

Cambridge Health and Weight Plan (CHWP) would like to thank you for the opportunity to comment on the Committee on Advertising Practice (CAP) consultation on the revision of the CAP code.

We very much welcome this revision of the CAP code to ensure that its rules remain up-to-date and fit for purpose.

CHWP offers a variety of weight management options, including a Very Low Calorie Diet (VLCD) programme, for those who are overweight and clinically obese. We believe that commercial weight management organisations, such as CHWP, can play an important role in supporting health services in tackling the obesity problem. Several primary and secondary care environments in England already use the VLCD programme, which is also available within the wider community as a referral option.

Flexible programme options are offered between 415 kcal/day and 1500 kcal/day, all using a nutritionally balanced formula food as the foundation. Re-education towards longer term healthy eating habits, behavioural change and feedback to health professionals, as appropriate to each individual, are common to all programmes.

Please find below our specific comments:

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?

CHWP appreciates this step in the right direction to allow people that are obese to be targeted. However we feel that the CAP should be consistent in its thinking. If non-prescriptive medicines will be allowed to target obese people, then surely non-medical products should also be allowed to target people who are obese, especially when the sale of those food products is monitored by trained counsellors.

We would like to point out that this rule now effectively puts food products intended for weight loss, such as VLCDs, in the position of facing stricter requirements for advertising than medicinal products. After all VLCDs, while falling under the European Directive on Food for Particular Nutritional Uses, remain a food product and not a medical product. They are food products, for a particular nutritional use, which comply with all relevant legislation and provide daily essential nutrients to give effective weight loss at predictable rate. People using a VLCD receive advice from specially trained counsellors on which programmes are available and how to use them properly.

Therefore, there seems to be no reason why products such as VLCDs could not be offered under the supervision of a specially trained counsellor to people who are obese.

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?

CHWP agrees that the rules should be updated to include the most up-to-date guidance on VLCDs.

However, we would like to note that, while the NICE guidance suggests that VLCDs less than 600kcal/day should only be used under "clinical supervision", the guidance itself does not actually provide a definition of what this means, leading to a lack of clarity for companies wishing to advertise their products. A proper definition of what constitutes "clinical supervision" would be needed, if the ASA intends to measure against it. However, Cambridge does not believe the ASA is the appropriate body to provide such a definition.

In addition to the above, we would also like to point out that the NICE guidance does not cover formulation issues, unlike the COMA Report, which does. Cambridge fears that by removing the reference to COMA completely, new companies entering the market may not feel compelled to apply the formulation suggestions contained within COMA, which are considered best practice by Cambridge and the Industry Group we are a Member of.

It is also worth noting that CHWP strongly encourages participants in their VLCD programmes to seek medical advice before commencing the programme. All of Cambridge's counsellors have received detailed instruction on contra-indicated medical conditions and medications so that they are well-placed to screen clients throughout the programme. If needed, the counsellor will also ensure that relevant issues are raised with the client's general practitioner.

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?

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?

iii) CHWP would like to make the point that Very Low Calorie Diets are not only completely legal food products complying with the applicable legislation in place. They are also scientifically sound and are grounded in up to date research and substantiated by rigorous trials on people. They are very efficient weight loss tools especially designed for those people that are obese, providing them with the necessary daily amount of essential nutrients for wellbeing and optimum health whilst following a programme.

As re-education towards longer term healthy eating habits and behavioural change are essential elements of all CHWP programmes, these products offer a real chance to help obese people achieve significant weight loss and, more importantly, also sustain it in the long term, and thereby improve their overall health and reduce their chance of suffering from obesity related illnesses.

As the prevalence of obesity is increasing, it is almost impossible that advertising for such products will not reach the obese. Furthermore, this rising prevalence of obesity means it is important that responsible adverts for weight loss products should be able to target the obese, as a way of helping to tackle a major public health crisis. Some individuals may even be prompted by seeing the adverts to realise that they have a weight problem and that there are tools available to assist them with their weight management.

Given the rising costs of ill-health associated with obesity, it simply does not make sense that responsible advertisers cannot inform obese people about the existence of these products.

In addition to the more general remarks above, we would also like to comment on new rule 13.10.1, implemented to comply with the Nutrition and Health Claims Regulation.

While we fully understand that this rule merely reflects law and therefore the change was necessary, it does seem to give rise to discrimination between food based programmes and non-food based programmes. Following this new rule, non-food based programmes are able to continue to make a rate or amount of weight loss claims. While as stipulated, a food-based programme is no longer able to do so. This provides non-food programmes with a commercial advantage over food programmes. However, the purpose and advertised intent of food programmes is the same as for non-food programmes. In addition, from a consumer's point of view, no difference is perceived - both programmes are equal tools to them to lose weight, but both tools are not given equal access to that same consumer.

Section 15: Food, Dietary supplements and Associated Health and Nutrition claims

Permitted nutrition and health claims

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.

CHWP agrees that this is a correct interpretation of the requirements of Article 12(b) of the NHCR.

However, we would strongly suggest that the ASA liaises with the local Trading Standards Office of the company, whose advertising it is scrutinising. We feel this TSO involvement is necessary as they are the enforcement agency in charge of the correct implementation of the Nutrition and Health Claims Regulation. As a legitimate and responsible company, we liaise on a permanent basis with our TSO, to ensure that we comply with all applicable rules, including those on rate or amount of weight loss claims.

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?
- 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?
- iii) Do you have other comments on this section?

We would like to repeat that while CHWP agrees that rules 15.6 and 15.6.6 are a correct interpretation of the requirements of the NHCR, we question why these rules apply to food products but not equally to non-food products such as slimming clubs. The purpose and advertised intent of food products is the same as for non-food products, and so the fact that the rules do not apply to both equally, gives the non-food products a commercial advantage over food products. CHWP sees no reason why the same rules should not be applied to all weight loss products/programmes equally.

I have pleasure in attaching Camelot Group's response to the CAP/BCAP consultation on the proposed revision of the Advertising Codes.

We have been liaising with BCAP about the Codes for some considerable time and at considerable length. In this latest consultation, BCAP made it clear that it did not wish us to re-visit the case we put the last time around. While it is impossible not to allude to some of our arguments in this current response, we have tried as far as possible not to repeat in detail the case we have previously made and instead concentrated on answering the specific questions posed.

We nevertheless believe that as a matter of record it is important that this response should be accompanied by a paper which Camelot sent to BCAP in November 2007 which sets out our detailed reasons for objecting to The National Lottery being included in the way proposed in the revised Codes. The document also gives details of our previous correspondence and submissions on this issue and we continue to rely on the points made in these exchanges. The November 2007 paper is therefore attached, as is our response to the current consultation.

Camelot Group plc's response to the Consultation on the CAP and BCAP Codes – June 2009

Introduction

As the CAP/BCAP consultation document makes clear, revision of the advertising Codes to accommodate the requirements of the Communications Act 2003 and of the Gambling Act 2005 has been under active consideration since 2006. As part of that process, the regulator of The National Lottery (TNL), the National Lottery Commission (NLC), and the operator, Camelot, have been involved in detailed discussions with BCAP.

We have concentrated our remarks on the BCAP provisions. So far as we are aware, there has been no change to the non-broadcast provisions as stated by CAP in correspondence with Camelot dated 20 December 2006, in which it stated:

“CAP recognised the Gambling Act 2005 provides no explicit public policy mandate to include the National Lottery in the proposed CAP gambling rules.”

Camelot took the view that the current regime for regulating National Lottery advertising has always worked extremely well. There is no evidence of the existing system having failed to protect players, and, crucially, the current rules reflect the special status of TNL as determined by Parliament. It therefore argued that there were powerful policy and legal reasons for retaining a structure that broadly reflected the status quo – i.e. in addition to its general provisions, BCAP should maintain its existing but light-touch National Lottery-specific rules; (these are covered in more detail in our response to Question 105). At the same time, the NLC should continue to regulate TNL through the detailed Advertising and Sales Promotion Code of Practice (*‘the Lottery Code’*), which is a Licence requirement. The NLC recognised that the liberalisation of gambling advertising had properly resulted in a re-consideration of the position of TNL and accepted that, in principle, it was appropriate for there to continue to be separate, lottery specific provisions within the new BCAP Code. The NLC made clear, however, that it believed that the existing lottery specific provisions of the Code should only be extended where there was a clear case for doing so.

In an attempt to reach agreement, and in recognition of BCAP's duties and responsibilities under the Communications and Gambling Acts, Camelot argued that if BCAP were to recommend the inclusion of TNL in the new Code, then it should not be as part of the general gambling provisions, nor should it be placed in a separate section covering lotteries

- i.e. Society and Local Authority Lotteries (SLAs). Rather, if BCAP were to recommend extending the rules to include TNL it should be in a discrete National Lottery section. Camelot's reasons for continuing to advocate this course are outlined in this response.

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After protracted discussions among and between all the parties involved, we remain of the view that no compelling case for change has been made. **Our overriding concern about the proposal is that CAP/BCAP's desire to embrace the better regulation principle of consistency has not been adequately balanced against the better regulation principle of proportionality.**

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?

Answer

While we support consistency as a principle of good regulation, we do not believe that in this case it will be achieved by applying the same rules to lotteries that are quite different in scale and character, and the subject of separate and distinct Acts of Parliament.

The National Lottery and SLAs share a definition of their activity as a lottery and a responsibility to raise money for good causes. However, in other characteristics, they are not at all similar. We would suggest that there is not so much any inconsistency in treatment between TNL and other lotteries, but rather differing needs arising from major differences in audiences, media usage and scale of operation. That is why in our discussions with BCAP we have argued that TNL should have its own stand-alone section and not be bracketed with SLAs, for the following reasons:

- (i) TNL and SLAs are governed by different legislation. TNL is subject to the National Lottery etc Act 1993 (as amended) and is specifically excluded from most of the Gambling Act 2005, whereas SLAs are specifically subject to the Gambling Act. The special status of TNL has always been recognised by Parliament and upheld by successive governments. For example, the DCMS *Decision document on National Lottery Licensing and Regulation*, of July 2003, stated that... "*the unique support that it (TNL) provides for good causes has led the Government to conclude that it should not be exposed to direct competition that could undermine its role.*"
- (ii) TNL and SLAs are regulated by different bodies; the NLC and the Gambling Commission respectively. The priorities of the NLC differ from those of the Gambling Commission. The Gambling Commission has a duty to allow gambling to expand and develop in new ways even when new products may compete directly with TNL.

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By contrast, the NLC's first priority is to ensure that any product developed as part of TNL must be safe for all, not just for children and the vulnerable. This regulatory demarcation

was deliberate and has been successful in delivering a fair and a prosperous National Lottery and a thriving society lotteries sector.

- (iii) TNL has a dedicated regulator to ensure that issues of propriety and player protection – including the conduct of advertising – are properly dealt with as part of a comprehensive system of oversight and regulation. This close scrutiny sets TNL apart from sectors regulated by the Gambling Commission. SLAs are not subject to the same intensity of regulation.
- (iv) TNL is subject to other safeguards, primarily through licence conditions, which include a requirement for an Advertising and Sales Promotion Code (*the Lottery Code*), which the NLC approves and enforces. The Code is reviewed annually under the terms of Section 5 of the Licence. This is not the case for SLAs, which are wholly regulated by BCAP Codes.
- (v) TNL has nearly 15 years of experience in mass media advertising and other promotional activities which have been conducted to high standards of propriety. As yet, there is no such track record within the gambling industry and we believe the approach to TNL should reflect the responsibility it has demonstrated in this area over a prolonged period.
- (vi) The scale of operation of TNL and SLAs is radically different and they have marketing expenditure to match. As a consequence, their requirements of broadcast advertising codes are very different. For example, the question of whether a lottery can or cannot advertise during *Coronation Street* is likely to be of hypothetical interest only to SLAs, whereas it is a critical question for TNL.
- (vii) SLAs enjoy a number of commercial freedoms which TNL does not. For example, there is no restriction on the frequency of draws held by SLAs in traditional manned retail environments, whereas TNL is limited to hourly draws. SLAs are also able to vend unmanned and TNL is not.
- (viii) Because of the unique status of TNL it is conceivable that at some point it may be desirable to make changes to the Code. While there would need to be a wide consultation, it would be a benefit for BCAP to have the flexibility to change requirements as they affect TNL exclusively. Equally, it could potentially be very frustrating for SLAs to be caught up by Code changes that are designed to impact on National Lottery advertising only, and vice versa.

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Consistency; age of appeal of content

Question 107

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+?

Answer

In acknowledging BCAP's argument that it would be impractical to ask the ASA Council to distinguish between content of particular appeal to under 16s and content of particular appeal to under 18s, because such an assessment is subjective, on balance the NLC concluded that the minimum age of appeal (for National Lottery advertisement content, or restrictions on the scheduling or placement of advertisements) should be 18.

Camelot, on the other hand, took the view that the expansion of the BCAP rules would be disproportionate to the perceived regulatory problem. The principle of proportionality requires that the means used to attain a given end should be no more than what is appropriate and necessary to attain that end. Where consistency of treatment is appropriate, Camelot said there was sufficient consistency of treatment in the present 'side-by-side' operation of *the Lottery Code* and the existing BCAP provisions.

National Lottery products can be purchased legally by those who are 16+ and no case has been made or evidence provided to suggest that the current minimum age of 16 has led to any detriment. In seeking to be consistent in its own Code, BCAP has recommended the creation of a significant inconsistency between its provisions and those of *the Lottery Code*. This illustrates the pitfalls of dual regulation and of conflating the rules applying to two very different lottery sectors. Should the recommendation be implemented the only way to assure consistency would be for the NLC to drop the age related provisions from its Code entirely.

An adequate system for preventing harmful National Lottery advertisements is already in place which operates in the same field and is regulated to a comparable level of detail.

There is no mischief that needs solving because there is no evidence that the existing age restrictions applied to TNL are a cause for concern. The whole basis of better regulation is a requirement for a thorough risk assessment. This has not, so far as Camelot is aware, taken place and no risks have been raised to justify change.

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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?

Answer

We think it is wholly disproportionate to increase the content rules on the age of persons featured in lottery advertisements to 25. Not only does this proposal fail to reflect that lotteries have different age limits to those set for other forms of gambling (for which this rule was developed), but it also fails to take account of the fact that the present rules for advertising of TNL in this regard have been in place for nearly 15 years and have not led to any significant public concern or regulatory action.

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 and should be applied to broadcast advertisements for the National Lottery as they presently are to broadcast advertisements for other lotteries?

Answer

We support BCAP's general policy objectives as outlined in Part 1 (4) of the consultation document. We note, however, that at 4.x it states that: "*BCAP considers that users of the*

Code should feel confident that the Code does not conflict with the law or otherwise undermine it.”

Parliament has consistently separated TNL from other forms of gambling. This separation is not just in terms of regulatory structure, but is also reflected in different regulatory and public policy principles. This is one of the main reasons we have argued in favour of TNL having a stand-alone section in the revised Code rather than being grouped with SLAs. Moreover, a number of BCAP’s recommendations for aligning TNL more closely with the rules covering SLAs in effect align all lotteries much more closely with harder forms of gambling. For example, the proposals on age restrictions (see Questions 106 and 107) are identical to the general gambling provisions. This was never Parliament’s intention. The Government has always been explicit that the regimes applied to TNL and to the gambling sector should differ. In ‘A Safe Bet for Success’, published in 2002, it says:

“5.3 – While the National Lottery clearly involves gambling, the unique support which it provides for good causes has led the Government to

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conclude that it should not operate on the same playing field as other kinds of gambling.”

We are therefore concerned that an unintended consequence of ‘tidying up’ the new Code would be to blur the clear distinction that has always existed between TNL and the gambling sector. This may not conflict with the law but we think it breaches and undermines its spirit.

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?

Answer

We think that while this provision may be appropriate for gambling products, it would be inappropriate to extend it to National Lottery play. As BCAP recognise, syndicates have been operated by groups of colleagues in a working environment for many years, with no apparent detriment.

Other questions

Question 10

(i) Taking into account BCAP’s policy consideration, do you agree that BCAP’s rules on Gambling and Lotteries are necessary and easily understandable?

Answer

As we have explained in this paper, we do not think TNL should be grouped with SLAs for the purpose of harmonizing the level and extent of the exceptions to the BCAP gambling advertising rules that are granted to all lotteries, and we remain vigorously opposed to the extent to which the proposed new rules move TNL squarely into restrictions applied to the gambling sector.

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BCAP TV AND RADIO RULES APPLYING TO THE NATIONAL LOTTERY: Camelot comments

1.0 INTRODUCTION

1.1 At a meeting between BCAP, the NLC and Camelot on 11 October 2007, Camelot agreed to write to BCAP reflecting on possible further changes to the current BCAP

Code as it affects The National Lottery in advance of the next BCAP meeting on 23 November 2007.

- 1.2 Camelot's understanding is that a review of rules relating to The National Lottery has been triggered by the requirement to create codes for the liberalised gambling sector, which is able to advertise on broadcast media for the first time. Camelot responded to CAP/BCAP's consultation on new draft Codes for the gambling sector, which closed on 15 September 2006 and provided a further paper dated 9 November 2006 for the joint CAP/BCAP Committee.
- 1.3 The publication in March 2007 of new CAP/BCAP Codes for the gambling sector, which were approved by Ofcom, did not include National Lottery advertising.
- 1.4 We understand that the Advertising Advisory Committee (AAC) nevertheless advised BCAP to revisit National Lottery advertising and to make further recommendations, primarily to ensure that Ofcom was discharging its responsibilities under section 3 of the Communications Act 2003, particularly in relation to the duty of consistency. BCAP has not put any specific proposals to us; rather we and the NLC have again been invited to share our thoughts on the possibility and desirability of change.
- 1.5 We understand that two possible candidates for consideration may be the inclusion of National Lottery advertising in the gambling-specific Codes (which has recently been consulted on and rejected), or the expansion of existing Lottery-specific section that closely mirrors and reflects the gambling provisions.
- 1.6 Camelot has always maintained that the current regime for regulating National Lottery advertising works extremely well, has never caused a problem and, crucially, reflects the special status of the Lottery as determined by Parliament. That is why we continue to argue vigorously that there are overwhelming policy and legal reasons for retaining a structure that broadly reflects the status quo, i.e.: (in addition to its general provisions) BCAP maintains its existing but light touch National Lottery-specific rules. At the same time, the NLC continues to regulate the National Lottery through the detailed Advertising and Sales Promotion Code of Practice ("the Lottery Code"), which is a Licence requirement.
- 1.7 In an attempt to find an amicable and workable solution to what other parties may perceive to be a problem, Camelot has identified and examined several other options. These are outlined briefly in section 2.0 and considered in more detail in section 3.0. After lengthy and exhaustive consideration, we have concluded that maintenance of the status quo remains the most appropriate course of action. Thus far we have neither seen nor heard a compelling case for change.

