

## SECTION 13: WEIGHT CONTROL AND SLIMMING

**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?

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| <p><i>Responses received in favour of CAP's proposal from:</i></p> <p>Advertising Association; Archbishops' Council, Church of England; Asda; Bayer Plc; Combe International; Institute of Practitioners in Advertising (IPA); Proprietary Association of Great Britain (PAGB); Kraft Foods UK and Ireland; A company; An individual</p> | <p><i>Summaries of significant points:</i></p> <p>These respondents (left) supported CAP's proposal.</p> <p><i>The Medicines and Healthcare Products Regulatory Agency (MHRA) agreed and noted that the MHRA and EMEA take into account the professional support required before licensing any product for the treatment of obese people available through pharmacies.</i></p> | <p><i>CAP's evaluation of those points and action points:</i></p> <p>CAP welcomes the respondents' support of its proposal.</p> |
| <p><i>Responses received against CAP's proposal:</i></p>   | <p><i>Summaries of significant points:</i></p> <p>1. <i>Which?</i> said it remained to be convinced that it</p>  | <p><i>CAP's evaluation of those points and action points:</i></p> <p>CAP must balance the need to protect the</p>               |

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| British Nutrition Foundation; Which?   | <p>is safe to target ads for non-prescription medicines that require the involvement of a pharmacist in the sale or supply of the medicine to people who are obese. Pharmacists are not doctors and although they can advise about side effects, they do not take account of previous medical / family history or assess mental suitability before dispensing treatments.</p> <p>2. <i>British Nutrition Foundation</i> said it is concerned that a pharmacy might not offer sufficiently controlled advice and does not provide the opportunity to measure relevant health markers such as blood sugars, triglycerides or cholesterol, and as such would recommend that consumers are encouraged to visit their GP or a dietitian before considering weight loss medications.</p> | <p>audience against the right of advertisers to promote their products without undue constraint. Because the MHRA and EMEA take into account the safety of medicinal products and the professional support required before licensing any product for the treatment of obese people through pharmacies, CAP is content that sufficient safeguards are in place to ensure that the audience is protected and the advertisement of 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, is not unduly prohibited.</p> |
| <p><i>Other</i></p> <p>Alliance Boots; British Retail Consortium (Consumer Affairs Policy Group); Cambridge Health and Weight Plan (CHWP); Charity Law Association; LighterLife; A Company; Very Low Calorie Diet Industry</p> | <p><i>Alliance Boots</i> accepted that a body mass index of 30+ is an accepted standard for defining obesity but, with the British Retail Consortium, argued that BMI is not a reliable measure of obesity. They stated there are dangers in using BMI to differentiate acceptable from unacceptable advertising.</p>  | <p>CAP considers – for the reasons set out in the consultation document - it is necessary, for the purpose of preventing harm, to differentiate between a target audience that is overweight and a target audience that is obese. An advertiser can target an audience that is obese by, for example, linking – explicitly or implicitly – a slimming product with someone that is or appears to be obese. Whilst a 30+ BMI might be an unsatisfactory measure of obesity for a variety of reasons, it has and continues to work well as a rule-of-thumb to determine the acceptability or</p>                                   |

