

QAAD RESPONSE TO CAP AND BCAP CODE REVIEW CONSULTATION; ADDENDUM ON ScHARR REVIEW

Quaker Action on Alcohol and Drugs (QAAD) is a listed group of the Religious Society of Friends (Quakers). QAAD is an independent national charity that has a concern with the use and misuse of all drugs, legal, illegal and prescribed, and with gambling. QAAD offers prevention and information services for Quakers. We also contribute to public debates and consultations on matters relating to our concern and experience. Trustees give their time to QAAD freely, and bring voluntary and statutory experience from settings that include prevention, treatment, medical services and criminal justice. QAAD does not represent the Religious Society of Friends as a whole, but the views we express are grounded in our Quaker principles.

Question 158: Given BCAP's policy consideration, do you agree that the evidence contained in the ScHARR Review does not merit a change to BCAP's alcohol advertising content or scheduling rules? If your answer is no, please explain why you consider the ScHARR Review does merit a change to BCAP's alcohol advertising content or scheduling rules.

We do not agree that the evidence contained in the ScHARR review does not merit a change to BCAP's advertising content or scheduling rules. We believe that a tightening of restrictions is warranted, and we support the position that Alcohol Concern has adopted on these issues. We endorse the idea of a ban on the advertising of alcohol on television before the 9.p.m. watershed, and we would also support the proposal that 1/6 of advertising expenditure be devoted to public health messages.

We accept the authority of the ScHARR report and its account of the limitations on the evidence-base. However, we note the wording of the statement: *'there is conclusive evidence of a small but consistent association of advertising with consumption at a population level.'* We also note that, whilst recognising the variable nature of the evidence about advertising limitation and the difficulties of extending it to a UK context, the authors state in the full report:

'Results vary substantially depending upon which published evidence is assumed to be most applicable to England, with overall changes in consumption of between - 0.2% and -2.2%, and the financial value of harm avoided over 10 years ranging from - £0.39bn to -£3.9bn. Similar exploratory analyses for the total elimination of exposure to advertising for under-18s show an overall change in consumption ranging from -0.1% to -0.4%, and the financial value of harm avoided over 10 years ranging from -£0.3bn to - £1.0bn.' (page 11, ScHARR report)

These gains are relatively modest in relation to other measures such as minimum price setting, but even the lower estimated figures would be extremely worthwhile in terms of health and well-being, as well as in terms of social savings.

We acknowledge the specific methodological difficulties the report outlines in relation to banning advertising for under 18s. However, a recent review of the available

evidence (Smith and Foxcroft, 2009)¹, which limited itself to robust, predominantly longitudinal studies, concluded that:

'The data from these studies suggest that exposure to alcohol advertising in young people influences their subsequent drinking behaviour. The effect was consistent across studies, a temporal relationship between exposure and drinking initiation was shown, and a dose response between amount of exposure and frequency of drinking was clearly demonstrated in three studies. It is certainly plausible that advertising would have an effect on youth consumer behaviour, as has been shown for tobacco and food marketing.'

Whilst Smith and Foxcroft do not assert that limiting advertising would certainly reduce young people's drinking (because there may be other factors involved other than those the studies controlled for), they note the emerging 'stronger empirical evidence' in this area and its application to policy. Their conclusion also points up the potentially significant role of counter-advertising.

Within the SchARR report we note the middle estimate they consider suggests there would be a particularly strong effect on teenagers:

'The result of the 'Mid' scenario (37) is an estimated reduction in total consumption of just - 0.3%, but the effects on 11 to 18 year olds are estimated to be much more substantial with a reduction in consumption for that group of -9%. The estimated consequent reduction in harm occurs particularly in the area of crime, with -38,000 offences and a crime costs reduction of - £28m per annum.' (page 162)

The health and social gains for young people of limiting alcohol advertising warrant a proactive approach. This is particularly the case given that apart from the risks of excessive consumption for young people at the time it occurs, there are indications from the current generation of mid-life drinkers that higher consumption in youth may be sustained into middle years (Joseph Rowntree Report, 2009²). Studies also show that early onset drinking in young people is sustained into young adulthood (Andersen et al., 2003³) A precautionary approach to these significant risks seems wholly appropriate.

There is further evidence that positive expectations of alcohol intake affects the consumption of young people, and advertising is one element in creating these expectations. A recent naturalistic study also showed that exposure to alcohol images is likely to increase the extent of intake at the time it occurs⁴. As evidence message 10 of the SchARR report summarises, *'There is consistent evidence from longitudinal studies that exposure to TV and other broadcast media is associated with inception of and levels of drinking.'*

¹ Smith, L., Foxcroft, D., The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: systematic review of prospective cohort studies. *BMC Public Health*, Volume 9, 2009.

² Smith, L., Foxcroft, D. (2009) Joseph Rowntree Report, *Drinking in the UK* p 86

³ Andersen, Anette; Due, Pernille; Holstein, Bjorn E.; Iversen, Lars (2003) *Addiction*. 98(11):1505-1511

⁴ Rutger C. M. E. Engels, Roel Hermans, Rick B. van Baaren, Tom Hollenstein and Sander M. Bot (2009) Alcohol Portrayal on Television Affects Actual Drinking Behaviour, *Alcohol and Alcoholism*, 44, 244-249

Advertising affects the general culture and individual expectations - and both of these need to modify if the damage from alcohol is to reduce. Public health budgets for responsible drinking information are dwarfed by the amount spent on the positive promotion of alcohol. The proposal that a proportion be used for safety messages is desirable in terms of public awareness - and whilst the potential social savings are uncertain in their configuration, as the SchARR report outlines, some at least are likely.

The consultation discussion inherently raises the question of what level of proof is required before a precautionary approach can and should be taken. We believe that on the basis of the balance of strong probabilities and the desirability of the social goals to be achieved, there is already sufficient evidence for action. The SchARR report suggests that some positive impacts would be likely to result from restrictions in the three areas it outlines, even though the level and types of gain are difficult to estimate. The developing evidence-base relies on policies being adopted and then measured for impact, and no certainty about outcomes can be guaranteed in a UK context except by UK action. We believe, therefore, that the time has come for these restrictions to be adopted. We note that similar measures have been adopted in other European countries, some of which have lesser alcohol problems than the UK. As Pratten and Lovett⁵ note:

‘....members of the European Union signed the WHO’s European Charter on Alcohol, which declared that ‘children and adolescents have the right to grow up in an environment protected from the negative consequences of alcohol consumption and, to the extent possible, from the promotion of alcoholic beverages’. The result was that each member state reduced the advertising of alcohol addressed specifically to young people. As illustrations: Belgium stopped spirit advertising on commercial TV and all alcohol advertising on radio; France prohibited advertising on TV for alcohol over 1% ABV and on advertising in publications for young people and sports venues; Ireland banned spirit advertising on radio or TV, refused to allow alcohol adverts before sports programmes and insisted that the same advert could appear only once per night on any channel; Italy permits alcohol adverts on TV only after 8pm; Luxembourg radio and TV adverts must not depict consumption of alcohol or feature young people or sportsmen or drivers consuming alcohol; Portugal has restricted alcohol advertising on TV to 10pm and later, and Spain’s watershed is 9.30 pm (Institute of Alcohol Studies).’ ‘

For all these reasons, then, we suggest that two of the measures discussed in the SchARR report - pre-watershed television advertising and public health messages with 1/6 of current advertising revenue - be adopted. Whilst we think in principle a full advertising ban would be desirable on similar grounds, we accept that it may be helpful to start with these limited measures before wider ones are implemented. We note the evidence that advertising restrictions have a more substantial and measurable impact if they are linked with other harm-reduction initiatives, and hope that a broader approach will be developed. We would, of course, expect that the

⁵ Pratten, J.D., Lovatt, C.J. (2006) None for the road: an attempt to identify the responsibility for ethical alcohol service.’ Paper presented at the Business Studies and the Environment Conference, Corporate Responsibility Research Conference at Trinity College Dublin, 2-5 September 2006.

impact of these restrictions would be rigorously researched to assist further policy development.

RESPONSE TO CONSULTATION ON PROPOSED ADVERTISING STANDARD CODES FOR CAP AND BCAP

Quaker Action on Alcohol and Drugs (QAAD) is a listed group of the Religious Society of Friends (Quakers). QAAD is an independent national charity that has a concern with the use and misuse of all drugs, legal, illegal and prescribed, and with gambling. QAAD offers prevention and information services for Quakers. We also contribute to public debates and consultations on matters relating to our concern and experience. Trustees give their time to QAAD freely, and bring voluntary and statutory experience from settings that include prevention, treatment, medical services and criminal justice. QAAD does not represent the Religious Society of Friends as a whole, but the views we express are grounded in our Quaker principles.

Question 1 – Given BCAP’s policy consideration, do you agree that rule 1.2 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We agree with this inclusion, and that codes should have a sense of responsibility to the audience and society.

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

Question 57

Given its policy consideration, do you agree with BCAP’s proposal to extend to radio the present TV ban on advertisements for breath-testing devices and products that purport to mask the effects of alcohol? If your answer is no, please explain why.

We agree with this proposal.

Section 17: Gambling

Question 105

Given BCAP’s policy consideration, do you agree in principle that National Lottery and SLA lottery broadcast advertisements should be regulated by the same rules? If your answer is no, please explain why.

We agree that broadcast advertisements for the National Lottery and Society and Local Authority Lotteries should be regulated by the same rules. As Quakers we opposed the National Lottery, which encouraged gambling as a method of fund-raising, and was given special status for this reason. Whilst we support many of its social purposes, we prefer to see these achieved by other methods. All lotteries are gambling, though their funds may be put to positive use. We believe that the NL should be regulated as a gambling activity, and that high standards of social responsibility should be common to

all.

Consistency; age of appeal of content

Question 106

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to increase the restriction on age of appeal for broadcast National Lottery advertisements from 16+ to 18+? If your answer is no, please explain why.

We agree that no gambling advertisements, including the National Lottery, should appeal to those under 18 years of age.

Consistency; age at which a person may be featured gambling in a lottery advertisement

Question 107

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to apply rules 18.6 and 18.7 to all broadcast lottery advertisements? If your answer is no, please explain why.

We wonder if there is a discrepancy between the text in the consultation and the wording in 18.6 – namely, the word 'not' seems to have been omitted from the first sentence of 18.6.

Our view is that the age of people portrayed in advertisements for the National Lottery should appear to be over 25, as is the case for other gambling advertisements.

18.7. As Quakers we have strong reservations about the advertising of the National Lottery portraying the benefits of its funding for children's causes and showing children in so doing. It is hard to separate this from an encouragement to gamble. However, we realise that others may find this acceptable and if it is to be the case, we would hope that the standard of no explicit encouragement to gamble be strongly applied.

Consistency; other lottery rules

Question 108

Given BCAP's policy consideration, do you agree that the rules included in the Lottery Section of the Code are in line with BCAP's general policy objectives (see Part 1 (4) of this consultation document) and should be applied to broadcast advertisements for the National Lottery as they presently are to broadcast advertisements for other lotteries? If your answer is no, please explain why and, if relevant, please identify those rules that should not be applied to advertisements for the National Lottery.

We do accept that the new requirements are in line with BCAP's general objectives.

Participating in a lottery in a working environment

Question 109

Given BCAP's policy consideration, do you agree that lottery advertisements should be able to feature participation in a lottery in a working environment? If your answer is no, please explain why.

We do not agree that SLA lottery advertisements should be able to feature lottery participation in a working environment. The National Lottery was allowed an exemption from the general prohibition because of its special status, and the general trend of the changes proposed in this document is to remove that. We do not disagree with this, but we would like standards to be rounded up, not down.

We accept that there are many work-based syndicates for lottery play, but believe that gambling should not be encouraged in non-gambling environments. This general principle was accepted within the Gambling Act of 2005, though National Lottery gambling was one of the de facto exceptions. Now that the NL special status in advertising is being reconsidered, we would prefer to see the general gambling safety principle observed. If lotteries are enabled to be portrayed in the working environment, other gambling sectors may press for the same standard to apply to them. The normalization of gambling in non-gambling venues goes against the spirit of the Act and we disagree with it in principle.

Other questions

Question 110

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Gambling and Lotteries are necessary and easily understandable? If your answer is no, please explain why.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

We do not have any further comments on this section.

Section 19: Alcohol

Sales promotions in alcohol advertisements

Question 111

Given BCAP's policy consideration, do you agree that rule 19.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

19.11 Advertisements may include alcohol sales promotions but must not imply, condone or encourage immoderate drinking.

We have general concerns about the sales promotion of alcohol, but agree that advertising should be prevented from marketing that could encourage irresponsible use.

Irresponsible handling of alcohol

Question 112

Given BCAP's policy consideration, do you agree that rule 19.12 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We agree that this rule should be included in the code.

Alcoholic strength

Question 113

Given BCAP's policy consideration, do you agree that rule 19.10 should be included in the proposed BCAP Code? If your answer is 'no', please explain why.

19.10

Advertisements may give factual information about the alcoholic strength of a drink or make a factual strength comparison with another product but, except for low-alcohol drinks, which may be presented as preferable because of their low alcoholic strength, must not otherwise imply that a drink may be preferred because of its alcohol content or intoxicating effect.

We agree that care needs to be taken in how the strength of alcoholic beverages is portrayed. However, we do think that low alcohol content may be regarded as a positive feature by many in society. We support the reasoning and the proposals in the document.

Alcohol in a working environment

Question 114

Given BCAP's policy consideration, do you agree that rule 19.14 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We agree that the radio principle should be applied to television, and that alcohol should not be portrayed in the working environment. We have some concerns about the word 'normally', but agree that the example given in the document (of a brewer tasting his beer) is exceptional. We hope that guidance on the spirit of this rule would accompany the adoption of this standard.

Exception for children featuring incidentally in alcohol advertisements

Question 115

Given BCAP's policy consideration, do you agree that rule 19.17 should be included in the proposed BCAP Code? If your answer is no, please explain why.

We find this a difficult area, and one in which there seems to be little research. We accept that children seeing the responsible use of alcohol may often be unexceptionable. However, we are mindful of the Chief Medical Officer's advice about children not drinking before the age of fifteen and drinking very carefully up to the age of seventeen. One of his suggested messages to parents and carers is 'Look at your own drinking and ask what example it sets.' ('Consultation on children, young people and alcohol' Department for Children, Schools, and Families, 2008, p 27.) We do have some concerns at the drinking of alcohol being regularly portrayed, as it may associate alcohol with a routine expectation of a happy or normal family time. This is a particular consideration in view of the fact that most advertisements are repeated and children would have access to them. On balance, therefore, we think that it would be best for there to be an assumption that children would not be portrayed.

