

Response from Ms Gill Frances OBE, Chair, Teenage Pregnancy Independent Advisory Group.

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?

The Teenage Pregnancy Independent Advisory Group agrees that it is necessary to maintain a rule specific to post-conception advice services. It is absolutely critical that advertisements for post-conception advice services should be explicit about whether or not they refer women for abortion. This is particularly the case with teenagers who sometimes present later into pregnancy than women of other age groups, sometimes lack the skills and knowledge to discern the difference between post-abortion services and can find themselves facing later and more complicated abortion procedures due to unnecessary delays caused by this confusion.

Pre-conception advice advertisements can be regulated through the general rules.

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.

Yes. The Teenage Pregnancy Independent Advisory Group agrees that rule 11.11 should be included in the proposed BCAP Code.

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.

Yes. The Teenage Pregnancy Independent Advisory Group, which monitors the Government's Teenage Pregnancy Strategy and advises minister, strongly recommends a relaxation in the current restrictions around condom advertising. Condoms play a critical role in both protection of sexually transmitted infections and prevention of pregnancy and it is absolutely essential for public health that condoms can be advertised as widely as possible. The broadcast media has a particularly important role in imparting information to teenagers and we fully support any move which helps remove taboos around condoms and makes them more socially acceptable, particularly for this age group.

In relation to the under-10s, we can accept this recommendation that condom adverts do not appear in or adjacent to programmes for this age group, but it seems an unlikely scenario as condom companies are unlikely to choose to advertise

There has been a palpable lack of transparency regarding the motivation for this consultation. Ofcom has itself not concluded its own consultations into the use of premium rate services in programmes and it does seem to us to be a case of “putting the cart before the horse” to have a consultation of this nature before Ofcom has concluded its own deliberations and before members of the public as well as affected business interests have been given a reasonable opportunity to comment on the same.

Indeed, only this week, Ofcom have announced yet another consultation, this time into proposed changes to the Ofcom Broadcasting Code concerning TV and Radio.

Good regulation should be proportionate. It cannot be proportionate to bring forward proposals which will wreck many a good business and destroy jobs etc, where in respect to the highly popular consumer driven services affected, there is no evidence of consumer harm and the legal justification for reclassifying certain services including psychic and adult, as teleshopping, remains open to challenge in the courts.

We believe that certain areas of the information contained in the BCAP consultation is factually incorrect e.g the reference to “around 200 complaints” in paragraph 22.43 and in other instances information is not set in its correct context, the cumulative effect of which is that the reader is given a misleading impression of the actual evidence, e.g. the reference to “drunken female presenters” in paragraph 22.43. It does not behove a regulator to select only those facts which suit its cause (or that of another agency to whom it is accountable, Ofcom) or to set those facts out in a way that misleads.

We support regulatory initiatives that are consistent and targeted at cases where action is needed. We cannot see that the process surrounding this BCAP consultation has been consistent. The practical effect of the BCAP proposals in respect to the free to air psychic and adult broadcast genres will be to cause them great damage. Targeting these broadcast activities is not a response to a compelling “need”, rather it is quite clearly a reaction by BCAP to pressure being brought to bear on them by Ofcom. It is all the more extraordinary that such targeted activity should be taking place given that Ofcom have not themselves concluded their own consultation process into PRS – how can it be possible to sensibly and reasonably postulate a “cure” before the need for a cure has been established?

Recent events in the UK and globally, have demonstrated the need for governments and those in position of authority to take urgent action in order to restore public confidence in their integrity. We cannot see how those of BCAP’s proposals which would have the effect of banning certain popular genres of free to air broadcast do anything but damage such confidence.

Yours faithfully,

We fail to understand how this consultation can be regarded as being consistent with the principles of good regulation as enunciated by the UK Government's Department for Business Innovation and Skills.

There is no transparent justification for a consultation which seeks to reclassify certain types of service as teleshopping. Many of these services are already very substantially regulated under a combination of Ofcom's Broadcasting Code and the PhonepayPlus Code of Practice and an additional tier of regulation will only serve in our view to make the regulatory process more opaque and **less accountable**.

