

Consultation on references to obesity in advertisements

CAP and BCAP's proposal for rule change

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1. Executive summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (the BCAP Code), are consulting on proposals to allow providers of certain lifestyle weight loss programmes to refer to obesity in their advertising and therefore target obese people.

Although all weight loss programmes may currently advertise their services, currently references to obesity in advertisements, for example in text or spoken word, or through the depiction of obese people can only be made for weight loss programmes where participants are placed under the direct supervision of a healthcare professional. This prevents lifestyle weight loss programmes not under the supervision of a healthcare professional from referring to obesity in their advertisements, including showing obese people. Given the recognition in public health policy of the value of weight loss programmes in tackling obesity, CAP and BCAP (or 'the Committees') consider that this position might now be too restrictive.

This document sets out a proposal to now allow providers of lifestyle weight management programmes meeting certain criteria to make responsible references to obesity in their advertisements. However given the serious nature of obesity and its links with serious medical conditions e.g. type 2 diabetes, some may consider that the present restrictions remain justified. The Committees welcome responses from all those who have an interest in this subject.

The consultation will close at 5pm on Monday 11 May 2015. For more information on how to respond to the consultation and next steps, see section 6.

2. Introduction to the UK advertising regulatory system

2.1 The Committee of Advertising Practice (CAP)

CAP is the self-regulatory body that creates, revises and enforces the [CAP Code](#). The CAP Code covers non-broadcast marketing communications, which include advertisements across media, sales promotions, direct marketing communications and marketing communications on marketers' own websites. Marketers have primary responsibility for complying with the CAP Code and advertisements must comply with it. Advertisements that are judged not to comply with the Code must be withdrawn or amended. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from an upheld ruling by the Advertising Standards Authority (ASA), or further sanctions including the denial of media space.

CAP's members include organisations that represent advertising, sales promotion and direct marketing and media businesses. Through their membership of CAP organisations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the Code so that marketing communications are legal decent, honest and truthful, and consumer confidence is maintained.

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including on misleading advertising ([Directive 2005/29/EC](#)). Self-regulation is accepted by the Department for Business, Innovation and Skills and the Courts as a first line of control in protecting consumers and the industry.

Further information about CAP is available at www.cap.org.uk.

2.2 The Broadcast Committee of Advertising Practice (BCAP)

BCAP is the regulatory body responsible for maintaining the UK Code of Broadcast Advertising ([the BCAP Code](#)) under agreement with the [Office of Communications](#) (Ofcom). Ofcom has statutory responsibility, under the [Communications Act 2003](#), for maintaining standards in TV and radio advertisements. Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in 2004 in recognition of CAP and the ASA's successful regulation of non-broadcast advertisements for over 40 years, and in line with better regulation principles.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to observe the standards set out in the BCAP Code.

The members that make up BCAP include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC). In accordance with Section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule drafting is transparent, accountable, proportionate, consistent and targeted where action is needed, in

accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them.

Further information about BCAP and the AAC is available at www.cap.org.uk.

2.3 The Advertising Standards Authority (ASA)

The ASA is the independent body responsible for administering the CAP and BCAP Codes and ensuring that the self-regulatory system works in the public interest.

The ASA receives and investigates complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's rulings are published on the [ASA's website](http://www.asa.org.uk) and made available to the media. If the ASA Council upholds a complaint, the marketing communication must be withdrawn or amended.

An Independent Review Procedure exists for interested parties who are dissatisfied with the outcome of a case. CAP conducts compliance, monitoring and research to help enforce the ASA Council's decisions.

Information about the ASA is available at www.asa.org.uk.

2.4 Funding

The entire system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about Asbof and Basbof is available at www.asbof.co.uk and at www.basbof.co.uk.

3. Regulatory framework of the BCAP Code

3.1 Communications Act 2003

The [Communications Act 2003](#) ('the Act') sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements. The most relevant standards objectives to this consultation are:

[319\(2\)\(a\)](#) that persons under the age of eighteen are protected;

[319\(2\)\(h\)](#) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.