Low alcohol exceptions

Question 116

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that requires anyone associated with drinking must be, and seem to be, at least 25 years old? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

We agree with BCAP's position that these exemptions are not consistent with the purpose of advertising the low alcohol quality of certain drinks. We agree that the advertising of low alcohol drinks should be subject to the

same age restrictions as other forms of alcohol, and that they should not portray anything that might encourage immoderate drinking, such as repeated round-buying.

Question 117

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents encouraging excessive consumption via sales promotions? If your answer is no, please explain why.

iii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents featuring a voiceover of anyone who is or appears to be 24 or under? If your answer is no, please explain why.

We agree that the exemption for radio is inconsistent and support its removal.

Question 153

Given BCAP's policy consideration, do you agree that it is no longer necessary to restrict detailed TV text advertisements for gambling to full advertising pages devoted solely to such advertisements? If your answer is no, please explain why.

We do not have any further comments on this section.

RESPONSE TO CAP CODE REVIEW

Q. No.	RESPONSE
1	Rule 1.1 states that "Marketing communications <u>should</u> be legal, decent, honest and truthful." However, a number of other rules in this section have been changed from <u>should</u> to <u>must</u> but this one hasn't.
2	No additional comments to add.
3	AGREED - THIS GOES TO THE HEART OF LEGAL, DECENT, HONEST AND TRUTHFUL.
4	IN AN IDEAL WORLD THE SPIRIT OF THE CODE SHOULD DEAL WITH THIS REQUIREMENT. However, a number of ASA adjudications have been produced where claims have not been based on normal use and have caused the ad to be misleading and so on this basis it would seem that the new rule is necessary.
5	It would seem reasonable given that restrictions on availability if not communicated, lead to unnecessary disappointment.
6	YES, THIS PROVIDES MORE FLEXIBILITY GIVEN THE INCREASED USE OF INTERNET AND EMAIL COMMUNICATIONS. CLARIFICATION WOULD BE WELCOMED ON THE USE OF TESTIMONIALS TAKEN FROM CUSTOMER COMMUNICATIONS WHERE THE CUSTOMER IS QUOTED BUT WHOSE DETAILS ARE NOT GIVEN, E.G. "MRS P" OR "CUSTOMER FROM LONDON".
7	Yes the proposed new code requirement 3.54 seems to deal adequately with this.
8	Yes, this merely enforces the Consumer Protection from Unfair Trading Regulations.
9	No additional comments to add.
10	Yes, however, access to information should be made available to guide promoters as to the most common effects or techniques that could affect those suffering from photosensitive epilepsy.
11	No additional comments to add.
12	Yes, this merely enforces the Consumer Protection from Unfair Trading Regulations.
13	Yes, agreed.
14	No additional comments to add.
15	No additional comments to add.
16	Unable to comment as not relevant to market operating in.

17	<p>IN THEORY, WHERE CRITERIA IS REALISTIC, ACHIEVABLE AND REASONABLE THERE SHOULD BE FEW INSTANCES WHERE IT WOULD NOT BE MET.</p> <p>HOWEVER, THE RECENT ADJUDICATION IN THE CASE OF SYMWORKS T/A SHINYSHACK (PRIZE WITHHELD BECAUSE OF CHEATING CONCERNS) SHOWS THAT WITHHOLDING PRIZES WAS JUSTIFIED EVEN THOUGH THE CRITERIA SET OUT IN THE RULES WAS MET.</p> <p>THIS MAY NEED SOME ADDITIONAL THOUGHT AS TO THE WORDING OF THE PROPOSED RULE, BUT WE WOULD SUPPORT THE OBJECTIVE OF THE RULE.</p>
18	YES, THIS IS A REASONABLE APPROACH.
19	Yes, no issues.
20	Yes, but need greater clarification see q22 below.
21	Yes this appears to be a reasonable response to practical difficulties faced by promoters.
22	<p>IN THEORY, YES, ALTHOUGH THERE IS LIKELY TO BE SOME CONFUSION AROUND WHAT IS CLASSED AS A "SIGNIFICANT PROPORTION."</p> <p>FOR EXAMPLE, WOULD ANYTHING OVER 50% BE SIGNIFICANT OR WOULD SOMETHING LIKE 66% (AS USED IN TYPICAL APR CREDIT ADVERTISING) BE APPROPRIATE?</p> <p>THERE IS SOME CONCERN THAT EVEN PROVIDING GUIDANCE ON WHAT CONSTITUTES A "SIGNIFICANT PROPORTION" WOULD STILL NOT ADDRESS THOSE PROMOTERS THAT MERELY TRY TO AVOID THE SPIRIT OF THE CODE, I.E. THEY COULD MERELY SET THE ALLOCATION LEVEL AT 1% BELOW ANY GUIDANCE.</p>
23	YES, THIS APPEARS TO BE REASONABLE AND RELAXES THE PRACTICALITIES FOR PRIZE DRAW SELECTION WHERE THERE IS AN ALTERNATIVE LEVEL OF PROTECTION PROVIDED FOR THE CUSTOMER, E.G. RANDOM COMPUTER PROCESS.
24	<p>NOT CLEAR OF THE RELEVANCE OF "CAN BE" FOR REGIONAL PROMOTIONS AND "MUST BE" FOR NATIONAL PROMOTIONS.</p> <p>IT IS POSSIBLE TO RUN SEPARATE REGIONAL PROMOTIONS BUT THE AMOUNT OF PROMOTIONS AND GEOGRAPHICAL SPREAD ARE SUCH THAT THEY EFFECTIVELY COVER MOST OF THE NATION.</p> <p>IF THE PROCESS HAS BEEN VERIFIED BY A SUITABLE INDEPENDENT PARTY TO BE SECURE FAIR AND RANDOM AND CAN BE INDEPENDENTLY AUDITED AND THE PROMOTER HAS COMPLIED WITH THE REST OF THE CODE SHOULD AN ABILITY TO AUDIT SUFFICE?</p> <p>On the same basis, it does seem disproportionate to require an independently audited statement as per current rule 35.8</p>
25	YES. ALTHOUGH THE "MAKE-UP" OF THE POOL WILL NOT ALWAYS BE KNOWN WHICH COULD MAKE INDEPENDENCE DIFFICULT.
26	Yes, no issues.
27	Yes, merely supports the CPRs.

28	<p>NEW CODE REF 8.23 CHANGES OLD RULE 35.5 FROM “THE RULES <u>SHOULD</u> CONTAIN NOTHING THAT COULD REASONABLY HAVE INFLUENCED THE CONSUMER AGAINST MAKING A PURCHASE OR PARTICIPATING” , TO “THE RULES <u>MUST</u> CONTAIN NOTHING...”</p> <p>THERE MAY BE RULES SUCH AS PARTICIPATING IN PUBLICITY WHICH COULD INFLUENCE THE DECISION NOT TO PARTICIPATE. HOW THIS IS A REASONABLE RULE.</p> <p>IT IS SUGGESTED THAT THIS WORDING COULD BE CHANGED TO “THE RULES MUST CONTAIN <u>NO UNREASONABLE CONDITIONS</u> THAT COULD INFLUENCE THE CONSUMER AGAINST MAKING A PURCHASE OR PARTICIPATING..”</p>
29	Unable to comment as not relevant to market operating in.
30	Agreed.
31	No additional comments to add.
32	Yes, agreed.
33	YES, AS BLUETOOTH COMMUNICATION REQUIRES THE MOBILE PHONE USER TO ACCEPT THE COMMUNICATION. HOWEVER, SEE RESPONSE TO Q34.
34	<p>NEW CODE REF 10.6 STATES THAT <i>“MARKETING COMMUNICATIONS SENT BY ELECTRONIC MAIL (BUT NOT THOSE SENT BY BLUETOOTH TECHNOLOGY) MUST CONTAIN THE MARKETER’S FULL NAME AND A VALID ADDRESS, FOR EXAMPLE AN E-MAIL ADDRESS OR A SMS SHORT CODE TO WHICH RECIPIENTS CAN SEND OPT-OUT REQUESTS.”</i></p> <p>In addition, new code 10.4.1 states <i>MARKETING COMMUNICATIONS ARE SUITABLE FOR THOSE THEY TARGET.</i></p> <p>WITH SPECIFIC REFERENCE TO BLUETOOTH TECHNOLOGY, THERE ARE A COUPLE OF OBSERVATIONS:</p> <ul style="list-style-type: none"> • BLUETOOTH IS TARGETED MERELY AT CONSUMERS WHO HAVE THEIR BLUETOOTH ENABLED DEVICES SET IN DISCOVERABLE MODE. FOR THIS REASON, PROMOTERS CANNOT TARGET SPECIFIC COMMUNICATIONS AT SPECIFIC CONSUMERS, E.G. IT WOULD NOT BE POSSIBLE TO DIRECT ADULT CONTENT ONLY TO ADULTS. • WHILST TARGET CONSUMERS CAN ACCEPT OR REJECT A COMMUNICATION THEY CANNOT TELL AT THAT POINT THE CONTENT OF THE PROMOTION. • A LARGE AMOUNT OF CHILDREN NOW HAVE MOBILE PHONES AND THERE IS A RISK THAT INAPPROPRIATE CONTENT COULD BE RECEIVED BY THIS GROUP. • IN ADDITION, THE LACK OF THE PROMOTER’S NAME OR CONTACT DETAILS IN A BLUETOOTH PROMOTION WOULD POSSIBLY RESTRICT THE ABILITY OF A RECIPIENT OR THEIR REPRESENTATIVE FROM COMPLAINING ABOUT THE CONTENT OF THE PROMOTION. <p>This may require greater guidance within the code about the content of Bluetooth communications.</p>
35 – 43	Unable to comment as not relevant to market operating in.
44	No issues.
45	No additional comments to make.

46-73	Unable to comment as not relevant to market operating in.
74	No additional comments to make.



444 HIGHGATE STUDIOS
53-79 HIGHGATE ROAD
LONDON NW5 1TL, UK
TEL: 44 20 7267 6567
FAX: 44 20 7267 2551

E-MAIL: MBERER@RHMJOURNAL.ORG.UK
WEB (ELSEVIER): WWW.RHM-ELSEVIER.COM
WEB (RHM): WWW.RHMJOURNAL.ORG.UK

19 JUNE 2009

**RE: BCAP AND CAP CODE REVIEWS: A RESPONSE TO THE
CONSULTATIONS**

REPRODUCTIVE HEALTH MATTERS IS AN INTERNATIONAL PUBLICATIONS PROJECT WHOSE AIM AS A CHARITY IS: *"TO ADVANCE EDUCATION FOR THE PUBLIC BENEFIT CONCERNING ALL ASPECTS OF THE REPRODUCTIVE HEALTH AND REPRODUCTIVE RIGHTS OF WOMEN WORLDWIDE, IN PARTICULAR BY THE PRODUCTION OF REGULAR PUBLICATIONS IN THIS FIELD."* WE PRODUCE AN INTERNATIONAL, TWICE-YEARLY, PEER REVIEWED JOURNAL COVERING ALL ASPECTS OF REPRODUCTIVE AND SEXUAL HEALTH, WHICH IS TRANSLATED INTO SEVEN LANGUAGES IN ADDITION TO ENGLISH, PRODUCE PUBLICATIONS FOR OTHERS IN THE FIELD, INCLUDING THE WORLD HEALTH ORGANIZATION, AND ORGANISE SEMINARS AND CONFERENCES. IN THE 17 YEARS OF OUR EXISTENCE, WE HAVE MOTIVATED AND PUBLISHED AN EXTENSIVE BODY OF LITERATURE IN THIS FIELD FROM AROUND THE WORLD THAT EXPLORES WOMEN-CENTRED PERSPECTIVES AND HOW TO IMPROVE NATIONAL POLICY AND PRACTICE IN WAYS THAT BENEFIT BOTH WOMEN AND MEN, AND CHILDREN. WE ALSO SUPPORT WOMEN'S RIGHT TO ACCESS AND USE CONTRACEPTION, TO SAFE PREGNANCY AND MOTHERHOOD, AND TO SAFE, LEGAL ABORTION GLOBALLY. WE PARTICIPATE ACTIVELY IN VOICE FOR CHOICE, THE UK COALITION TO DEFEND AND EXTEND WOMEN'S RIGHT TO CHOOSE ABORTION.

THE FOLLOWING IS OUR RESPONSE TO THREE QUESTIONS IN THE CONSULTATION DOCUMENT ON CHANGES TO THE BCAP CODE, AND A COMMENT ON ONE PARAGRAPH OF EXPLANATORY TEXT, SOME OF WHICH ALSO APPLY TO THE CAP CODE:

QUESTION 61

GIVEN BCAP'S POLICY CONSIDERATION, DO YOU AGREE THAT, UNLESS PREVENTED BY LAW, IT IS NOT NECESSARY TO MAINTAIN THE PRESENT

**PROHIBITION ON THE USE OF HEALTH PROFESSIONALS IN TV
ADVERTISEMENTS FOR PRODUCTS THAT HAVE NUTRITIONAL, THERAPEUTIC
OR PROPHYLACTIC EFFECTS AND IN RADIO ADVERTISEMENTS FOR
TREATMENTS? IF YOUR ANSWER IS NO, PLEASE EXPLAIN WHY.**

RESPONSE:

WE ARE OPPOSED TO THE ADVERTISING OF MEDICINES AND OTHER TREATMENTS ON TELEVISION AND RADIO, AND IN PRINT. WE HAVE SEEN AT FIRSTHAND THE EFFECT OF SUCH ADVERTISEMENTS IN THE UNITED STATES, WHERE THIS HAS LONG BEEN PERMITTED.⁶ THE PUBLIC ARE LED BY SUCH ADVERTISEMENTS TO BELIEVE THAT THEY MAY BE SUFFERING FROM A CONDITION THAT HAS NOT BEEN IDENTIFIED AND ENCOURAGED TO DISCUSS WITH THEIR DOCTOR WHETHER THEY MIGHT HAVE THE CONDITION AND BENEFIT FROM THE PRODUCT OR TREATMENT. WE BELIEVE SUCH ADVERTISEMENTS ENCOURAGE PEOPLE TO FEEL AFRAID THAT THEY ARE ILL OR UNDER-NOURISHED WHEN THEY ARE NOT, AND ARE THEREFORE UNETHICAL AND SHOULD BE BANNED.