Regulators should aim to **simplify and modernise existing regulations**. This consultation does quite the opposite. The regulatory burden proposed by BCAP would add yet a further layer of regulation to that which already exists.

Many of the businesses affected are prime drivers of new technologies which employ many thousands of people whose jobs would be put at risk by the BCAP proposals. The premium rate industry alone is estimated to generate revenues in the order of £1.07 billion per annum yielding to the Exchequer valuable tax revenues which stand to be lost.

TERRANCE HIGGINS TRUST RESPONSE

- 1.1 Terrence Higgins Trust (THT) is the largest HIV charity in the UK, with over 30 centres across England, Scotland and Wales. We offer a wide range of services to, and campaign on behalf of, people living with, affected by and at risk of HIV or sexual ill health.
- 1.2 We welcome the opportunity to respond to the Broadcast Committee of Advertising (BCAP) consultation on the proposed single standards code. We will limit our comments to answering the questions concerning sexual health issues, namely: questions 62, 66 and 147.

Question 62: Family Planning Centres

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?

- 2.1 THT welcomes the proposed relaxation of the rules on pre and post conception service advertising. With estimates indicating that as many as 4 in 10 pregnancies in the UK are unplannedⁱ, it is crucial that family planning information and support is readily accessible for all women. The reach provided by broadcastingⁱⁱ, suggests that the option of increased advertising could significantly improve awareness and visibility of services to women. This is particularly important given the continued high levels of conceptions among under 18s in the UKⁱⁱⁱ and the need to improve awareness and service uptake among this group.
- 2.2 THT agrees that it is appropriate to control pre-conception advertising through the general rules as this is in keeping with BCAP's aim of regulation that is socially responsible, proportionate and targeted only where needed.
- 2.3 An NOP opinion poll published in 2007^{iv} indicated broad acceptance of the need for post-conception services among the British population, with 83% of individuals polled indicating support for a woman's right to access abortion services. Given that BCAP's Code aims to reflect changes in wider society, we support its conclusion that the minority of people who could be offended by these advertisements will be adequately protected under general rules that guard against offence and promote sensitive scheduling.

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.

- 2.4 THT supports the inclusion of rule 11.11 in the code and considers that it will provide a level of protection against unnecessary delay, misdirection or distress for women seeking abortion services. Department of Health policy states that women, who are legally entitled to an abortion, should have access to the procedure as soon as possible as risk of complication increases as gestation progresses^v. It is therefore crucial that women who are, or may be, pregnant and considering abortion receive accurate and objective information in a timely way.
- 2.5 THT supports the recommendation of the House of Commons Science and Technology Committee on the Scientific Developments Relating to the Abortion Act 1967 that: 'no patients [should be] misled' and that 'those claiming to offer pregnancy counselling services make the guidelines available or indicate clearly in their advertising that they do not support referral for abortion'. Rule 11.11 as drafted is clearly in keeping with that recommendation and as such should be included in the BCAP Code.
- 2.6 THT is aware of some concern that a similar rule does not apply within the CAP code and that non- broadcast adverts will not be subject to the same standards. We are not aware of any arguments in favor of a different approach within the Codes and as such would urge consideration of a comparable clause for the CAP Code.
- 2.7 We are also aware of some discussion on the issue of how the rule will impact upon services that provide accurate, objective information on all post-conception options for women but do not have the mechanisms to make referrals. We would recommend that BCAP keep this issue under review.

Question 66: Anti-drugs and anti-AIDS messages

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?

- 3.1 THT supports BCAP's proposal to delete the radio rule on Anti- AIDS messages. Considerable scientific and medical advances have been made in recent decades in terms of understanding HIV: how it is transmitted and its impact on the body's immune system. The availability of effective treatment now means that HIV is recognised as a

long term manageable condition and as such is comparable with other illnesses such as diabetes and cancer.