2.0 OPTIONS

Summary of the case for change

- ⌚ The Ofcom/CAP/BCAP review of the regime was triggered by implementation of the Gambling Act 2005, which required revision to the advertising codes as they relate to gambling

- ⌚ The Act does not, however, provide for regulation advertising of The National Lottery, which is not “gambling” under the terms of the Act
- ⌚ Current arrangements have worked well for 13 years – i.e. have preserved the distinction between The National Lottery and the gambling sector and, because the sector-specific BCAP code for the Lottery is very limited, have not exposed the Lottery to dual regulation and double jeopardy (which would seem to run counter to best regulatory practice)
- ⌚ There is significant strategic risk to public policy objectives in aligning the Lottery more closely with the gambling sector
- ⌚ There is no compelling case for change in terms of needing to address problems relating to player protection, as none has been identified by BCAP
- ⌚ Best practice is continually evolving, and can be incorporated in the Lottery Code

Option 1 – The status quo

- ⌚ Preserves the important public policy differentiation between the Lottery and gambling sector
- ⌚ Avoids significant dual regulation and double jeopardy
- ⌚ Maintains a regulatory regime that is tried, tested and proven
- ⌚ Enables any inconsistencies to be swiftly resolved by Camelot and the NLC and best practice easily incorporated in the Lottery Code
- ⌚ Ensures that the NLC, as experts in regulating the Lottery, with a duty to maximise revenues to Good Causes, continues to be well placed to shape the future regulatory regime
- ⌚ Ensures Ofcom fulfils its statutory duty, reflecting the duties in sections 3 and 6 of the Communications Act 2003
- ⌚ Is justified given that no player protection issues or risks have been identified by BCAP
- ⌚ Avoids immediate inconsistency between broadcast and non-broadcast arrangements for the Lottery

Option 2 – Include The National Lottery under the new gambling-specific broadcast code (BCAP)

- ⌚ Runs counter to the Government policy of clear demarcation between the Lottery and mainstream gambling and ensuring the Lottery does not operate on the same playing field as mainstream gambling – which presents very serious strategic and policy implications for the special status of the Lottery and the Good Causes it supports

- ⌚ Creates immediate unnecessary and substantial inconsistency between Lottery broadcast and non-broadcast codes – counter to good regulation and confusing for consumers
- ⌚ Unless the Lottery Code is wound up, will create double regulation and double jeopardy on broadcast issues that is counter to best practice
- ⌚ Has already been considered and rejected as an option; it cannot be best regulatory practice to revisit this little more than a year later

Option 3 – Significantly expand the existing BCAP code for The National Lottery

- ⌚ Unless the detailed provisions of the Lottery Code (policed by NLC) were wound up, this would continue to operate alongside a BCAP code (policed by BCAP) that is significantly more detailed than the existing BCAP code – resulting in dual regulation and double jeopardy which are counter to best practice
- ⌚ This option would have the “look and feel” of the gambling-specific BCAP provisions, undermining the principle of demarcation; it is a cosmetic proposition, which in effect would align the Lottery more closely with the gambling sector
- ⌚ There is sufficient consistency of treatment in the present, side-by-side operation of the Lottery Code and existing BCAP provisions for the Lottery
- ⌚ There is no need to change the regulatory position to create two detailed sets of standards – will not result in consistent treatment or operate consistently
- ⌚ Exposes the Lottery to rule changes every time the gambling-specific codes change

Option 4 – Transfer of responsibility from NLC to BCAP (i.e. abolition of the Lottery Code)

- ⌚ Would eliminate dual regulation but create an immediate inconsistency with non-broadcast advertising for the Lottery
- ⌚ It is within Ofcom’s legal powers to approve an expanded mandate for BCAP
- ⌚ Would place the balance of responsibility with a regulator that has no statutory locus or interest in protecting Good Causes

Option 5 – Transfer of responsibility from BCAP/Ofcom to the NLC

- ⌚ Unlikely to be acceptable to BCAP/Ofcom for legal, political and policy reasons

3.0 CONSIDERATIONS

3.1 The review of the advertising regime for The National Lottery is not simply a minor tidying up exercise. It raises legal, political and public policy issues that could seriously undermine the Lottery’s competitive edge and that run counter to principles of good regulation. Detailed considerations of these issues are set out below.

Demarcation

3.2 We were pleased that CAP recognised the Gambling Act 2005 provides no explicit public policy mandate to include the National Lottery in the proposed CAP gambling rules (*letter from Helen Keefe to Lynette Huntley, 20 December 2006*). BCAP has also already recognised the Gambling Act 2005 provides no explicit public policy mandate to include the National Lottery in the proposed BCAP gambling rules (Option 2) and considered, as a self-regulatory body, it should not go against the wishes of the NLC as a statutory regulator on this matter. However, introducing a regime for The National Lottery which closely mirrors that for the gambling sector would

seriously damage the important demarcation between The National Lottery and the sector regulated by the Gambling Act.

3.3 An expanded BCAP Lottery-specific code (Option 3) would have the “look and feel” of, and similar content to, the current gambling-specific BCAP Codes. We consider this to be a very serious threat to the Lottery, running counter to the Government principle of regulatory demarcation for The National Lottery and undermining the reason for that distinction, which is to ensure that the Lottery and its Good Causes are adequately protected. The Government is explicit that the regimes applied to the Lottery and to the gambling sector should differ, and makes the reason for this clear. ‘A Safe Bet for Success’, published in 2002, states:

“5.3 – While the National Lottery clearly involves gambling, the unique support which it provides for good causes has led the Government to conclude that it should not operate on the same playing field as other kinds of gambling”.

3.4 We understand from correspondence with CAP and discussions with CAP officials that the AAC advised that BCAP should discuss how to achieve consistency in the regulation of advertisements for The National Lottery and for other lotteries, particularly regarding the Communications Act 2003 standards objective of protecting under 18s. The Advertising Advisory Committee’s (AAC) advice to BCAP was “that it is important for BCAP not to be seen to be offering a lesser degree of consumer protection for NL ads compared to other lottery ads” (*letter from Helen Keefe to Lynette Huntley, 20 December 2006*). AAC’s misunderstanding of the Government’s clear policy of demarcation is evident from the comparison it draws between The National Lottery and other lotteries. If the Government intended that the regulation of The National Lottery and other lotteries should be the same it would have provided for this in the Gambling Act or in other recently enacted statutes which deal in detail with The National Lottery – rather than stating explicitly that they should not.

3.5 While there appears within BCAP to be fundamental misunderstanding about the Government’s clear demarcation policy, and while we believe the AAC may be exceeding its remit in overlooking a policy distinction that is well established by Parliament and government, Option 3 would also fail to take account of the significant practical differences between The National Lottery and other lotteries in relation to potential problem play. For example, there is no restriction on the frequency of draws held by society lotteries in traditional manned retail environments, whereas the NLC is prohibited from allowing the operator to offer more than one draw per hour. The restriction effectively prohibits The National Lottery from operating a lottery similar to those already offered by society lotteries. The National Lottery is also subject to significantly stricter product controls and far more intense regulatory oversight than

society lotteries. In addition, the Lottery Code is broader in scope than any BCAP codes, because it covers all PR, marketing and promotional materials and web-site content – not just TV and radio.

- 3.6 Most importantly, the significantly more sophisticated player protection measures that The National Lottery has put in place ensure that National Lottery players experience not less but more consumer protection than those participating in other lotteries – and certainly more than those engaging in many harder forms of gambling.

Ofcom's duties and good regulation

- 3.7 Ofcom, in approving any change, would be acting unlawfully if it failed in its duty to have regard to (a) principles under which its regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and (b) any other principles appearing to Ofcom to represent best regulatory practice.
- 3.8 We are surprised that BCAP appears to be considering the issue of consistency whilst neglecting to take account of the other duties listed under section 3 of the Communications Act 2003 and its “duties to reduce regulatory burdens” under section 6.

Sections 3 and 6 Communications Act 2003 – principles to be applied

- 3.9 Any suggestion that **consistency** is achieved by making the advertising rules for The National Lottery the same as those for the gambling sector is fundamentally flawed. Proportionality and consistency are not achieved by simply applying the same regulations to sectors which are clearly differentiated in policy and actual terms.
- 3.10 Furthermore, there is a danger that BCAP could create even more regulatory inconsistency than the status quo. We have previously noted that, while well-established, the current BCAP regime for The National Lottery is already anomalous in terms of representing dual regulation, but has been manageable because it is light touch in scope.
- 3.11 Option 3 would create a scenario in which The National Lottery would be regulated by the NLC in terms of non-broadcast advertising via a specific and detailed set of rules, the National Lottery Code, which (rightly in our view) does not mirror the CAP rules for the gambling sector. On the other hand, National Lottery broadcast advertising would be regulated by both the NLC and BCAP, but with two different detailed sets of rules, one unique to the Lottery, and one that is aligned with both the BCAP and CAP rules for the gambling sector. This is in no way consistent or transparent – i.e. at odds with Ofcom's duty to regulate with **transparency** – and would be very confusing for all stakeholders, including the public. It would create two sets of standards for the Lottery which will not result in consistent treatment or operate consistently. It would be likely to give rise to inconsistent rules should activities offend one code, but not the other. Similar inconsistency would arise through Option 2.
- 3.12 There is pre-existing regulation of broadcast advertising of The National Lottery which operates satisfactorily. The expansion of the BCAP rules would be **disproportionate** to the perceived regulatory problem. The principle of proportionality requires that the means used to attain a given end should be no more than what is appropriate and necessary to attain that end. Where consistency of treatment is appropriate, we believe there is sufficient consistency of treatment in the present “side-by-side” operation of the

Lottery Code and the existing BCAP provisions. There is no necessity to change the regulatory position, particularly in a way which creates dual regulation.

- 3.13 An expanded set of BCAP rules for the Lottery are not **needed** because an adequate system for preventing harmful National Lottery advertisements is already in place, which operates in the same field and regulates to a comparable level of detail. There is no mischief that needs solving; there is, for example, no evidence that the existing age restrictions that apply to the Lottery in relation to advertising are a cause for concern.
- 3.14 Ofcom has not been asked to create new or specific rules for National Lottery advertising under the Gambling Act and the National Lottery Code has operated satisfactorily for a long period of time. Neither Ofcom nor the NLC have established why additional regulation is needed.
- 3.15 Since no action is needed, Ofcom does not need to regulate. Indeed if it does take action to regulate – or even to tighten an existing regulatory regime – it places itself in danger of failing in its duty of regulating in a targeted fashion. Raising the regulatory bar where there are no risks identified cannot be a proportionate measure.
- 3.16 We believe **best regulatory practice** ought to include considering whether Parliament has already granted another body the power to regulate a certain area and whether it has exercised that function properly. We cannot see how the real possibility of parallel action by two regulators is desirable or compatible with better regulation, even in the event that there was some level of liaison between the ASA and NLC. Given the NLC's role and the on-going satisfactory application of the existing, light touch BCAP rules for the Lottery it would appear to us that Ofcom is very adequately discharging its duties to regulate broadcasting in relation to the Lottery.
- 3.17 In addition, dual regulation is poor regulatory practice. Although the Lottery Code must be complied with by Camelot and the BCAP Rules complied with by broadcasters, there is *de facto* dual regulation as ultimately the rules bite on the content of the advertisements commissioned by Camelot. Dual regulation creates uncertainty over which rules would prevail and creates a risk of dual sanction for the same substantive breach – a form of double jeopardy for Camelot. Expanding the BCAP rule for the Lottery necessarily represents an increase in the regulatory burden, which in principle is at odds with Ofcom's statutory duties and general policy objectives.
- 3.18 The whole basis of better regulation is a requirement for a thorough risk assessment. This has not, so far as Camelot is aware, taken place and certainly no risks have been raised with Camelot to justify change. On the contrary, it is quite clear to us that risks in relation to National Lottery advertising have not changed. Any expansion of dual regulation, or any tightening of the rules relating to National Lottery advertising, which is unsupported by the necessary risk assessment, contradicts the principles of good regulation. **NLC's role**
- 3.19 The NLC as presently constituted and in its original form as Oflot has been regulating The National Lottery for 13 years. Camelot has spent over £390 million on above-the-line advertising alone since the launch of The National Lottery (including media and production costs). The Lottery's track record in terms of complaints and compliance is good. The NLC has extensive experience in this area and is best placed to continue to oversee it. Indeed, it has much more practical experience in regulating the advertising of its Licensee than either the Gambling Commission or the ASA/BCAP has in regulating the gambling sector given that, until 1 September 2007, advertising gambling on broadcast media was extremely limited and, in most cases, banned.

- 3.20 We therefore cannot agree with any proposal that were to include a more detailed Lottery-specific section in the BCAP Code than currently exists. This would only be justified if the current Lottery Code had been shown to be insufficiently robust to protect the interests of participants – a state of affairs that would be all the more startling given it is one of the NLC’s overriding duties to protect such interests. In addition, the Lottery Code has been jointly reviewed by the NLC and Camelot on an annual basis, and updated in the light of experience. As we understand it, BCAP makes no suggestion that the current wording is not robust or effective. Of course the industry is rapidly changing and, where lessons are learnt as to best practice, appropriate changes may be required to the Lottery Code.
- 3.21 Camelot is firmly of the view that any tightening of the existing BCAP rules for the Lottery, for example any changes relating to age limits, are likely to hamper its ability to maximise monies raised for Good Causes. Tightening either the Lottery Code or the BCAP rules for the Lottery without clear and compelling justification would seem to us to be inconsistent with the NLC’s duty to ensure that the net proceeds of The National Lottery are as great as possible – particularly given that the NLC is clear that the duty to protect players is being properly discharged. If there is the view that the changes to the BCAP rules for the Lottery do not amount to amendments of substance to the current regime, we do not understand why it is thought necessary to change the rules at all. We have consistently pointed out that against The National Lottery’s unique status and policy background no move from the status quo could properly be characterised as a minor tidying up exercise,

but would involve serious and far-reaching legal, political and public policy issues.

- 3.22 Overall, we believe a situation in which not one, but two differing sets of advertising rules would apply would cause confusion for advertisers; would stifle innovation by reducing the creative and commercial freedoms currently enjoyed; would reduce The National Lottery’s competitive edge; and, ultimately, would be detrimental to revenues, particularly in the face of a liberalised gambling sector, whose impact on the Lottery is as yet unknown.

4.0 CONCLUSION

- 4.1 As will be evident from this paper, and as already alluded to in point 1.7 of our introductory remarks, the procedures involved in reviewing the National Lottery’s place in the BCAP Codes have proved extremely complex, drawn-out and costly of management time and resources. The situation was compounded by both Camelot and the NLC being simultaneously engaged in the bidding process to select the operator for the third Licence – a process which was necessarily exceptionally complicated and time-consuming.
- 4.2 For the avoidance of doubt, and in view of the protracted nature of BCAP’s deliberations, we continue to rely on many of the relevant points contained in our previous correspondence and submissions on this issue. These include:

1. Letter from Lynette Huntley to Helen Keefe, 22 June 2006

2. Camelot's briefing note for the NLC "Proposed ASA Regulation of National Lottery Advertising", sent on 30 August 2006
 3. Camelot's response to the CAP/BCAP Consultation Document, "The Regulation of Non-Broadcast and Broadcast Advertising of Gambling", September 2006
 4. Letter from Lynette Huntley to Annette Lovell, 7 November 2006
 5. Camelot's submission to CAP/BCAP, "Draft CAP/BCAP Codes: Camelot Paper for Joint Meeting of the CAP and BCAP Committees", 9 November 2006
 6. Letter from Helen Keefe to Lynette Huntley, 20 December 2006
- 4.3 We are strongly of the view that the status quo provides the most appropriate regulatory regime for National Lottery advertising, i.e.:
- ⌚ CAP/BCAP general provisions continue to apply to The National Lottery;
 - ⌚ BCAP continues to provide regulation via the existing, light touch BCAP rules for The National Lottery, and
 - ⌚ NLC continues to regulate The National Lottery through the detailed Lottery Code.

5.0 PROCESS AND CONSULTATION

- 5.1 Finally, Camelot has become increasingly concerned that the procedures that have been followed regarding The National Lottery's position in relation to the new Codes fall well short of best regulatory practice.
- 5.2 In relation to Option 2 above (mentioned as a possibility by BCAP on 11th October) we do not believe it is good practice to consult on regulatory change, consider including The National Lottery in the new gambling-specific section or in a Lottery-specific section of the new BCAP Codes, reject those options, publish and approve new rules and, little more than a year later, re-visit this option again.
- 5.3 BCAP met the NLC in February 2007 to discuss BCAP rules relating to The National Lottery. We do not understand why BCAP did not see fit to have a similar conversation with Camelot as a major stakeholder in this matter, particularly as it already knew from previous discussions that Camelot was likely to have strong views. As a result Camelot was in the dark about the only option that appeared to have been considered by both BCAP and the NLC (i.e. Option 3 – in addition to Option 2 by BCAP) until the NLC shared its views with Camelot in late May, when Camelot was asked to provide urgent comments. BCAP will appreciate Camelot's frustration at the overall inadequacy and lack of transparency in this process.
- 5.4 In addition, BCAP does not appear to have given consideration to the broad range of options available, as outlined above, until they were identified by Camelot at the Camelot/BCAP/NLC meeting on 11th October. This obviously makes effective consultation difficult. We understand that Ofcom has set a timetable for BCAP, and

that BCAP therefore feels resolution is pressing. However, now that we have identified a broad range of possible options, and the associated legal and policy issues, we hope BCAP will set out very clearly its reasoned preliminary view on each before it comes to any decision, and that it will give Camelot the opportunity to respond to specific points that are raised. Ensuring that a proper dialogue on all the options takes place before a decision is made would help to alleviate our concerns about the process to date.

Response from CARE and CareConfidential to the Consultation on the proposed BCAP Broadcast Advertising Standards Code

CARE is a well-established mainstream Christian charity whose concern is to combine practical caring initiatives for those in need, outworking Christian values of love, mercy, acceptance, grace, kindness and compassion, with helping to bring Christian truth, insight and experience to matters affecting society today by providing resources and insight to public policy. CARE is represented in the UK Parliaments and Assemblies, at the EU in Brussels and the UN in Geneva and New York.

CareConfidential is a part of CARE and undertakes caring work in the fields of pregnancy counselling and advice on dealing with unplanned pregnancy and post-abortion situations. Through its extensive contact over 20 years with those affected by abortion, **CareConfidential is one of the major national organisations providing counselling and support in this sensitive area through a helpline and via the web through online advisory services.** CareConfidential also assists a network of over 150 affiliated pregnancy crisis centres.¹

The aim of CareConfidential is to provide a safe, impartial environment in which women and men can talk through their circumstances of unexpected pregnancy and discover all of the options open to them. CareConfidential also offers a longer term post-abortion counselling service.