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| <p>Group</p> | <p><i>LighterLife</i> said it agreed with CAP's policy: to ensure that people who respond to marketing communications are properly assessed to gauge their suitability for the programme at each stage of the programme and thereby avoiding, as far as possible, the potential for harm. CHWP, the Very Low Calorie Diet Industry Group and <i>LighterLife</i> UK said that the exemption – for targeting the obese - should be broadened further to VLCDs – a food product falling under the European Directive on Food for Particular Nutritional Uses. VLCDs should be allowed to advertise if they are offered under the supervision of a specially trained counsellor to people who are obese. <i>LighterLife</i> added that stricter criteria should apply to medical products, and not to foods. The Very Low Calorie Diet Industry Group said there is no obvious reason why food products, especially those which are designed to meet daily nutritional requirements and are supervised by trained counsellors, should be treated more strictly than medicines. The Very Low Calorie Diet Industry Group questioned why food products sold by trained counsellors cannot be targeted at obese people, like non-prescription medicines.</p> <p><i>A Company</i> said it supported the idea that ads for</p> | <p>otherwise of persons appearing in ads for slimming products.</p> <p>CAP has proposed to allow ads for non-prescription medicines that are indicated for the treatment of obesity to target the obese because the MHRA and EMEA take into account the safety of medicinal products and the professional support required before licensing any product for the treatment of obese people through pharmacies. The respondents have not provided evidence to suggest that all VLCDs fall under an equivalent regulatory regime that controls the products entry into the market AND their sale or supply to the public through a suitably qualified health professional; CAP accepts that some suppliers of VLCDs may employ suitably qualified health professionals in the sale or supply of the product, in which case, ads for those products / services may target the obese. For the avoidance of doubt, services that offer to treat obesity (including through the provision of VLCDs) under suitably qualified supervision may target the obese.</p> <p>CAP has allowed ads for non-prescription</p> |
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|  | <p>proven, safe and effective methods for helping those who are obese to lose weight should be allowed to be targeted at this group. It said weight loss programmes that: i) long-established, without negative side effects ii) effective as evidenced by large, long-term randomised clinical trials iii) recommended by national health authorities etc.</p> <p>A <i>company</i> said weight loss companies should be allowed to compete on a level playing field with ads for pharmaceutical and surgical methods so that consumers can be properly informed about appropriate choices that are available to them.</p> <p>A <i>company</i> said ads for certain weight loss programmes should be able to target people who are obese. Any concerns about particular medical conditions could be mitigated through warnings and disclosures included within the relevant marketing materials.</p> <p>A <i>company</i> said the ban on featuring in ads people who are, have been or appear to be obese (BMI of 30+) unfairly prevents companies from giving an accurate account of people who benefit from weight loss programmes; many of which have a BMI of 30+.</p> | <p>medicines that are indicated for the treatment of obesity to target the obese because the MHRA and EMEA take into account the safety of medicinal products and the professional support required before licensing any product for the treatment of obese people through pharmacies. The respondent has not provided evidence to suggest that other <i>categories</i> of weight loss or weight control products – that may be used for the treatment of obesity - fall under a regulatory regime that controls their entry into the market AND their sale or supply to the public through a suitably qualified health professional; to that end, CAP considers it is not merited to grant a further relaxation to the ban on targeting the obese.</p> <p>People who are obese might have other chronic conditions such as diabetes or coronary heart disease, which would render some slimming or weight control products and services unsuitable for them. In recognition of that fact, the present CAP Code states that only treatments used under suitably qualified supervision may target obese people. That policy ensures that people who respond to those advertisements are appropriately assessed to gauge their suitability for the advertised treatment at each stage of the treatment and thereby avoid, as far as possible, the potential for harm.</p> <p>CAP notes the respondent's comments about the</p> |
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|   | <p>inclusion of warnings or disclosures. In line with rule 12.2, CAP considers, “Marketers must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional.” The extent to which a simple warning or disclosure does or does not discourage essential treatment for a condition for which medical supervision should be sought must be considered on a case-by-case basis.</p>   |
| <p><i>Charity Law Association</i> said people that are overweight may not be aware of their own BMI and are unlikely to know how to ascertain their BMI. They may not even acknowledge that they are overweight or obese.</p> <p><i>Charity Law Association</i> said Rule 13.2 should be amended in its second sentence to read:</p> <p><i>“Marketing communications for non-prescription medicines that are indicated for obesity or other weight loss and that require the involvement of the pharmacist ...”</i></p> | <p>CAP’s rule does not prevent people who are obese – knowingly or not - from responding to ads for slimming or weight control products. It does, however, prevent advertisers from irresponsibly targeting people who are obese (unless the product advertised is offered under suitably qualified supervision).</p> <p>CAP considers the <i>Charity Law Association's</i> wording would allow medicines which are only targeted for those who are overweight to also advertise for weight loss in those who are obese. However, the requirement to comply with the medicine’s SPC would prevent that from happening in practice. CAP considers the respondent’s suggestion does not merit a change</p> |

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|  |  | to its rule.  |
| <p><b>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?</b></p> |  |   |
| <p><i>Responses received in favour of CAP's proposal from:</i></p> <p>Advertising Association;<br/>Archbishops' Council, Church of England; Asda;<br/>British Nutrition Foundation; Charity Law Association;<br/>Institute of Practitioners in Advertising (IPA);<br/>Kraft Foods UK and Ireland; Proprietary Association of Great Britain (PAGB); An individual</p>   | <p><i>Summaries of significant points:</i></p> <p>These respondents (left) supported CAP's proposal.</p> | <p><i>CAP's evaluation of those points and action points:</i></p> <p>CAP welcomes the respondents' support of its proposal.</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>   |