IN THIS CONTEXT, WE BELIEVE IT IS A SERIOUS CONFLICT OF INTEREST FOR ANY HEALTH PROFESSIONAL TO PARTICIPATE IN SELLING PRODUCTS AND TREATMENTS AS DESCRIBED IN QUESTION 61. WE BELIEVE THIS CONTRIBUTES TO A CULTURE IN WHICH HEALTH CARE BECOMES A CONSUMER PRODUCT, WHICH IN TURN ENCOURAGES PRIVATE HEALTH CARE AND PRIVATE HEALTH INSURANCE, ALL OF WHICH WE OPPOSE.

SECONDLY, WE BELIEVE SUCH ADVERTISEMENTS ENCOURAGE PEOPLE TO BELIEVE THAT IN ORDER TO OBTAIN CERTAIN PRODUCTS AND TREATMENTS, THEY MUST PURCHASE THEM, WHEN IN FACT THEY MAY BE AVAILABLE ON THE NHS IF AND WHEN THEY ARE REQUIRED. THIS COULD APPLY TO PRODUCTS AND TREATMENTS RELATED TO SEXUAL AND REPRODUCTIVE HEALTH, SUCH AS CONDOMS, CONTRACEPTIVES, TREATMENT FOR SEXUALLY TRANSMITTED INFECTIONS SUCH AS HERPES, VACCINATION AGAINST HUMAN PAPILLOMAVIRUS, DONOR INSEMINATION AND OTHER ASSISTED CONCEPTION TREATMENTS. WE THEREFORE URGE THAT ANY SUCH ADVERTISEMENTS BROADCAST OR PUBLISHED IN THE UK SHOULD BE REQUIRED TO STATE, WHERE IT IS THE CASE, THAT THESE PRODUCTS AND TREATMENTS ARE AVAILABLE FREE FROM THE NHS.

⁶ HULL SC, PRASAD K. READING BETWEEN THE LINES: DIRECT TO CONSUMER ADVERTISING OF GENETIC TESTING IN THE USA. REPRODUCTIVE HEALTH MATTERS 2001;9(18):44048.

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?

RESPONSE:

YES, WE AGREE THAT IT IS NECESSARY TO MAINTAIN A RULE SPECIFIC TO POST-CONCEPTION ADVICE SERVICES AND TO THAT END, RULE 11.11 SHOULD BE INCLUDED IN THE PROPOSED BCAP CODE.

WE CONSIDER IT EXTREMELY IMPORTANT THAT POST-CONCEPTION PREGNANCY ADVICE SERVICES BE REQUIRED TO MAKE IT CLEAR WHETHER OR NOT THEY REFER WOMEN DIRECTLY FOR ABORTION AS PREGNANT WOMEN MAY APPROACH THEM SPECIFICALLY SEEK SUCH REFERRAL. THE FAILURE TO MAKE THIS CLEAR CREATES AN OBSTACLE TO ACCESSING A LEGAL ABORTION, AND CAN CAUSE UNNECESSARY DELAY AND EVEN HARM TO WOMEN IN A VULNERABLE STATE WHO ARE SEEKING HELP, WHO HAVE THE EXPECTATION THAT THEY WILL BE GIVEN THIS INFORMATION.⁷ A REQUIREMENT THAT SERVICES STATE WHETHER THEY REFER WOMEN DIRECTLY FOR ABORTION SUPPORTS THE CONCEPT OF “TRUTH IN ADVERTISING” AND MAKES IT MORE DIFFICULT FOR WOMEN TO BE MISLED.

MOREOVER, THERE SHOULD BE A REQUIREMENT THAT THIS INFORMATION IS DISPLAYED PROMINENTLY IN ANY ADVERTISEMENT, NOT JUST IN TINY PRINT WHERE IT CAN EASILY BE MISSED.

IT IS ALSO IMPORTANT THAT THE CODE RECOMMENDS WHAT LANGUAGE SHOULD BE USED FOR THIS STATEMENT, IN ORDER TO PREVENT SERVICES WHOSE AIM IS TO CONVINCE WOMEN NOT TO HAVE AN ABORTION FROM USING VAGUE OR CONFUSING STATEMENTS THAT OBFUSCATE THE POINT. THE STATEMENTS COULD FOR EXAMPLE BE: “THIS SERVICE *WILL* / *WILL NOT* REFER WOMEN DIRECTLY FOR AN ABORTION IF THEY REQUEST SUCH REFERRAL.”

⁷ INGHAM R, LEE E, CLEMENTS SJ, STONE N. REASONS FOR SECOND TRIMESTER ABORTIONS IN ENGLAND AND WALES. REPRODUCTIVE HEALTH MATTERS 2008;16(31 SUPPLEMENT):18-29.

THIS REQUIREMENT SHOULD APPLY TO BOTH THE BROADCAST CODE AND TO THE NON-BROADCAST CODE AS WELL, AND WE ARE COPYING THIS PAPER TO THE CAP CONSULTATION TO MAKE THIS POINT.

WE DO NOT AGREE THAT ADVERTISEMENTS FOR PRE-CONCEPTION ADVICE SERVICES SHOULD CONTINUE TO BE REGULATED THROUGH THE GENERAL RULES ONLY, BECAUSE SOME SERVICES PROVIDE BOTH PRE- AND POST-CONCEPTION SERVICES, AND WE THINK THE SAME RULES SHOULD APPLY TO BOTH. SOME ANTI-ABORTION ORGANISATIONS AND ADVISORY/COUNSELLING SERVICES ACTIVELY OPPOSE USE OF CERTAIN CONTRACEPTIVE METHODS, INCLUDING EMERGENCY CONTRACEPTION. WE ARE CONCERNED THAT SOME PHARMACISTS HAVE BEEN CLAIMING TO HAVE A CONSCIENTIOUS OBJECTION TO FILLING PRESCRIPTIONS FOR CONTRACEPTIVES (FOLLOWING A TREND IN THE USA)⁸ EVEN THOUGH, UNLIKE WITH ABORTION, NO LAW OR REGULATION ENTITLES THEM TO DO SO AS CONTRACEPTION IS AN ENTIRELY LEGAL HEALTH CARE SERVICE IN THE UK AND HAS BEEN FOR DECADES.

OPPOSITION TO EMERGENCY CONTRACEPTION IS WIDESPREAD AMONG ANTI-ABORTION ADVISORY AND COUNSELLING SERVICES SO WE RECOMMEND THAT A SPECIAL REGULATION SHOULD ALSO BE REQUIRED FOR THOSE ADVERTISING PRE-CONCEPTION ADVICE SERVICES AS REGARDS EMERGENCY CONTRACEPTION AND OTHER CONTRACEPTIVE PROVISION. ANTI-ABORTION ORGANISATIONS AND ADVICE SERVICES ERRONEOUSLY BUT PERSISTENTLY DESCRIBE EMERGENCY CONTRACEPTION AS ABORTIFACIENT. THIS IS IN SPITE OF THE FACT THAT SCIENTIFIC EVIDENCE, NATIONAL HEALTH POLICY AND EXPERT OPINION ON WHAT CONSTITUTES CONTRACEPTION AND WHAT CONSTITUTES ABORTION ARE AGREED THAT EMERGENCY CONTRACEPTION IS NOT ABORTIFACIENT. EMERGENCY CONTRACEPTION IS EFFECTIVE ONLY PRIOR TO PREGNANCY ESTABLISHING ITSELF, NOT AFTERWARD. IN THIS CASE, SERVICES COULD BE REQUIRED TO STATE: "THIS SERVICE *DOES / DOES NOT* PRESCRIBE CONTRACEPTION AND EMERGENCY CONTRACEPTION, WHICH IS [ALSO] AVAILABLE FREE FROM GPs, FAMILY PLANNING CLINICS AND NHS DIRECT."

THESE RESPONSES ARE BASED ON OUR BELIEF THAT ALL PATIENTS MUST BE ABLE TO MAKE FREE AND INFORMED DECISIONS ABOUT ACCESSING ADVICE AND COUNSELLING AS WELL AS HEALTH AND MEDICAL CARE.

⁸ BEAL MW; CAPPIELLO J. PROFESSIONAL RIGHT OF CONSCIENCE. JOURNAL OF MIDWIFERY AND WOMEN'S HEALTH 2008;53(5):406-12.

UNREGULATED CRISIS PREGNANCY COUNSELLING ORGANISATIONS OPERATE WIDELY IN THE UK, OUTSIDE THE STANDARDS CONTAINED IN THE DEPARTMENT OF HEALTH'S REGISTER OF PREGNANCY ADVICE BUREAUX. WE BELIEVE THEY SHOULD BE REGULATED, AND THAT BY REQUIRING THEM TO ACKNOWLEDGE IN THEIR ADVERTISEMENTS AND PROMOTIONAL MATERIAL THE BIAS IN THEIR COUNSELLING, WOMEN WILL BE BETTER PROTECTED.

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.'

RESPONSE:

YES, WE AGREE THAT PRESENT RESTRICTIONS ON TELEVISION ADVERTISEMENTS FOR CONDOMS SHOULD BE RELAXED. CONDOMS ARE THE ONLY FORM OF PROTECTION AVAILABLE FOR PRACTISING SAFER SEX THAT EFFECTIVELY PREVENT BOTH UNWANTED PREGNANCY AND TRANSMISSION OF HIV AND OTHER SEXUALLY TRANSMITTED INFECTIONS SUCH AS CHLAMYDIA AND GONORRHOEA, WHICH CAN CAUSE INFERTILITY IF UNTREATED, AND HUMAN PAPILLOMAVIRUS, WHICH CAN CAUSE CERVICAL CELL ABNORMALITIES AND CERVICAL CANCER. THE PROMOTION OF CONSISTENT AND CORRECT CONDOM USE IS THEREFORE AN IMPORTANT FORM OF PUBLIC HEALTH EDUCATION, AND SHOULD BE PERMITTED ON TELEVISION AND OTHER MEDIA AT TIMES WHEN THOSE WHO WOULD BENEFIT FROM USING THEM ARE MOST LIKELY TO BE THE VIEWERS.⁹

WE DO NOT BELIEVE THAT CHILDREN WILL BE HARMED IN ANY WAY BY BECOMING AWARE OF CONDOMS AND THEIR VALUE THROUGH ACCURATE PUBLIC HEALTH EDUCATION BEFORE THEY REACH THE AGE WHERE THEY ARE LIKELY TO BE HAVING SEXUAL RELATIONS. INDEED, WE BELIEVE THAT APPROPRIATELY DESIGNED EDUCATION ON MATTERS OF SEXUALITY SHOULD BE STARTED IN SCHOOLS AT A YOUNG AGE, INCLUDING ABOUT CONDOMS. HOWEVER, THE PROMOTION OF CONDOMS ON TELEVISION TO ADOLESCENTS AND ADULTS SHOULD TAKE A DIFFERENT FORM, AND THEREFORE SHOULD

⁹ SEE THE FULL JOURNAL ISSUE OF REPRODUCTIVE HEALTH MATTERS 2006;14(28) ON CONDOMS AND THEIR VALUE FROM A GLOBAL PERSPECTIVE.

BE AIRED NEXT TO PROGRAMMES LIKELY TO APPEAL TO ADOLESCENTS AND ADULTS RATHER THAN THOSE LIKELY TO APPEAL TO CHILDREN UNDER 10.

PARAGRAPH 11.37

WE AGREE ENTIRELY WITH THE FIRST TWO SENTENCES OF THIS PARAGRAPH, AND WE REGRET THAT THERE IS APPARENTLY NO WAY TO STOP ORGANISATIONS, JOURNALISTS AND PROGRAMME MAKERS FROM BROADCASTING AND PUBLISHING MISLEADING AND IRRESPONSIBLE PROGRAMMES, ADVERTISEMENTS AND ARTICLES ABOUT PUBLIC HEALTH ISSUES, INCLUDING SEXUAL AND REPRODUCTIVE HEALTH ISSUES. WE HAVE SEEN THE KIND OF FEAR-MONGERING AND HARM THIS DOES WHEN VISITING SCHOOLS AND COLLEGES AND TALKING TO WOMEN SEEKING SERVICES WHO HAVE NOT ALSO HAD ACCESS TO ACCURATE INFORMATION. FOR MANY YEARS, FEAR OF CONTRACEPTIVE USE WAS BASED ON UNFOUNDED CLAIMS ABOUT TERRIBLE SIDE EFFECTS; THIS STILL OPERATES IN MANY PARTS OF THE WORLD. TODAY, IT OPERATES AS REGARDS FALSE AND MISLEADING CLAIMS OF NEGATIVE ADVERSE EFFECTS OF ABORTION, SUCH AS THAT IT CAUSES BREAST CANCER OR INFERTILITY, WHICH IT DOES NOT, OR TERRIBLE MENTAL HEALTH PROBLEMS, WHICH IT ALSO DOES NOT, OR THAT ABORTION METHODS THAT WENT OUT OF DATE 50 YEARS AGO BECAUSE THEY WERE REPLACED BY SAFER METHODS ARE STILL BEING USED IN THE UK.

WE DISAGREE THAT FAMILY PLANNING AND ABORTION INFORMATION AND COUNSELLING CAUSE SERIOUS OFFENCE TO VIEWERS OR LISTENERS IN THIS COUNTRY; THERE IS NO EVIDENCE TO SUPPORT SUCH A CLAIM. USE OF CONTRACEPTION AMONG THOSE WHO ARE SEXUALLY ACTIVE AND SEEKING TO AVOID UNPLANNED PREGNANCY IS ALMOST AT SATURATION LEVEL IN THE UK. MOST PEOPLE WITH RELIGIOUS VALUES ARE SUPPORTIVE OF AND USE CONTRACEPTION, AND THE GREAT MAJORITY ALSO UNDERSTAND AND SUPPORT THE RIGHT TO SEEK A SAFE, LEGAL ABORTION. WE BELIEVE THAT A SMALL, VOCAL MINORITY OF THOSE WHO ARE OPPOSED TO BOTH CONTRACEPTION AND ABORTION MAKE THESE CLAIMS TO GIVE VALIDITY TO THEIR WISH TO BAN BOTH, BUT NEVER OFFER EVIDENCE OF SUCH OFFENCE AMONG THE PUBLIC. IT IS POSSIBLE TO BE PERSONALLY OPPOSED TO ABORTION BUT ALSO RECOGNISE THAT IT WILL HAPPEN IN SPITE OF SUCH VIEWS AND SUPPORT THE RIGHT OF OTHERS TO SAFE SERVICES.