The Act requires Ofcom to set and, from time to time, review and revise a code containing standards for the content of broadcast advertisements carried by TV and radio services licensed under the Broadcasting Acts [1990](#) and [1996](#).

Ofcom has contracted-out its advertising standards codes function to BCAP under the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#). That function is exercised in consultation with and with the agreement of Ofcom. Provisions imposed on Ofcom by the Act are therefore relevant to BCAP.

3.2 Audio-Visual Media Services Directive (AVMS)

[AVMS](#) revises and updates the Television Without Frontiers (TVWF) Directive, which has regulated television broadcasting in the EU since 1989. The TVWF Directive applied to scheduled television broadcasting services only, whereas AVMS has extended the Directive's reach to some on-demand services.

4. Policy background and the decision to consult

4.1 General policy objectives

CAP and BCAP's general policy objective is to set standards to ensure that all advertisements are legal, decent, honest and truthful and prepared with a due sense of social and professional responsibility.

CAP and BCAP intend their Codes to be based on the enduring principles that advertisements should be responsible, respect the principles of fair competition generally accepted in business and should not mislead, harm or offend. The Committees are keen to maintain an environment in which responsible advertising can flourish. They intend their rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that the rules are easily understood, easily implemented and easily enforced.

4.2 Definition of obesity

The National Institute for Health and Care Excellence publishes BMI ranges for assessing whether individuals are underweight, a healthy weight, overweight or obese. Typically those with a body mass index (BMI) of 30 or above are considered to be obese and the Codes use this definition also. The NICE BMI ranges also include additional brackets of more serious obesity for those with a BMI of 35 – 39.9 (obesity II) and those with a BMI of 40 or more (obesity III)¹.

4.3 The Codes and obesity

Both Codes include general rules which apply to all advertising. They also contain a number of sections which deal with sectors or issues that require more detailed rules, for example where the Committees have considered that consumers require greater protection.

To that end both the Codes include sections on the advertising of medicines, medical devices and health-related products. Specific rules in those sections enact a general principle that advertising must not discourage essential treatment for serious medical conditions. That principle and the rules derived from it are intended to ensure that consumers who have (or suspect they have) a condition which is sufficiently serious that they should see a suitably qualified healthcare professional in the first instance are not encouraged by advertisements to do otherwise.

In the CAP Code the relevant rule appears in [Section 12 \(Medicines, medical devices, health-related products and beauty products\)](#):

12.2 Marketers must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health

¹ Adults who are overweight or obese; <http://www.nice.org.uk/guidance/ph53/chapter/7-glossary>; accessed on 19 January 2015.

professional. Accurate and responsible general information about such conditions may, however, be offered (see rule 12.11).

Health professionals will be deemed suitably qualified only if they can provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of members' skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

In the BCAP Code the relevant rules appear in [Section 11 \(Medicines, medical devices, treatments and health\)](#):

11.3 Advertisements must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional (see rule 11.9). That does not prevent advertising for spectacles, contact lenses or hearing aids.

11.9 Services including Clinics, Establishments and the like Offering Advice on, or Treatment in, Medical, Personal or other Health Matters - Advertisements are acceptable only if the advertiser can provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of their skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

CAP publishes a separate [Help Note](#) which lists, under the heading “Conditions for which suitably qualified medical advice should be sought”, the specific conditions to which these rules apply; obesity appears on this list. Marketers cannot claim to treat the conditions on the list unless the treatment advertised is supervised at an individual level by a medical practitioner².

This over-arching principle is given specific focus in relation to obesity in the Weight Control and Slimming section of each Code. The relevant rule in [Section 13 \(Weight control and slimming\) of the CAP Code](#) states:

13.2 Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m². Obesity is frequently associated with a medical condition and a treatment for it must not be advertised to the public unless it is to be used under suitably qualified supervision. Marketing communications 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 may nevertheless be advertised to the public.

