence

Proposal: Spell out for what "CE" stands

Rationale: Utility

Location: Background, sixth paragraph, third sentence

Proposal: Replace "relevant Essential Requirements of the Directives" with "relevant essential requirements of the above Directives"

Rationale: It is unclear why "essential requirements" is capitalized. Provides greater clarity that the Directives of relevance are those contained within the sixth paragraph of the Background to this Section of the Code.

Location: Rule 11.3, first sentence

Proposal: replace "offer specific advice on, diagnosis of or treatment for such conditions unless" with "offer: specific advice on; diagnosis of; or treatment for such conditions, unless"

Rationale: Necessary punctuation

Location: Rule 11.3, second sentence

Proposal: Replace "(See 11.9)" with "(See Rule 11.9)"

Rationale: Consistency

Location: Rule 11.4, second sentence

Proposal: Replace "humans beings" with "human beings"

Rationale: Sense

Location: Rule 11.5.3

Proposal: Replace "by 11.5.1." with "by Rule 11.5.1."

Rationale: Consistency

Location: Rule 11.6

Proposal: Replace "by 11.5.1," with "by Rule 11.5.1"

Rationale: Consistency

Location: Rule 11.8, second sentence

Proposal: Consider deletion of second sentence, as it appears superfluous, given that the scenario it describes would appear to be suitably covered by the preceding sentence.

Rationale: Utility

Location: Rule 11.10, first sentence

Proposal: Replace “to rule (11.9).” with “to Rule 11.9”

Rationale: Consistency and clarity

Location: Rule 11.13

Proposal: Replace “(see 11.9).” with “(see Rule 11.9).”

Rationale: Consistency

Location: Rule 11.14

Proposal: Replace “this section.” with “this Section.”

Rationale: Consistency

Location: Rule 11.15

Proposal: Move first clause of sentence (“Unless allowed by a product licence”) to end of Rule 11.15, rendering it: “Words, phrases or illustrations that claim or imply the cure of an ailment, illness, disease or addiction, as distinct from the relief of its symptoms are unacceptable, unless allowed by a product licence.”

Rationale: Clarity

Location: Rule 11.20.4

Proposal: Provide meaning of “indication” in “Definitions” part of Section 11, rather than approach attempting somewhat unclearly in Rule 11.20.4 itself

Rationale: Utility and clarity

Location: text beneath Rule 11.20.4

Proposal: Delete text

Rationale: The material appears to be largely repeated in Rule 11.33 (see later)

Proposal: Replace “MHRA Blue Guide at” with “Mandatory information *The Blue Guide – Advertising and Promotion of Medicines in the UK* published by the MHRA at”

Rationale:

Location: Rule 11.21.1

Proposal: Replace “treatments available only” with “treatments that are only available”

Rationale: Clarity

Location: Rule 11.21.2

Proposal: Replace “(see 11.18).” with “(see Rule 11.18).”

Rationale: Consistency

Location: Rule 11.23

Proposal: Replace “claim its” with “claim that its”

Rationale: Clarity

Location: Rule 11.24

Proposal: Replace “also section 9: Children and section 32: Scheduling” with “also Section 5 (Children) and Section 32 (Scheduling)”

Rationale: Consistency and correct section reference provided

Location: Rule 11.25

Proposal: Replace “they are or might be suffering” with “they are, or might be, suffering”

Rationale: Clarity

Location: Rule 11.25.1

Proposal: Replace “or affected” with “or detrimentally affected”

Rationale: Clarity – in the current version of the Rule the nature of the effect is unclear and thus the reason for including a reference to not taking the product in the advertisement

Location: Rule 11.27

Proposal: Replace “patient groups and health or sport organisations” with “patient groups, health bodies or sport organisations”

Rationale: Clarity

Location: Rule 11.29

Proposal: Move final clause of Rule into middle, to as to read: “Advertisements for medicinal products must not contain material that could lead to an incorrect self-diagnosis, for example by description or detailed representation of a case history.”

Rationale: Clarity. (Recommend that “wrong self-diagnosis” be substituted by “incorrect diagnosis”)

Location: Rule 11.33

Proposal: Replace existing Rule 11.33 with “Only traditional herbal medicines and homeopathic medicinal products that are registered in the UK may be advertised. Details of what mandatory information must be included in advertisements for traditional herbal medicines and homeopathic medicinal products can be found in *The Blue Guide – Advertising and Promotion of Medicines in the UK* published by the MHRA at www.mhra.gov.uk.”

Rationale: Clarity, utility and avoidance of repetition. (By providing the full title of *The Blue Guide*, for example, the reference is rendered more useful as the relevance of the publication becomes clearer.)

Section 12: Weight Control and Slimming

Irresponsible use of a weight-control or slimming product or service

Question 68

Given BCAP's policy consideration, do you agree that 12.4, which presently applies to TV advertisements for weight control or slimming products or services, should equally apply to those advertisements on radio? If your answer is no, please explain why. [Yes](#).

Dietary control and weight-loss surgery

Question 69

Given BCAP's policy consideration, do you agree that broadcast advertisements for establishments offering weight control or slimming treatments are acceptable only if they make clear that dietary control is necessary to achieve weight loss? If your answer is no, please explain why? [Yes](#).

Question 70

Given BCAP's policy consideration, do you agree that advertisements for establishments that provide immediate weight loss surgery are acceptable but those must not refer to the amount of weight that can be lost? If your answer is no, please explain why? [Yes](#).

Calorie-reduced or energy-reduced foods and drinks

Question 71

Given BCAP's policy consideration, do you agree that a broadcast advertisement for a calorie-reduced or energy-reduced food or drink may be targeted at under 18s, provided the advertisement does not present the product as part of a slimming regime and does not use the theme of slimming or weight control? If your answer is no, please explain why. [Yes](#).

Safety and efficacy of slimming or weight control products or services

Question 72

Given BCAP's policy consideration, do you agree that, before it is advertised, the safety and efficacy of a slimming or weight control product must be assessed by a qualified independent medical professional or another health specialist professional? If your answer is no, please explain why. [Yes](#).

Establishments offering medically supervised treatment

Question 73

Given BCAP's policy consideration, do you agree that advertisements for overseas clinics and other establishments offering medically supervised treatments are, in principle, acceptable if they are run in accordance with broadly equivalent requirements to those established by the Department of Health's National Minimum Standards Regulations? If your answer is no, please explain why? [Yes](#).

Targeting the obese

Question 74

Given BCAP's policy consideration, do you agree it is justified to allow advertisements for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine to target people who are obese? If your answer is no, please explain why? [Yes](#).

Rate of weight loss

Question 75

Given BCAP's policy consideration, do you agree that rule 12.9 should include a rate of weight loss that is compatible with generally accepted good medical and dietary practice? If your answer is no, please explain why. [Yes](#).

Very Low-Calorie Diets (VLCDs)

Question 76

Given BCAP's policy consideration, do you agree that rule 12.14.4 should reference 'Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children' (2006) published by the National Institute for Health and Clinical Excellence' and not Government COMA Report No.31, The Use of Very Low Calorie Diets? If your answer is no, please explain why? [Yes](#).

Other questions

Question 77

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Weight Control and Slimming section are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Weight Control and Slimming rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#)

Typos etc

Location: Principle

Proposal: Replace "The rules" with "The Rules". Replace "the necessary high level of scrutiny." with "the high level of scrutiny they deserve."

Rationale: Consistency and clarity

Location: Definitions, second sentence

Proposal: Replace “Section 10 Medicines, Medical Devices, Treatments and Health or Section 11 Food Dietary Supplements and Associated Health or Nutrition Claims.” with “Section 11 (Medicines, Medical Devices, Treatments and Health) or Section 13 (Food, Dietary Supplements and Associated Health or Nutrition Claims)”

Rationale: Consistency and correction of Section designations

Location: Definitions, third sentence

Proposal: Replace “Proprietary Association of Great Britain (PAGB) lays” with “Proprietary Association of Great Britain also lays”

Rationale: A reference to the Proprietary Association of Great Britain appears only once in the proposed so it appears unnecessary to supply an acronym. Clarity – the addition of “also” to the sentence assists with understanding

Location: Definitions

Proposal: Provide definitions for overweight (currently referred to in Rule 12.9), obese (currently referred to in Rules 12.9 and 12.11) and underweight (currently referred to in Rule 12.12) here rather than in the body of those three Rules. Similarly the definition of Body Mass Index (referred to in Rules 12.11 and 12.12) could also usefully be defined here.

Rationale: Utility

Location: Rule 12.3, first sentence

Proposal: Replace “(see 11.9).” with “(see Rule 11.9).”

Rationale: Consistency

Location: Rule 12.5, first sentence

Proposal: Replace “them, or, feature” with “them nor feature”

Rationale: Sense

Location: Rule 12.5, second sentence

Proposal: Replace “This rule” with “This Rule”

Rationale: Consistency

Location: Rule 12.9, third sentence

Proposal: Replace “For those who are normally overweight” with “For those who are defined as overweight”

Rationale: This introduces the concept of different degrees of overweight – it is doubted that this is the intention

Location: Rule 12.9, fourth sentence

Proposal: Replace “For those who are obese” with “For those who are defined as obese”

Rationale: Clarity

Location: Rule 12.11

Proposal: Replace “individuals with a Body Mass Index of 30 or above (obesity) or” with “individuals who are obese”

Rationale: Logical, if the proposal about defining obese in the “Definitions”, as is proposed above, is pursued

Location: Rule 12.11.1, second sentence

Proposal: Replace existing sentence with “Please see Rule 11.9.”

Rationale: Consistency

Location: Rule 12.12, third sentence

Proposal: Delete sentence

Rationale: Logical, if the proposal about defining underweight in the “Definitions”, as is proposed above, is pursued.

Location: Rule 12.14, second sentence

Proposal: Replace “relevant regulations made” with “relevant secondary legislation made”

Rationale: The Food Safety Act may provide for other forms of Statutory Instruments to be made than Regulations

Location: Rule 12.15

Proposal: Replace “with rule 11.9.” with “with Rule 11.9.”

Rationale: Consistency

Section 13: Food, Dietary Supplements and Associated Health and Nutrition Claims

Permitted nutrition and health claims

Question 78

Do you agree that BCAP has correctly reflected the requirements of Articles 8(1), 10(1) and 28 of the NHCR in BCAP’s proposed rules 13.4 and 13.4.1? If your answer is no, please explain why. [Yes](#).

Giving rise to doubt about the safety or nutritional adequacy of another product

Question 79

Do you agree that BCAP has correctly reflected the requirements of Article 3(b) of the NHCR in BCAP’s proposed rule 13.4.4? If your answer is no, please explain why. [Yes](#).

Comparative nutrition claims

Question 80

Do you agree that BCAP has correctly reflected the requirements of Article 9 of the NHCR in BCAP’s proposed rules 13.5.1 and 13.5.3? If your answer is no, please explain why. [Yes](#).

Comparison with one product

Question 81

Do you agree that BCAP has correctly reflected the requirements of Article 9 of the NHCR and the guidance from the European Commission in BCAP’s proposed rule 13.5.2? If your answer is no, please explain why. [Yes](#).

Prohibitions

Question 82

Do you agree that BCAP has correctly reflected the requirements of Article 12(a) of the NHCR in BCAP’s proposed rules 13.6 and 13.6.1? If your answer is no, please explain why. [Yes](#).

Question 83

Do you agree that BCAP has correctly reflected the requirements of Article 3(e) of the NHCR in BCAP’s proposed rules 13.6 and 13.6.4? If your answer is no, please explain why. [Yes](#).

Food Labelling Regulations (1996) (FLRs)

Question 84

i) Do you agree that BCAP has correctly reflected the requirements of Article 14 of the NHCR and Schedule 6 Part 1(2) of the FLRs in BCAP’s proposed rules 13.6 and 13.6.2? If your answer is no, please explain why. [Yes](#).

ii) Do you agree that BCAP has correctly reflected the relevant provisions of Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods in the proposed BCAP Code? If your answer is no, please

explain why. [Yes](#).

Infant formula and follow-on formula

Question 85

i) Do you agree that BCAP has correctly reflected the requirements of Regulation 21(a) of the Infant and Follow-on Formula Regulations (2007) (amended) in BCAP's proposed rule 13.8? If your answer is no, please explain why. [Yes](#).

ii) Do you agree that BCAP has correctly reflected the requirements of Regulation 19 of the Infant Formula and Follow-on Formula Regulations 2007 (amended) in BCAP's proposed rule 13.8.1? If your answer is no, please explain why. [Yes](#).

iii) Do you agree that BCAP has correctly reflected the relevant provisions of the Infant and Follow-on Formula Regulations (2007) (amended) in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Health claims that refer to the recommendation of an individual health professional

Question 86

i) Do you agree that BCAP has correctly reflected Article 12(c) of the NHCR in rule 13.6.3? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that the Code should allow broadcast food advertisements to include health claims that refer to a recommendation by an association if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics? If your answer is no, please explain why. [Yes](#).

Other questions

Question 87

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules included in the proposed Food, Dietary supplements and Associated Health and Nutrition claims Section are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Food, Dietary supplements and Associated Health and Nutrition claims rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Background, first paragraph

Proposal: Replace "These rules" with "This Section"

Rationale: Consistency

Location: Background, first paragraph, first sentence

Proposal: Change order of references to legislation as follows in order to avoid useful but odd reference to Schedule 6: "Regulation (EC) No 1924/2006 on Nutrition and Health Claims made on Foods, the Food Safety Act 1990 and the Food Labelling Regulations 1996 (as amended) – especially Schedule 6 thereof."

Rationale: As set out in proposal. Does EC stand for "European Community"? If so, is it worthwhile to clarify this?

Location: Background, first paragraph, second sentence
Proposal: Replace “They apply” with “The Rules in this Section apply”
Rationale: Consistency

Location: Background, second paragraph, second / third sentence
Proposal: Replace “Regulation. Advertising” with “Regulation. Advertising”
Rationale: Formatting (spacing)

Location: Background, second paragraph, third sentence
Proposal: Replace “No 1924 on” with “No 1924/2006”
Rationale: Incomplete reference to Statutory Instrument designation

Location, Background, third paragraph
Proposal: Consider classifying this paragraph as a definition
Rationale: Logic and utility

Location: Rule 13.4, fourth paragraph
Proposal: Replace “Home Authority and awaiting authorisation, may be used with particular care” with “Home Authority that are awaiting authorized may be used, but with particular care.”
Rationale: Clarity

Location: Rule 13.4.1, second paragraph
Proposal: Replace “high in [name of mineral] contains [name of mineral] with “high in [name of mineral], contains [name of mineral]
Rationale: Necessary punctuation

Location: Rule 13.4.2, fourth sentence
Proposal: Replace “scientific meaning, calorific value, with its colloquial meaning, physical vigour” with “scientific meaning (calorific value) with its colloquial meaning (physical vigour)”
Rationale: Clarity

Location: Rule 13.4.3, second sentence
Proposal: Consider replacing “accepted by generally accepted scientific” with “accepted by generally recognized scientific”
Rationale: Avoid repetition of word “accepted” in quick succession

Location: Rule 13.6.4
Proposal: Replace “rise to or exploit fear” with “rise to, or exploit, fear”
Rationale: Clarity

Location: Rule 13.7.1, second sentence
Proposal: Replace “clearly the group’s likely” with “clearly whom is likely”
Rationale: Clarity

Location: Rule 13.7.1, sixth bulletpoint
Proposal: Replace “convalescents,” with “convalescents”
Rationale: Consistency

Location: Rule 13.7.1, seventh bulletpoint
Proposal: Replace “active,” with “active”
Rationale: Consistency

Location: Rule 13.7.1, eighth bulletpoint

Proposal: Replace “smoke,” with “smoke”

Rationale: Consistency

Location: Introduction to Rules 13.8 and 13.8.1

Proposal: Replace “the Infant Formula and Follow-on Formula Regulations 2007” with “the Infant Formula and Follow-on Formula (England) Regulations 2007, the Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007, the Infant Formula and Follow-on Formula (Scotland) Regulations 2007, the Infant Formula and Follow-on Formula (Wales) Regulations 2007 (all as amended)”

Rationale: Reflects the fact (a) that the devolved administrations all have their own set of Regulations and (b) that they have all been amended subsequently

Location: Introduction to Rules 13.8 and 13.8.1

Proposal: Replace “claims made on foods” with “Claims made on Foods”

Rationale: Reflects actual name of Regulation 1924/2006

Location: Page 257, text beneath “Food and Soft Drink Product Advertising to Children” heading

Proposal: Replace “These rules should” with “These specific Rules should”

Rationale: Consistency

Location: Page 257, text beneath “Food and Soft Drink Product Advertising to Children” heading

Proposal: Replace “the general rules in this Section and other rules in this code” with “the general Rules in this Section and other Rules in this code”

Rationale: Consistency

Location: Page 257, text beneath “Food and Soft Drink Product Advertising to Children” heading

Proposal: Replace “Section 32: (Scheduling)” with “Section 32 (Scheduling)” (also applicable to end of definition of “advertisements targeted directly at pre-school or primary school children”

Rationale: Consistency

Location: Page 257, Definitions

Proposal: Recommend that the Definitions be set out as they are in other Sections (e.g. do not use numbers (1.) and (2.). Also, logical for HFSS products to be defined before “advertisements targeted directly at pre-school or primary school children” as the latter refers to the former

Rationale: Consistency and logic

Location: Page 257, Definitions

Proposal: Replace “with 13.4.” with “with Rule 13.4.”

Rationale: Consistency

Location: Page 258, Definitions, second sentence

Proposal: Delete “References to food apply also to soft drinks.”

Rationale: This point has already been made in the Background to Section 13.

Location: Page 258, blue text

Proposal: Delete “13.9 – 13.12.5 apply to television only”

Rationale: Superfluous

Location: Rule 13.9 (heading)

Proposal: Replace “Television” with “Television only”

Rationale: Consistency

Location: Rule 13.9.4, second sentence

Proposal: Replace “as well as the amount” with “as well as to the amount”

Rationale: Sense

Location: Rule 13.10, second paragraph

Proposal: Replace “designed to sell.” with “designed to market.”

Rationale: Sense – avoidance of circularity

Location: Rule 13.12

Proposal: Replace “(Please see also Section 9, Children: Direct Exhortation)” with “Please see also Section 5 (Children).”

Rationale: Consistency and accuracy of cross-reference

Location: Page 260, blue text

Proposal: Delete “13.13 – 13.15 apply to radio only”

Rationale: Superfluous

Location: Rule 13.14, second sentence

Proposal: Replace “designed to sell.” with “designed to promote.”

Rationale: Sense

Section 14: Financial products, services and investments

Interest on savings

Question 88

Do you agree that rule 14.7.5 makes clearer the requirement that the nature of the relation between interest rate and variable be stated? If your answer is no, please explain why. [Yes](#).

Other questions

Question 89

i) Taking into account BCAP’s policy consideration, do you agree that BCAP’s rules on financial products, services and investments are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle, first paragraph, third sentence

Proposal: Replace “especially high-risk” with “especially of high-risk”

Rationale: Clarity

Location: Principle, second paragraph, second sentence

Proposal: Replace “advertising (see Section 3) and” with “advertising – see Section 3 (Misleading) – and”

Rationale: Consistency

Location: Principle, second paragraph, second sentence

Proposal: Replace “(see rule **3.10**).” with “(see Rule 3.10).”

Rationale: Consistency

Location: Definitions, first paragraph
Proposal: Replace “Financial Services” with “Financial Services”
Rationale: Formatting

Location: Definitions, second paragraph, first sentence
Proposal: Delete quotation marks
Rationale: Gives impression that the wording is taken direct from FSMA, which it does not appear to be.

Location: Definitions, second paragraph, third sentence
Proposal: Replace “the New Insurance” with “the Insurance”
Rationale: The Insurance Conduct of Business sourcebook is no longer referred to as “new”

Location: Definitions, third paragraph, third sentence
Proposal: Replace “not regulated are” with “not regulated by the FSA are”
Rationale: Gives the impression that these products are subject to no regulation whatsoever. Also, propose that reference to “second-charge mortgages” is deleted, given Rule 14.10.1

Location: Definitions, third paragraph, fourth sentence
Proposal: Replace “in Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) Chapter 3” with “in Chapter 3 of Mortgages and Home Finance: Conduct of Business sourcebook”. With the prospect of the successful passage of the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI No. 2009/1342) it may also be worth making reference here to “sale and rent back agreements”
Rationale: Clarity.

Location: Definitions, third paragraph, fifth sentence
Proposal: Replace “in MCOB 3” with “in Chapter 3 of MCOB”
Rationale: Clarity

Location: Definitions, third paragraph, fifth sentence
Proposal: Replace “in MCOB Chapter 2.” with “in Chapter 2 of MCOB.”
Rationale: Clarity

Location: Definitions, fifth paragraph
Proposal: In light of the introduction of the FSA’s Banking Conduct of Business Sourcebook (BCOBS) and its application from 1 November 2009, this paragraph will require a significant redraft.
Rationale: Forthcoming change to regulatory framework

Location: Rule 14.3
Proposal: Recommend that it be checked as to whether reference should be to the European Union or the European Economic Area.
Rationale: Confirmation that current reference to the European Union is correct.

Location: Rule 14.4
Proposal: Replace “regulated activity may” with “regulated activities may”
Rationale: Plural required

Location: Rule 14.4.3, third sentence
Proposal: Render this sentence clearer
Rationale: Clarity

Location: Rule 14.5
Proposal: Replace “channels or stations or programming” with “channels, stations or programming”
Rationale: Clarity

Location: Rule 14.5.1
Proposal: Replace “other EEA State” with “other Member State of the European Economic Area”
Rationale: Clarity – not all readers of the Code may know for what EEA stands

Location: Rule 14.5.2, third sentence

Proposal: Replace “rules (see Section 17).” with “rules – see Section 17 (Gambling).”

Rationale: Consistency

Location: Rule 14.5.3

Proposal: Replace “though appropriate” with “through an appropriate”

Rationale: Clarity

Location: Rule 14.7.2

Proposal: Replace “Annual Equivalent Rate (AER) and” with “Annual Equivalent Rate and”

Rationale: The term Annual Equivalent Rate appears only once in the proposed Code, so it is unnecessary to provide an acronym. Also, Rule 14.7.2 may need to be revisited in light of the coming into force of BCOBS

Location: Rule 14.8

Proposal: Replace “premiums” with “premia”

Rationale: Plural required

Location: Rule 14.9, fifth sentence

Proposal: Replace “with the FSMA” with “with FSMA”

Rationale: Clarity. Also, the wording of this Rule may need to be revisited with the prospect of the successful passage of the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI No. 2009/1342) it may also be worth making reference here to “sale and rent back agreements”

Location: Rule 14.10

Proposal: Replace “by FSMA” with “by that Act”

Rationale: Clarity

Location: Rule 14.10.1

Proposal: Replace “should be taken of the requirements in those Regulations for secured loans” with “should also be taken of the requirements in those Regulations that relate to secured loans.”

Rationale: Clarity and consistency (punctuation). This Rule may also need to be revisited in light of the ongoing review of the regulatory regime for second charge mortgages. In due course this Rule may also need to reflect the new requirements imposed by the implementation in the UK of the Consumer Credit Directive.

Location: Rule 14.14

Proposal: Replace “in rule 14.4, but not those in 14.5” with “in Rule 14.4, but not those in Rule 14.5”

Rationale: Consistency

Section 15: Faith, Religion and Equivalent Systems of Belief

Spiritual benefit in return for donations to the advertised cause

Question 90

Given BCAP's policy consideration, do you agree that 15.11, which presently applies to radio advertisements by or that refer to charitable faith-based bodies and that appeal for funds, should also cover those TV advertisements? If your answer is no, please explain why. [Yes](#).

Unreasonable pressure to join or participate or not opt-out

Question 91

Given BCAP's policy consideration, do you agree that 15.2.3 should apply to radio as it presently does to TV? If your answer is no, please explain why. [Yes](#).

Advertisements for charitable purposes that include recruitment or evangelism

Question 92

Given BCAP's policy consideration, do you agree that faith advertisements, which appeal for funds for charitable purposes that include or will be accompanied by recruitment or evangelism, are acceptable if that information is made clear in the advertisement? If your answer is no, please explain why. [Yes](#).

Use in advertisements of sacred or religious music and acts of worship or prayer

Question 93

Given BCAP's policy consideration, do you agree that present radio rules 3.10 and 3.11, of section 3, need not be included in the proposed Code? If your answer is no, please explain why. [Yes](#).

Involving viewers in services or ceremonies

Question 94

Given BCAP's policy consideration, do you agree that present TV rule 10.9 need not be included in the Code? If your answer is no, please explain why. [Yes](#).

Individual experiences or personal benefits associated with a doctrine

Question 95

Given BCAP's policy consideration, do you agree that present TV rule 10.10 should not be included in the Code? If your answer is no, please explain why. [Yes](#).

Counselling

Question 96

i) Given BCAP's policy consideration, do you agree that present TV rule 10.11 should not be included in the Code? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that 15.13 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Advertisements for products related to psychic or occult phenomena

Question 97

Given BCAP's policy consideration, do you agree to maintain the existing TV and radio requirements on advertisements for products or services concerned with the occult or psychic practices? If your answer is no, please explain why. [Yes](#).

Other questions

Question 98

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Faith, Religion and Equivalent Systems of Belief are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle (c)

Proposal: Replace “because, for example, of sickness” with “because of, for example, sickness

Rationale: Clarity

Location: Rule 15.2.3

Proposal: Replace “not to opt-out.” with “to remain in membership.”

Rationale: Clarity

Location: Rule 15.4, first sentence

Proposal: Replace “by rule 15.5.” with “by Rule 15.5”

Rationale: Consistency

Location: Rule 15.6

Proposal: None, but to note that “the advertiser and its faith” reads rather oddly

Rationale: Clarity

Location: Rule 15.7, second sentence

Proposal: Replace “it is the advertiser’s opinion.” with “it represents the advertiser’s opinion only.”

Rationale: Clarity and adds additional stress

Location: Rule 15.8

Proposal: Replace “their beliefs” with “their religious beliefs”

Rationale: Clarity (as to scope of Rule)

Location: Rule 15.9, first sentence

Proposal: Replace “lack of faith.” with “lack thereof.”

Rationale: Clarity

Location: Rule 15.11, second paragraph

Proposal: Replace “must seek be satisfied” with “must be satisfied”

Rationale: Clarity

Location: Rule 15.12, second sentence

Proposal: Replace “The elderly” with “For the purposes of this Section, the elderly”

Rationale: Clarifies that the definition of vulnerable given applies only in the context of Section 15, given the existence of the CPRs.

Location: Rule 15.15

Proposal: Replace “that children are especially likely to take part in.” with “in which children are especially likely to take part.”

Rationale: Clarity

Section 16: Charities

Requirement to identify charities

Question 99

Given BCAP’s policy consideration, do you agree that it is proportionate to replace the requirement for advertisements that include reference to a charity to include, in that advertisement, a list of charities that may benefit from donations with proposed rule 16.5.2? If your answer is no, please explain why. [Yes](#).