WE THEREFORE DO NOT FEEL THAT POLICY OR REGULATIONS ON ADVERTISING CONTRACEPTIVE AND ABORTION SERVICES OR INFORMATION SHOULD BE BASED ON CONCERNS THAT THEY MAY BE OFFENSIVE.

MANY THANKS FOR THE OPPORTUNITY TO RESPOND ON THESE IMPORTANT MATTERS.

Section 1: Compliance

Question 1

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules, included in the proposed Compliance Section are necessary and easily understandable? If your answer is no, please explain why.

We duly note the coming into force of the CPRs in 2008 and the read across from them in relation to marketing communications. It is therefore right that the CAP Code is amended to take account of the CPRs and that the former should be the primary vehicle for ensuring, monitoring compliance with the latter in a marketing context. This will avoid any duplication of activity and effort, say by local authorities, and also limit the risk of potential double jeopardy for marketers from issues being pursued by different bodies or regulatory/legal frameworks.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Compliance rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

There is clearly a shift of emphasis and tone within the Code and its rules, principally from "shall" to "must", to reflect and be compatible with consumer law. Our internal review processes are geared up to cope with this, but again we would repeat that the risk of double jeopardy is mitigated by ensuring that the self-regulatory framework overseen by the ASA and CAP is the means of oversight and enforcement.

This ensures the consistent application of the rules, with advice but not interjection by other bodies, and a proportionate response based around the merits of each case, as now.

iii) Do you have other comments on this section?

No.

Section 2: Recognition of marketing communications

Question 2

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Recognition of Marketing Communications Section, are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Marketing Communications rules that are likely to amount to a

significant change in advertising policy and practice, are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 3: Misleading

Clarity of qualifications

Question 3

Do you agree that rule 3.10 should be included in the Code? If your answer is no, please explain why.

We note the intention of the new rule to address the increasing number of media using marketing communications that appear only briefly and the need to ensure qualifications are clearly communicated. Such clarity will be measured on the basis of the communication being seen or heard only once.

Presumably there is a read across here to broadcasting media and we would just seek to ensure that there is consistency across the piece here in respect of the clarity of the qualification and the level of detail i.e. whether on a detailed level or cross referenced to where the further information is readily available from.

Exaggerated performance

Question 4

Do you agree that rule 3.11 should be included in the Code? If your answer is no, please explain why.

THIS APPEARS TO CONFLICT WITH PROPOSED RULE 3.2:

'3.2

OBVIOUS EXAGGERATIONS ("PUFFERY") AND CLAIMS THAT THE CONSUMER IS UNLIKELY TO TAKE LITERALLY ARE ALLOWED PROVIDED THEY DO NOT AFFECT THE ACCURACY OR PERCEPTION OF THE MARKETING COMMUNICATION IN A MATERIAL WAY.'

WHICH PREVAILS?

WHAT IS MEANT BY "NORMAL" USE? WILL GUIDANCE BE ISSUED ON THIS?

Restrictions on availability

Question 5

Given CAP's policy consideration, do you agree with the revisions made to rule 3.28.3? If your answer is no, please explain why.

Yes.

Testimonials

Question 6

Given CAP's policy consideration, do you agree that rule 3.45 should be amended to require documentary evidence and contact details only? If your answer is no, please explain why.

DOES THE REQUIREMENT TO HOLD CONTACT DETAILS PLACE AN OBLIGATION ON THE HOLDER OF A TESTIMONIAL TO MAINTAIN UP-TO-DATE CONTACT DETAILS? IT IS POSSIBLE THAT THE PROVIDER OF THE TESTIMONIAL COULD MOVE WITHOUT NOTIFYING.

Additional rights provided by guarantees

Question 7

Given CAP's policy consideration, do you agree that rule 17.2 should be deleted from the Code? If your answer is no, please explain why.

Yes.

The unavoidable cost of responding

Question 8

Given CAP's policy consideration, do you agree that marketing communications should not describe items as "free" if the consumer has to pay for packaging? If your answer is no, please explain why.

Yes.

Other questions

Question 9

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on misleading are necessary and easily understandable? If your answer is no, please explain why.

Yes they are, but briefly and as mentioned elsewhere it is important that the application of the rules is done on a consistent basis, particularly with the onset of the CPRs, through the self-regulatory framework that the ASA and CAP oversee.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that

are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration?

No, other than repeating the above, particularly with the shift in emphasis from "should" to "must" in most elements of the rules.

iii) Do you have other comments on this section?

No.

Section 4: Harm and Offence

Flashing images

Question 10

Given CAP's policy consideration, do you agree that rule 4.7 should be included in the proposed CAP Code? If your answer is no, please explain why.

Yes, provided mirrors the requirements, tone, etc of the rules that apply to broadcast media.

Other Questions

Question 11

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Harm and Offence section, are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Harm and Offence rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 5: Children

Promotions that contain a direct exhortation to buy a product

Question 12

Given CAP's policy consideration, do you agree that rule 5.7

should be included in the Code? If your answer is no, please explain why.

Yes.

Marketing communications that contain a direct exhortation to buy products via a direct-response mechanism

Question 13

Given CAP's policy consideration, do you agree that rule 5.5 should be included in the Code? If your answer is no, please explain why.

Yes.

Section 6: Privacy

Question 15

i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Privacy section, are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Privacy rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 8: Sales Promotions

Withholding prizes

Question 17

Given CAP's policy consideration, do you agree that rule 8.27 should be included in the Code? If your answer is no, please explain why.

NO. THERE ARE CIRCUMSTANCES WHEN IT MAY BE APPROPRIATE TO WITHHOLD A PRIZE WHERE THIS HAS NOTHING TO DO WITH THE PARTICIPANT MEETING CRITERIA IN THE RULES E.G. GOODS THAT HAVE BECOME UNLAWFUL TO SELL AS A RESULT OF A CHANGE IN THE LAW, OR AS A RESULT OF A RECOGNISED FAULT OR DANGER. THE RULE SHOULD PROVIDE THAT WITHHOLDING OF PRIZES WILL BE JUSTIFIED WHERE THE PROMOTER HAS RESERVED THE RIGHT TO SUBSTITUTE THE PRIZE WITH AN ALTERNATIVE OF EQUIVALENT VALUE.

Promotions directed at children; the need for a closing date

Question 18

Given CAP's policy consideration, do you agree that rule 8.17.4.b should be included in the Code? If your answer is no, please explain why?

Yes.

Prizes and Gifts

Question 19

Given CAP's policy consideration, do you agree that rule 8.17.6 should be included in the Code? If your answer is no, please explain why.

Yes.

Section 8: Sales Promotions

Significant conditions exception: limited by time or space

Question 21

Given CAP's policy consideration, do you agree that rule 8.18 should be included in the Code? If your answer is no, please explain why.

DOES CAP AGREE THAT MAKING ADDITIONAL INFORMATION AVAILABLE ON A WEBSITE ONLY SATISFIES THE REQUIREMENT FOR BEING "EASILY ACCESSIBLE"? DOES THIS RULE MEAN THAT REFERENCES IN A MARKETING COMMUNICATION PIECE TO RESTRICTIONS, EXCLUSIONS AND LIMITATIONS APPLYING WITHOUT ACTUALLY SETTING OUT WHAT THEY ARE WOULD COMPLY WITH RULE 8.18?

Distinction between prizes and gifts: a significant proportion

Question 22

Do you agree that rule 8.19 should be included in the CAP Code? If your answer is no, please explain why.

Yes.

Supervising Prize Draws

Question 23

Given CAP's policy consideration, do you agree that rule 8.24 should be included in the Code? If your answer is no, please explain why.

Yes.

Auditing instant-win promotions

Question 24

i) Do you agree that the present requirement, in CAP rule 35.8, for a promoter to obtain an independently audited statement that all prizes have been distributed, or made available for distribution on a fair and random basis is disproportionate and should not therefore be included in the Code? If your answer is no, please explain why?

Yes.

ii) Given CAP's policy consideration, do you agree that rule 8.25 should be included in the Code? If your answer is no, please explain why.

Yes.

Judging of prize promotions

Question 25

Given CAP's policy consideration, do you agree that rule 8.26 should be included in the Code? If your answer is no, please explain why.

Yes.

Other questions

Question 28

i) Taking into account CAP's general policy objectives, do you agree that CAP's Sales Promotions rules are necessary and easily understandable? If your answer is no, please explain why.

Yes.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Sales Promotions rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

No.

iii) Do you have other comments on this section?

No.

Section 11: Environmental Claims

Question 35

Given CAP's policy consideration, do you agree that rule 11.7 should be included in the Code? If your answer is no, please explain why.

We would not wish green products to be subject to a confusion of different guidance. We would therefore caveat the inclusion of 11.7 with similar comments to those made elsewhere in our response. These relate to ensuring that the self-regulatory framework is the primary vehicle to address relevant issues and for the principles of better regulation to apply in terms of the consistency and proportionality of the associated outcomes.

In this respect, the energy sector's Green Supply Guidelines, once in place, will provide an important reference point for consideration of the extent of any environmental benefit, as will Defra's Green Claims Code and its associated guidance, to assist any assessments under the Code allied to its help/guidance notice on specific related topics i.e. green supply in the energy sector.

Other questions

Question 36

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on Environmental Claims are necessary and easily understandable? If your answer is no, please explain why.

The rules on Environmental Claims are necessary and should be separated out given the rise in such advertising and the wider implications of that advertising beyond a consumer's immediate transactional decision. The clarity around these rules is key, and in opting for general principles, backed up by more specific, up-to-date advice through Help/Guidance notes, the visibility of the latter is very important.

In addition while the currency of the specific Help/Guidance will be maintained by tapping into relevant reference points, such as those produce by Defra and the energy sector's Green Supply Guidelines, the review and pronouncement on relevant issues should be through the self-regulatory Code, rules and associated documents.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration?

We note the reference in Annex 2 to the document, of the need to take account of Government guidance in this area, i.e. the Green Claims Code and supporting guidance. We would note also that we will soon have energy sector specific green supply guidelines that we will need to take account of!

In this context it is important that this principle and "should", not "must", takes account of such guidance and is adhered to within and through the application of the Rules. This will ensure that the Code and its rules, and supporting guidance, are the primary focus for any review, with guidance from elsewhere being cited as reference points for a review of relevant matters.

iii) Do you have other comments on this section?

No.

Section 22: Other comments

Question 74

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

THE PROPOSED PARAGRAPH (Q) OF THE SECTION AS TO WHAT THE CODE DOES NOT APPLY TO IS WORDED INCORRECTLY AND THIS NEEDS TO BE ADDRESSED.

WE BELIEVE THAT THE SELF-REGULATORY FRAMEWORK REPRESENTED BY THE CAP CODE HAS, THROUGH ITS APPLICATION AND FLEXIBILITY, BEEN EFFECTIVE FOR CONSUMERS AND MARKETERS. IT HAS DEMONSTRATED THE VALUE OF SELF-REGULATION IN DELIVERING TARGETED, CONSISTENT AND PROPORTIONATE OUTCOMES IN LINE WITH THE KEY PRINCIPLES OF BETTER REGULATION.

THE PROPOSED CODE SHIFTS THE EMPHASIS WITHIN IT TO REFLECT THE ONSET OF NEW CONSUMER LAW IN THE FORM OF THE UNFAIR COMMERCIAL PRACTICES REGULATIONS (CPRs), PRIMARILY THROUGH THE USE OF "MUST NOT" RATHER THAN "SHOULD NOT" IN TERMS OF THE APPLICATION OF THE RULES. WE HAVE COMMENTED ON SPECIFIC CHANGES TO THE RULES ABOVE, IN PARTICULAR IN THE CONTEXT OF ENVIRONMENTAL CLAIMS AND THE BUSY SPACE THAT HAS BECOME IN TERMS OF BOTH CLAIMS MADE AND EXTERNAL GUIDANCE GIVEN.

HOWEVER, ASIDE FROM THE ABOVE THE BASIC STRUCTURE OF THE RULES HAS NOT CHANGED SIGNIFICANTLY AND SHOULD PROVIDE A SIMILARLY SOUND BASIS TO ENSURE THE ONGOING INTEGRITY OF AND THEREFORE COMPLIANCE OF RELEVANT ADVERTISING. ALL WE WOULD ASK IS THAT THE ASA, CAP AND THE CODE RETAINS ITS PRIMARY POSITION AS THE REVIEWER, ARBITER OF THE ISSUES THAT COME BEFORE THEM, NOTWITHSTANDING THE PRESENCE OF AND/OR GUIDANCE GIVEN BY OTHER BODIES OR FRAMEWORKS.

SAINSBURY'S RESPONSE TO THE CONSULTATION ON THE CAP AND BCAP CODES

Sainsbury's welcomes the opportunity it has been given to respond to the consultation on the CAP and BCAP Codes.

1. BACKGROUND:

- 1.1 For context, I have included some key statistics on Sainsbury's:
- 785 STORES, OF WHICH 276 ARE CONVENIENCE
 - 153,000 EMPLOYEES
 - AROUND 18.5 MILLION CUSTOMERS A WEEK
 - WE ARE A MAJOR ADVERTISER BOTH AT NATIONAL AND LOCAL LEVEL. IN 08/09 OUR REPORTED SPEND WAS C£61 MILLION. (SOURCE: NIELSEN ADDYNAMIX SPEND FOR NATIONAL AND REGIONAL ADVERTISING ACROSS OUTDOOR, CINEMA, ONLINE, PRESS, RADIO AND TV.)
- 1.2 OUR CORPORATE GOAL STATES "...*WE WILL EXCEED CUSTOMER EXPECTATIONS FOR HEALTHY, SAFE, FRESH AND TASTY FOOD, MAKING THEIR LIVES EASIER EVERY DAY*". IT IS NOT POSSIBLE TO ACHIEVE THIS GOAL WITHOUT LEGAL, DECENT, HONEST AND TRUTHFUL ADVERTISING.
- 1.3 WE HAVE 140 YEARS OF VALUE BASED, PRINCIPLED RETAILING BEHIND US AND AS OUR RECENT STRAPLINE STATES "OUR VALUES MAKE US DIFFERENT".
- 1.4 WITH THIS IN MIND, WE ARE ABSOLUTELY IN AGREEMENT WITH THE OVERARCHING PRINCIPLES CONTAINED IN THE CODES. HOWEVER, WE HAVE A NUMBER OF FUNDAMENTAL ISSUES WITH THE CODES AND SOME OF THE CONTENT WHICH WE HAVE DETAILED BELOW.