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| None   |  |   |
| <p><i>Other</i></p> <p>British Nutrition Foundation; Charity Law Association</p>   | <p><i>British Nutrition Foundation</i> agreed with CAP's proposal. However, it pointed out that the surgical removal of fats is not recognised as a method of substantial weight loss, but rather for the removal of small fat deposits that do not respond to diet and exercise. It is important that advertising communications reflect this and do not promote the surgical removal of fat from the body as a way of reducing overall body weight or body fat.</p> <p><i>The Charity Law Association</i> agreed but said rule 13.9 unduly prohibited ads for products which could legitimately enable a user to lose a precise amount of weight within a stated period.</p> | <p>CAP considers these rules in the proposed Code provide the safeguards sought by the respondent:</p> <p><b>3.1</b><br/>Marketing communications must not materially mislead.</p> <p><b>3.3</b><br/>Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner</p> <p>CAP considers the rule appropriately exempts surgical clinics, establishments and the like from the ban on claims about fat loss from specific parts of the body. It has not been presented with evidence from respondents to suggest the exemption is disproportionate.</p> |
| <p><b>Question 42: Given CAP's policy consideration, do you agree that rule 13.7:</b></p> <p>“Marketers promoting Very Low Calorie Diets or other diets that fall below 800 kilo-calories a day must do so only for short-term use and must encourage users to take medical advice before embarking on them. Marketers should refer to the Guidance on “Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children”</p> |  |   |

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| <p>(2006) published by the National Institute for Health and Clinical Excellence.”</p> <p><b>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?</b></p> |   |  |
| <p><i>Responses received in favour of CAP’s proposal from:</i></p> <p>Advertising Association; Asda; Archbishops’ Council, Church of England; British Nutrition Foundation; Charity Law Foundation; Cambridge Health and Weight Plan (CHWP); Institute of Practitioners in Advertising (IPA); Kraft Foods UK and Ireland; Proprietary Association of Great Britain (PAGB); An individual</p>  | <p><i>Summaries of significant points:</i></p> <p><i>CHWP and the Very Low Calorie Diet Industry Group</i> agrees but note that the COMA report covers formulation issues, which CHWP and the Industry Group of which it is a member (the Very Low Calorie Diet Industry Group), applies as best practice. It fears that new companies entering the market would no longer feel compelled to apply the formulation suggestions contained within COMA.</p> | <p><i>CAP’s evaluation of those points and action points:</i></p> <p>The CAP Code applies to marketing communications for products and not the products themselves. The formulation of low and very low calorie diets is not principally a matter for CAP. CAP’s rule, 13.7, is intended to ensure that <i>marketing communications</i> for VLCDs that fall below 800 kilo-calories are in line with NICE’s publication on obesity.</p> <p>CAP’s proposed rule states: Marketers should <i>refer</i> to the Guidance on “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.” Because ‘refer’ might be interpreted as ‘refer within the marketing communication’, and that is not CAP’s intent, CAP has reverted to the present wording:</p> <p>“Marketers promoting Very Low Calorie Diets or other diets that fall below 800 kilo-calories a day</p> |



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|   |  | must do so only for short-term use and must encourage users to take medical advice before embarking on them. Marketers should <del>refer</del> <b>have regard</b> to the Guidance on “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.” |
| <i>Responses received against CAP's proposal:</i><br><br>None   | <i>Summaries of significant points:</i>  | <i>CAP's evaluation of those points and action points:</i>   |
| <i>Other</i><br><br>Cambridge Health and Weight Plan (CHWP); LighterLife; Very Low Calorie Diet Industry Group                | <i>CHWP, the Very Low Calorie Diet Industry Group and LighterLife UK notes that NICE guidance suggests VLCDs less than 600kcal/day should only be used under “clinical supervision” but does not offer a definition of “clinical supervision” leading to a lack of clarity for companies wishing to advertise their products. CHWP does not believe the ASA is the appropriate body to provide such a definition; NICE should provide that definition.</i> | CAP notes the respondents concerns and has made them known to NICE.  |
| <b>Question 43:</b><br>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?

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?

iii) Do you have other comments on this section?

*Responses received from:*

Advertising Association;  
Cambridge Health and Weight Plan (CHWP); Food Standards Authority;  
the Health Food Manufacturers' Association;  
LighterLife;  
Sainsbury's Supermarket Limited;  
an organisation

*Summaries of significant points:*

The *Advertising Association* alerted CAP to a significant inaccuracy within the proposed rules. Under 'Definitions', the text incorrectly cross-references the sections on Medicines, Treatments, Devices and Health.

