

I understand you are undertaking a national consultation on whether to allow abortion adverts on TV for the first time and the showing of advertisements for condoms before the 9pm watershed.

I respond on behalf of the Christian Democratic Party, which believes both proposals should be rejected.

The UK is subject to an alarming decline in moral standards, to which the unacceptably high rates of teenage pregnancy and the proliferation of sexually-transmitted disease are directly attributable. The increased availability of so-called 'birth control' measures, far from reducing teenage pregnancy, has had entirely the opposite effect. Any reduction in teenage pregnancy will only come about when the message reverts to one of abstinence and self-control. Further reductions in the control of condom advertisements will merely add to the already-overwhelming problems.

Moreover, the notion of 'abortion on demand' was never the intention of the 1967 Abortion Act, but the constant erosion of the safeguards set in place by the liberal interpretation of the Act has led to an appalling situation where the destruction of infants in the womb is viewed merely as an extension of birth control provision.

The hideous proposal to place advertisements for abortion practitioners on television must be resisted at all costs.

# **Submission from the Christian Medical Fellowship to the Broadcast Committee of Advertising Practice consultation**

## **with reference solely to proposed TV advertising of family planning centres and of condoms to children aged 10-16**

### 1. Introduction

The Christian Medical Fellowship (CMF) is an interdenominational organisation with more than 4,500 British doctors as members. All are Christians who desire their professional and personal lives to be governed by the Christian faith as revealed in the Bible. Members practise in all branches of the profession, and through the International Christian Medical and Dental Association are linked with like-minded colleagues in over 100 other countries.

CMF regularly makes submissions on ethical and professional matters to Government committees and official bodies. All submissions are on our website at [www.cmf.org.uk/ethics/submissions/](http://www.cmf.org.uk/ethics/submissions/). Perhaps most relevant to the subject matter of this submission to the BCAP is our submission in 2007 to the House of Commons Science and Technology Committee's new inquiry into 'Scientific developments relating to the Abortion Act 1967'.

### 2. General considerations

One of CMF's aims is 'to promote Christian values, especially in bioethics and healthcare, among doctors and medical students, in the church and in society'. While therefore advocating marriage as God's intention for human sexual relationships, and families headed by married couples as the ideal context for the procreation and nurturing of children, our members practise within the whole range of relationships and behaviours current in UK society, and this submission endeavours to reflect that.

We confine ourselves to the consultation questions directly relevant to our aims, namely those concerning proposed TV advertising of family planning centres and of condoms to children aged 10-16.

### 3. 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 note that the discussion of 'post-conception advice services' appears to apply only to the consideration of whether or not to have an abortion, and not to ante-natal advice for women continuing with their pregnancy. We therefore limit our discussion to the question of whether, on balance, abortion advice services should be advertised on television?

We answer this question 'No'. Because of the cost of TV advertising, it is likely that only those 'advice services' with large incomes from the performance of abortion (and therefore also with financial vested interests as well as ideological ones) will be able to afford significant advertising. Thus there will be a disproportionate opportunity for abortion providers to advance their cause, in a

morally contentious area. Almost everybody in the UK thinks '200,000 abortions a year is too many' and TV advertising will increase this number.

We argue that such advertising is both unnecessary and unethical.

#### Unnecessary

Any woman considering abortion will be sufficiently motivated and will easily be able (with the help of friends if necessary) to find information about abortion providers from the wide range of sources currently available – internet, print advertisements in newspapers, women's magazines, etc. There is simply no need to advertise abortion providers on television.

#### Unethical

Such advertising would be unethical on two grounds:

##### Medical considerations, and the approach taken by abortion providers

Abortion is always a procedure with a 50% mortality – the life of the fetus is intentionally ended. However, there is also growing recognition of serious long term medical consequences for some women undergoing an abortion:

##### Subsequent pre-term delivery

There have been many reputable studies confirming the association between abortion and pre-term delivery. . . . This association is significant for health outcomes in subsequent pregnancies and for their economic costs to parents and to society. Extremely preterm delivery is associated with high risk of neonatal death and of permanent brain damage causing long term disability. Most women considering abortion will subsequently deliver one or more live children, who will face these risks. Women should be adequately counselled about abortion and risk in subsequent pregnancies, and the counselling offered by the main abortion providers is inadequate here.

##### Psychological and psychiatric consequences

Any association between abortion and mental health problems has effectively been dismissed not as causal, but as incidental due to other confounders. But in the last decade, there has been much evidence from robust and methodologically sound controlled studies that abortion causes:

- increased psychiatric hospitalisation - admission rates were higher post-abortion than post-partum when those with a prior psychiatric history were excluded
- increased psychiatric outpatient attendance - outpatient funding claims were higher in the post-abortion group when prior psychological problems were controlled
- increased substance abuse during subsequent pregnancies carried to term - women who had aborted were significantly more likely to abuse cannabis, other illicit drugs and alcohol during a subsequent pregnancy
- increased death rates from injury, suicide, and homicide - a controlled study in Finland 1987-2000
- higher rates not due to prior vulnerability of major depression, suicidal ideation, illicit drug dependence, and overall mental health problems -perhaps most relevant for UK comparison, a landmark 2006 New Zealand controlled population study

In addition to this quantitative psychiatric data we have summarised the psycho-social consequences some women undergoing abortion suffer.

##### A possible link with breast cancer

Breast cancer rates are rising in Europe and North America and are projected to rise further. There is evidence suggesting that having an abortion may increase a woman's risk of breast cancer in later life. A 1997 review that pooled 23 studies found that the risk increased by 30% but authors of a 2001 review have denied a link. However, it is undisputed that a full term pregnancy protects against subsequent breast cancer, and that significantly pre-term deliveries make it more likely. The link is therefore biologically plausible.

Women should be adequately counselled about all these risks, and given the 'space' necessary to make a truly informed decision. The limited service of the main abortion providers in these respects is inadequate. Permitting TV advertising of abortion services is likely to cause more women to have abortions and therefore will harm more women.

'Message' considerations, and the power of television to trivialise sexual behaviour and abortion BCAP must consider issues of context, of interpretation, and of the 'message' that TV advertising of abortion services would bring. We are aware that BCAP acknowledges the unique power of television as a medium. TV does not just convey information; it inevitably conveys a powerful message of what is accepted and acceptable. Television creates culture as well as reflecting it.

Males watching abortion adverts will become even more likely to conclude that the prevention of pregnancy is the responsibility of the female, and that abortion is there as a socially acceptable back-up means of contraception. This ignores the destruction of the fetus; the possible serious health consequences to the female; and if it makes the male less likely still to use barrier contraception may put him at even greater risk of acquiring a sexually transmitted infection.

Most females viewing abortion adverts will not actually be pregnant at the time, but again are likely to take on board the message that abortion is there as a quick fix if they have failed to use contraception or if contraception has failed. This will discourage a responsible approach to sexual behaviour and lead to other attendant risks.

#### Conclusion

CMF therefore holds 'that it is necessary to maintain a rule specific to post-conception advice services' and believes that rule should continue to prohibit the TV advertising of abortion services.

We are not in a position to comment on whether 'to regulate advertisements for pre-conception advice services through the general rules only'.

#### Question 62 (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.

Because of our real concern that the only agencies able to afford sustained abortion advice advertising will be the current abortion providers, and because of our conviction that advertising by them is both unnecessary and unethical, we argue that there should be no such advertising.

Should that argument not prevail, we would seek 'a level playing field' for advertising by agencies from both sides of the debate. We dispute the claim from the House of Commons Science and Technology Committee's new inquiry into 'Scientific developments relating to the Abortion Act 1967' that pregnancy counselling services that do not refer for abortion intentionally mislead, and cause

dangerous delay should abortion ultimately be performed. We counter (see above) that the counselling of the abortion providers intentionally misleads by omission.

In any case, BCAP notes that some agencies do not have the legal power to refer directly. We suggest that should such advertising go ahead, all agencies should be required to make a statement about their referral practices. For some this might read along the lines of:

‘XXX does not have the legal power to refer directly for abortion, but aims to give you the space and balanced information you need to make your own choice. Should you conclude you want a referral for consideration for abortion, we will if necessary give you appropriate advice.’

Those advice services that do have the power to refer directly (very probably to their own staff) should be required to publish the statistics of referral rates for the preceding year, along the lines of:

‘YYY can refer you directly to our own staff for abortion. In 2008, ZZ% of those we counselled were referred for abortion.’

#### Conclusion

Should TV advertising be permitted, we would accept the principle of a statement about referral policy and practice. We believe the policy outlined above, applied fairly and equally to both sides of the debate, would lead to a greater probability of the woman eventually making a fully informed choice.

#### 4. 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.

We argue that this proposal is also unnecessary and unethical. We note that ‘Baroness Gould of Potternewton, Chair of the Government’s Independent Advisory Group (IAG) on Sexual Health and HIV, wrote to BCAP to request a review of the scheduling restrictions on condom advertising, noting that the UK had the highest teenage pregnancy rate in Europe and spiralling rates of sexually transmitted infections’.

The presupposition in this proposal is that more condom advertising to an ever wider range of young people will reduce unintended pregnancy and offer some protection against sexually transmitted infections. Briefly, the evidence shows, instead, a correlation between the government’s policy of increasing promotion of contraception and the very rises Baroness Gould notes.<sup>16,17</sup> Again, as we argue above, the negative effect of the ‘message’ trumps any possible positive medical benefits.

The more that sexual behaviour is trivialised, the greater will be the numbers of those involved in casual behaviour. Whether they set out intending to use condoms or not, the greater will be the adverse health consequences. The correct strategy is to promote responsible sexual choices by young people and television can have great power for good here.

We question whether the current 9pm watershed (on most channels) is in any case a deterrent to children and young people aged 10 upwards – they are likely to have access to such adverts already.

We emphasise that it would be impossible to prevent children under the age of 10 from watching such adverts screened earlier, should this proposal be adopted.

Finally, we point out that this proposal takes UK policy ever further back from the legal age of consent, and we argue against this proposed further sexualisation of children.

### Summary

Further promotion of condom advertising to children aged 10-16 is unnecessary and unethical. Those for whom condom knowledge is relevant will find it anyway, and the ever increasing trivialisation of sexual behaviour will damage more and more children and young people.

### 5. Conclusion

Christian Medical Fellowship is grateful to have had this opportunity to comment, and wishes BCAP well in its many deliberations. We would be willing to help further on these two specific matters.

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Sir, with regard to the BCAP consultation, I write as a teacher with over 20 years experience and a former Head, now National Team Leader of The Christian Schools' Trust, a group of nearly 50 independent schools.