2. GENERAL CONCERNS

- 2.1 SAINSBURY'S WELCOMES THE REDUCTION IN THE NUMBER OF CODES BUT WE WOULD QUESTION WHY THE REFORM COULD NOT HAVE GONE FURTHER, RESULTING IN A SINGLE CODE. THIS IS PARTICULARLY RELEVANT GIVEN THAT THE CONCEPT OF MISLEADING AS DEFINED IN THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 (CPRs) IS NOT MEDIA SPECIFIC.

- 2.1.1 WHERE SPECIFIC DIFFERENCES ARE REQUIRED DUE TO THE NATURE OF A SPECIFIC MEDIA THESE COULD BE INCLUDED WITHIN THE RELEVANT SECTION OF A SINGLE CODE. THIS APPROACH HAS ALREADY BEEN ADOPTED IN THE PROPOSED BCAP CODE WHERE THE REQUIREMENTS FOR RADIO AND TV ARE SEPARATED (E.G. SECTION 4).

THIS WOULD ENSURE THAT A FULLY INTEGRATED APPROACH IS TAKEN TO ADVERTISING CAMPAIGNS WHICH OFTEN USE MORE THAN ONE MEDIA TYPE.

- 2.2 BOTH CAP AND BCAP HAVE STATED IN THEIR CONSULTATION DOCUMENTS THAT THE REASON FOR THE REVIEW TO ENSURE THAT THE CODES ARE FIT FOR PURPOSE AND TO REFLECT CHANGES IN THE LAW.

THE BIGGEST CHANGE IN THE LAW SINCE THE CODES WERE LAST REVIEWED HAS BEEN THE INTRODUCTION OF THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 (CPRs). THIS PIECE OF LEGISLATION, WHICH IS A FULLY HARMONISED EUROPEAN DIRECTIVE, FUNDAMENTALLY ALTERED CONSUMER PROTECTION IN THE UK AWAY FROM PRESCRIPTIVE RULES TO PURPOSEFUL, PRINCIPLED BASED LEGISLATION THAT ALLOW MANY ROUTES TO THE SAME END, NAMELY THAT CONSUMERS

SHOULD NOT BE MISLEAD. OUR CONCERN IS THAT BY TRYING TO ADAPT VERY DETAILED CODES TO INCORPORATE THE NEW LEGISLATION THEY 'GOLD PLATE' THE LEGISLATION AND REQUIRE ADHERENCE TO RULES AND VOLUNTARY CODES WHICH THE LEGISLATION ITSELF DOES NOT REQUIRE. WE BELIEVE THAT FOLLOWING THE RECENT ECJ JUDGMENT AGAINST THE GOVERNMENT OF BELGIUM THAT THIS APPROACH MAY BE UNLAWFUL.

2.2.1 EXAMPLES OF "GOLD PLATING" INCLUDE:

- THE REQUIREMENTS FOR DESCRIBING AN ITEM AS A 'FREE' ITEM;
- TAKING INTO ACCOUNT THE 'IMPRESSION' ON CONSUMERS INSTEAD OF ASSESSING WHETHER IT WOULD LEAD THE AVERAGE CONSUMER TO TAKE A TRANSACTIONAL DECISION HE WOULD NOT OTHERWISE HAVE TAKEN';
- THE NEED TO TAKE ACCOUNT OF THE PRICING PRACTICES GUIDE WHEN THE GUIDE IS QUITE EXPLICIT THAT THERE IS NO REQUIREMENT TO TAKE ACCOUNT OF ITS PROVISIONS;
- THE NEED FOR ANY CONDITIONS TO BE CLEAR TO ANY CONSUMER WHO SEES THE ADVERTISEMENT ONLY ONCE.

2.3 IN SAINSBURY'S VIEW THE REQUIREMENTS SET OUT IN THE CPRs ALONE SHOULD BE USED TO JUDGE WHETHER AN ADVERT IS MISLEADING AND THE CODES IN THEIR PRESENT FORMAT SHOULD FOCUS ON QUESTIONS OF DECENCY AND TASTE.

2.4 WE HAVE ADDITIONAL CONCERNS ABOUT THE FOLLOWING ELEMENTS OF THE CODE:

- DE FACTO COMPULSORY NATURE OF THE CODE
- LACK OF TRANSPARENCY IN INTERPRETING THE CODE
- LACK OF PROPER PROCEDURES FOR INVESTIGATING COMPLAINTS AND HEARING EVIDENCE
- LACK OF APPEALS PROCEDURES AGAINST DECISIONS ON COMPLAINTS

2.4.1 THE FACT THAT IN CERTAIN CIRCUMSTANCES THE "VOLUNTARY" CODES GO FURTHER THAN THE CPRs AND USE DIFFERENT TERMINOLOGY TO THAT LEGALLY DEFINED WHEN DESCRIBING THE FACTORS TO BE CONSIDERED WHEN JUDGING IF A PRACTICE IS MISLEADING CREATES A TENSION AND REPLACES THE PRINCIPLE BASED LEGISLATION WITH DE FACTO GOLD PLATING (SEE 2.1.1). THE DE FACTO ELEMENT IS INTRODUCED BECAUSE IT IS IMPOSSIBLE TO PLACE AN ADVERT UNLESS IT MEETS THE CRITERIA OF THE CODE AND IN THE CASE OF TV AND RADIO ADVERTISING IS PRE CLEARED AGAINST THE CODE.

2.4.2 OUR CONCERNS AROUND LACK OF TRANSPARENCY RELATE TO THE METHODOLOGY USED IN ASSESSING COMPLAINTS; THE LACK OF AN INDEPENDENT SYSTEM OF APPEALS; AND THE FACT THAT HELP NOTES ARE NOT CONSULTED ON EVEN THOUGH THEY ARE WE BELIEVE TAKEN INTO ACCOUNT WHEN ASSESSING ADVERTS AGAINST THE CODE. THIS IS HIGHLIGHTED BY THE FACT THAT SECTION 60 IN THE OLD CODE "HOW THE SYSTEM WORKS" DOES NOT APPEAR TO HAVE BEEN MAPPED ACROSS PROVIDING EVEN LESS TRANSPARENCY THAN WE CURRENTLY HAVE.

3.0 **SPECIFIC COMMENTS**

THE SPECIFIC COMMENTS WE HAVE MADE ARE IN RELATION TO THE CODE AS WRITTEN AND ARE IN NO WAY INTENDED TO WEAKEN THE COMMENTS MADE IN SECTION 2. WE HAVE NOT ATTEMPTED TO ANSWER EVERY SPECIFIC QUESTION RAISED IN THE CONSULTATIONS ON THE TWO CODES. WE HAVE ONLY COMMENTED WHERE A PARTICULAR ISSUE WITH THE WORDING OF A RULE.

3.1 CAP CODE

3.1.1 QUESTION 1

AS ALREADY ALLUDED TO BY OUR COMMENTS IN SECTION 2, THE INTRODUCTORY SECTION SHOULD IDENTIFY THE ROLE OF THE CODE WITHIN THE CPRs. PARTICULAR MENTION SHOULD BE MADE THAT THE DEFINITIVE REQUIREMENT, WITH RESPECT TO NOT MISLEADING A CONSUMER, IS TO ABIDE BY THE CPRs AND THAT THE CODE ITSELF IS VOLUNTARY.

THE RELEVANT 'SECTOR SPECIFIC RULES' MENTIONED IN 1.4 SHOULD BE DEFINED.

SECTION 1.6 REFERS TO MARKETING COMMUNICATIONS RESPECTING THE PRINCIPLES OF FAIR COMPETITION. THE CPRs REFER TO PROFESSIONAL DILIGENCE. IT WOULD BE HELPFUL IF THE CODE USED THE SAME LANGUAGE OR AT THE VERY LEAST USED WORDING WHICH REFLECTS THIS CHANGE.

THE CODE SHOULD SET OUT CLEAR TIME LIMITS FOR MAKING A COMPLAINT (AS DID THE PREVIOUS CODE); INVESTIGATING A COMPLAINT; MAKING AN ADJUDICATION; FOR AN APPEAL; AND FOR ANSWERING A QUERY FROM THE ASA. IN THE OLD CODE THERE WAS A TIME LIMIT OF 3 MONTHS FOR A COMPLAINT IN SECTION 60 – BUT THE MAPPING DOCUMENT SEEMS TO OMIT A NUMBER OF PROVISIONS OF THE OLD CODE AFTER RULE 57. (SEE 2.4.1)

3.1.2 QUESTION 3

NO, WHILST WE RECOGNISE THE INTENT BEHIND THIS RULE AND THE USE OF THE WORDS "ONLY ONCE"; WE BELIEVE THAT THIS RULE WILL BE IMPOSSIBLE TO ENFORCE AND GOES BEYOND THE PROVISIONS OF THE CPRs. THE CPRs APPLY TO THE AVERAGE CONSUMER DEFINED AS REASONABLY WELL INFORMED, OBSERVANT AND CIRCUMSPECT. IT MAY ALSO HAVE THE UNINTENDED CONSEQUENCE OF STIFLING 'TEASER' CAMPAIGNS WHERE DETAIL AND UNDERSTANDING IS BUILT UP OVER A PERIOD OF TIME.

HOW WOULD THE ASA JUDGE THIS WHEN HOLDING AN ADVERTISER TO ACCOUNT?

3.1.3 QUESTION 4

NO. THIS MAY BE APPROPRIATE FOR A 'HELP NOTE' BUT THIS IS AN ATTEMPT TO REINTERPRET RULES UNNECESSARILY. IT SHOULD BE POSSIBLE TO EXPLAIN THAT THE ADVERTISEMENT DOES NOT REFER TO NORMAL USE. THE BCAP CODE IN SECTION 3.4 ALLOWS FOR OBVIOUS EXAGGERATIONS ("PUFFERY").

3.1.4 QUESTION 5

NO. THE PROPOSAL IN 3.28.3 IS TOO PRESCRIPTIVE AND GOES BEYOND THE CPRs. 3.28 SHOULD ONLY APPLY TO 'INVITATIONS TO PURCHASE' AND THERE IS NO LEGAL REQUIREMENT TO STATE EACH AND EVERY AGE RESTRICTION IN TERMS OF AGE RELATED SALES. THIS COULD BE PARTICULARLY DIFFICULT WHERE THE AGE RESTRICTIONS VARY IN RELATION TO SPECIFIC VIDEO TITLES, FOR EXAMPLE.

3.1.5 QUESTION 9

THE NEW REVISED CODE OFTEN USES THE WORD 'MUST' INSTEAD OF 'SHOULD'. THIS SUGGESTS THAT THERE IS ONLY ONE ROUTE TO COMPLIANCE WHEN THE CPRs. AS MENTIONED PREVIOUSLY, THE CPRs IS PURPOSIVE LEGISLATION AND ADHERENCE TO IT

CAN BE ACHIEVED IN MORE THAN ONE WAY. CONSEQUENTLY, WE CAN SEE NO REASON FOR THIS CHANGE.

THE SUGGESTION THAT PRICE STATEMENTS SHOULD TAKE ACCOUNT OF THE PRICING PRACTICES GUIDE IS AN ATTEMPT TO MAKE LAW BY THE BACK DOOR. THE GUIDE ITSELF SAYS IT CAN BE IGNORED! THE SECTION SHOULD BE RE-PHRASED TO MAKE IT CLEAR IT IS ONE WAY OF SECURING COMPLIANCE.

THE PROPOSED WORDING IN THE 'PRINCIPLE' TO THE EFFECT THAT THE ASA WILL TAKE ACCOUNT OF THE IMPRESSION CREATED BY THE COMMUNICATION GOES WELL BEYOND THE CPRs WHICH REFER TO THE AVERAGE CONSUMER AND THE TRANSACTIONAL DECISION TEST. THE CODE SHOULD REFLECT THE CPRs.

RULE 3.3 SHOULD REFER TO THE AVERAGE CONSUMER.

RULE 3.20 SHOULD INCLUDE PACKAGING AS A REASONABLE CHARGE.

RULE 3.39 SHOULD MERELY REPEAT THE ADVICE IN THE PRICING PRACTICES GUIDE AND IT SHOULD CLEARLY BE ADVICE.

3.1.6 QUESTION 21

IT WOULD BE HELPFUL IF THERE WAS CLARITY ABOUT WHETHER OR NOT INFORMATION ON A WEBSITE COUNTS AS 'EASILY ACCESSIBLE.' WE BELIEVE IT SHOULD.

3.1.7 QUESTION 24

WE DO NOT UNDERSTAND THE LOGIC BEHIND THE DIFFERENCES IN VERIFICATION REQUIRED BETWEEN LOCAL AND NATIONAL COMPETITIONS. THE SAME RULES SHOULD APPLY TO BOTH.

3.1.8 QUESTION 25

IT IS NOT CLEAR WHAT IS MEANT, IN THIS INSTANCE, BY 'INDEPENDENT' JUDGE. THIS GOES BEYOND THE REQUIREMENTS OF THE GAMBLING ACT. THE JUDGE SHOULD BE INDEPENDENT OF THE COMPETITION NOT NECESSARILY THE PROMOTER. THERE ARE MANY CIRCUMSTANCES WHERE IT WOULD BE APPROPRIATE FOR THE PROMOTER TO BE THE JUDGE ESPECIALLY WHERE THE PROMOTER'S STAFF AND THEIR FAMILIES ARE NOT ALLOWED TO ENTER THE COMPETITION.

3.1.9 QUESTION 28

RULE 8.12 IS IMPRACTICAL. IT IS NOT POSSIBLE SIMPLY TO SWITCH THE PROMOTION TO ANOTHER PRODUCT GIVEN THAT WE WOULD HAVE TO HOLD MASSIVE ADDITIONAL STOCKS OF ALTERNATIVE PRODUCTS "JUST IN CASE". THAT WOULD MERELY CAUSE A PROBLEM FOR THE SUPPLY OF THAT PRODUCT OR IN THE EVENT IT WAS NOT NEEDED, HUGE WASTE ISSUES.

