

Gambling Consultation: Regulatory Statement

Betting websites featuring individuals under the age of 25



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The UK Advertising Codes are the responsibility of two industry Committees – the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) and are independently administered by the Advertising Standards Authority (ASA).

The Codes require advertisements across media to be legal, decent, honest and truthful, promoting consumer trust in advertising and maintaining fair competition between businesses. The Codes also include additional, sector-specific rules, such as those for alcohol, food and gambling, to ensure responsible advertising and the protection of vulnerable groups in certain sectors.

1. Summary

1.1 Betting websites featuring individuals under the age of 25

In response to industry concerns over the impact of CAP's Online Remit Extension¹ on betting websites and following a period of public consultation, CAP has decided to make an amendment to the Code to allow marketers to feature people under the age of 25 on betting websites where they are illustrating a bet being offered for sale. The move serves to restore the position that existed prior to remit extension where betting websites could use such images, for instance, a footballer illustrating a bet on their performance in a match.

CAP considers that there is a strong technical case for the Code to be amended but, importantly, is now also satisfied that the change to the Code is very unlikely to result in harm to children or young people.

This regulatory statement includes:

- Background to the issue
- Summary of consultation responses
- CAP's evaluation of responses
- Confirmation of CAP's decision and the amended version of the Code

Full evaluation tables for each of the questions (the Annex A) and the consultation document are available in via the links on the relevant consultation page of the CAP website. They include details of all significant points made by respondents and CAP's full evaluation.

¹ For further details of the Online Remit Extension, please see [CAP's announcement](#).

2. Background

2.1 Online Remit Extension and betting websites

In November 2012, CAP launched a consultation on response to concerns raised by the Remote Gambling Association (RGA) concerning the extension of the remit of the CAP Code to cover marketing communications on marketers' own websites.

The remit extension brought within remit marketing communications on sports betting websites where betting selections are offered for sale. Rule 16.3.14 of the CAP Code prohibits marketing communications for gambling products from featuring people who are or seem to be under the age of 25 playing a significant role.

The RGA were concerned that this prevented the use of images of sportsmen and women who are or seem to be under the age of 25 to illustrate a bet offered on a sports betting website where they are the subject of the bet. Before the remit of the CAP Code was extended, the use of these images was permitted when these websites were regulated only by the relevant gambling regulators, including the Gambling Commission for operators licensed in Great Britain.

2.2 CAP's decision to consult

When it extended the remit of the CAP Code, CAP announced a two year on-going review in part to address any unforeseen consequences of applying the CAP Code to marketing communications in non-paid-for space online. CAP considered the RGA's request in the context of the review and, after a pre-consultation exercise, considered that a proposal to grant a limited exemption to return to the previous regulatory position merited formal consideration.

CAP was mindful of the need to maintain the protections provided by the Code, in particular, the protection of children (those aged 15 and under) and young people (those aged 16 or 17), but also keen to ensure that the extension of remit was implemented in a balanced and proportionate manner.

In that context, CAP acknowledged that the extension of the CAP Code's remit had inadvertently prohibited a marketing practice that was previously allowed under the general regime of gambling operator licensing and that was not considered when the rules for gambling advertisements were first consulted upon.

For further background, please see CAP's [consultation document](#).

3. Consultation Responses

3.1 Summary

Total responses	9
For	6
Against	3
Industry or parties representing industry	5
Interested parties (e.g. NGOs or pressure groups)	3
Members of the public	0
Government or regulatory bodies	1

3.2 Significant points in favour of the proposal

Several industry and industry representing parties made points supporting the proposal:

- The Advertising Association maintained that the proposal responded to a technical issue brought about by CAP's extension of remit to cover marketers' own websites, which had resulted in rule 16.3.14 being applied to betting websites that were previously allowed to feature under-25s to illustrate betting selections.
- The RGA said an exemption for such content would result in little possibility of children or young people being harmed.
- The RGA and TSE (Gibraltar) LP t/a Betfair outlined the various age verification processes, which are required under operators' licence conditions, and work in conjunction with the controls on the content of marketing communications.

The Gambling Commission also made points in supporting the proposal:

- Commission guidance on point of sale advertising encompassing online platforms such as websites prior to CAP's Online Remit Extension had allowed the use of those under the age of 25 to illustrate, for example, a betting selection on a sports event.
- Provided that any changes to the Code resulted only in a return to that regulatory position and did not allow the use of those under the age of 25 for promotional purposes, the Commission did not object.

3.3 Significant points against the proposal

Non-industry respondents cautioned against the amendment for a number of reasons.

- The Methodist Church (also on behalf of the Baptist Union of Great Britain and the United Reform Church) pointed out that the amendment would not stop children and young people from accessing images of those under the age of 25 on betting websites.

- Gambling Watch UK, Quaker Action on Alcohol and Drugs (QAAD) and The Methodist Church (also on behalf of the Baptist Union of Great Britain and the United Reform Church) raised concerns about and pointed to evidence of the potential for harm caused by online gambling.
- The Methodist Church (also on behalf of the Baptist Union of Great Britain and the United Reform Church) said the amendment would set a precedent that would undermine the protection afforded by a prohibition on those under 25 appearing in marketing communications.

From a different perspective, TSE (Gibraltar) LP t/a Betfair and Gala Coral Group both made representations:

- The two respondents called for the exemption to be extended further than CAP had proposed; direct marketing to age verified customers was the principle example of a medium that the respondents thought might also be exempted from the prohibition on featuring under-25s playing a significant role in marketing communications for betting offers.