On the question (62) of the advertising of post-conception services: What seems clear to those of us who actually teach children and young people is that TV and advertising does not form opinion but it does strengthen it. If we want to encourage a society in the use of abortion services then let us go ahead and advertise them. This will undoubtedly be successful and lead to greater 'irresponsibility' in sexual behaviour (especially amongst the young) with more 'unwanted' pregnancies and more unpleasant long-term effects of terminations. Meanwhile I and my teaching colleagues, along with parents across the nation will battle against this influence to try and instil a sense of responsible sexual conduct in the growing generations.

On the question of the advertising of condoms (147) it is again an observable fact in the classroom that more information does not lead to responsible action. Advertisers have no meaningful relationship with the young people they communicate with so any message is simply and economic one. Do we wish to be responsible for reducing these important social issues to the level of advertising where we compete with adverts for clothing and breakfast cereal? The Christian Schools' Trust opposes these moves because they will do nothing to honour human life as a creation and gift of God.

## Responses to various questions from Church Society

### 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

Pre-conception and post-conception advice services should NOT be advertised on the television and radio. We wish to see prohibited the adverting of condoms as this is assisting in creating an environment which is increasing the number of abortions of unborn children, the incidences and cost of sexually transmitted diseases and the number of pregnancies to young teenagers.

### 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.

We do not wish to see adverts which suggest that spiritual benefits accrue from financially supporting particular charities.

### 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.

Instinctively this prohibition seems reasonable, but the term 'unreasonable' could easily be misused to prevent reasonable advertising.

### 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.

Yes.

### 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. Rules 3.10 and 3.11 are reasonable and specific. The proposed alternative cover-all is too general and vague.

### 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.

**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. As explained in response to Question 62 the increasing use of advertising condoms, particularly those aimed at young people, is having a disastrous effect on the wellbeing of individual lives and our national life in general. Advertising of condoms on television and radio should be prohibited, not increased.

David Phillips  
General Secretary  
Church Society

**Subject:** Offensive weapons and replica guns

Dear Sir / Madam,

It's been brought to my attention that there is a document that you are working on that has several points that you need responses on ( & by the looks of it some sound guidance )

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.

**Advertising guns for illegal use should obviously ( & I assume already is ) prohibited. Any advertising of a legal use, promoting safety & awareness should be available to all businesses & organizations in the interests of public safety, public recreational sporting facilities & competition with our customers in other parts of the world**

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.

**This is truly ridiculous. Clay Pigeon Shooting is an Olympic sport, we are hosting the next Olympic Games ( someone obviously doesn't realise this ).**

**Clay Pigeon Shooters are among the most law abiding citizens in the land, as they possess shotgun licenses & are checked out by the police regularly. There are, I believe over 700,000 shotgun certificate owners in the UK. We ( Clay Pigeon Shoot Ltd & numerous other companies in the UK ) are a legitimate business that contribute to the whole of the economy by creating employment & paying taxes. Clay Pigeon Shooting is statistically many times safer than either participating in, or going to a football match. Will football advertising be next?**

Best regards

Olly Searl

Clay Pigeon Shoot Ltd

## **Clay Pigeon Shooting Association response to the BCAP Code Review**

1. This response is from the Clay Pigeon Shooting Association to the BCAP Broadcast Advertising Standards Code and specifically, questions 55 and 56.
2. The Clay Pigeon Shooting Association is the National Governing Body for clay target shooting in England. Through the federation of the British International Clay Target Shooting Federation it is recognised by the International Olympic Committee, the British Olympic Committee (BOC), the International Shooting Sports Federation and the Sports Councils of the four Home Countries, as being the relevant National Body for 5 of 15 shooting events at the Olympic Games as well as World Cups and World Championships held throughout the world.
3. The Association has over four hundred affiliated clubs who between them have an indeterminable amount of members, however Government figures identify in excess of six hundred thousand shotgun certificate owners. We apply strict codes of conduct to all who are in membership with us and are recognised by various organisations which include The Scout Movement, the Duke of Edinburgh Award Scheme and The Cadet Movement.
4. We are concerned that your Consultation is inaccurate and will probably mislead those who are reading it. Our specific points are:

The Communications Act 2003 at 319(2) (a) states “that a person under the age of 18 should be protected”. There is no reason why young people of any age should not be allowed to participate in an Olympic Sport. Persons from the age of fourteen may in certain circumstances, have their own Firearm Certificate and certainly can shoot under suitable supervision.

At 319(2) (h) - It is a requirement that advertising must not be misleading. It is to be regretted that your Consultation fails that test.

10.8 is incorrect in law for an individual does not have to be a registered dealer to sell a firearm and ammunition to another person, provided the transferee is legally allowed to possess the firearms in question.

10.12 - The Violent Crime Reduction Act 2006 does not totally prohibit the manufacture or sale of realistic imitation firearms. There are a number of exceptions including film and television or re-enactment societies.

10.65 to 10.67 - You link firearms with weaponry and then go on to use the emotive phrase “offensive weapon”. The equipment our members use is not made or adapted to cause injury. It is not denied that it could do so if misused but so could the kitchen knife or the motor car.

10.7 - You state “a TV advertisement for a replica gun could be viewed as glamorising the use of real guns, which BCAP considers could cause serious or widespread offence to the

audience.” We would ask what evidence you have as to the advertising causing widespread offence. Immediately following the Dunblane tragedy a poll of the public found that seventy-four per cent did not favour a ban but supported the status quo.

5. Given the inaccuracies in law or the bias in opinion, and having spoken to our legal advisors, we invite you to withdraw the Consultation Paper in so far as it relates to firearms and guns more widely, and to restart the consultation period for that discrete category of advertisement. Should you decline our invitation we together with the other National shooting organisations reserve the right forthwith without further notice to take action (including but not limited to judicial review proceedings) to quash the relevant part of the current Consultation and have it re-issued in the terms we seek.

6. Should you choose to follow the route you are proposing it will mean that there will be a ban on advertising the shooting events for the Olympic Games, the Paralympic Games and test events before the Games. This we feel sure would be a disappointment to the BOC and the London Olympic Committee for the Organisation of the Games (LOCOG)

7. Turning specifically to your questions:

Question 55 and 56 - We cannot agree with the existing prohibition on television advertising and request that this prohibition be removed. We see no reason why a legitimate Olympic sport should be singled out in this manner.

## Lidl Decision

We have read with interest CAP's recent guidance on "verifiability", which was issued following the decision in *Lidl Belgium GmbH & Co KG v Etablissements Franz Colruyt NV*. Given that the Codes are currently under review, we would like to put forward our view as to the correct interpretation of the *Lidl* decision and its practical implications. If this analysis does not fall within your remit, we would be grateful if you could pass it on to the appropriate person.

As you are aware, the *Lidl* case concerned price comparisons of supermarket basic consumables. The ECJ considered five questions in its judgment. Question 4 concerned the requirement of verifiability, which arises out of Article 3a(1)(c) of the Comparative Advertising Directive: a comparative advertisement is permitted provided that it meets various conditions, including, where it "*objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price*".

Our view is that "verifiable" means that the features forming the basis of the comparison are capable of being verified. The clear purpose of this provision is to ensure that advertisers make comparisons which are accurate so that consumers are not misled.

The ECJ found that "*Article 3a(1)(c) of the Directive must be interpreted as meaning that a feature mentioned in comparative advertising satisfies the requirement of verifiability laid down by that provision, in cases where the details of the comparison which form the basis for the mention of that feature are not set out in the advertising, only if the advertiser indicates, in particular for the attention of the persons to whom the advertisement is addressed, where and how they may readily examine those*

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*details with a view to verifying, or, if they do not possess the skill required for that purpose, to having verified, the details and the feature in question as to their accuracy."*

The *Lidl* case concerned freely available pricing information about a variety of supermarket products. There was no reasonable objection to the data being made available for third parties to inspect. The parts of the judgment which deal with question 4 (paras 63-74) explicitly reference the features at issue in the particular case, namely products and prices, and the fact that they are dealing with basic consumables. However, there will clearly be circumstances when the evidence that an advertiser has to back up its claims should not be made freely available, for example, where it concerns confidential data, trade secrets or complex technical data, which the judgment did not consider.

The ASA plays an important role in being able to consider, and therefore verify, all such data, without the details of it being passed on to competitors. Moreover, a lot of comparisons are highly technical in nature and consumers are unlikely to be able to interpret that data. In these types of situations the ASA would be the most appropriate source of verification. Competitors referred to in comparative adverts are, of course, able to challenge the advertiser's substantiation for the claims, but it is the ASA, as the regulator, that should be able to consider the evidence and come to a conclusion as to substantiation. This would satisfy article 4 of the Directive which obliges Member States to ensure that adequate and effective means exist for ensuring compliance with the provisions of comparative advertising in the interests of consumers as well as competitors and the general public.

To extend the application of the *Lidl* case more broadly, and in particular so as to require advertisers to make their trade secrets and confidential information publicly available, would inhibit comparative advertising. This would be totally at odds with the rationale of the Directive (the *Lidl* judgment at para. 22 acknowledges that it is "*settled case law that the conditions required of comparative advertising must be interpreted in the sense most favourable to it*"). Comparative advertising should not be discouraged.

We therefore consider that the requirement of verifiable data being made available to the public, including competitors, should be applied only in cases similar or comparable to *Lidl*, taking into account all of the circumstances of the advertisement and the type of feature being compared.

Yours sincerely



**Susan Barty**  
**CMS Cameron McKenna LLP**



**BCAP Code Review**  
**Consultation on the proposed BCAP**  
**Broadcast Advertising Standards Code**  
RESPONSE BY COM AND TEL (UK) LTD TO CONSULTATION DOCUMENT

Com and Tel ( UK) are a Service Provider licensed under live licence permission certificate 9908017 by Phone Pay Plus, offering Service Provision to Broadcasters and Non Broadcasting clients. We have been established since 1998 and are well known in the Premium Rate Industry for offering high quality live services with a high regard for compliance. Our current business is primarily functioning as a Service Provider for several Participation Television Channels. This accounts for approximately 90% of our current business.

Whilst we are a relatively small Company in terms of full time members of staff (four), there are many Companies and individuals that rely heavily on the revenues that are generated on the premium rate numbers that we supply to the Broadcasters. This is not limited to the Broadcasters themselves, as currently our Premium Rate services, which comply fully with the Phone Pay Plus code of Practice, have a resource and support network of third party suppliers which include hosting companies, live operator suppliers, live operator trainers, technical support agents, and corresponding administration and management staff, involved on an employed or self employed basis. We estimate that there are over one thousand individual people relying on the revenues generated from the numbers we provide to PTV programmes.