The equivalent rules in [Section 12 \(Weight control and slimming\) of the BCAP Code](#) are:

² CAP's AdviceOnline article [Therapies: References to Medical Conditions](#) sets out examples of how advertisers may differentiate references to specific conditions from claims to treat those conditions.

12.11 Advertisements for weight control or slimming products or services must not be targeted directly at individuals with a Body Mass Index of 30 or above (obesity) or use testimonials or case histories referring to subjects who were or seemed to be obese before using the advertised product.

12.11.1 Advertisements for clinics or other establishments that offer treatment under suitably qualified medical supervision and 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 may nevertheless be targeted at those who are obese.

The ASA or CAP are likely to consider a practitioner “suitably qualified” if he or she is medically qualified or registered with a statutory or recognised health professional body, provided that registration fulfils certain essential criteria. Professionals, such as pharmacists and practice nurses, might also be considered “suitably qualified” if they form part of a clinical team treating the patient, have access to the patient’s medical details and have delegated responsibility by a GP with whom they are in regular contact. CAP maintains an AdviceOnline article entitled [Weight Control: Obesity](#) summarising its position and which includes links to relevant ASA rulings.

The current practical effect of the rules described above and the ASA rulings which have engaged them is that marketers offering weight loss services cannot reference obesity in their advertising unless the administration of the advertised service or treatment is directly supervised by a medical professional (recent examples include ASA rulings on [Smash Training](#) and [Miruji Health & Wellbeing](#)). This prevents marketers from targeting obese individuals by, for example, referring to obesity through the spoken word, in text or by showing obese individuals. It prevents depictions of individuals who have now arrived at a healthy weight if there is an implication that they used to be obese.

4.3 Why CAP and BCAP restrict references to obesity

Obesity is frequently associated with a wide range of other health problems including heart disease, type 2 diabetes, osteoarthritis and some cancers. It is also a risk factor in other diseases including, but not limited to, angina, gall bladder disease, liver disease, ovarian cancer, osteoarthritis and stroke^{3 4}. As a result CAP and BCAP’s current rules are designed to prevent a situation in which an obese person is encouraged by an advertisement to explore treatment options without the input of an appropriately qualified medical professional.

Although the risks of obesity have not lessened, CAP and BCAP now consider that there is good cause to re-evaluate whether a broader community of advertisers may refer to it.

³ Health Risks, Public Health England, http://www.noo.org.uk/NOO_about_obesity/adult_obesity/Health_risks; accessed on 5 December 2014

⁴ Health Risks of Adult Obesity, Public Health England, http://www.noo.org.uk/NOO_about_obesity/obesity_and_health/health_risk_adult; accessed on 5 December 2014.

4.4 The case for regulatory change

The prevalence of obesity and its effect on public health has increased steadily in recent years. Data suggests that 64% of the population of England are now overweight or obese⁵ and 1 in 4 adults in the UK is obese⁶. The cost of this increase to both healthcare services and the wider economy is substantial⁷ and recent years have seen a number of public policy initiatives to try and tackle it. In 2011 the Government launched its Responsibility Deal⁸ which encourages the food industry to take action to help people live and eat more healthily. The Change4Life initiative aims to prevent people becoming overweight by encouraging them to eat better and move more; most recently with a focus on reducing sugar intake through its Sugar Swaps campaign⁹.

In May 2014, after a period of consultation, the National Institute of Health and Care Excellence (NICE) significantly updated a section of their guidance, “Obesity: Guidance on the prevention, identification, assessment and management of overweight and obesity in adults and children” with [Guideline PH53](#) (‘the Guideline’).

The Guideline makes recommendations on the provision of effective multi-component lifestyle weight management services for adults (those aged 18 and over) who are overweight or obese. It covers weight management programmes, courses, clubs or groups that aim to change someone's behaviour to reduce their energy intake and encourage them to be physically active. The aim is to help meet a range of public health goals, particularly the reduction in risk of the above mentioned range of associated medical conditions.