- 3.2 THT is satisfied that the general rules that promote social responsibility and prevent advertisements from misleading or causing harm are sufficient to ensure consistency of information to the public about HIV/AIDS.
- 3.3 The deletion of the radio rule is also appropriate within the context of the increasing levels of HIV recorded in the UK in recent years, with 7,734 people diagnosed in 2007 and a remaining 28% estimated to be living with HIV unknowingly^{vi}. Any measure which assists the communication of prevention and testing messages, whilst also protecting against misleading or incorrect claims, is welcome.

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?

4. 1 THT welcomes the proposed relaxation of scheduling restrictions on condoms. We supported the request made by the Government's Independent Advisory Group (IAG) on Sexual Health and HIV for a review of the BCAP restrictions in 2007 and therefore welcome plans to allow condom advertising before the 9pm watershed on all channels. We acknowledge that some restrictions will be required, namely, prohibiting condom advertising during programmes aimed at children below the age of 10, and consider that these are proportionate sanctions.
- 4.2 Historically restrictions on pre -watershed condom advertising aimed to limit offence and harm to children and young people. However, thinking on this subject has moved on considerably in recent years, particularly in light of the growing rates of STIs among young people. Young adults (aged 16-24) account for more than half of all STI diagnoses in the UK despite representing only 12% of the population. In 2007, 702 young people were diagnosed with HIV in Britain; with young men who have sex with men being particularly affected^{vii}. These issues represent a significant public health challenge requiring a proactive response across Government and in partnership with the voluntary sector, the media, parents and young people.
- 4.5 A sexual health survey published earlier this year by the Office for National Statistics^{viii} reported that

television programs were the most commonly cited source of information about STIs (31%) followed by television advertisements (22%).

- 4.4 Pre-watershed programming already gives young people a wide range of information about sex. These messages can often be sensationalised and seldom include information on condom use or associated risk. Allowing manufacturers to raise awareness of their products among the age groups most at risk of sexual ill health will go some way to balancing out these pervasive messages and should prove a pragmatic and cost-effective way of improving young people's awareness.
- 4.5 In its annual report for 2006/2007 IAG expressed concern over the level of embarrassment which still exists around condoms and the extent to which this inhibits normalisation of their use^{ix}. With evidence increasingly suggesting that broadcasting provides a key source of sexual health education for the public, THT considers that the relaxation of restrictions on condom advertising could make a significant contribution to the promotion and normalisation of condom use and subsequently to public health improvement.
- 4.6 BCAP acknowledge that the presence of condom advertising does attract a minimal number of complaints. THT considers that the potential public health benefits associated with relaxing the rules on condom advertising must take precedence over any marginal concerns and that the potential for offence will be minimised via the general rules of the code.

Terrence Higgins Trust

TESCO RESPONSE

Tesco welcomes the opportunity to respond to the Code Review Consultation.

As a responsible retailer we have robust processes and procedures in place to ensure that all of our advertising is in full compliance with all applicable laws as well as the existing advertising Codes. In the interests of our customers, we apply the highest standards to ensure that our advertising does not mislead or offend. To this end we engage actively and constructively with both the CAP and the ASA.

The role of CAP and ASA

We agree that for the benefit of consumers and competitors it is vital that a clear and coherent set of rules be in place to ensure that all advertisers act legally and responsibly. We are also wholly supportive of an enforcement system which is targeted, proportionate, effective, accountable and transparent.

However, we have a number of fundamental concerns with the CAP existing and proposed rules and the ASA enforcement system. In our view these concerns need to be addressed in order to ensure the future effectiveness of the self-regulatory system. Our concerns are set out below whilst our detailed comments on the proposed Code are set out in the attached Annex.

CAP and BCAP (the “CAP Codes”)

In recent years there has been significant development in the area of consumer protection including rules on Data Protection, Distance Selling and, most recently, the Consumer Protection from Unfair Trading and Business Protection from Misleading Marketing Regulations. The existing legislation provides a clear framework for advertisers to follow. The extent of existing legislation and the number of enforcement bodies available is reflected in the consultation itself with nearly all sections stating the numerous laws that already exist in the relevant area.

Given the wealth of existing legislation, the adequacy of which does not appear to be in question, it is our view that it is completely unnecessary, disproportionate and unduly burdensome for the CAP to overlay that legislation with a ‘mandatory’ code. To do so presents two fundamental issues.

