

## SECTION 4: HARM AND OFFENCE

**Question 10: Given CAP's policy consideration, do you agree that rule 4.7 (flashing images) should be included in the proposed CAP Code? If your answer is no, please explain why.**

<i>Responses received in favour of CAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
<p>Advertising Association; ASDA; Association for Interactive Media and Entertainment; British Board of Film Classification; Charity Law Association; Consumer Focus; E.ON; Enable; Institute of Practitioners in Advertising; Institute of Sales Promotion; Proprietary Association of Great Britain;</p>	<p><i>1. Charity Law Association said:</i> The rule as drafted may cause difficulties given that it is a matter of medical opinion as to what effects or techniques may or may not affect members of the public with photosensitive epilepsy and what sort of affects it is likely to have on members of the public. It is accordingly difficult for marketers to know how any such effects or techniques may affect the public. Accordingly, we think it may be useful, in the spirit of the Code in general, if it was provided that it is the responsibility of marketers, prior to the publication of any marketing communication, to satisfy themselves that visual effects or techniques are unlikely to adversely affect members of the public in any manner which may be reasonably anticipated by members of the medical profession.</p> <p>The onus should be on marketers to ensure that effects on members of the public are a consequence recognised by members of the established medical profession. If marketers have</p>	<p>1. The Charity Law Association's suggestion would require all marketers to obtain reports on the suitability of images in all their ads before publication. CAP considers that it would be overly onerous on marketers if the rule were amended to require marketers to satisfy themselves before publication that their marketing communications would be unlikely to adversely affect those with photosensitive epilepsy.</p> <p>CAP's rule, which states "Marketers must take particular care not to include in their marketing communications visual effects or techniques that are likely to adversely affect members of the public with photosensitive epilepsy", should provide the ASA the opportunity to uphold a complaint about, for example, a marketing communication that contained unsuitable flashing images. As such, the rule will afford protection to members of the public with photosensitive epilepsy without imposing a disproportionate requirement on marketers.</p>

<p>Redcat (Brands) Ltd; RWE npower;</p> <p>3 organisations requesting confidentiality</p> <p>Two individuals</p>	<p>to obtain medical reports before they embark on any effect or technique, that should be their responsibility.</p> <p>It is not adequate for marketers to simply warn the public about the possibility of, by way of example, strobe lighting or flashing photography, given that the public do not ask to see the marketing communication and is not intended primarily for the public's benefit, as opposed to, for instance, news items which may contain flash photography where a warning is usually given.</p> <p><i>2. RWE npower said:</i> Yes, provided the rule mirrors the requirements, tone etc of the rules that apply to broadcast media.</p> <p><i>3. Institute of Sales Promotion said:</i> Considering that individual sensitivity to "flashing images" will vary and be subject to medical opinion the ISP suggests that the term "not to include" be replaced with "avoid where possible".</p>	<p>CAP expects that, in time, the rule would be supported with guidance informed by the ASA's interpretation and, perhaps, by borrowing general principles from Ofcom's Guidance Note for Licensees on Flashing Images and Regular Patterns in Television.</p> <p>A marketer could not abdicate its responsibility under the rule simply by including a warning that one of its marketing communications contained flashing images.</p> <p>2. CAP's new rule closely mirrors BCAP's rule on the use of flashing images in TV ads.</p> <p>3. CAP considers that the rule is not overly prescriptive because it states that marketers must "take particular care" not to include certain visual techniques. The rule therefore takes account of the fact that individuals' sensitivities to particular flashing patterns will vary. On that basis, CAP considers the rule's wording is clear.</p>
<p><i>Responses received against CAP's proposal:</i></p>	<p><i>Summaries of significant points:</i></p>	<p><i>CAP's evaluation of those points and action points:</i></p>

None		
<p><b>Question 11:</b></p> <p><b>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.</b></p> <p><b>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?</b></p> <p><b>iii) Do you have other comments on this section?</b></p>		