Medicine advertisements and donations to charities

Question 100

i) Given BCAP’s policy consideration, do you agree that the present TV and radio prohibitions on charity-

based promotions in medicine advertisements should be deleted? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that 16.7 should be included in the new code? If your answer is no, please explain why. [Yes](#).

Complying with Data Protection Legislation

Question 101

Given BCAP's policy consideration, do you agree that it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client's consent, and the client's name will be promptly deleted on request? If your answer is no, please explain why. [Yes](#).

Comparisons with other charities

Question 102

Given BCAP's policy consideration, do you agree that the present TV and radio prohibitions on comparisons in charity advertisements should be deleted? If your answer is no, please explain why. [Yes](#).

The right of refund for credit or debit card donations of £50 or more

Question 103

Given BCAP's policy consideration, do you agree that the present radio rule, 3.2.4, should be deleted? If your answer is no, please explain why. [Yes](#).

Other questions

Question 104

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules included in the proposed Charities Section are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Charities rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#)

Typos etc

Location: Principle, first paragraph, first sentence
Proposal: Replace "These rules" with "These Rules"
Rationale: Consistency

Location: Principle, second paragraph
Proposal: Replace "with Section 7....Scheduling." with "with Section 5 (Children), Section 7 (Political and Controversial Matters), Section 9 (Environmental Claims), Section 15 (Faith, Religion and Equivalent Systems of Belief) and Section 32 (Scheduling)."
Rationale: Consistency, logical order and correct Section titles

Location: Definitions, first paragraph
Proposal: Replace "Rules in" with "The Rules in"
Rationale: Consistency

Location: Definitions, first paragraph

Proposal: Replace “The Department” with “the Department”
Rationale: Consistency

Location: Definitions, second paragraph
Proposal: Replace “The rules” with “The Rules”
Rationale: Consistency

Location: Rule 16.3
Proposal: Replace “objectives of a” with “objectives of, a”
Rationale: Clarity

Location: Rule 16.3.1
Proposal: Replace “the cause it” with “the cause of causes”
Rationale: the charity concerned may be pursuing more than one cause at any one time

Location: Rule 16.3.4
Proposal: Replace “children or likely” with “children or be likely”
Rationale: Sense

Location: Rule 16.4
Proposal: Replace “or objects of” with “or objectives of”
Rationale: Sense

Location: Rule 16.4
Proposal: Replace “under 16.2” with “under Rule 16.2”
Rationale: Consistency and necessary punctuation

Location: Rule 16.7
Proposal: Replace “Section 11 Medicines, Medical Devices, Treatments and Health” with “Section 11 (Medicines, Medical Devices, Treatments and Health).”
Rationale: Consistency and necessary punctuation

Section 17: Gambling

Consistency; principle

Question 105

Given BCAP’s policy consideration, do you agree in principle that National Lottery and SLA lottery broadcast advertisements should be regulated by the same rules? If your answer is no, please explain why. [Yes](#).

Consistency; age of appeal of content

Question 106

Given BCAP’s policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to increase the restriction on age of appeal for broadcast National Lottery advertisements from 16+ to 18+? If your answer is no, please explain why. [Yes](#).

Consistency; age at which a person may be featured gambling in a lottery advertisement

Question 107

Given BCAP’s policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to apply rules 18.6 and 18.7 to all broadcast lottery advertisements? If your answer is no, please explain why. [Yes](#).

Consistency; other lottery rules

Question 108

Given BCAP's policy consideration, do you agree that the rules included in the Lottery Section of the Code are in line with BCAP's general policy objectives (see Part 1 (4) of this consultation document) and should be applied to broadcast advertisements for the National Lottery as they presently are to broadcast advertisements for other lotteries? If your answer is no, please explain why and, if relevant, please identify those rules that should not be applied to advertisements for the National Lottery. [Yes](#).

Participating in a lottery in a working environment

Question 109

Given BCAP's policy consideration, do you agree that lottery advertisements should be able to feature participation in a lottery in a working environment? If your answer is no, please explain why. [Yes](#).

Other questions

Question 110

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Gambling and Lotteries are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#)

Typos etc

Location: Principle, third paragraph, second sentence

Proposal: Replace "(see 14.5.4)." with "(see Rule 14.5.4)"

Rationale: Consistency

Location: Principle, fourth paragraph

Proposal: Replace "advertisements to counter problem" with "advertisements aimed at countering problem"

Rationale: Clarity

Location: Principle, fifth paragraph

Proposal: Replace "to section 32, Scheduling" with "to Section 32 (Scheduling)"

Rationale: Consistency

Location: Definitions, first paragraph, second sentence

Proposal: Replace "For rules on lottery advertisements, see Section 18." with "For Rules on lottery advertisements, see Section 18 (Lotteries)."

Rationale: Consistency

Location: Definitions, second paragraph

Proposal: Replace "whether on-shore" with "whether or not the provider is based on-shore"

Rationale: Clarity

Location: Rule 17.3.10

Proposal: Consider replacing “solitary gambling is preferable to social gambling.” with “gambling alone is preferable to doing so as part of a group”

Rationale: Clarity

Location: Rule 17.4.1

Proposal: Consider replacing “gambling” with “chance”

Rationale: Degree of circularity, given wording of Rule 17.4

Location: Rule 17.4.6, second sentence

Proposal: Consider replacing “may behave in” with “may be portrayed behaving in”

Rationale: Clarity

Location: Rule 18.2.1

Proposal: Consider replacing “encourage gambling behaviour that” with “encourage behaviour associated with lottery participation that”

Rationale: Clarity

Location: Rule 18.2.8

Proposal: Replace “not portray” with “portray”

Rationale: Double negative, if Rule stems from 18.2

Location: Rule 18.2.10

Proposal: Replace “solitary gambling is preferable to social gambling.” “participating in a lottery alone is preferable to doing so as part of a group.”

Rationale: Clarity

Location: Rule 18.3

Proposal: Replace “clear” with “clear.”

Rationale: Necessary punctuation

Location: Rule 18.5

Proposal: Replace “Please refer to Section 32 for scheduling restrictions” with “Please also refer to Section 32 (Scheduling).”

Rationale: Consistency and necessary punctuation.

Location: Rule 18.6, second sentence

Proposal: Replace “featured gambling or playing” with “featured participating in a lottery or playing”

Rationale: Clarity

Location: Rule 18.8

Proposal: Consider replacing “about gambling or luck” with “about chance or luck.”

Rationale: Clarity – rule is contained in lotteries not gambling section

Section 19: Alcohol

Sales promotions in alcohol advertisements

Question 111

Given BCAP’s policy consideration, do you agree that rule 19.11 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Irresponsible handling of alcohol

Question 112

Given BCAP's policy consideration, do you agree that rule 19.12 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Alcoholic strength

Question 113

Given BCAP's policy consideration, do you agree that rule 19.10 should be included in the proposed BCAP Code? If your answer is 'no', please explain why. [Yes](#).

Alcohol in a working environment

Question 114

Given BCAP's policy consideration, do you agree that rule 19.14 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Exception for children featuring incidentally in alcohol advertisements

Question 115

Given BCAP's policy consideration, do you agree that rule 19.17 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Low alcohol exceptions

Question 116

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that requires anyone associated with drinking must be, and seem to be, at least 25 years old? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why. [Yes](#).

Question 117

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents encouraging excessive consumption via sales promotions? If your answer is no, please explain why. [Yes](#).

iii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents featuring a voiceover of anyone who is or appears to be 24 or under? If your answer is no, please explain why. [Yes](#).

Other questions

Question 118

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Alcohol section are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Alcohol section that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?
[No.](#)

iii) Do you have other comments on this section? [Yes.](#)

Typos etc

Location: Principle, second paragraph

Proposal: Replace “the rules in this section” with “the Rules in this Section”

Rationale: Consistency

Location: Definitions, first paragraph, first sentence

Proposal: Replace “The rules in this section” with “The Rules in this Section”

Rationale: Consistency

Location: Definitions, first paragraph, second sentence

Proposal: Replace “as drinks containing” with “as those containing”

Rationale: Clarity

Location: Definitions, second paragraph, second sentence

Proposal: Replace “the rules in this section” with “the Rules in this Section”

Rationale: Consistency

Location: Definitions, third paragraph

Proposal: Replace “the rules in this section” with “the Rules in this Section”

Rationale: Consistency

Location: Definitions, fourth paragraph, first sentence and second sentence

Proposal: Consider replacing existing sentences with “The Rules in this Section are not intended to inhibit advertisements aimed at countering problem drinking or informing consumers about alcohol-related health or safety themes that are responsible and unlikely to promote an alcohol product or brand.”

Rationale: Clarity

Location: text above Rule 19.2

Proposal: Replace “Rules that apply to all advertisements” with “Rules for all advertisements”

Rationale: Consistency with approach elsewhere

Location: Rule 19.3

Proposal: Consider replacing “must neither imply” with “must imply neither” (and deleting second use of word “imply” in Rule)

Rationale: Clarity

Location: Rule 19.4 (first sentence), 19.5, 19.6 (first sentence), 19.8 (second sentence)

Proposal: Consider constructing these Rules using neither/nor. (Rule 19.5 would require “nor with”)

Rationale: Clarity

Location: Rule 19.4, second sentence

Proposal: Considering replacing “or consumption of alcohol.” with “of alcohol or its consumption”

Rationale: Clarity

Location: Rule 19.13, second sentence

Proposal: Replace “other rules in” with “other Rules in”

Rationale: Consistency

Location: text above Rule 19.15

Proposal: Replace “Rules that apply to all advertisements” with “Rules for all advertisements”

Rationale: Consistency with approach elsewhere

Location: Rule 19.15.2

Proposal: Consider deleting “Advertisements for alcoholic drinks must not”

Rationale: If “Alcohol advertisements must not:” has same meaning as the deletion proposed, then there is an unnecessary repetition of part of Rule 19.15

Location: Rule 19.16.2

Proposal: Delete “Alcohol advertisements must not”

Rationale: Repeats exactly Rule 19.16 from which it stems

Section 20: Motoring

References to speeds over 70mph

Question 119

i) Given BCAP’s policy consideration, do you agree that it is not justified to maintain a rule that prohibits references to speeds of over 70mph in motoring advertisements? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP’s policy consideration, do you agree that rule 20.4 should be included in BCAP’s new Code? If your answer is no, please explain why. [Yes](#).

The use of fog lights

Question 120

Given BCAP’s policy consideration, do you agree that the Code should not grant an exemption from proposed rule 20.2 for advertisements that feature a driver on a non-UK public road or in a non-UK public place using his or her fog lights when visibility is good? If your answer is no, please explain why. [Yes](#).

Other questions

Question 121

i) Taking into account its general policy objectives, do you agree that BCAP’s rules, included in the proposed Motoring Section, are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Motoring rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you consider should be retained or otherwise given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle

Proposal: Replace “young drivers.” with “young drivers or motorcyclists.”

Rationale: Sense

Location: text above Rule 20.1

Proposal: Delete “Rules for all broadcast advertisements:”

Rationale: Rule 20.1 is contained in the BCAP Code covering television and radio advertising – the above statement is implicit and thus superfluous

Location: text above Rule 20.3

Proposal: Replace “advertisements:” with “advertisements”

Rationale: Consistency

Location: Rules 20.3, 20.4 and 20.5

Proposal: Note that these three Rules all have the same opening stem “Motoring advertisements must” – consider adopting approach used elsewhere in such circumstances e.g. Rule 17.4

Rationale: Clarity

Location: Rule 20.4, second sentence

Proposal: Replace “advertised vehicle” with “advertised product”

Rationale: Avoids repetition of “vehicle”

Location: Rule 20.5

Proposal: Consider replacing “must not exaggerate the benefit or safety features to consumers or suggest that a vehicle’s features” with “must neither exaggerate the benefit of safety features to consumers nor suggest that the features of a vehicle”

Rationale: Clarity

Section 22: Premium-Rate Services

PhonepayPlus Code

Question 122

Given BCAP’s policy consideration, do you agree that proposed rules 22.1 to 22.6 and 22.8 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Radio advertisements for telecommunications-based sexual entertainment services

Question 123

Given BCAP’s policy consideration, do you agree that proposed rule 23.1 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Television advertisements for PRS of a sexual nature

Question 124

Given BCAP’s policy consideration, do you agree that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only? If your answer is no, please explain why. [Yes](#).

Question 125

i) Given BCAP’s policy consideration, do you agree that the BCAP rule on PRS of a sexual nature should be clarified to make clear that it applies also to TV advertisements for telecommunications-based sexual entertainment services made available to consumers via a direct-response mechanism and delivered over electronic communication networks? If your answer is no, please explain why. [Yes](#).

ii) If your answer is no to question X(i), do you consider the rule should make clear that ‘premium-rate call charge’ is the only permissible form of payment? If your answer is no, please explain why. [Not applicable](#).

Question 126

Given BCAP's policy consideration, do you agree that BCAP's rule should not define PRS of a sexual nature as those operating on number ranges designated by Ofcom for those services? If your answer is no, please explain why. [Yes](#).

Question 127

Given BCAP's policy consideration, do you agree that BCAP's rule on TV advertisements for telecommunications-based sexual entertainment services should extend to 'voice, text, image or video services of a sexual nature'? If your answer is no, please explain why. [Yes](#).

Question 128

Given BCAP's policy consideration, do you agree that rule 11.1.2 in the present BCAP Television Code should be replaced by proposed rule 23.2? If your answer is no, please explain why. [Yes](#).

Other Questions

Question 129

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Premium-Rate Services section, are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Premium-Rate Services rules that you consider are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle, second sentence

Proposal: Replace "or short codes should" with "or text short codes must"

Rationale: Clarity and use of "must"

Location: Rule 22.1

Proposal / Observation: Rule 22.1 appears largely to repeat the second sentence of the Principle.

Rationale: Avoidance of repetition

Section 24: Homeworking Schemes

New rules for radio

Question 130

i) Given BCAP's policy consideration, do you agree that rules 24.1 and 24.2.1 should be applied to radio advertisements, as they presently are to TV advertisements? If your answer is no, please explain why. [Yes](#).

ii) Given BCAP's policy consideration, do you agree that it is not necessary to extend to radio the TV ban on advertisements that involve a charge for raw materials or advertisements that include an offer from the advertiser to buy goods made by the homemaker? If your answer is no, please explain why. [Yes](#).

Other Questions

Question 131

i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Homeworking Schemes Section, are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Homeworking Schemes rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#)

Typos etc

Location: Definition, first sentence

Proposal: Replace "at or from home." with "at, or from, home."

Rationale: Clarity

Location: Rule 24.1, second sentence

Proposal: Consider replacing "make clear conditions" with "make clear all conditions"

Rationale: Clarity

Location: Rule 24.2 (sub-Rules 24.2.1, 24.2.2 and 24.2.3)

Proposal: Consider replacing "may be advertised:" with "may be advertised if:" and deleting the word "if" from the subsequent sub-rules

Rationale: Clarity

Section 25: Instructional Courses

New rules for radio

Question 132

i) Given BCAP's policy consideration, do you agree that rules 25.1 and 25.2 should be applied to radio advertisements, as they presently are to television advertisements? If your answer is no, please explain why. [Yes](#).

ii) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Instructional Courses section are necessary and easily understandable? If your answer is no, please explain why. [Yes](#).

Unrecognised qualifications

Question 133

Given BCAP's policy consideration, do you agree with BCAP's proposal not to include present TV rule 11.5b in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Other questions

Question 134

i) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Instructional Courses rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? [No](#).

ii) Do you have other comments on this section? Yes

Typos etc

Location: Rule 25.1

Proposal: Consider replacing “or a course...or remuneration.” with “or one that leads to a professional or technical examination must not exaggerate the opportunities for work or remuneration that are likely to result.”

Rationale: Clarity

Location: Rule 25.2

Proposal: Replace “credentials: for example, affiliation” with “credentials, for example: affiliation”

Rationale: Clarity

Location: Rule 25.2

Proposal: Replace “competencies and” with “competencies; and”

Rationale: Necessary punctuation

Location: Rule 26.2 (Services Offering Individual Advice on Consumer or Personal Problems)

Proposal: Replace “credentials: for example, affiliation” with “credentials, for example: affiliation”

Rationale: Clarity

Section 27: Introduction and Dating Services

Precautions when meeting people

Question 135

Given BCAP’s policy consideration, do you agree that rule 27.4 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Data Protection

Question 136

Given BCAP’s policy consideration, do you agree that it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client’s consent, and the client’s name will be promptly deleted on request? If your answer is no, please explain why. [Yes](#).

Promiscuity

Question 137

Given BCAP’s policy consideration, do you agree the proposed BCAP Code provides adequate protection from the potential for harm or offence from advertisements that encourage or condone promiscuity? If your answer is no, please explain why. [Yes](#).

Misleading

Question 138

Given BCAP’s policy consideration, do you agree it is not necessary to carry over radio rules 3.14 (a) and (d) into the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Location or telephone number

Question 139

Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rule 3.14 (b) into the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Other questions

Question 140

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Introduction and Dating Services Section are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Introduction and Dating Services rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? [No](#).

iii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Principle

Proposal: Consider replacing existing text with "Advertisements are acceptable, subject to Rules 10.1.5 and 10.2 in Section 10 (Prohibited Categories). Services operating through premium-rate telephone and text services are subject to Section 22 (Premium-Rate Telephone Services) and the *PhonepayPlus Code of Practice*."

Rationale: Consistency, clarity, accurate names of new Sections

Location: Rule 27.1

Proposal: Replace "27.1" with "27.1 – Radio Central Copy Clearance

Rationale: Consistency with approach in rest of Code

Location: Rule 27.2

Proposal: Insert full-stop at end of sentence

Rationale: Necessary punctuation

Location: Rule 27.5

Proposal: Replace "See section 32: Scheduling." with "See Section 32 (Scheduling)."

Rationale: Consistency

Location: Cross reference

Proposal replace: "PhonepayPlus code go" with "*PhonepayPlus Code of Practice go*"

Rationale: Clarity

Section 28: Competitions

Competitions

Question 141

i) Given BCAP's policy consideration, do you agree that rule 28.1 should be included in BCAP's new Code? If your answer is no, please explain why? [Yes](#).

ii) Do you have other comments on this section? [Yes](#).

Typos etc

Location: Rule 28.1

Proposal: Consider replacing “clear and made known” with “clear and appropriately made known”

Rationale: Clarity

Section 31: Other Categories of Radio Advertisements that Require Central Copy Clearance

18+ rated computer or console games

Question 142

Given BCAP’s policy consideration, do you agree that 31.1.4 should be included in the Code? If your answer is no, please explain why. [Yes](#).

Typos etc

Location: Rule 31.1

Proposal: Above Rule 31.1 insert the word “**Rules**”

Rationale: Consistency

Location: Rule 31.1

Proposal: Replace “Code, these products” with “Code, advertising for the following products”

Rationale: Clarity

Location: Rule 31.1.2

Proposal: Replace “Stripograms” with “strip-o-grams”

Rationale: Consistency

Section 32: Scheduling

Computer and console games

Question 143

Given BCAP’s policy consideration, do you agree that proposed rules 32.5.4 and 32.20.5 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Betting tipsters

Question 144

Given BCAP’s policy consideration, do you agree that proposed rules 32.2.3 and 32.20.4 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

In respect of betting tipsters, please note the following typos in Section 21.

Location: Rule 21.4

Proposal: Replace “main-line service” with “mainline service.”

Rationale: Necessary punctuation

Location: Rule 21.6

Proposal: Replace “details (see Section 22.1: Premium-rate Services section).” with “details. Please see Section 22 (Premium-Rate Telephone Services).”

Rationale: Consistency

Location: Rule 21.10

Proposal: Replace “could forge a” with “could generate a”

Rationale: The word “forge” has multiple meanings

Location: Rule 21.13

Proposal: Replace existing sentence with “An advertisement for a betting tipster must not be repeated if a change in circumstances would render it misleading – for example, if a race meeting were cancelled.”

Rationale: Clarity

Location: Rule 21.14, second sentence

Proposal: Replace “by advance proofing.” with “by proofing”

Rationale: Proofing is already defined as being something done in advance of an event at the start of Section 21, so using the term “advance proofing is superfluous here.

Live premium-rate services

Question 145

Given BCAP’s policy consideration, do you agree that proposed rules 32.2.6 and 32.20.8 should be included in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Restrictions around children’s programmes

Question 146

Given BCAP’s policy consideration, do you agree with BCAP’s proposal to extend the restriction on advertisements for low alcohol drinks, medicines, vitamins and other dietary supplements from around programmes made for children to programmes of particular appeal to audiences below the age of 16? If your answer is no, please explain why. [Yes](#).

Condoms

Question 147

Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why. [Yes](#).

Sensational newspapers/magazines/websites

Question 148

Given BCAP’s policy consideration, do you agree that it is proportionate to require that special care be taken when scheduling advertisements for sensational newspapers, magazines, websites (or their content)? If your answer is no, please explain why. [Yes](#).

TV Text and interactive advertisements

Question 149

Given BCAP’s policy consideration, do you agree that the same rules on placement of advertisements should apply to broadcast advertisements behind the red button as to TV Text advertisements? [Yes](#).

Liqueur chocolates

Question 150

Given BCAP's policy consideration, do you agree that the restriction on advertisements for liqueur chocolates is no longer required, given the restriction on HFSS foods around programmes of particular appeal to under 16s? If your answer is no, please explain why. [Yes](#).

Charities

Question 151

Given BCAP's policy consideration, do you agree that it is no longer necessary to restrict advertisements for charities from appearing adjacent to any appeal or community service announcement transmitted in programme time? If your answer is no, please explain why. [Yes](#).

Programmes featuring advertisements

Question 152

Given BCAP's policy consideration, do you agree that it is proportionate to delete the requirement that advertisements for products and services that feature in advertisement compilation programmes should not appear in or adjacent to those programmes? If your answer is no, please explain why. [Yes](#).

Detailed advertisements for gambling; Code for Text Services

Question 153

Given BCAP's policy consideration, do you agree that it is no longer necessary to restrict detailed TV text advertisements for gambling to full advertising pages devoted solely to such advertisements? If your answer is no, please explain why. [Yes](#).

Artist separation

Question 154

Given BCAP's policy consideration, do you agree that it is no longer necessary to maintain 'the artist separation rule'? If your answer is no, please explain why. [Yes](#).

Exclusion of certain types of advertisement in or adjacent to broadcasts of Parliamentary proceedings

Question 155

Given BCAP's policy consideration and the view of the Parliamentary authorities, do you agree that it is suitable to maintain rule 32.14 in the proposed BCAP Code? If your answer is no, please explain why. [Yes](#).

Other Questions

Question 156

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Scheduling Section are necessary and easily understandable? If your answer is no, please explain why? [Yes](#).

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Scheduling rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated

consideration? **No.**

iii) Do you have other comments on this section? **Yes.**

Typos etc

Location: Definitions, third paragraph

Proposal: Replace “of 32.12, a ‘politician’ is defined as a Member of, or candidate...organisation.” with “of Rule 32.12, a ‘politician’ is defined as a Member of, or prospective candidate for, the House of Commons or European Parliament, other elected Assemblies in the UK or a local authority, a Member of the House of Lords or a person prominent in a political party organisation.”

Rationale: Consistency, clarity

Location: Definitions, fifth paragraph

Proposal: Replace “apply to” with “apply equally to”

Rationale: Clarity

Location: Definitions, sixth paragraph, first sentence

Proposal: Replace “rule 32.20” with “Rule 32.20”

Rationale: Consistency

Location: Definitions, sixth paragraph, second sentence

Proposal: Replace “For the avoidance of doubt, these rules...32.16.” with “For the avoidance of doubt, Rules 32.12, 32.13, 32.15 and 32.16 apply to television text and interactive services.”

Rationale: Consistency, clarity

Location: page 301, first paragraph

Proposal: Replace “Television Text and Interactive television services” with “Television Text and Interactive Television Services”

Rationale: Consistency

Location: page 301, second paragraph

Proposal: Replace “When deciding whether a station’s programming has” with “When deciding whether the programming of a station has”

Rationale: Clarity

Location: page 301, second paragraph

Proposal: Delete “(RAJAR)”

Rationale: The Radio Joint Audience Research organization is referred to only once in the BCAP Code, therefore it is unnecessary to provide the acronym here.

Location: page 301, fourth paragraph, second sentence

Proposal: Replace “7.30 pm” with “7.30pm”

Rationale: Consistency with format of other times given in draft Code

Location: page 301, sixth paragraph, first sentence

Proposal: Replace “under **32.1 – 32.6.**” with “under Rules 32.1 – 32.6.”

Rationale: Formatting, consistency

Location: page 301, sixth paragraph, second sentence

Proposal: Replace “under **32.2.2** or **32.5.1**, namely: gambling” with “under Rule 32.2.2 or 32.5.1, namely: gambling”

Rationale: Formatting, consistency

Location: Definitions, third paragraph

Proposal: Replace “for...organization.” with “

Location: Rule 32.2.1

Proposal: Replace “volume; (See also 32.4.7)” with “volume (see also Rule 32.4.7)”

Rationale: Consistency

Location: Rule 32.2.2

Proposal: Replace “(see 32.4)” with “(see Rule 32.4)”

Rationale: Consistency

Location: Rule 32.2.5

Proposal: Replace “Section 15, Faith, Religion and Equivalent Systems of Belief” with “Section 15 (Faith, Religion and Equivalent Systems of Belief)”

Rationale: Consistency

Location: Rule 32.5.1

Proposal: Replace “as high in fat, salt or sugar (HFSS) in” with “as HFSS in”

Rationale: The acronym HFSS is already explained in the section on children’s television on page 301, so it unnecessary to spelt it out in full again. Consideration could be given moving “HFSS” to the definitions as is the approach adopted in Section 13 (Food, Dietary Supplements and Associated Health or Nutrition Claims).

Location: Rule 32.5.3

Proposal: Replace “preclude the scheduling in or adjacent to children’s programmes of an” with “preclude scheduling in or adjacent to children’s programmes an”

Rationale: Clarity

Location: Rule 32.8, second sentence

Proposal: Replace “a prohibition of any” with “the prohibition of any”

Rationale: Renders clearer?

Location: Rule 32.9 & 32.10

Proposal: Give consideration to deleting “(including puppets)” from Rule 32.9 and moving the definition of “persons” to the Definitions section at the start of Section 32. For example, this could be rendered to read: “For the purposes of Rules 32.9 and 32.10, cartoon and puppet characters are classed as ‘persons’.” This approach is adopted in respect of Rule 32.12.

Rationale: Logic

Location: Rule 32.10, fourth sentence

Proposal: Replace “The rule does” with “The Rule does”

Rationale: Consistency

Location: Rule 32.14.2, Cross reference

Proposal: Replace “see Section 2, Recognition of Advertising” with “see Section 2 (Recognition of Advertising).”