Firstly, contrary to Hampton principles, advertisers are faced with having to interpret and comply with two sets of rules – the law and the Codes. This is because the CAP Codes do not in all cases accurately reflect the exact provisions of the legislation, albeit that the Codes intend to reflect the law. One such example is that the concepts of ‘transactional decisions’ and the ‘average consumer’ are not effectively incorporated into the rules on misleading advertising.

Secondly, the CAP Code often goes beyond what is required in the legislation, e.g. the requirement that consumers should be able to understand all of the terms and conditions by reading an advert once. As well as not being compliant with Hampton principles, the Codes are contrary to the requirements of maximum harmonisation as imposed by the EU. It is not, we submit, for the CAP to place a more detailed interpretation of the law into a 'mandatory' code – this is the preserve of the legislature and thereafter the Court.

We accept that there is a role for CAP rules to prevent consumer harm, but these should be restricted to areas where no legislation currently exists, e.g. moral or social harm, taste and decency.

We accept that there are benefits to a self-regulatory enforcement system which can swiftly and efficiently deals with advertising complaints. However, it is unnecessary for the CAP Codes to overlay the existing legislation in order to achieve this. In our view, there is a viable solution to resolve these concerns, which we implore the CAP to consider:

- In those areas where legislation exists already, the CAP Codes be recast as voluntary guidance which is taken into consideration by the ASA, the OFT and, ultimately, the court when determining if an advertisement is in breach of the legislation. We are confident that responsible advertisers would sign up to and comply with a voluntary code provided they are able to play a more active part in drafting the Codes and determining the enforcement mechanisms.
- It will, however, be vital that the CAP Codes accurately reflect the wording and terminology of the legislation and do not go beyond it.
- This approach would strike the correct balance between ensuring consumer protection whilst removing much of the existing unnecessary burden on advertisers. This would also preserve a self-regulatory scheme. However, please see our comments below regarding the need to have an adequate enforcement system in place.

In the event that the CAP does not agree that the Codes should be implemented as voluntary, persuasive guidance, in the interests of not usurping the power of the legislature and the courts the CAP should ensure that the existing legislation is, in effect, copied out into the Codes so that the law is accurately reflected and not extended. This will also ensure compliance with the rules on maximum harmonisation and provide that advertisers do not have to comply with different rules depending on the enforcement authority.

ASA enforcement

We note that the ASA is considered to be 'established means' for enforcement of advertising matters. We recognise that in appropriate circumstances there is a role for an enforcement body which is a swift, cost efficient and effective means of resolving disputes and complaints without recourse to the courts. However, such a system must have a minimum set of standards. We note it is CAP and ASA's intention that the existing system is targeted, proportionate, effective, accountable and transparent. We agree that these principles are the cornerstone of good, Hampton compliant enforcement. However, based on our significant experience we are regretfully of the view that the

existing ASA enforcement system falls significantly short of these requirements both in the underlying procedures and their implementation in practice.

In particular, we are concerned that:

- There is no reasonable, minimum standard for accepting complaints

Other regulators are compelled by legislation or Codes to ensure that any investigation and enforcement action is in the public interest and there are adequate grounds for proceeding, e.g. 'reasonable grounds for suspecting' a breach of the relevant rules.

The ASA system does not include such a requirement and we strongly believe there needs to be a minimum standard before a complaint is investigated. It is unduly burdensome, disproportionate and unjustifiable to pursue a complaint without any proper evidence of a breach of the Code. For example, the ASA should not presume that the Codes have been breached where one customer is unable to obtain a promoted product. There are numerous reasons which may explain this including, in some cases, error on the part of the customer. Equally, in complaints alleging that consumers have been misled by an advert, we submit that the number of complaints is highly relevant in this context and that one complaint would be unlikely to provide sufficient evidence under the Consumer Protection Regulations that the 'average consumer' has been misled.

It is disproportionate and contrary to Hampton principles to require an advertiser to launch an investigation in such circumstances. We note that the ASA may treat such cases as 'informal' but from the responsible advertiser perspective, where the outcome of the ASA's decision is important, informal and formal investigations are treated with similar gravity.