<p><i>Responses received from:</i></p> <p>Advertising Association; ASDA; Association for Interactive Media and Entertainment; British Naturism; Charity Law Association; Christian Concern for Our Nation and Christian Legal Centre;</p>	<p>These organisations, and an individual, agreed the rules in the proposed Harm and Offence section are necessary and easily understandable. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document:</p> <p>Advertising Association; ASDA; Association for Interactive Media and Entertainment; Charity Law Association; E.ON; Institute of Practitioners in Advertising;</p>	<p><i>CAP's evaluation of those points and action points:</i></p>

<p>Consumer Focus; E.ON; Glasgow Community Safety Services; Institute of Practitioners in Advertising; Proprietary Association of Great Britain; Royal Society for the Prevention of Cruelty to Animals; RWE npower; Samaritans;</p> <p>3 organisations requesting confidentially</p> <p>2 individuals</p>	<p>Proprietary Association of Great Britain; RWE npower; 3 organisations requesting confidentiality</p> <p><i>Summaries of significant points:</i></p> <p><i>1. British Naturism said:</i> The code does not recognise that there are many situations where the two requirements of avoiding harm and offence conflict and it does not provide a rule for resolving the conflict. We firmly believe that considerations of harm must always take precedence over offence. Anything else is indistinguishable from prejudice.</p> <p>The rules are almost entirely concerned with the rights of marketers and the rights of individuals receiving advertising material. Marketing materials are part of the general pattern of life and they do have an impact on society as a whole. The code needs to give more weight to the general well-being of society.</p>	<p>1. CAP's new rule 4.1, which seeks to prevent marketing communications from causing serious or widespread offence, is deliberately principles-based. That approach provides the ASA the scope to consider complaints about offensive marketing by taking into account the context, medium, audience, product and prevailing standards. The rule recognises that marketing communications may be distasteful without breaching the Code, meaning that the ASA must make subjective judgements, on a case-by-case basis, about the likelihood of a marketing communication causing either serious or widespread offence.</p> <p>CAP considers that there is not a conflict between new rule 4.1, which protects consumers from offensive marketing material, and new rule 1.3, which protects consumers from socially irresponsible marketing material, including that which is or could be harmful. It would be possible for a marketing communication to breach either or both of those rules.</p>
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	<p><i>2. Christian Concern for Our Nation and Christian Legal Centre said:</i> The current rule 5.1 should be retained, as it is of concern that the proposed replacement rule 4.1 omits the words “of decency” after prevailing standards when it is important to maintain standards of decency.</p> <p><i>3. Consumer Focus said:</i> The general accessibility guidelines issued by the Equality and Human Rights Commission should form basic standards for marketing under the code.</p> <p><i>4. Glasgow Community Safety Services and an individual said:</i></p>	<p>2. CAP considers that its new rule is adequate to protect consumers from marketing material that is likely to cause serious or widespread offence. Standards of decency in advertising would be maintained under the new rule to the same degree as under the existing rule. On that basis, there is no change in advertising policy and practice between the existing and new rules.</p> <p>3. The purpose of the new Code is to ensure marketing remains legal, decent honest and truthful; the rules in the Harm and Offence section of the Code are intended to prevent marketing material from harming consumers or from causing serious or widespread offence.</p> <p>The Code does not conflict with the Equality and Human Rights Commission’s (EHRC’s) guidelines; it is intended to secure different objectives. CAP considers it unnecessary to duplicate the EHRC’s guidelines in its Code, and inappropriate to expect the ASA to consider complaints under them, given the EHRC is the expert body for maintaining and enforcing its own guidelines.</p> <p>4. The Code ensures that marketing communications do not cause serious or</p>
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	<p>The sexual objectification of women through advertising can lead to a range of harms, such as body and self esteem issues; eating disorders; the desire for plastic surgery; constant monitoring of appearance; violence; sexist attitudes; sexual harassment; the view that women are always sexually available; a detrimental impact on men's ability to build lasting, healthy, mutually respectful relationships; and racism. Images of thin, highly sexualised young women now saturate the advertising industry.