Rationale: Consistency, necessary punctuation

Location: Rule 32.15.4

Proposal: Replace “before and/or after” with “before and / or after”

Rationale: Clarity

Location: Rule 32.16, third sentence

Proposal: Replace “(See Section” with “See Section”

Rationale: Unnecessary punctuation in the form of an opening bracket with no corresponding closing one.

Location: Rule 32.17.3

Proposal: Replace “stripograms” with “strip-o-grams”

Rationale: Consistency

Location: Rule 32.19, second paragraph

Proposal: Replace “transmission designed to” with “transmission designed so as to”

Rationale: Clarity

Location: Rule 32.20.11

Proposal / observation: If the decision is taken to incorporate a separate section on lotteries within the Code then Rule 32.20.11 would need to be revised as follows “Gambling, ~~including lotteries~~. A new Rule – 32.20.12 – would need to be inserted into the Code.

Rationale: Logic

Section 33: Other comments

Question 157

Do you have other comments or observations on BCAP's proposed Code that you would like BCAP to take into account in its evaluation of consultation responses? [Yes](#).

Typos etc

Location: Page 209

Proposal: Replace "Treatments, and Health" with "Treatments and Health"

Rationale: Superfluous comma

Location: Page 209

Proposal: Replace "Belief," with "Belief"

Rationale: Superfluous comma

Location: Page 209

Proposal: Replace "Scheduling rules" with "Scheduling Rules"

Rationale: Consistency

Location: Page 210, Section (a), second paragraph, first sentence

Proposal: Replace "CAP" with "BCAP"

Rationale: More logical for references to be made to BCAP than CAP in this Code.

Location: Page 210, Section (a), second paragraph, second sentence

Proposal: Replace "CAP website at www.cap.org.uk" with "BCAP website at www.bcap.org.uk"

Rationale: More logical for references to be made to BCAP than CAP in this Code.

Location: Page 210, Section (b)(ii)

Proposal: Delete line space above Section (b)(ii)

Rationale: Consistency of formatting

Location: Page 210, Section (b)(ii), second sentence

Proposal: Replace "excluded" with "excluded;"

Rationale: Consistency of punctuation

Location: Page 210, Section (b)(iii)

Proposal: Replace "payment" with "payment;"

Rationale: Consistency of punctuation

Location: Page 210, Section (e), second sentence

Proposal: Replace "about of the" with "about the"

Rationale: Sense

Location: Page 211, Section (h)

Proposal: Replace "the shortening, suspending or taking away of a licence" with "the foreshortening, suspension or revocation of a licence"

Rationale: Clarity

Location: Appendix 1, Paragraph 1, "second sentence"

Proposal: Insert line space between end of first sentence and reference to Sections 319(1), 319(3)

Rationale: Consistency with approach elsewhere in Appendix 1

Location: Appendix 1, Paragraph 3(f)

Proposal: Replace “ that generally” with “that generally”

Rationale: Formatting – see also Paragraph 3(a)

Location: Appendix 1, Paragraph 3(l)

Proposal: Insert line space between end of Paragraph 3(l) and reference to Section 319(2)

Rationale: Consistency with approach elsewhere in Appendix 1

Location: Appendix 1, page 311, “first paragraph”, sub-sections (b) and (c)

Proposal: Replace “ the likely” with “the likely”

Rationale: Formatting

Location: Appendix 1, page 311, “first paragraph”, sub-section (d)

Proposal: Replace “ the likelihood” with “the likelihood”

Rationale: Formatting

Location: Appendix 1, page 311, “first paragraph”, beneath sub-section (e)

Proposal: Replace “Section 319(4).” with “Section 319(4)”

Rationale: Consistency, unnecessary punctuation

Location: Appendix 1, page 312, “NB”

Proposal / observation: Strange formatting of this text noted

Rationale: Consistency

Location: Appendix 1, Paragraph 8(a)

Proposal: Replace “by section 321(2) Communications Act, including” with “by section 321(2) of the Communications Act 2003, including”

Rationale: Consistency of references to legislation in Appendix 1

Location: Appendix 1, Paragraph 8(c), second sentence

Proposal: Replace “refuse an advertisements” with “refuse advertisements”

Rationale: Sense

Location: Appendix 1, Paragraph 9

Proposal: Replace “Communications Act requires” with “Communications Act 2003 requires”

Rationale: Consistency of references to legislation in Appendix 1

Location: Appendix 1, Paragraph 11

Proposal: Replace “provisions of Medicines (Monitoring of Advertising) Regulations to” with “provisions of the Medicines (Monitoring of Advertising) Regulations 1994”

Rationale: Clarity, consistency of reference to legislation in Appendix 1

Location: Appendix 1, Paragraph 12

Proposal: Replace “ASAB will” with “ASA(B)”

Rationale: Consistency (e.g. see Paragraph 11)

Location: Appendix 1, Paragraph 13 and Paragraph 15

Proposal / observation: There does not appear to be a Paragraph 14

Rationale: Logic

Location: Appendix 1, Paragraph 15, “introduction”

Proposal: Replace “the Communications Act, such” with “the Communications Act 2003, such”

Rationale: Consistency of references to legislation in Appendix 1

Location: Appendix 1, Paragraph 15(a)

Proposal: Replace “service an advertisement” with “service an advertisement”

Rationale: Formatting

Location: Appendix 1, Paragraph 15(c), second sentence

Proposal: Replace “(Broadcasting Act 1990 s.4(1)(c) and 87(1)(d) and Broadcasting Act 1996 s.4(1)(c) and 43(1)(d)).” with “Broadcasting Act 1990 sections 4(1)(c) and 87(1)(d) and Broadcasting Act 1996 sections 4(1)(c) and 43(1)(d)).”

Rationale: Consistency of references to sections of legislation elsewhere in Appendix 1

Location: Appendix 2, Article 3e, Paragraph 1(c)(ii)

Proposal: Replace “racial or-ethnic origin” with “racial or ethnic origin”

Rationale: Superfluous hyphen

Location: Appendix 2, Article 3e, Paragraph 1(c)(iv)

Proposal: Replace “environment.,” with “environment”

Rationale: Clarity

Location: Appendix 2, Article 15(b)

Proposal: Replace “performance or to driving” with “performance or to driving”

Rationale: Formatting

Location: Appendix 2, Article 19

Proposal: Propose that Article 19 appear at the top of the page that follows together with the text to which it relates

Rationale: Formatting, logic

Location: Appendix 2, Article 19

Proposal: Replace existing disjointed format of sentence with the following: “The provision of this Directive shall apply *mutatis mutandis* to channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion.”

Rationale: Formatting

Location, Appendix 2, Article 22, Paragraph 1

Proposal: Replace “Member States” with “Member States”

Rationale: Formatting

Location: Appendix 3, Title

Proposal: Replace “of the consumer protection from Unfair Trading” with “of The Consumer Protection from Unfair Trading”

Rationale: Standard form for referring to legislation

Location: Appendix 3, second paragraph, sixth sentence

Proposal: Replace “the Regulations and” with “the CPRs and”

Rationale: Logical, given the acronym is provided and used on several occasions previously in that paragraph

Location: Appendix 3, second paragraph, sixth sentence

Proposal: Replace “the Code” with “the BCAP Code”

Rationale: Clarity and consistent with references earlier in the same paragraph

BCAP Code Review Consultation

Response from Alcohol Concern to the Broadcast Committee of Advertising Practice

June 2009



Alcohol Concern
Making Sense of Alcohol

Alcohol Concern, 64 Leman Street, London E1 8EU Tel: 020 7264 0510, Fax: 020 7488 9213 Email: contact@alcoholconcern.org.uk Website: www.alcoholconcern.org.uk Alcohol Concern is a registered charity no. 291705 and a company limited by guarantee registered in London no. 1908221.

Alcohol Concern

Alcohol Concern is the national agency on alcohol misuse campaigning for effective alcohol policy and improved services for people whose lives are affected by alcohol-related problems.

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1. About Alcohol Concern

1.1 Alcohol Concern is the national agency on alcohol misuse campaigning for effective alcohol policy and improved services for people whose lives are affected by alcohol-related problems.

1.2 Alcohol Concern is a membership body working at a national level to influence alcohol policy and champion best practice locally. We support professionals and organisations by providing expertise, information and guidance. We are a challenging voice to the drinks industry and promote public awareness of alcohol issues.

2.Introduction

2.1 We welcome the opportunity to comment on the Committee's review of the advertising Code and will also submit to the non-broadcast Committee's review of the advertising Code.

Section 19: Alcohol

Sales promotions in alcohol advertisements

Question 111

Given BCAP's policy consideration, do you agree that rule 19.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

19.11 – *Advertisements may include alcohol sales promotions but must not imply, condone or encourage immoderate drinking.*

We do not agree that rule 19.11 should be included in the proposed BCAP Code as it is presently worded, although we agree that there does need to be a rule which bans the encouraging of irresponsible drinking. We believe that proposed rule 19.11 should be amended to read:

'Advertisements must not include alcohol sales promotions and must not imply, condone or encourage immoderate drinking'

We believe that marketing communication must not include sales promotion information. The advertising of alcohol sales promotions implicitly encourages higher sales and therefore greater consumption by the individual. At the very least, it promotes the message that it is desirable to buy, and therefore consume, large quantities of alcohol. There should be no promotion of alcohol which is being sold at a discount or as part of a multi-buy promotion. Currently, the advertising of alcohol sales promotions encourages competition between retailers to heavily discount alcohol products and encourages below-cost or 'loss leading' sales, in turn leading to higher alcohol consumption and alcohol-related harms.

Irresponsible handling of alcohol

Question 112

Given BCAP's policy consideration, do you agree that rule 19.12 should be included in the proposed BCAP Code? If your answer is no, please explain why.

19.12 - *Advertisements must not feature alcohol being handled or served irresponsibly.*

Yes. We agree that rule 19.12 should be included in the proposed BCAP Code.

Question 113

Given BCAP's policy consideration, do you agree that rule 19.10 should be included in the proposed BCAP Code? If your answer is 'no', please explain why.

19.10 –*Advertisements may give factual information about the alcoholic strength of a drink or make a factual strength comparison with another product but, except for low-alcohol drinks, which may be presented as preferable because of their low alcoholic strength, must not otherwise imply that a drink may be preferred because of its alcohol content or intoxicating effect.*

We believe that proposed rule 19.10 should be amended to read:

Advertisements may give factual information about the alcoholic strength of a drink but must not imply that a drink may be preferred because of its alcohol content or intoxicating effect. They may not make a factual strength comparison with another product, except for low-alcohol drinks which may be presented as preferable because of their low-alcoholic strength.

We believe that strength comparisons with other products should not be made, even if there is no implication that the drink is preferred because of its alcohol content and intoxicating effect. This is because the presentation of a strength comparison automatically infers that the product is preferable, even without the addition of further methods to imply that higher strength is preferable. For example, an advertisement which simply states that a type of beer which is higher in strength than other beers, whilst using no additional techniques to imply that this is preferable, would be allowed under the new rule. We do not think that this is acceptable.

Alcohol in a working environment

Question 114

Given BCAP's policy consideration, do you agree that rule 19.14 should be included in the proposed BCAP Code? If your answer is no, please explain why.

19.14 *Advertisements must not normally show alcohol being drunk by anyone in their working environment.*

We believe that proposed rule 19.14 should be amended to read:

Advertisements must not show alcohol being drunk by anyone in their working environment.

Removing the word 'normally' will remove the possibility of exceptional circumstances in which an individual may be shown drinking in his/her working environment. We believe that only in a very small number of cases would this be appropriate and that it is an unnecessary exception, creating a vague rule which may be open to misinterpretation. Furthermore, we are concerned that such an exception seems to condone drinking in working environments in which alcohol is the norm, for example the retail drinks industry. Statistics show that alcohol-related deaths are higher among bar staff and publicans than among any other group surveyed. For example, male bar staff, publicans and managers of licensed premises have twice the proportion of alcohol-related deaths of men in England and Wales as a whole (ONS, 2007). It is therefore unwise to promote the consumption of alcohol by anyone in their working environment.

Exception for children featuring incidentally in alcohol advertisements

Question 115

Given BCAP's policy consideration, do you agree that rule 19.17 should be included in the proposed BCAP Code? If your answer is no, please explain why.

19.17 – *Alcohol advertisements must not feature in a significant role anyone who is, or seems to be, under 25 and must not feature children. An exception is made for advertisements that feature families socializing responsibly. Here, children may be included but they should have an incidental role only and anyone who seems to be under the age of 25 must be obviously not drinking alcohol.*

We believe that proposed rule 19.17 should be amended to read:

People shown must neither be, nor seem to be, under 25.

We believe that no-one who is under 25 or a child should be featured in advertisements in any capacity and that no exceptions should be made for advertisements that feature families socializing responsibly.

Low alcohol exceptions

Question 116

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that requires anyone associated with drinking must be, and seem to be, at least 25 years old? If your answer is no, please explain why.

Yes. We agree that it is wrong to exempt low-alcohol drinks from this rule as we agree that such exemptions might reflect a policy intention to normalise the consumption of low-alcohol drinks among under-aged drinkers. We agree that 25 or over is the correct age point for both low-alcohol drinks and drinks above 1.2% ABV.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

Yes. We agree that it is wrong to exempt low-alcohol drinks from the rule that prevents implying or encouraging immoderate drinking.

Question 117

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

Yes.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents encouraging excessive consumption via sales promotions? If your answer is no, please explain why.

Yes.

iii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents featuring a voiceover of anyone who is or appears to be 24 or under? If your answer is no, please explain why.

Yes.

Other questions

Question 118

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Alcohol section are necessary and easily understandable? If your answer is no, please explain why.

) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Alcohol section that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?

Having considered the mapping document, we have concerns with regard to a number of the rules in their proposed form. We would therefore like to make recommendations on the following rules -

19.6 – *Advertisements must not link alcohol with sexual activity, sexual success or seduction or imply that alcohol can enhance attractiveness. That does not preclude linking alcohol with romance or flirtation.*

We believe rule 19.6 should be amended to read:

Advertisements must not link alcohol with sexual activity, romantic or sexual success or seduction or imply that alcohol can enhance attractiveness.

We believe that romantic success should not be linked to alcohol, in the same way that the code prohibits the linking of sexual or social success to alcohol. It is unclear why the Committee have chosen to exempt romantic success. We would argue that for many viewers such a link could be as, if not more, compelling as that between sexual/social success and alcohol. Alcohol has no more bearing on romantic success than it does on social or sexual success and therefore romantic success should be included under the Code rules.

19.7 – *Advertisements must not portray alcohol as indispensable or as taking priority in life. Advertisements must not imply that drinking can overcome problems or that regular solitary drinking is acceptable.*

We believe that proposed rule 19.7 should be amended to read:

Advertisements must not portray alcohol as indispensable or as taking priority in life. Advertisements must not imply that drinking can overcome problems or that regular solitary drinking is acceptable. Nor must they imply that drinking is an essential or normal part of daily routine.

believe that the proposed rule should retain a measure to ensure that drinking on a daily basis is not normalised, due to the long term health risks associated with frequent alcohol consumption.

19.5 – Advertisements must not link alcohol with daring, toughness, aggression or unruly, irresponsible or anti-social behaviour.

We believe rule 19.5 should be amended to read:

Advertisements must not suggest or imply that drinking is an essential attribute of gender. Advertisements must not link alcohol with daring, toughness, aggression or unruly, irresponsible or anti-social behaviour.

Under the proposed new rule, advertisers will be allowed to suggest that alcohol can enhance or even be a principal marker for masculinity or femininity. Our amendment retains the wording of the current rule, which includes a reference to gender.

19.8 - Advertisements must not imply that alcohol has therapeutic properties. Alcohol must not be portrayed as capable of changing mood, physical condition or behavior or as a source of nourishment. Although they may refer to refreshment, advertisements must not imply that alcohol can improve any type of performance.

We believe rule 19.8 should be amended to read:

Advertisements must not imply that alcohol has therapeutic properties. Alcohol must not be portrayed as capable of changing mood, physical condition or behavior or as a source of nourishment. Advertisements must not imply that alcohol can improve any type of performance, nor that it has hydrating properties.

We do not think that alcoholic drinks should be portrayed as providing refreshment. Alcohol is a diuretic, therefore its consumption can result in temporary dehydration of the body. We therefore feel that the presentation of alcoholic drinks as thirst-quenching is misleading, as alcohol may easily be misinterpreted by the viewer as having hydrating properties, which would be an incorrect and unsafe conclusion.

19.10 – Advertisements may give factual information about the alcoholic strength of a drink or make a factual strength comparison with another product but, except for low-alcohol drinks, which may be presented as preferable because of their low alcoholic strength, must not otherwise imply that a drink may be preferred because of its alcohol content or intoxicating effect.

We believe that proposed rule 19.10 should be amended to read:

Marketing communications may give factual information about the alcoholic strength of a drink but must not imply that a drink may be preferred because of its alcohol content or intoxicating effect. They may not make a factual strength comparison with another product, except for low-alcohol drinks which may be presented as preferable because of their low-alcoholic strength.

We believe that strength comparisons with other products should not be made, even if there is no implication that the drink is preferred because of its alcohol content and intoxicating effect. This is because the presentation of a strength comparison automatically infers that the product is preferable, even without the addition of further methods to imply that higher strength is preferable. For example, an advertisement which simply states that a type of beer which is higher in strength than other beers, whilst using no additional techniques to imply that this is preferable, would be allowed under the new rule. We do not think that this is acceptable.

19.18 – *Advertisements for alcoholic drinks may give factual statements about product contents, including comparisons, but must not make any health claims, which include fitness or weight control claims.*

We believe that proposed rule 19.18 should be amended to read:

Marketing communications may give factual information about product content, including comparisons, but must not make any physical or mental health or wellbeing claims, which include fitness or weight control claims, or claims to enhance overall quality of life.

We recommend a broader approach to the matter of the relationship between alcohol and health, which encompasses mental health. There should be no claims made that alcohol can promote mental health. There is increasing evidence to suggest that alcohol misuse can have a negative effect on an individual's mental as well as physical health. For many people, there can be a link between problem drinking and psychiatric disorders. For example, the Royal College of Psychiatrists states that 'alcohol affects the chemistry of the brain, increasing the risk of depression.'¹ One US study found that 19.9% of the general population had one or more psychiatric disorders, but in those with alcohol abuse or dependence the figure rose to 36.6%².

19.13 – *Advertisements must not link alcohol with the use of potentially dangerous machinery or driving. Advertisements may feature sporting and other physical activities (subject to other rules in this Section) but must not imply that those activities have been undertaken after the consumption of alcohol.*

We believe that proposed rule 19.13 should be amended to read:

Advertisements must not link alcohol with the use of potentially dangerous machinery or driving. Advertisements must not feature sporting and other physical activities.

¹ Royal College of Psychiatrists factsheet, Alcohol and Depression -

<http://www.rcpsych.ac.uk/mentalhealthinfoforall/problems/alcoholanddrugs/alcoholdepression.aspx>

² Knight, Robert G, *Neurological Consequences of Alcohol Use*, Chapter 7, International Handbook of Alcohol Dependence, 2001, ed. Heather N, Peters T J, Stockwell in Institute of Alcohol Studies Factsheet, 'Alcohol and Mental Health'

- ³ WHO European Charter on Alcohol (1995)- http://www.euro.who.int/Document/EUR_ICP_ALDT_94_03_CN01.pdf
- ⁴ Aitken, P.P et al (1988) *Television advertisements for alcoholic drinks do reinforce under-age drinking*, British Journal of Addiction, Vol 83, no 12, pp.1399-1419
- ⁵ *Alcohol Advertising and Alcohol Consumption by Adolescents* (National Bureau of Economic Research, Working Paper No. 9482: 2004).
- ⁶ L.B. Snyder et al (2006) *Effects of alcohol advertising exposure on drinking among youth*, Archives of Paediatrics and Adolescent Medicine 160: 18-24
- ⁷ British Academy of Medical Sciences (2004) 'Calling Time – The Nation's Drinking as a Major Health Issue'

There should be no link made whatsoever between alcohol and sporting activity, even if it is not implied that those activities have taken place after the consumption of alcohol. For example, the rule as proposed allows for the consumption of alcohol after sport or physical activity which we would argue could create a misleading impression that alcohol is an appropriate beverage for hydration.

19.11 *Advertisements for alcoholic drinks must not publicise sales promotions (including competitions) that appear to encourage excessive consumption.*

We believe that proposed rule 19.11 should be amended to read:

Advertisements for alcoholic drinks must not publicise sales promotions.

iii) Do you have other comments on this section?

Alcohol Concern advocates a ban on alcohol advertising before the watershed of 9pm. This should include advertisements by supermarkets where a range of products, including alcohol, are offered.

Clearly, if alcohol advertising occurs before 9pm there is a stronger possibility that children may be watching. The World Health Organisation's European Charter on Alcohol states that:

"All children and adolescents have the right to grow up in an environment protected from the negative consequences of alcohol consumption and, to the extent possible, from the promotion of alcoholic beverages."³

Several studies have shown that young people are increasingly adept at interpreting the cultural messages contained in alcohol advertisements. Research undertaken at the University of Strathclyde⁴ in attitudes to alcohol advertising among 10-17 year olds indicate that 88% of 10-13 year olds and 96% of 14-17 year olds were aware of alcohol advertising and 76% of these (across the whole age range) could identify three or more advertisements when the brand name was masked.

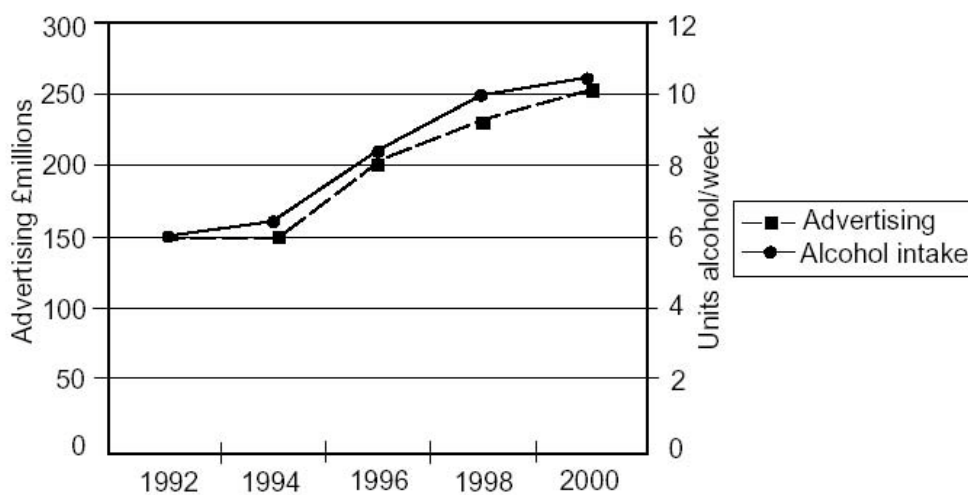
A report from the US National Bureau of Economic Research found that alcohol advertising (the majority of which focuses on beer and spirits rather than wine) had a positive effect on the decisions young people make on whether to drink and how much they consume.⁵

A long-term national study in the U.S.⁶ published in 2006 concluded that for each additional dollar per capita spent on alcohol advertising in a local market, young people drank 3% more.

The Academy of Medical Sciences report *Calling Time*⁷ demonstrates a clear link between spending on alcohol advertising and children's drinking, as can be seen from Figure 1 below.

Figure 1

Close relationship between annual expenditure on alcohol advertising and weekly alcohol of 11-15 year old children ($R=0.995$)



Source: WARC (2002);
Jernigan (2001), Cooke et al. (forthcoming)

Code Review Consultation – Addendum (ScHARR Review)

Response from Alcohol Concern to the Broadcast Committee of Advertising Practice

July 2009



Alcohol Concern
Making Sense of Alcohol

Alcohol Concern

Alcohol Concern is the national agency on alcohol misuse campaigning for effective alcohol policy and improved services for people whose lives are affected by alcohol-related problems.

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BCAP Code Review Consultation Addendum – ScHARR Review

The Independent Review of the Effects of Alcohol Pricing and Promotion published by the School of Health and Related Research at the University of Sheffield (ScHARR).

1.About Alcohol Concern

1.1 Alcohol Concern is the national agency on alcohol misuse campaigning for effective alcohol policy and improved services for people whose lives are affected by alcohol-related problems.

1.2 Alcohol Concern is a membership body working at a national level to influence alcohol policy and champion best practice locally. We support professionals and organisations by providing expertise, information and guidance. We are a challenging voice to the drinks industry and promote public awareness of alcohol issues.

2. Introduction

2.1 Alcohol Concern welcomes the opportunity to comment on the Addendum to the BCAP Code review. Alcohol Concern has also contributed to the submission by the Alcohol Health Alliance, of which we are a member.

2.2 We have made recommendations for the tightening of the content rules of the Code in our response to the main part of the consultation. The following represents our concerns largely with regard to the scheduling of alcohol advertising. These are particularly in relation to the exposure of alcohol advertising to those who are not legally old enough purchase alcohol.

2.3 We have considered the evidence included in 'The Independent Review of the Effects of Alcohol Pricing and Promotion', conducted by the School of Health and Related Research, University of Sheffield and published by the Department of Health on 3rd December 2008. We do not agree that this evidence does not merit a change to BCAP's advertising content or scheduling rules.

2.4 We are concerned that there is evidence on the potential impact of restrictions on the placement of broadcast alcohol advertisements beyond that which has been provided by SchARR, for example evidence which has been published since the publication of 'The Independent Review of the Effects of Alcohol Pricing and Promotion.' We consider it appropriate, given the scale of the Committee's review of the Code, that all available evidence should be considered before the Committee reaches this significant decision.

2.5 We also consider that BCAP should give consideration to EU examples of country-wide restrictions on the placement of broadcast alcohol advertisements.

3.The SchARR Review

3.1 Q. 168 - Given BCAP's policy consideration, do you agree that the evidence contained in the SchARR Review does not merit a change to BCAP's alcohol advertising content or scheduling rules? If your answer is no, please explain why you consider the SchARR Review does merit a change to BCAP's alcohol advertising content or scheduling rules.

3.2 Alcohol Concern does not agree with the conclusion of BCAP that the evidence contained in the SchARR Review does not merit a change to BCAP's alcohol advertising content or scheduling rules. We believe that changes are necessary to the rules, based on the evidence presented in the SchARR Review (and elsewhere). We are convinced that the SchARR Review offers persuasive evidence to further strengthen the alcohol advertising rules, particularly in order to protect young people.

3.3 Alcohol Concern would particularly like the Committee to note Evidence Statement 5 of the SchARR Review, which states that 'there is conclusive evidence of a small but consistent association of advertising with consumption at a population level. There is also evidence of small but consistent effects of advertising on consumption of alcohol by young people at an individual level'. Alcohol Concern believes that the conclusion of the Committee that the 'SchARR review does not offer persuasive evidence' is based too narrowly on Evidence Statement 6, which calls for further research and methodological developments. While we agree that both of these would be helpful to further understand this complicated issue, the evidence already presented is of acceptable significance to merit a change to BCAP's current rules.