- There is a presumption of guilt with the onus on the advertiser to prove innocence

Linked to there being no adequate standard for accepting complaints, the ASA system is predicated on the basis that adverts are presumed to be in breach unless the advertiser can prove otherwise. Whilst we accept there is a requirement that documentary evidence be held to prove claims, it is contrary to prevailing legal standards that the ASA does not have to make a case against which the advertiser is entitled to defend itself. This is unduly burdensome, does not accord with the enforcement systems embedded in the applicable legislation and simply cannot be supported

In practice, complaints are often so vaguely characterised that the advertiser is left having to presume what complaint is being levelled at it. Equally it is not uncommon for complaints to be raised yet no advert can be produced by the complainant and the advertiser is requested to conduct a search for material which may or may not exist. We are happy in all circumstances to assist the ASA in any investigation, but it is inherent in any enforcement system that the enforcer is able to make its case against the advertiser rather than relying on a system of self incrimination. Equally, it is vitally important that the advertiser knows the precise scope and detail of the case against it in order for there to be a "level playing field".

- The system is entirely lacking in transparency

Unlike the court system or investigations conducted by other regulators there is a fundamental lack of ability to make formal, oral representations to the ASA secretariat. We have also suggested on a number of occasions that informal discussion of the complaint might be a better way forward but only one meeting has been agreed to so far Advertisers are also deprived of the opportunity to present their own representations to the ASA Council or to know what was considered and discussed during the adjudication procedure. Whilst we accept that there are sufficient opportunities to provide written submissions, this is often inadequate as

- i) the ability to explain issues, particularly complex matters such as pricing data, can be much more effectively and accurately explained in person
- ii) written submissions do not afford the best opportunity to ask questions (by the ASA) and provide response (by the advertiser)
- iii) without a face to face meeting it can be difficult to assess whether complex issues have been fully understood – any misunderstandings are more likely to come out during verbal communication
- iv) lack of understanding might mean that undue weight is being placed on matters which are less relevant. This could be resolved during oral representations with the opportunity to provide explanation tailored to the identified misunderstandings.
- v) the advertiser accused of breaching the code has no visibility of the decision making process including the tone and extent to which the advertiser's arguments in defence are adequately made or whether the ASA's case is presented more favourably or strongly.

The CAP/ASA is effectively the legislator, investigator, judge and enforcer of the Codes, an unhealthy and unacceptable mix for a mandatory code system. There is a clear need for separation of powers.

We appreciate that there is a cost associated with allowing businesses to respond orally. However, in complex cases, assessing 'guilt' on a paper basis alone is an inadequate mechanism. This is particularly so given the potential severity an upheld complaint can have on the advertiser in PR terms and the ability to advertise, especially where the advertiser is likely to have invested significantly in an advertising campaign. To this end, we submit it is vital that oral hearings be permitted in complex cases and greater transparency be permitted in all cases generally. This would permit efficient removal of any aspects of confusion, allow questions to be answered and overall raise the investigating teams' knowledge of the issues at hand.

Based on experience, the ASA is often unwilling to engage with advertisers in this way despite the fact that this opportunity is afforded in the courts and with other enforcement areas.

- The Code should be interpreted using proper legal principles to ensure certainty

In circumstances where the ASA is interpreting those parts of the CAP Code that are intended to reflect existing legislation, staff should be adequately trained in basic legal principles e.g. applying definitions and turning to common meanings in the absence of such. Whilst the ASA is unable to take on the role of a court of law, a self-regulatory system should be implemented in a way that ensures the outcome is likely to be broadly comparable with that of a court. This ensures certainty

for advertisers and prevents unnecessary burdens which arise if a campaign is prepared with all due regard to the law but the ASA takes its own, inconsistent or narrower view.

We submit that, based on the current system of decision making, it is nearly impossible to predict with any certainty how the ASA might view a particular advert, despite close regard to the legislation and Code. This fundamental lack of certainty imposes excessive burdens on advertisers. We accept that the Copy Advice Team has a role to play, but in all practicality, this is not a realistic option for an advertiser that produces a significant level of advertising to very tight deadlines. And, in any event, an adequate system should be sufficiently clear that there is no need for recourse to Copy Advice.