</p> <p>Advertisements for pornography should not appear in magazines, accessible to men, women and children, simply because those magazines have a predominantly male readership. Magazines should not include ads for pornography because the inclusion of those ads suggests a woman's readership is unexpected and unwelcome; magazines, especially those often found in waiting rooms, should not include ads for pornography because children have easy access to them.</p> <p>In light of the harms outlined by irresponsible, sexist advertising we are pleased the CAP has included a section in the Review (part 2, section 4), entitled "harm and offence". In particular we support the commitment to ensuring marketing communications "contain nothing that is likely to condone or encourage violence or anti-social behaviour". These proposals outline a</p>	<p>widespread offence, with particular care being taken on the grounds of sex and sexual orientation. The new rules therefore provide the ASA the scope to uphold complaints about marketing communications, on a case-by-case basis, that depict women in such a way that is likely to cause harm or offence. CAP therefore considers Glasgow Community Safety Services's (GCSS's) point relates more to the interpretation of the Code than to the new rules themselves. In the absence of evidence that the depiction of women in advertising currently acceptable to the ASA is harmful, it would be disproportionate for CAP to introduce prescriptive rules on the depiction of women in advertising.</p> <p>New rule 4.1 makes clear that compliance with the Code "will be judged on the context, medium, audience, product and prevailing standards", ensuring the ASA is able to take into account the way in which an ad is targeted when considering if its appearance is likely to cause serious or widespread offence. In reaching those decisions, the ASA considers magazines' readership figures to ensure an ad is suitably placed. Again, it would be disproportionate for CAP to prohibit categories of products or services from being advertised if they are presently being advertised in a way that complies with the Code and in media likely to be of interest to the marketers' target audience.</p>
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	<p>commitment to greater social responsibility in the media and we would hope these recommendations are adhered to.</p> <p>There is the concern that voluntary codes can prove meaningless in relation to long term impact. Therefore we would recommend that gender equality be mainstreamed into media regulation – at present concerns relating to the sexualisation of women are judged solely on the grounds of obscenity and decency. We would suggest that this must be extended to gender equality by bodies such as OFCOM and ASA and this regulation is enacted via legislation in order to enhance its credibility.</p> <p>Ideally, we would be in favour of legislative sanctions banning all forms of pornographic material and adverts containing such objectifying images due to our belief that it is degrading to the women involved, harmful to users and complicit in violence against women both in its production and consumption.</p> <p><i>5. Glasgow Community Safety Services said:</i> Since 2003, Jobcentre Plus (JCP) has accepted and advertised jobs from within the adult entertainment industry such as positions for “lap dancers”, “strip webcam performers” and “escorts”. We are concerned that the sex industry is further</p>	<p>CAP would like to highlight that its Code is not voluntary. Although it does not have the force of law, marketers must adhere to the Code or face sanctions for non-compliance, and the overwhelming majority of advertisers and media owners comply with ASA rulings without the need for the ASA and CAP to invoke those sanctions already in place. CAP does not institute legislative sanctions and is therefore unable to comment on GCSS’s comments in favour of measures of that kind banning pornographic images and ads that contain images that objectify women.<sup>5</sup> CAP is not in a position to comment on the acceptability of job ads accepted by Jobcentre Plus, apart from the fact that those ads must comply with the Code. Concerns that those ads, on a case-by-case basis, do not comply with the Code should be brought to the ASA’s attention. Wider comments about Jobcentre Plus and Department for Work and Pensions policy fall outside the scope of CAP’s Code Review.</p> <p>5. CAP is not in a position to comment on the acceptability of job ads accepted by Jobcentre Plus, apart from the fact that those ads must comply with the Code. Concerns that those ads, on a case-by-case basis, do not comply with the</p>