3.4 Alcohol Concern would like to further point to Evidence Statement 10, which we feel is not reflected in the Committee's conclusion that no change to the rules is merited.

Evidence Statement 10 maintains that 'there is consistent evidence from longitudinal studies that exposure to TV and other broadcast media is associated with inception of and levels of drinking. Furthermore, the authors state that 'evidence for the effect of video watching is equivocal', therefore it is safe to assume that it is the role of advertising which is having the impact on inception of and levels of drinking.

3.5 The SchARR authors also note that 'consumer studies also provide increasing evidence that exposure to alcohol advertisements increases initiation of alcohol use amongst adolescents. These can be ranged alongside evidence from econometric studies with a majority finding a positive association between the volume of advertising and drinking behaviour and outcomes'.

3.6 Such conclusions should be understood in the context of young people's drinking in the UK, which continues to be a significant problem. There has been a 57% increase in alcohol-related deaths amongst young people aged 15-34 between 1991 and 2006/7.¹ Accidents, suicide and violence are significant causes of death in the 16-25 age groups, and alcohol is often implicated in all three.² The European School Survey Project on Alcohol and Drugs 2007, published in March 2009, showed that 15 and 16 year olds in the UK had the third highest level of alcohol consumption on the last drinking day of all countries surveyed, behind the Isle of Man and Denmark (the latter in fact having limited comparability). The UK also had the third highest level of youngsters having reported being drunk in the past 12 months and the third highest level of youngsters having reported being drunk in the past 30 days. The UK, importantly, also recorded the third highest rate of youngsters experiencing problems associated with alcohol use, such as individual problems, relationship problems, sexual problems and delinquency. Yet at the same time, youngsters in the UK were more likely than those in any other country to expect positive consequences as a result of their alcohol consumption. Alcohol Concern believes that the disparity between teenagers' expectations surrounding the experience of drinking alcohol and the reality may in part be attributed to the comparatively low level of restriction of alcohol advertising in the UK - advertising which of course conveys only

¹ Department for Children, Schools and Families (2008) Youth Alcohol Action Plan

² Acheson, D. (1998) Independent inquiry into inequalities in health report

positive messages about drinking. As shall be mentioned later, all European countries, except for the UK, have a ban on one form or another of one or more types of alcohol advertising.

4. Further evidence

4.1 Alcohol Concern believes that, in addition to that provided by ScHARR, there is further evidence which should be taken in consideration. A research experiment led by Rutger Engels, Professor in Developmental Psychopathology at the Behavioural Science Institute, Radboud University Nijmegen in The Netherlands, was published in February 2009³, some months after the publication of the ScHARR Review in December 2008. It involved the first controlled, randomised experiment into whether exposure to alcohol on television affects immediate drinking behaviour. Some respondents were exposed to alcohol advertising and portrayals, others were not.

4.2 The research team concluded that ‘this study shows a causal link between exposure to drinking models and alcohol commercials on acute alcohol consumption’. They went on to state that ‘results were straightforward and substantial: those in the condition with alcohol portrayal in movie and commercials drank on average 1.5 glasses more than those in the condition with no alcohol portrayal.’ The authors pointed to three potential underlying mechanisms for a direct link between alcohol portrayals and individual alcohol use. The first of these is ‘the positive portrayal of substances in a positive way by using prototypes of the ‘ideal’ person in an appealing context’. Secondly, they point to an association made by the viewer between a specific cue or event and a specific behaviour pattern, which may become habitual and automatic behaviour. Thirdly, alcohol portrayals may lead to drinking as a result of imitation. They note that previous research in this area strongly supports the assumption that an individual drinks at a quicker pace when in the company of another person who is drinking. This may also apply to watching a person on a screen, for example in an alcohol advert.

4.3 This study is important because it is generally assumed that advertising primarily works by changing attitudes of consumers and behaviour in the long term. Furthermore, it is considered that exposure to advertising messages should occur several times in order

³ Engels et al (2009) ‘Alcohol Portrayal on Television Affects Actual Drinking Behaviour’, *Alcohol and Alcoholism*, Vol 44, No 3, pp 244-249

to effect this process. Given the fact that many people – including children of course - watch television at home and have the opportunity to drink, direct effects may account for some consumption.

4.4 A further study published since the SchARR Review was conducted by Anderson, Bruijn, Angus, Gordon & Hastings and published in *Alcohol and Alcoholism* in January 2009. 'Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies'⁴ reviewed 13 studies that measured exposure to advertising and promotion. 12 of the 13 studies concluded an impact of exposure on subsequent alcohol use, including initiation of drinking and heavier drinking among existing drinkers. The authors also noted a 'dose relation response' – the greater the exposure to advertising, the greater the impact. They do recognise, as does Alcohol Concern, that alcohol advertising is simply 'one of the many factors that have the potential to encourage youth drinking', but they conclude that 'alcohol advertising and promotion increases the likelihood that adolescents will start to use alcohol, and to drink more if they are already using alcohol'.

4.5 In an article published in *The Lancet*⁵ in June 2009, Anderson, Chisholm & Fuhr drew on a substantive evidence base of systematic reviews and meta-analyses in order to assess the evidence for the effectiveness of policies and programmes to reduce harms caused by alcohol. In the target area of marketing alcoholic beverages, they note that 'the effects of exposure seem cumulative and, in markets with greater availability of alcohol advertising, young people are likely to continue to increase their drinking as they move into their mid-20s, whereas drinking decreases at an earlier age in people who are less exposed to it.' They go on to conclude that 'policies that regulate the environment in which alcohol is marketed (economic and physical availability and commercial communications) are effective in reducing alcohol-related harm.'

4.6 The Science Group of the European Alcohol and Health Forum adopted the report of its dedicated working group on the issue of alcohol marketing in February 2009⁶. They

⁴ Anderson et al (2009) *Alcohol and Alcoholism Online*, January 2009, pp.1-15

⁵ Anderson et al (2009) *The Lancet*, Vol 373, pp 2234-46

⁶ Science Group of the European Alcohol and Health Forum (2009) 'Does marketing communication impact on the volume and patterns of consumption of alcohol beverages, especially by young people? – A review of longitudinal studies.'

concluded that although not all studies found an impact for all types of marketing exposures, 'the overall description of the studies found consistent evidence to demonstrate an impact of alcohol advertising on the uptake of drinking among non-drinking young people and increased consumption among their drinking peers.'

5. International examples

5.1 Alcohol Concern believes that BCAP should give consideration to international examples of restrictions on the placement of broadcast alcohol advertisements.

5.2 In his paper, 'Is it time to ban alcohol advertising?'⁷, World Health Organisation consultant Peter Anderson notes that all European countries, except for the UK, have a ban on one form or another of one or more types of advertising. He claims that since advertising commonly crosses country borders, 'there is an argument to approximate advertising rules across Europe banning alcohol advertising targeted to young people, a highly cost effective measure to reduce harmful alcohol use'.

5.3 The French alcohol policy law, the Loi Evin, prohibits alcohol advertising on television and in the cinema. This has been challenged by the European Commission and the UK, however, in their justifications of the law, the European Court has always decided that it should stay in place on the grounds that it protected health and was an effective strategy. The Loi Evin defines advertising restrictions on drinks over 1.2% ABV and defines places and media where advertising is allowed, rather than where it is not allowed, in order to make the regulations clearer to advertisers. Specifically:

- no advertising is allowed in television or in cinemas
- no sponsorship of cultural or sports events is permitted
- advertising is permitted only in the press for adults, on radio channels, on billboards (as of recently), at special events or places such as wine fairs and wine museums. Content is of course controlled where advertising is permitted and a health message must be included on each advertisement.

5.4 Norway and Sweden prohibit advertising to the public of all alcoholic beverages over 2.5 percent (Norway) or 3.5 percent (Sweden). France, as mentioned, prohibits broadcast

⁷ Anderson, P (2009) Clinical Medicine, Journal of the Royal College of Physicians, Vol. 9, No. 2., pp. 121-124.

advertising of all beverages. Many other European countries use time limits on TV advertising, whether regulated through legislation or self-regulation, on one or more type of beverage. The Netherlands, for example, prohibits TV advertising between 6am and 9pm. Portugal has a slightly stricter rule which bans advertising between 7am and 10.30pm, therefore making it unlikely children will be exposed to alcohol advertising. Italy prohibits advertising between 4 and 7pm, when children are likely to be watching television. Other countries prohibit or time limit advertising for distilled beverages, such as Italy (between 4 and 7pm) and Spain (total ban) or advertising for wine as well as distilled beverages (Poland). These countries all have lower levels of youth drinking than the UK.⁸

6. The frequency of advertising to children

6.1 The CAP Code currently states that ‘no medium should be used to advertise alcohol drinks if more than 25% of its audience is under 18 years of age’. This is a much tighter definition than the broadcast code rules. For broadcast programming, the BARB Conversion Index is used to calculate the proportion of children watching a particular programme. If the proportion of children aged watching a programme is more than 20% higher than the proportion of the UK television population watching the programme (or in other words, a programme achieves a Conversion Index of 120 or higher), the programme is defined as one which attracts a significantly higher than average proportion of viewers in that age group and, for the purposes of regulating the scheduling of TV advertisements, is said to be of particular appeal to an under 18 audience. However, there is a serious concern over the use of this method. BARB considers an ‘adult’ to be anyone aged 16 or over, therefore 16 & 17 year olds are not included as ‘children’ and therefore not counted when ascertaining whether a programme is of particular appeal to children. This means that alcohol adverts are being shown in programmes ‘likely to appeal’ to under 18 year olds, even if they are not ‘likely to appeal’ to 15 year olds and under. This seems questionable considering that 16 & 17 year olds are also too young to be able to buy alcohol. We have further concerns, and seek clarification on, the situation (as it seems) that BARB uses an audience profile of 10-15 year olds in order to determine whether a programme is likely to appeal to children. This would assume that, like 16 & 17 year olds, under tens aren’t included in the calculation. We would suggest that this does not allow for a clear picture of exactly how many under 18 year olds are watching a particular

⁸ Hibell et al (2009) ‘The 2007 ESPAD Report: Substance Use Among Students in 35 European Countries’

programme and therefore assessments of whether alcohol adverts should be shown can be inaccurate.

6.2 A programme which is not specifically designed for children, such as Coronation Street or Britain's Got Talent is still likely to have a high number of underage viewers who are then exposed to alcohol advertising. This criterion is therefore quite inadequate in terms of protecting minors from alcohol advertising. Figures to demonstrate this circumstance are shown in the table below. Furthermore, the current rule does not chime with the World Health Organisation's European Charter on Alcohol which states that 'all children and adolescents have the right to grow up in an environment protected from the negative consequences of alcohol consumption and, to the extent possible, from the promotion of alcoholic beverages.'⁹

6.3 Alcohol Concern, funded by the Alcohol Education Research Committee, conducted its own research into this matter in 2007¹⁰. We carried out research into the scheduling of alcohol adverts during two weeks (December and March) to ascertain how many were featured before the watershed of 9pm. Our study showed that in the week researched in December 2006, there were more than 350 alcohol adverts shown before the 9pm watershed. In terms of supermarket alcohol adverts, there were twice as many shown before the watershed than after. The research also showed a spike in alcohol advertising between 3 and 6pm, a time of day at which, we would argue, children, rather than adults, are very likely to be watching television.

6.4 Alcohol Concern's research found alcohol being advertised within programming that may appeal to children. The three programmes had a proportion of young viewers which did not break the 120 Index rule (based on number of 15s and under viewing). However, due to high viewing figures, this reflects a significant actual number of young people.

Programme	Advertiser	Products	Channel	Date/Time	% of 4-19 year olds viewing	Actual number of 4-19 year olds viewing
The X	Morrisons	2 x pack	ITV	17/12/06	18.18%	6,000

⁹ World Health Organisation European Charter on Alcohol (1995)

¹⁰ Alcohol Concern (2007) 'Not in Front of the Children'

Factor		Grolsch for £16		13.53		
Home & Away	Morrisons	2 x pack Grolsch for £16	Channel 5	11/12/06 18.13	12.67%	237,300
Coronation Street	Lidl	Low price wine	ITV	15/12/06 19.46	11%	1,126,000

Source: Mediametrie/Xtreme Information/Eurodata TV/BARB/ TNS UK

6.5. Alcohol Concern therefore recommends a watershed ban on all broadcast alcohol advertising and a requirement of less than 10% of the total viewing audience to be underage viewers in relation to advertisements shown after the watershed (of which large numbers of children may still watch). For the purposes of this calculation, that should include 16 & 17 year olds who are of course legally too young to buy alcohol. We believe that this dual approach will significantly decrease the ‘margin of error’ which currently exists with the effect of exposing far too many children to alcohol advertising. This will allow alcohol producers to continue to advertise to appropriate audiences, whilst ensuring that the children and young people are protected.

7. Public-health-based messages

7.1. Alcohol Concern further recommends that public-health-based messages should be included in 1/6th of advertising. This technique is referred to by the ScHARR authors as ‘counter advertising’, defined as ‘actions involving the use of advertising-styled messages about the risks or negative consequences of drinking’. Therefore, when referring to broadcast advertising, 1/6th of the broadcast time for any alcohol advert would need to be dedicated to a public health message. This would possibly a) reduce alcohol advertising expenditure by 1/6th and b) reduce consumption through the effect of the message. While the ScHARR review concluded that there is limited evidence of the effect of such a measure on consumption outcomes, they did model the effect of a reduction in advertising by 1/6th across both broadcast and non-broadcast media. Results varied, finding changes in overall consumption to decrease by between 0.2% and 2.2% with the financial value of the harm avoided over ten years estimated to be between £390m and £3.9bn. In terms of deaths avoided, the lower estimate is of 7 per year and the higher estimate is of 119 per year. Alcohol Concern recommends the requirement for public-health-based messages to be included in 1/6th of advertising under the BCAP Code, with further research conducted

into the impact of the content of public health messages in order to determine the most effective solutions.



The BCAP Code Review - Consultation on the proposed BCAP Broadcast Advertising Standards Code

1. The Alcohol Health Alliance UK is a group of 24 organisations whose mission is to reduce the damage caused to health by alcohol misuse and who are working together to:

- Highlight the rising levels of alcohol-related health harm
- Propose evidence-based solutions to reduce this harm
- Influence decision makers to take positive action to address the damage caused by alcohol misuse

While coalitions have previously been formed on specific topics in the medical field, notably tobacco control, this is the first time that a group has existed specifically to co-ordinate campaigning on alcohol, bringing together medical bodies, patient representatives and alcohol health campaigners.

2. Members of the Alliance:

Academy of Medical Royal Colleges, Action on Addiction, Alcohol and Health Research Trust , Alcohol Concern, Alcohol Focus Scotland, British Association for the Study of the Liver, British Liver Trust, British Society of Gastroenterology, College of Emergency Medicine, Faculty of Occupational Medicine, Faculty of Dental Surgery, Faculty of Public Health, Institute of Alcohol Studies, Medical Council on Alcohol, National Addiction Centre, National Organisation on Fetal Alcohol Syndrome, Royal College of General Practitioners, Royal College of Nursing, Royal College of Physicians Edinburgh, Royal College of Physicians London, Royal College of Physicians and Surgeons, Glasgow, Royal College of Psychiatrists, Royal College of Surgeons London, Royal Pharmaceutical Society, Scottish Intercollegiate Group on Alcohol

3. Introduction

The Alliance welcomes the opportunity to comment on the Committee's review of the advertising Code and will also submit to the non-broadcast Committee's review of the advertising Code.

Section 19: Alcohol

Sales promotions in alcohol advertisements

Question 111

Given BCAP's policy consideration, do you agree that rule 19.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

No we do not agree that rule 19.11 should be included in the code. Alcohol sales promotions encourage excessive consumption and harm, and under no circumstances should be included in advertisements. We would suggest that the rule be reworded to state that:

*'Advertisements **must not** include alcohol sales promotions and must not imply, condone or encourage immoderate drinking.'*

Irresponsible handling of alcohol

Question 112

Given BCAP's policy consideration, do you agree that rule 19.12 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We agree that rule 19.12 should be included in the proposed BCAP Code.

Alcoholic strength

Question 113

Given BCAP's policy consideration, do you agree that rule 19.10 should be included in the proposed BCAP Code? If your answer is 'no', please explain why.

We do not agree that rule 19.10 should be included in the proposed BCAP Code as it is currently worded:

We propose that rule 19.10 should be amended to read:

Marketing communications may give factual information about the alcoholic strength of a drink but must not imply that a drink may be preferred because of its alcohol content or intoxicating effect. They may not make a factual strength comparison with another product, except for low-alcohol drinks which may be presented as preferable because of their low-alcoholic strength.

We believe that strength comparisons with other products should not be made, even if there is no implication that the drink is preferred because of its alcohol content and intoxicating effect. This is because the presentation of a strength comparison automatically infers that the product is preferable, even without the addition of further methods to imply that higher strength is preferable

Alcohol in a working environment

Question 114

Given BCAP's policy consideration, do you agree that rule 19.14 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We agree that rule 19.4 should be included but should be strengthened to prohibit advertisements showing alcohol being drunk in their working environment. We propose that it should read:

*'Advertisements must **not** show alcohol being drunk by anyone in their working environment'*

We think it is more important that adverts do not use specific occupations with connotations of responsibility, glamour or otherwise attractive to young people to promote alcohol.

Exception for children featuring incidentally in alcohol advertisements

Question 115

Given BCAP's policy consideration, do you agree that rule 19.17 should be included in the proposed BCAP Code? If your answer is no, please explain why.

19.17

We do not agree that rule 19.17 should be included in the Code as it stands. We believe that none who is under 25 or a child should be featured in advertisements in any capacity and that no exceptions should be made for advertisements that feature families socializing responsibly.

Question 116

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that requires anyone associated with drinking must be, and seem to

be, at least 25 years old? If your answer is no, please explain why.

Yes we agree with this.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

Yes we agree with this.

Question 117

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

Yes we agree with this.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents encouraging excessive consumption via sales promotions? If your answer is no, please explain why.

Yes we agree with this.

iii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents featuring a voiceover of anyone who is or appears to be 24 or under? If your answer is no, please explain why.

Yes we agree with this.

Other questions

Question 118

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Alcohol section are necessary and easily understandable? If your answer is no, please explain why.

We agree that the rules included in the proposed alcohol section are absolutely necessary in the absence of statutory regulation but they need to be made more understandable.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Homeworking Schemes rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

iii) Do you have other comments on this section?

Section 33: Other comments

Question 157

Do you have other comments or observations on BCAP's proposed Code that you would like BCAP to take into account in its evaluation of consultation responses?

The exposure of young people to alcohol marketing has very clearly been shown to have similar deleterious effects as the marketing of cigarettes. The Science Committee of the European Commission recently reviewed all the evidence and found that¹¹;

“Despite the above methodological concerns and despite the fact that not all studies found an impact for all the individual marketing exposures studied, nevertheless, the overall description of the studies found consistent evidence to demonstrate an impact of alcohol advertising on the uptake of drinking among non-drinking young people, and increased consumption among their drinking peers.

This finding is all the more striking, given that only a small part of a total marketing strategy has been studied, and is corroborated by the results of the other methodologies, including qualitative, econometric, cross-sectional and experimental studies. It should be stressed that the studies come from countries with a long history of advertising and with relatively high levels of alcohol consumption, and it is difficult to speculate the size of the impact of marketing in cultures with either a short history of advertising or low alcohol consumption.”

These studies comprised normal alcohol advertising compliant with all the content regulations and guidelines, the problem is not only that of inappropriate content, but of the exposure of children and young people to normal alcohol advertising. The codes have to deal better with the volume and content issues. A stepwise approach to regulation of marketing might be the following:

	Regulation of Marketing
CORE	Regulation of all marketing including sponsorship Content restricted with no lifestyle ads Bans on sponsorship Placement restricted by volume and media (eg no electronic media)
EXPANDED	No pricing promotions or discounts No promotions using competitions, gifts
OPTIMAL	Restrictions on packaging and product design Ban advertising of corporate philanthropy Ban on all forms of product marketing

¹¹ ¹¹ Science Group of the European Alcohol and Health Forum. Does marketing communication impact on the volume and patterns of consumption of alcoholic beverages, especially by young people? - a review of longitudinal studies. 2009.

From: All Souls Church Eastbourne

To: BCAPCodeReview

Subject: BCAP Code Review Consultation Response

Attachments: COVER SHEET FOR A CAP OR BCAP CONSULTATION RESPONSE.doc

Dear Sir / Madam,

I am writing in response to two questions in particular. I write as a teacher and as a Christian, holding a high concern for the youth of our nation and the value of the life of the unborn child.

Question 62:

- i) I oppose all pre and post conception advice services being advertised on TV and radio. Here's why:

The underpinning assumption behind the government's sexual health strategy is that more information, more advice more discussion among children of an ever younger age will increase the sexual health of the nation and reduce unwanted pregnancies. How long will it be before someone in power acknowledges that this does not work? Talking up sex and sexual advice services has been happening for two decades and look at the results. Advertising for such advice services on TV and radio takes us further down this road which does no-one any good and only makes young people think that pre-marital sex is the norm.

Advertising is expensive – who will be able to pay for it? Pro-life charities won't but rich abortion clinics who have connections with advice centres will. So this advertising will inject a massive slant to the advice that people will seek out. That slant will be towards the pro-abortion lobby.

Whilst eating my breakfast cereal I don't want to be hearing about condoms and people who will be able to tell me about them. Parents and people with religious convictions will not like this.

- ii) I oppose the inclusion of 11.11 in the code.
This sort of advertising should be included in section 10.

There are rules as they are currently proposed could only be obeyed by abortion clinics as religious groups and pro-life organisations will have extra hoops to jump through according to proposed rules. This injects a huge slant in the nature of what is being proposed.

Question 147

Condoms should not be allowed to be advertised on TV and Radio.

- Whilst eating my breakfast cereal I don't want to be hearing about condoms and people who will be able to tell me about them. Parents and people with religious convictions will not like this.
- Talking about all sexual paraphernalia encourages sexual activity; talking about abstinence on TV would be a better tactic. See above.

Alliance Boots

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CAP Code Review
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Dear Sirs

CAP & BCAP

I write in response to your Consultation Document on the above two Codes. We are grateful for the opportunity to comment on these Codes as they have a significant impact upon our promotional and advertising activities. It is important that advertising is legal, decent, honest and truthful, neither should it mislead, harm our customers. To that extent we support CAP's goals and these principles are something that we would always endeavour to deliver in preparing our advertising.

However we have serious concerns about the fact that the alignment of the Codes still results in different Codes for different sectors. They are often not consistent with the law and go far beyond it imposing burdens on advertisers that exceed legal requirement.

We would therefore suggest that if the Code is to be considered as part of the "established means" regime operated by the OfT, the part of the Code which gold plate legal requirement should be simplified to reflect the law.

Our other general concern with the Codes over the years has been the way they appear to be arbitrarily and inconsistently applied in particular with the use of help notes which are applied as if they are the Code. These notes do not seem to undergo full stakeholder scrutiny. If we as a business are to have confidence in the Codes, the issue of consistency in application needs to be seriously addressed. That together with the appeal mechanisms is one part of the Code that has not been considered as part of this review.

Our detailed comments on the provisions of the Code are attached. We would however stress that our general view is the Code is overly complex, often inconsistently applied and therefore difficult to follow and repeats unnecessarily much of the existing regulation

We would therefore welcome a fuller debate about these issues and would strongly suggest that further discussion should take place about the operation of the Codes with all stakeholders, a debate that we would be more than happy to participate in.

If you have any questions about our response please feel free to contact us.

Yours faithfully

Harold Gay
Trading Law Manager

Response to the CAP & BCAP Code Review Consultation

General

The CAP and BCAP Codes on advertising do provide a useful source of guidance about how advertising is to be approached, what needs to be considered and how the Committee on Advertising Practices values of legal, decent, honest and truthful are to be delivered. We strongly support those principles and, as do most advertisers, seek to ensure that the advertising we create and use is neither misleading nor likely to cause harm to consumers. Having had the opportunity to consider these two rather large Consultation Documents we have to say that the Consultation is somewhat overly complex, focused on making detailed changes to the existing Codes rather than standing back and asking whether or not the Codes are fit for purpose in a somewhat more rapidly moving world than the last time the Codes were reviewed.

This is particularly important as one of the reasons given for reviewing the Codes is an attempt to make them consistent with the requirements under the Consumer Protection from Unfair Trading Regulations and other changes to legal approach. The law in this area is now far more principle based than its predecessors. That has the advantage of being flexible, allowing innovation and not restricting approach in the prescriptive way that earlier regulation has done. However what we face with the Codes as currently drafted is that we now have a freedom of approach in the regulatory arena that is being restricted by prescription in the self-regulation arena. That cannot be right.

The law is quite clear in that it is now an offence to mislead consumers and it is that objective that the Code seeks to support. However by the use of the detailed provisions the Codes go far beyond legal obligation. It is our view that the Codes should not be used as regulatory documents, which they are often referred to as, but as guidance as to how the compliance objective of not misleading customers can be achieved. We would therefore submit that there is no longer a need for the immense detail that these Codes contain and certainly no need to repeat detailed legislation. If there is a need for that detail it is in order to assist and inform how compliance can be achieved, it should not be regarded as the only way of delivering that compliance as it so often is. We would therefore question whether or not in fact we do need two Codes as the principles of misleadingness apply equally whether the media is broadcast, print or SMS text. In fact the Code Consultation itself suggests that the CAP Code at least is media neutral. We cannot see why the BCAP Code needs to be any different. Indeed given that the Code seeks to be “established means” then it is vitally important that there is no difference between these Codes. Compliance with the law should not be subject to different interpretations in different locations. The Code as drafted gold plates in many areas the legal requirement and steps should be taken to ensure that the Code is consistent with the law, OFT guidance and interpretation of the law by enforcers and it should not go beyond legal requirement. There is a very real danger if it does that it adds cost to business which is neither needed or welcome.

One other area of concern with this review is that the big problems that occur with ASA complaints are around the investigation process which seems to be inconsistently interpreted particularly where regard is had by investigators to help notes which are often issued without stakeholder consultation and applied by the Investigation Team as if they are law. The Code review seems to make no effort to look at the investigation processes or the appeal mechanisms that exist for resolving problems when they do occur. In fact an investigation is required to apply a one size fits all approach, which has little or no regard to the media the advertising status or the damage and harm that may or may not be caused by the advertising. We would therefore seriously suggest that the appeals process and investigation mechanisms need to be looked at as part of this process. It is important whether it is self-regulation or regulation that rules are applied consistently so that compliance is easier to achieve. At the moment there is little or no transparency about the investigation process and paradoxically it is the process in which the person being investigated has less opportunity to comment and debate the issues being raised than occurs in the criminal investigation field. Given the Codes seek to be established means it is important that the application of these Codes is consistent, so that there is a consistency with the law and the application of the Codes allowing businesses to apply them with some degree of certainty.