We have been the Service Provider for Psychic Interactive TV since its beginnings, as well as being the Service Provider for the “Babe” style PTV channels Babecast, Sex Station, Blue Kiss TV and several Daytime Chat Channels. We therefore cover many different PTV genres and take a responsible view on each, working between the Broadcaster and Phone Pay Plus to achieve a quality product that we believe gives value for money to the consumer.

It should be noted that both Psychic Interactive TV has been on TV since 2003, This was preceded by Babecast TV. We have regular liaison with Phone Pay Plus to ensure we follow their latest guidelines and directives and run a very successful business.

Com and Tel have responded to the OFCOM consultations and completed the OFCOM request for the provision of specific information sent to PTV Service providers in December 2008.

In August 2008 Com and Tel had a meeting of over two hours with BCAP members at their request, the main thrust of the meeting being “our thoughts on BCAP's prohibition on the advertising of live psychic services and the restriction of ads for premium-rate sexual entertainment services to encrypted elements of adult channels only. In particular, do you consider these rules meet the Communication Act's requirements for Ofcom (BCAP) to adequately protect under 18's and to adequately protect the audience from harmful or offensive material?” During this meeting we felt we were able to clarify what is entailed in the provision of live services for Psychic and Babe PTV, the vast amount of work that goes into training and compliance for producers, presenters and operators and the overall structure of how the emphasis of the service is on transparency of promotion and customer satisfaction. In short we felt BCAP members seemed genuinely surprised at the organisation and commitment to run high quality products with strict emphasis on compliance and that generally we satisfied many concerns they had.

Following this meeting Com and Tel supplied additional written information. BCAP correspondence advised us that the BCAP “aim is to see whether we can formulate rules that could protect vulnerable viewers from harm without imposing a blanket ban on live psychic advice”

In October 2008 Com and Tel attended the ASA workshop “re: BCAP’s review of TV rule 10.3 (psychic practices) and TV rule 11.1.2 (PRS services of a sexual nature)”, the purpose of which was stated by BCAP “to discuss potential options relating to the review of these TV Code rules.” At this workshop BCAP presented various options for its forthcoming consultation document. It was therefore a complete and not altogether pleasant surprise to receive the BCAP consultation document on March 26<sup>th</sup>. Not only was this Consultation Document some four months later than initially suggested, but its content concerning programming of the PTV genres did not seem to reflect either the openness of the BCAP members during the meetings Com and Tel had attended, or what the Industry was led to believe would be the format and choices given in the Consultation Document itself.

Com and Tel therefore wonder what conversations have taken place between OFCOM and BCAP in the interim period since these meetings and indeed, if BCAP seem unprepared to regulate PTV programming, then which body will now regulate it? In the initial meeting that Com and Tel held with BCAP, BCAP members did admit their reluctance to accept PTV under

their jurisdiction. It was due to the publishing of the OFCOM PTV2 Consultation that BCAP realized that if PTV was reclassified as Teleshopping, it may well fall under their domain and hence (supposedly independently and without consultation with OFCOM) commenced investigation into PTV genres such as Psychic and Babe by holding the meetings previously mentioned. Patently, another branch of OFCOM, Phone Pay Plus, already governs the premium rate elements of the PTV services quite satisfactorily. Services of the same or a similar nature operate across all other types of media, from print advertising to the internet and digital media. The question would therefore seem to be the Programming element of the same services on PTV. Questions such as targeting vulnerable viewers suddenly become raised, which are not generally regarded as being problems in any other form of media.

Com and Tel suggests that a separate governing body could be created that sits between PhonePayPlus, OFCOM and BCAP to satisfactorily control PTV. This body could be an arm of BCAP or indeed a subdivision of OFCOM. Broadcasters could then apply to OFCOM for licences in the way that they do now and Phone Pay Plus could continue their function on governing the PRS elements, giving prior permission etc. The new governing body (PCAP) could then deal with any requirements for all genres of PTV using premium rate telephony products under this classification, monitor programming and quality and ensure all visual elements were upheld to comply with the OFCOM code.

#### COMMENTS AND RESPONSES

Due to the size of the Consultation Document, Com and Tel have chosen to respond only to the points that they feel are directly relevant to them and indeed to the use of premium rate numbers in advertising and in PTV programming. For ease of reading, any inclusions of BCAP's are marked in bold, while our own responses are marked in normal typeface.

**3.iii BCAP's proposed Code has been drafted to meet the relevant requirements set out in the Act. For example, BCAP's proposed Code includes rules best calculated by BCAP to secure the Act's "standards objectives" (s.319 (2)). Those relevant to advertisements are:**

- (a) that persons under the age of 18 are protected;**
- (b) that material likely to encourage or incite the commission of crime or lead to disorder is not included in television and radio services; ....**
- (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;**
- (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from inclusion in such services of offensive and harmful material; ....**
- (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;**
- (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with [especially, for television, those obligations set out in Articles 3b, 3e, 10, 14, 15, 19, 20 and 22 of Directive 89/552/EEC (the Audiovisual Media Services Directive)]; ...**
- (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred."**

Com and Tel Comment

All genres of Psychic and Babe PTV on which we are the Service Provider fully comply with the above statements. The Phone Pay Plus Code has similarly worded requirements which we must abide with. So under the BCAP code there would not appear to be any conflict with the nature or content of PTV programmes of this type.

#### Question 1

**1.2 Advertisements must be prepared with a sense of responsibility to the audience and to society.**

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

Com and Tel Comment

We agree.

#### 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.**

Com and Tel Comment

Proposed Code under Section 1 seems clear enough.

**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?**

Com and Tel Comment

No

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

Com and Tel Comment

No Comments

## **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.**

Com and Tel Comment

The wording **"Advertisements must be clearly distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement"** does not necessarily (and possibly purposefully) take into consideration PTV programmes such as Psychic PTV or Babe TV where the editorial content is currently classified as the programme promotion by Phone Pay Plus. Phone Pay Plus also advise that the promotional number should be on screen at all times, covering what is effectively editorial content. OFCOM referred to the programmes as having "editorial content" in PTV1, but by PTV2 argued against this. One of the problems we have in PTV is that we are "between classifications" at the present time. Whilst we agree in principle to the sentiment that 2.1 is written and concur that in no way should audiences ever be misled into thinking that editorial is in fact advertising, there is still a grey area as far as PTV is concerned. We assume 2.1 has been worded in this way because BCAP does not wish to control PTV programmes and does not wish to see them as a genre in their own right that comes under their own jurisdiction.

**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.**

Com and Tel Comment

No Comment

#### 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.**

Com and Tel Comment

No Comment

### 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.**

Com and Tel comment

We agree. DELETE: Broadcasters must retain editorial independence and responsibility for the content and scheduling of programmes

**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.**

Com and Tel comment

We agree. DELETE Advertisements must not refer to the use or appearance of any service or product in any programme.

#### 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.**

Com and Tel comment

We believe they are, if Participation TV is classified as a separate genre in its own right either under the jurisdiction of the ASA or under recognised as such by OFCOM

**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?**

Com and Tel comment

No Comment

### 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.**

Com and Tel comment  
We agree

### 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.**

Com and Tel comment  
We agree

### 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.**

Com and Tel comment  
We agree.

### 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.**

**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.**

Com and Tel comment  
We agree. This policy sits with the Phone Pay Plus Code as far as Premium Rate products are concerned.

### 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.**

Com and Tel comment  
We agree.

#### 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?**

Com and Tel Comment

We agree

## **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.**

Com and Tel Comment

We agree

### **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.**

Com and Tel Comment

We agree with rule 26.2

**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.**

**26.2 Services offering individual advice on consumer or personal problems may be advertised only if those advertisers have given the broadcaster evidence of suitable and relevant credentials: for example, affiliation to a body that has systems for dealing with complaints and for taking disciplinary action; systems in place for regular review of members' skills and competencies; registration based on minimum standards for training and qualifications; and suitable professional indemnity insurance covering the services provided.**

**Com and Tel Comment**

We agree although wish to comment that promotions for psychic services do not fall under this category.

### **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.**

Com and Tel Comment

Since the last BCAP Code review, there have been several changes to the Adult broadcasting arena and also perhaps the UK viewing audience of the perception of such with programmes like “Sexcetera” achieving mainstream TV viewing. Among these changes are the introduction of an adult section on the Sky EPG where there is pin access and restriction for users to protect minors. We are however unsure of the BCAP’s classification of “pornography products” and what they mean by this. Would they classify “Sexcetera” as pornographic material, even though it is on mainstream TV? We feel that pornography is perhaps not the term that BCAP really mean and that actually they mean “erotic products”. Evidence of erotic products could perhaps be those that are available in Ann Summers stores on every high street, or indeed advertised in many daily newspapers. In short, we feel that the nature of advertising should adequately reflect the nature of editorial programming around it.

**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.**

Com and Tel comment

They are not easily understood due to the outdated and unclear classification of “pornography products”

**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.**

Com and Tel comment

Again we wonder if BCAP’s classification of encrypted elements of adult entertainment channels is actually what they mean as opposed to restricted adult content such as the Adult channels on the Sky EPG. Making a classification that the nature of advertising should adequately reflect the nature of editorial programming around it would adequately cover this .

## Other Questions

### Question 58

Com and Tel comment

NO further comments

## 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.**

Com and Tel comment

We agree

## 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.**

Com and Tel comment

We agree

## 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.**

Com and Tel comment

We agree

**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.**

Com and Tel comment

We agree

## 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.**

Com and Tel Comment

We strongly disagree and are very surprised that BCAP have chosen this option. Firstly it is important to differentiate between psychic and occult products or services. At the time the Beyond Entertainment research was conducted there was very little editorial content on TV that viewers could watch that concerned either area. Since then we have seen the rise of Most Haunted, Medium, Supernatural and many other related programmes that handle such subject matter. Such programmes are high in popularity with viewers but is more occult than psychic.. The psychic theme is also separately well established as a programme genre on free to air TV (the Sally Morgan show on ITV) and on subscription services (Derek Acoura show Living Channel from Virgin Media). Thus we feel there should be two distinct categories and psychic and occult should be handled differently.

There has also been a rise in public interest in other areas such as reiki, spiritualism and many others since the Beyond Entertainment research and last Code review. Furthermore the psychic marketplace outside of TV has risen dramatically since the last review, with additional high

circulation magazines such as Chat its Fate ( circulation 90,000), internet psychics available via premium rate handling high volumes of over 100,000 minutes of traffic per month as well as the rise of Psychic TV which is now on two channels. Most major national media groups in the UK are happy to promote, under their own mastheads, live psychic and tarot services alongside recorded information services where they are positioned as “for entertainment only” or where readings are “intended as a guide only”.

We believe that should similar research to that conducted for “ Beyond Entertainment” be conducted in 2009, there would be a change in viewer attitude, with a greater proportion of participants viewing mainstream psychic products as being harmless.