On a related note, whilst our experience of working with Clearcast and RACC is very positive, we are disappointed that pre-clearance does not provide the same assurance of likely (although not guaranteed) compliance with the Code that Copy Advice provides. This is confusing when Clearcast and RACC are enforcing the same legislation and Codes. There appears to be no logical reason for this distinction in approach and we request that this discrepancy be rectified so that greater comfort can be obtained from broadcast clearance.

- New issues and matters of importance should be managed outside of rulings

There is an inherent bias against large advertisers when the ASA determines that a new issue has come to light (e.g. technological developments which require a new term or condition to be added) or making clear that a particular issue is important e.g. what goes beyond acceptable in a taste and decency context. We accept that it is important for these issues to be clarified so that advertisers comply for future ads. However, these decisions should not be taken in the context of an individual advertiser complaint, particularly where the advertiser would have had little realistic opportunity to know in advance that their advert would have been non-compliant. The existing ASA approach is fundamentally detrimental to those advertisers that produce large volumes of advertising and whose ads are therefore more likely to raise those new and important issues first.

- There is no adequate mechanism for appeal

There needs to be an adequate legal appeal system to a body which recognises all of the standards mentioned above. At present, the Independent Reviewer's powers are limited to requiring the ASA Council to re-open its deliberations; there is no power to ratify or overturn an adjudication. This is surprising, given the implications of an adverse adjudication by the ASA Council, not least the potential damage to the reputation of the advertiser. The Codes enforcement process should include a proper judicial procedure for hearing appeals against adjudications.

The CAP and ASA assume responsibility across a very wide range of areas that go to the heart of consumer protection. The CAP and ASA remit has the potential to and does impact significantly on the day to day running of a business. In this context it is vital that the Codes are drafted to ensure the correct balance between consumer protection and Hampton compliant regulation. Equally, the ASA should employ the highest standards in all of its decision making and we request that our concerns be addressed in the interests of consumers and business alike.

Sirs

Re: The BCAP Code Review – Consultation on the proposed BCAP Broadcast Advertising Standards Code.

Further to the consultation document issued on 26 March 2009, please find the response from Thane Direct UK Ltd, a broadcaster with three OfCom licenses in the Tele-shopping Genre.

Guidance Notes

In the consultation document it is written (by BCAP) that the Code will be supplemented by guidance. This will be essential and it is disingenuous of BCAP to go on to write that 'guidance will not generally be considered necessary'. The Code cannot possibly contain rules explicit enough to cover the subjectivity of the advertisers, Clearcast and BCAP employees and therefore it is entirely necessary that EVERY rule has guidance notes to explain beyond any doubt what is expected from the rule. Failure to achieve this will however provide enough confusion to allow complaints and investigations which will keep BCAP employed for the foreseeable future.

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.

New rules 3.4 and 3.5 continue to create confusion and should only be included in the code once sufficient and approved guidance is added to create a sufficient level of understanding of the differences in what BCAP believe is acceptable. These should include relevant examples of what BCAP classes as an "obvious exaggeration". The rule is very subjective for example "claims that the audience is UNLIKELY to take LITERALLY" is impossible for an advertiser to unravel beyond all reasonable doubt.

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.

Whilst I agree with the sentiment of clarification of the rules on the use of the word 'free', we do not believe that the changes made have made any headway in that clarification. The main consideration in dealing with 'free' items is that they should genuinely be no cost to the purchaser. We do not believe that the wording in 3.25 goes anywhere near far enough in clarification of this rule. There would need to be substantial guidance notes to ensure this rule made perfect sense.

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.

The writer of this rule has misunderstood and over simplified a complex set of rules regarding Distance Selling. The rule should read:

8.3 Broadcasters must be satisfied that the advertisers:

8.3.6 *process* a refund within 30 days if the consumer

8.3.6.a cancels, for any reason, within seven days of receiving goods or seven clear days from the conclusion of a contract for services providing that the goods are returned to the advertiser.

