

The New Advertising Codes – An Overview

1. Background

In March 2009, following a systematic, rigorous and inclusive review of the Codes – with views sought from several industry trade bodies, Government departments and agencies and other regulatory bodies – CAP and BCAP launched a full 12-week public consultation of the Advertising Codes.

The aim of the consultation was to ensure that the Codes remain up to date and fit for purpose; providing adequate protection to children and vulnerable adults, yet retaining an environment in which responsible advertising can flourish.

CAP and BCAP received a significant volume of submissions (30,000) and have fully evaluated all the responses from a wide range of stakeholders.

The new Codes, which will replace the existing Codes on 1 September 2010, continue to be based on the enduring principles that all ads should be legal, decent, honest and truthful.

Alongside the new Codes, CAP and BCAP have published all non-confidential responses to the consultation and their evaluation of significant comments, explaining their conclusions. These documents and the new Codes can be found at www.cap.org.uk.

2. Why have CAP and BCAP updated the Codes?

As the Code-owning bodies, CAP and BCAP have acted to fulfill their responsibility to keep the Codes up-to-date and easy to follow. Although rules have been revised or added over recent years, it has been more than eight years since the Codes were reviewed in their entirety.

This has been the first concurrent review of the broadcast and non-broadcast Codes and the first time the broadcast Codes have been reviewed by an organisation other than a statutory body.

The existing Codes continue to work well: ASA compliance surveys show time and time again that the vast majority of UK ads are legal, decent, honest and truthful. Nevertheless, as part of their commitment to ensure the highest standards in advertising, CAP and BCAP have undertaken a root and branch review of the Codes to make sure they are evidence based, take account of prevailing standards in society and, where necessary, reflect changes in the law.

3. What are the main new rules?

Because the present Advertising Codes are, in general, effective, well-understood and strike the right balance between freedom of expression and necessary restrictions, CAP and BCAP opted to maintain the protections those Codes provided.

Main changes (not exhaustive):

i. Easier to use

A single Broadcast Advertising Code – The existing four Codes have been merged into a single, user-friendly Code.

Clearer format – Key Code sections now contain an overarching principle and a simple, clean set of rules. Existing guidance has either been incorporated into a rule or will be provided in new separate, easy-to-link-to documents.

Greater consistency – the non-broadcast and broadcast Codes now share many of the same rules in key areas of the Code like misleading advertising, harm and offence.

In line with Better Regulation principles – the Codes are designed to be simple, user-friendly, proportionate, joined-up and effective.

ii. Enhanced Protection for Children

Data Collection – Rules to prevent marketers from collecting data from under 12s without obtaining the consent of their parent or guardian, and from under 16s about other people.

Direct Exhortation – New and revised rules that make clear the ways in which advertisers may fall foul of the ban on exhorting a child to buy a product or persuading adults to buy a product for them.

Computer and console games – New TV and radio scheduling restriction to prevent ads for age-restricted computer and console games from appearing around programmes made for, or likely to appeal particularly to, children. Radio ads will require central clearance. This is in line with the existing policy for age-restricted films and in response to the Byron Review.

Exploitation of trust – a new TV and radio rule preventing advertisements from exploiting the trust that children and young persons place in parents, teachers or other persons.

Explicit rules reflecting new legislation on the promotion of **infant and follow-on formula**.

iii. Social and Environmental Responsibility

Social Responsibility - Introduction of an overarching social responsibility rule for the first time in the broadcast Code, bringing it in line with the non-broadcast Code

Environmental claims - an additional explicit rule in the environmental section of the non-broadcast Code to prevent marketers from exaggerating the environmental benefits of their products and, new for TV, **an environmental claims section in the broadcast code** that reflect the requirements already in the radio and non-broadcast Codes.

A **dedicated 'lottery advertising'** section to cover the National Lottery and lotteries licensed under the Gambling Act. CAP and BCAP consider that all lottery ads should be subject to the same social responsibility rules regardless of their different regulatory status.

iv. Health

Nutrition and Health Claims made on Foods – the new Codes reflect the main provisions of a European Regulation, which prevents misleading claims about food products.

Traditional Herbal Medicines – the new Codes contain rules to regulate the advertising of these products to reflect their new regulatory status in the EU.

Photo-sensitive epilepsy – a new rule in the non-broadcast Code to protect people who might be harmed by flashing images (in line with an existing TV rule).

Condoms - the late-night scheduling restriction on condom advertising has been relaxed in response to evidence from the Independent Advisory Group on Sexual Health and in light of the UK having the highest teenage pregnancy rate in Europe. Ads will be kept away from younger viewers (U10s).

v. Consumer Protection

Free – clarification on the use of 'free' in marketing communications

Debt Advice – the non-broadcast Code now contains a specific requirement that debt advice ads should comply with OFT guidance

Sales Promotion rules to oblige marketers to be **clear about the number and nature of**

prizes, including about those that are *available* to win and those that are *guaranteed* to be won; ensure that recipients of ‘**instant wins**’ are able to access their **prize quickly and easily**

vi. Sector Specific Rules

CAP and BCAP have introduced or amended rules that might be particularly relevant to some sectors, but have not been detailed in this document in full. Advice and training will be available to advertisers in the coming months. Please visit www.cap.org.uk for more details.

Comparative charity ads – the charity sector will now be able to air comparative ads (ads that compare one charity with another) on TV and radio subject to the long-standing and strict rules governing comparative advertising.

Adult material – Advertisements for adult material (magazines, films etc) may be broadcast for the first time, but **only** on adult entertainment channels that are accessible through mandatory PIN access controls.

Betting Tipsters – are currently allowed to advertise on TV Text services, but will now be permitted to advertise on TV and radio for the first time subject to a dedicated and comprehensive set of rules that ensure they do not mislead the audience.

4. What is not included in the new Codes?

Extending the Digital Remit of the CAP Code

In its consultation, CAP clarified the existing online remit of the Code which covers paid-for advertisements and sales promotions on websites. However, the consultation did not contain proposals to extend the Code’s remit to cover marketers’ own marketing communications on their own websites. This was because this was the subject of a separate project being considered by the wider advertising industry, led by the Advertising Association, at that time.

On 8 March 2010 the advertising industry recommended an extended online remit to CAP, along with new enforcement powers and a mechanism to fund its regulation. This would allow the Advertising Standards Authority to apply the Code to online marketing communications that currently sit outside their remit for the benefit of consumers, children and industry.

CAP will now assess the practicalities of the recommendations, with the aim of bringing the new remit into effect as soon as possible, later in 2010.

Post-conception advice services

On 1 March 2010, BCAP publicly announced that it identified, with Ofcom, some outstanding matters for further discussion on the proposal for post-conception advice services. Both parties agreed that this should not delay the launch of the new Broadcast Advertising Code. BCAP wrote to those parties who responded to the consultation informing them of the decision. A separate statement will be made in due course. BCAP’s announcement can be found at www.cap.org.uk.

5. What happens now that the Codes have been launched?

There will now be a period of grace for advertisers and media owners to adjust to the new rules. The new Codes will apply to all advertisements from 1 September 2010. In the meantime, the existing Codes will continue to apply in their entirety.

CAP and BCAP will be embarking on a training and awareness programme to bring the industry up to speed with any significant changes that may impact on them. Details of the programme will be announced in the coming weeks. For further information on the available training and guidance, visit the CAP Services section at www.cap.org.uk.