Live premium rate chat products require prior permission by Phone Pay Plus and services have a low, if non-existent level of complaints. The psychics are all very carefully vetted and tested and must comply with a stringent set of guidelines provided both by the Phone Pay Plus code and by the Service Providers and Broadcasters, who at all costs wish to prohibit minors from calling their services and train the psychics on giving general readings similar to those that can be obtained by other forms of divination deemed safe by BCAP such as recorded horoscopes. Services are also subject to monitoring by Phone Pay Plus.

Psychic TV has now been operating for six years, but not one person has ever suggested or indeed complained that the content is scary, or comes under the occult category. There have also been no accusations from the public to Com and Tel that a psychic ever “ told them what to do”. In fact it is within our code of conduct to train the psychics carefully to remain impartial and only give “ a reading.”OFCOM have also scrutinized the programme Psychic Interactive TV and have not found fault with it.

In Ireland, which has much tighter regulatory restrictions on Premium Rate services than the UK, television advertising for live psychic/tarot is allowed, with certain restrictions on claims that cannot be made, many of these are already covered in BCAPs new rules under Faith Religion and Equivalent Systems of Belief. Psychic advertising is also prevalent on TV in nearly all European countries and is pretty free of any issues. Certainly there are no more issues on TV than in any other media that we are aware of. We therefore find BCAP’s comment under 15.51 objectionable; “The present TV rule might suggest, therefore, that the power of TV advertising inappropriately validates or otherwise lends weight to a product or service that could cause harm to vulnerable members of the audience, including children” There is absolutely no evidence of this whatsoever!

The question the remains as to why BCAP would wish to restrict the viewing public from seeing advertisements that can be extensively viewed in all other forms of media. Com and Tel consider this to be restrictive to the Peoples freedom of choice, as well as to competition.

## 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?**

Com and Tel comment

They are not easily understandable as there seems no good reason that the advertising of mainstream psychic services would not be permitted.

## **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.**

Rather than repeat and duplicate elements of the Phone Pay Plus Code it should be sufficient to state, as with 22.1 that advertisements that include premium-rate telephone numbers or short codes should comply with the Phone Pay Plus Code of Practice and other relevant guidelines. There is no reason to duplicate existing satisfactory regulation by creating extra rules.

### **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.**

Com and Tel Comment

We agree

### **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.**

Com and Tel Comment

We would agree that Adult promotions should be restricted to viewing after the watershed and in areas that are effectively designated adult sections, but NOT only on encrypted channels. Again the landscape has changed for this section of broadcasting since the last BCAP Code review with the movement of all adult channels into one section on the sky EPG which the individual can restrict in its entirety by pin. BCAP in 22.35 quotes OFCOM research from 2002, at which time the current landscape was NOT in place. Whilst this is counteracted by OFCOM research of 2006, the comments by BCAP mix points of view on Adult Promotions in the wider broadcasting environment and discussions on strong sexual imagery etc with research based on programming in the Adult sections, which is not necessarily entirely useful and confusing and possibly even misleading for the Consultation reader who has a limited knowledge of this marketplace.



We understand BCAP's point of view that they defer to OFCOM and remain open to changing their CODE following consultations by BCAP and OFCOM. However we wish to point out that the term ""PIN Protected encryption"" is also confusing since PIN and encryption represent two different technologies with PIN protection being the most widely accepted, understood and effective method of access to adult channels.

Again we revert to our stance that in our opinion, advertising should reflect the editorial around it. Therefore around Babe shows that use 098 prefixes, there would be no reason that PRS advertisements for adult 121 services could not appear, as these would simply reflect the programming around them. We agree that TV advertisements for PRS of a sexual nature should not be permitted on channels that do not have some form of adult restriction, but do NOT agree that this means encryption.

### **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.**

Com and Tel comment

We are unsure what this question means and what kind of product this refers to "available to consumers via a direct-response mechanism and delivered over electronic communication networks?" is not clear. This section must be clarified and either reworded or deleted as it is meaningless in its current context.

**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.**

Com and Tel comment

We do not think that payment forms should be restricted, what is important is clarity of cost, of billing and clear labeling of customer services, so the customer may have a clear point of contact if needed. If a service is operational on a premium rate number which falls under the remit of Phone Pay Plus, there is no reason why alternative billing mechanism could not be used for the same service. Furthermore billing mechanisms such as credit card payments should not be questioned as the user always has recourse to complain.

### **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.**

Com and Tel comment

We 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.**

Com and Tel comment

We agree, however we would prefer a broader wording such as "services of a sexual nature" without the need to define the type of services that these comprise.

### 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.**

Com and Tel comment

We do not agree. As previously stated we feel that the wording should be similar to Advertisements for telecommunications-based sexual entertainment services are acceptable on adult entertainment channels only, where entertainment of a similar nature to the advertisements exists.

## 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?**

Com and Tel comment

We do not agree. We feel that we have previously explained why in our answer to previous questions. We do not agree that BCAP have laid out all the considerations in this option, either considering adult services on encrypted channels only or ALL channels, when there is in fact a sensible middle ground using a contextual rule, to place advertising in a similar editorial environment to what is being advertised on adults only channels that are not necessarily encrypted but have some sort of protection mechanism in place for minors.

We also feel that any one NOT involved in providing Premium Rate services would be working their way through a minefield of confusing information in the way that the whole section is written, mixing broadcast content with advertising with encrypted channels, with PTV channels, with research on both programming on PTV and advertising all muddled in

from various time periods. We feel this whole section has NOT been correctly portrayed and needs reissuing with clearer explanation.

**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?**

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

Com and Tel comment

No comment

At this point in the consultation document on p177 there is a header; **Part 2 - Section 23 Telecommunications-Based Sexual Entertainment Services**

Under this is written;

**23.1 BCAP's proposal to establish a dedicated section on betting tipster advertising is discussed in section 10, Prohibited Categories, of this consultation document.**

There then follows a blank page? This may be an error but it certainly is not what one expects in a Consultation document? Additionally many of the points under section 22 should actually be in section 23, which means that the whole PRS section is muddled in with PRS of a Sexual nature. Again we find this unacceptable. We cannot expect respondents to work their way through this section in a proper manner and suggest this section is reissued.

## **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.**

Com and Tel comment.

Com and Tel find this section very confusing. Why have live PRS services been taken out of the PRS section in section 22 and are included here? We understand on protection of minors what the issue is and wholeheartedly agree, but live services are already covered by the Phone Pay Plus Code adequately to protect minors and you have a premium rate section There is therefore no need for BCAP to duplicate this. WE also do not agree on higher premium rate tariffs. Can you in fact define what this is? What is a Premium-rate telephone services that costs more than the normal national premium rates? Does this in fact exist?

## **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.**

Com and Tel comment.

We agree

## Question 157

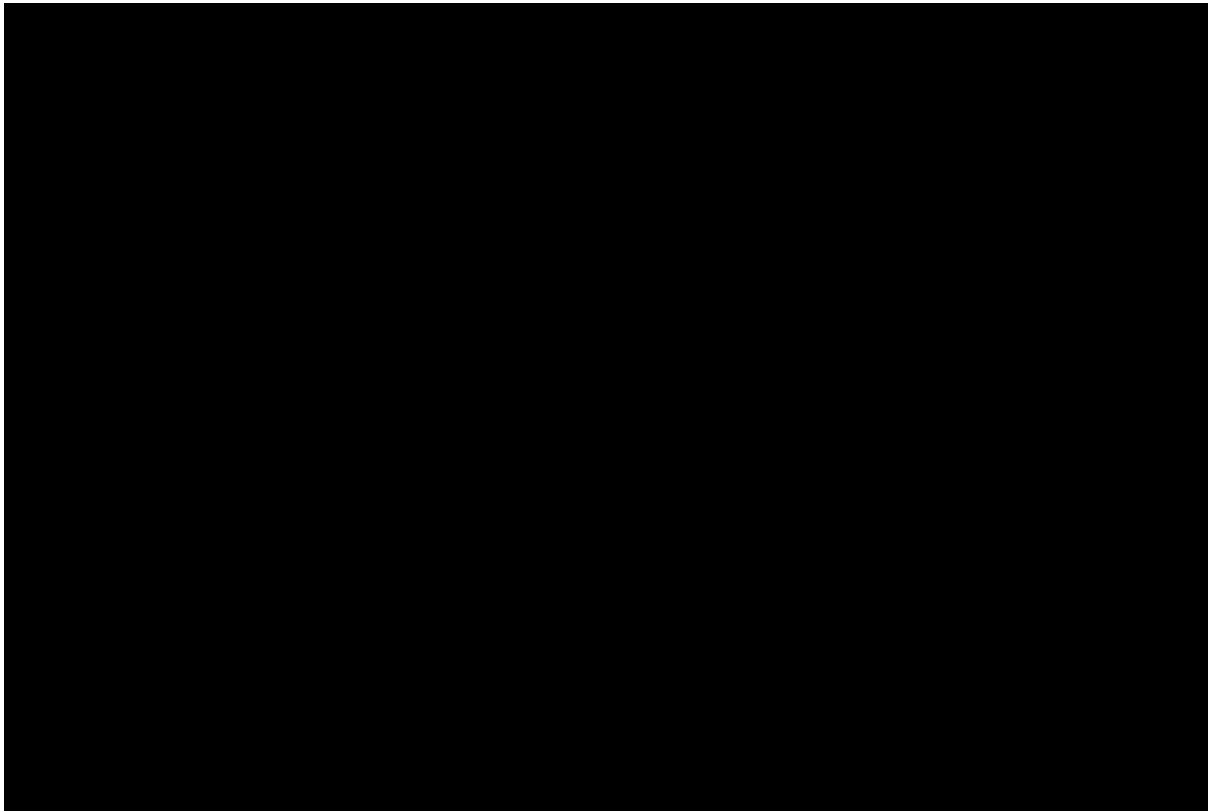
**Do you have other comments or observations on BCAP's proposed Code that you would like BCAP to take into account in its evaluation of consultation responses?**

Com and Tel Comment

The fundamental problem that PTV programming has is that it is in a genre of its own. It is neither purely advertising nor purely editorial. BCAP, being the advertising regulator refer to it as being PTV programming but are of course forced to look at this from an advertising perspective, to see whether it could fit under its current Code. This would of course be difficult as there IS editorial content on both Psychic and Babe style TV that BCAP may well feel is out of its remit. In this consultation, BCAP try and categorise PTV as advertising to some extent and quote research related to both PTV from OFCOM and previous research such as Beyond Entertainment which covers audience viewpoints on Psychic Subject matter, as well as giving a wide range of fairly muddled views on the adult marketplace in the PRS of a Sexual Nature section, but refuses to commit itself to whether a) it DOES regard PTV containing PRS to be under its jurisdiction and b) whether they feel it IS in fact advertising and therefore under its remit. PTV therefore remains up in the air at the end of the Consultation with no firm decision made as to who should regulate it, whether it is in fact Teleshopping, or comes under BCAP either in the Teleshopping or Advertising capacity. One thing is certain though, BCAP is reluctant to regulate it. It defers to OFCOM.