*CAP's evaluation of those points and action points:*

CAP agrees. The definition should read:

#### **Definition**

This Section applies to marketing communications for weight control and slimming foodstuffs, aids (including exercise products that make weight-loss or slimming claims), clinics and other establishments, diets, medicines, treatments and the like. If applicable, they must comply with Section 12, (Medicines, **Treatments**, **Medical Devices**, and **Health**)-related Products and ~~Beauty Products~~, and Section 15, (Food, Dietary Supplements and Associated Health and Nutrition Claims).

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|  | <p><i>CHWP</i> notes that the Nutrition and Health Claims made on Foods Regulation 2007 prevents rate or amount of weight loss claims being made on foods. It questions why non-food products are allowed to make those claims, which gives advertisers of those products an unfair commercial advantage.</p> <p><i>The BRC and Sainsbury's Supermarkets Ltd</i> commented on rule 13.10.1, which prevents health claims in marketing communications for food products that refer to a rate or amount of weight loss. Referring to the FSA's Guidance (question 36), the BRC and Sainsbury's Supermarkets Ltd stated the Codes should reflect that reference to terms such as 'rapid' or 'fast' could be used: <i>"In the absence of case law, it is difficult to make categorical assertions about the scope of this prohibition. Reference to periods of time alone, particularly in more general terms such as "rapid", "fast", etc should not mislead consumers, but may not be subject to this prohibition.</i></p> <p><i>When considering compliance with this provision context will often need to be considered. For</i></p> | <p>The NHCR relates to claims made on foods. Rule 13.10.1 states: "Health claims in food product ads that refer to a rate or amount of weight loss are not permitted". The NHCR does not apply to other types of slimming or weight control products, which may – through marketing communications for them - make rate or amount of weight loss claims if they are substantiated and responsible.</p> <p>CAP has a responsibility to ensure the CAP Code does not conflict with the law. CAP considers the FSA Guidance is helpful and stakeholders are advised to consult it: however, it does not bind the ASA Council or CAP Compliance and Monitoring team. The existing rules on slimming and weight loss have been easily interpreted and applied over many years by stakeholders. The ASA and CAP have an established position on 'rapid' and 'fast' weight loss claims for a variety of slimming and weight loss products, including foodstuffs. Additionally, the ASA and CAP are experienced in assessing the context of an advertisement and have on numerous occasions adjudicated on before and after photographs that depict a rate or amount of weight loss that is not compatible with good medical or nutritional practice.</p> |
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|  | <p><i>example, personal experiences and before and after photographs that can be substantiated and which are presented in a way that does not imply a guarantee of effect for the average consumer and which make no reference to an amount of weight or an amount of weight over a period of time, are probably beyond the scope of this prohibition. However, they are likely to be caught by the definition of health claim and as such may need to be either subject to a specific authorisation, or, as the case may be, under the provisions in Article 10(3) accompanied by an authorised claim.</i></p> <p>An <i>organisation</i> said there are very strong public policy reasons for CAP and BCAP, in consultation with MHRA and the Department of Health, to reconsider their approach on ads targeting the obese.</p> <p><i>CHWP</i> and the <i>Very Low Calorie Diet Industry Group</i> said responsible ads for weight loss products should be able to target the obese, especially against the background of a major public health crisis. <i>LighterLife</i> added that NICE acknowledge there is a place for commercial weight loss programmes to help the Government in tackling obesity.</p> | <p>CAP must balance the need to protect consumers against the right of advertisers to promote their products without undue constraint. Increasingly, that balance cannot ignore the issue of obesity in the UK. It is against that back-drop that, in April 2009, the EMEA and the MHRA licensed the first diet pill available to buy in the UK without a doctor's prescription; albeit that it requires a pharmacist to be involved in its sale or supply.</p> <p>In its evaluation of responses to the Slimming and Weight Control section, CAP has not been persuaded to grant further exceptions to the targeting of ads to people who are obese. It has not been presented with evidence that other <i>categories</i> of weight loss or weight control products fall under a regulatory regime that controls their entry into the market and their sale</p> |
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|  |  | <p>or supply to the public to the extent that they may be safely used without the need for supervision by a suitably qualified health professional.</p> <p>As new evidence arises in any area of the Code, CAP will review it.</p> |
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