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	<p>attempting to mainstream and normalise its activities by advertising through the JCP and that JCP by agreeing to promote these adverts is offering an expedient pathway for vulnerable women to become part of the sex industry. Although it may be out with the remit of this Consultation paper, we still consider it important to reiterate once again the need for the Department for Work and Pensions to reverse this policy.</p> <p><i>6. Samaritans said:</i> As part of our work to reduce suicide, Samaritans have committed to working more closely with regulators, particularly those responsible for media issues, to address our concerns relating to the representation of suicide in the public domain.</p> <p>Samaritans believes that the evidence of the impact of the media on vulnerable people is well established and irrefutable. In 1981, German television screened a six-part series called <i>Death of a Student</i>. At the start of each episode, a scene of a young man killing himself on a railway line was shown. During the series, deaths recorded by this method increased by 175%.</p> <p>Therefore we are taking this opportunity to share our expertise and experience on the role of the media in suicide prevention. Our intention is to inform the ASA's CAP code committee on best</p>	<p>Code should be brought to the ASA's attention. Wider comments about Jobcentre Plus and Department for Work and Pensions policy fall outside the scope of CAP's Code Review.</p> <p>6. CAP's new rule that ensures marketing communications are socially responsible (1.3), combined with other rules in the Harm and Offence section – in particular, 4.1 (Offence) and 4.5 ("Marketing communications... must not condone or encourage an unsafe practice) – ensure that the ASA can uphold complaints about a marketing communication that is likely to condone or encourage suicide.</p> <p>As stated above, the rules in the Harm and Offence section of the new Code are deliberately principles-based. That approach provides the ASA the scope to consider complaints about potentially harmful or offensive marketing on a case-by-case basis, taking into account relevant factors such as context, medium and audience. CAP considers its principles-based approach in the Harm and Offence section more helpful than a prescriptive approach on advertising techniques:</p>
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	<p>practice with the aim of reducing future deaths by suicide. In the last six months we have become aware of some advertisements that we feel have failed to recognise this best practice. We recognise that we may not have taken adequate steps in the past to extend our expertise on suicide prevention to the advertising industry and, by responding to this consultation, we are acting to address this.</p> <p>Based on research into the media's influence on suicide prevention (<a href="http://www.samaritans.org/media_centre/media_guidelines.aspx">http://www.samaritans.org/media_centre/media_guidelines.aspx</a>), Samaritans would suggest the following points are included within the code. They have been written to reflect the language of the existing code.</p> <ol style="list-style-type: none"> <li>1. Marketing Communications and Advertisements must not portray suicidal acts either through the use of graphic images (photographic or illustrative) which provide methodology or detail on how to complete the suicide act.</li> <li>2. Marketers and Advertisers must take particular care not to glorify or normalise suicide and its effects, such as representing a positive dimension because of the death.</li> <li>3. Marketers and Advertisers must pay attention to the context (including time and location) of the communication, and particularly to its likely impact on distressed</li> </ol>	<p>over-arching principles embody the spirit of the Code, are readily understandable and minimise the risk of an unscrupulous marketer exploiting loopholes in prescriptive rules that would, by their nature, be likely applied by the letter.</p> <p>CAP agrees with Samaritans that it is important to ensure marketing does not have a harmful effect on consumers; CAP is confident that the Code secures that need. Nevertheless, CAP empathises with Samaritans's desire for more explicit guidance on the portrayal of suicide in marketing and will consider the need to produce guidance in due course.</p>
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	<p>or vulnerable people.</p> <p>We believe these points condense the key factors that can lead to imitative suicidal behaviour and urge the ASA CAP code review team to recognise them within the code.</p> <p><i>7. An individual said:</i> I am very concerned that “some people” finding an advertisement offensive is not considered sufficient cause to take action against it or its perpetrators.</p>	<p>7. The ASA investigates complaints about offensive advertising on a case-by-case basis. It has to make subjective judgements and must weigh up the marketer’s right to freedom of expression against the level of offence caused. The ASA would prohibit a marketing communication on the grounds of offence only if it were proportionate to do so.</p> <p>New rule 4.1 prevents marketing communications from causing serious or widespread offence. There is no minimum number of complaints required for the ASA to consider a marketing communication against that rule: one complaint is sufficient to investigate whether a marketing communication breached the requirement not to cause serious offence.</p>
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