The Guideline provides this definition:

Lifestyle weight management programmes for overweight or obese adults are multi-component programmes that aim to reduce a person's energy intake and help them to be more physically active by changing their behaviour. They may include weight management programmes, courses or clubs that:

- *accept adults through self-referral or referral from a health or social care practitioner*
- *are provided by the public, private or voluntary sector*

Such lifestyle services are sometimes known as tier 2 services¹⁰.

The Guideline does not address the acceptability of references to obesity in advertising but does, through its recommendations, envisage a substantial role for certain lifestyle weight

⁵ PHE release local authority adult obesity data, Public Health England, <https://www.gov.uk/government/news/phe-release-local-authority-adult-obesity-data>. Accessed on 8 December 2014.

⁶ Obesity, NHS Choices. <http://www.nhs.uk/conditions/obesity/pages/introduction.aspx>. Accessed on 8 December 2014.

⁷ Health and economic burden of the projected obesity trends in the USA and the UK; The Lancet; [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(11\)60814-3/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(11)60814-3/abstract); accessed on 20 January 2015

⁸ Public Health Responsibility Deal; Department of Health; <https://responsibilitydeal.dh.gov.uk/wp-content/uploads/2013/02/Generic-RD-Flyer-Final.pdf>; accessed on 20 January 2015

⁹ Change4Life; NHS; <http://www.nhs.uk/change4life/Pages/change-for-life.aspx>; accessed on 20 January 2015

¹⁰ Managing overweight and obesity in adults – lifestyle weight management services; <http://www.nice.org.uk/guidance/ph53>; accessed 5 December 2014;

management programmes as part of a broader strategic approach to managing obesity in the population. The Guideline is addressed to a broad audience including (though not limited to): national health bodies, local authorities, clinical commissioning boards, health and wellbeing boards, hospitals, commissioners of health and social services and service providers themselves.

The Guideline encourages an integrated approach to preventing and managing obesity, specifically highlighting the role of lifestyle weight management programmes and raising awareness amongst the public of such services (Recommendation 5). It does not recommend medical supervision for all weight loss programmes for those with a BMI over 30.

The prohibitions outlined in section 4.3 above prevent such services making reference to obesity in their advertising. CAP and BCAP have therefore considered whether that restriction remains proportionate for these services. In particular CAP and BCAP are aware of the following points:

- Responsible lifestyle programmes are generally recognised as a safe, effective and appropriate way for overweight and obese people to lose weight. A number of UK health authorities operate programmes for referring overweight and obese individuals to them, in some cases without the patient being seen in person by a primary healthcare provider.
- Many of those who attend lifestyle programmes, and those who could potentially benefit from them, are obese but such individuals cannot be shown or referenced in advertising. A change in the rules would allow marketers to show more accurate representations of the full range of individuals who could benefit from their regimes in their advertising.
- Presently ads for weight loss surgery and medications may reference obesity because such interventions are medically supervised. However ads for lifestyle regimes may only feature the less noticeably overweight. This approach has the potential to give the misleading impression that weight management needs to be treated only medically for those with a BMI over 30 when that is not the case for all people.
- Even without the current requirement that treatments are directly supervised by a medical professional, the Codes still require that marketers are able to prove that efficacy claims for treatments are substantiated and provide numerous other specific protections, for example: prohibiting claims or predictions of specific weight loss; prohibiting any implication that being underweight is desirable and requiring advertisements to make clear that dietary control is necessary to achieve weight loss.

4.5 The decision to consult

CAP and BCAP share a commitment to ensure that advertising does not lead to harm. They recognise that health-related advertising is an area where the Codes must ensure that advertising does not create the potential for harm by inviting those with a potentially serious medical condition to respond to an advertisement instead of seeing a medical professional. However, the Committees must ensure that the Codes are proportionate and targeted only where action is needed.