Com and Tel do wonder how it reached the conclusions that it has. We are grateful for the time BCAP took to invite us to meet and prepare questions for this document, but do not ultimately feel that BCAP has through these meetings fully understood the PRS marketplace, the Adult landscape in terms of advertising platforms with the restricted SKY adult section, the nature of psychic product and is not looking without of the broadcasting marketplace either to see what is happening in other forms of media in terms of promoted services. We do not either feel that BCAP has fairly assessed the risk in the psychic marketplace either and has not considered PRS psychic as a low risk product. Phone Pay Plus could tell them it is.

We are very disappointed and trust that BCAP will consider re-issuing the incorrect section on PRS of a Sexual nature and to further clarify its position on the regulation of the PTV genres.



# Consumer Focus response to consultation on the proposed CAPS and BCAPS Code

June 2009

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The face of advertising is changing radically and this review is timely and critical. Our comments are included below and make specific reference to the CAPS code but many have application to the equivalent sections in the BCAPS code. Many of the comments focus on the need to be future-facing in amending the code to ensure its continuing relevance. There will also be a need for more regular reviews given the pace of change in the area, and a commitment to genuine consultation. We would suggest an annual review on fast developing areas or areas of concern with a total review at least every five years.

### **The Scope of the Code**

A code of practice should:

- deliver a higher level of consumer protection than the basics set down in law
- build on best practices within a sector
- react quickly to changes in market practices
- deliver commercial benefits to business<sup>1</sup>

The complaints mechanism and remedies should be included in the code and we submit that the provision of conciliation procedures and for independent arbitration would strengthen the code in line with the standard required for approval by OFT.

We are particularly concerned by the statement that „Consumer Protection regulation goes far wider and deeper than could be reflected in a self-regulatory code of practice but compliance with the Code **goes a long way** to ensuring compliance with law in subjects covered by the Code“<sup>2</sup> (our emphasis). The code needs to incorporate the law at a minimum and give guidance on compliance, not cherry-pick aspects of the law (eg, at para 2.10 where the code is said to „approximate the law“ or para 9.23 where it is stated that the code „incorporates many of the DSRs“ requirements). To do so is misleading of itself and leads to confusion for the industry and the consumer as to what applies. There is still room for the Code to provide administrative remedies for specific breaches while clearly sign-posting the principles and the legal requirements in one consistent document.

## Application of code

We welcome the extended definition of advertisements in non-broadcast electronic media as this picks up significant growth areas of online advertising that were not previously covered. We encourage the extension of the code to advertiser’s claims that appear on the advertiser’s website to ensure that advertisers and consumers understand that these claims are subject to the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). In 1.1(d) it is unclear whether the code applies to advertisements in space that is not paid for, and whether it applies to commercial websites such as **www.rupertbear.com** and **www.inthenightgarden.co.uk**, which have a clear marketing and influencing focus.<sup>3</sup> Given the developments in online advertising these are areas for particular concern and need mention as specific inclusions to remove doubt. The issue of non-UK-registered websites needs to be subject to specific work by the ASA to seek co-operation from other advertising regulatory organisations to the principles of the code and as to how cross-border issues are dealt with.

## Misleading

There have been some amendments to the code made in the light of the CPRs but arguably the most significant change introduced by the CPRs is the prohibition against misleading by omission. This is an important change that needs to be reflected in the code.

The proposed rule 2.3 attempts to combine two different legislative provisions and in doing so appears to water down the provision that „any commercial communication provided by him (sic) ...shall be clearly identifiable as a commercial communication“.<sup>4</sup> The provisions should be reflected separately and reproduce the legislation. A new rule 3.10 is proposed, that „Qualifications must be clear to consumers who see or hear the marketing communication only once.“ This is especially true of mobile phone marketing, where restrictions on time and space are likely to be greatest and therefore to have the most impact. The rule should also include ads seen only briefly to include something to reflect that it covers ads that may be seen on a small mobile screen. Proposed rule 3.24.1, „Marketing communications must not describe items as “free” if the consumer has to pay for packing, packaging, handling or administration“ should add „or through the provision of personal information“, as many free services are now provided in exchange for this information that is subsequently traded on or used for profiling. Rule 32.5 in the present code states any consumer „liability for costs should be made clear in all material featuring “free” offers. An offer should be described as free only if consumers pay no more than:

a) the minimum, unavoidable cost of responding to the promotion, eg the current public rates of postage, the cost of telephoning up to and including the national rate or the minimum, unavoidable cost of sending an e-mail or SMS text message”

We believe that the definition of unavoidable cost of responding is helpful and that it should be retained in the new rule.

A new rule 3.28.3 states „marketing communications must state restrictions on the availability of products, for example, geographical restrictions or age limits.“ It may be necessary to state specifically that marketing related to mobiles or goods and services provided to mobile users by third parties should state where geographical restrictions apply due to a lack of network coverage (especially 3G services).

## **Harm and offence**

We support the proposed changes in relation to flashing images and believe that the general accessibility guidelines issued by the Equality and Human Rights Commission should form basic standards for marketing under the code.

## **Children**

The Trans Atlantic Consumer Dialogue (TACD) has recently revised its resolution on marketing to children online.<sup>5</sup> The adoption of the resolution’s recommendations would provide an appropriate framework for online marketing to these vulnerable consumers. Our recommendation regarding specific coverage of websites by the code applies specifically to marketing to children because of the popularity of these websites with children. Previous research carried out by the National Consumer Council which assessed commercial activity on children’s favourite websites<sup>6</sup> recommended that the existing codes take action to monitor internet advertising practices and be pro-active in enforcing codes and regulations. This would assist in closing existing loopholes which allow companies to promote products that are unsuitable for children within editorial spaces or by other hidden forms, for example, advertisers taking over whole home pages or within profiles on social networking sites. Consumer Focus wants to see greater consistency in the protection of children aged up to 16 years old with regard to the restrictions for advertising to children in both CAP and BCAP codes. We would want to see a tightening up of the proposed principle that „the way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered. Marketing communications that are acceptable for young teenagers will not necessarily be acceptable for younger children. The ASA will take those factors into account when assessing whether a marketing communication complies with the code.“

We are concerned about arbitrary distinctions being made. Recent neuroscience research conducted both in the EU and the US suggests that, contrary to previous beliefs, children over 12 do not have adult-like understanding and critical judgement of marketing<sup>7</sup>. Compliance is easier if there is a consistent age limit of application and the minimum should be 16, with consideration of 18 being the minimum in relation to areas such as financial services and explicit material.

## **Food and Soft drink advertisements and children**

Although the advertising of High Fat Sugar Salt food and drinks are regulated by Ofcom’s rule (using nutrient profiling) and the EU Nutrition and Health Claims regulation, the code should reflect and enhance on the principles contained there and also set minimum standards that apply consistently throughout the codes. Age protection should consistently be set at up to a minimum of 16 years and this standard is applied to some parts of the codes but not others. For example at 13.13 in the BCAP code: „Promotional offers to children must be used with a due sense of responsibility. They may not be used in food or soft drink product advertisements targeted directly at pre-school or primary school children.“ And under 15.14 and 15.15 (CAP) – „Marketing communications featuring a promotional offer must be prepared with a due sense of responsibility. Except for those for fresh fruit and vegetables, marketing communications for food advertisements that are targeted through their content directly at pre-school or primary school children must not include a promotional offer.“ Licensed equity characters should be included in restrictions on the involvement of



licensed characters and celebrities popular with children in advertising of less healthy food, eg the Dairy Lea cow, (47.9 CAP, 7.2 BCAP) as these characters are also used to market a diet that conflicts with expert recommendations.

Restrictions need to be expanded in the CAP code on food marketing and advertising based on restricting less healthy foods utilising the Food Standards Agency nutrient profiling model.<sup>8</sup> This will ensure a level playing field with the BCAP codes and enable the marketing of healthier foods. Infant formula and follow-on formula restrictions should include restrictions for foods that the consumer is reasonably led to believe will fulfil these functions even if not labelled as such (15.11 CAP 13.8 BCAP).

## **Gambling**

We note that under section 16 of the CAP code children are defined as people of 15 and under and young persons are people of 16 or 17, yet the legal age for gambling in a betting shop or football pools is 16 years. Point 16.1 proposes that „marketing communications for gambling must be socially responsible, with the particular need to protect children.“ We want to see a tightening up of children’s potential exposure to gambling advertisements online with monitoring and a more proactive stance taken by the ASA. Research by the National Consumer Council<sup>9</sup> has found that out of a total of 70 online advertisements surveyed, nine per cent were for online gambling and children as young as 12 were being exposed to these advertisements.

## **Privacy**

The code has not been altered in relation to privacy and therefore fails to respond to the developments of online behavioural advertising. Consumers are concerned about privacy issues but not necessarily equipped to protect their own privacy. The profile/tracking process is not transparent and because of lack of transparency, marketing methods may be unfair and deceptive. Information is passed on to third parties with whom consumers have no direct relationship and therefore have no control over the transactions. Profiling also collects sensitive information, such as health or medical issues and potentially targets the vulnerability of certain users in a way that is not known in traditional commercial arrangements. For example, almost every website used by young people is commercial. The content is funded by three methods: selling advertising space to third parties who want to target children; selling merchandise direct from the site; and/or collecting children’s data to sell to other organisations.

The Internet Advertising Bureau has recently revised their Good Practice Principles for Online Behavioural Advertising<sup>10</sup> to safeguard individual privacy. They have reflected basic protections such as notice, choice through an opt-out mechanism and user education. Our preferred model and industry best practice, would require affirmative express consent (by way of an opt in model) for use of information, however the CAP code should at the least reflect the IAB principles to enable some consistent dealing with online advertising across the industry. Data should only be collected, processed and used with the express and voluntary permission of consumers to the form, collection and processing of data held and the code needs to make provision for this. We suggest a form of amendment to 10.15 below.

## **Distance selling**

Data protection law requires marketers to tell consumers how they intend to use the personal data supplied by the consumer. These provisions need to be better reflected in the code, as the use of personal data is not just for the purpose of sending a representative to visit,<sup>11</sup> but is now increasingly used for profiling by the advertiser themselves or to sell on to ad networks. As such there needs to be transparency about how information is collected, if the information is stored and the details about this, if it may subsequently be used by the advertiser or if it is passed on to a third party and what are the advertiser’s security arrangements in relation to this data.