We are responding to the BCAP consultation on Question 62 and Question 147.

Advertisements for Post-conception Pregnancy Advice 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?

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.

11.11 *Advertisements for post-conception pregnancy advice services must make clear in the*

¹ The centres offer a range of facilities including free pregnancy testing, counselling relating to unplanned pregnancy, post abortion counselling, miscarriage counselling, befriending services, adoption schemes, accommodation, provision of free clothes and equipment for those on low income, advice on benefits and accommodation and parenting classes. The network has approximately 800 trained volunteer counsellors in the UK, as well as a **help line and website**. The network provides services to over 38,000 clients per year and there have been over 10,000 calls to the help line. The website has self help information and access to online advisors plus links to the network of centres throughout the UK and recently won a BT Helpline Association Award for innovative use of web based applications.

advertisement if the service does not refer women directly for abortion.

We do not agree that rule 11.11 should be included in the proposed BCAP code.

1. Para 11.37 claims that some groups in society are potentially vulnerable to misleading or otherwise irresponsible advertisements for those centres, including women who are or might be pregnant and members of the public who are seeking advice on contraception. **Q9 in the CAP consultation** may be used to similarly require that pregnancy counselling services must state in print advertising whether or not they provide abortion services, in order that women are not misled.

2. However there is **no evidence provided to suggest that advertising by pregnancy counselling centres has been misleading**. The title of the centres themselves makes it very clear what the service is that they provide – e.g. ‘pregnancy advisory centres’, ‘pregnancy counselling centres’ – and such descriptions reflect exactly the holistic services offered. There is no need to restrict or control advertising wording when they already clearly describe what they do. A good example is the CareConfidential website at www.careconfidential.com.

3. The stated purpose for introducing this new rule is concern that pregnancy advisory services delay women accessing abortion provision (11.38) and can provide misleading advertisements (11.37, 11.42). However, as there is **no evidence** provided for such an assertion it is misleading to suggest this is a problem. Pregnancy advisory services always refer women straight to their GP if a woman wants an abortion, so there is really no delay, other than to inform a woman (and/or her partner) of their choices, including abortion. To falsely alarm people about potential delay is unsubstantiated, unnecessary and discriminatory.

4. We are very concerned about the emphasis in the consultation on the need for speed in referral straight to an abortion, and the trivialisation of informed decision-making. The message given is that informed consent *and* time to make a considered decision is unnecessary and unimportant compared to the need for speed in obtaining an abortion. Thus the benefit of (and right for women to have) informed consent is trivialised over the desire to speed the whole process up. Yet research comparing the risk of early abortion versus pregnancy has found that there is actually a *lower* risk of psychotic reactions after *pregnancy* than post-abortion:

18.4/10,000 for women who had an abortion compared to 12/10,000 for those who gave birth.² A 2002 study of out-patient mental health claims over a four year period, comparing abortions versus deliveries, found that after 90 days there were 63% more claims post abortion, after 180 days there were 42% more claims, after 1 year there were 30% more claims and after 2 years there were 16% more claims post abortion than delivery.³ After years of denying any link between abortion and women's mental health, the Royal College of Psychiatrists recently released a statement recognising that having an abortion may damage a woman's mental health.⁴ This is based on evidence such as that from the recent large longitudinal, methodologically robust study in New Zealand (published since the RCOG report, para 11.38), which found that having an abortion doubles the chances of the woman concerned suffering from depression and psychological difficulties, even where there is no previous history of depression.⁵ **Thus this should not be a decision taken lightly, quickly or without informed consent.**

5. The Royal College of Psychiatrists likewise recognises that good practice in relation to abortion will include **informed consent**, which clearly cannot be fully informed without the provision of adequate and appropriate information regarding the possible risks and benefits to physical and mental health.⁶ Women considering an abortion have a *right to know* what they are choosing and time to make a decision. When facing an unexpected pregnancy, women and their partners need accurate information and an opportunity to look at all the options available - parenting, adoption or abortion. There has been - and still is - huge resistance among abortion providers to giving women enough information – perhaps for the reason that too many of them might choose not to have an abortion. Yet valid choices cannot be made without information. The 'right to choose' is meaningless unless people know just exactly what they are choosing.

² David et al 1981. *Family Planning Perspectives*. 13 (1):. 32-34.

³ Coleman et al. 2002. *American Journal Orthopsychiatry*. 72,1. 141-152. Study of first time psychiatric out-patient contact in 4 years post-abortion. Data set: 14,297 in abortion group, 40,122 in birth group. Research controlled for pre-existing psychological problems, age, number of pregnancies and months of eligibility.

⁴ Position Statement on Women's Mental Health in Relation to Induced Abortion, Royal College of Psychiatrists, 14 March 2008.

⁵ Fergusson, DM, Horwood, LJ and Ridder, EM, *Journal of Child Psychology and Psychiatry*, 47 (1), 2006, pages 16-24.

⁶ Position Statement on Women's Mental Health in Relation to Induced Abortion, Royal College of Psychiatrists, 14 March 2008.

6. Moreover, failure to provide women with anything less than this is an affront to their dignity and human rights. It could also make government/regulators/service providers vulnerable to subsequent legal challenge should it be demonstrated that women were provided with sub-standard information. If the ASA is to adopt a progressive, rights based, approach it must ensure that women are properly informed so that they enjoy a 'felt right to choose', especially after they have undergone the chosen way of dealing with the pregnancy, whether that is to stay pregnant, give the child up for adoption or abortion.

7. Whilst we are not advocating preventing women from having abortions if they choose, nor deliberately delaying them if they wish to be referred to a GP for an abortion, we do believe that the role of advisory centres in providing time and information is both unique and essential given the seriousness of the abortion procedure and the possible physical and psycho-social consequences noted above. Alongside information, women often need *time* to explore the options as well as their feelings, without pressure or judgment, and it is not helpful for them to feel rushed into making major decisions that may have a long-term impact. Here we are not talking about weeks, but rather days or even hours on the helpline or via our online service. Indeed, we have heard from many women who have felt rushed (by a partner or otherwise) into decisions that have impacted them in a significant way, long-term. Over-emphasising the importance of speed of referral not only undermines the need for time but can also mislead women about the seriousness of the decision and procedure involved.

8. Decision making about proceeding with an abortion warrants careful, objective counselling. Instead of undermining and restricting the work of pregnancy advisory centres, they should be supported, promoted and their unique service should be made more widely available for women with unplanned pregnancies. Indeed, many GPs welcome them in their area as they can provide the time, the practical and emotional support and the on-going assistance (whatever the decision) that many GPs do not have the time or resources to offer. As we said above, centres will always refer women who want to go ahead with abortion to their GPs.

9. It is striking that there is no requirement from the BCAP that advice centres who do not offer such full informed consent, any alternatives, on-going support, in depth counselling and a full caring service including material assistance, should state this in their advertising. Many do not offer a 'full service' but only an abortion service, which could similarly be construed as being misleading. It is also notable which organisations are driving this policy: the Independent

Advisory Group on Sexual Health and HIV consists of people who have a vested financial interest to promote abortion. These include Brook, The Family Planning Association and the British Pregnancy Advisory service (which alone, is responsible for more than a quarter of all abortions in England and Wales.) We are concerned that the BCAP, which should take a non-partisan position, seems overly concerned to promote the views of pro-abortion groups only.

We disagree with the proposed policy to allow abortion providers the freedom to advertise on TV.

10. Allowing abortion organisations to advertise abortion on television **would trivialise the seriousness of abortion**, and treat abortion in a promotional and misleading manner. It would fail to inform women of the potential consequences they may face (especially risks to emotional and physical health, see para 4 above) and would undermine any message that abortion is a serious procedure that involves either a surgical operation and/or powerful drugs. Nor should advertising be used to encourage even larger numbers of women to have abortions. We are unaware of any other Western country that permits the promotional advertising of abortion services.

11. Along with trivialising abortion, there is a very real danger that **abortion will become increasingly ‘normalised’ by TV advertising and promotion**. As the BCAP consultation document itself claims regarding sanitary protection products, these have been normalised to such an extent through advertising that they are associated in adverts with healthy and active lifestyles: *“In her letter to BCAP, Baroness Gould noted that the lesser degree of restriction placed on sanitary protection products had helped normalise those products and that advertising now associated them with healthy and active lifestyles.”* (para 32.27). While we welcome the effect that advertising has had on sanitary protection products, we are concerned about the same happening to abortion, and it becoming a simple, seemingly consequence-free lifestyle choice, rather than the much more serious matter that it is. Given that the Royal College of General Practitioners has seen an increase in abortion being used as a contraceptive this point is particularly worrying. (see para. 12 for citation)

12. We already have concerns that abortion is being treated in the same way as contraception, and indeed seems to be increasingly used as a method of contraception.⁷ Again, in our view, the answer lies not in easier abortion provision but in treating abortion as a serious procedure.

⁷ *“I have already seen an increase in the number of women coming forward for abortions. Many are now using it as a method of contraception...”* Dr Sarah Jarvis, Royal College of General Practitioners spokeswoman for women’s

13. The high rate of terminations does not suggest that it is ignorance of the options nor availability that sees so many women having terminations. Even among young girls the rates are higher than ever: in 2007, more than 20,000 girls under the age of 18 received a legal abortion in England and Wales - a rate of 20/1000, the highest ever recorded.

14. Allowing the advertising of abortion services would not deal with the real problem that the Government is facing, which is that its strategy on teenage pregnancy (based on condoms, the morning-after pill and abortion) is failing as teenage conceptions are continuing to rise. This proposed approach is like having an ambulance at the bottom of the cliff to deal with the casualties, rather than providing a fence at the top to prevent them in the first place.

Radio and TV advertising of condoms to children aged 10 to 16

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.

We do not agree that condom adverts should be allowed on television during and adjacent to programmes that appeal to 10 year olds and above.

15. It is argued that condoms should be treated in the same way as sanitary protection.⁸ Clearly, however these are two very different products. Condoms are not about hygiene, they are not value free and their use has many risky and long-term consequences. They offer very little protection at all against some infections, including HPV which can lead to cervical cancer, nor do they protect against emotional fallout. Whilst the objective of this proposal is to prevent pregnancy and abortion, this is far from guaranteed, especially with youngsters.

health.

(<http://www.healthcarerepublic.com//news/index.cfm?fuseaction=HCR.News.GP.LatestNews.Article&nNewsID=879810&sHashCode=#AddComment> accessed 19 June 2009)

⁸ In her letter to BCAP, Baroness Gould noted that the lesser degree of restriction placed on sanitary protection products had helped normalise those products and that advertising now associated them with healthy and active lifestyles.

16. Adverts will be unable to deal effectively (if at all) with the emotional and moral side of contraceptive use. However this is an essential aspect of sex education, hence the safeguards of the 1996 Education Act and the stipulation in Section 403(1) that: Schools *“shall take such steps as are reasonably practicable to secure that where sex education is given to any registered pupils ... it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life.”* (our emphasis). Sex and relationship education is not just about biology.

17. Furthermore, sexual activity is illegal if it is with a minor, yet the advertising is proposed to be directed to those aged 10 years old i.e. minors. This could therefore not only condone but might encourage illegal underage sex, and in a way that suggests it is an easy option with no consequences. From a young age, impressionable youngsters viewing such TV adverts will be encouraged to regard early sexual activity as the norm and are likely to feel pressurised to conform to this cultural pressure and to unhelpful peer pressure. Society has to be particularly sensitive and careful when dealing with young people who are highly vulnerable to the influence of advertising.

18. CARE believes that the media is already one of several causes of the high rate of teenage pregnancy within the UK. In 1996, teenage magazines for girls were at the heart of controversy for the sexually explicit information they contained, and the influences they appeared to be having on sexual behaviour. Many parents, and indeed young people, still feel unable to influence the continuous flow of material that seems to encourage a range of sexual activity “as long as it feels OK at that moment” among teenagers. We have also seen the explosion of ‘Lads Mags’ Nuts, FHM and Loaded etc which youth workers report having a significant impact on teenagers. The encouragement of ‘sexual activity so long as it feels OK at the moment’ is usually disseminated without outlining the relational context and implications of sexual activity, the significant risks and responsibilities of sex, or the positive option of delaying sex.

19. The reality is that the pressure to conform rarely produces the happy “safe sex” depicted in ‘glossy’ magazines, films and many TV shows. In fact, many of those who engage in under age sex later regret their early sexual experiences. Indeed: *“Early intercourse often leads to subsequent regret: only two fifths of*

*respondents in a recent study indicated that first intercourse occurred "at about the right time"; 45% of girls and 32% of boys indicated that it had happened too early or should never have happened at all."*⁹

20. Britain already has the highest level of teen conceptions in Europe, but the cause is more down to lifestyle than to lack of information. We have to question why the huge investment in sex education, free condoms and pills, promotion and teaching of sex education has resulted in more unwanted pregnancies than ever before. Why have Britain's rates remained so high during a decade when advice has never been easier to access? We concur with recent claims that the Government's £250 million Teenage Pregnancy Strategy has been disastrous: the truth is that since the strategy began, diagnoses of sexually transmitted infections have increased, while the rate of decline in pregnancy rates has slowed.¹⁰

21. So is the best way to reduce rates of teen conceptions really to continue to promote condoms even more than is already the case? *"There has been a tendency for the Government's teenage pregnancy strategy to focus on creating schemes where teenagers can get the morning after pill or other forms of family planning at school or clinics...**The danger with this sort of approach is that it can lead to an increase in risky sexual behaviour amongst some young people...**"* *"There is now overwhelming evidence that such schemes are simply not effective in cutting teenage pregnancy rates."* (our emphasis).¹¹

22. Instead of 'normalising' condom use even more, we should be aiming to 'normalise' sexual intimacy within the context of a committed, mutually faithful relationship when children are older, and of advertising the benefits of delaying sexual activity. Teaching about self esteem and the value of their bodies and selves enables teenagers to withstand unhelpful peer and societal pressures: *"...evidence shows that appropriate sexual and reproductive health and rights strategies and policies, including compulsory age-appropriate, gender-sensitive sex and relationships education for young people, results in less recourse to abortion. This type of education should include teaching on self-esteem, healthy relationships, the freedom to delay*

⁹ Wright D, Henderson M, Raab G, Abraham C, Buston K, Scott S, et al. Extent of regretted sexual intercourse among young teenagers in Scotland: a cross sectional survey. BMJ 2000; 320:1243-4.

¹⁰ Professor David Paton, chair of industrial economics at Nottingham University Business School. <http://www.cypnow.co.uk/news/ByDiscipline/Health/login/891517/>

¹¹ Ibid.

sexual activity, avoiding peer pressure, contraceptive advice, and considering consequences and responsibilities.”¹² (our emphasis)

23. We are also concerned that parental influence, as well as some religious and cultural beliefs, would be undermined by promotional contraceptive advertising on TV. It would be hard for parents to protect their children from viewing TV advertising yet many parents will not wish their children to be influenced in this way at a young age, and to have their own parental responsibilities removed from educating their children themselves. Indeed, the 1996 Education Act stipulates that (403(1A).) “(The) *Secretary of State must issue guidance designed to secure that when sex education is given to registered pupils at maintained schools.... (b) they are protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned.*” (our emphasis). Parents should be able to tailor this sensitive subject to their children’s understanding, situation and age. It is more important, and would be more effective, if government were to engage proactively with parents as co-educators, as is the case in the Netherlands¹³ where teen pregnancy rates are significantly lower than the UK.

To summarise, there is no need to restrict or control advertising wording of pregnancy advisory centres when they already clearly describe what they do. Advertising condoms and abortion advice services to children and teenagers will do nothing to reduce teenage conceptions or sexually transmitted infections. Rather it will have the effect of normalising and trivialising abortion and of encouraging yet more sexual experimentation among young people by giving them the false impression that they can engage in casual sexual relationships without consequences.

About CARE:

As part of CARE’s schools work initiative we have set up a program called **Evaluate**.

¹² The Parliamentary Assembly of the Council of Europe Resolution 1607 (2008) ‘*Access to safe and legal abortion in Europe*, April 16th 2008.

¹³ The current Netherlands’ policy on sex education was set out by their government last year and said: “*Good sex education is important in preventing unwanted pregnancies. This is the **responsibility of parents**, but schools can also make a contribution.*” (our emphasis). Coalition agreement between the parliamentary parties of the Christian Democratic Alliance, Labour Party and Christian Union, 7 February 2007, para 34, page 42

Evaluate...informing choice is a sex and relationship education programme developed to support teachers and complement the delivery of SRE within the PSHE framework. Using a set of interactive multimedia presentations, teams of trained volunteer educators deliver the programme to whole year groups starting at age 11. These age-appropriate presentations:

- examine media influence and peer pressure, drugs and alcohol and their effect on decision making
- impart knowledge about pregnancy, sexually transmitted infections, HIV and contraception
- assist in developing life skills to enable young people to make healthy and well-informed decisions
- challenge attitudes and prejudices

Evaluate is preparing a programme that will engage with primary school age children. This curriculum is currently being developed.

Bringing a fresh, modern and direct edge to Sex & Relationship Education and lifestyle choices, **evaluate** teams empower young people to make healthy informed decisions and support them in delaying sexual experience until a long-term committed exclusive relationship, ideally marriage. Since the programme's launch in January 2004, evaluate teams have delivered the presentations to over 60,000 young people in 130 schools with excellent feedback and comments from staff and pupils alike.

To Whom it may concern:

Re: Consultation on the proposed BCAP Broadcast Advertising Standards Code

Advertisements for Post-conception Pregnancy Advice Centres (Question 62)

1.11 Advertisements for post-conception pregnancy advice services must make clear in the advertisement if the service does not refer women directly for abortion.

I do not agree that rule 11.11 should be included in the proposed BCAP code for the following reasons:

- There is no evidence provided to suggest that advertising by pregnancy counselling centres has been misleading to 'some groups in society (who) are potentially vulnerable...., including women who are or might be pregnant and members of the public who are seeking advice on contraception'. (Para 11.37). The title of the centres themselves makes it very clear what the service is that they provide – e.g. 'pregnancy advisory centres', 'pregnancy counselling centres'

As these titles adequately describe the services offered, there is no need to restrict or control advertising wording.