3.1.10 QUESTION 34

IT WOULD BE HELPFUL TO MAKE THIS SECTION TECHNOLOGY NEUTRAL GIVEN THE CONSTANT CHANGES TO, AND INNOVATION IN, TECHNOLOGY.

3.1.11 QUESTION 43

WHILST SECTION 13.10.1 IS A CORRECT COPY OUT OF THE RELEVANT SECTION ON THE NUTRITION AND HEALTH CLAIMS REGULATIONS. HOWEVER, AS THE FOOD STANDARDS AGENCY GUIDANCE STATES THE INTERPRETATION OF THIS PROVISION IS NOT THAT STRAIGHTFORWARD. WE BELIEVE THAT THE PROVISIONS IN THE CODES SHOULD REFLECT THAT REFERENCE TO TERMS SUCH AS 'RAPID' OR 'FAST' COULD IN CERTAIN CIRCUMSTANCES BE USED.

3.1.12 QUESTION 46

No.

15.1.1 - THE NUTRITION AND HEALTH CLAIMS REGULATION ALLOWS THE USE OF ANY CLAIM LIKELY TO HAVE THE SAME MEANING IN ADDITION TO THE WORDING SPECIFIED IN THE ANNEX TO THE LEGISLATION. WE BELIEVE IT IS IMPORTANT THAT THIS IS REFLECTED IN THE CAP CODE. PROVIDING A FEW EXAMPLES WOULD BE USEFUL, E.G. 'REDUCED ENERGY' OR EQUIVALENT WORDING SUCH AS 'REDUCED CALORIES' OR 'LESS CALORIES'.

THE CODE CANNOT GO BEYOND THE REQUIREMENTS IN THE NUTRITION AND HEALTH CLAIMS REGULATION. MARKETERS HAVE TO BE ABLE TO PROVE (THEY ARE NOT REQUIRED TO HOLD DOCUMENTARY EVIDENCE) THAT THEIR PRODUCT CONTAINS THE QUANTITY OF VITAMIN OR MINERAL OR SUBSTANCE SPECIFIED UNDER THE 'CONDITIONS OF USE' OF AN APPROVED ARTICLE 13 CLAIM.

3.1.13 QUESTION 52

NO. SEE OUR RESPONSE TO QUESTION 43.

3.1.14 QUESTION 55

MANY OF THE MANY OF THE PROVISION CONTAINED WITHIN THE LEGISLATION ARE STILL TO BE ENACTED AND ARE SUBJECT TO LONG TRANSITION PERIODS; SOME AS LONG AS 15 YEARS. THEREFORE IT IS IMPORTANT THAT THE CODES ARE KEPT UP-TO-DATE..

THE CODES USE A NUMBER OF TERMS WHICH HAVE A DEFINED MEANING SUCH AS FOOD PRODUCT, LOW ALCOHOL ETC., IT IS CLEAR THAT THE DEFINITIONS HAVE TO BE THE SAME AS THOSE IN THE NUTRITION AND HEALTH CLAIMS REGULATION.

WHILST THE CODE EXPLAINS THE NUTRITION CLAIMS THAT CAN BE USED AND THE CONDITIONS FOR USING THESE CLAIMS, THE TREATMENT OF HEALTH CLAIMS IS MUCH SPARSER. PARAGRAPH 15.1.1 STATES THAT AUTHORISED CLAIMS STATES THAT AUTHORISED CLAIMS IN THE COMMUNITY REGISTER MAY BE USED IN MARKETING COMMUNICATIONS. WHILST THIS IS TRUE IT IS ONLY PART OF THE STORY FOR EXAMPLE, ARTICLE 10.3 HEALTH CLAIMS DO NOT NEED TO BE AUTHORISED OR INCLUDED IN THE REGISTER. THE CODE SHOULD CLEARLY COVER THE PROVISIONS UNDER NUTRITION AND HEALTH CLAIMS REGULATION APPLICABLE TO ALL THE DIFFERENT TYPES OF HEALTH CLAIMS. THE CODE SHOULD CLEARLY COVER THE PROVISIONS UNDER NUTRITION AND HEALTH CLAIMS REGULATION APPLICABLE TO ALL THE DIFFERENT TYPES OF HEALTH CLAIMS.

3.1.15 QUESTION 57

ALTHOUGH THE NUTRITION AND HEALTH CLAIMS LEGISLATION IS A COMPLEX PIECE OF LEGISLATION WHICH CAME IN TO FORCE IN JULY 2007 MANY OF THE PROVISION

CONTAINED WITHIN THE LEGISLATION ARE STILL TO BE ENACTED AND ARE SUBJECT TO LONG TRANSITION PERIODS; SOME AS LONG AS 15 YEARS. WE BELIEVE THAT SHOULD BE ACCURATELY REFLECTED IN THE CODE.

ADDITIONALLY THE FOOD STANDARDS AGENCY AND INDEED THE COMMISSION ARE REVISING THEIR GUIDANCE AS THE PRACTICALITIES OF THE LEGISLATION BECOME APPARENT.

THE CODE REFERS TO FOOD AND SOFT DRINKS WHILE THE NUTRITION AND HEALTH CLAIMS REGULATION APPLIES TO FOOD AND ALL DRINKS.

SOME OF THE RULES IN 15.11 DO NOT FOLLOW OUR UNDERSTANDING OF THE LEGAL REQUIREMENTS. IT IS SUGGESTED THIS SECTION BE WRITTEN IN A PRINCIPLE BASED MANNER OR REMOVED COMPLETELY ON THE GROUNDS THE AREA IT SEEKS TO CONTROL IS COVERED BY THE EXISTING REGULATORY FRAMEWORK AND THIS IS AN AREA OF RAPID CHANGE.

3.2 BCAP CODE

IT IS SLIGHTLY CONCERNING THAT THE BCAP CODE IS CONSIDERABLY LONGER THAN THE CAP CODE. AS ALREADY STATED IN 2.1 AND 2.1.1 WE BELIEVE THAT THE BCAP CODE SHOULD BE BROUGHT TOTALLY INTO LINE WITH AND INCLUDED IN A SINGLE CAP CODE. WHERE THERE ARE CLEAR REASONS FOR ANY DIFFERENCES BASED ON THE NATURE OF THE MEDIA THERE SHOULD BE SPECIFIC REFERENCES IN THE CAP TEXT. FOR THIS REASON MANY OF THE COMMENTS WE HAVE MADE IN SECTION 3.1 ARE RELEVANT HERE ESPECIALLY THOSE RELATING TO THE CPRs, THE VOLUNTARY PRICING PRACTICES GUIDE AND HEALTH CLAIMS.

3.2.1 QUESTION 6

IT IS DIFFICULT TO UNDERSTAND THE DISTINCTION BEING MADE BETWEEN TV AND RADIO HERE. SURELY THE SAME PRINCIPLE SHOULD APPLY TO BOTH MEDIA.

3.2.2 QUESTION 8

THIS SEEMS A SENSIBLE INCLUSION AND SHOULD ALSO APPLY TO THE CAP CODE. SECTION 3.4 IS AT ODDS WITH THE MUCH STRICTER PROVISIONS WE OBJECTED TO IN SECTION 3.11 (SEE RESPONSE TO QUESTION 4 ABOVE). HOWEVER WE WOULD BE CONCERNED ABOUT THE INTERPRETATION OF "PERCEPTION" AND HOW IN PRACTICE THIS WOULD BE JUDGED.

3.2.3 QUESTION 32

YES. WHILE WE AGREE WITH THE NEW PROVISIONS SET OUT IN 13.2 NAMELY, "ADVERTISEMENT MUST AVOID ANYTHING LIKELY TO ENCOURAGE POOR NUTRITIONAL HABITS OR AN UNHEALTHY LIFESTYLE, ESPECIALLY IN CHILDREN". THE REMIT OF THIS PROVISION SHOULD BE MADE CLEAR. IT SHOULD CLARIFY THAT THE PROMOTION OF AN INDULGENT PRODUCT WHEN THE ADVERT DOES NOT ENCOURAGE PEOPLE TO REGULARLY EAT THE PRODUCT OR TO CONSUME IT AS A SUBSTITUTE FOR A MEAL, WILL NOT BE CAUGHT UNDER THIS PROVISIONS.

2.2.3 QUESTION 80

THE WORDING USED FOR 13.5.1 IS NOT AS CLEAR AS IT COULD BE. WHILST THE PROVISIONS HAVE BEEN CORRECTLY IMPLEMENTED WE WOULD SUGGEST THAT THE SENTENCE: "COMPARATIVE NUTRITION CLAIMS MAY ONLY BE MADE BETWEEN FOODS OF THE SAME CATEGORY", IS CLEARER.

2.2.4 QUESTION 84

QUESTION 84 ASKS IF WE AGREE THAT BCAP HAS ACCURATELY REFLECTED THE RELEVANT PROVISIONS ON REGULATION 1924/2006. THE FOLLOWING COMMENTS REFER TO SECTION 13.4 OF THE CODE AND ITS SUB SECTIONS.

WHILST THE CODE EXPLAINS THE NUTRITION CLAIMS THAT CAN BE USED AND THE CONDITIONS FOR USING THESE CLAIMS, LITTLE MENTIONED IS GIVEN TO HEALTH CLAIMS. THIS PARAGRAPH STATES THAT AUTHORISED CLAIMS IN THE COMMUNITY REGISTER MAY BE USED IN MARKETING COMMUNICATIONS. WHILST THIS IS TRUE IT IS ONLY PART OF THE STORY FOR EXAMPLE, ARTICLE 10.3 HEALTH CLAIMS DO NOT NEED TO BE AUTHORISED OR INCLUDED IN THE REGISTER. THE CODE SHOULD CLEARLY COVER THE PROVISIONS UNDER NUTRITION AND HEALTH CLAIMS REGULATION APPLICABLE TO ALL THE DIFFERENT TYPES OF HEALTH CLAIMS.

13.4.2 WE BELIEVE THAT THE REQUIREMENTS UNDER THIS PARAGRAPH COULD BE INTERPRETED TO GO BEYOND THE REQUIREMENTS IN THE NUTRITION AND HEALTH CLAIMS REGULATION. MARKETERS HAVE TO BE ABLE TO PROVE, NOT HOLD DOCUMENTARY EVIDENCE THAT THEIR PRODUCT CONTAINS THE QUANTITY OF VITAMIN OR MINERAL OR SUBSTANCE SPECIFIED UNDER THE 'CONDITIONS OF USE' OF AN APPROVED ARTICLE 13 CLAIM. THEY DO NOT HAVE TO PROVIDE EVIDENCE OF A HEALTH RELATIONSHIP ALREADY GIVEN A POSITIVE OPINION BY EFSA AND APPROVED BY STANDING COMMITTEE.

FOR NUTRITION CLAIMS, THE MARKETERS HAVE TO PROVE THAT THEIR PRODUCT CONTAINS THE QUANTITY REQUIRED UNDER THE CRITERIA LAID DOWN IN ANNEX I OF NUTRITION AND HEALTH CLAIMS REGULATION FOR THAT NUTRIENT OR SUBSTANCE WHEN MAKING THAT CLAIM.

13.11 THIS PARAGRAPH GOES BEYOND THE PROVISIONS OF THE EU NUTRITION AND HEALTH CLAIMS REGULATION. THE WAY TO ESTABLISH WHETHER A CLAIM CAN BE MADE ON A PRODUCT IS BY ASSESSING IT AGAINST THE NUTRIENT PROFILE SET FOR THIS PURPOSE AND WHICH IS CURRENTLY UNDER DEVELOPMENT. THE OFCOM MODEL WHICH

CLASSIFIES FOOD AS HFSS AND NON-HFSS SHOULD NOT BE USED FOR THE PURPOSE OF CLAIMS.

THE CODE REFERS TO FOOD AND SOFT DRINKS WHILE THE NUTRITION AND HEALTH CLAIMS REGULATION APPLIES TO FOOD AND ALL DRINKS.

General Comments

Samaritans' mission is to be available 24 hours a day to provide confidential emotional support for people who are experiencing feelings of distress or despair, including those which may lead to suicide. Through the delivery of our helpline service, we work towards a society in which fewer people die by suicide, where people are able to explore their feelings and in which people are able to acknowledge and respect the feelings of others. Samaritans is a non-religious, non-partisan organisation representing 201 volunteer-led autonomous federated branches across the UK and the Republic of Ireland.

Samaritans welcomes the opportunity to respond to this review. As part of our work to reduce suicide, we have committed to working more closely with regulators, particularly those responsible for media issues, to address our concerns relating to the representation of suicide in the public domain. Our role in supporting the community of Bridgend during the recent suspected suicide cluster has given us direct experience of how influential communications activities can be in shaping the perceptions, attitudes and even the actions of the public. Samaritans' concern is that inappropriate representation of suicide can lead vulnerable people to imitate what they read or see, resulting in 'copycat suicides'.

Samaritans believes that the evidence of the impact of the media on vulnerable people is well established and irrefutable. In 1981, German television screened a six-part series called *Death of a Student*. At the start of each episode, a scene of a young man killing himself on a railway line was shown. During the series, deaths recorded by this method increased by 175%. However, the media can also play a positive role in suicide prevention. A study in Vienna, tracking suicides on the underground system, showed that, once media guidelines were implemented, these suicides reduced significantly. Further examples of the impact of the media can be sourced and examined in detail from the list in the reference section of Samaritans' Media Guidelines:

http://www.samaritans.org/media_centre/media_guidelines.aspx

Therefore we are taking this opportunity to share our expertise and experience on the role of the media in suicide prevention. Our intention is to inform the ASA's CAP code committee on best practice with the aim of reducing future deaths by suicide. In the last six months we have become aware of some advertisements that we feel have failed to recognise this best practice. We recognise that we may not have taken adequate steps in the past to extend our expertise on suicide prevention to the advertising industry and, by responding to this consultation, we are acting to address this. We look to encourage a debate on these issues and are happy to discuss this consultation with representatives of the ASA, the CAP Code team and relevant representatives of the industry.

Specific Comments

Section 4: Harm and Offence

Question 11

- i. No comments
- ii. No comments
- iii. Do you have any other comments on this section?