All lifestyle weight management providers are currently able to advertise their programmes but they are effectively prohibited from referring to obesity. Given the significant increase in the prevalence of obesity¹¹ and the now widely acknowledged role which responsible and effective lifestyle programmes can play in tackling it CAP and BCAP wish to assess whether it might be appropriate for a change to the rules to allow providers of programmes which meet certain criteria to refer to obesity in their advertising. For the reasons set out above, CAP and BCAP consider that obesity remains sufficiently serious to warrant not removing the restriction altogether.

The next chapter contains a discussion of some of the issues which rule change might present, proposals as to how change can be achieved in practice and relevant questions.

¹¹ UK and Ireland prevalence and trends; Public Health England;
http://www.noo.org.uk/NOO_about_obesity/adult_obesity/UK_prevalence_and_trends; accessed on 19 January 2015

5. Issues and proposed changes

Notwithstanding the case for change set out in the previous section, CAP and BCAP still have some concerns about how any potential rule change may work in practice and the effect change may have on the weight loss sector. These issues are explored below and accompanied by questions where relevant.

5.1 Selecting appropriate criteria for rule change

As noted in the previous chapter, CAP and BCAP consider that obesity's links with serious medical conditions still warrants a level of restriction concerning how advertisers may make reference to it.

In considering a conditional change to the advertising rules and in the absence of a notification regime authorised to approve providers' compliance with NICE Guideline PH53, CAP and BCAP need to identify what criteria providers should meet before they can make references to obesity, how that criteria can best be made clear and how compliance with them might best be investigated by the ASA.

CAP and BCAP do not consider it reasonable for their own Codes to require lifestyle weight loss programme providers who wish to reference obesity in their ads to comply with the letter of NICE Guideline PH53, which is 61 pages long. PH53 is not designed as a regulatory tool for advertising and its provisions are too extensive for the ASA to reasonably be expected to judge programmes' compliance with them when considering the acceptability of individual advertisements. Additionally CAP and BCAP do not consider it appropriate for the ASA to make adjudications on the acceptability of an advertisement on the basis of another body's Code or Guideline, particularly given the risk to advertisers of being judged by another body on the same criteria but for other reasons e.g. the programme's suitability to be commissioned by a local health authority.

Therefore, if a conditional change of the rules is merited, CAP and BCAP propose that the most effective and proportionate way to do that is to identify a small number of criteria which providers will need to meet to be able to reference obesity in their advertisements. CAP and BCAP and the ASA operate a well-established and effective principle of placing the burden of proof for claims on advertisers. The Committees envisage that many lifestyle weight loss providers will already have internal auditing procedures in place to demonstrate compliance with requirements of this type.

Having reviewed Guideline PH53 CAP and BCAP have arrived at a provisional view on what those criteria should be. CAP and BCAP consider that, in order to be able to make references to obesity in advertisements, programmes which are not carried out under medical supervision should be:

- of at least three months duration
- multi-component; addressing dietary intake, physical activity levels and behaviour change
- developed by a multi-disciplinary team; including input from a registered dietician registered practitioner psychologist and a qualified physical activity instructor
- shown to be effective at 12 months and beyond, and
- provided by staff who are trained to deliver them

CAP and BCAP consider that these criteria ensure that programmes are properly designed, multi-faceted, effective, sufficiently long to have an impact and delivered by trained staff.

However, the Committees welcome responses from those who feel that different criteria from Guideline PH53 or from any other source are required.

CAP and BCAP consider that there may be occasions when the ASA needs to draw on the wider Guideline to inform its understanding of the key criteria and therefore propose to allow the ASA the discretion to have regard to Guideline PH53 to help judge whether a particular marketing communication for a lifestyle weight loss programme may permissibly refer to obesity.