- There is no evidence provided for the assertion that pregnancy advisory services delay women accessing abortion provision (11.38) It is misleading therefore to suggest this is a problem. Pregnancy advisory services always refer women straight to their GP or a Family Planning Centre if a woman wishes to have an abortion.
- I am concerned that the emphasis on the speed of referral for abortion, as opposed to the need for *time* for a woman to make an informed and considered decision, makes light of the very real need for a woman to think through her choices in a relaxed environment. This can be a time of stress for a woman and pregnancy advisory centres are able to offer a service for which many GPs and abortion clinics simply do not have the time. The need for this in relation to a woman's mental health has been recognised in recent years by the Royal College of Psychiatrists.

Re: the proposed policy to allow abortion providers the freedom to advertise on TV

I do not agree with this proposal for the following reasons:

- This would promote abortion in a misleading manner by failing to inform women of possible consequences to their physical or mental health and would increasingly 'normalise' (to quote Baroness Gould) the procedure. Abortion is not merely an issue of 'healthy and active lifestyles' like sanitary protection products but a very serious 'life' decision.
- As the abortion rate among under 18s is higher than ever and the rate of STIs is rising, this does not suggest that the Government's policy to have more sexual health education has been successful, or that easier access to contraception and abortion is the real problem.

Radio and TV advertising of condoms to children aged 10 to 16 (Question 147)

I do not agree with this proposal for the following reasons:

- The emotional and moral side of contraceptive use is an essential aspect of sex education, yet adverts will be unable to deal effectively with this issue.
- The media, especially TV, film and teenage magazines, is already having a huge impact on teenagers' sexual habits. A message of 'do it if it feels OK' is being promulgated without any emphasis on the possible emotional and relational consequences of this behaviour. The Government's Teenage Pregnancy Strategy has been a disaster - for the reasons stated above. We need rather to promote and encourage sexual intimacy within the context of a committed, mutually faithful relationship, the benefits of delaying sexual activity, and an understanding of their own self-esteem to enable teenagers to withstand unhelpful pressure from their peers and the surrounding culture.

Thank you for considering my views.

ANSWER TO QUESTION 55: I STRONGLY DISAGREE WITH BCAP'S PROPOSAL TO FURTHER RESTRICT THE PRESENT PROHIBITION ON TV ADVERTISEMENTS FOR GUNS, BY PROHIBITING ADVERTISEMENTS FOR "OFFENSIVE" WEAPONS AND REPLICA GUNS. THE PROHIBITION SHOULD BE LIFTED AS IT IS SO DRACONIAN AND SHOWS IGNORANCE IN ABUNDANCE!

THAT THERE IS A PROHIBITION ON TV ADVERTISEMENTS FOR GUNS, (OFFENSIVE ((QUESTIONABLE)) OR OTHERWISE) SMACKS OF BIAS! GUN'S (SHOTGUNS AND FIREARMS) ARE PART OF EVERYDAY LIFE FOR MILLIONS OF BRITAINS AND HAVVE BEEN FOR CENTURY'S. A MEANS OF ANIMAL HUSBANDRY, AND A CONTROL OF VERMIN, AND CLAYSHOOTING - AN ENJOYABLE SPORT.

ANSWER TO QUESTION 56: I ONCE AGAIN STRONGLY DISAGREE WITH BCAP'S PROPOSAL TO EXTEND THE PRESENT RADIO EXCEPTION TO THE RULE FOR REFERENCES TO CLAY PIGEON SHOOT IN ADVERTISEMENTS ONLY IF THEY ARE PROMOTED AS PART OF A WIDER RANGE OF OUTDOOR PURSUITS. THIS IS A TOTALLY BIASED ATTITUDE, ON A HEALTHY, PLEASURABLE OUTDOOR SPORT, AND GOES TO SHOW THE SMALL MINDS OF THE BCAP TEAM.

SO YOU CAN WATCH ALL THE JAMES BOND FILMS, TOMB RAIDER, YOUNG GUNS, MAGNIFICENT SEVEN, BUT NO ADVERTISEMENTS WITH CLAY SHOOTING!?????

I WOULD ALSO LIKE TO INVITE THE BCAP TEAM TO OUR SHOOTING GROUND TO MEET WITH THE SHOOTERS, MEN, LADIES AND CHILDREN!!

Submission to Consultation on BCAP Broadcast Advertising Standards Code

**prepared by the Catholic Bishops' Conference of England and Wales
and the Linacre Centre for Healthcare Ethics¹⁴**

Introduction

We welcome the opportunity to contribute to the consultation on the draft BCAP Code, and will focus on two issues: the advertising of pregnancy/abortion advisory services, and the advertising of contraceptives.

Post-conception Pregnancy Advisory Services

We do not believe that services which offer or refer for abortion should be allowed to advertise on broadcast media. We also argue that even on its own terms the proposed rule 11.11 is defective.

(1) Reasons for opposing such broadcast advertisements on principle

Abortion is neither medicine nor a consumer product. Presenting it as either of these erodes respect for life, and is highly misleading and damaging to women, who may feel pressured into making a quick decision which can never be revoked.

The law in the UK does not permit abortion on demand, and there is no “right” to have an abortion. Abortion is illegal in the United Kingdom unless two doctors agree that the woman satisfies specific exemption criteria as laid out in the 1967 Abortion Act (as amended). To allow broadcast advertising of post-conception pregnancy advisory services which refer women for abortion would be to send a profoundly misleading message about the basis on which abortion is legally available.

Abortion, so often surrounded by euphemisms, is still, when seriously and honestly examined, the deliberate taking of an innocent human life. As such, it violates the rights of the unborn child – rights which coexist in harmony with those of the mother – to security from deliberate, lethal attack.¹⁵

¹⁴ This submission has been prepared on behalf of the Bishops' Conference of England and Wales and the Linacre Centre for Healthcare Ethics by Dr Helen Watt, the Director of the Centre, in collaboration with colleagues Stephen Barrie and Anthony McCarthy.

¹⁵ There is a vast literature supporting this view, including many works which do not appeal to religious presuppositions. For a very brief summary of non-religious arguments, see Watt H, Living Together: Pregnancy and Parenthood, in Institute of Ideas *Debating Matters* Series, *Abortion: Whose Right?*

Allowing broadcast advertising of abortion services would contribute to a further “normalisation” of abortion and its assimilation to a consumer service. This is counter-productive to the reduction of the number of abortions and STIs and it fails to promote habits and attitudes which effectively secure better sexual health and respect for life in the population, especially young adults. What is needed is the development and financing of a comprehensive programme aimed at reducing the abortion rate and promoting positive values of human life and relationships.

Moreover, to allow the advertising of abortion-referral services is, in effect, to allow the exploitative promotion of these services and is not in the interests of the health or psychological well-being of women.

Due to their access to substantial funding, both from private and from NHS sources, organisations that provide or arrange abortions are in practice likely to be the only pregnancy advisory services that will be able to afford to advertise on TV and Radio. Such organisations would seek to recoup their advertising costs both through charges to private patients and through charges to the NHS. Taxpayers would then be paying both for abortions on the NHS and for their promotion.

While sometimes treatment of the woman’s own body (for example, removal of a cancerous womb or damaged fallopian tube) will sadly result in the death of her baby as an unintended side-effect, this is not an abortion. It is not the kind of intervention marketed by abortion advisory services. On the contrary, these services promote deliberate, elective abortion for entirely social reasons. The ending of a human life is presented as a simple lifestyle choice.

(2) Why on its own terms the proposed rule 11.11 is defective

The proposed rule 11.11 states that “Advertisements for post-conception pregnancy advice services must make clear in the advertisement if the service does not refer women directly for abortion”.

Providing abortion referrals should not be seen as a central part of ‘pregnancy advice’, such that its absence is deemed worthy of specific comment. It is not abortion referral, but help with having a baby, that should be the central focus of pregnancy advice.

Many counselling centres help women to overcome problems associated with pregnancy, without recourse to aborting their children, and so reduce the number of women who see abortion as the only option. This is surely admirable, particularly in a climate where so many people are rightly concerned about the vast scale on which abortion is occurring.

To present non-referring organisations with a mandatory warning is in effect to privilege abortion-referring organisations. It sidelines those who respect both the woman and her child. Without exposure to those who do not refer for abortion, women risk being given a misleading, euphemistic picture of what abortion involves, of a kind favoured by abortion providers. They also risk not being offered the practical support available from non-referring organisations for women who wish to continue with their pregnancies, but are in need of some assistance. This downgrades the psychological and physical welfare of pregnant women and leaves them vulnerable to exploitation.

The reason given for stating where a service does not refer is to reduce “delay in performing an abortion [because this] could result in medical complications”¹⁶ No evidence is, however, offered to show that use of non-referring centres causes significant delays - assuming such delays are undesirable, rather than providing space to think and reflect.

A woman may *choose* to delay seeking an abortion while she explores other options - and during this period she may decide to keep her baby and avoid the trauma of abortion. Would that be an outcome to regret? The loss of one’s child through abortion is permanent: to suggest that a woman should be helped to make this kind of choice without delay is to fail to acknowledge the gravity of this irrevocable decision.

There is a parallel, in terms of access and delay, between advice centres and doctors who have a conscientious objection to abortion. In both cases, patients are in practice free to seek a second opinion, but nonetheless have valuable access to those offering life-affirming options. Many women who have had abortions have spoken of the ‘conveyor belt’ onto which they were pushed at an early stage, without being offered a chance to think further about a choice that did them serious harm.

Contraception for 10 – 16 year olds

We also have concerns relating to the advertising of condoms and other contraceptives, including to those under 16. It is profoundly inappropriate to advertise condoms to children, and around programmes that appeal particularly to children from the age of 10. Promoting use of condoms cannot be separated from promoting sex, and the sexualisation of the target audience, which will be extended in this case to children from 10 – 16 years old. The age of consent is 16 in England, Scotland and Wales. The BCAP should not encourage the sexualisation of children by promoting condom use, because such use does not in any way remove the moral or legal objections to sex involving children.

While some may argue that condom promotion to underage children is a preventative measure, the failure rate for the first year of condom use is around 17.4%¹⁷. It should be noted that this failure rate is with reference to pregnancy, rather than STIs; since pregnancy can occur on only a few days a month, the failure rate for STI transmission may be much higher. In view of this, to promote condoms as ‘safe sex’ or as a reliable preventative measure is misleading and irresponsible. The only totally reliable ‘safe’ measure, which is compatible with respecting the dignity and innocence of children, is saving sex for marriage at some appropriate age.

The BCAP has said that its intention is to “normalise” condom use following the suggestions of the president of the Family Planning Association, Baroness Gould.¹⁸ No arguments are offered in support of the claim that promotion of condoms will be effective in combating teenage pregnancy and STI rates; indeed the link is assumed with no supporting evidence at all.

Promoting condoms may, in fact, have an adverse impact through making sex more attractive to children, as the rate of STIs among young people in this country may seem to suggest. Even those who support condom use admit to frustration when it comes to reducing STIs in practice. As one writer

¹⁶ BCAP consultation document 11.40.

¹⁷ http://www.guttmacher.org/pubs/fb_contr_use.html [6th June 2009]

¹⁸ BCAP consultation document 32.27.

commented: “condom use has gone up, but probably not enough to offset the increase in sexual partners”.¹⁹

The BCAP, following Baroness Gould, proposes to bring the scheduling restriction for condoms “in line with advertisements for sanitary protection products”²⁰. We would question the appropriateness of a comparison between condoms and sanitary products for the purpose of advertising regulations. Menstruation is not a moral issue, and sanitary products pose no problems apart from the usual considerations of taste and decency.

In contrast, condoms for children from 10 – 16 are being promoted for use in sexual intercourse, which is entirely inappropriate where one or both parties is a child. The analogy between condom promotion campaigns and promotion of “reduced risk” cigarettes may be instructive. Whereas young people are standardly advised to reduce risks of sex by using condoms, rather than abstain, health campaigns have tended to urge smokers to ‘quit’, rather than promoting ‘reduced risk’ cigarettes. One study found that “the unregulated promotion of “reduced risk” products threatens to undermine smoking cessation (which is proven to save lives), cause former smokers to resume their addiction, and even attract young people to tobacco products.”²¹

Such objections apply even more to some other forms of contraception, as many non-barrier methods may sometimes work, according to manufacturers, by preventing any embryo conceived from implanting in the womb. The morning-after pill, in particular, should be subject to the same advertising restrictions as surgical abortion.

Again, it is not clear that the morning-after pill reduces the rate of unintended pregnancy or recorded abortion at the population level,²² even leaving aside its possible anti-implantation effect.

Conclusion

Our society is already failing young people by presenting an impoverished view of sex, too often entirely separated from any context of committed love and readiness for parenthood. It is very important that this process is not encouraged by a willingness to advertise services which have already done enormous damage to perceptions of sex in our society. In the many cases where respect for life, as well as sex and marriage, is at issue, the situation is still more serious, since not only the rights of young people are at

¹⁹ Adler MW, Sexual health – health of the nation, *Sexually Transmitted Infections* 2003; 79:85-87. See also Paton D, Random behaviour or rational choice? Family planning, teenage pregnancy and sexually transmitted infections, *Sex Education, Sexuality, Society and Learning* 2006; 6 (3): 281 – 308; Richens J et al., Condoms and seat belts: the parallels and the lessons, *Lancet* 2000; 355: 400-403.

²⁰ BCAP consultation document 32.27.

²¹ The Lessons of “Light” and “Low Tar” Cigarettes: Without Effective Regulation, “Reduced Risk” Tobacco Products Threaten the Public Health, February 17, 2004. *Tobacco Control. Reports on Industry Activity from Outside UCSF*. Paper USREP <http://repositories.cdlib.org/tc/reports/USREP>).

²² Raymond, EG et al, Population effect of increased access to emergency contraception pills: a systematic review, *Obstetrics and Gynecology* 2007; 109: 1, 181–188.

stake, but those of any child they conceive. Respect for life, sex and parenthood are central to a healthy society, and advertising standards should reflect this.

19th June 2009

Department for Christian Responsibility and Citizenship, Catholic Bishops' Conference of England and Wales

Linacre Centre for Healthcare Ethics

¹ Raymond, EG et al, Population effect of increased access to emergency contraception pills: a systematic review, *Obstetrics and Gynecology* 2007; 109: 1, 181–188.

The Catholic Parliamentary Office is pleased to respond to the questions below which are of particular interest to us.

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?

No.

We are of the view that these should be included in section 10, the prohibited categories of the code. The nature of these types of services is such that they constitute inappropriate subjects for advertising on television and radio. Recent government statistics have revealed yet another increase in abortion which has elicited widespread disapproval and heightened concern about how the issues around sexual health and abortion in particular have been trivialized. The advertising of such services will further trivialize the matter given that no serious treatment of the issues involved can be dealt with in a short advertisement.

Advertising, rather, is typically aimed at increasing the market for services and therefore very likely to lead to a worsening of the situation of high abortion levels. This cannot be beneficial for society in general or the women involved in particular.

Abortion is particularly controversial and raises issues which can cause great offence to many people. The nature of television and radio also make it difficult for parents to protect their children from inappropriate, distressing or corrupting information which may be propagated in these media.

The mental health considerations which are necessary in dealing with abortion provision make personal and private attention the appropriate manner in which to deal delicately with the needs of individual persons.

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 believe that this rule should not be included in the Code.

The reasons given above broadly justify our position on this matter

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.

Evidence suggests that the greater the promotion of condoms the greater the likelihood of promiscuous behaviour with correspondingly adverse effects on sexually transmitted infection rates. The pervasive presence of broadcast media make it difficult to ensure that children are protected from unnecessarily graphic information which can be particularly problematic during the ages of tranquillity from around 5 years until puberty. It is responsible therefore to ensure that advertising for condoms is more tightly restricted than under the present controls.

Re: proposed TV advertising of Family Planning Centres and of condoms to children aged 10 to 16.

CUT is an organisation of lay Catholics, our aim to highlight the dangers of watching television and therefore persuade Catholics and anyone who will listen to give up the TV.

It is clear that the broadcast media having sexualised people and children beyond what is natural. Are proposing a solution which is quite frankly repugnant to Catholics, which is that abortion ads be allowed on TV and that condoms be allowed to shown on programmes for children between 10 and 16. We therefore request that abortion ads are NOT allowed on the TV or any broadcast media, likewise that condom ads also are not allowed to be shown to children.

It is a well know fact that condoms are in-fact not safe and add to the problem of sexually transmitted dresses and by sexualising people and being only 85% efficient that they add to problem of unwanted pregnancies.

I recommend that the committee read the book 'The Case Against Condoms' by Trujillo and Clowes, Human Life International (2006) before any decision is made.

Annex 3

Consultation questions

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.

No. Any tool can become an offensive weapon, so the prohibition would have to include kitchen knives and cricket bats, for example. The definition is open to (mis)interpretation and abuse. As regards replica guns, their possession and use are already covered adequately by the law. This is like saying that advertisements for toy cars should be prohibited, because real ones can be used to break the law, or to injure people.

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.

The question is very difficult to understand. It appears that you are proposing to extend the exception to the rule (which apparently currently only applies to radio advertisements) that clay pigeon shoots can only be advertised as part of a wider range of outdoor pursuits. If that understanding is correct, then I agree with it.

If, however, the real intention is to restrict the advertising of clay pigeon shoots, then my answer is No. Clay pigeon shooting is a sport enjoyed by tens of thousands of normal, responsible people in this country. Their guns are legally held, as they are licensed by the police. The sport raises huge sums of money for charity. Olympic Gold Medals have been won by this country's shooters. What possible reason, other than plain bias, could there be for singling out this sport for special treatment.

I have been organizing clay pigeon shoots and teaching shooting for 20 years. My opinion is, therefore, based on many years' experience of shooting people.

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

I refer to the above consultation and would ask that you treat this letter as a formal response by XXXX in respect to the same.

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?

The use of the word "pornography" is very emotive and without qualification is likely to create in the mind of consumers a connotation with something that is distasteful or negative. It cannot reasonably be said that much of what appears on Babe channels is "pornographic" in the modern day sense of that word. To that extent, the use of this word is misleading.

Question 97

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?

Once again, the use of the word "occult" is very emotive. By combining the use of this word with the reference to psychic practices – as if to imply that they are one and the same thing – is misleading. Modern day psychic and tarot offerings on broadcast television are a highly popular programme genre. There can be no reasonable justification for a ban on advertising such services.

Question 122

Given BCAP's policy consideration, do you agree that proposed rules 22.1 to 22.6 and

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22.8 should be included in the proposed BCAP Code?

We cannot see why there is a need for BCAP to become involved in the regulation of premium-rate-services. These services are already subject to substantial regulation by PhonepayPlus.

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?

We are concerned that information given to BCAP by Ofcom has either been inaccurate or that BCAP have failed to accurately present that information.

If members of the public and business community cannot rely on the accuracy and fairness of information used in the consultation document, it must be the case that the entire consultation process is fatally flawed.