Almost 58 per cent of advertising online classifies as search advertising where traders pay for listing and prominent positions on the search engines and search comparison sites<sup>12</sup>. There is a lack of transparency in disclosing information about this form of advertising to

consumers and consumers are unaware that the prominent position of a trader on a search engine list may not equate with the best quality offer or best match of product searched for. We would recommend that the Code require publishers such as search engines and search comparison sites to include a declaration that results lists and advertising displays are prioritised according to commercial arrangements and do not, therefore, carry any ranking according to whether the advertisement may be appropriate to a consumer's needs. Separate attention in the Code should be given to online auctions where large proportions of complaints recorded by Consumer Direct refer to misleading claims and

omissions.<sup>13</sup> Yet consumers face problems with redress because the auction platforms do not accept liability for sellers or buyers loss, or quality, safety or legality of the products on sale.

With the convergence of operating platforms and increasing number of mobile phone users, mobile advertising is becoming a growing lucrative market, which can benefit both consumers and business. However the exploratory TACD survey on mobile commerce<sup>14</sup> and the OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce<sup>15</sup> highlighted problems in relation to mobile advertising which impact on consumers. Areas of particular concern are: limited information disclosure due to a small mobile screen and low memory capacity, unauthorised use of personal information and protection of minors. The Code does not address the problems and only makes references to the issues, for example, in rule 3.3. We would recommend that ASA deal with consumer concerns over mobile advertising in the review of the Code and specifically address the recommendations highlighted by the TACD Resolution on Mobile Commerce 2005 such as:

- Require clear and full disclosure about the products and services offered, the cost, and the terms and conditions in any commercial communication as well as immediately before any individual transaction
- Prohibit fraud and deceptive and misleading solicitations and provide especially strong sanctions against such solicitations targeting vulnerable consumers
- Protect consumer privacy in mobile commerce and prohibit use of any personal data (including purchase and location information) for purposes that consumers have not explicitly agreed to or that unfairly disadvantage them
- Give special protection to children and restrict marketing practices targeting children<sup>16</sup>

## **Database practice**

The collection of data generally needs to comply with the data protection principles, ie:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept for longer than is necessary
- Processed in line with your rights
- Secure
- Not transferred to other countries without adequate protection.<sup>17</sup>

If information is collected then it must be done fairly (ie transparently), it must be relevant and processed for limited purposes (ie it should not be done without informed consent as to

the exact uses of the information because there is no need for an advertiser to collect this information), it is to be kept securely and not for longer than is necessary (and this again underlines the need for the consumer to understand and consent to the purpose). The US Federal Trade Commission has recognised in a recent report that information need not on its own be personally identifiable information (PII) in order to potentially or reasonably be associated with a consumer or device. In order to properly reflect the principles above and ensure compliance in a changing environment we submit that 10.15 needs to be amended to read: „Marketers must not collect information for marketing or other purposes that could potentially or reasonably be associated with a consumer or device without first obtaining affirmative express consent to the collection and specific uses of that information from the consumer.“ At 10.26, the CAP code consultation paper says: „CAP considers that consumers make an informed choice to potentially receive marketing communications broadcast via Bluetooth and it is, therefore, disproportionate to extend the „explicit consent requirements“ of the Privacy and Electronic Communications (EC Directive) Regulations to Bluetooth marketers.“ This seems reasonable – mobile users tend to leave Bluetooth deactivated because of the high battery consumption it uses, as well as for privacy reasons. However, it will be important for the ASA to monitor developing technology in this area; successors to Bluetooth technology could potentially have wider application while being more power efficient, which could lead to them being targeted as a medium by marketers.

## **Sales Promotion**

We believe that the issues in relation to advertising on mobiles and PDAs, ie small screen devices would be better dealt with through the following amendment to rule 8.18 „Marketing communications that include a promotion and are significantly limited by time or space must include information about significant conditions and must direct consumers clearly to an easily-accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion.“

## **Environmental claims**

Consumer Focus has done extensive research<sup>[1]</sup> with consumers on green claims in advertising, offering insights into what gives consumers confidence in these claims. It showed that, despite the credit crunch, consumers still want to buy products that are better for the environment – 53 per cent of consumers say they are buying more environmentally friendly products than two years ago. However, two thirds of consumers say they are not sure how to tell if claims made by companies advertising green products – from household cleaners to cars and energy – are true. Only one in five people think it is not possible for companies to make false claims about their products“ environmental credentials.

Consumers are now confronted with an increasing number of green claims – some in relation to specific products or product ranges, others in relation to a company brand or even an industry sector as a whole. Green claims in advertising have the potential to play a part in encouraging consumers to make sustainable consumption choices, as well as rewarding progressive companies for their efforts. This can, in turn, encourage business to make further environmental innovations, completing a virtuous circle. However, green claims also have the possibility, intentionally or otherwise, to mislead consumers and, in doing so, erode trust in the premise of environmentally responsible purchases. Alongside this, consumers can find green claims confusing – the complexity of information required to make a judgement on the greenness of a product can leave even the most dedicated green consumer confused and disempowered. Our research shows that, in order for consumers to have confidence and trust in the green claims, companies need to follow the 3Cs: **Clarity** – consumers are looking for, as a minimum, claims that are clear and easy to understand. There is demand for information on green issues that is direct and „to the point“. Ambiguous and overly technical terms are not

widely understood or liked by consumers. **Credibility** – consumers want realistic, accessible and verifiable claims. They deploy a series of „perceptual filters“ to make rapid judgements, based on intuitive and in-built rules of thumb. They can be grouped into four categories:

~ **Ad specific elements** – There is widespread dislike of small text, asterisks and footnotes (all of which are considered to represent „the catch“), whereas third-party endorsements from well known and respected organisations are highly valued by consumers. Consumers were confused by imagery that was unclear or not obviously connected to the product.

~ **Perceptions of brand & brand ‘fit’ with the environment** – Consumers were more likely to accept and believe claims that „made sense“ (ie, a brand with which they have positive associations and/or believe is consistent with environmental responsibility) but were more suspicious of other brands. This „brand baggage“ affected their assessment of the specific green claim.

~ **Ingrained habits and beliefs** – Consumers draw upon their own experiences of green products to judge the credibility of a claim and – where they have no experience – expectations of performance are used as a proxy.

~ **The wider market and social context** – Consumers have varying levels of confidence in how strictly green claims are regulated and this impacts on how credible they perceive claims to be.

**Comparability** – these emerge as one of consumers’ most important demands. Consumers want simple, meaningful and „like-for-like“ comparisons. The absence of meaningful comparisons, the general proliferation of labelling schemes and comparisons that are not well understood (eg, grams of CO<sub>2</sub>/km on car ads) offer little or even undermine the relevance and usefulness of a green claim. In addition, as the number of products and claims expands, the sheer amount of information may drown out the ability of consumers to make like-for-like comparisons and ceases to provide them with any useful means of differentiation. In light of these findings, we recommend that both Codes currently have insufficient focus in relation to the following issues:

The use of imagery: The code should include a rule that states „Marketing communications must not use green imagery that implies broader environmental impacts than the product offers: for example, by using a general green image such as a wind turbine to advertise a product that’s only claim of greenness is a longer battery life.“

Comparisons: Rules that cover absolute claims and comparative claims state „absolute claims must be supported by a high level of substantiation. Comparative claims such as „greener“ or „friendlier“ can be justified, for example, if the advertised product provides a total environmental benefit over that of the marketer’s previous product or competitor products and the basis of the comparison is clear.“ However, this deals insufficiently with the issue of comparisons for consumers. Our research demonstrates that valid and useful comparisons are in strong demand among consumers because they help them navigate their way through the multiple claims and offers that are presented to them on a daily basis. Consumers highlighted the following aspects of what makes a useful comparison for them (quotes provided are from our June 2009 research „Green expectations: consumers understanding of green claims in advertising): Relative and absolute comparisons were demanded to help to understand if a claim offers something that is above and beyond „business as usual“: *‘But then I don’t know even how long other products take to biodegrade so for me there’s no comparison at all. That doesn’t tell me if it’s any better than anything else’ ‘So if it’s the best of the seven seaters, where*

*does it rate overall? Way down'* Meaningful comparisons - All groups struggled with measures of grams of CO<sub>2</sub>/km used in car ads. Some of those classified as high-green receptivity did understand this term but it was a definite minority. Instead – in relation to cars – consumers used road tax bands as a proxy for environmental performance. Many were keen on this way of deciding whether a car advert with a green claim was valid or not because it provided them with clarity in comparing one car with another: *'Well it's just a random figure [g CO<sub>2</sub>/km]. Unless they compare it with something it's just a random figure' 'I mean it's stating CO<sub>2</sub> but unless you've looked into what's good and what's bad you just see the number you don't know where on the scale that is' 'The road tax is £35 a year which is very cheap. So that is saying something about the emissions straight away because if it were higher then the road tax would be a lot higher'*

Standardisation and the consolidation of standards – this emerged as a priority area, with several participants highlighting the amount of different labelling schemes – echoing the findings of our previous research<sup>[2]</sup> – while others pointed

to both the A-G ratings on white goods and the healthy eating traffic light as good practice examples to follow: *'Different stores have their own labels and there's no consistency between them so it can be confusing' 'I think we went through a phase where it was all about your calories and fat and everything like that in your food and that's quite well indicated now, but how recyclable a product is, or how environmentally friendly it is, that's not clear'*. The danger for green products and claims, as the number of products and claims expands, is that the sheer amount of information drowns out the ability of consumers to make like-for-like comparisons and ceases to provide them with any useful means of differentiation. This point was neatly made in the discussions, as follows: *'When you've got so many cars pitching against each other you just kind of lose any interest, they're all making these claims so none of them stand out'* The CAP and BCAP Codes need to reflect these findings. There is a fine line between consumer scepticism and cynicism – without confidence in the truth of advertising, consumers could become reluctant to exercise their green purchasing power, as they no longer know who or what to believe. This can put the whole market for the „green pound“ in danger. Getting this right is clearly in businesses self-interest and the Codes must provide clear guidance of how to do this. We are pleased to see that the Codes will include a principle that states that „marketers should take account of Government guidance including the Green Claims Code published by Defra“. This helps to ensure that any new Government guidance on emerging issues and definitions in the green claims area will be taken into account by the ASA when investigating complaints about environmental claims. However, we would like the Code to include this as a rule, ensuring stronger coordination between the Government Green Claims Code and the CAP and BCAP Codes.

## **Digital products and services**

The OFT study recognises that „poor information may include omitting important details on for instance, restrictions on usage“ and refers to particular examples such as music downloads which are often limited by Digital Rights Management Software or by the terms of a subscription service.<sup>18</sup> These limitations need to be clearly stated in advertising material as the consumer assumption is that products will be interoperable and not subject to controls.