3.4 Significant comments related to the wording of proposal

- TSE (Gibraltar) LP t/a Betfair and the Institute of Practitioners in Advertising questioned whether the amendment was sufficiently clear as to the types of illustration that could be used under the amended rule.
- The Gambling Commission suggested that the following wording (underlined) be added to the amendment; “The individual may only be used to illustrate specific betting selections where the individual is the subject of the bet offered and the image used must show them in the context of the bet and not in a gambling context.” They believed that this would clarify the intended meaning of the amendment.
- TSE (Gibraltar) LP t/a Betfair were concerned that it was not clear whether the second part of the amended rule was intended to include any person under 25, or whether it was intended to apply only to individuals aged between 18 and 24.

4. Evaluations of Responses

4.1 General points

CAP considers that the impact of ORE on a previously existing regime is an important consideration. The ORE responded to broad concerns about the regulatory gap for marketing communications appearing on marketers' own websites, but CAP did not specifically intend to extend the prohibition on featuring the under-25s to betting websites. However, CAP considers that its primary concern is to ensure that any amendment to rule 16.3.14 is proportionate, targeted and accords with the Code's objective of ensuring that gambling advertising is responsible and protects children, young people and other vulnerable groups.

In its decision to make the amendment, CAP noted, in particular, the Gambling Commission's support for the proposal provided that the wording of the amendment was circumscribed sufficiently to ensure that the use of individuals under the age 25 could not be used to promote a gambling operator or gambling in general. CAP believes the amendment adopted fulfils the objective of providing a narrow, but proportionate exemption from rule 16.3.14 for sites where bets are offered for sale directly via a transactional facility.

4.2 Evaluation of significant points against the proposal

CAP acknowledges that the impact of the amendment will allow gambling operators to feature, for instance, sportspeople between the ages of 18 and 24 on generally accessible parts of their websites. However, central to the amendment are the provisions that limit its applicability to places "where a bet can be placed directly through a transactional facility, for instance, a gambling operator's own website" and the restriction on the use of such representations; "The image or other depiction used must show them in the context of the bet and not in a gambling context". CAP has already noted that the audience for such websites is likely to comprise of those who have already made a series of transactional decisions to enquire further. This audience is narrow and a large part of it is likely to be made up of returning customers who, by virtue of their holding an account, have already been subject to age verification measures. Added to this, the amended rule prohibits approaches that seek to promote a gambling operator, a service offered or gambling in general.

The supporting material referred to by respondents did not relate specifically to online betting websites. CAP considers that this evidence relates to broader concerns about the wide variety of gambling platforms made possible by digital media. It does not focus specifically on betting websites where CAP note the previous regime which permitted the use of such imagery did not give rise to concerns over potential harm to children and young people.

CAP emphasises that this decision is not intended to undermine the principle that gambling advertising should not be of particular appeal to children or young people, nor does it constrain CAP in future considerations of related policy issues. CAP initiated a process to consider those circumstances where ORE conflicted with the position of a pre-existing regulatory framework governing marketers' own websites. CAP's decision to amend rule 16.3.14 is taken in that context. CAP does not consider that the ORE review process presents a suitable occasion on which to consider whether the prohibition on under-25s should be relaxed in media that have always been subject to rule 16.3.14.

Notwithstanding that point, CAP is open to the possibility of considering the regulatory implications of targeting mechanisms such as age-gating for all-media restrictions aimed at protecting children such as the under-25s principle. However, it considers that such work should form part of a separate process not limited to the gambling sector.

4.3 Evaluation of significant comments related to the wording of proposal

Following responses to the consultation CAP has decided to make changes to the wording of the proposed amended rule in order to clarify its intended meaning and address two concerns raised by respondents.

- CAP has decided to add the wording [underlined] “to be under 25 years old (18-24 years old) may be featured ...” to ensure that it is clear that those under the age of 18 may not be featured as they are below the legal age for gambling.
- CAP has decided to add the wording [underlined] “that individual is the subject of the bet offered. The image or other depiction used must show them in the context of the bet and not in a gambling context” to better communicate its intention that the amendment should not permit depictions of those under the age of 25 to promote a gambling operator, a service offered or gambling in general.

5. Consultation Outcome

5.1 CAP's decision

CAP has decided to amend rule 16.3.14 to include a narrow exemption to permit the use of those under the age of 25 to illustrate betting selections.

The exemption relates only to a place where a bet can be placed directly through a transactional facility, for instance, a gambling operator's own website and is subject to a further content restriction to ensure that depictions are only used to illustrate a bet and not to promote a gambling operator, a service offered or gambling in general.

5.2 Amendment to the Code

The existing CAP Code rule 16.3.14 states:

Marketing communications must not:

[...] include a child or a young person. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way.

From **Tuesday 17 September 2013**, rule 16.3.14 will state:

Marketing communications must not:

[...] include a child or a young person. No-one who is, or seems to be under-25 years old may be featured gambling. No-one may behave in an adolescent, juvenile or loutish way.

Individuals who are, or seem to be under 25 years old (18-24 years old) may be featured playing a significant role only in marketing communications that appear in a place where a bet can be placed directly through a transactional facility, for instance, a gambling operator's own website. The individual may only be used to illustrate specific betting selections where that individual is the subject of the bet offered. The image or other depiction used must show them in the context of the bet and not in a gambling context."

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