In general we support the idea of a self-regulatory framework where it adds value to the advertising process and clearly these Codes add value in the areas of taste and decency. What we do not support is the application of a self-regulatory Code in a way that adds to the burden with which we have to operate and does so in a way which is both inconsistent and opaque. We would therefore suggest that these Codes need a significant rethink against the modern regulatory background

CAP Code

Without prejudice to our general views stated above we would make the following comments on the questions raised in the Consultation. Given that the Code is seeking to ensure that the requirements of the Consumer Protection from Unfair Trading Practices Regulations are delivered in the UK and that those provision are an implementation of an EU maximum harmonisation directive it should be made clear in the first section of the Code that the objective of the Code is to assist compliance with those Regulations and that the Code in the areas covered by the Consumer Protection from Unfair Trading Practices Regulations provides nothing more than guidance as to how the objectives of the Regulations can be achieved. It should not be presented as definitive interpretation of the law. One further comment would be that there has been no further clarification of which sorts of advertising are caught given the lack of consistency of approach when investigations are carried out clarification that in-store advertising is not within the scope of the Codes would be beneficial.

General

Question 2 - we do not believe that the detail provided for is necessary unless it is intended to be guidance to statutory provisions. Given the flexibility of the statutory provision we should be careful to ensure that guidance does not go beyond that permitted by the law.

Question 3 - the information in Section 3 in general sets down the legal position with regard to the CPRs and BPRs and to that extent they are helpful. However the amendment proposed by Rule 3.10 is gold plating and in practical terms would be difficult to comply with as it will be difficult to know which advertising has only been seen once and which has been seen multiple times.

Question 4 - the proposed addition would be acceptable if the Code was merely guidance, however given that this seems to stretch the rules further than is necessary and appears to gold plate the CPR requirements we would suggest that its addition is unnecessary.

Question 5 - the proposal to require advertisers to state in advertising the time period and quantities of product available in advertising goes far beyond the requirement of CPRs and is therefore gold plating which is not required.

Question 7 - we would agree that Rule 17.2 is superfluous and not required in the Code.

Question 8 - the proposed change is prescriptive and goes beyond the requirements in the CPRs and could therefore, if interpreted strictly, lead to a perfectly legal promotion being barred.

Question 9 - the general principles set down in CAP's policy objectives are clear and easy to understand. However the section at times goes beyond legal requirement and creates prescriptive rules which are neither necessary or wanted. If however the Code is to be regarded as guidance as to how advertising compliance should be achieved then there may be justification for helpful comments. However care should be taken to ensure that we talk about this as one way to comply with the requirements rather than writing rules which you must follow.

Children - the amendment to include "promotions that contain a direct exhortation" to children is again in principle something we would have no objection to. However there is a lack of clarity around what constitutes a direct exhortation.

Sales Promotions - we found this revised section confusing as there was no clarity between what equalled a promotion, what related to a competition and what obligations were required to be delivered in each case.

Question 19 - whilst we can understand the principle that the revised 18.17.6 seeks to address it is something that we foresee great difficulty in delivering in practical terms. It would surely be incorrect to put in an estimate of the total prize the number of prizes capable of being won when in actual fact some of them may not be won by virtue of the promotion not being a success.

Question 20 - for the same reasons we have great difficulty with the proposed amendment to 18.17.6 as we can see no practical way to carry out the estimations required by that course that will be meaningful to customers.

Question 21 - we would merely ask is a website an easily accessible source?

Question 24 - we see no need to impose an independent audit requirement on competitions whether national or local. If an independent audit is felt to be necessary this will add significant cost to promotions. Furthermore if the requirement only to do this on national promotions is maintained it will lead to a distortion of promotional activity as it will focus promotional activity on local opportunity. Furthermore it is not clear what equals national in the context of this rule change.

Question 25 - this rule does not aid clarity. It should simply state that a judge should be independent of the competition rather than seeking to require businesses to appoint somebody who is independent from themselves and any of their intermediaries at additional cost. We fully understand and support the need for independence so that competition judging can be above scrutiny. However a rule that imposes a completely separate judge who no doubt would have to be paid for is not helpful and likely to reduce the number of promotions.

Question 28 - this is the role of enforcement to police - Rule 8.4 within the Code seems superfluous. It is already legal to supply alcohol to persons under the age of 18 and it is therefore unlikely that anyone will direct promotion to persons under the age of 18. Rule 8.12 within this section of the Code makes it clear that where a promotion cannot be run an alternative should be provided. This is not always practicable as it often causes supply problems in other areas.

Distance Selling

Question 29 - we see no need for Rule 42.7 as it merely reflects the legal obligation. Why repeat rules that already exist in law

Question 31 - with the exception of the rules dealing with harm to children this section merely reiterates the rules on distance selling and we therefore see no need for these rules.

Database Practice

Question 34 - the focus within these rules on particular forms of technology run the risk of being outdated before they are actually implemented. Technology is one area where innovation and change will also always exceed the ability of detailed rules of the type proposed to the Code. We would therefore suggest that consideration be given to simply adopting a principle based approach which does not seek to exempt or control technologies, merely recognise that where technologies are limited alternative means should be provided for delivering compliance.

Medicines, Treatments, Devices & Health

Question 38 - given the section deals with medicines, treatments, devices and health it seems odd that the word beauty is included in the proposed amendment to Rule 12.1. It is not clear why that should be included within this proposed rule.

Question 39 - again much of what is contained within this section could be regarded as superfluous. Medicines and health products is one of the most highly regulated areas and the law on the subject is quite clear. It therefore seem to us that there is no need to overcomplicate an already tightly controlled area with additional rules which go beyond the legal requirement.

Weight Control & Slimming

Question 40 - the proposed Rule is helpful as guidance, however a body mass index of 30 is, whilst being an accepted standard, something that needs to be understood by the person using it. Body mass index generally is not a reliable measure of obesity. There are therefore dangers in using this as a requirement upon which to base advertising.

Dietary Supplements and Associated Health and Nutrition Claims

Question 57 - the proposed rule changes in this section are a brave attempt to reflect the high volume of change that is going on in this area. However what they succeed in doing is indicating how difficult it is to draft rules to reflect law in a way that will be useable for a long time to come. In fact some of the rules proposed in particular 15.11 do not follow our understanding of the legal requirements and the same could be said with some of the other detail within the sections. We would therefore strongly suggest that this section is either completely revamped and again written in a principle based way which avoids the need to deal with the detail or removed completely as the matters which the area seeks to control are covered by the existing regulatory framework, which it would be better if CAP sought to compliment, rather than attempting to apply rules which at this current moment in time are undergoing a rapid rate of change.

BCAP Code

The BCAP Code is far longer and far more detailed than the CAP Code, something that we find difficult to understand given that they cover the same ground and address the same principles of ensuring that advertising is legal, decent, honest and truthful. The reality of the BCAP Code is that it seeks to revise a great deal of prescriptive detail on how one should comply with the principles of the Codes. Much of this, I have no doubt, is helpful, however it is prescriptive in nature and because of the way the Codes are enforced, frequently makes it inflexible and difficult to use in creating innovative advertising. Furthermore the way in which the Codes are applied is highly restrictive and limiting on broadcast communication. The Broadcast Code is not media neutral as it introduces a different set of controls for radio compared to television and when compared against the CAP Code we would also have different communication needs with press and print advertising. We do not believe that that difference is justifiable in the detailed way that it is set out within the Broadcast Code. In fact we see no need for two approaches and would suggest that a single Code as outlined in our earlier comments at the beginning of this response should be the goal. We fully understand that people working in broadcast media may find it useful to have guidance about the best way to achieve advertising which meets the CAP principles but that is exactly what it should be - guidance - not a set of mandatory rules applied arbitrarily as part of pre-clearance and investigation processes.

The detailed comments we made in response to the questions on the CAP Code stand for this Broadcast Code and we would further state that in many areas the gold plating is considerably thicker than that created by the CAP Code. Much of the Code merely reiterates the law which in our view is unnecessary and secondly interprets the law in ways which are not consistent with either the law itself or the regulatory body responsible for enforcing it. We therefore believe a great effort should be made to restructure this Code into guidance rather than leave it as a prescriptive set of rules which is restrictive on advertisers, innovative advertising and unhelpful in many cases to consumers by imposing restrictions which limit the effectiveness of the communication.

Comments On The Rules

Section 3 is misleading as we observed in the CAP Code this set of provisions simply seeks to put into guidance form the requirements set out in the law. However the practical problem we have had with this part of the Code is that the pre-clearance team frequently interpret the rules in a way which goes far beyond either the law or the guidance issued by OFT and other enforcers. This has been in recent times particularly the case with 'from' price offers where they have insisted that at least 10% of the stock should be at the 'from' price, a requirement that is neither in the Code nor in the law. The proposed changes go some way to assisting the understanding of misleading but as with the CAP Code we would strongly suggest that this needs to be regarded as guidance and needs to be delivered in a way which is consistent with the law rather than seeking to replace it with a set of arbitrary controls.

Food, Dietary Supplements and Associated Health and Nutrition Claims

As we commented in the CAP section, the Nutrition and Health Claims Regulations came into force in June 2007 and whilst we welcome the review of the Code to reflect those changes, they would appear in places to go beyond the requirements of the law in some situations. We have particular concerns about the requirements in 13.7.1 of the old Code which have not been addressed in the review. The requirements of that provision are that vitamins should only be advertised if in the advertisement it is made clear the groups likely to benefit from the supplement. The Code then goes on to indicate a list of certain groups that might be included in such a benefit claim. Our problem is that particularly, with the pre-clearance activity, the people responsible for reviewing this sort of advertising prior to airing apply this list of groups as a definitive requirement and often insist that the vitamins must fit into one of the categories listed within the Code. That is not helpful and in fact makes things very difficult when vitamins are suitable for a wide range of groups and the advisers are reluctant to accept a more generic statement such as "food supplements are not intended to replace a balanced and varied diet". Again the problem is not really with the Code, but with the way it is sometimes arbitrarily applied.

Medicines, Medical Devices, Treatments and Health

The definition provided in 11.4 is not accurate. It does not reflect the definitions in the Medicines Act or that contained in the Medical Devices Regulations in our view. It may be helpful to include it in the Code from the point of view of providing assistance to people assessing what is a medicinal product, however as it does not accurately reflect the law we would suggest that it is not used.

General

In closing we would like to reiterate our comments that the one part of the Codes that have not been subject to this review are the investigation and appeal mechanisms. We have serious concerns with those mechanisms as they are not open and transparent nor do they provide us with an opportunity to resolve problems in an effective way.

Dealing first with the investigation process, it is often the case that the interpretation of the Codes is that applied to it by the investigating officer. This at times delivers inconsistent application of the Codes as different individuals seem to have a different approach and a different view. This is further compounded when in fact the view of the investigator from the Advertising Standards Authority is different from that of the local Enforcement Authority who have provided guidance on what constitutes misleading under the law. The situation should not exist whether there is a discrepancy between these interpretations. This is particularly the case when investigators are using "help notes" to seek to justify their interpretation, often doing so without regard to the legal position or guidance offered by professional regulators responsible for enforcing the law.

When disputes do occur, whilst it is possible on occasions to have a sensible and meaningful debate with individuals, it is not always possible to be certain that those views have been conveyed to the CAP Committee. It is not clear whether or not those views have been properly presented to Council and neither is there a mechanism which permits an advertiser the opportunity to present these views in person to Council so that they can be certain that they have been communicated accurately and effectively.

Last but not least, when things do go wrong there is no effective appeal mechanism against Council's decisions. Given that the cost of a major advertising campaign is not insignificant it seems remarkable that there is no mechanism for appealing Council's decision other than to refer it to the Chairman of the ASA who could scarcely be seen as independent in these matters. There should be a proper, independent appeals panel who can consider the issues and rule on them independently from Council. Furthermore that appeals panel should have the ability to award costs where advertisers have been significantly adversely affected because of a wrong decision by Council.

We remain fully committed to supporting the ASA ideals of legal, decent, honest and truthful. However, we feel that the time has come to completely review the Codes and the processes that go with them to ensure that they work in a way that is more in tune with modern marketing and advertising and meets the needs of the industry and the consumers rather than being a burden on the industry that adds little or no value.

From: Psychic Interactive

To: BCAPCodeReview

Subject: Code review

Dear Sirs,

The BCAP Code Review - Consultation on the proposed BCAP Broadcast Advertising Standards Code

I am employed as a psychic on a psychic TV programme and have worked on the show for [2] years.

I wish to place on record that I do not agree with BCAP's policy consideration referred to in question 97 of their consultation document.

Many of the statements made in connection with this policy consideration are simply not true or otherwise misleading. Joining together "occult" and "psychic" practices is, to my mind, intended to give the public the misleading impression that we engage in mysterious and dangerous practices which may give rise to offence and harm.

Nothing could be further from the truth. So far as I am aware, compared with the likes of the BBC and ITV, we receive relatively minimal complaints. We provide a highly interactive content driven service which is very popular with viewers.

I see that the BCAP refer at paragraph 15.56 of the consultation document to the Essential report which was commissioned by Ofcom. The extracts referred to in that paragraph are highly selective and in my view are clearly designed to give an impression supportive of BCAP's policy preference, namely an outright ban on psychic programming. To highlight my point, I find it astonishing that BCAP have not attempted to give any sense of proportionality or balance to the wording of their consultation by omitting sections of the Essential research which are clearly not supportive of their policy preference. The following is an example of one such omission:

4.4.1 Among female respondents, viewing was more likely to be alone and late at night, whereas many of the male respondents tended to watch with female partners. Respondents, particularly female viewers, felt the output could be engaging due to its focus on "real life" issues and the viewing experience was described by female viewers as "uplifting", "inspiring" or "informative".

"I'd describe them as 'insightful' channels. You get to understand people and Their lives. "

Female, London, Psychic Group

"You feel like you have a connection with other people who feel the same."

Female, London, Psychic Group

For female respondents, Psychic TV was felt to play an important role in helping them consider their own problems and issues, although it could also simply provide vicarious entertainment. As television output, Psychic TV was felt to be trustworthy and supportive"

It cannot be right that simply because Ofcom appear intent on reclassifying the psychic TV genre as teleshopping that BCAP should so transparently mislead the reader by the selective use of information into supporting an outright ban for programme content that *was described by female viewers as "uplifting", "inspiring" or "informative", "trustworthy and supportive"* – this would be a completely unjust and disproportionate reaction.

I am not aware - nor have BCAP given any example of – a single complaint having been made

against a broadcaster of psychic programmes since the inception of the genre some 5 years ago.

I happened to read in my newspaper recently that the government is keen on improving regulations and that they are promoting a number of principles and having checked again with the Department for Business Innovation and Skills see that these include the need for regulators to be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

How can BCAP satisfy any of these principles when the research they base their conclusions on is wholly inadequate, the manner in which they present their case is misleading and the end result of their proposal, if implemented, will be to generate widespread job losses – including my own – at a time when that is precisely what this country definitely does not need.

I cannot identify that BCAP have actually spoken with any Psychic TV presenter because if they had they surely cannot have made many of the statements that appear in this consultation document.

I believe that if BCAP are to comply with the BIS five principles of better regulation, they need to go back to the drawing board and re-issue the consultation once they have properly consulted and once they understand the subject matter on which they are consulting.

Surely this consultation is in any event premature given that no conclusion has been reached as to whether to reclassify psychic TV content as “teleshopping”?

Yours faithfully,

Response to consultation questions

BCAP Code Review

The Archbishops' Council of the Church of England is grateful for the opportunity to respond to this wide-ranging consultation. This response has been produced by the Archbishops' Council's Communications Office and the Mission & Public Affairs Council of the Church of England. The Communications Office is responsible for the Church's engagement with media policy issues and is accountable to the General Synod through the Archbishops' Council. The Mission & Public Affairs Council is the body responsible for overseeing research and comment on social and political issues on behalf of the Church. It comprises a representative group of bishops, clergy and lay people with interest and expertise in the relevant areas, and also reports to the General Synod through the Archbishops' Council.

Section 5: Children

The 'Good Childhood' report commissioned by The Children's Society (Penguin, 2009), based on more than 2,500 submissions and a range of qualitative interviews with young people, points to the negative effects that media-driven consumerism can have on the overall well-being of children. The report quotes UK studies (Kasser 2002, Nairn and Ormond 2007) to illustrate the pattern explored by Juliet Schor (2004), who concluded that, other things being equal, the more a child is exposed to the media, the more materialistic they become, the worse they relate to their parents, and the worse their mental health. These effects, the Good Childhood report argues, can have a disproportionate effect on children from poorer families.

In 2006, the Archbishop of Canterbury, Dr Rowan Williams, spoke of his concern over the growing commercialisation of childhood, in light of the publication of a report by the independent group Compass. The report suggested that while 70 per cent of 3 year olds recognised the McDonalds logo, only half of that number knew their own surname. He said that "if children grow up in an environment where they think it's acceptable to spend, to encourage others to spend, to be irresponsible about what they have, that's not good news. And it also cripples their own childhood, it limits their own possibilities as children, it fences them in."

We agree with each of the recommendations made in questions 28-34, which represent a welcome tightening of the rules relating to advertising targeted at young people.

Section 10: Prohibited Categories

Betting tips

Question 49

i) Given BCAP's policy consideration, do you agree that the ban on TV and radio advertisements for betting tips should be relaxed? If your answer is no, please explain why.

No.

In February 2008, the Church of England's General Synod carried a motion expressing its 'grave concern' about the growth in gambling. An increase in gambling opportunities, and further steps towards normalising gambling, risks an increase in problem gambling. In Great Britain today, there are around a quarter of a million problem gamblers. Lifting the prohibition on broadcast advertising for tipsters – especially during difficult economic times –

risks broadening the numbers drawn into gambling more than they can afford, lured by the prospects of easy wins; it also risks deepening the problems faced by those already hooked on betting. Indeed, the timing of the proposal, as the country faces the worst economic situation for many years – and more than 2.22 million people are unemployed (as at 12 May 2009) – seems extraordinarily ill-judged.

We do not accept that rules prohibiting advertisements for betting tipsters are ‘no longer relevant’; indeed, it could be argued that as the wider ban on betting and gaming products was lifted (September 2007), the case for tightly controlling the outlets through which such tipsters can advertise is even more compelling.

As 10.35 states, the ASA “has upheld many complaints about non-broadcast advertisements” for such services, “mainly because they include misleading claims”. While we note (from 10.37) that there have been few complaints about advertisements carried via interactive TV/TV Text, it seems reasonable to assume that such advertisements were carried on specialist channels where audiences were likely to be aware of the services offered by betting tipsters and the considerable risks associated with their services. Even in light of the proposed rules (outlined in 10.38 as ‘Section 21’), it seems irresponsible for BCAP to propose a blanket lifting of the ban on broadcast advertising, which would lead to such advertisements being aired on mainstream channels (albeit with possible scheduling restrictions outlined in 32.18) and a considerably greater risk of attracting vulnerable consumers with less knowledge of the betting and gaming sector.

ii) Given BCAP’s specific policy objectives to protect under 18s and the vulnerable and to prevent misleading and irresponsible claims in betting tipster advertisements, do you agree that BCAP’s proposed rules are necessary and easily understood? If your answer is no, please explain why.

No - for two main reasons. First, we are opposed to this proposed extension of the ability of betting tipsters to advertise on broadcast outlets. Second, the proposed rules can only be considered to be ‘necessary’ if they are likely to be effective in achieving their objective. Our problem is not with the ‘necessity’ of these principles but with their applicability, in requiring advertisers to refrain from commending their product in particular ways and to seek to prevent effects which may not be within their control. The 14 detailed requirements set out in the proposed BCAP Code Section 21 are wide-ranging and carefully formulated, but their application will be difficult and unlikely to achieve the policy objectives set.

For example, “(21.2) ..must not be likely to be of particular appeal to under 18s”: Despite the expertise of advertisers in targeting particular groups, the concept of “age of appeal” is more elusive than it may seem. Age-related restrictions are always problematic on account of inequalities in development: how much more when the criterion is as notional as the “appeal” of advertisements.

Because of the inherent nature of gambling, we have considerable apprehension about the effects of liberalising the law, and question whether the carefully-devised safeguards will achieve their intended purpose of preventing the growth of problem gambling, with its attendant damage to individuals and families.

Commercial services offering individual advice on personal or consumer problems

Question 52

i) Given BCAP's policy consideration, do you agree that the ban on TV advertisements for commercial services offering individual advice on consumer or personal problems should be relaxed? If your answer is no, please explain why.

No, we do not favour such a broad relaxation as is being proposed. In particular, we object to the fact that, as the proposals stand, advertisements for post-conception advice services would not be subject to any specific scheduling restrictions (see Q156). We recognise, however, that in other areas the potential for beneficial services (including ones offered for a fee, i.e. on a commercial basis) to reach new audiences may outweigh the need for an outright prohibition on TV. Most of the problematic areas (debt management, in particular) are well regulated through other aspects of the Codes, and this proposal appears to introduce greater consistency between media. The proposal would also allow non-charitable organisations that operate on a deliberately low-cost basis (certain relationship counselling services, credit unions and co-operatives etc) the opportunity to promote their services in a regulated environment.

ii) Given BCAP's specific policy objectives, do you agree that BCAP's proposed rule 26.2 is necessary and easily understood? If your answer is no, please explain why.

No. See 52(i).

Question 53

Given BCAP's policy consideration, do you agree that proposed rule 26.1 should be included in the proposed BCAP Code? If your answer is no, please explain why.

Yes. See 52(i).

Pornography

Question 54

i) Given its policy consideration, do you agree with BCAP's proposal to relax the present prohibition on TV advertisements for pornography products and allow them to be broadcast on encrypted elements of adult entertainment channels only? If your answer is no, please explain why.

No.

The Church of England's Council for Mission and Public Affairs has consistently opposed the creeping normalization of pornographic material, particularly that potentially accessible by the young. Pornographic material presents a degraded view of humanity that rebuts the Christian tradition (shared with the other main religions) of attributing intrinsic dignity to men and women.

It is therefore very difficult to see any circumstances when the Church could approve of relaxing the existing restrictions on the promotion of pornographic material, no matter whether it is proposed that this be limited to 'specialist' encrypted channels where users have actively sought out such material. BCAP has itself acknowledged (10.16) that 'some children are able to access and use their parents' or guardians' PINs' in order to access pornographic programming.

The Church deliberately avoids use of the euphemism ‘adult’ when referring to pornography. The presentation of sexual activity void of any context of compassion, personal caring and affection is the opposite of the sacred and intimate view of sex in which love, marriage and human commitment are pre-eminent. To describe such a representation of sexual activity as ‘adult’ and hence infer it is a ‘mature’ approach is to completely misrepresent the gift of sex.

ii) Given its specific policy objective, do you agree that BCAP’s proposed rules are necessary and easily understood? If your answer is no, please explain why.

No. See 54(i).

iii) Given BCAP’s policy consideration, do you agree that advertisements for R18-rated material should be permitted to be advertised behind encrypted elements of adult entertainment channels only but that the content of those advertisements themselves must not include R18-rated material or its equivalent? If your answer is no, please explain why.

No. See 54(i). Further, the Ofcom report ‘R18 Material: its effect on people under 18’ (May 2005; <http://www.ofcom.org.uk/research/radio/reports/bcr/r18.pdf>) included among its conclusions that such material might affect ‘the moral development of minors’ (although it did state there is no conclusive evidence of this). Given the fact that young people can gain access to encrypted channels, it seems irresponsible to promote products that would further glamorise (or, indeed, normalise) unhealthy attitudes to sex.

Section 11: Medicines, Medical Devices, Treatments, and Health

The use of health professionals in advertisements

Question 61

i) Given BCAP’s policy consideration, do you agree that, unless prevented by law, it is not necessary to maintain the present prohibition on the use of health professionals in TV advertisements for products that have nutritional, therapeutic or prophylactic effects and in radio advertisements for treatments? If your answer is no, please explain why.

No. The concerns articulated clearly by BCAP in 11.30 outweigh the other arguments presented. Protection of the public and safeguarding the integrity of health professions ought to take priority. We therefore would argue for the current broad restrictions to remain in place.

Family planning centres

Question 62

i) Given BCAP’s policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?

Yes.

We have no fundamental objection to the advertisement of such services on TV, but we agree that a specific rule relating to post-conception advice services would serve a helpful purpose, amended as suggested in (ii) below, for clarity. We are content that the general rules

protecting the public from indecent or offensive material will suffice for advertisements for pre-conception services.

However, we object to the fact that there appears to be no proposal for scheduling restrictions on post-conception advice service to ensure that such advertisement are not aired at a time when a large number of under-16s will be in the audience.

ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

No, we would rather see a revised version that placed a duty on all advertisers within this category to state whether or not they are able or willing to refer clients to abortion services, rather than place this onus only on those who do not.

According to figures published in February 2009, there were 8200 conceptions to women under 16 at age of conception in 2007. This figure has been stubbornly consistent, with a slight rise in the last year, since 1996. 61 per cent were aborted and 39 per cent became maternities. This works out at approximately 3200 births to women under 16 at time of conception.

It is a matter of great concern to the Church that this shows that the incidence of risky early sexual activity by young people continues, despite the great efforts made at national and local level aided by the Government's teenage pregnancy strategy.

The Church of England combines strong opposition to abortion with a recognition that there can be - strictly limited - conditions under which it may be morally preferable to any available alternative. As the BCAP consultation notes, young women who have conceived and are unsure whether they are able to continue with the pregnancy are in an extremely vulnerable position. This is no less the case for those who are opposed to abortion, and it is important that their sensibilities are given due respect and that they are able to clearly understand whether a service they see or hear advertised is likely to include abortion among the options presented to them. The greatest possible care must be taken to ensure that all such advertisements for post-conception advice centres, whether or not they refer women to abortion services, comply fully to both the letter and the spirit of the general rules on being honest and accurate with audiences. With this in mind, we agree that advisory services should openly state in their advertising whether or not they are able or willing to refer clients to abortion services.

We would also complement this relaxation of the implicit ban on TV advertising for such services with a call for greater investment in objective, peak time information on sexual health targeted at the 16-20 year old age group in particular (see Q147).

Hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis or psychotherapy

Question 63

Given BCAP's policy consideration, do you agree that rule 11.10, supported by rule 11.9, should be included in the proposed BCAP Code? If your answer is no, please explain why.

Yes. As with the proposed amendments to the rules regulating commercial services offering individual advice, most of the problematic areas (debt management, in particular) are well regulated through other aspects of the Codes, and this proposal appears to introduce greater consistency between media.

Remote personalised advice

Question 64

i) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 11.13? If your answer is no, please explain why.

We agree with the proposal.

ii) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 12.3 in the Weight Control and Slimming Section? If your answer is no, please explain why.

We agree with the proposal.