Based on research into the media's influence on suicide prevention (http://www.samaritans.org/media_centre/media_guidelines.aspx), Samaritans would

suggest the following points are included within the code. They have been written to reflect the language of the existing code.

1. Marketing Communications and Advertisements must not portray suicidal acts either through the use of graphic images (photographic or illustrative) which provide methodology or detail on how to complete the suicide act.
2. Marketers and Advertisers must take particular care not to glorify or normalise suicide and its effects, such as representing a positive dimension because of the death.
3. Marketers and Advertisers must pay attention to the context (including time and location) of the communication, and particularly to its likely impact on distressed or vulnerable people.

We believe these points condense the key factors that can lead to imitative suicidal behaviour and urge the ASA CAP code review team to recognise them within the code.

THE SCOTCH WHISKY ASSOCIATION RESPONSE TO THE CAP CODE REVIEW CONSULTATION ON THE PROPOSED CAP CODE

1. INTRODUCTION

THE SCOTCH WHISKY ASSOCIATION (SWA) IS THE INDUSTRY'S REPRESENTATIVE ORGANISATION. ITS AIM IS TO PROTECT, PROMOTE AND GROW SCOTCH WHISKY WORLDWIDE.

OUR 54 MEMBER COMPANIES INCLUDE DISTILLERS, BLENDEES, BOTTLERS, AND BROKERS OF SCOTCH WHISKY, REPRESENTING AROUND 90% OF THE INDUSTRY.

THE SCOTCH WHISKY ASSOCIATION HAS DEVELOPED ITS OWN CODE OF PRACTICE ON THE RESPONSIBLE MARKETING AND PROMOTION OF SCOTCH WHISKY, DRAWN UP BY THE INDUSTRY IN 2005 AND REVISED IN 2009. THE PRINCIPLES OF THE SWA CODE COVER ALL COMMERCIAL ACTIVITIES IN RELATION TO SCOTCH WHISKY AND APPLICATION OF THE CODE IS A MANDATORY CONDITION OF MEMBERSHIP FOR MEMBER COMPANIES ACROSS THE EU.

WE FULLY SUPPORT THE CAP SELF-REGULATORY APPROACH AND FULLY ENDORSE AND SUBSCRIBE TO THE RULES AND PRINCIPLES OF THE CAP/BCAP CODES.

WE WELCOME THE OPPORTUNITY TO RESPOND TO THIS CONSULTATION. AS AN ALCOHOL PRODUCER TRADE ASSOCIATION WE HAVE LIMITED OUR COMMENTS TO THE QUESTIONS RAISED IN THE CONSULTATION ON THE CODE RULES IN RELATION TO ALCOHOL.

2. RESPONSE TO CONSULTATION QUESTIONS

QUESTION 62

YES WE SUPPORT THE INCLUSION OF RULE 18.9 IN THE CODE.

IN THE SWA CODE OF PRACTICE WE CLEARLY STATE THAT UNDUE EMPHASIS SHOULD NOT BE PLACED ON HIGH ALCOHOL CONTENT AS A PRINCIPAL BASIS OF APPEAL TO THE CONSUMER. EQUALLY WE DO NOT

THINK IT APPROPRIATE TO PROMOTE A 'LOWER STRENGTH' PRODUCT ON THE BASIS OF STRENGTH FOR THE REASONS SET OUT IN PARAGRAPH 18.13 OF THE CONSULTATION DOCUMENT.

QUESTION 63

WE AGREE THAT CAP RULE 56.15 SHOULD BE REMOVED FROM THE PRESENT CODE.

WE ALSO AGREE THAT MARKETING COMMUNICATIONS FOR LOW ALCOHOL DRINKS (CONTAINING BETWEEN 0.5% AND 1.2% ALCOHOL) SHOULD BE SUBJECT TO THE ALCOHOL RULES, WITH THE EXCEPTION THAT LOW-ALCOHOL DRINKS MAY BE PRESENTED AS PREFERABLE BECAUSE OF THEIR LOW STRENGTH.

QUESTION 64

WE AGREE THAT RULE 18.12 WITH THE PROPOSED WORDING AS SET OUT BE INCLUDED IN THE CODE.

QUESTION 65

YES, WE AGREE THE CAP RULES AS SET OUT IN THE PROPOSED ALCOHOL SECTION ARE UNDERSTANDABLE AND NECESSARY.

WE HAVE NO OTHER COMMENT TO MAKE.

ADDENDUM QUESTION 75: SCHARR REVIEW

YES WE AGREE THE EVIDENCE CONTAINED IN THE SCHARR REVIEW DOES NOT MERIT A CHANGE TO CAP'S ALCOHOL ADVERTISING CONTENT OR SCHEDULING RULES.

BCAP/CAP CODE REVIEW CONSULTATION ADDENDUM– SCHARR REVIEW

I WRITE ON BEHALF OF SCOTTISH GOVERNMENT IN RESPONSE TO THE ABOVE CONSULTATION. PLEASE ACCEPT MY APOLOGIES FOR THE SLIGHT DELAY IN RESPONDING.

AS YOU MAY BE AWARE SCOTTISH GOVERNMENT PUBLISHED “CHANGING SCOTLAND’S RELATIONSHIP WITH ALCOHOL: A FRAMEWORK FOR ACTION” IN MARCH 2009. IN THE FRAMEWORK WE MADE CLEAR OUR CONCERN TO REDUCE THE IMPACT OF ALCOHOL ADVERTISING, ON YOUNG PEOPLE IN PARTICULAR. WE EXPRESSED CONCERN THAT YOUNG PEOPLE ARE EXPOSED DAILY TO ADVERTISING, WHETHER OR NOT IT IS SPECIFICALLY TARGETED AT THEM.

WE CONSIDER THAT A PRECAUTIONARY APPROACH TO THE PROTECTION OF YOUNG PEOPLE IN RELATION TO ALCOHOL ADVERTISING IS JUSTIFIED GIVEN THAT EVIDENCE IS MOUNTING IN RELATION TO:

- THE CONSIDERABLE HARMS WHICH EXCESSIVE ALCOHOL CONSUMPTION CAN CAUSE;
- INDICATIONS THAT EARLY INTRODUCTION TO ALCOHOL CAN LEAD TO MISUSE IN LATER LIFE; AND
- THE INFLUENCE WHICH EXPOSURE TO ALCOHOL ADVERTISING HAS ON YOUNG PEOPLE’S CONSUMPTION.

IN REGARD TO THE LAST POINT IT IS DISAPPOINTING THAT BCAP/CAP ARE SO DISMISSIVE OF THE FINDINGS OF THE SHEFFIELD REVIEW, GIVEN IT IDENTIFIED THAT “*THERE IS CONSISTENT EVIDENCE FROM LONGITUDINAL STUDIES THAT EXPOSURE TO TV AND OTHER BROADCAST MEDIA IS ASSOCIATED WITH INCEPTION OF AND LEVELS OF DRINKING [BY YOUNG PEOPLE]*”.

IN ADDITION YOUR REVIEWS MAKE NO MENTION OF THE RECENT REVIEW BY THE EUROPEAN ALCOHOL & HEALTH FORUM’S SCIENCE GROUP STUDY WHICH CONCLUDED: “*THE FINDINGS OF THE REVIEW ARE CLEAR, NAMELY THAT COMMERCIAL COMMUNICATIONS INCREASE THE LIKELIHOOD THAT ADOLESCENTS WILL START TO USE ALCOHOL AND WILL DRINK MORE IF THEY ARE ALREADY USING ALCOHOL.*”

WE CONSIDER THAT GIVEN THE LATEST EVIDENCE THE CURRENT APPROACH OUTLINED BY BCAP AND CAP FALLS SHORT OF THE REQUIREMENT UNDER

THE COMMUNICATIONS ACT 2003, SECTION 319 (2) (A) TO ENSURE THAT “PERSONS UNDER THE AGE OF EIGHTEEN ARE PROTECTED”. THE BCAP/CAP CODES CLAIMS TO “PREVENT APPEAL TO YOUNG PERSONS”, HOWEVER, WE CONSIDER THAT IN PRACTICE THE CODE SIMPLY LIMITS EXPLICIT APPEAL TO YOUNG PEOPLE RATHER THAN PREVENTING APPEAL TO THEM.

AS INDICATED SCOTTISH GOVERNMENT CONSIDERS THAT A PRECAUTIONARY APPROACH SHOULD BE ADOPTED, BOTH IN RELATION TO THE CONTENT OF ADVERTS, BUT ALSO CRUCIALLY TO THE OVERALL EXPOSURE OF YOUNG PEOPLE.

SCOTTISH GOVERNMENT RECOGNISES THAT THE LEGISLATIVE REGIME AROUND ALCOHOL ADVERTISING IS COMPLEX AND THAT MUCH OF IT IS RESERVED. HOWEVER, WE URGE UK GOVERNMENT TO DEVELOP A UK APPROACH TO ADVERTISING WHICH UNEQUIVOCALLY PROTECTS CHILDREN FROM EXPOSURE TO ALCOHOL ADVERTISING, WHETHER ON TELEVISION, ON LINE OR IN THE CINEMA. WE CONTINUE TO BELIEVE THAT ONE WAY OF ACHIEVING THIS IS TO APPLY A BAN ON TELEVISION ADVERTISING BEFORE THE 9PM WATERSHED.

WE WOULD ALSO WELCOME THE DEVELOPMENT OF A CO-REGULATORY APPROACH - WORKING WITH THE INDUSTRY, UK GOVERNMENT AND ADVERTISING REGULATORY BODIES – WHICH COULD ADDRESS ON LINE ADVERTISING EFFECTIVELY.

1.0 ABOUT SCOTTISH HEALTH ACTION ON ALCOHOL PROBLEMS

1.1 SCOTTISH HEALTH ACTION ON ALCOHOL PROBLEMS (SHAAP) WAS ESTABLISHED IN 2006 BY THE SCOTTISH MEDICAL ROYAL COLLEGES AND FACULTIES TO PROVIDE AN AUTHORITATIVE MEDICAL VOICE ON REDUCING THE NEGATIVE IMPACT OF ALCOHOL ON THE HEALTH AND WELL-BEING OF THE PEOPLE OF SCOTLAND. SHAAP IS A MEMBER OF THE ALCOHOL HEALTH ALLIANCE UK, AN ALLIANCE OF MEDICAL BODIES, PATIENT REPRESENTATIVES AND ALCOHOL HEALTH CAMPAIGNERS WORKING TOGETHER TO RAISE AWARENESS OF RISING LEVELS OF ALCOHOL HEALTH HARM IN THE UK.

2.0 SHAAP'S RESPONSE TO THE CAP/BCAP CODE REVIEW CONSULTATION RELATES TO THOSE PROVISIONS OF THE CODES THAT COVER THE ADVERTISING OF ALCOHOLIC DRINKS.

3.0 SHAAP'S POSITION ON THE CAP/BCAP CODES COVERING THE ADVERTISEMENT OF ALCOHOLIC DRINKS

3.1 SHAAP IS NOT RESPONDING TO SPECIFIC QUESTIONS IN THE CONSULTATION CONCERNING THE RULES GOVERNING ALCOHOL ADVERTISING. OUR GENERAL VIEW IS THAT RULES COVERING ALCOHOL ADVERTISING SHOULD NOT BE A MATTER FOR INDUSTRY SELF-REGULATION.

3.2 WE ARE CONCERNED THAT THE WAY THE CODES ARE DRAWN UP IN THE CURRENT SYSTEM IS NOT SUFFICIENTLY PROTECTIVE OF PUBLIC HEALTH. A CONSULTATION PROCESS THAT INVOLVES INDUSTRY AND HEALTH BODIES, ORGANISATIONS WITH FUNDAMENTALLY INCOMPATIBLE AIMS AND OBJECTIVES, CAN ONLY RESULT IN COMPROMISED STANDARDS, EVEN IF THOSE STANDARDS ARE THEN RIGOROUSLY ENFORCED.

3.3 WE ARE CONCERNED THAT AS A CONSEQUENCE OF INDUSTRY SELF-REGULATION, ATTENTION IS DIVERTED FROM PUBLIC DEBATE ABOUT WHETHER IT SERVES THE PUBLIC INTEREST TO ALLOW THE PROMOTION OF PRODUCTS THAT HAVE A SUBSTANTIAL NEGATIVE IMPACT ON PUBLIC HEALTH IN THE UK. ALCOHOL IS NO ORDINARY COMMODITY. IT IS A DEPENDENCE INDUCING PSYCHOACTIVE DRUG FOR WHICH THERE IS NO 'SAFE' DOSE. IT IS LINKED TO MORE THAN 60 TYPES OF DISEASE, DISABILITY AND INJURY. ALCOHOL HAS BEEN RANKED THE 6TH MOST HARMFUL DRUG IN THE UK, AHEAD OF TOBACCO, CANNABIS AND CLASS A DRUGS SUCH AS ECSTASY AND LSD.ⁱ

3.4 THERE IS A GROWING BODY EVIDENCE LINKING ALCOHOL ADVERTISING AND CONSUMPTION. A RECENT SYSTEMATIC REVIEW OF LONGITUDINAL STUDIES OF THE IMPACT OF ALCOHOL ADVERTISING ON ADOLESCENTS FOUND CONSISTENT EVIDENCE TO LINK ALCOHOL ADVERTISING WITH THE UPTAKE OF DRINKING AMONG NON-DRINKING YOUNG PEOPLE, AND INCREASED CONSUMPTION AMONG THEIR DRINKING PEERS.ⁱⁱ GIVEN THE SUBSTANTIAL BURDEN OF HARM LINKED TO ALCOHOL USE IN THE UK, PARTICULARLY IN SCOTLAND WHERE THE DEATH RATE FROM ALCOHOLIC LIVER CIRRHOSISⁱⁱⁱ IS NOW ONE OF THE HIGHEST IN THE WORLD,

SHAAP IS INCREASINGLY MINDED TO TAKE THE VIEW THAT A COMPLETE BAN ON ALCOHOL ADVERTISING WILL OFFER THE BEST PROTECTION FOR PUBLIC HEALTH.

CAP CODE REVIEW CONSULTATION: RESPONSE FROM STUC

Question 9

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on misleading are necessary and easily understandable? If your answer is no, please explain why.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration?

III) DO YOU HAVE OTHER COMMENTS ON THIS SECTION?