## **Other comments**

The Consultation document was long and rather unwieldy, and would discourage even the hardest of consumers. A more public-facing consultation would assist in reinforcing the principles and their credibility and making them relevant.

600% NUT 91

Convent of Mercy,  
Cordier Hill,  
Guernsey,  
Channel Isles,  
GY1 1JH  
13/6/09

Your Lordship,

The Community and I find the idea of advertising abortion on tv and radio quite disturbing. Advertising "post conception pregnancy advice services" would promote abortion, increase its incidence and thereby increase harm to all involved. Advertising has the power to be subtly constructed so as to direct vulnerable women to agencies where abortion may be provided as the "best option." Abortion advertising is offensive to abortions potential victims - these being the unborn child, the mother and the father of the baby, the grandparents and other family members.

Please help to prevent these advertisements.

Yours sincerely,  
Sister Ann Marie

## ASA/BCAP CODE REVIEW

Response from Cornwall's Community Standards Association, Tremore Manor, Lanivet, Bodmin, Cornwall, PL30 5JT Chairman: Cllr Armored Carlyn; Hon.Sec.: Ann Whitaker, M.A.(Oxon.) *Founded in 1974, supporters include professional and business people, parents and others concerned for the upbringing of children and the well-being of our community; also, Christian churches and groups. Most supporters live in Cornwall.*

## 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.
- 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.
- 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. We have been concerned over the spread of pornography since the 1970's, believing that it is actually an attack upon women and upon sex, and so are opposed to it being given the apparent respectability of a public advertisement.

In our opinion, the public needs protection against further exploitation by commercial interests.

A further consideration is the affect of pornography on children and, again, the apparent respectability increased by every advance in its availability, will not be a help.

## 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. Every effort to reduce the advertising of offensive weapons easily available is to be applauded.

## 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 have watched with concern the increase in sexual promiscuity among young people for the past 30 years. In this county (Cornwall) we were promised a halving of the teenage pregnancy rate by the year 2000. When the local-authority policy (originating from central government) did not achieve this deduction, we were promised a halving by the year 2010. The latest statistics show this target will also not be reached. Every effort should be made to avoid advertising on television and radio with the considerable influence which advertising stimulates on these services. The rules should not be relaxed and, on the contrary, strict regulation needs to be enforced.

As a result of and in contrast to the government's failed policies, concerned teams of volunteer young men and women are going into schools to give presentations encouraging young people to save sex for marriage – this being the absolute healthy alternative to abortion and sexual disease. Increased advertising on behalf of commercial interests makes it even harder to promote the true interests of young people over sex and re-establish the best lifestyles.

Another objection is the absence of clinical trials in relation to the use of the Morning After Pill, now being sold freely in, for instance, Lloyds Pharmacy.

## 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. There is great concern among our supporters at the increase of the advertising of condoms. Condoms should not be advertised on television or radio. Every effort to apparently warn children against promiscuous sex has failed because the policies are wrong. The only solution is to encourage young people in an entirely different lifestyle, promote every other kind of conduct and return responsibility to parents. Society has totally failed in its attempts, by increasing knowledge of sexual matters to promote sexual restraint. The opposite has occurred.

We have to face up to the fact that earlier generations were more successful with their imperfect methods of simply providing children with other things to think about “until you are older”. This was better than the present excessive dissemination of sexual information being accorded the respectability of public service promotion. Young people are at present being encouraged to believe that they will have sex when they choose and that this is normal.



## **Response to the Public Consultation on the CAP and BCAP Codes**

*This response is made by me on behalf of the Cosmetic, Toiletry and Perfumery Association (CTPA). None of the content of this response is confidential.*

The CTPA represents UK manufacturers and distributors of cosmetic products who, collectively, constitute over 80% of the UK retail market by value. It is a market in the UK worth £7.3 billion and which, even today, reports year on year growth of over 3% (CTPA Annual Report, 2008; 18th June, 2009). It is a sector which makes significant use of print and broadcast advertising to communicate product attributes to the customer, placing the sector amongst the very top of those contributing financially to the running of the scheme by which advertising in the UK is controlled.

CTPA welcomes the wide-ranging review and public consultation on the rules announced by the Advertising Standards Authority on 26th March, 2009. Member companies and others will comment individually to the ASA in response to this consultation; CTPA wishes to confine its response largely to broad principles but does have some specific comments to make on detail and thanks the ASA for specifically inviting the CTPA to respond to the consultation.

CTPA agrees that the existing codes have worked well in underpinning the principle of self-regulation in advertising within a well-defined and consistently applied framework of codes and guides. Simplification of a single broadcast code from the existing four separate codes and a clearer format for presentation of the codes themselves are both welcomed. However, the process by which those codes are put into practice has given, and continues to give, concern to members of CTPA. Although, for example, the selection of consultants and experts is an area where the CTPA could offer suggestions for change that may be cost-effective as well as addressing members' concerns, CTPA recognises the present consultation is on the codes themselves and not on the processes adopted by the regulators.

Therefore, in addition to the welcome updating of the codes themselves, CTPA looks forward to seeing a wide-ranging review of the practices adopted by reviewers of claim support material to minimise some of the uncertainty inherent in the current system, to improve transparency throughout the system and to ensure a cost-effective process is maintained for the future.

## **Sector-specific requirements – the CTPA Guide to Advertising Claims**

In an all-encompassing code covering all advertisers in all sectors, it is clearly not possible to deal with individual market sectors unless they present specific and significant areas of concern (e.g. alcohol advertising). This does not mean that other sectors could not benefit from additional guidance on how the codes might be applied in practice within a more specialised sector of the whole advertising market. The cosmetics sector is a case in point.

Of particular importance to the cosmetics sector is consistency of advertising message across all media and therefore a consistent evaluation of the same supporting information under the two codes, CAP and BCAP, is vital.

CTPA has worked closely with ASA and Clearcast over the past three years to develop a sector-specific guideline relevant to the cosmetics sector. This guide, "The CTPA Guide to Advertising Claims" (copy enclosed), has been welcomed and adopted by both bodies as augmenting the codes and clarifying practical procedures to ensure a consistent approach is applied to advertising claims whether in print or broadcast format. Although this guide is understood to be the only such initiative to date by a specific industry sector, CTPA finds it important to see included in the codes a specific reference to the CTPA Guide as an example of the benefit of adopting specific guidance for particular sectors. An opportunity would exist at the start of the section on Health and Beauty Products & Therapies in the CAP code; a similar reference in the BCAP code is also sought.

This would, we believe, underpin the authority of the Guide and recognise the joint work by both Clearcast and the ASA in contributing to its production and in endorsing the final product as well as perhaps providing a stimulus for other sectors to develop their own guides along similar lines.

## **Professional endorsement**

CTPA welcomes the clarification regarding the use of endorsement of products and claims made for them by professionals. Such endorsements have been routinely accepted in other countries and this change will enable advertisers to develop more harmonised advertising campaigns across wider markets. CTPA believes the current proposal represents an acceptable balance

between permitting professional endorsement in principle and applying adequate controls to avoiding the misuse of professionals to the consequent detriment of the consumer.

**Medicinal claims: CAP Rule 12.1 – Question 38/BCAP Rule 11.4 – Question 60**

Rule 12.1 of the proposed CAP code and rule 11.4 of the proposed BCAP code each refers to making medicinal claims. The new text goes further than the original text (original rule 50.1 of the CAP code, there being no reference in the BCAP code) by saying that “Medicinal claims may be made for a medicinal product that is licensed by the MHRA or EMEA, or a medical device...” This implies that medicinal claims may not be made for products that are not licensed medicinal products or medical devices; the original text did not suggest such a restriction since it referred only to “Medical and scientific claims made about beauty and health-related products should be backed by evidence...”

CTPA does not agree with the proposed text of these two rules and wishes to see them both amended to allow cosmetic products to continue to be able to make secondary medicinal claims (e.g. oral care products which are primarily for cleaning but which made secondary claims referring to gum health or tooth decay). Such claims would need to be backed by evidence.

Such secondary health-related benefits are of importance to consumers when making purchasing decisions. To be denied this opportunity to inform the consumer of product benefits would put advertisers at a considerable disadvantage in the UK.

*Rationale*

Such a restriction implied by the proposed wording of CAP rule 12.1 / BCAP rule 11.4 is not in accord with the legislation governing cosmetic products (The Cosmetics Directive 76/768/EEC) and the accumulated wisdom pertaining to the borderline situation between cosmetic products and medicinal products. The Cosmetics Directive, implemented in the UK by the Cosmetic Products (Safety) Regulations, defines cosmetic products as “... any substance or preparation intended to be placed in contact with the various external parts of the human body... with a view exclusively or mainly to cleaning them... etc.” This has become accepted by competent authorities for both cosmetic and medicinal products as meaning that a cosmetic product may have a secondary function which is not a cosmetic function and yet does not disqualify that product from being a cosmetic product.

Given that European legislation includes mutual exclusivity between cosmetic and medicinal products, a product may not be a cosmetic and medicine at the same time: it can only be one or the other. Such decisions are incorporated into the Manual on the Scope of Application of the Cosmetics Directive 76/768/EEC prepared by the European Commission; this guide is based on decisions taken by member states authorities and has established precedents for cosmetic products making secondary medicinal claims yet not being re-classified as medicines on the basis of this secondary function. CTPA sees it as important that this well-established European-level principle is not undermined by the revision of the CAP and BCAP codes.

*Proposed solution*

An additional sentence should be added to both CAP rule 12.1 and BCAP rule 11.4 saying “Secondary medicinal claims made for cosmetic products as defined in the appropriate European legislation should be backed by evidence.” This does not conflict with the requirements elsewhere in the codes that medicinal products should not present themselves as cosmetics.

CTPA trusts these comments are helpful in the current consultation process.

Yours faithfully,

**Dr Christopher Flower**  
Director-General

The Cosmetic, Toiletry and Perfumery Association

# Council For Cadet Rifle Shooting

Registered Charity No. 284838

**Derby Lodge, Bisley Camp, Brookwood,  
WOKING, Surrey GU24 0NY**

Tel: **01483 473095**

e-mail: **simon@taraccrs.co.uk**

Fax: **01483 797598**

*Patron:* **HRH The Duke of Edinburgh, K.G., K.T.**

*President:* **Air Chief Marshal Sir John Cheshire K.B.E., C.B**

*Chairman:*

**Brigadier JR Smales**

*General Secretary:* **Major (Retd) SB Fraser MBE**

*Assistant General Secretary:*

**Captain SL Ellis QVRM**

**16 June 2009**

Dear Sir,

The Council for Cadet Rifle Shooting (CCRS) is a youth organization dedicated to encouraging and facilitating target shooting among young people, specifically Cadets, from the ages of 13 to 18. The objectives given in its Constitution are:

3.1 To encourage proficiency in target shooting among members of the Cadet Forces and thereby prepare them to play their part in the defence of the realm in either the Regular or Auxiliary Forces of the Crown;

3.2 To inculcate principles of good citizenship, loyalty, discipline and a sense of responsibility among members of the Cadet Forces through the demands made by shooting for their teams or units;

3.3 To provide assistance to pupils at schools and to others under-going service in voluntary youth organisations, with specialist facilities and training designed to improve the physical education and development of such persons as well as the development and occupation of their minds.