It is unreasonable to expect that an advertiser should refund unless goods are back in their possession (and that reasonable care has been taken by the consumer to ensure the goods are not damaged) or if services have been provided to the level agreed prior to the contract being confirmed. Additionally, whilst advertisers will process refunds within 30 days, the banking system may under its terms take up to 30 days to return any funds to their customer's bank or credit card accounts.

Furthermore, it should be absolutely clarified in guidance notes that the Distance Selling Regulations 2000 (amended 2005) and further amendments should take precedence in any decisions made by advertisers.

Question 61

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.

Whilst we agree with the sentiment of this rule, it is once again left as a trap to advertisers that there is little clarity in the rules.

11.6 "Suitably qualified" must be explained in full with reasoning in the guidance notes.

11.7 "unless it is obvious in context" what is 'obvious' to one reasonable person is not necessarily 'obvious' to a reasonable BCAP professional. This must be explained in full within the guidance notes to satisfy that it is absolutely clear..

11.7 Advertisers should be given a clear guideline on what text to add to an advertisement to make it suitably "clear that a health professional has a direct financial interest" in the advertised product or service.

11.8 This must be explained in full in guidance notes to the avoidance of ANY doubt as to what substantiation is required.

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.

Whilst the sentiment of this rule is correct, the rule is open to too much interpretation and should be clarified in guidance notes beyond any reasonable doubt:

"Other Health Specialist" is a meaningless term and should be qualified with detailed explanation in guidance notes or should be removed.

"Advice" should be qualified with a detailed explanation of what constitutes acceptable "advice"

"Safety and efficacy" is a meaningless term and leaves, explicit criteria for what makes a product safe and effective must be given in guidance notes or the term should be removed so that suitable advice can be given. One assumes that the safety of the product is checked through standard EC and BS regulations but efficacy is remains unclear and open to too much interpretation.

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?

Figures for Great Britain (Henderson et al. 2003) show that 42% of men and 32% of women are overweight (i.e. have a BMI between 25 and 30), and 25% of men and 20% of women are obese (BMI>30). Today, more adults are obese than ever before. Whilst it may make sense to not target the Class 3 obese viewers, it should be considered again that by distinguishing the type of advertising that targets the obese there may be some benefit to these viewers. The advertisers should be allowed to target up to a BMI of 40 (class 3 obese). The code should reflect that carefully pre-approved on screen advice is

shown on television advertising. The code should also take care to distinguish between advertisements for dramatic weight control or slimming products and products which make claims for advertising of health, fitness and exercise products in which the obese would certainly benefit. Whilst it is obvious that the Department of Health would rather ensure that obese people are not targeted with dangerous products, it is also clear that the current Department of Health advice is not working (obesity among children and adults is still increasing). A different, controlled approach to advertising to the obese may help to obese people find solutions to their health issues which the relevant government departments have failed to deliver so far.

Sincerely

ⁱ Survey commissioned by evriwoman.co.uk (2004).
<http://news.bbc.co.uk/1/hi/health/3515400.stm>

ⁱⁱ Ofcom, *Media Literacy Audit - Report on adult media literacy*, 2008

ⁱⁱⁱ Office of National Statistics, *Health Statistics Quarterly* 41, October 2008

^{iv} NOP Poll, commissioned by Abortion Rights, October 2007
<http://www.abortionrights.org.uk/content/view/218/106/>

^v Department of Health & Office of National Statistics, *Statistical Bulletin, Abortion Statistics, England and Wales: 2008*

^{vi} Health Protection Agency, *HIV in the UK: 2008 Report*, November 2008

^{vii} Health Protection Agency, *Sexually Transmitted Infections and Young People in the United Kingdom: 2008 Report*, July 2008

^{viii} Office for National Statistics, Feb 2009, *Contraception and Sexual Health 2007/08*
<http://www.statistics.gov.uk/statbase/Product.asp?vlink=6988>

^{ix} IAG SexualHealth and HIV, *Annual Report 2006/2007: Why Sexual Health is a Cross Governmental Issue*