We would submit that it is critically important that any consultation satisfies the five principles of good regulation identified by the UK Government's Department of Business Innovation as the "cornerstone" of better regulation, namely that any regulation should be:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted – only at cases where action is needed.

We believe this consultation fails to satisfy these principles of good regulation.

We have read with interest the proposed changes to the two codes and welcome the simplification of the language and the aligning of the two. We have no problems with the suggested changes as far as advertising is concerned. My colleague Marc Michaels will separately comment on the suggestions for direct marketing.
Many thanks

Graham

Graham Langton

Special Projects

Channel Integration
Management
COI

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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?

We think the inclusion of 1.2 in the proposed code is a valuable addition for advertisers to recognize their responsibilities to their audience and society. This is particularly relevant to the work of our charity, *Changing Faces* that supports and represents children, young people and adults who have disfigurements. A public attitude survey in 2008 of a representative sample of 1000 showed that 9 out of 10 people have unwitting negative attitudes towards disfigurements. If not tackled, these attitudes may constitute 'facial prejudices' and lead to 'facial discrimination' at work, at school and in public situations. They can have a detrimental effect on the self-esteem, lives and prospects of people who have disfigurements.

Advertisers need to be aware that their material could reinforce negative stereotypes amongst an uninformed audience and could cause offence towards people who have disfigurements and further contribute to their challenges. For example, when portraying disfigurement, they may automatically use scars/disfigurement to portray negative qualities (evil, something nasty).

Advertisers promoting fire prevention/drink driving and other accident prevention need to be careful that images used with the intention of preventing harm, are also considerate to those who have disfigurements and doesn't unduly cast a person's disfigurement in an offensively negative light.

In order to enact this code however, advertisers need to be fully informed about the various sectors of society that exist and need to show a willingness to engage with those with knowledge about these sectors.

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

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?

Yes

iii) Do you have other comments on this section? **No**

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**

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**

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 but see below**

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?

Yes but see below

iii) Do you have other comments on this section?

Whilst the background notes explain the reason for this decision, it is important that advertisers understand the link between proposed harm and the link with "misleading" and to the inclusion of rule 1.2 relating to social responsibility. Particularly relevant to this discussion, are advertisements linked to cosmetic surgery which may exaggerate the merits of such treatment and not give enough attention to the risks. In doing so they may encourage vulnerable people (i.e. those with low esteem,

young people) to undertake such a procedure. This could result in disfigurement, other serious injuries.

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**

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?

We believe that this Code does not give adequate attention to the issues around the advertising of cosmetic surgery and other beauty industry products which has become more and more prolific in recent times.

The Department of Health's Chief Medical Officer is committed to the tighter regulation of the cosmetic surgery as a whole and has drawn attention to the need for scrutiny of the advertising of cosmetic surgery (see http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4102047).

The Department is also exercised about the need for potential consumers/patients of cosmetic surgery not to be influenced by advertising hyperbole and to ask the right questions (http://www.dh.gov.uk/en/PublicHealth/CosmeticSurgery/DH_913).

Given the increasing numbers of people undergoing cosmetic procedures, this is something Changing Faces believes should merit a whole section of the Code.

In particular, we suggest attention should be given to the following points:

- **Advertisements for cosmetic surgery should not exaggeratedly associate 'good looks' with lifelong happiness, getting promotion or other aspirations.**

- **Advertisements should not overestimate the benefits of cosmetic surgery procedures nor underestimate their risks. To do so may lead to the harm of potentially vulnerable people (ie. young people and those with low self-esteem).**
- **All advertisements for cosmetic surgery should provide information about the credentials, competencies and experience of those clinics/individuals providing the service - again to prevent harm.**
- **In relation to making a clear differentiation between advertising and editorial content, BCAP may need to look at whether TV programmes (eg: makeover shows) which appear to advocate cosmetic surgery as something to aspire to, may constitute advertising.**

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Shahriar Coupal
BCAP Code Review
Code Policy Team
Broadcast Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

23 June 2009

Sent by post and email: **BCAPcodereview@ca~.oru.uk**

Dear Mr Coupal

I am writing in response to the consultation on the proposed BCAP Broadcast Advertising

Standards Code. Thank you for agreeing to accept this response after the consultation deadline of

19 June 2009.

Channel 4 supports BCAP's policy objective of creating a Code based on the principle that

advertising should not mislead, offend or harm. Channel 4 also agrees with BCAP that in a digital

media environment it is important, where justified, to have greater consistency in the setting of

standards for broadcast advertisements across media. Channel 4 therefore welcomes BCAP's

proposal for a single Code covering television and radio advertisements, but which continues to

take account of the particular characteristics of each medium when assessing compliance.

Channel 4 broadly supports the proposed Code, given that it mostly reiterates the standards

established in the existing television and radio codes. Channel 4 has therefore not sought to

comment on every section of the proposed Code or every question in the consultation document.

Instead, this letter flags specific areas where Channel 4 would be grateful of clarification.

Broadcaster compliance

In relation to responsibility for Code compliance, Channel 4 recognises that it is the broadcaster

that is responsible for ensuring that advertisements comply with the standards set out in the

Code. In practice, many broadcasters use Clearcast for the pre-transmission examination and clearance of television advertisements in order to comply with the Code. This system has worked extremely well in ensuring compliance.

In the proposed Code, a number of sections set out direct obligations on broadcasters to satisfy themselves about the way in which an advertiser is operating and/or about the claims made for products and services. For example, proposed section 3.27 in relation to estimates of demand..

provides that "Broadcasters must be satisfied that advertisers have made a reasonable estimate of demand" for the product advertised. Similar obligations are proposed, for example, in sections

3.29, 3.50, 8.3, 11.2, 11.13, 14.2, 14.15, 15.11, 16.6 and 27.4. Channel 4 would be grateful for

confirmation that enquiries and assessments made by Clearcast in the process of vetting

advertisements would be sufficient to fulfil a broadcaster's responsibility in these areas.

Misleading advertising

In relation to claims made in advertisements, section 3.9 of the proposed Code provides that

"Broadcasters must hold documentary evidence to prove claims that the audience is likely to

regard as objective". In the current TV Code, broadcast licensees are required only to "obtain

adequate objective evidence to support all claims". Channel 4 is unclear whether there is an intended distinction between the alternative use of the words "prove" and "support" in these two

versions. In addition, Channel 4 queries whether a requirement for broadcasters themselves to

physically hold documentary evidence is practical or proportionate: it is likely to be more appropriate for Clearcast to hold such evidence.

Direct remittance

Further, while retaining the principle that financial promotions must not invite the direct remittance of money, section 14.15 of the proposed Code introduces a new requirement that

"Broadcasters must retain, for 90 days after final transmission, printed paper copies of each advertisement that invites direct remittance of money". Channel 4 would be grateful for clarification of what exactly is meant by "printed paper copies of each advertisement". In addition,

Channel 4 again queries whether this requirement is practical or proportionate for broadcasters: it

is likely to be more appropriate for Clearcast to hold such copies.

Premium rate telephone services

Section 22.6 of the proposed Code sets out a new requirement that "Television advertisements for premium-rate services must include a non-premium telephone number for customer care purposes". Channel 4 notes that from 1 August 2009, "087" numbers will become premium-rate numbers regulated by PhonepayPlus. "087" numbers are currently often used for customer care contact. PhonepayPlus guidance on the issue states that in the case of 087 providers, PhonepayPlus will accept the 087 number in question, or an alternative 087 number, being used for customer care. In that scenario, the number, which will be technically classified as premium-rate from 1 August 2009, may well need to be used in advertisements. Channel 4 believes that this should be anticipated in the drafting in order to prevent the new Code from becoming outdated rather quickly. Channel 4 also queries why this clause applies to television only, rather than to both television and radio.

Gambling

In section 17 on gambling, Channel 4 notes that the proposed code refers to obligations on "licensees" rather than on "broadcasters". The remainder of the proposed Code consistently refers to "broadcasters" and Channel 4 suggests that this practice continues in section 17 unless there are compelling reasons otherwise.

Alcohol advertising

Channel 4 has also seen the addendum to the Code consultation in relation to alcohol advertising. Channel 4 agrees with BCAP that the evidence contained in the Independent Review of the Effects of Alcohol Pricing and Promotion conducted by Sheffield University [the SchARR Review], which considered the relationship between the price and promotion of alcohol and alcohol-related harm, does not merit a change to BCAP's alcohol advertising content or scheduling rules. Channel 4 agrees that the SchARR Review does not offer persuasive evidence to support a proposal to further strengthen the alcohol advertising rules.

I hope this information is of assistance. Channel 4 would be happy to discuss any aspect of this response with the BCAP Code Policy team.

Yours sincerely

A handwritten signature in black ink, appearing to read 'NP Adgeis'.

Neil Pepin
Deputy Head of Legal and Compliance

BCAP CONSULTATION

Responses from the Charity Law Association Working Party

Introduction

The Charity Law Association (CLA) has over 900 members, mainly lawyers but also accountants and charity professionals. It is concerned with all aspects of the law relating to charities, and has established a Working Party to consider the CAP and BCAP Code consultations.

The members of the Working Party are:

- Elizabeth Davis – Blake Lapthorn - Chairman
- Nick Burrows - Blandy and Blandy
- Yvette Deerness - Cancer Research UK
- Sue Greaves - Wrigleys Solicitors LLP
- Natalie Johnson - Wrigleys Solicitors LLP
- William Lister - Pannone LLP
- Stephen Ravenscroft - Stone King Sewell LLP
- Geoffrey Sturgess - Blake Lapthorn

The members of the Working Party serve in a personal capacity and the views expressed in this submission should not be taken to be the formal opinion of the organisations that they represent.

General Remarks

In many areas the Working Party are supportive of the proposals made to the CAP and the BCAP Codes. The proposals are a welcome response to the way that society and the industry have moved on. We do however feel that the new Codes are poorly constructed, and more consideration should be given to the proposed amendments.

In particular there is an inconsistency of terminology and a lack of definitions through introducing provisions from the Consumer and Business Protection from Unfair Trading Regulations without considering their relevance or context. Further the Codes appear uncertain as to the extent to which the rules should be designed to protect consumers and small and big businesses. For example the provisions of BCAP 3.24 prohibiting exaggeration directly contradicts 2.2 allowing "puffery" without making it clear that one should read 3.24 in the light of 2.2.

While these issues may not cause a problem at the consultation stage we feel that it may cause significant problems for advertisers and their advisers leading to increased costs when advertisers need to qualify the advice. Charities that wish to advertise may be disadvantaged in finding the necessary financial or administrative resources to obtain skilled advice to protect them from risk of breach of the Code and subsequently the expense and administrative resources required to deal with any allegation of breach or other challenge.

Consultation questions

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?

No

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?

No

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.

It should not apply to either radio or TV as it is too difficult to adjudicate and a normal and acceptable part of selling techniques (all media).

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 but "how it is calculated" may be impractical e.g. different rates of import duties for different destinations.

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 but "buying another product" should be inserted after "..product or service depends on".

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.

No, BPR 4(i) is in the context of comparative advertising and seeks to prohibit the offer of alternatives by reference to branded originals. This wording could for example prohibit advertisement of a porcelain replica stilton cheese.

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.

No. Solicitors should be subject to the same rules as others on misleading claims. We are equivocal on whether special emphasis should be given to use of this potentially misleading term.

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?

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?

iii) Do you have other comments on this section?

General confusion of use of terms 'marketer', 'advertiser' and 'consumer'. More clarity is required. See e.g. 3.3.2 and 3.6.

3.8- Disagree- see response to question 13

3.9- It is sufficient that the advertiser holds this information and that the broadcaster is aware of it.

3.11- Needs to be clear that its target is communications intended or likely only to be heard once.

3.12- should make clear that it is "subject to 3.4".

3.16- Inappropriate and unnecessary in broadcast advertising as it could prohibit ironical or humorous content and is unlikely to be misunderstood.

3.24.3- Unless so qualified

3.36- An advertising prohibition is anti-competitive. Fair comparison should be permitted.

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.

It is, obviously, a matter of judgment as to what is meant as “grossly prejudicial”. It must be borne in mind that there is minority body of opinion which does not accept that global warming is caused by the activities of mankind. Accordingly, consider amending rule 4.10 to read:

“Advertisements must not condone or encourage behaviour which is regarded by the significant body of scientific opinion as being grossly prejudicial to the protection of the environment”

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 we agree with this rule, save consider the addition of the following words:

“No advertising is acceptable which infringes or is likely to infringe the intellectual property rights of third parties”.

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?

See above

iii) Do you have other comments on this section?

No further comments.

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.

We agree with rule 5.7 but would propose adding the words:

“Advertisements must not exploit or seek to exploit, either directly or indirectly, the special trust ...”

It is arguable whether some definition of “special trust” might be required. If so, we would suggest that “special trust” is that trust which is ordinarily understood by right-thinking people.

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.

Given the cost of current toys, £30 is a reasonable cut off point.

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.

See above.

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.

Why have the words "or indirect" been omitted? These words should be included.

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.

Agree.

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.

As above.

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.

Agree.

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.

i) TV rule 7.3.4

Agree.

ii) Radio rule 11.11 a), section 2

Agree

iii) Radio rule 11.11 b), section 2

Agree.

iv) Radio rule 11.12, section 2

Agree.

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.

Agree.

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.

Rule 5.4 creates a problem as it is not clear in every case what may or may not be detrimental to children's health. An example might, for instance, be an advertisement for peanuts which to most children are completely safe, but may cause very serious illness, if not death, in others. Accordingly, consider rephrasing rule 5.4 to read:

"Advertisements must not condone or encourage practices which are regarded by the substantial body of medical opinion to be detrimental to children's health."

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.

See above.

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?

See above.

iii) Do you have other comments on this section?

No.

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.

We agree in general with the proposed Code on this point, however please consider adding a rider that such generic advertising may be looked at and examined in the light of such a complaint.

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.

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.

No comment.

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 comment.

iii) Do you have other comments on this section?

No comment.

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. It is a useful rule, but is probably no longer relevant.

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?

No

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?

No

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.

Agree.

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.

As (i) above.

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.

Certain charities may have concerns about this relaxation. For example, Rule 21.2 puts in place some protection for under 18s but they may still be exposed to betting tips as there is no proposed restriction on scheduling, and there is no evidence of protection for vulnerable adults.

It would also need to be made clear in the advertisement that the tip is no more than the best guess of the tipster and no guarantee can be made that the tip will come to pass. Further, tipsters should rely on some degree of knowledge of the sport concerned, rather than on pure guesswork.

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.

Agree.

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.

Agree.

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 we agree although it is unclear what is meant in the rule by "centrally clear". This should be expressly defined and stated.

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.

Agree, so long as adequate safeguards are in place. It may be helpful for the code to define what "consumer or personal problems" are.

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.

Agree.

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.

This relaxation may be of concern to certain charities and is arguably not within the public interest. There is no reason why there should be any relaxation on TV advertisements for pornography products, whether encrypted or otherwise. Those who wish to find adult channels can do so easily enough. Although they are clearly not aimed at children, it is all too easy for children, young persons and vulnerable people to obtain access. There is a serious danger of normalising activity which is not universally regarded as acceptable.

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.

See (i) above.

The term "centrally cleared" needs to be explained.

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.

If it is decided to permit such adverts then we agree that any such advertisements for R18-related material should be encrypted for adult entertainment channels only and that the advertisements themselves should not include such material or its equivalent.

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.

Agree, the Code cannot strongly enough prohibit advertisements for guns or weapons of any type, whether real or replica. Such advertisements are wholly offensive and should in no circumstances be permitted. There is and can be no public interest in such advertisements.

Note that the inclusion of replica guns without further definition may prohibit the advertising of certain children's toys or for example a plastic model kit of a WW2 anti-aircraft gun.

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.

Products intended to mask the effects of alcohol should **not** be permitted as these are clearly intended to defeat the consequences of the law if a drunk driver should be caught. There may however be some benefit in individuals being able to test whether they are safe to drive in the first place.

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?

The liberalisation of the Code as regards betting and adult sex material may be of concern to certain charities. A possible consideration is that any service which provides tips is likely to encourage people to bet and may cause harm to the vulnerable. It may also be considered that any step to make pornography generally more readily accessible or to encourage people to watch it is concerning. The only risk that seems to have been considered is the risk that under-18s may come across it.

ii) Do you have other comments on this section?

See above.

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 subject to the MHRA's approval of the wording.

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 comment.

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.

No comment.

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?

No comment.

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 comment.

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.

No comment.

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.

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.

No comment.

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 comment.

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 with regard to those provisions that we have commented upon.

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?

No

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?

Although the rules may protect consumers in general they do little to protect vulnerable groups. The press and society in general are filled with bad messages about body image. The problem with such advertisements is their impact on vulnerable groups such as young people whose bodies are developing and those suffering from poor body image and experiencing associated health conditions. If these advertisements are permitted then we agree that they must not refer to the amount of weight that can be lost. However the advertisers should be required to take additional responsibility - for example consideration should be given in the rules for vulnerable adults to be encouraged to talk to responsible adults, parents and independent health professionals prior to any contact being made with such establishments. In addition these advertisements should not be scheduled around programmes that appeal to audiences below the age of 18.

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.

These products are primarily used for slimming and weight control. Body image is a particular problem with young people. Targeting these advertisements at under 18's may be viewed as by implication encouraging their use as part of a slimming and weight control regime.

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?

The term "broadly equivalent requirements" may be too vague to establish any consumer confidence.

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?

People that are overweight may not be aware of their own BMI and may not even acknowledge that they are obese.

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.

The statement "generally accepted good medical and dietary practice" is too vague – are there any medical guidelines that can be inserted in rule 12.9 to clarify this statement.

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?

Necessary – but not always easily understandable – see above comments.

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 – no advertisements involving weight loss or slimming should be scheduled around programmes that appeal to audiences below the age of 18.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition however, we would like to highlight the grey area which proves problematic for Health Charities around the issue of whether the mere presence of a Health Charity's logo is by its nature an implied disease-reduction claim – we understand that it is for national regulators to clarify this and it may be worth following up with the FSA to establish their position. If there is no clarity then this would mean that logos could not go on food packaging unless authorised by the European Commission which we do not believe is what was intended.

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.

See above.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Insofar as we can tell, we agree with this proposition.

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.

Although we agree in general, the health-related charity or national representative body of medicine, nutrition or dietetics must be one which has general respect and acceptance amongst a general body of medical opinion. It is all too easy for such a charity to be registered that might be on the very outer fringes of medicine professing positive medical effects for the eating of what the majority of the medical profession might consider to be absurd substances.

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.

See 86(ii) above.

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?

See above.

iii) Do you have other comments on this section?

No.