Radio: sales promotions in medicine advertisements

Question 65

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete radio rule 3.4.28? If your answer is no, please explain why.

No. Recent efforts by pharmacies to restrict bulk buying of OTC medicines such as paracetamol have been credited with a drop in the incidence of accidental overdoses by members of the public. If the evidence referred to in 11.56 is sound, then it may well be that responsible self-regulation is working. Nonetheless, deleting radio rule 3.4.28 removes an existing safeguard in the hope that it will be replaced by self-regulation backed up by other rules and practices. On balance, the interests of public safety are best served by retaining the current restrictions.

Anti-drugs and anti-AIDS messages

Question 66

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete the radio rule on anti-AIDS and anti-drugs messages from BCAP's proposed Code? If your answer is no, please explain why.

No. The current restrictions ought to be maintained as anti-drugs and anti-AIDS messages need to recognise the complexity of the issues involved in these areas and they need also to reflect current medical and scientific knowledge and practice. Bodies approved by a local health authority or the Central Office of Information are likely to be able to meet these criteria while other bodies may not. Anti-drugs messages also need to be tailored to their target audiences so 'care over scheduling' continues to be relevant.

Section 12: Weight Control and Slimming

Irresponsible use of a weight-control or slimming product or service

Question 68

Given BCAP's policy consideration, do you agree that 12.4, which presently applies to TV advertisements for weight control or slimming products or services, should equally apply to those advertisements on radio? If your answer is no, please explain why.

We strongly agree with these proposals.

Dietary control and weight-loss surgery

Question 69

Given BCAP's policy consideration, do you agree that broadcast advertisements for establishments offering weight control or slimming treatments are acceptable only if they make clear that dietary control is necessary to achieve weight loss? If your answer is no, please explain why?

We strongly agree with these proposals.

Question 70

Given BCAP's policy consideration, do you agree that advertisements for establishments that provide immediate weight loss surgery are acceptable but those must not refer to the amount of weight that can be lost? If your answer is no, please explain why?

No. Weight loss surgery is seldom the best option for people who *need* to lose weight and when this is the case it ought to be pursued in consultation with an individual's GP and other health professionals. Weight loss surgery for those who need to lose weight has associated risks and ought only to be considered after all risks and potential benefits have been fully explored with health professionals who do not have any financial interest in the client's decision.

Weight loss surgery for those who do not need to lose weight but who wish to do so for cosmetic purposes has also attendant risks. There is a concern that individuals may be drawn into needless surgery through advertising that exploits unrealistic or unwelcome body-image propaganda, already too prevalent in the media. We therefore hold that the current restrictions ought to remain in place.

Calorie-reduced or energy-reduced foods and drinks

Question 71

Given BCAP's policy consideration, do you agree that a broadcast advertisement for a calorie-reduced or energy-reduced food or drink may be targeted at under 18s, provided the advertisement does not present the product as part of a slimming regime and does not use the theme of slimming or weight control? If your answer is no, please explain why.

In principle this change is acceptable but the danger also exists of such advertisements using 'size zero' models, thus giving a slimming or weight control message without explicitly stating that this is the case.

Safety and efficacy of slimming or weight control products or services

Question 72

Given BCAP's policy consideration, do you agree that, before it is advertised, the safety and efficacy of a slimming or weight control product must be assessed by a qualified independent medical professional or another health specialist professional? If your answer is no, please explain why.

The definition of 'health specialist professional' has to be clearly stated. Only professionals subject to statutory regulation ought to be included in this category.

Establishments offering medically supervised treatment

Question 73

Given BCAP's policy consideration, do you agree that advertisements for overseas clinics and other establishments offering medically supervised treatments are, in principle, acceptable if they are run in accordance with broadly equivalent requirements to those established by the Department of Health's National Minimum Standards Regulations? If your answer is no, please explain why?

In principle this is acceptable but the term 'broadly equivalent' is too vague and subject to varied interpretation. The term 'comparable' would be better.

Targeting the obese

Question 74

Given BCAP's policy consideration, do you agree it is justified to allow advertisements for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine to target people who are obese? If your answer is no, please explain why?

This appears to be a reasonable proposal.

Rate of weight loss

Question 75

Given BCAP's policy consideration, do you agree that rule 12.9 should include a rate of weight loss that is compatible with generally accepted good medical and dietary practice? If your answer is no, please explain why.

We agree with this proposal.

Very Low-Calorie Diets (VLCDs)

Question 76

Given BCAP's policy consideration, do you agree that rule 12.14.4 should reference 'Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children' (2006) published by the National Institute for Health and Clinical Excellence' and not Government COMA Report No.31, The Use of Very Low Calorie Diets? If your answer is no, please explain why?

We agree with this proposal.

Section 13: Food, Dietary Supplements and Associated Health and Nutrition Claims

Health claims that refer to the recommendation of an individual health professional

Question 86

i) Do you agree that BCAP has correctly reflected Article 12(c) of the NHCR in rule 13.6.3? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that the Code should allow broadcast food advertisements to include health claims that refer to a recommendation by an association if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics? If your answer is no, please explain why.

No. The use of health professionals in advertisements is fraught with difficulties. Protecting the public and the integrity of health professions outweighs any benefits of relaxing current restrictions. Referring to recommendations by nationally representative bodies of medicine, nutrition or dietetics is not problematic in that safeguards against abuse are built in to such bodies' policies and regulations. The same may not be true of health-related charities who may wish to be associated with certain advertisements partly in order to raise their own profile.

Section 15: Faith, Religion and Equivalent Systems of Belief

Spiritual benefit in return for donations to the advertised cause

Question 90

Given BCAP's policy consideration, do you agree that 15.11, which presently applies to radio advertisements by or that refer to charitable faith-based bodies and that appeal for funds, should also cover those TV advertisements? If your answer is no, please explain why.

The Church of England has consistently argued that there is clear potential for exploiting viewers' and listeners' sensitivities through appeals using emotive or misleading language or images to suggest that making a donation will yield a miracle cure, or reap some other spiritual benefit associated exclusively with that cause. We note the explanation given (15.14) that this proposal is not intended to prevent faith-based bodies from advertising for funds, but simply from suggesting that spiritual benefits could be linked to any such donation.

Unreasonable pressure to join or participate or not opt-out

Question 91

Given BCAP's policy consideration, do you agree that 15.2.3 should apply to radio as it presently does to TV? If your answer is no, please explain why.

We agree with this proposal; an integral part of Christian faith is the *voluntary* decision to accept its claims.

Advertisements for charitable purposes that include recruitment or evangelism

Question 92

Given BCAP's policy consideration, do you agree that faith advertisements, which appeal for funds for charitable purposes that include or will be accompanied by recruitment or evangelism, are acceptable if that information is made clear in the advertisement? If your answer is no, please explain why.

We welcome the relaxing of restrictions on TV advertising in this area and agree that it is entirely reasonable to expect faith-based advertisers to make it clear if recruitment or evangelism form part of the charitable purposes of the fund which is being promoted.

Although it is clearly beyond the remit of BCAP, for clarity, we remain opposed to relaxing the regulations regarding on-air appeals for funds during programming time.

Use in advertisements of sacred or religious music and acts of worship or prayer

Question 93

Given BCAP's policy consideration, do you agree that present radio rules 3.10 and 3.11, of section 3, need not be included in the proposed Code? If your answer is no, please explain why.

No. We are reluctant to agree to this relaxation on two grounds. The first is experience: there have been numerous recent instances of past parodies of hymns and carols, mooted for broadcast on both radio and TV, which people have found offensive. Second, removing the restriction would erase any specific reference to the need to consider the sensibilities of those with religious convictions. The current rule serves as a reminder to advertisers that such concerns need to be considered when preparing scripts. While the general rules could be used if it was clear that widespread offence was likely to be caused, it seems likely that this would be a borderline call for the regulator and we would far rather see the specific prohibition of such parodies remain.

Involving viewers in services or ceremonies

Question 94

Given BCAP's policy consideration, do you agree that present TV rule 10.9 need not be included in the Code? If your answer is no, please explain why.

We are content that the general rules will cover potential difficulties in this area.

Individual experiences or personal benefits associated with a doctrine

Question 95

Given BCAP's policy consideration, do you agree that present TV rule 10.10 should not be included in the Code? If your answer is no, please explain why.

We welcome the relaxation of the code in this area; personal testimonies, when genuine and clearly presented as an individual's view of their own experience, are one of the few ways of succinctly expressing the impact of faith on an individual's life. We note that such testimonies would clearly be regulated by existing general rules on accuracy and fairness.

Counselling

Question 96

i) Given BCAP's policy consideration, do you agree that present TV rule 10.11 should not be included in the Code? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that 15.13 should be included in the Code? If your answer is no, please explain why.

We agree with these proposals.

Advertisements for products related to psychic or occult phenomena

Question 97

Given BCAP's policy consideration, do you agree to maintain the existing TV and radio requirements on advertisements for products or services concerned with the occult or psychic practices? If your answer is no, please explain why.

We agree with this proposal.

Section 17: Gambling

Consistency; principle

Question 105

Given BCAP's policy consideration, do you agree in principle that National Lottery and SLA lottery broadcast advertisements should be regulated by the same rules? If your answer is no, please explain why.

We see no objection to the regulation of advertising for the National Lottery and SLA lotteries by the same rules. This would simplify the present complex set of regulations in the TV and radio codes and bring the Lottery within a consistent set of principles and rules.

Consistency; age of appeal of content

Question 106

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to increase the restriction on age of appeal for broadcast National Lottery advertisements from 16+ to 18+? If your answer is no, please explain why.

Yes. As we have noted elsewhere, despite the expertise of advertisers in targeting particular groups, the concept of "age of appeal" is more elusive than it may seem, so anything that decreases the likelihood that younger audience members will be attracted to gambling products is to be welcomed.

Consistency; age at which a person may be featured gambling in a lottery advertisement

Question 107

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to apply rules 18.6 and 18.7 to all broadcast lottery advertisements? If your answer is no, please explain why.

Yes, we support the minimum age of 25 for people featured gambling or playing a significant role, as this establishes a clear demarcation between adolescents and adults. It is worth remarking that imitative behaviour may not be confined to exactly-defined peer groups, and the behaviour of young adults may have an aspirational effect on adolescents. Nevertheless, it makes sense to draw a firm line in the portrayal of gambling behaviour.

Consistency; other lottery rules

Question 108

Given BCAP's policy consideration, do you agree that the rules included in the Lottery Section of the Code are in line with BCAP's general policy objectives (see Part 1 (4) of this consultation document) and should be applied to broadcast advertisements for the National Lottery as they presently are to broadcast advertisements for other lotteries? If your answer is no, please explain why and, if relevant, please identify those rules that should not be applied to advertisements for the National Lottery.

We see no objection to the regulation of advertising for the National Lottery and SLA lotteries by the same rules, directed by BCAP's general policy objectives.

Participating in a lottery in a working environment

Question 109

Given BCAP's policy consideration, do you agree that lottery advertisements should be able to feature participation in a lottery in a working environment? If your answer is no, please explain why.

No, we would prefer to see the current broadcast prohibition maintained, but with a possible exemption for the National Lottery due to its special status and role in donating significant sums to good causes (i.e. keep the status quo). While we also note (17.44) that syndicates have operated in some workplaces for many years, there are a great number of workplaces where they do not, and also a range of workplaces in the context of which it would be inappropriate to show employees engaging in such activities.

Section 19: Alcohol

Sales promotions in alcohol advertisements

Question 111

Given BCAP's policy consideration, do you agree that rule 19.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

This appears to be a helpful clarification of the general principle regarding sales promotions for alcohol products.

Irresponsible handling of alcohol

Question 112

Given BCAP's policy consideration, do you agree that rule 19.12 should be included in the proposed BCAP Code? If your answer is no, please explain why.

Similarly, this appears to be a helpful harmonisation of the rules regarding promoting responsible serving of alcohol.

Alcoholic strength

Question 113

Given BCAP's policy consideration, do you agree that rule 19.10 should be included in the proposed BCAP Code? If your answer is 'no', please explain why.

This appears to be a helpful harmonisation and simplification of the rules regarding portrayal of low alcohol products.

Alcohol in a working environment

Question 114

Given BCAP's policy consideration, do you agree that rule 19.14 should be included in the proposed BCAP Code? If your answer is no, please explain why.

This appears to be a helpful harmonisation and simplification of the rules regarding portrayal of the consumption of alcohol in a working environment.

Exception for children featuring incidentally in alcohol advertisements

Question 115

Given BCAP's policy consideration, do you agree that rule 19.17 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We have no objection to this proposal.

Low alcohol exceptions

Question 116

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that requires anyone associated with drinking must be, and seem to be, at least 25 years old? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

Question 117

- i) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents encouraging excessive consumption via sales promotions? If your answer is no, please explain why.
- iii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents featuring a voiceover of anyone who is or appears to be 24 or under? If your answer is no, please explain why.

Questions 116 and 117 and their sub-divisions are taken here together: although the question is finely balanced, we accept the logic advanced, that the serving of low-alcohol products to under 18s is as illegal as serving higher-alcohol products; to this, we would add to that the argument that allowing lower-alcohol products to be targeted at those around the age of 18 (specifically through the use of younger actors or voiceover artists in advertisements) will further normalise the consumption of alcohol to young people. For these reasons we support each of the proposals.

Section 27: Introduction and Dating Services

Promiscuity

Question 137

Given BCAP's policy consideration, do you agree the proposed BCAP Code provides adequate protection from the potential for harm or offence from advertisements that encourage or condone promiscuity? If your answer is no, please explain why.

No. We do not endorse any proposal that weakens the specific prohibition on advertising that appears to encourage or condone promiscuity. The Church's traditional teaching on sexual activity states 'sexual intercourse is an act of total commitment which belongs properly within a permanent married relationship'. While, of course, we recognise that a variety of relationships exist in today's society, and these will understandably be reflected in contemporary advertising, that is quite distinct from actively portraying promiscuous behaviour in a way that suggests it is acceptable.

Furthermore, it is clear that the rise in unplanned pregnancies and Sexually Transmitted Diseases is due in part to the increase in the number of people engaging in sexual activity with multiple partners.

The whole of society shares the goal of helping young people develop a mature understanding of sexuality and relationships. Broadcasters have a part to play in ensuring we all work to create a society where promiscuous behaviour, particularly by the young, is not glamourised or normalized through programming and advertising. We are not convinced that the very broad general regulations are sufficient to make this point of principle clear, and believe that there remains a place for a particular rule making clear the generally held public opinion on this matter.

Section 32: Scheduling

Computer and console games

Question 143

Given BCAP's policy consideration, do you agree that proposed rules 32.5.4 and 32.20.5 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We welcome this proposal as a sensible step to harmonise scheduling for such advertisements. In addition to the evidence presented in the Byron Review (quoted in 32.15), the Children's Society's 'Good Childhood' report (Penguin, 2009) cites research by the US Surgeon General (reported in Anderson et al 2007) which highlights the role that playing violent video games can play in determining their child's behaviour. Avoiding targeting any age-restricted games at children is to be welcomed.

Betting tipsters

Question 144

Given BCAP's policy consideration, do you agree that proposed rules 32.2.3 and 32.20.4 should be included in the proposed BCAP Code? If your answer is no, please explain why.

No. See Q49.

Restrictions around children's programmes

Question 146

Given BCAP's policy consideration, do you agree with BCAP's proposal to extend the restriction on advertisements for low alcohol drinks, medicines, vitamins and other dietary supplements from around programmes made for children to programmes of particular appeal to audiences below the age of 16? If your answer is no, please explain why.

We agree with this proposal.

Condoms

Question 147

Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why.

No.

We remain deeply opposed to relaxing the regulations around the targeting of condom advertising at under 16s. Attempts to help young people towards a mature understanding of sexuality and relationships will only work if they are tackled in the home, at school, in the community and in wider society – including through the media.

The Church supports the sensitive use of media to offer unbiased and authoritative information to young people, but educational and commercial objectives should not be muddled. While we do not dispute the facts outlined in 32.26 and 32.27, the causality that is inferred between lack of widespread branded condom advertising to under 16s and the extent of STDs among that same age group is entirely unproven. This point is evaded in 32.26, which simply refers to a survey conducted by the Government's Independent Advisory Group on Sexual Health and HIV which suggested that the young people polled believed that TV as a medium would be helpful in spreading information about condom use. This is not the same as suggesting that commercial advertising for condoms will help achieve the aim of cutting teenage conceptions or STDs.

This contradiction highlights the potential role for properly funded public information, aimed at 14-18 year olds and transmitted at peak times adjacent to programmes watched by that age group. Such broadcasts would support the transmission of authoritative messages about contraception –

delivered in the context of relationships – and should be designed to give young people confidence to make their own decisions about if and when to engage in sexual activity (and include the viability of abstinence as an option).

Sensational newspapers/magazines/websites

Question 148

Given BCAP's policy consideration, do you agree that it is proportionate to require that special care be taken when scheduling advertisements for sensational newspapers, magazines, websites (or their content)? If your answer is no, please explain why.

We agree with this proposal.

Charities

Question 151

Given BCAP's policy consideration, do you agree that it is no longer necessary to restrict advertisements for charities from appearing adjacent to any appeal or community service announcement transmitted in programme time? If your answer is no, please explain why.

We agree with the proposal.

Other Questions

Question 156

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Scheduling Section are necessary and easily understandable? If your answer is no, please explain why?

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Scheduling rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

It is unclear how the proposed specific regulations concerning post-conception advisory services are further affected by any scheduling restrictions, if at all. It is inappropriate for such advertisements to be aired adjacent to programmes aimed at under 16s (for the broad reasons outlined in the associated subject of Q147), but it is unclear if this is made specific in any of the regulations.

THE ARK OF THE COVENANT

**Diocesan Centre for Evangelisation and
Prayer**

Director: Rev. Fr. David Keniry

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29 MAY 2009

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22nd May 2009

To whom it may concern:

Re: Advertising of Abortion Facilities on Television and Radio

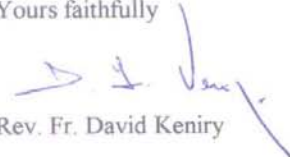
I am writing to express my dismay and concern over the proposed advertisements for post-conception services on TV and radio. In our secular society, these 'services' are really a euphemism for abortion. I think it absolutely unnecessary for advertisements of this kind to be broadcast. It is not as though it is difficult to access these services in the UK.

These adverts will undermine parents, teachers and religious bodies seeking to encourage moral and ethical values in young people. These values include maintaining loving, respectful and faithful attitudes to sex and relationships.

These adverts will further promote sex as a commodity rather than a loving response within a committed relationship and will encourage more problems of unwanted pregnancies, sexually transmitted disease and abuse. With the easy access to contraception and abortion that already exists, it is possible that young girls are increasingly being pressurised into premature sexual activity. This can only be damaging to the physical, emotional and psychological long-term health of our young people.

Abortion is a traumatic experience for any woman and it carries health risks, both physical and emotional. Merely advertising the availability of abortions, without discussing these well-documented effects is deceitful, manipulative and demeaning to the women of this nation, who deserve better treatment from your organisation.

Yours faithfully



Rev. Fr. David Keniry

From: ASDA

Annex 3

Consultation questions

You may respond to some or all of the consultation questions. This Annex is provided in Word format to enable you to copy and paste the questions into a document that should accompany your completed cover sheet, which is made available [here](#). See 'Responding to this consultation' in this Annex.

**THE COMMENTS BELOW FOR THE CAP (NON-BROADCAST) CODE REVIEW CONSULTATION
APPLY EQUALLY TO BCAP (BROADCAST) CODE REVIEW CONSULTATION.**

Section 1: Compliance

Question 1

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules, included in the proposed Compliance Section are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Compliance rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **Yes**

Compliance

Recent Changes to this section of the CAP Code

1.4 Marketers must comply with all general rules and with relevant sector-specific rules.

As stated in 1.iv "CAP intends its rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that they are easily understood, easily implemented and easily enforced". The rules need to be free from contradiction and ensure Marketers are aware of any potential issues, for example, the issue of Verifiability. CAP had the opportunity to formulate a CAP ruling following the Lidl case (2006). CAP instead chose to take action against one organisation and enforce a decision whereas an amend to the Code and communication of the amend would have been a better means of ensuring fairness and respect.

"Sector-specific rules", should be defined or a help-note issued for the purposes of clarification.

The introduction of new relevant sector-specific rules should be communicated by CAP/copy advice team to ensure compliance from Marketers.

Compliance

Rules

1.6 Marketing communications must respect the principles of fair competition generally accepted in business.

"Fair" and "generally accepted" should be defined or a help-note issued for the purposes of clarification.

Compliance

Meeting the need to ensure that marketing communications meet the standards set out in the Code

1.7 Any unreasonable delay in responding to the ASA's enquiries will normally be considered a breach of the Code.

"Unreasonable delay" should be defined by CAP to ensure organisations respond to ASA enquiries within a specified period. The proposed requirement does not go far enough to ensure organisations respond within a specified period. CAP should consult then define what is reasonable. This would create consistency in the treatment of all cases and prevent organisations flouting the law or CAP rules by continuing to advertise when clear breaches of the Code or failure to substantiate have occurred.

The CAP Code 'Sanctions' also states "if a marketing communication is obviously misleading or offensive, the ASA and CAP may take compliance action in the absence of complaints or during an investigation". It is not clear under what circumstances such action will be taken. This should be explained for the purposes of clarification.

Section 2: Recognition of marketing communications

Question 2

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Recognition of Marketing Communications Section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Marketing Communications rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 3: Misleading

Clarity of qualifications

Question 3

Do you agree that rule 3.10 should be included in the Code? If your answer is no, please explain why. **No**

Misleading Qualification

3.10 Qualifications must be clear to consumers who see or hear the marketing communication only once.

The reference to "hear" in the proposed CAP Code appears to be out of context given that the proposed Code is for non-broadcast communications. "Clear" should be defined, or guidance issued, to ensure Marketers comply with the requirements of the Code. Specifically, directions for the use of caveats, asterisks, bold etc. The requirement for qualifications to be clear to consumers who see the ad only "once" could result in complaints that have less to do with clarity and more to do with the period in which consumers had to comprehend the ad. It is therefore recommended that "only once" is deleted from 3.1.

Exaggerated performance

Question 4

Do you agree that rule 3.11 should be included in the Code? If your answer is no, please explain why. **No**

Misleading Exaggeration

3.11 Marketing communications must not exaggerate the capability or performance of a product; claims must be based on normal use.

“Normal use” should be defined or a help-note issued for the purposes of clarification.

Restrictions on availability

Question 5

Given CAP's policy consideration, do you agree with the revisions made to rule 3.28.3? If your answer is no, please explain why. **No**

Misleading Availability

3.28.3 Marketing communications must state restrictions on the availability of products, for example, geographical restrictions or age limits.

Under the proposed CAP code, the requirement for age limits to be included in marketing communications should be deleted as this is beyond the requirements of legislation. Under the CAP proposal, it is not clear whether there would be a requirement to display, for example, age restrictions for solvents (e.g. oven cleaner) and aerosols within marketing communications. This requirement appears to be beyond the powers of the ASA.

“Geographic restrictions” should be defined or a help-note issued for the purposes of clarification.

Testimonials

Question 6

Given CAP's policy consideration, do you agree that rule 3.45 should be amended to require documentary evidence and contact details only? If your answer is no, please explain why. **Yes**

Additional rights provided by guarantees

Question 7

Given CAP's policy consideration, do you agree that rule 17.2 should be deleted from the Code? If your answer is no, please explain why. **Yes**

The unavoidable cost of responding

Question 8

Given CAP's policy consideration, do you agree that marketing communications should not describe items as "free" if the consumer has to pay for packaging? If your answer is no, please explain why. **No**

Misleading Free

3.24 Marketing communications must not describe items as "free" if:

3.24.1 the consumer has to pay for packing, packaging, handling or administration.

It is considered that it is reasonable to expect customers to pay for packaging, in addition to postage, if this is clearly stated within the "free" offer e.g. "Excludes Post & Packaging" and the price charged for packaging appropriately reflects the cost to the organisation. Free refers to the product.

Other questions

Question 9

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on misleading are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **Yes**

Misleading Prices – Principle

Principle Price statements in marketing communications should take account of the Department for Business, Enterprise and Regulatory Reform's (BERR's) Pricing Practices Guide.

Given that the BERR's Pricing Practices Guide is not statutory, it is proposed that the reference to "should take account" is amended to "may have regard to" as the Code should reflect legislation including the Consumer Protection Regulations (2008). By stating "should take account" CAP may deem that a organisation has not complied with the BPPG, when compliance should be with the CPRs (2008).

Misleading Principle

Principle The ASA will take into account the impression created by marketing communications as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, not the marketer's intentions.

This requirement should be aligned with the Consumer Protection Regulations (2008) which make reference to the 'average consumer'. The reference to "impression" made here and elsewhere in the Code is too subjective and goes beyond legislation. In including "impression", CAP goes beyond its powers and the spirit of the legislation. Indeed, it could hold everything is in their "impression" misleading.

A single consumer could potentially complain that an "impression" was created – as a recent complaint (not upheld by the ASA) against Asda's "Big Rollback" demonstrated. The term "impression" can be viewed in a

number of different ways and should not be used in this context.

The reference to “consumers” should be replaced with the “average consumer” – as per the CPRs – to better reflect the likely effect of communications on consumers.

Misleading Definition

3.20 Marketing communications that state prices must also state applicable delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.

“Packaging” has been omitted from the list of charges and should be included.

Misleading Price Comparison

3.39 Marketing communications that include a price comparison must state the basis of the comparison. Comparisons with a competitor price must be with the price for an identical or substantially equivalent product and must explain significant differences between the products. If the competitor offers more than one similar product, marketers should compare their price with the price for the competitor’s product that is most similar to the advertised product.

The reference to “substantially equivalent” is not clear and it is not understood where such a requirement exists in current legislation.

The proposed requirement contradicts the “Retailers Price Comparisons” CAP help note, which states: “Marketers should, as far as is reasonably possible, compare products of the same, or very similar, quality (for example own-brand with own brand, brand with brand and premium with premium).”

No reference is made to “substantially equivalent”.

The reference is also in contradiction of the BERR Pricing Practices Guide which states: “In general you should compare like with like. This implies that the products compared should be the same or very similar”.

Again, no reference is made to “substantially equivalent”.

The Business Protection from Misleading Marketing Regulations 2008 state “Comparative advertising shall, as far as the comparison is concerned, be permitted only when the following conditions are met... it objectively compares one or more material, relevant, verifiable and representative features of those products, which may include price”.

The reference to “substantially equivalent” should be deleted as it not a legislative requirement nor is it referenced in any guidance.