Many thousands of young people of both sexes are taught target shooting and compete in rifle matches every year in events organized by CCRS. Firearms of various types and calibers are used, from .177" air rifles to the Cadet Target Rifle which uses the NATO 7.62mm cartridge. It also encourages and organizes clay target shooting with the shotgun. The organization is civilian, but works closely with, and is sponsored by, the MOD.

We endorse and support wholeheartedly the response of the British Shooting Sports Council, dated 8 June 2009, and signed by their Secretary, David J Penn. Please consider their response as ours too.

Yours faithfully,

John Smales  
Chairman

## BCAP PROPOSED BROADCAST ADVERTISING STANDARDS CODE REVIEW

The Countryside Alliance is a campaigning organisation working for everyone who loves the countryside and rural way of life. As a membership organisation representing 250,000 people across the UK, we reflect the views and concerns of a broad range of rural people and their livelihoods. Our Rural Manifesto states: "There should be no further restrictions on firearms or shooting in the UK" and as such the Countryside Alliance welcomes the opportunity to respond to this consultation. As a member of the British Shooting Sports Council (BSSC) the Alliance would also commend their response.

The Countryside Alliance is deeply concerned about what appears to be a fundamental lack of understanding of shooting sports in Britain displayed in the consultation document. It is simply offensive to misrepresent shooting and to treat shooting in the same way as prostitution, pornography and similar activities. The approach taken in the document is evidence of a regrettable bias and a consequent presumption against shooting which is not based on any evidence. On what basis can BCAP claim 'an advertisement that had the sole focus of promoting guns, replica guns or a gun club could, BCAP considers, cause serious or widespread offence or condone the use of guns'? In the absence of evidence there is no rational basis for the current restrictions on advertising let alone the further restrictions proposed at Questions 55 & 56 of the document, especially with respect to clay pigeon shoots.

### CHIEF EXECUTIVE'S OFFICE

#### DIRECT TELEPHONE

020 7840 9210

#### DIRECT FAX

020 7787 0082



Countryside Alliance The Old Town Hall 367 Kennington Road London SE11 4PT

**Telephone** 020 7840 9200 **Fax** 020 7793 8484 **Email** [info@countryside-alliance.org](mailto:info@countryside-alliance.org) **Website** [countryside-alliance.org.uk](http://countryside-alliance.org.uk)



I would draw your attention again to the BSSC submission and the examples given of the inaccurate and misleading nature of the consultation document:

- *“10.1 319(2) (a) Persons under 18 are not prohibited from ‘possessing’ firearms (note that ‘possession’ does not equate with ‘ownership’ in law), nor are 17 year olds prohibited from purchasing certain firearms. A non-exhaustive list of exceptions are: There is no specified lower age for a Shot Gun Certificate (a young person under 15 in possession of an assembled shotgun is required to be under the supervision of someone of 21 years or over, however); a Firearm Certificate may be granted to a person from the age of 14; persons under 18 may temporarily possess a firearm without holding a Firearm Certificate as a member of a Home Office Approved rifle club, or as a member of a cadet corps or while shooting on a miniature rifle range; persons under 18 may similarly temporarily possess a borrowed shotgun without a Shot Gun Certificate on private premises and in compliance with specific requirements; and persons under 18 may temporarily possess a borrowed shotgun without a Shot Gun Certificate at a clay pigeon shoot approved by the chief officer of police for the area in which the event is to take place. The circumstances in which young persons may legally possess and use firearms are carefully circumscribed to ensure public safety.*
- *10.1 319(2) (b) Sporting firearms are not items ‘liable to encourage the commission of crime’. Anyone wishing to advertise firearms or shooting services will clearly be selling those services only to those who are lawfully entitled to possess firearms, as is the case with advertisements in the printed media. Persons entitled to purchase a firearm or ammunition subject to licensing (in practice all firearms except low-powered air weapons and antiques) are rigorously vetted.*
- *10.8 It is not an offence for a person who is not a Registered Firearms Dealer to sell a firearm or ammunition. Any person lawfully entitled to possess a firearm may sell that firearm to another person, provided the purchaser is also lawfully entitled to acquire and possess it and that appropriate notifications are made to the police.*
- *10.12 With regard to the Violent Crime Reduction Act 2006, the ban on the manufacture, sale or importation of realistic imitation firearms is not absolute: Section 37(2) of the Act provides for six ‘defences’ which allow manufacture, sale or importation.*
- *10.65-67 Sporting firearms are not ‘offensive weapons’ insofar as they are not made or adapted to cause (human) injury. They are used for competition target shooting, for hunting and for the control of pests. That they may, if misused, cause injury makes them no different to motor vehicles, golf clubs or a large number of other sporting or household items.*
- *10.70 Guns, whether replica or ‘real’ are not ‘intended to murder or maim’. They are merely pieces of sporting equipment (as above). Replicas legally available for sale in this country cannot be converted into functioning weapons, and the relevant shooting and gun trade Associations have spent considerable effort in co-operating with the Home Office in ensuring their non-convertibility.”*

In contrast to the apparent BCAP approach the legitimacy of shooting as a sport and an essential part of wildlife management is ever more widely recognised and is acknowledged by the Government and all the major political parties. The Labour Party's 2005 'Charter for Shooting' recognises that there is no connection between legitimate sporting shooting and gun crime. Richard Caborn MP, then Minister of State for Sport has stated: "We want to boost the numbers of people who go fishing and shooting particularly amongst the young."

The third National Shooting Week took place from 23 to 31 May 2009 with over 200 public open days. Through this initiative thousands of people have taken the opportunity to try shooting activities at local shooting clubs, grounds and schools. National Shooting Week has the full endorsement of the Government and the leading opposition parties. At the time of writing there has been significant coverage in the national and regional media, with an overwhelmingly positive response from the public. There has not been the public outcry one would have expected had the assumption in the consultation document been true, that widespread "offence" is caused by shooting publicity.

Shooting is an international and Olympic sport at which this country excels. It is also one of the only sports at which both able bodied and disabled sportsmen and women can compete on equal terms.

Shooting is a mainstream activity within the UK with an estimated one million participants. The shooting sector is a £1.6 billion industry, supporting 70,000 jobs, according to the 2006 PACEC Report. Shooting providers spend an estimated £250 million a year on habitat and wildlife management. There are around 1,000 shooting clubs in the UK.

Shooting should be recognised for its important contribution to the sporting life of this country and the management and conservation of our countryside. The demonising of shooting sports and businesses is wholly unacceptable and based on ignorance, misconceptions and prejudice. It is not the place of an advertising standards code to entrench prejudices or restrict legitimate business opportunities unless there is good reason to do so under the law. There is none.

**On the two key questions in the consultation of concern to us we would note:**

***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.*

The Countryside Alliance cannot see any justification for the current prohibition on TV advertising and believes the current restrictions on advertising of guns and shooting should be lifted. Given the recent changes in the law under the Violent Crime Reduction Act 2006 with respect to 'replica' guns we can see no purpose in any extension of the present prohibition in this regard.

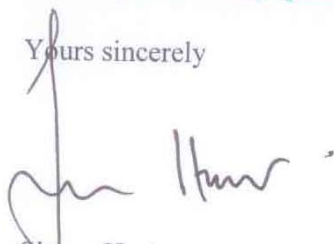
***Question 56***

*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 Countryside Alliance does not believe BCAP have made the case for the existing restrictions let alone restricting the advertising of clay pigeon shooting only to situations where they 'form part of a wider range of outdoor pursuits, for example in advertisements for a country fair'. There should be no restriction on its advertising on either television or radio.

Should you have any questions please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Hart', written over a vertical line that extends from the 'Yours sincerely' text.

Simon Hart

Chief Executive, Countryside Alliance



Your name: *ANNE WILSON*  
 Are you responding as an individual ☒ or on behalf of an organisation ☒  
 Organisation name: *CROSSWAY PREGNANCY CRISIS CENTRE*  
 E-mail, postal address or fax no.: *anne@helpimpregnant.org.uk*

## Advertisements for Post-conception Pregnancy Advice Centres

### 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. See also rule 11.9 and Section 15 Faith and Section 16 Charities.

### 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.*

*I run a pregnancy listening service that is not able to refer patients for abortion. Whenever a member of the public contacts our service, we check that they understand that we are not a clinic. We always advise them to put an appointment in place for a termination and we inform them how this can be done, so there is no delay for the patient due to their having contacted our service.. We also offer them appointments at short notice to enable them to have as much time as they feel that they need to talk over their situation in a confidential and unpressured situation before the date for the appointment comes up. Many have told us that this was very helpful to them, and that they were not offered this opportunity elsewhere.*

*In Richmond borough, referral time for abortion has been improved so that in many cases a woman can undergo the procedure within 1 week of the date of the appointment with their GP. Our service therefore will offer appointments within that week.*

*Due to financial restraints within the NHS there is no other service locally which is offering extended listening to people with unplanned pregnancies as a matter of course – many post abortive women who come to us say they were not offered any counseling before abortion – they were only asked when attending the clinic for the procedure whether they were sure about their decision. In many of these cases, women will complain that they were pressurized at the time of decision by circumstances or a partner or family member. They demonstrate to us that they have not had the opportunity to fully own the decision that they made and this significantly increases the stress they feel following the procedure. In contrast, we have seen a significant number of women both before and after termination,*



*and those who have had the opportunity and the time to explore all the issues and own their decision consistently fare better following the procedure.*

***I do not agree with 11.11, because services like ours do not prevent women from obtaining abortions, nor do they cause any delay in referral times. Thus there is no need to specify whether such a service can refer. If inclusion of the clause about whether we refer directly for termination generates misunderstanding in the patient they may miss the vital opportunity to receive adequate time to process their situation, since this is not offered elsewhere in this borough.***

#### **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.*

***Our service provides sex and relationships education to teenagers in local schools. Our experience has shown us that teenagers are inclined to believe that behaviour in relationships that is presented by the media is normal, until they are specifically encouraged to assess them critically. Thus advertising condoms may sow confusion in the minds of young teenagers, for whom engaging in sex is an illegal activity due to their age.***