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. Even greater clarification might be achieved by adding the word "variable" so that the new rules reads "14.7.5 if interest rates are calculated by reference to an external variable index or rate that fact must be stated clearly." This does reintroduce the very word that was confusing in the old rule, but in the new context is perhaps no longer confusing, and instead us useful clarification.

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?

No

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. This would be an important rider to 15.11. Of equal concern is perhaps the promise of material benefits in return for donations. E.g. you give to this organisation and your prayers for material things will be answered. Perhaps this should be dealt with in the code by referring to "spiritual or material benefits".

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 in general with this proposition; however advertisements should not be accepted from any bodies which apply any pressure whatsoever on people to join or participate. What is or is not “unreasonable” is very subjective. To those who may be persuaded to join a cult, they may well no doubt consider that the pressure put upon themselves was reasonable. Indeed, those applying the pressure would equally consider that the pressure they have applied on such third parties was reasonable. By the time consideration is given as to whether or not the pressure is reasonable or otherwise, it may well be too late.

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.

This will be an issue of concern to some charities. As the advancement of religion is charitable and evangelism is a key part of many faiths, religious charities may argue that such advertisements should be allowed, possibly without the requirement to make clear that their purposes include evangelism. There may be concern that a faith-based organisation which carries out a number of works including evangelism might have to state in the advert that some of the monies will fund its evangelistic works even though the vast majority of its funds are used elsewhere. This may either require a longer, more expensive advert or may lead to the key purpose of the fundraising being missed. There may also be an issue of mixed use: there are some activities which may have an evangelistic element whilst not being exclusively or even mainly evangelistic. However, it is likely that some secular charities would prefer such advertisements to remain prohibited.

We further consider that advertisements which appeal for funds for purported charitable purposes must make it clear if those funds are only to be applied to those who are members of the faith group in question.

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.

This change would be a weakening measure which, again, could cause concern to faith-based charities. Consideration should be given to the fact that rule 4.1 does not fully cover the interests protected in rules 3.10 and 3.11. An advert which fell foul of rule 3.10 or 3.11 and was offensive to a minority of the population but not against generally accepted moral, social or cultural standards would not be caught by rule 4.1.

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.

The Working Party had mixed views on this question. Some members agreed that the rule should be deleted. Others felt that rule 10.10 ought to be included given that it is not possible to explore the basis upon which the testimonial or reference was given, whether it was freely and voluntarily given or whether it was given following some form of indoctrination. It may have been given following an inducement. Further, what may be a positive experience for one individual may not necessarily be a positive experience for another. Given the vulnerability of certain sections of the community they should not be asked to rely upon such testimonials or references, the providence of which may be obscure.

Counselling

Question

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.

The Working Party again had mixed views. Some members agreed that the rule should be deleted. Others felt that rule 10.11 ought to be included on the basis that counselling is, by definition, offered to vulnerable people. Counselling from a doctrinal position is likely to result in the recipient adopting the doctrine concerned, or at least an acceptable risk that they may do so. This may be all very well in respect of the established religions, but may not be in respect of fringe cults. Further, it is not possible to know the quality of the counselling which is offered or the qualifications of those involved. If counselling is required, an individual has access to more conventional counselling under the NHS or (if applicable) private medicine.

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.

Generally yes. The removal of the requirement of substantiation in relation to the claimed benefits of religion for personal wellbeing is of note, but probably largely reflects the reality that claims would be incapable of independent, scientific substantiation. The requirement that the claims be restrained and proportionate, in addition to the overall protection regarding misleading advertising, should be adequate in the circumstances.

However, faith-based charities, particularly those which offer counselling services, may be concerned. What if claims relating to treatment, cure or alleviation of physical or mental health problems can be substantiated? Faith counselling may be viewed as being different from (and less objectionable than) faith healing or miracle working, particularly where the counselling service is properly regulated and the counsellors are suitably qualified.

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, but has there been any fresh consideration as to whether there should be any exceptions at all for occult practices? Those which are regarded as entertainment arguably blur the distinction between

harmless fun and more dangerous practices. Again, some charities, perhaps those working with vulnerable people, may have concerns about this.

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?

Necessary, yes. Easily understandable – not always, see comments above.

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: 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.

The Charity Law Association believes that the proposed wording must ensure compliance with the revised requirements of the Charities Act 1992 (as amended by Charities Act 2006). In particular, reference must be given to the "notifiable amount" which is defined as being either the actual amount of remuneration or sum received (if that is known at the time when the statement is made), or otherwise the estimated amount of the remuneration or sum to be received, calculated as accurately as is reasonably possible in the circumstances. It might be helpful for proposed Rule 16.5.2 to reflect more fully the requirements of Section 60 of Charities Act 1992 (as amended).

In addition the audience must be able to obtain the information on the charities that will benefit at no/very low cost. A website would seem to be the easiest option, but possibly there should be an alternative means to obtain the information for those who do not have easy access to the internet. Any telephone line to provide the information should either be free or at no more than local rate. Perhaps the Code should address these points.

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.

It is clear that commercial relationships between manufacturers of products and charities can lead to preference to purchase one product compared to another. Charities generally need to be very careful with regard to the types of promotion they support: for example, a cancer charity simply would not for reputation reasons participate in a promotional venture with a tobacco company. For these reasons, we believe that this issue should be, effectively, self-regulating: charities will form a view for themselves as to whether they would wish to enter into a promotion with a pharmaceutical company. While it is easy to see that there are several downsides in a charity engaging in any such promotional venture with a pharmaceutical company, nevertheless we believe that the position will effectively self-regulate: this is particularly supported by the fact that any joint promotional ventures can only be taken with the benefit of an agreement with the charity itself, so the charity would be on notice and have the ability to take a policy view as to whether the promotion should be supported.

Care is also needed, in particular as regards the efficacy of the medicine concerned. It is important that any such advertisement features the charity promotion as a subsidiary to the promotion of the effects of the medicine itself.

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.

Subject to (i) above we agree with the broad thrust of rule 16.7. We would refer to the response given at question 99 above with regard to the proposed method of calculation of the contribution and the need to ensure compliance with Charities Act 1992 (as amended).

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.

We agree with BCAP that compliance with the requirements of the Data Protection Act 1998 should suffice and we therefore agree that the current provisions of the Radio Code can be deleted in this regard.

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.

The Charity Law Association broadly agrees with the view that restrictions with regard to comparisons in charity advertisements can be deleted and makes the following comments:

- It is simply not possible in many circumstances to compare charities on any form of commercial "like for like" basis. The range of services and support provided by charities is bespoke in its nature and charities will have a wide range of different measures by which their efficiency and effectiveness can be identified. While the general view within the sector is that, for these reasons, comparisons are unlikely to be helpful; it is hard to see why the code should necessarily single out charities for special treatment in this regard.

- The removal of the ban on comparative advertising will no doubt help maintain the consumer's trust in and perception of the charity sector. A concern is that there is an air of inevitability surrounding the possibility of 'tit for tat' comparative advertising between major charities. Such behaviour would undoubtedly affect the view of the sector in the consumer's mind and could adversely impact on donations. Having said that there would no doubt be consequential benefits for consumers in terms of the provision of further information enabling a more reasoned and informed choice about their donation. In addition charity advertisers which perform more efficiently and effectively will no doubt benefit. On balance, the benefits of deleting the current ban outweigh the potential problems which comparative advertising may bring, particularly given the fact that the overarching rule 1.2 requires that any and all advertisements must be prepared with a sense of responsibility to the audience and to society.
- This relaxation does have the potential to be damaging to the reputation of the charity sector as a whole. It is one thing for a charity to say (for example) 'we keep our administrative and fundraising expenses below 3% of the total fundraised'. It is another thing for charities to be seen to be "trading off" against each other, particularly if there is a risk that they may not have the full facts of another charity's fundraising expenses or effectiveness. However, there are clear benefits for the sector and for the public in charities being able to openly and honestly make such comparisons. Charity trustees would be aware of any reputational issues, in the event of their charity wishing to make comparisons, and would be required to act prudently and ensure that their claims had foundation.

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.

We note the proposed deletion and the difficulty in envisaging a scenario in which a third party, for example, a shampoo advertiser invites the audience to donate £50 to its nominated charity. We think this is possibly over-simplifying the range of scenarios in which the public can be invited to make donations, since the rules cover both commercial participators (such as shampoo manufacturers etc.) and also professional fundraisers (for example, organisers of charity balls, etc.). It is possible to see that the total value of goods which may be sold would exceed £50 and, in these circumstances, given the wording of Section 60(4) of Charities Act 1992 (as amended) and the fact that many advertisers may simply be unaware of these provisions, we wonder whether it would in fact be appropriate to retain the current radio rule 3.2.4.

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?

No.

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 agree with this approach to ensure consistency of treatment between SLA lotteries and the National Lottery.

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.

Agree.

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.

We agree that, where the good causes of an SLA lottery are featured, it is appropriate to include under 18s in a significant role provided that there is no explicit encouragement by the lottery product. This is particularly of relevance to the numerous charities which are for the benefit of children. However, the Charity Law Association acknowledges that this needs to be balanced with a need for charities not to be seen to promote irresponsible gambling among younger people.

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.

Generally, the Charity Law Association agrees with BCAP's position with regard to questions 108, 109 and 110. In particular, the Charity Law Association considers that there should be consistency between advertisements on the one hand for SLAs and on the other hand for the National Lottery.

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.

Generally, the Charity Law Association agrees with BCAP's position with regard to questions 108, 109 and 110. In particular, the Charity Law Association considers that there should be consistency between advertisements on the one hand for SLAs and on the other hand for the National Lottery.

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?

See below at iii)

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?

See below at iii)

iii) Do you have other comments on this section?

Generally, the Charity Law Association agrees with BCAP's position with regard to questions 108, 109 and 110. In particular, the Charity Law Association considers that there should be consistency between advertisements on the one hand for SLAs and on the other hand for the National Lottery.

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.

Agree

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.

Agree

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.

Agree

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.

Agree

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.

Agree

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.

No comment

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.

No comment

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.

Agree

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.

Agree

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.

No comment

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.

Agree

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?

Charities operating in areas affected by alcohol and related issues will probably welcome any changes to the codes.

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.

Agree

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 but reference to non-presentation as reason for preference should be deleted or amended as unless included as a warning, any such information will be a potential reason for preference.

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.

Such an exemption would suggest that it was necessary, which must be in doubt. If advertising of this nature is a problem the rule could be modified to state that the fact that the pictured activity takes place out of the UK does not grant automatic exemption. The explanatory note in the existing rules is helpful.

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?

The definition should be modified to make it clear that the rules only apply to motoring on public roads or in public places.

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?

If the intention is to remove background notes, this would be retrograde.

iii) Do you have other comments on this section?

No

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 if otherwise legally required but explicit reference should be made to that other requirement.

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.

No. Such advertisements are freely accessible in non-broadcast media and the content of such advertisements is otherwise regulated.

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.

Agree

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.

N/A

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.

Agree

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.

Agree

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 provided that "telecommunications based" is defined as excluding broadcast material e.g. cable, satellite, IPTV and similar or it could be impossible to broadcast/advertise encrypted services otherwise than through an encrypted service.

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?

Not easily understandable because of constantly changing technologies and terminology.

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?

No

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 homeworker? 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?

No

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?

No

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.

No comment.

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.

No comment.

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?

27.1- Meaning of "centrally cleared" is unclear

27.2- Unnecessary or covered by general rules on misleading. Also wording is unclear.

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?

Despite question 137 there appears to be no mention of promiscuity. In any event the ASA should not concern itself with such questions of personal behaviour.

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?

ii) Do you have other comments on this section?

We agree with the wording of the proposed rule 28.1. However, we wonder whether there is something to be gained from reference to the legislation concerned to ensure that advertisers are aware of the requirements of the Gambling Act 2005 in this regard. Otherwise, the proposed new rule is potentially too vague.

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

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.

Agree

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.

Subject to our comments under section 10 above regarding betting, we agree with this proposal.

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.

Agree.

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.

Agree.

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.

It is a matter of expert opinion as to whether the advertising of condoms which may come to the attention of young children may or may not encourage them to partake in underage sexual activities. Some charities may argue that such advertising is unacceptable, and others would argue that if children are going to engage in sexual activities, they should be made aware of the need for contraception. The overriding danger is that the advertising of condoms may serve to normalise sexual activity in our culture for children of a young and vulnerable age which is not in the public interest. Children of a young age who have reached puberty may consider that early age sex is appropriate and condoned. Accordingly, on balance, there should be no relaxation in advertising in this regard.

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.

Agree.

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?

No comment.

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.

Agree. The amount of liqueur in liqueur chocolates is almost minimal and of a very low alcoholic content indeed.

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.

Agree.

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.

The problem with this deletion is that it may give rise to a perception of endorsement.

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.

The greatest care and caution should be taken over advertising for gambling and, accordingly, one should relax the rules only where there is very significant and cogent evidence that it is appropriate.

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.

Again, the danger with this deletion is that it gives rise to a risk of endorsement. Media personalities have a very powerful "pulling power", especially with the young and vulnerable.

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.

Agree.

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?

Subject to above, agree.

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?

As above.

iii) Do you have other comments on this section?

No.

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?

Confusing use (or lack of use) of defined terms.

Removal of background notes is unhelpful.

Inadequate cross-referencing to other regulatory requirements e.g. "central clearance" for radio.

The following question was issued as an addendum on 29 May 2009. The closing date for responses to this question is 10 July 2009. The full text of the addendum can be found [here](#).

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 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.

CHILDREN AND YOUNG PEOPLE'S PARTNERSHIP BOARD	Item No. (Partnership Support will complete this)
CYPPB Meeting Date: 7th May	Report Author Jane Waite
Title of Report: Advertising Standards Agency Consultation re condom and abortion services advertising	Board member Kate Yates

1. Decision (s) required from CYPP Board

That the Partnership agrees to the following as a decision from the CYPPB Northamptonshire contributing to the Advertising Standards Agency Consultation re condom and abortion services advertising

- that the relaxation for advertising for Condoms takes place, and that the advertising is not in or adjacent to programmes commissioned for and principally directed at or likely to appeal to children below the age of 10.
- That advertisements for post-conception pregnancy advice services must make clear in the advertisement if the service does not refer women directly for abortion (***proposed television and radio rule 11.11***)

2. Plan Priority and Outcome Measure (s) to which the issue relates

- Teenage Pregnancy Strategy: Reduction in Under 18 Conception Rates by 50% by 2010.
- Reduction in repeat termination rate (currently 12% in under 19's)
- Impact on transmission of STI's

3. Background information

The Advertising Standards Agency consultation re condom and abortion services advertising concludes on the 19th June. Responses are being collated from all areas in the East Midlands including Northamptonshire to feedback to GOEM via the regional Teenage Pregnancy Lead.

Feedback to the National Site will also be undertaken:

http://www.asa.org.uk/cap/Consultations/open/BCAP_Code_Review_consultation/

- **Condoms**

The Rules on the scheduling of television advertisements presently state that condoms may not be advertised before 9pm, except on Channel 4 where the restriction is 7pm, subject to copy content. The present rule is intended to protect younger viewers from inappropriate advertising.

We are asked to respond to Question 147 P 202 in the consultation:

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.

- **Family Planning Services**

We are asked to respond to Question 62 P 90 in the consultation:

- 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
- ii) Advertisements for pre-conception advice services through the general rules only?
- iii) 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.

Rule 11.11: Advertisements for post-conception pregnancy advice services must make clear in the advertisement if the service does not refer women directly for abortion.

4. Recommendation(s) –

That the Board approve the proposed changes and that the Teenage Pregnancy Coordinator represents their approval to GOEM and to the national consultation website.

Report authors **must complete the table below** or the report will not be accepted

Author:	Name: Jane Waite Team: Teenage Pregnancy (Safeguarding NHSN)
Contact details:	Tel: 01604 651724 Fax: 01604 Email: jane.waite@northants.nhs.uk
Background Papers:	National consultation website: http://www.asa.org.uk/cap/Consultations/open/BCAP_Code_Review_consultation/
Is this report proposing an amendment to the budget and/or existing CYPP Plan?	NO
Have the financial implications been cleared by the relevant finance manager?	Not applicable
Are the proposals based on research into need and into effective responses to need?	National Consultation
Have any legal implications been cleared by Legal Services?	YES by National Leads in preparation for the consultation
Has an Equalities Impact Assessment been carried out in relation to this report?	N/A

Choose Life
After Abortion Recovery Ministry
Strandtown Baptist Church
1 Clonallon Court
BELFAST
BT4 2AB
Northern Ireland

14th April 2009-04-15

BCAP
Consultation on Abortion advertisements
Sent by email on Wednesday 15th April 2009

Dear Sir or Madam

Cover sheet attached also with this Microsoft Word document in accordance with your requirements.

Question 62(i) on your Consultation Paper:

Yes, there should be specific rules on abortion agencies advertising their business on television. I have had an abortion and have worked in helping other women (and men) in after abortion recovery for over 15 years. There are enough avenues open for women to seek out an abortion provider. Targetting them through the television when they are vulnerable and alone is not the answer to our high abortion rate. Abortion has long lasting physical, psychological, emotional and spiritual effects to abortion. If you are going to consider advertising abortion services, then I suggest you advertise also the consequences of the long term effects or you could find yourself at the wrong end of a law suit.

Women rush in to the abortion decision as it is and live to regret it. These adverts would compound that and allowing them to be shown to children is extremely irresponsible.

Will the BCAP consider advertising alternatives to abortion? Will the consider advertising what an abortion entails?

Abortion is not legal in Northern Ireland and under our criminal law, it is illegal to advertise abortion providers in booklets, yellow pages etc., Television would also come under this aspect of the law. You should seek legal advice. If you go to our Church website, we have a breakdown of the law and what constitutes an offence.

www.strandtownbaptist.org/chooselife

Question 147 on the Consultation Paper

Condom advertisements aimed at children over 10 years old.

No, rules for condom advertisements should not be relaxed. Condoms also do not solve our high teen pregnancy rate in the UK. The Government is sending out a false message that condoms protect you – they do not. HPV is skin to skin contact for example and you can contract it using a condom. Again, the Government is pushing these advertisements as a ‘band aid’ on our wider social problems and break down of our society.

If the condom adverts I have seen on TV are anything to go by so far, (Respect yourself, Use a Condom) the content alone is only suitable for adults. Our children are highly sexualised already. That is why we have a high teen pregnancy rate. The BCAP need to tighten up all their advertising to protect our young, innocent and vulnerable children. Especially those who have little or no parental involvement to protect them.