5.1.1 Proposed Code Changes

In light of the above, CAP proposes to make the following textual and structural changes to rule 13.2 of its Code:

<p>Current wording</p>	<p>13.2 Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m². Obesity is frequently associated with a medical condition and a treatment for it must not be advertised to the public unless it is to be used under suitably qualified supervision. Marketing communications 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 may nevertheless be advertised to the public.</p>
<p>Proposed revised wording</p> <p>Key:</p> <p>Deleted <u>New rule</u> Reproduced rule</p>	<p>13.2.1 Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m². Obesity is frequently associated with a medical condition and a treatment for it must not be advertised to the public unless it is to be used under suitably qualified supervision. Marketing communications 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 may nevertheless be advertised to the public.</p> <p><u>13.2.2 Lifestyle weight management programmes which meet the following standards may make responsible references to obesity in their marketing communications. These programmes should be:</u></p> <ul style="list-style-type: none"> • <u>of at least three months duration</u> • <u>multi-component and developed by a multi-disciplinary team</u> • <u>shown to be effective at 12 months and beyond, and</u> • <u>provided by staff who are trained to deliver them</u> <p><u>In assessing whether a particular marketing communication may permissibly refer to obesity the ASA may have regard to NICE Guideline PH53.</u></p> <p>13.2.3 Marketing communications 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 may nevertheless be advertised to the public.</p>

BCAP proposes to make the following addition to rule 12.11 of its Code:

Current wording	<p>12.11 Advertisements for weight control or slimming products or services must not be targeted directly at individuals with a Body Mass Index of 30 or above (obesity) or use testimonials or case histories referring to subjects who were or seemed to be obese before using the advertised product.</p> <p>12.11.1 Advertisements for clinics or other establishments that offer treatment under suitably qualified medical supervision and 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 may nevertheless be targeted at those who are obese.</p>
Proposed additional rule	<p>12.11.2 Lifestyle weight management programmes which meet the following standards may make responsible references to obesity in their advertisements. These programmes should be:</p> <ul style="list-style-type: none">• of at least three months duration• multi-component and developed by a multi-disciplinary team• shown to be effective at 12 months and beyond, and• provided by staff who are trained to deliver them <p>In assessing whether a particular marketing communication may permissibly refer to obesity the ASA may have regard to NICE Guideline PH53.</p>

In the event that CAP and BCAP decide to implement the above, or similar, changes to the Weight Loss sections of their Codes, they will also amend the Help Note referred to in section 4.3 accordingly.

Question 1

Do you agree with CAP and BCAP's proposal to allow certain lifestyle weight loss programme providers who fulfil particular criteria to refer to obesity in their marketing, and in doing so to target obese individuals? If not, please provide your rationale and any relevant evidence.

Question 2

Do you agree CAP and BCAP have identified appropriate criteria to include in the rules? If you consider different criteria are required, or if a different approach to provide for a change in the rules is required altogether, please provide your comments, rationale and any relevant evidence.

Question 3

Do you agree that the ASA may have regard to NICE Guideline PH53 to judge whether an advertisement for a lifestyle weight management programme may make permissible responsible references to obesity? If not, or if you consider that the ASA should use the Guideline in a different way please provide your comments.

Question 4

Do you have any comments or suggestions on the drafting of the proposed rules?

5.2 Obesity classifications

Guideline PH53 sets out various classifications of obesity; Obesity I, II or III linked to particular BMI brackets. CAP and BCAP understand that the risk of co-morbidities increase with the higher classifications of obesity¹². CAP and BCAP therefore seek respondents views on whether different categories of obesity should be treated differently in the Codes. For example, respondents may consider that references to only lower classifications are acceptable and that references (for example by depictions of very obese individuals) should remain prohibited for this category of advertiser.

Classification	BMI (kg/m ²)
Healthy weight	18.5–24.9
Overweight	25–29.9
Obesity I	30–34.9
Obesity II	35–39.9
Obesity III	40 or more

Question 5

For advertisers meeting the criteria, do you think they should be able to refer to (and therefore target):

- category I,
- category I and II, or
- category I, II and III

of obese people?