Section 4: Harm and Offence

Flashing images

Question 10

Given CAP’s policy consideration, do you agree that rule 4.7 should be included in the proposed CAP Code? If your answer is no, please explain why. **Yes**

Other Questions

Question 11

i) Taking into account its general policy objectives, do you agree that CAP’s rules, included in the proposed Harm and Offence section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Harm and Offence rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 5: Children

Promotions that contain a direct exhortation to buy a product

Question 12

Given CAP's policy consideration, do you agree that rule 5.7 should be included in the Code? If your answer is no, please explain why. **Yes**

Marketing communications that contain a direct exhortation to buy products via a direct-response mechanism

Question 13

Given CAP's policy consideration, do you agree that rule 5.5 should be included in the Code? If your answer is no, please explain why. **Yes**

Other questions

Question 14

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Children section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Children rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 6: Privacy

Question 15

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Privacy section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Privacy rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 7: Political Advertisements

Question 16

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Political Advertisements Section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Political Advertisements rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 8: Sales Promotions

Withholding prizes

Question 17

Given CAP's policy consideration, do you agree that rule 8.27 should be included in the Code? If your answer is no, please explain why. **Yes**

Promotions directed at children; the need for a closing date

Question 18

Given CAP's policy consideration, do you agree that rule 8.17.4.b should be included in the Code? If your answer is no, please explain why? **Yes**

Prizes and Gifts

Question 19

Given CAP's policy consideration, do you agree that rule 8.17.6 should be included in the Code? If your answer is no, please explain why. **Yes**

Question 20

Given CAP's policy consideration, do you agree that rule 8.17.6.a should be included in the Code? If your answer is no, please explain why. **Yes**

Significant conditions exception: limited by time or space

Question 21

Given CAP's policy consideration, do you agree that rule 8.18 should be included in the Code? If your answer is no, please explain why. **No**

Sales Promotions

Significant conditions for promotions

8.18 Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable and must direct consumers clearly to an easily-accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion.

"Easily-accessible" should be explained e.g. would terms and conditions hosted on a website be considered easily-accessible?

Distinction between prizes and gifts: a significant proportion

Question 22

Do you agree that rule 8.19 should be included in the CAP Code? If your answer is no, please explain why. **Yes**

Supervising Prize Draws

Question 23

Given CAP's policy consideration, do you agree that rule 8.24 should be included in the Code? If your answer is no, please explain why. **Yes**

Auditing instant-win promotions

Question 24

i) Do you agree that the present requirement, in CAP rule 35.8, for a promoter to obtain an independently audited statement that all prizes have been distributed, or made available for distribution on a fair and random basis is disproportionate and should not therefore be included in the Code? If your answer is no, please explain why?

ii) Given CAP's policy consideration, do you agree that rule 8.25 should be included in the Code? If your answer is no, please explain why. **Yes**

Judging of prize promotions

Question 25

Given CAP's policy consideration, do you agree that rule 8.26 should be included in the Code? If your answer is no, please explain why. **No**

Sales Promotions Prize Promotions

8.26 In competitions, if the selection of a winning entry is open to subjective interpretation, an independent judge, or a panel that includes at least one member who is demonstrably independent, especially from the competition's promoters and intermediaries and from the pool of entrants from which the eventual winner is picked, must be appointed. Those appointed to act as judges should be competent to judge the competition and their full names must be made available on request.

The requirement for an "independent judge" for national competitions appears inconsistent with the rules for regional competitions where no such requirement is specified. Also, promotions and competitions should be treated separately within the Code for clarity.

Receipt of prizes: time

Question 26

Given CAP's policy consideration, do you agree that rule 8.23.3 should be included in the Code? If your answer is no, please explain why. **Yes**

Appeal to children

Question 27

Given CAP's policy consideration, do you agree that rules 8.33 and 8.33.9 correctly updates present rule 37.1(i) to reflect the CPRs? If your answer is no, please explain why. **Yes**

Other questions

Question 28

i) Taking into account CAP's general policy objectives, do you agree that CAP's Sales Promotions rules are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Sales Promotions rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 9: Distance Selling

Personal visits

Question 29

Given CAP's policy consideration, do you agree present rule 42.7 should not be included in the proposed Code? If your answer is no, please explain why. **Yes**

The packaging of products that might fall into the hands of children

Question 30

Given CAP's policy consideration, do you agree that present rule 42.7 should not be included in the Code? If your answer is no, please explain why. **Yes**

Other questions

Question 31

i) Taking into account CAP's policy consideration, do you agree that CAP's rules on Distance Selling are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 10: Database practice

Collection of data from children

Question 32

Given CAP's policy consideration, do you agree that rules 10.15 and 10.16 should be included in the Code? If your answer is no, please explain why. **Yes**

Explicit consent of consumers: Bluetooth

Question 33

Given CAP's policy consideration, do you agree rules 10.13.3 and 10.6 should explicitly exempt marketing communications sent by Bluetooth technology? If your answer is no, please explain why. **Yes**

Other questions

Question 34

i) Taking into account CAP's general policy objectives, do you agree that CAP's Database Practice rules are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Database Practice rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 11: Environmental Claims

Question 35

Given CAP's policy consideration, do you agree that rule 11.7 should be included in the Code? If your answer is no, please explain why. **Yes**

Other questions

Question 36

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on Environmental Claims are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 12: Medicines, Treatments, Devices and Health

Traditional Herbal Medicinal Products

Question 37

Given CAP's policy consideration, do you agree that rule 12.20 should be included in the Code? If your answer is no, please explain why. **Yes**

Medicinal claims

Question 38

Given CAP's policy consideration, do you agree that rule 12.1 should be included in the proposed CAP Code? If your answer is no, please explain why. **Yes**

Other questions

Question 39

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules, included in the proposed Medicines, Treatments, Devices and Health Section are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Medicines, Treatments, Devices and Health rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 13: Weight Control and Slimming

Targeting the obese

Question 40

Given CAP's policy consideration, do you agree it is justified to allow marketing communications for non-prescription medicines that are indicated for obesity and that require the involvement of a pharmacist in the sale or supply of the medicine to target people who are obese? If your answer is no, please explain why? **Yes**

Loss of weight or fat from specific parts of the body

Question 41

Given CAP's policy consideration, do you agree that marketing communications for surgical clinics, establishments and the like that can remove fat from specific parts of the body may make claims about losing weight or fat from specific parts of the body but that those advertisers must not refer to the amount of weight that can be lost? If your answer is no, please explain why? **Yes**

Very Low-Calorie Diets (VLCDs)

Question 42

Given CAP's policy consideration, do you agree that rule 13.7 should reference 'Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children' (2006) published by the National Institute for Health and Clinical Excellence' and not Government COMA Report No.31, The Use of Very Low Calorie Diets? If your answer is no, please explain why? **Yes**

Other questions

Question 43

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules, included in the proposed Weight Control and Slimming Section are necessary and easily understandable? If your answer is no, please explain why? **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Weight Control and Slimming rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 14: Financial products Individual Voluntary Arrangements (IVAs)

Question 44

Given CAP's policy consideration, do you agree that the underlined wording should be included in the Background to CAP's rules on Financial products? If your answer is no, please explain why. **Yes**

Other questions

Question 45

i) Taking into account CAP's policy consideration, do you agree that CAP's rules on financial products are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 15: Food, Dietary supplements and Associated Health and Nutrition claims

Permitted nutrition and health claims

Question 46

Do you agree CAP has correctly reflected the requirements of Articles 8(1), 10(1) and 28 of the NHCR in CAP's proposed rules 15.1.1 and 15.1.2? If your answer is no, please explain why. **Yes**

Give rise to doubt the safety or nutritional adequacy of another product

Question 47

Do you agree CAP has correctly reflected the requirements of Article 3(b) of the NHCR in proposed rule 15.6 and 15.6.5? If your answer is no, please explain why. **Yes**

Comparative nutrition claims

Question 48

Do you agree CAP has correctly reflected the requirements of Article 9 of the NHCR in proposed rules 15.3 and 15.3.2? If your answer is no, please explain why. **Yes**

Comparison with one product

Question 49

Do you agree CAP has correctly reflected the requirements of Article 9 of the NHCR and the European Commissions' guidance in proposed rule 15.3.1? If your answer is no, please explain why. **Yes**

Prohibitions

Question 50

Do you agree CAP has correctly reflected the requirements of Article 12(a) of the NHCR in proposed rule 15.6 and 15.6.1? If your answer is no, please explain why. **Yes**

Question 51

Do you agree CAP has correctly reflected the requirements of Article 3(e) of the NHCR in proposed rule 15.6 and 15.6.4? If your answer is no, please explain why. **Yes**

Question 52

Do you agree CAP has correctly reflected the requirements of Article 12(b) of the NHCR in proposed rule 15.6 and 15.6.6? If your answer is no, please explain why. **Yes**

The use of health professionals

Question 53

Do you agree CAP has correctly reflected the requirements of Article 12(c) and Article 11 in proposed rule 15.6 and 15.6.3? If your answer is no, please explain why. **Yes**

Food labelling Regulations (1996) (FLRs)

Question 54

Do you agree CAP has correctly reflected the requirements of Article 14 of the NHCR and Schedule 6 Part 1(2) of the FLRs in CAP's proposed rule 15.6 and 15.6.2? If your answer is no, please explain why. **Yes**

Question 55

Do you agree that CAP has correctly reflected the relevant provisions of Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods in the proposed CAP Code? If your answer is no, please explain why. **Yes**

Infant and follow-on formulae

Question 56

i) Do you agree CAP has correctly reflected the requirements of Regulation 21(a) of the Infant Formula and Follow-on Formula Regulations 2007 (as amended) in CAP's proposed rule 15.11? If your answer is no, please explain why. **Yes**

ii) Do you agree CAP has correctly reflected the requirements of Regulation 19 of the Infant Formula and Follow-on Formula Regulations 2007 (as amended) in CAP's proposed rule 15.11.1? If your answer is no, please explain why. **Yes**

iii) Do you consider CAP has correctly reflected the relevant provisions of the Infant Formula and Follow-on Formula Regulations 2007 (as amended) in the proposed CAP Code? If your answer is no, please explain why. **Yes**

Other questions

Question 57

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules, included in the proposed Food, Dietary supplements and Associated Health and Nutrition claims Section are necessary and easily understandable? If your answer is no, please explain why? **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice

and are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 16: Gambling

Consistency: principle

Question 58

Given CAP's policy consideration, do you agree in principle that National Lottery and society and local authority marketing communications should be regulated by the same rules? If your answer is no, please explain why. **Yes**

Consistency: rules

Question 59

Given CAP's policy consideration, do you agree that the rules included in the Lottery Section of the Code are in line with CAP's general policy objectives (see Part 1 (4) of this consultation document) and should be applied to marketing communications for the National Lottery as they presently are to marketing communications for other lotteries? If your answer is no, please explain why and, if relevant, please identify those rules that should not be applied to marketing communications for the National Lottery. **Yes**

Participating in a lottery in a working environment

Question 60

Given CAP's policy consideration, do you agree that lottery marketing communications should be able to feature participation in a lottery in a working environment? If your answer is no, please explain why. **Yes**

Other questions

Question 61

i) Taking into account CAP's policy consideration, do you agree that CAP's rules on Gambling and Lotteries are necessary and easily understandable? If your answer is no, please explain why? **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration? **No**

iii) Do you have other comments on this Section? **No**

Section 18: Alcohol

Alcoholic strength

Question 62

Given CAP's policy consideration, do you agree that rule 18.9 should be included in the Code? If your answer is no, please explain why. **Yes**

Provision for low-alcohol drinks

Question 63

i) Given CAP's policy consideration, do you agree that CAP rule 56.15 should not be included in the

present Code? If your answer is no, please explain why. **Yes**

ii) Given CAP's policy consideration, do you agree that, with the exception of the rule that prevents preference based on alcoholic strength, marketing communications for low-alcohol drinks should be subject to all the Alcohol rules? If your answer is no, please explain why. **Yes**

Question 64

Given CAP's policy consideration, do you agree that rule 18.12 should be included in the Code? If your answer is no please explain why **Yes**

Other questions

Question 65

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Alcohol Section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Alcohol rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 19: Motoring

The legal requirements of the Highway Code

Question 66

Given its policy consideration, do you agree with CAP's proposal to include rule 19.2 in the Code? If your answer is no, please explain why. **Yes**

Prices in motoring marketing communications

Question 67

Given its policy consideration, do you agree with CAP's proposal not to include present rule 48.7 in the Code? If your answer is no, please explain why. **Yes**

Other questions

Question 68

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Motoring section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Motoring rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 20: Employment, Homework Schemes and Business Opportunities

Employment businesses

Question 69

Given its policy consideration, do you agree with CAP's proposal to extend the requirements of the present rule on marketing communications by employment agencies to cover marketing communications by employment businesses? If your answer is no, please explain why. **N/A**

Required information in marketing communications for homework schemes

Question 70

Given its policy consideration, do you agree with CAP's proposal to require all marketing communications for homework schemes to include limitations or conditions that might influence consumers before their decision to participate and to state whether the marketers will buy any products made? If your answer is no, please explain why. **N/A**

Vocational training and instruction courses

Question 71

Given its policy consideration, do you agree with CAP's proposal to require marketing communications for vocational training and other instruction courses to make clear significant conditions for acceptance and significant conditions likely to affect a consumer's decision to embark on a course? If your answer is no, please explain why. **N/A**

Other Questions

Question 72

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Employment, Homework Schemes and Business Opportunities section, are necessary and easily understandable? If your answer is no, please explain why. **N/A**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Employment, Homework Schemes and Business Opportunities rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **N/A**

iii) Do you have other comments on this section? **N/A**

Section 21: Tobacco, Rolling Papers and Filters

Question 73

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Tobacco, Rolling Papers and Filters section, are necessary and easily understandable? If your answer is no, please explain why. **Yes**

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Tobacco, Rolling Papers and Filters rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration? **No**

iii) Do you have other comments on this section? **No**

Section 22: Other comments

Question 74

Do you have other comments or observations on CAP's proposed Code that you would like CAP to take into account in its evaluation of consultation responses? **Yes**

The Code Review

The Scope of the Code

4.ix The Digital Media Group (set up by the Advertising Association) is the communications industry policy group consisting of experts and practitioners from a variety of industry bodies, including traditional and digital media owners, agencies and advertisers. It is presently considering if and how the scope of CAP's Code might, for example, extend to an advertiser's claims that appear on that advertiser's website. Further information about this work will be communicated separately to this review.

It is not clear from 4.ix to what extent online has been incorporated into the code. As stated in 4.viii "CAP's proposed Code will spell out, for the avoidance of any doubt, the extent to which new forms of digital advertising are already regulated by the ASA".

Comments on the CAP Code Review Consultation:

1. The comments above for CAP (non-broadcast), apply equally to BCAP (broadcast).
2. There is a need for greater consistency between the CAP Code and BCAP Code.
3. There is no reference to the 'average consumer', as defined in the Consumer Protection Regulations (2008), in the CAP Code Review Consultation. The process was extremely labour intensive and onerous. It was particularly difficult to cross-reference Annex 1 and Annex 2 as the former follows the order of the proposed Code, the latter the order of the current Code. The questions raised in Annex 1 were primarily concerned with the issues identified by CAP.
4. There is generally a need for greater guidance and transparency from CAP, in order for organisations to ensure compliance with the Code. As highlighted in the above comments, there is a need for further clarification of certain aspects of the Code. The ASA have previously indicated that they will do this.
5. The codes now state "must" instead of "should" with a view to removing any ambiguity within the Code. The Code should make reference to "must" only where legislation is in place e.g. CPR's to ensure that the CAP and BCAP Codes do not have the appearance of creating law for what otherwise would be considered guidance. Akin to this, there should be no need for CAP/BCAP to 'gold-plate' the CPRs.
6. Adjudications which deal with issues of principle should be updated in the help notes.
7. The proposed Code gold plates aspects of the CPRs, including the requirements on what can be described as a 'free' item.



BCAP Code Review
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19th June 2009

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BCAP Code Review

Consultation on the proposed BCAP

Broadcast Advertising Standards Code

AIME Submission

About AIME (www.aimelink.org)

AIME is a UK based trade association that promotes excellence in the Interactive Media and Entertainment industry.

We uphold our Code of Ethics and create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to media.

We are the only trade association with membership across all elements of the Interactive Media and Entertainment value chain.

AIME promotes the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

We welcome the opportunity to respond to a review of the existing BCAP Broadcast

Advertising Standards Codes to ensure the rules for broadcast advertisements are up to date and fit for purpose together with proposals for a new, single BCAP Broadcast Advertising Standards Code administered by the Advertising Standards Authority (ASA). We note that this consultation refers to advertisements in Ofcom-licensed scheduled broadcast services only.

Executive Summary

AIME totally supports the need for consumers to be fully informed which includes the clear separation of editorial and advertising content. However, AIME is still in the process of Consultation with Ofcom on options as to how this is best achieved for interactive television programming in today's more enlightened consumer environment and multiplicity of media communications channels.

It is the view of AIME that BCAP finds itself in the invidious position of being required by Ofcom to attempt to apply its Code to a modern genre of interactive television services for which it was never designed under the guise of Teleshopping. Also, through no fault of its own, in pursuing the possible Ofcom requirement to regulate current lawful and popular interactive television programmes under the Teleshopping category many programmes will become untenable and cease to trade with resultant and serious losses in revenues and employment.

The Ofcom proposals to designate some interactive television programming as Teleshopping are not finalised and are the subject of an incomplete Consultation process. For this reason AIME would expect any BCAP regulatory action in the interactive television space, including requirements for the introduction of encryption for some advertising and programming, to be deferred until the current Ofcom Consultation process is completed.

There is a tendency with regulatory Codes, and this Code is no exception, for them to become ever more prescriptive (and lengthy) as the Code attempts to address every conceivable situation, often in the name of clarity. AIME believes this to be a mistake and would like to see a core Code stating clear principles surrounded by flexible Help Notes or Guidelines which can be amended at will without costly Consultations.

In a similar vein the convergence of services technologies and media is increasingly blurring the boundaries between regulatory bodies and it is important to avoid the costly duplication of effort and standards with resulting confusion for industry and even consumers.

AIME also believes there would be benefit from closer future co-operation between BCAP and AIME to better reflect the activities of our members across all elements of the rapidly developing interactive media market. Through AIME or through individual member contacts we have over the preceding months attempted to convey an understanding of how our members' services are operated and managed and we believe a continuation of constructive dialogue will benefit both sides.

1. General

AIME is totally supportive of the need to apply sensible standards to advertising but also takes the view that it is of paramount importance that regulation itself should abide by best regulation principles and standards to avoid creating impediments to legitimate and responsible business and associated advertising. For this reason we are pleased to note the statement that BCAP intends its rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so they are easily understood, easily implemented and easily enforced and retain an environment in which responsible broadcast advertising can flourish.

As digital media converge and multi media advertising becomes more prevalent AIME believes it is important to have consistency in the setting and application of standards for all advertising in a media neutral manner. Only in this way will we avoid confusion between various media standards and the unnecessary duplication of effort and cost between regulatory agencies addressing what they perceive to be special circumstances. Services utilising Premium Telephony billing is an example of this where additional advertising Code to CAP and BCAP is detailed within the PhonepayPlus Code of Practice. There is also a declared intent for the separate Codes to apply separate adjudications and sanctions for common Code infringements and AIME believes this to be both undesirable and unnecessary.

It is also very clear that Ofcom considerations (as yet the subject of incomplete Consultations) to redefine certain interactive television programmes as Teleshopping and therefore liable to regulation under BCAP do not fit well within the traditional CAP and BCAP regulatory scene. Given that the base BCAP regulation was inherited from an era before the genre of interactive television emerged to achieve today's popularity this is not surprising. AIME believes that the BCAP Code could be reviewed to consider how it might accommodate this new genre of interactive programmes and better reflect the constantly changing nature and attitudes of society. Indeed we understand that BCAP is considering the need for more focused regulation in the digital arena of video streaming and downloads and AIME will be happy to assist in this. Alternatively, this long established and developing service genre might be regulated elsewhere. This would of course be outside the scope of this BCAP Consultation and we would expect BCAP, via Ofcom, to defer any proposed changes at least until the current Ofcom Consultation exercise is completed.

As a step towards the sensible rationalisation of Codes AIME welcomes the proposal to replace the current four ASA based Codes with a single, user-friendly Code covering TV and radio advertisements for the benefit of the public and the broadcast advertising industry.

We note that item 3.iii (f) of the Consultation document states with regard to the BCAP Code's standard objectives "*that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from inclusion in such services of offensive and harmful material;*" And AIME wonders if this is in error as the BCAP Code is understood to apply exclusively to advertising and not to broadcast programme content (with the exception of teleshopping which is defined as advertising) which, we believe, remains within the direct remit of Ofcom.

2. Questions

Due to the scale of this Consultation AIME will confine its responses to questions that best match its areas of particular interest.

Part 2.1 - Compliance

BCAP considers a social responsibility rule is in keeping with its general policy objectives and, both in its expression in the Code and in its application will prevent irresponsible broadcast advertisements. BCAP proposes to introduce:

1.2 Advertisements must be prepared with a sense of responsibility to the audience and to society.

Question 1

Given BCAP's policy consideration, do you agree that rule 1.2 should be included in the proposed BCAP Code?

Answer 1

Agreed

Question 2

No comment.

Part 2.2 – Recognition of Advertising

Audiovisual Media Services (AVMS) Directive

AVMS revises and updates the Television Without Frontiers (TVWF) Directive, which has regulated television broadcasting in the EU since 1989. The TVWF Directive applied to scheduled television broadcasting services only. AVMS also applies to some on-demand services but this consultation is about advertisements in scheduled broadcast services only. Article 10 of TVWF has been revised in AVMS to state:

- Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.
- Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

Question 3

Given BCAP's policy consideration, do you agree that rule 2.1 should replace present TV rules 2.1.2 (b) and 2.2.2 (c), be applied to TV and radio and be included in the proposed BCAP Code?

2.1

Advertisements must be clearly distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement.

Answer 3

AIME agrees that advertising content should be readily distinct from editorial and there will, of course, be a variety of ways in which this can be achieved. It is interesting to see that research shows that viewers are instinctively able to differentiate traditional TV from advertising on TV and that the UK public is significantly more media literate than when the present Codes were last revised about nine years ago.

Question 4

No comment

Question 5

Given BCAP's policy consideration, do you agree that present TV rule 2.2.1 should not be included in the proposed BCAP Code?

ii) Given BCAP's policy consideration, do you agree that present TV rule 2.2.2 (a) should not be included in the proposed BCAP Code?

2.2.1

Broadcasters must retain editorial independence and responsibility for the content and scheduling of programmes.

2.2.2

Advertisements must not refer to the use or appearance of any service or product in any programme.

Answer 5

Agreed that 2.2.1 and 2.2.2 should be deleted.

Question 6

No comment

Question 7

Taking into account BCAP's general policy objectives, do you agree that BCAP's rules on the Recognition of Advertising are necessary and easily understandable?

Answer 7

AIME believes BCAP rules on recognition of advertising (separation of advertising from editorial) to be necessary and reflect the AVMS Directive that audiovisual commercial communications shall easily be recognizable as such. We believe BCAP has taken a reasonable approach which reflects significant improvements in public media literacy over the years.

Part 2.3 – Misleading

The Communications Act 2003 sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements. The standards objectives most relevant to the Misleading Section of the BCAP Code are:

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

319 (2) (1) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.

Question 8

Given BCAP's policy consideration, do you agree that rules 3.4 and 3.5 should be included in the Code?

3.4

Obvious exaggerations (“puffery”) and claims that the audience is unlikely to take literally are allowed provided they do not affect the accuracy or perception of the advertisement in a material way.

3.5

Subjective claims must not mislead the audience; advertisements must not imply that expressions of opinion are objective claims.

Answer 8

Agreed, with the proviso that these examples fall within the comment made for questions 9 – 23.

Question 9 – 23

These are all prescriptive examples of circumstances that would be interpreted as misleading the public and should therefore reside in Help Notes or Guidelines.

Answers 9 – 23

Rather than attempt to prescribe examples for every conceivable circumstance AIME believes it is more efficient and effective to state the basic premise that advertising must not intentionally or unintentionally mislead the public and that BCAP's decisions will be final. Useful examples should be located in Help Notes or Guidelines and not in the basic Code.

Part 2.4 – Harm and Offence

The proposed Code, and the present BCAP Codes, enshrine in rules some of the legal requirements of the Communications Act and Broadcasting Acts. Those rules make clear the general, overarching principle that advertisements must not harm or cause serious or widespread offence to the audience, for example, by offending against generally accepted moral, social or cultural standards. That principle has been, and should continue to be, applicable to all broadcasters and advertisers to ensure that generally accepted standards in broadcast advertising are upheld.

BCAP is aware that its duty to protect the audience from the inclusion of harmful or offensive material in advertising must be balanced with advertisers' fundamental right to freedom of expression. BCAP considers it reasonable to restrict that right if it is necessary to protect the audience from harm or serious or widespread offence.

Question 24

BCAP proposes to reflect provision in its Code to compliment the general principle that advertisements must not include harmful material. BCAP proposes:

4.7

Advertisements must not condone or encourage violence, crime, disorder or anti-social behavior.

Do you agree that rule 4.7 should be included in the proposed BCAP Code?

Answer 24

Agreed.

Questions 25 –27

No Comment

Part 2.5 Children

AVMS Directive states:

Audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

Question 28

Given BCAP's policy consideration, do you agree that rule 5.7 should be included in the Code?

5.7

Advertisements must not exploit the special trust children place in parents, guardians, teachers or other persons.

Answer 28

While AIME agrees totally with the sentiment of the proposed rule the wording is unnecessarily prescriptive regarding parents etc. when it closes with "other persons". It might be more realistic to adopt a more generic approach e.g. "Advertisements must not exploit the special relationships that children enjoy with adults and from whom they would expect the protection of care and trust."

Questions 29 – 34

No additional comments.

Part 2.6 – Privacy

Questions 35 – 36

No comments

Part 2.7 – Political and Controversial Issues

Question 37

No comments

Part 2.8 – Distance Selling

Distance selling advertisements, like all other business-to-consumer advertisements, must comply with the CPRs. The CPRs forbid advertisers from using misleading, aggressive or unfair sales techniques, which are defined in the Regulations, and specifically prohibits certain practices that are deemed to be unfair in all circumstances. AIME notes and supports BCAP intent to place accountability for consumer protection closer to the point of sale, in this instance the Broadcasters, by making broadcasters responsible for the conduct of their advertisers.

Questions 38 – 44

No additional comments

Part 2.9 – Environmental Claims

Questions 45 – 47

No comments

Part 2.10 – Prohibited Categories

Question 48

No comments

Question 49

On balance, and in line with its general policy objectives, BCAP proposes to relax the ban on broadcast advertisements for betting tips and to include dedicated new content and scheduling rules with the objective that persons under the age of 18 and the vulnerable are protected, and that misleading and irresponsible claims in betting tipster advertisements are prevented. The proposed rules have been distilled from the TV Text Guidance Note, which has been long-established and has successfully regulated TV text and interactive TV advertisements for betting tipsters; BCAP is unaware of any complaints to the ASA about those advertisements. BCAP considers the new rules provide an adequate level of protection for the audience.