**CHRISTIAN CONCERN FOR OUR NATION/
CHRISTIAN LEGAL CENTRE RESPONSE TO
THE BCAP CODE REVIEW
JUNE 2009**



*Changing Society to put the
Hope of Christ at its Centre*



Andrea Minichiello Williams, Director
Christian Concern for our Nation/Christian Legal Centre
(020) 7467 5427
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<http://www.ccfon.org> and <http://www.christianlegalcentre.com>

Responding to this consultation

How to respond

BCAP invites written comments including supporting evidence on the proposals contained in this document, by 5pm on 19 June. Respondents should complete a consultation cover sheet, which is made available [here](#).

When responding, please state if you are doing so as an individual or if you are representing an organisation. Also, please make clear what your individual interest is or who your organisation represents. It will be helpful if you explain fully and clearly why you hold your opinion.

We strongly prefer to receive responses as e-mail attachments, in Microsoft Word format, because that helps us to process the responses.

Please send your response to BCAPcodereview@cap.org.uk.

If you are unable to reply by e-mail, you may submit your response by post or fax (+44 (0)20 7404 3404), marked with the title of the consultation, to:

BCAP Code Review
Code Policy Team
Broadcast Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

Accessibility

We want our consultation process to be accessible to everyone. If you have particular accessibility needs please contact the Code Policy team and we shall be happy to help.

Telephone: 020 7492 2200

E-mail: BCAPcodereviewquestions@cap.org.uk

Fax: 020 7404 3404

Textphone: 020 7242 8159

Note that we do not need a hard copy in addition to an electronic version. Also note that, other than an automated response to responses received by email, BCAP will not routinely acknowledge receipt of responses.

BCAP has sent written notification of this consultation to the organisations and individuals listed in this annex. We welcome suggestions of others you think should be informed of this consultation.

More information

If you have any questions about this consultation or need advice on the form of response, please contact BCAP's Code Policy team on +44 (0)20 7492 2200 or email us at BCAPcodereviewquestions@cap.org.uk.

Confidentiality

BCAP considers that everyone who is interested in the consultation should see the consultation responses. We shall publish all non-confidential responses on our website, www.cap.org.uk, when we announce the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by e-mail or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.

If part of a response is confidential, please put that in a separate annex so that non-confidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

Response

About Us

Christian Concern for our Nation (CCFON) is a policy and legal resource centre that identifies changes in policy and law that may affect the Judeo-Christian heritage of this nation. The team of lawyers and advisers at CCFON conduct research into, and campaign on, legislation and policy changes that may affect Christian Freedoms or the moral values of the UK. CCFON serves a mailing list reaching 25,000 supporters.

CCFON is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. .

Executive Summary

1. The Broadcast Committee of Advertising Practice (BCAP) and the broadcast arm of the Advertising Standards Authority (ASA) regulate advertising. CCFON/CLC welcomes the opportunity to respond to this consultation on the BCAP Code review on TV and radio advertising.
2. Combining the previously separated radio and TV advertising codes failed to produce a “single-user-friendly Code” as intended. Unfortunately, it also resulted in the lowering of code standards. This is partly because the Code insufficiently accounts for the audio-visual impact of TV. Generally, proposed changes in the Code tend to operate on the basis of the lowest common denominator of comparative standards for radio and TV.
3. A shorter joint code resulted in creating weaker principles. These weaker principles make it substantially more difficult for an individual to complain about falling standards and much easier to ignore complaints. While the skeleton remains, important nuances and explanatory descriptions which flesh out the body of the Code have been removed.
4. The principle in the harm and offence section – (i.e., taking account of “generally acceptable standards” rather than “high standards” as the criteria for measuring the risk of causing harm or serious or widespread offence) will lead to a serious lowering of Code standards. In our opinion, the proposed changes make the Code ineffectual and unable to meet its statutory obligations.
5. The stated aim of ASA is to “make sure all advertising, wherever it appears, meets the high standards laid down in the advertising codes”.²³ Unfortunately the proposed BCAP code fails to achieve high standards and relaxes existing benchmarks. It is our hope that ASA/BCAP will revise these proposals to avoid such a result.
6. The statutory framework for this Code must meet the standard objectives required under s.319 (2) of the Communications Act 2003. This standard requires protection of persons under 18. It further requires government to prevent misleading, harmful or offensive advertising in television and radio.
7. The proposed change to allow profit-motivated abortion advertising fails to meet these statutory obligations. Current advertising of the morning after pill and condoms likewise fail to meet these same legal requirements. The proposed profit-motivated abortion advertising deeply offends citizens holding a belief system grounded in sincerely held religious tenets. Commercial pandering of abortion and related services should, therefore, be prohibited. Abortion advertising to increase the already high level of abortions at a time of increasing concern about repeated teenage abortions is counterproductive. It also ignores the serious mental health implications of abortion. Commercial profits should never come at the expense of a woman’s health.
8. The Code keeps fairly tight restrictive advertising rules for charities and religious organisations yet relaxes the Code in areas where the young or vulnerable are in need of protection. To be sure, some categories of advertising should remain prohibited: (such as betting tipsters, encrypting pornography or R18 material; services offering advice on consumer or personal problems; private investigation agencies and live premium rate services which target the under 18). In our view, the government should extend this list of prohibited categories to include alcohol advertising.

²³ See <http://www.asa.org.uk/asa>

9. The watershed of 9pm may need revising upwards to 10pm or 11pm considering that many teenagers own their own TVs (and view TV later in the evening).
10. In view of the statutory obligations, the proposed Code should not weaken the harm and offence section. Yet it does so by: 1) removing standards on shared values on sex and nudity; 2) removing standards on the use of offensive language; 3) removing standards on the portrayal of sexual violence; 4) removing standards concerning respect for spiritual beliefs; and 5) removing standards concerning respect for the interest and dignity of minorities. It is highly surprising the government proposes such changes in light of the OFCOM broadcasting code protections for children under 18 (dealing with matters such as offensive language, sex, and nudity).²⁴
11. The proposal insufficiently regards the need to ensure that advertisements are not directly or indirectly discriminatory on the grounds of religion or belief. Whilst the EHRC enforce such advertising obligations²⁵, the Code itself must have serious regard for complaints of offence on the grounds of religion or belief.
12. In summary, the proposed BCAP code fails to meet its legal obligations and the Advertising Standards Authority's aim of the requirement for high standards in advertising codes. The proposed BCAP code needs to be revised in order to meet such standards.

²⁴ See section 1 <http://www.ofcom.org.uk/tv/ifi/codes/bcode/protectingul8>

²⁵ See section 54 Equality Act 2006 http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en_5#pt2-pb3-11g54

Annex 3

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 . See 'Responding to this consultation' in this Annex.

Section 1: Compliance

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.

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?

There do not appear to be any significant changes apart from the addition of rule 1.2. Please see our answer to question 1.

iii) Do you have other comments on this section?

No.

Section 2: Recognition of Advertising

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, except that rule 2.2. 2. (c) does add a clarification point which should be included.

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.

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.

No, because the proposed rule is much weaker. Rule 2.1.2 (a) is a more rigorous rule because it makes it clear that advertisements must not use expressions reserved for important news and public service announcements. It is important to retain this rule to avoid confusion between news content and commercial advertisements.

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.

Rule 2.2.1 needs to be modified rather than entirely removed. OFCOM may have the overall responsibility for the content and scheduling of programmes but Broadcasters practically implement these rules and an amended rule should reflect that.

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.

No, rule 2.2.29(a) should be retained to avoid phrases such as seen "on such and such a show". This will ensure that there is a clear distinction between programmes and commercial advertising.

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.

No, it is important to maintain the rule that station presenters should not make personal testimonials with advertisements on stations in which they appear. This is to make a clear distinction between their role as presenter and advertiser.

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.

No, it would be better to apply rule 2.4 to radio as well. This will ensure that there will be no confusion between impartial news presentation and advertisements.

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.

They are necessary but the present code provides a more easily understandable explanation and should be maintained. This is to avoid a relaxation and weakening of the code. For example, the current rule 2.1.2 clearly states what advertisements must not do in the recognition of advertising section and 2.2 is a watered down version referring to the need for special care instead.

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?

Please see our answer to question 7 i).

iii) Do you have other comments on this section?

No.

Section 3: Misleading

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 to rule 3.5. but no to rule 3.4. being included in the Code. Rule 3.4. is an additional new rule to allow for obvious exaggeration (puffery) in advertisements. We would oppose this additional rule as there are many vulnerable and gullible people who may be misled even by obvious exaggeration in advertisements.

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.

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.

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.

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.

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.

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.

No, there is a weakening of the current rule 5.3.3 which should be retained for consumer protection.

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.

No, there is a weakening of the current rule 5.3.3 which should be retained for consumer protection.

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.

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.

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.

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, there is no reason why it is not possible to say in an advertisement that a product has not been tested on animals.

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 but the second part of the present radio code rule on the issue of "no win no fee" should be included to protect consumers.

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.

No it is necessary, see answer to question 21.

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 but see answer to question ii).

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?

We disagree that there should be any weakening or relaxation of the code in this misleading section of the Code. For example, current rules 5.1.1 and 5.4.1. are stronger in prohibition terms than the proposed rule 3.1 and the second part of the proposed 3.2.rule similarly weakens the current 5.1.3 rule.

iii) Do you have other comments on this section?

No

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 agreed that the new rule 4.7 should be included. Advertisements should not condone or encourage crime, disorder or anti-social behaviour.

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, the same rule that advertisements should not condone or encourage crime, disorder or anti-social behaviour should apply to radio as well as TV. This should include a ban on alcohol advertising.

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.

No, we disagree. The radio rule specifically states that advertisers must not harm listeners, nor exploit either personally or financially, their vulnerability. Whilst the general principles would help ensure this does not happen, this rule should still be included. It provides a higher level of specific protection for the vulnerable than the general principle covering serious or widespread offence or harm. The radio harm rule should be extended to watchers of TV. The need not to exploit the vulnerable found in this rule is particularly important. The proposals for abortion services advertisements do not provide that protection, which is another reason why adverts on abortion should not be on the radio and TV. Please see our answer to question 62.

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.

Apart from the inclusion of rules that advertisements should not condone or encourage crime, disorder or anti-social behaviour, the current code should be retained.

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?

We strongly disagree with the changes being made to this section and believe that they will result in a significant weakening of the code and make it an ineffective vehicle to maintain advertising standards. The detail in this section must be retained.

The current code makes it clear that the rules are to prevent advertising causing offence to viewers generally or to particular groups in society (for example by causing significant distress, disgust or insult, or by offending against widespread public feeling). This is replaced by the less detailed principle statement that “Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence” The BCAP Code should aim to maintain high standards of advertising not to let standards slip to the lowest common denominator of “generally accepted” standards with the BCAP arbitrarily deciding exactly what those are and taking no account of the views of “particular groups in society”. This new proposed principle could easily be used to allow virtually every type of advertisement even if a significant number of people from particular groups in society complained. The word “widespread” offence could be used to ignore virtually every complaint. We would suggest that the current code should be kept and improved upon in the draft below:

“Advertisements must not be harmful or offensive. Advertisements must prevent causing offence to viewers generally or to particular groups. (For example to prevent causing significant distress, disgust or insult or by offending against widespread public feeling). The context in which an advertisement is likely to be broadcast must be taken into account to avoid unsuitable scheduling. (See Annex 1: Scheduling). Account must also be taken of whether or not it is considered harmful or offensive in view of its audio or audio-visual impact as a result of being broadcast on radio or TV.”

The new proposed rule 4.1 omits the phrase “or offends against public feeling”. It is very important that this phrase is included. Does this mean that advertisements are now to be allowed to offend against public feeling in a section which is meant to provide protection against harm and offence?

In addition the current rule 6.1. provides important explanatory notes which help to sustain and maintain higher standards. These notes should be retained and included in the proposed Code. They include standards on shared values on sex and nudity and the use of offensive language, the portrayal of sexual violence, respect for spiritual beliefs and respect for the interest and dignity of minorities.

The proposed rule 4.8. should state that advertisements must not distress the audience, it should not add the proviso of “without justifiable reason”.

iii) Do you have other comments on this section?

The statutory framework is based upon ensuring that advertising which is harmful and offensive in television and radio is prevented. Yet the proposed changes would result in a significant relaxation of the rules in this section on harm and offence. The lowering of standards is not only based upon narrowing the remit for particular groups to complain but will result in basing judgments upon an arbitrary standard of whatever the BCAP happen to think are generally accepted standards (without any explanatory notes to anchor these standards in shared values with higher standards of advertising).

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 but with additions to it.

Proposed Rule 5.7.states that Advertisements must not exploit the special trust placed in parents, guardians, teachers or other parents.

In order to comply with the AVWS Directive this should also say that “TV advertisements must not cause physical or moral detriment to minors.”

It is important that the moral protection of children is included.

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

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.

No the rules will lower standards. The current principle correctly states that a need exists for special concern for the protection of children. The proposed principle compromises the paramount need to protect children from advertisements that cause physical, mental or moral harm.

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?

The current rules and notes should be retained, particularly all of the current rules 7.4, 7.4.5 and 7.4.7 and explanatory notes. Not portraying children in a "sexually provocative manner" in the current rule is much more descriptive and specific than in the proposed rule using the term "sexual way". The scheduling descriptions should be maintained and there appears to be a lowering of standards in relation to age specific timings.

iii) Do you have other comments on this section?

We are concerned that the proposed rules in this section will lower standards and children must be properly protected.

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.

No, because a need exists to draft the rules in such a way that if someone can identify you in a crowd scene, you should have the right to stop an advertisement.

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.

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?

iii) Do you have other comments on this section?

No

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.

No in our opinion the sections of the Communications Act 2003 should not be repeated.

http://www.opsi.gov.uk/Acts/acts2003/ukpga_20030021_en_30

The unnecessary way in which this section links into the sections on religion and charities needs to be reviewed.

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?

iii) Do you have other comments on this section?

In our view this section should not be cross-referenced with religion or charities. Please see our comments in answer to questions in those sections. There should be an additional rule to say that this section does not apply to religious, charitable or non-profit making organisations who wish to advance religion or provide a beneficial service. Religious belief should not be interpreted as political but correctly interpreted as an out working of moral beliefs deriving from religious belief.

Section 10: Prohibited Categories

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

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, we would strongly disagree with the rules on betting tipsters being relaxed. There is no legal imperative to allow this and we agree with the remarks made in point 10.35 of the consultation that this could lead to scams. This could also

increase gambling addiction and result in complaints from poor tipsters predictions.

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, the best way to protect the under 18s and the vulnerable would be to retain the ban on betting tipster advertising.

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.

No, the BCAP should maintain standards and not allow such advertising.

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.

No, it is unnecessary and the present ban should be maintained. There is no independent recognised regulation of such agencies in order to ensure standards and the BCAP should not undertake such a task.

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.

No, because private investigation agency advertising should also be banned for radio. Central radio clearance would still allow such advertising.

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 this is an area where the young and vulnerable are most at risk and the ban on advertisements in this area should continue.

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, it is unnecessary and should not be allowed in the first place. No amount of credentials will make such advertising suitable or appropriate. The BCAP has to consider the audio-visual impact of TV for its audience, protect the under 18, and prevent harmful advertising.

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.

No, the advertisements should not be allowed in the first place

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 present ban should be maintained. This proposed change is illustrative of a lowering of advertising and moral standards and should not be entertained even behind encryption.

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, they are not necessary and there should be no relaxation of the current rules.

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, R18 material should not be advertised and should be prohibited even if the adverts themselves do not include R18 material. The nature of R18 material is such that it is only shown in specially licensed cinemas, or supplied only in licensed sex shops, and to adults of not less than 18 years.²⁶ The need to protect children under 18 is a statutory obligation in the standard objectives of the Communications Act 2003. Encryption will not be a sufficient safeguard as children often have more technical know-how than their parents.

The Byron review which examined ratings, has suggested the greater need for the protection of the young in relation to 12+ categories so that they are rated on a statutory basis. This BCAP proposed change is in direct contradiction to that government accepted change in direction. If anything the BCAP should be tightening up the rules and extending them so that more care is taken for the 12+ category and not relaxing R18 adverts. Extra efforts need to be taken to ensure

²⁶ See http://www.bbfco.co.uk/classification/c_R18.php

that the younger audience is protected from such sexually explicit material which are not age appropriate. In our opinion, R18 should be prohibited from being advertised on TV and radio.

http://www.dcsf.gov.uk/byronreview/pdfs/byron_action_plan.pdf

<http://www.dcsf.gov.uk/byronreview>

We are concerned that this proposal is being made when Parliament sought to safeguard and provide protection from R18 material by ensuring a licensing system was put in place.²⁷ In our opinion, the proposals here overstep the mark into areas which require legislative prohibition.

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, there is a great concern about increasing gun crime.

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.

No, it would be better to have a simple and general ban without exceptions.

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

Question 57

²⁷ See section 12 of the Video Recordings Act 1984

<http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1810866>

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.

It is necessary to have prohibitions but this list of prohibitions should be extended beyond the current list and not allow the rules to be relaxed in any way.

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?

All of the current prohibitions should be maintained except we agree with the removal of the rule on some bodies subject to the rules on religion, faith and belief systems.

ii) Do you have other comments on this section?

The prohibition for TV should refer to all pre-conception and post-conception medicines, medical products, medical devices, advices, abortion services, and the morning after pill. This should also extend to a ban on advertising condoms, which is currently allowed. Pre-conception and post-conception medication should be banned whether or not on prescription. This prohibition should also apply to radio as well as TV. Please see our answer to question 62.

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.

No, the fact that there is currently no rule for TV is presumably because the proposed code would now allow services including clinics for advice on personal, medical or other health matters. We do not consider that it is suitable for advice services to be advertised (including preconception and post-conception advice services and medication). In our opinion the new section 26 offering individual advice on personal problems should be prohibited to protect the young and vulnerable. A short commercial advert is unable to properly assess the mental health needs of the audience watching or prevent them from being exploited by such advertising. The need for medical credentials would also discriminate against pro-life organisations with non-medical volunteers and result in only abortion adverts being able to meet such criteria. Please see our answer to question 62.

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.

No, rule 11.4 is about medical products and also refers to medical devices. The consultation text refers to a reference that is totally unclear on the difference between products and devices. The rule then confusingly refers to "a medical device that contains a medical substance that acts in a way which is ancillary to the device only." We note that non-hormonal intra-uterine contraceptive devices are mentioned in the further information reference given in the consultation text prior to this question. We do not believe that pre-conception or post-conception

medical products, medical devices or, in the confusing words of this rule, “any other medical device that contains a medical substance that acts in a way which is ancillary to the device only” should be advertised on TV or radio. This should be made clear in this rule and the prohibited section of this Code.

<http://www.mhra.gov.uk/home/groups/es-era/documents/publication/con007498.pdf>

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, it is disagreed that the broad restriction on the use of health professionals in advertisements should be removed or relaxed. This would take advantage of the public trust in health professionals that it perceives to be objective and independent of commercial influence. It is very important that health professionals do not endorse products, as this could compromise their integrity and lead to a lowering of public opinion of medical staff.