¹² Measurement and assessment of overweight and obesity – adults; Faculty of Public Health; http://www.fph.org.uk/uploads/HealthyWeight_SectE_Toolkit03.pdf; accessed on 19 January 2015

Please provide any evidence you consider supports your response.

5.3 Children

CAP and BCAP's proposals relate only to services for those aged 18 or over. Both Codes contain rules which prevent advertising for any weight-reduction regime being directed at, or containing anything that is likely to appeal particularly to people aged under 18. CAP and BCAP propose to maintain that restriction. However, obesity in children is a major public health concern and CAP and BCAP wish to ensure that respondents agree with their proposal to maintain the prohibition on weight loss services being advertised to those aged under 18.

Question 6

Do you agree with CAP and BCAP's proposal to maintain the prohibition on the advertising of weight loss treatments and services to those under 18? You are welcome to provide any other comments you might wish to make on this issue.

5.4 Depictions and references to obese people

CAP and BCAP consider that any rule change is likely to lead to a perceptible shift in advertising content such that obese people are shown and referred to in advertising more often. Both Codes contain rules which prohibit marketers from causing serious or widespread offence and which therefore empower the ASA to address any inappropriate images or references.

5.5 Other comments

Question 7

Are there any other comments you wish to make, or evidence you wish to submit, in relation to CAP and BCAP's consideration of the issues set out in this document?

6. Responding to this consultation and next steps

6.1 How to respond

The consultation will run for eight weeks. CAP and BCAP invite written comments, including supporting evidence, on the proposals contained in this document, by 5pm on Monday 11 May 2015.

When responding, please state if you are doing so as an individual or a representative of 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.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

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

If you are unable to reply by email, you may submit your response by post or fax (+44 (0)20 7242 3696), marked with the title of the consultation, to:

Obesity Consultation
Regulatory Policy Team
Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

6.2 Next steps

The Committees will evaluate all significant points arising from consultation and explain the reasons behind the decisions they make. The consultation evaluation will be published on the CAP website when the outcome of the consultation is announced.

CAP and BCAP will seek to implement any changes as soon as is practicable. Under the terms of its contracting-out agreement BCAP is required to seek approval from Ofcom before implementing any changes to its Code.

6.3 Confidentiality

CAP and BCAP consider that everyone who is interested in the consultation should see the consultation responses. In their evaluation document, CAP and BCAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation will be published with 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 email 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.

Annex 1: List of consultation questions

Question 1

Do you agree with CAP and BCAP's proposal to allow certain lifestyle weight loss programme providers who fulfil particular criteria to refer to obesity in their marketing, and in doing so to target obese individuals? If not, please provide your rationale and any relevant evidence.

Question 2

Do you agree CAP and BCAP have identified appropriate criteria to include in the rules? If you consider different criteria are required, or if a different approach to provide for a change in the rules is required altogether, please provide your comments, rationale and any relevant evidence.

Question 3

Do you agree that the ASA may have regard to NICE Guideline PH53 to judge whether an advertisement for a lifestyle weight management programme may make permissible responsible references to obesity? If not, or if you consider that the ASA should use the Guideline in a different way please provide your comments.

Question 4

Do you have any comments or suggestions on the drafting of the proposed rules?

Question 5

For advertisers meeting the criteria, do you think they should be able to refer to (and therefore target):

- category I,
- category I and II, or
- category I, II and III

of obese people?

Please provide any evidence you consider supports your response.

Question 6

Do you agree with CAP and BCAP's proposal to maintain the prohibition on the advertising of weight loss treatments and services to those under 18? You are welcome to provide any other comments you might wish to make on this issue.

Question 7

Are there any other comments you wish to make, or evidence you wish to submit, in relation to CAP BCAP's consideration of the issues set out in this document?