BCAP proposes to replace the ban on television and radio advertisements for betting tips with rules 21.1 – 21.14.

i) Given BCAP's policy consideration, do you agree that the ban on TV and radio advertisements for betting tips should be relaxed?

ii) Given BCAP's specific policy objectives to protect under 18s and the vulnerable and to prevent misleading and irresponsible claims in betting tipster advertisements, do you agree that BCAP's proposed rules are necessary and easily understood?

Answer 49

AIME agrees with the proposal to remove the ban but believes the rules should be less prescriptive with more use made of Help Notes or Guidelines.

Question 50 – 51

No comment

Question 52

BCAP proposes to replace the present TV prohibition on commercial services offering individual advice on consumer or personal problems and instead assimilate, in a new rule, the protection afforded by the present radio rule on consumer advice services. BCAP intends that the proposed rule would achieve the policy objective of providing an adequate level of protection for the consumer and to those services whose reputations are placed at risk by rogue traders within the sector. To that end, BCAP proposes to broaden the rule (26.2) to cover all services offering individual advice on consumer or personal problems and not just commercial services:

26.2 Services offering individual advice on consumer or personal problems may be advertised only if those advertisers have given the broadcaster evidence of suitable and relevant credentials: for example, affiliation to a body that has systems for dealing with complaints and for taking disciplinary action; systems in place for regular review of members' skills and competencies; registration based on minimum standards for training and qualifications; and suitable professional indemnity insurance covering the services provided.

i) Given BCAP's policy consideration, do you agree that the ban on TV advertisements for commercial services offering individual advice on consumer or personal problems should be relaxed?

ii) Given BCAP's specific policy objectives, do you agree that BCAP's proposed rule 26.2 is necessary and easily understood?

Answer 52

AIME agrees that this ban should be relaxed and supports rule 26.2

Question 53

No comment

Question 54

On balance, BCAP considers that the TV ban on advertisements for pornography products is disproportionate; an outright ban is not required by law or necessary, given broadcast encryption technology. BCAP proposes to relax the ban to allow advertisements for pornography products to be broadcast on encrypted elements of adult entertainment channels only. BCAP's proposal avoids the likelihood of children and adults who might be seriously offended by advertisements for pornography from being in the viewing audience.

BCAP considers that audience members who have signed up for encrypted adult entertainment channels are unlikely to be offended by advertisements for pornography products and are unlikely to object to receiving information about such products. BCAP considers, however, it is important to ensure the content of an advertisement for a pornography product is in keeping with, and no more explicit than, surrounding programme material.

BCAP proposes to prohibit the broadcast of R18-rated material or equivalent in the content of advertisements. It does not propose to ban advertisements for R18-rated material (as classified by the BBFC) or its equivalent: those would, under BCAP's proposal, be allowed behind encryption.

On that basis, BCAP proposes these rules, which would impose on advertisements requirements similar to those in the Ofcom Broadcasting Code:

30.3 – Television only

Advertisements must not feature R18-rated material (as classified by the British Board of Film Classification) or its equivalent. That does not preclude advertisements for R18-rated material or its equivalent.

30.4 – Television only

Advertisements must not feature adult-sex material before 10 pm or after 5.30 am.

i) *Given its policy consideration, do you agree with BCAP's proposal to relax the present prohibition on TV advertisements for pornography products and allow them to be broadcast on encrypted elements of adult entertainment channels only?*

ii) *Given its specific policy objective, do you agree that BCAP's proposed rules are necessary and easily understood?*

iii) *Given BCAP's policy consideration, do you agree that advertisements for R18-rated material should be permitted to be advertised behind encrypted elements of adult entertainment channels only but that the content of those advertisements themselves must not include R18-rated material or its equivalent?*

Answer 54

AIME submits that access to adult channels is already adequately controlled by a variety of methods as listed below and that any requirement to employ encryption technology to be unnecessary, disproportionate and costly.

- PIN (parental control)
- Credit card
- Subscription
- Mobile Age Verification
- 090 call blocking
- Watershed timing

AIME believes the protection offered by PIN access to specialist channels to be equivalent and preferable to encryption and would like to see the Code clarifying this point. Since adult programming and advertising are subject to restricted access there appears to be no need to address advertising content separately. Any insistence that programming of an adult nature be placed behind encryption technology, such as a dedicated channel on a satellite service, would be commercially beneficial to the satellite service and could be interpreted as commercially restrictive or unfair.

We would also suggest that variants of the word pornography, which has evolved since this Code was last reviewed to become an emotive expression closely linked with unacceptable obscenity, be replaced with the word erotica, glamour or a similar term which will be more socially acceptable and cover

areas beyond pure sexual content. It is AIME's view that, with sufficient access controls already in place, advertising for programmes of an adult nature should be available on appropriate channels, in context with the programming, after the Watershed.

Questions 55 – 58

No further comments

Part 2.11 – Medicines, Medical Devices, Treatment and Health

Questions 59 – 67

No comments

Part 2.12 – Weight Control and Slimming

Questions 68 – 77

No comments

Part 2.13 - Food, Dietary Supplements and Associated Health and Nutrition Claims

Questions 78 – 87

No comments

Part 2.14 - Financial products, services and investments

Questions 88 – 89

No comments

Part 2.15 - Faith, Religion and Equivalent Systems of Belief

Questions 90 – 96

No comments

Question 97 (psychic PRS)

Later this year, Ofcom will consult on the use of premium-rate telephone services (PRS) in programmes with reference to Section 10 (Commercial References and Other Matters) of its Broadcasting Code, specifically to ensure that advertising is kept separate from programme content ('editorial content') in accordance with European broadcasting legislation and UK regulation. That consultation is of particular significance to a growing number of programmes that are predicated on the use of PRS, including programmes that invite the audience to call to speak to psychics or others who provide services that would be regarded, in the terms of the proposed Code, as 'occult or psychic' services. For the purposes of this consultation, these services are referred to as 'psychic PRS'.

Ofcom might, after consultation, include new rules in Section 10 of the Broadcasting Code and/or issue guidance to make clearer the extent to which PRS is permissible in programme content, in line with Ofcom's legal and regulatory obligations. Ofcom might conclude, on a case-by-case basis, that particular content predicated on PRS, including psychic PRS, does not comply with its Broadcasting Code, in its current form, or as amended. Broadcasters would then need to consider whether to adjust their format or broadcasting

model to bring their services into compliance with the Broadcasting Code or operate as advertising (teleshopping). Teleshopping must comply with the relevant BCAP Code. At present, the BCAP Television Code bans advertisements for products that rely on belief in psychic or occult phenomena. It exempts three types of product from that prohibition: pre-recorded tarot services, publications that discuss tarot without recommending it and services that readers are likely to regard as entertainment and that offer advice that would obviously apply to large sections of the population (such as newspaper horoscopes).

i) Given BCAP's policy consideration, do you agree to maintain the existing TV and radio requirements on advertisements for products or services concerned with the occult or psychic practices?

ii) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Faith, Religion and Equivalent Systems of Belief are necessary and easily understandable?

Answer 97

BCAP appears to justify its intent to maintain a ban on advertising for “psychic PRS” by considering the acceptability of the service content, which lies outside of the BCAP remit and is already subject to regulation by Ofcom and PhonepayPlus. This is a very popular service genre with a very low record of consumer complaint and AIME takes the view, as highlighted in the Executive Summary, that BCAP should await the outcome of the Ofcom Consultation on editorial content before considering taking a position on this.

Live services such as psychic and Tarot are already tightly regulated by PhonepayPlus with specialist requirements, a prior approval process and an effective license to operate in place. They are also subject to ongoing monitoring by PhonepayPlus. Such services have been advertised and have operated in Europe for many years with no known evidence of consumer harm.

It is notable that most major national media groups in the UK are happy to promote, under their own mastheads, live psychic and tarot services alongside recorded information services where they are positioned as “for entertainment only” or where readings are “intended as a guide only”. The psychic theme is also well established as a programme genre on free to air TV (the Sally Morgan show on ITV) and on subscription services (Derek Acoura show Living Channel from Virgin Media). Use of the term “occult” is outdated and should be reconsidered as inappropriate for today’s psychic and tarot offerings.

Any ban on advertising such services would be unnecessary and restrictive given their unchallenged popularity and their availability from other media together with the absence of any evidence of consumer harm.

It is appreciated that these arguments might be better directed at Ofcom within the context of their ongoing Consultation but it is felt that there is benefit in BCAP being aware of AIME’s position given the commercial importance of this established service genre.

Question 98

No comment

Part 2.16 – Charities

Questions 99 – 104

No comments

Part 2.17 – Gambling

Questions 105 – 110

No comments other than to note the existence of the Gambling Commission which shares responsibility for gambling advertising with Ofcom.

Part 2.18 – Lotteries

Included under Part 2.17 – Gambling

Part 2.19 – Alcohol

Questions 111 - 118

No comments

Part 2.20 – Motoring

Questions 119- 121

No comments

Part 2.21 – Betting Tipsters

Included under Part 2.17 – Gambling

Part 2.22 – Premium Rate Services

PhonepayPlus Code

TV and radio broadcasters are required, by the terms of their Ofcom license, to ensure advertisements they broadcast that promote premium-rate services (PRS) comply with the PhonepayPlus Code of Practice. The price and nature of premium-rate telephone services must be made clear and Advertisements that include premium-rate telephone numbers or short codes should comply with the PhonepayPlus Code of Practice.

BCAP rules are intended to protect audiences from potentially misleading, offensive or harmful advertisements and, in line with broadcasters' Ofcom license requirement, to secure compliance with the PhonepayPlus Code of Practice. BCAP seeks to maintain that approach in the proposed BCAP Code with the following proposed additions:

22.1

Advertisements that include a premium-rate telephone number must comply with the PhonepayPlus Code of Practice.

22.2

Advertisements for premium-rate telephone services must include clear pricing information if the service generally costs 50 pence per call or more.

22.3

Advertisements for premium-rate children's services, services accessed by automated equipment or subscription services must always include clear pricing information.

22.4

Advertisements for premium-rate services must state the identity of the service provider or the information provider.

22.5 – Radio

If it is not included in the advertisement, radio broadcasters must retain and, on request, make available a non-premium-rate telephone number for the premium-rate service for customer care purposes.

22.6 – Television

Television advertisements for premium-rate services must include a non-premium-rate telephone number for customer care purposes.

22.8

Advertisements for live premium-rate services must not appeal particularly to people under 18, unless those services have received prior permission from PhonepayPlus to target people under 18.

BCAP considers the inclusion of these rules would not increase the regulatory burden for television or radio.

Question 122

Given BCAP's policy consideration, do you agree that proposed rules 22.1 to 22.6 and 22.8 should be included in the proposed BCAP Code?

Answer 122

Rather than repeat and duplicate elements of the PhonepayPlus Code it should be sufficient to state, as with 22.1 that advertisements that include premium-rate telephone numbers or short codes should comply with the PhonepayPlus Code of Practice and other relevant guidelines. As we have stated earlier it would be sensible for one body only to have responsibility for advertising standards in a media neutral manner.

Radio

To provide consistent standards for the benefit of consumers and the radio industry, the present Radio Code and the proposed BCAP Code require some categories of radio advertisements to be centrally cleared by the RACC. Those categories of radio advertisements have a clear potential to mislead, offend or harm. On that basis BCAP proposes to include a new rule for radio:

23.1 – Radio

Advertisements for telecommunications-based sexual entertainment services must be centrally cleared.

Question 123

Given BCAP's policy consideration, do you agree that proposed rule 23.1 should be included in the proposed BCAP Code?

Answer 123

Agreed

Television advertisements for PRS of a sexual nature

BCAP believes that the existing policy on TV advertisements for PRS of a sexual nature should be retained. As part of its forthcoming consultation, Ofcom intends to conduct viewer and consumer research on PRS-based TV services. That research and consultation will inform Ofcom's decisions on possible changes to both the Ofcom Broadcasting Code and, potentially, to the BCAP Code, for which Ofcom has responsibility for final approval. The current Broadcasting Code requirement is that programmes must not show adult-sex material unless it is broadcast behind a mandatory PIN-protected encryption system between 10pm and 5.30am.

BCAP proposes that the present policy on TV advertisements for PRS of a sexual nature should be maintained, subject to possible change following BCAP's and Ofcom's consultations and decisions by Ofcom.

Question 124

Given BCAP's policy consideration, do you agree that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only?

Answer 124

As shown in answer 54 there already exist a number of access control methods for content of an adult nature and the specified requirement for encryption is unnecessary, disproportionate and costly. The reference to "PIN Protected encryption" is also confusing since PIN and encryption represent two different technologies with PIN protection being the most widely accepted, understood and effective method of access control. We particularly note the reference to Ofcom's Consultations and future decisions and repeat our concern that existing, well established, services should not be exposed to unsuitable regulatory constraints until such Consultations are completed and decisions known.

Payment Mechanisms

For historic reasons the present BCAP rules specify premium-rate as the method of payment for telephone sexual entertainment services. BCAP's review of the rule makes clear that the present restriction on TV advertisements for those services is intended to prevent serious or widespread offence and protect children from potential harm. The restriction takes account of the wholly adult nature of the service and the potential for advertisements, particularly live broadcast material predicated on the use of telephone sexual entertainment services, to go beyond generally accepted standards on unencrypted TV channels. The method of payment is not therefore relevant to restricting those advertisements to encrypted elements of adult entertainment channels.

Question 125

i) Given BCAP's policy consideration, do you agree that the BCAP rule on PRS of a sexual nature should be clarified to make clear that it applies also to TV advertisements for telecommunications-based sexual entertainment services made available to consumers via a direct-response mechanism and delivered over electronic communication networks?

ii) If your answer is no to question 125 (i), do you consider the rule should

make clear that ‘premium-rate call charge’ is the only permissible form of payment?

Answer 125

- i) It should be sufficient to refer to “TV advertisements for telecommunication based sexual entertainment services” and the reference to direct response mechanism and delivery method is not understood.
- ii) Having established that the method of payment has no relevance to advertisements it is not acceptable to restrict the consumers options of payment methods. There is no reason for BCAP to become involved with this issue which is outside of BCAP remit.

New Code Section

In line with this proposal BCAP proposes to create a new section in the proposed BCAP Code, entitled Telecommunications-Based Sexual Entertainment Services. Advertisements for PRS of a sexual nature would continue to be required to comply with the rules in the Premium-Rate Services section of the proposed BCAP Television Code, as well as the rules in the Telecommunications-Based Sexual Entertainment Services section.

AIME believes there is potential here for confusion from duplication of requirements contained in the PhonepayPlus Code of Practice and recommends this proposal be reconsidered.

Dialing Codes

The present TV rule defines PRS of a sexual nature as those that operate on the 0909 dialing Code only. Today, those services may operate on 0908, 0909 or 098 number ranges and on mobile short code numbers beginning 69 or 89. Those number ranges are designated for the purpose of premium-rate sexual entertainment services by Ofcom On balance, BCAP proposes not to reference number ranges either as examples of, or as a means of defining, PRS of a sexual nature.

Question 126

Given BCAP’s policy consideration, do you agree that BCAP’s rule should not define PRS of a sexual nature as those operating on number ranges designated by Ofcom for those services?

Answer 126

Agreed

Types of PRS services of a sexual nature

The present rule refers to ‘voice services of a sexual nature’. BCAP considers it reasonable to assume that, when the rule was last reviewed, voice services (live or recorded) comprised the vast majority of telecommunications-based sexual entertainment services made available to the public. Today, telecommunications-based

sexual entertainment services include voice, text, image or video content services. BCAP proposes to reflect the custom and practice of interpreting the present rule by making clear that telecommunications-based sexual entertainment services are ‘voice, text, image or video services of a sexual nature’.

Question 127

Given BCAP’s policy consideration, do you agree that BCAP’s rule on TV advertisements for telecommunications-based sexual entertainment services should extend to ‘voice, text, image or video services of a sexual nature’?

Answer 127

It should not be necessary to attempt to quantify all possible options for service delivery and it should be sufficient to simply refer to “entertainment services of a sexual nature”.

BCAP considers that, by restricting TV advertisements for telecommunications-based sexual entertainment services to encrypted elements of adult entertainment channels, the proposed rule prevents the potential for serious or widespread offence. It also, on a precautionary principle, protects children from seeing material that goes beyond generally accepted standards on unencrypted channels and prevents children from responding to TV advertisements for services intended for a strictly adult audience and potentially accessing those services.

Question 128

Given BCAP’s policy consideration, do you agree that rule 11.1.2 in the present BCAP Television Code should be replaced by proposed rule 23.2?

23.1 – Television (assumed actually 23.2)

Advertisements for telecommunications-based sexual entertainment services are acceptable on encrypted elements of adult entertainment channels only.

Answer 128

As with answers 54 and 124.

Telecommunications-based live chatline services

The present BCAP Codes do not include a rule on TV advertisements for live chatline services. The vast majority of those are offered in return for payment by premium-rate call charge and, therefore, advertisements for them must comply with rules in the Premium-Rate Services section and the general rules of the present Codes and the proposed BCAP Code.

If the new BCAP Code allowed TV advertisements for telecommunications-based sexual entertainment services on encrypted elements of adult entertainment channels only, BCAP will undertake, in discussion with PhonepayPlus, to monitor closely the content of unencrypted advertisements for live chatline services and the content of those services. BCAP and the ASA would not allow a rule that confined advertisements for telecommunications-based sexual entertainment services to encrypted elements of adult entertainment to be circumvented by unencrypted advertisements for live chatline services that, in breach of the BCAP Code and the PhonepayPlus Code, promoted those services as being sexual in nature or that operated as sexual entertainment services.

Overall PRS

Question 129

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Premium-Rate Services section, are necessary and easily understandable?

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Premium-Rate Services rules that you consider are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

Answer 129

As mentioned previously this subject is adequately covered by the existing PhonepayPlus Code of Practice.

Part 2.23 - Telecommunications-Based Sexual Entertainment Services

This subject is adequately covered by the existing PhonepayPlus Code of Practice. The reference to Betting Tipster Advertising under this heading is not understood.

Part 2.24 – Homeworking Schemes

Questions 130 - 131

No comment

Part 2.25 – Instructional Courses

Questions 132 – 134

No comment

Part 2.26 - Services Offering Individual Advice on Consumer or Personal Problems

Included under section 2.10 – Prohibited Categories

Part 2.27 – Introduction and Dating Services

Advertisements are currently acceptable, subject to Rule 10.1.5. Services operating through premium-rate telephone and text services are subject to Section 22 (Premium-rate Section) and the PhonepayPlus Code.

Precautions when meeting people

BCAP's proposed TV and radio rule is:

27.4

Broadcasters must satisfy themselves that advertisers give customers clear advice on precautions to take when meeting people through an advertisement for an introduction or dating agency.

Question 135

Given BCAP's policy consideration, do you agree that rule 27.4 should be included in the proposed BCAP Code?

Answer 135
Agreed

Data Protection

BCAP requires the broadcaster to obtain an assurance that the advertiser complies with the requirements of Data Protection Act. BCAP considers that is an obligation placed on all organisations who obtain, store, or process personal data and, therefore, it is not, in BCAP's opinion, necessary to require the broadcaster to obtain an assurance from the advertiser to that end. However, BCAP proposes to include a cross-reference the Data Protection Act 1998 in this Section.

Question 136

Given BCAP's policy consideration, do you agree that it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client's consent, and the client's name will be promptly deleted on request?

Answer 136
Agreed

Promiscuity

Question 137

Given BCAP's policy consideration, do you agree the proposed BCAP Code provides adequate protection from the potential for harm or offence from advertisements that encourage or condone promiscuity?

Answer 137
Agreed

Misleading

BCAP considers this is adequately regulated by rules in the Misleading section of the proposed BCAP Code. BCAP therefore proposes to delete current radio rules (3.14(a) and (d) but, because it considers it to be a common claim in advertisements for introduction and dating services, to retain the requirement that, 'Advertisements must not imply a greater degree of matching of individual clients according to suitability than is achieved.'

Question 138

Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rules 3.14 (a) and (d) into the proposed BCAP Code?

Answer 138
Agreed

Location or Telephone Number

BCAP considers the business models on which introduction and dating services are based means that most, if not all advertisements in this sector, include a telephone number or website address that include relevant contact details and locations for clients

to visit.

Question 139

Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rule 3.14 (b) into the proposed BCAP Code?

Answer 139

Agreed

Question 140

No further comments

Part 2.28 – Competitions

BCAP's proposed TV and radio rule is:

28.1

Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.

Question 141

i) Given BCAP's policy consideration, do you agree that rule 28.1 should be included in BCAP's new Code?

Answer 141

Agreed and competitions should comply with the PhonepayPlus Code of Practice.

Part 2.29 – Private Investigation Agencies

Included under section 2.10 – Prohibited Categories

Part 2.30 - Pornography

Included under section 2.10 – Prohibited Categories. It is recommended that the term “pornography” be reconsidered.

Part 2.31 - Other Categories of Radio Advertisements that Require Central Copy Clearance

Question 142

No comments

Part 2.32 – Scheduling

Question 143 – 144

No comments

Live Premium Rate Services

BCAP's Codes do not explicitly address the subject of live premium-rate services; Section 22 Premium-rate Services requires broadcasters to comply with the PhonepayPlus Code, which includes rules for live premium-rate services. BCAP recognises that such services have proliferated on TV and radio and therefore proposes to introduce a scheduling requirement that television and radio advertisements for such services may not be advertised in or adjacent to programmes commissioned for,

principally directed at or likely to appeal particularly to audiences below the age of 18, unless those services have received prior permission from PhonepayPlus to target people under 18.

Question 145

Given BCAP's policy consideration, do you agree that proposed rules 32.2.6 and 32.20.8 should be included in the proposed BCAP Code?

Answer 145

AIME generally agrees with these rules which reflect the requirements of the PhonepayPlus Code with the exception of the restrictions suggested on higher rate Premium tariffs. If tariffs are approved by Ofcom it is not considered within BCAP's remit to restrict their use.

Questions 146 – 157

No comments

Conclusion

Despite the serious concerns we raise over the Ofcom proposals to designate current popular interactive television formats as Teleshopping and the unsuitability of the BCAP Code to cope with these, AIME would like to see closer future co-operation between BCAP and AIME to better reflect the activities of our members across all elements of the interactive media market. This is a fast moving and rapidly changing service environment that calls for an informed approach to fair and proportional regulation while preserving the consumer's right to informed freedom of choice.

BCAP has a clear priority, shared by AIME, that consumers are fully informed and properly protected from inappropriate content and it is appreciated that the BCAP Code has made significant efforts to limit interference in legitimate commerce. However, we feel that the current Code, even modified by this Consultation, is too prescriptive and BCAP would benefit from confining the actual Code to core principles while making full use of flexible Help Notes or Guidelines to assist readers with examples or clarification.

It is certainly a key issue that consumers are not confused between advertising and editorial content and AIME believes that there are various ways of achieving this, one of which is clear labeling. It is equally important that in attempting to protect consumers from such confusion regulation should not inhibit the consumer's freedom of choice, nor should it deter investment in the development of new and popular service offerings for ultimate consumer benefit.

It does appear that, if current Ofcom intentions are enforced, the BCAP Code could result in advertising being banned for legitimate and lawful services e.g. "physic or occult phenomena" and this seems to equate to content based judgment beyond the scope of the BCAP remit. Such actions by BCAP would clearly be out of step with other UK media channels and the current practice of other European TV networks. The use of archaic terms such as "occult" is also not helpful since such services are dominated by harmless and popular tarot type offerings that are also widely available from other media.

AIME would like to see one media neutral Code of Practice for all advertising, be it broadcasting or other media, under the auspices of ASA to avoid unnecessary, costly

and potentially confusing duplication of regulatory effort.

Statement of Representation

AIME confirms that this response has been compiled following a process of circulation of the relevant Consultation documentation to all our members for consideration and comment. A list of our members may be found at www.aimelink.org/currentmembers.aspx

The views expressed in this response are a fair representation of the views held by the responding AIME membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

Close

We look forward to your response and assure you that, as ever, our comments are made constructively and with the aim of achieving an effective, fair and proportional regulatory regime for the Interactive Media and Entertainment Industry.

If any clarification to our response is required, or if we can be of any further assistance, please contact Zoe Patterson +44 (0) 8445 828 828 or zoe@aimelink.org

Sincerely

AIME Executive

27 APR 2009

THE ASSOCIATION OF CATHOLIC WOMEN

Chairman: *Josephine Robinson*

Vice Chairman *Patti Fordyce*

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The Director

Advertising Standards Authority

Mid City Place

71 High Holborn

London

WC1V 6QT

24/4/09

Dear Director

We are deeply concerned at the proposal to show advertisements for abortion procurement and for condoms to be advertised on TV before 9.00pm.

Advertisements are designed to encourage purchase and use of whatever is advertised. A "termination of pregnancy" is the taking of a new, human life. There are, inevitably, two victims - the child and the mother. The rupture of the symbiotic relationship between mother and child may not be immediately felt by the anxious girl or woman, but there is much evidence that damage is done, which may be physical, psychological or emotional, and which may occur later on. Few women are heard talking about having their child aborted.

Advertising the ease with which an abortion may be obtained will trivialise abortion further and will lead to young girls giving in to pressurising boy-friends to have sex, because abortion will seem an easy way out.

It is also surprising that after so many years of promoting condoms and the continual growth of inappropriate pregnancies among adolescent girls (and a near epidemic of sexually transmitted infections in young people), educators still have not understood that the message of safe sex is understood by young people as an endorsement of sexual activity itself. TV advertisements at whatever time will underline this message. No

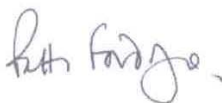
doubt condoms leave the factory in perfect order, but condom failure is well known by people who work in crisis pregnancy centres with young people, or simply in general conversation.

That the Advertising Standards Authority should be considering such advertisements is, surely an attack on the standards the Authority was instituted to uphold. We very much hope that the A.S.A. will not reduce its standards.

Yours sincerely



Chairman ACW



Vice Chairman ACW



Secretary ACW

Confidential

Consultation on the proposed BCAP Broadcast Advertising Standards Code

As with other service providers and retailers it is our practice to list the services we provide, rather than an exhaustive list of those we *do not* provide. This avoids our advertising becoming cluttered and confusing.

We have not once, with any of the women we have seen had any complaint that the women concerned did not feel they received the service they were expecting. On the contrary we are often complimented on providing *more* than the women expected.

Our aim is to provide advice and information for women who are *unsure* whether to continue with their pregnancy. Those who have come to a decision are directed to their GP in the first instance or a clinic if they feel this is the better option for them. Our aim is to help the women we see make a fully informed decision.

We aim to provide a quiet place, separate from the referral system, where those women who feel unsure what they want to do may find space to consider their options. However if we were part of the referral process our clients may feel that we were not providing them with that much needed space.