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.

No, for the reasons specified in our answer to 61 i) above.

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?

We strongly oppose advertisement of pre-conception and post-conception advice services on TV and radio. Instead, we recommend listing such advertising in section 10 of the proposed BCAP code as prohibited categories. The prohibition for TV and radio should refer to all pre-conception and post-conception services, including abortion and the morning after pill. The prohibition should also reverse current law by banning the advertising of condoms.

The context, medium and impact of TV are highly different to that of radio. The radio code is restricted in rule 3.6 (c) to family planning centres approved by the Local Health Authority, the Central Office or other approved NHS body. Adverts on abortion should be prohibited on both radio and TV at any time, whether commercial or not. Pre-conception and post-conception services should be accessed by medical referral only.

The vulnerability of the young audience, and the recognised potential for mental disorders following abortion, argue strongly against the appropriateness of advertising for such services— especially in short commercial TV adverts.

Short commercial adverts cannot adequately address the serious mental health implications of abortion. In the UK, profits derived from commercial pandering should never come at the expense of a woman's health.

Mounting concern exists over the number of repeat abortions amongst teenagers. The proposed adverts add to these concerns.

<http://www.dailymail.co.uk/health/article-1127083/Repeat-abortion-teenage-girls-risen-70.html>

<http://www.dailymail.co.uk/health/article-1131543/Teenage-girls-having-repeat-abortion-rise-experts-warn.html>

<http://www.sundaymercury.net/news/midlands-news/2009/03/08/wolverhampton-and-solihull-teens-having-highest-repeat-abortion-66331-23090333/>

Profit-motivated advertising, even more than GP abortion advice, properly alarms parents and guardians. This is an especially serious issue for those parents and children who live by sincerely held religious tenets. So much so that allowing such abhorrent adverts will likely lead such families to cease watching TV.

Commercial pandering of abortion services presents abortion in a trivial demeaning way, treating the disposal of life as another consumer product.

Nearly 200,000 abortions occur each year in the UK. A nation purporting to support good governance principles ought not specifically intend to increase that number through Advertising Standards Authority's sanctioned abortion advertising.

Only the abortion industry possesses the financial resources to advance their profit-motivated political agenda through Advertising Standards Authority's sanctioned advertising. Pro-life women's groups and other organisations supporting life in vitro are thus unfairly excluded from this forum of the political process. The abortion industry wants to change the law and extend abortion to Northern Ireland where it is illegal. Advertising abortion in the rest of the UK will help them achieve this.

The proposal breaches the BCAP rules in the current code as well as section 7 of the proposed code on the advertising of political and controversial matters (given the broad definition of "political," in those places).

The Prime Minister recently responded to a petition on not extending abortion to Northern Ireland saying that such matters are best dealt with by the Northern Ireland Assembly. Advertising of abortion services there is, therefore, inappropriate.

<http://www.number10.gov.uk/Page19063>

Pages 90 to 91 of the BCAP consultation, to which this question refers, argues a need exists to balance the protection afforded by those restrictions and the right of all categories of family planning centres to advertise their services. The balance in this case should be clearly on the side of protecting human life.

Abortion advertisements also discriminate against those holding sincerely held religious views on abortion. Such advertisements deeply offend pro-life women, parents, and others with pro-life opinions, (whether or not these opinions are informed by sacred tenets).

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.

We strongly oppose including abortion advertisements on TV and radio. We therefore oppose inclusion of rule 11.11 in the BCAP Code. As stated in our answer to 62 i) the advertising at issue here belongs in section 10 of the Code as a prohibition.

We are concerned that the consultation unilaterally takes a pro-abortion viewpoint, lacking any impartiality on this highly political issue.

An unequal playing field is being created in rule 11.11 as pro-life organisations will have to declare if they do not support abortion but pro-abortion organisations will not have to declare that they do not support a woman's pregnancy continuing.

It is important for women to make a decision on whether or not to continue a pregnancy on an informed consent basis. The Royal College of Psychiatrists "recognises that good practice in relation to abortion will include informed consent. Consent cannot be informed without the provision of adequate and appropriate information regarding the possible risks and benefits to physical and mental health."

<http://www.rcpsych.ac.uk/member/currentissues/mentalhealthandabortion.aspx>

There are clear attempts to prohibit pro-life advertisements as a result of extra rules being proposed for religious organisations, charities and non-medical volunteers. The rules proposed could only be passed by pro-abortion clinics.

Point 4.8. on page 39 of this consultation refers to the need to take account of the Communication Act and the Broadcasting Acts. The overarching principle here is that advertisements must not harm or cause serious or widespread offence to the audience. Abortion advertising would cause serious and widespread offence to UK citizens holding sincerely held religious beliefs on abortion.

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.

No, the advertisements in hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis or psychotherapy were seen as unacceptable products and services and should continue to be seen in that way. These types of advertising may exploit the vulnerable and mentally ill. Such services should be assessed by medical referral only.

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.

No, please see our answer to question 59.

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, because the general rule BCAP advertisements must be prepared with a sense of responsibility to the audience and to society is not specific enough to ensure that harmful or controversial medicines are not used in an inappropriate way. Instead the radio rule should be extended to TV.

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, anti-drugs and anti-aids messages need to be treated with great sensitivity. The radio rule should be extended to TV to ensure that special care is extended to TV adverts. The TV rules should ensure that special care is taken not only in scheduling but also in relation to religious sensitivities. We are concerned to see cures for Aids and it should be prevented but it is important that adverts are not seen to encourage or condone the practice of homosexuality and have proper regard to many of the world's religions including Biblical beliefs that the practice of homosexuality is a sin.

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.

No, because inappropriate rules are in this section. Please see our answer to ii).

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?

Rule 11.11 should not be in this section and all pre-conception and post-conception advice services and medicines should be in section 10 as prohibited categories for both radio and television. This includes condoms, abortion services and the morning after pill (whether or not a prescription drug). Please see our answer to question 62.

iii) Do you have other comments on this section?

Yes, there is a need to place services including clinics, establishments and the like offering advice on, or treatment in, medical, personal or other health matters firmly in the prohibited section of the Code and not be allowed in section 11 or section 26 of the proposed new Code. These type of advertisements should continue to be prohibited to protect the young and vulnerable.

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.

Part of Rule

15.11

Advertisements must not imply that respondents will receive spiritual benefits in return for a donation.

No, we disagree that this rule should apply to TV or be extended to radio. There are sacred doctrinal texts which support tithing of monies and God's blessing as a result. The principle d. in the proposed code which refers to preventing potentially harmful advertisements from exploiting their audience already covers this.

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.

No, the rule for both TV and radio should be removed as the general principle in d in the proposed code in this section already covers this.

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.

Part of Rule 15.11

Advertisements must not appeal for funds, except for charitable purposes. If the charitable purpose includes or will be accompanied by recruitment or evangelism, the advertisement must make that clear.

No, the present radio code does not include that restriction. The rule should not apply to either radio or TV because principle d already covers this.

It is of concern that this restriction on fund raising has not taken account of the many different types of organisations which may nowadays be beneficial but are not necessarily charities. The strategic government report in 2002 called *Private Action Public Benefit* recognised that there were a range of forms of not for profit organisations. This can include social enterprise companies as well as other forms of non-profit organisations. The rules for radio and TV appear to be out of touch with these changes and the BCAP rules on charities do not recognise the different types of religious organisations. This is an additional reason why such rules should be removed. Christianity sees proselytism as one of the central parts of our faith. The great commission from Jesus Christ was to go and make disciples of all nations. The charity case law definition of the advancement of religion includes proselytism so that there is absolutely no reason why there should be any special safeguarding rules on donations for proselytism. The charitable head for religious organisations in charity law is the advancement of religion and it is clear that proselytism is part of that advancement.

<http://www.charity-commission.gov.uk/spr/corl.asp>

<http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/strat%20data.pdf>

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, the rule from radio should extend to television as the general rule of not causing serious or widespread offence against generally accepted moral, social or cultural standards does not have any specific mention of sensitivities to the use of religious music which radio rules 3.10 and 3.11 do.

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.

Rule 10.9 states that doctrinal advertisements must not appear to involve viewers in services or ceremonies

Yes, it is agreed that rule 10.9 does not need to be included as the Code's general rule on the need for advertisements to be prepared with a sense of responsibility to the audience and society is sufficient.

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.

Rule 10.10 states that testimonials and references to individual experiences or personal benefits associated with doctrine are not acceptable.

Yes, it is agreed that this rule 10.10 is not needed and could be covered by other rules in the Code

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.

Rule 15.13

Advertisements must not claim that faith healing, miracle working or faith based counselling can treat cure or alleviate physical or mental health problems; they may, however make restrained and proportionate claims that such services can benefit emotional or spiritual wellbeing

No, rule 15.13 should not be included in the code. The general code rules adequately cover such matters to ensure that adverts are made with a sense of responsibility. There are no specific rules for secular counselling and to have specific restrictions for religious counselling creates an unlevel playing field.

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.

No, the rules should prohibit these products and services without exceptions on the grounds of the need for advertisements to protect those under 18 and to prevent harmful advertising. The rules for both TV and radio should simply state that advertisements must not promote psychic practices or practices related to the occult without exceptions.

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?

No, we see no reason why it is necessary for the rules for Faith and Religion to

also refer to the Political section of the code. We particularly disagree that there should be any reference to political as religious beliefs should be interpreted as arising from a religious moral not political motivation, apart from in exceptional cases. The reference to the Charities section is also outdated in view of the many different types of not-for-profit organisations which may also be religious organisations. Another hurdle which may be unnecessary is that radio central copy clearance is also required for all religious advertisements.

We consider that many of the areas in this section are sufficiently covered within the general Code rules and this section is largely unnecessary. For example, the first paragraph of page 269 of in this section of rule 15.7 provides unnecessarily detailed rules on doctrines or beliefs which should be deleted. The current radio rule which simply states that advertisements may expound doctrines or beliefs if they are presented as the advertiser's opinion should be extended to TV.

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?

The current code makes it clear that the BCAP/ASA or OFCOM should not make subjective judgments about faith values. The proposed code does not include this important point. Instead the proposed rule 15.9. states that religious advertisers must not present the advertiser's beliefs as the "one" or "true" faith. This directly challenges Christian beliefs that Jesus is the way, the truth and the life. There should be nothing wrong with an advertiser saying that this is the Christian belief.

iii) Do you have other comments on this section?

In our opinion many of the rules in this Faith and Religion section are unnecessary. For example, the elaborate proposed rule 15.14 should be deleted. The general Code rules are sufficient.

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.

No, because medical products which are controversial and morally questionable may aim for public opinion credibility by stating their product makes a certain percentage donation to charity.

We strongly oppose the recent introduction of the advertising of the morning after pill **before** this consultation and also oppose condoms being advertised as outlined in our answer to questions 62 and 147. These are the type of products which could exploit such rule changes and thereby endeavour to gain public support by making percentage donations to other charities on the purchase of such products.

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.

No, rule 16.7 should not be included in the Code for the reasons explained in answer to question i) above. In addition the purchase of medicine should be for just medical usage and it would be irresponsible to encourage purchases for other reasons.

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.

No, there are some rules which are not needed. Charities link to other sections and like the religious section should not do so. The rules on charities are over-elaborate and in many ways unnecessary as provisions within the general code provide sufficient protection. As stated in our answer to question 92 there are many different types of non-profit organisations which may wish to legitimately advertise to raise funds. There are a number of religious organisations which are no longer charities but are non-profit making companies with religious aims who should not be prohibited from fund raising. Linking this section with the political section of this Code is inappropriate. It may also be inappropriate to link this with religious organisations as not all religious organisations are charities. However, the Charity Commission guidance has a positive approach to campaigning issues by charities as outlined in their CC9 guidance on speaking out and the BCAP rules need updating.

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?

iii) Do you have other comments on this section?

The current and proposed rules are far too restrictive. There should be no automatic assumption that the actions of Charities, non-profit organisations or religious organisations are political. In fact the Charity Commission publications have been more geared to ensuring the freedom of charities to campaign.

See CC9 - Speaking Out - Guidance on Campaigning and Political Activity by Charities

<http://www.charity-commission.gov.uk/publications/CC9.asp>

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.

No, as it is unclear in the text to this question what the changes are and it sounds as if this would lead to a relaxation of the gambling 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.

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, to rule 18.6 but no to rule 18.7. Rule 18.7 exploits the advertising of children as beneficiaries of lottery funds.

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.

No, please see our answer to question 105. We oppose any relaxation of the rules.

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, as SLA lotteries are different and national lotteries are unique and may appeal to people who otherwise would not gamble.

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?

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?

iii) Do you have other comments on this section?

Yes, it is important to ensure that there is no relaxation of the rules in order to protect the under 18s and the vulnerable from gambling addiction.

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, the current radio rule section 3, 11.5 should be extended to TV as rule 19.11 is not as stringently worded.

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.

No, the current TV rule 11.8.1. (g) is clearer.

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.

Alcohol should not be advertised in a working environment and the word “normally” should be deleted from this rule’s wording. There are health and safety reasons for not encouraging the drinking of alcohol at work as well as the potential for this to result in dismissal.

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.

No, the current TV rule should be kept, this rule on not having children in alcohol advertisements must be maintained and the Code should not be weakened.

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.

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?

iii) Do you have other comments on this section?

The rules in this section appear to be weakened and strengthened in different areas. It is important that standards are maintained and strengthened to

protect the under 18s. We agree with making the rules more stringent but in our opinion there should be an outright ban of alcohol advertising. Please see our answer to question 158.

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, it is important that the current code rules for radio and television are maintained. The consultation itself in the text on question 147 on condoms refers to the problem of rising sexually transmitted diseases and advertisements should not encourage promiscuity.

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.

No, the current rules should be kept to ensure businesses that advertise conduct their businesses responsibly.

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.

No, for customer consumer protection.

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.

No in our opinion films, DVDs ,videos ,computer and console games that have an 18 plus certificate or rating should not be advertised on TV or radio due to the need to protect the under 18s and should be in the prohibited section. Please see our answer to question 54.

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.

Rule 32.5.4. covers scheduling or time restrictions for the under 16s for computer or console games carrying an 18+, 16+ and 15+. This is clearly not age appropriate. In our opinion, in view of concerns over the harmful effect of such video games, only 12+ should be advertised on radio and TV. The other games, films or DVDs should be prohibited. The 12+ rating should be scheduled and timed for the under 16s.

Yes to rule 32.20.5 as this rule protects children but this rule should extend to the 12+ category in view of the recommendations of the Byron review to make

these categories have a statutory rating for the greater protection of children.

The Home Affairs Knife Crime Parliamentary Committee recently concluded that:

“Evidence to our inquiry supported our view that violent DVDs and video games exert a negative influence on those who watch and play them. Watching or playing such media contributes around 10% of any person's predisposition to be violent. Of particular concern is their influence on individuals who are already predisposed to violence because they grew up in a violent environment. (Paragraph 88)”

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/112/11212.htm>

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, we disagree with any relaxation of the rules. Betting tipsters should remain as a prohibited category to protect the under 18s, scheduling will not provide that protection.

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.

No, rule 32.2. is all that is required to ensure appropriate scheduling for the under 18s. There should be no Phone Pay Plus exceptions which allow for the targeting of people under 18. Parents normally pay such bills not children.

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: Condoms

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 do not agree. Condom adverts for both radio and TV should instead be in section 10 of the Code as a prohibited category.
- It is highly irresponsible of the BCAP code to promote sex amongst young children by advertising condoms. It is a myth that Condoms prevent STDs as it is possible to spread STDs by sexual contact. For example, "Genital warts are not easily prevented from being passed on to a sexual partner even if condoms are used." "Condoms may help protect against genital herpes, although their effectiveness is unclear as the virus is present on the skin, and the condom only covers the penis so it can't offer complete protection." Hence abstinence is the best prevention policy.
<http://www.ssha.info/public/faqs/index.asp#16>
<http://www.bbc.co.uk/switch/slink/features/horror.shtml>
- The listed ages of protected children under Sexual Offences Act 2003 suggest that the BCAP code is inconsistent with current law detailing sexual offences of children under 13 and under 16.
http://www.opsi.gov.uk/acts/acts2003/ukpga_20030042_en_2#pt1-pb4

BCAP sends the wrong message with its condom advertising proposal here. Encouraging young underage children to engage in sex encourages casual sex, and increases teenage pregnancy.

- The proposal further undermines parental, responsibility for the welfare of their own children.

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.

No instead the current radio rule should be extended to TV so that advertisements for sensational newspapers, magazines, websites (or their content) must not be broadcast in or around programming/features aimed particularly at those aged 18 years or around religious programming. It is important there is no relaxation of the rules to protect children and religious sensitivities.

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?

No because again this seems a lowering of standards and a relaxation of rules.

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.

No there is a need to properly maintain boundaries between programmes and advertisements.

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.

No, it is still important that gambling advertisements are kept separate from editorial content to protect the young and vulnerable.

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.

No, because this rule should be maintained to protect both the young and vulnerable. The proposal is just to delete the rule without any substitute rules for child protection. On balance it would be best to maintain this rule to avoid confusion between programmes and advertising, so that a well known performer is not in a programme and then in an advertisement adjacent to that programme.

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?

Whilst scheduling may help to avoid inappropriate advertisements, it is far more important to consider the need for outright bans which properly protect

the young and vulnerable. Many teenagers have their own TVs and the watershed of 9pm appears to be out of date. This should be increased to 10pm or even 11pm at night. Further research needs to be undertaken on scheduling by seeing what time young people do actually watch TV or listen to the radio in relation to different age categories. It is doubtful how much protection is provided by scheduling and much more emphasis needs to be placed on extending, not relaxing, advertising prohibitions to provide proper protection.

Radio scheduling includes special care on scheduling of family planning products but TV has no rules. All pre- conception and post-conception advice services and products should be banned. Condom advertising before 9pm and 7pm for channel 4 is totally inappropriate and should be a prohibited category as should the morning after pill.

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?

iii) Do you have other comments on this section?

No see answer to i)

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 , please see our Executive summary.

The following question was issued as an addendum on 29 May 2009. The closing date for responses to this question is 10 July 2009. The full text of the addendum can be found [here](#).

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 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.

No, it does merit a change. Real health concerns about binge drinking for teenagers exist. An outright ban on such advertisements would be appropriate. There should also be public health messages on the dangers of drinking. We note with concern that in answering the alcohol questions in this consultation that there were instances where there was even a weakening of the current code.

<http://www.dailymail.co.uk/news/article-1165002/British-teenagers-binge-drinking-champions-Europe.html>