Response to Question 9

THE STUC ASKS THAT CONSIDERATION BE GIVEN TO THE INTRODUCTION OF A NEW RULE (TO BE NUMBERED AS APPROPRIATE) WHICH WOULD ENSURE THAT PREGNANCY COUNSELLING SERVICES DO NOT MISLEAD VULNERABLE WOMEN BY OMITTING TO MENTION IF ABORTION SERVICES ARE NOT OFFERED.

WOMEN FACING DIFFICULT DECISIONS WITH REGARD TO CONTINUING WITH A PREGNANCY ARE VULNERABLE AND WE BELIEVE THAT AGENCIES SHOULD BE COMPLETELY CLEAR IN THE ADVERTISING OF THEIR SERVICES.

On this issue, the Report of the House of Commons Science and Technology Committee on the Scientific Developments Relating to the Abortion Act 1967 has recommended: *'to ensure that no patients are misled, we ... recommend that the Government consider ways of ensuring that all those claiming to offer pregnancy counselling services ... indicate clearly in their advertising that they do not support referral for abortion.'*

The BCAP code Review proposes a new Rule (11.11) covering this point for broadcast advertising. We strongly believe that this should be extended to be clearly included in the revised CAP Code, therefore ensuring that printed advertisements, posters, websites and all advertisements on non-broadcast media will meet the same criteria.

Section 10: Database practice

Collection of data from children

Question 32

Given CAP's policy consideration, do you agree that rules 10.15 and 10.16 should be included in the Code? If your answer is no, please explain why.

WE WOULD RAISE THE FOLLOWING ISSUES WITH THE PROPOSED RULES 10.15 AND 10.16:

1. We would question why the age stated in 10.16 is 16 years old whereas in 10.15 it is 12 years of age. We believe that there should be greater consistency across the rules, therefore making the ages the same.
2. If you cannot collect personal information about other people from children under 16 as stated in 10.16, how do you propose collecting information from a parent/guardian to obtain consent? There ought to be clarification here that the collection of data required for consent is not being included in the prohibition set out in 10.16.

The Committee on Advertising Practice's Code Review Consultation Response by the Children's Food Campaign

INTRODUCTION

WE ARE PLEASED TO SUBMIT A RESPONSE TO THIS CONSULTATION ON BEHALF OF THE CHILDREN'S FOOD CAMPAIGN WHICH IS CO-ORDINATED BY SUSTAIN: THE ALLIANCE FOR BETTER FOOD AND FARMING (FOR MORE INFORMATION SEE WWW.CHILDRENSFOODCAMPAIGN.ORG.UK).

THE CHILDREN'S FOOD CAMPAIGN WANTS TO IMPROVE YOUNG PEOPLE'S HEALTH AND WELL-BEING THROUGH BETTER FOOD – AND FOOD TEACHING – IN SCHOOLS AND BY PROTECTING CHILDREN FROM JUNK FOOD MARKETING. WE ARE SUPPORTED BY OVER 300 ORGANISATIONS AND 12,000 MEMBERS OF THE PUBLIC.

We understand that this is a wide ranging consultation, but this submission limits its comments to the issues of children and food, which are the remit of our work. A draft of this response has not been circulated to supporting organisations and individuals, because the points we make are established campaign policy

Section 22: Other comments

Question 74

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

FOOD MARKETING TO CHILDREN

INTERNATIONAL RESEARCH SHOWS THAT FOOD IS AMONG THE PRODUCTS MOST MARKETED AT CHILDREN¹⁰ AND, FOR MANY CHILDREN, FOOD PRODUCTS WILL BE AMONG THE FIRST THINGS THAT THEY PURCHASE INDEPENDENTLY OF THEIR PARENTS. MARKETING FOOD AND DRINKS TO CHILDREN IS WORTH HUNDREDS OF MILLIONS OF POUNDS EVERY YEAR. THE VAST MAJORITY OF THIS MONEY PROMOTES UNHEALTHY FOODS: THAT IS, FOODS WHICH ARE HIGH IN FAT, SUGAR AND/OR SALT (HFSS)¹¹, WITH THE DEPARTMENT OF HEALTH ESTIMATING THAT THE COMMERCIAL SECTOR SPENDS £335M EVERY YEAR PROMOTING CONFECTIONERY, SNACKS, FAST FOOD AND SUGARY DRINKS¹².

THE EFFECTS OF MARKETING OF JUNK FOOD ON CHILDREN'S DIETARY HEALTH ARE EXTREMELY WORRYING. SOME 86 PERCENT OF CHILDREN EAT TOO MUCH SUGAR; 92 PERCENT EAT TOO MUCH SATURATED FAT¹³. IN ENGLAND THE AVERAGE FRUIT AND VEGETABLE

¹⁰ COON, K.A., TUCKER, K.L. (2002) TELEVISION AND CHILDREN'S CONSUMPTION PATTERNS. A REVIEW OF THE LITERATURE. *MINERVA PEDIATR* 2002; 54: 423-436

¹¹ OFCOM (2006) *TELEVISION ADVERTISING OF FOOD AND DRINK PRODUCTS TO CHILDREN - OPTIONS FOR NEW RESTRICTIONS*. LONDON: OFCOM

¹² CHANGE4LIFE (2009) *PARTNER FAQs*. WWW.NHS.UK/CHANGE4LIFE/PAGES/PARTNERFAQ.ASPX

¹³ OFFICE OF NATIONAL STATISTICS (2000) *NATIONAL DIET AND NUTRITION SURVEY: YOUNG PEOPLE AGED 4 TO 18 YEARS*. VOLUME 1: REPORT OF THE DIET AND NUTRITION SURVEY. NORWICH: OFFICE OF NATIONAL STATISTICS

INTAKE FOR GIRLS AGED 5-15 IS 2.6 PORTIONS AND FOR BOYS 2.5 PORTIONS¹⁴, WHICH COMPARES POORLY TO THE WORLD HEALTH ORGANISATION RECOMMENDATION OF AT LEAST FIVE PORTIONS A DAY. WHILST THERE ARE MANY FACTORS INFLUENCING DIET, RESEARCH INDICATES THAT FOOD PROMOTIONS PLAY A SIGNIFICANT PART IN INFLUENCING FOOD PREFERENCES, PURCHASING AND CONSUMPTION.¹⁵

THE HEALTH CONSEQUENCES OF POOR DIETARY HEALTH ARE DISTRESSING AND ARE ASSOCIATED WITH:

- **SOME CANCERS**, INCLUDING THREE OF THE MOST COMMON CANCERS: BREAST CANCER, BOWEL CANCER, AND PROSTATE CANCER.
- **TYPE 2 DIABETES**. THIS USED TO BE KNOWN AS ADULT ONSET DIABETES BUT DUE TO THE RISE OF CHILDHOOD OBESITY IT IS NOW ALSO DIAGNOSED IN CHILDREN AND ADOLESCENTS¹⁶.
- **HEART DISEASE**
- **HIGH BLOOD PRESSURE/ STROKES**
- **DENTAL PROBLEMS**
- **MENTAL HEALTH PROBLEMS**. RESEARCH HAS SUGGESTED A LINK BETWEEN MENTAL ILL HEALTH AND SUGAR, FAT AND FOOD ADDITIVES IN ONE'S DIET¹⁷.

THE CHILDREN'S FOOD CAMPAIGN IS CONCERNED ABOUT THE NEGATIVE IMPACT OF UNHEALTHY FOOD MARKETING ON CHILDREN'S HEALTH. WE BELIEVE THAT THE MESSAGES WHICH CHILDREN RECEIVE FROM THE FOOD INDUSTRY SERIOUSLY UNDERMINE THE MESSAGES ABOUT HEALTHY EATING WHICH PARENTS, TEACHERS AND THE GOVERNMENT TRY TO CONVEY TO THEM. THE BARRAGE OF ADVERTISEMENTS FOR JUNK FOOD ACROSS ALL DIFFERENT MEDIA IS DAMAGING CHILDREN'S HEALTH.

BETTER REGULATION

CURRENTLY IN THE UK, CHILDREN UNDER THE AGE OF 16 ARE PROTECTED FROM SOME UNHEALTHY FOOD MARKETING THROUGH REGULATION INTRODUCED BY OFCOM IN APRIL 2007, WHICH RESTRICTS ADVERTISING OF UNHEALTHY FOOD PRODUCTS DURING CHILDREN'S TELEVISION PROGRAMMING. IN ACCORDANCE WITH THIS REGULATION, THE BROADCAST COMMITTEE OF PRACTICE (BCAP) CODE HAS BEEN AMENDED APPROPRIATELY. HOWEVER, THERE IS CURRENTLY NO LEGISLATION TO PROTECT CHILDREN FROM UNHEALTHY FOOD MARKETING THROUGH MEDIA OTHER THAN TELEVISION, INCLUDING THOSE COVERED BY THE COMMITTEE OF ADVERTISING PRACTICE (CAP) CODE.

SINCE THERE IS NO EVIDENCE TO SUGGEST THAT NON-BROADCAST MARKETING WHICH TARGETS CHILDREN IS ANY LESS EFFECTIVE THAN BROADCAST MARKETING, STANDARDS COVERING NON-BROADCAST MARKETING AIMED AT CHILDREN SHOULD BE COMMENSURATE TO, AND CONSISTENT WITH, REGULATION OF ADVERTISING OF UNHEALTHY FOODS ON TELEVISION.

¹⁴ DEVERIL, C. (2002) FRUIT AND VEGETABLE CONSUMPTION. *HEALTH SURVEY FOR ENGLAND 2002*. LONDON: DEPARTMENT OF HEALTH

¹⁵ HASTINGS, G., STEAD, M., McDERMOTT, L., FORSYTH, A., MACKINTOSH, A.M., RAYNER, M., GODFREY, C., CARAHER, M., ANGUS, K. (2003) *SYSTEMATIC REVIEW OF RESEARCH ON THE EFFECTS OF FOOD PROMOTION ON CHILDREN*. LONDON: FOOD STANDARD'S AGENCY

¹⁶ REVILL, J. (2003) UK FACES CHILD DIABETES EPIDEMIC. LONDON: *THE OBSERVER*. 8 JUNE 2003

¹⁷ VAN DE WEYER, C. (2005) *CHANGING DIETS, CHANGING MINDS: HOW FOOD AFFECTS MENTAL HEALTH AND BEHAVIOUR*. LONDON: SUSTAIN

THEREFORE, THE FIRST TWO OF THE THREE AMENDMENTS THAT WE PROPOSE WOULD BRING THE PARTS OF THE CAP CODE WHICH COVER NON-BROADCAST MARKETING OF FOOD TARGETING CHILDREN BETTER INTO LINE WITH REGULATION COVERING TELEVISION MARKETING OF FOOD TO CHILDREN.

BOTH THESE AMENDMENTS TO THE CODE WOULD CONSTITUTE BETTER REGULATION, SINCE THEY SIMPLIFY THE RULES COVERING FOOD MARKETING TO CHILDREN, MAKING THEM MORE MEDIA NEUTRAL AND SIMPLER TO COMPLY WITH. AS WELL AS BEING CONSISTENT IN PROTECTING CHILDREN FROM JUNK FOOD MARKETING AND ITS NEGATIVE CONSEQUENCES, MEDIA NEUTRAL RULES ARE AN IMPORTANT ASPECT OF GOOD REGULATION IN TODAY'S WORLD OF COMPLEX COMMUNICATION, AND SUCH CONSISTENCY IS EXPECTED BY THE PUBLIC, INCLUDING PARENTS. MORE COMPLEX REGULATION, WHICH DIFFERENTIATES BETWEEN DIFFERENT TYPES OF MEDIA, CAN BE A BURDEN ON BUSINESS, PARTICULARLY SMALL ENTERPRISES, AND THUS RUNS THE RISK OF BEING ANTI-COMPETITIVE.

INDEED, ACCORDING TO THE ADVERTISING STANDARDS AUTHORITY (ASA)'S OWN WEBSITE: "CAP AND BCAP ARE WORKING TO ENSURE MORE CONSISTENCY BETWEEN THE NON-BROADCAST AND BROADCAST MEDIA WHENEVER THAT IS DESIRABLE."¹⁸ FOR THE REASONS OUTLINED ABOVE, WE BELIEVE SUCH MEDIA NEUTRALITY IS DESIRABLE, AND AN IMPORTANT STEP TOWARDS PROMOTING CHILDREN'S HEALTH.

¹⁸ ASA (2005) *FREE, UNLIMITED AND MEDIA NEUTRAL*.
WWW.ASA.ORG.UK/CAP/NEWS_EVENTS/NEWS/2005/FREE+UNLIMITED+AND+MEDIA+NEUTRAL.HTM

PROPOSED AMENDMENTS

IN RESPONSE TO THE ABOVE CONSULTATION, THE CHILDREN'S FOOD CAMPAIGN PROPOSES THE FOLLOWING AMENDMENTS TO THE CAP CODE.

1. ADOPT A DEFINITION OF "CHILDREN" CONSISTENT WITH UK LAW AND OTHER MARKETING REGULATION

THE PARTS OF THE CURRENT CAP CODE THAT REFER TO THE MARKETING OF FOOD TO CHILDREN TEND TO APPLY ONLY TO YOUNG CHILDREN, FOR EXAMPLE:

"EXCEPT THOSE FOR FRESH FRUIT OR FRESH VEGETABLES, FOOD OR DRINK ADVERTISEMENTS THAT ARE TARGETED DIRECTLY AT *PRE-SCHOOL OR PRIMARY SCHOOL CHILDREN* THROUGH THEIR CONTENT SHOULD NOT INCLUDE PROMOTIONAL OFFERS."¹⁹ (EMPHASIS ADDED)

"EXCEPT THOSE FOR FRESH FRUIT OR FRESH VEGETABLES, FOOD OR DRINK ADVERTISEMENTS THAT ARE TARGETED DIRECTLY AT *PRE-SCHOOL OR PRIMARY SCHOOL CHILDREN* THROUGH THEIR CONTENT SHOULD NOT INCLUDE LICENSED CHARACTERS OR CELEBRITIES POPULAR WITH CHILDREN."²⁰ (EMPHASIS ADDED)

HOWEVER, THERE IS GOOD EVIDENCE THAT OLDER CHILDREN ARE ALSO INFLUENCED BY, AND THEREFORE NEED PROTECTION FROM, MARKETING OF UNHEALTHY FOODS²¹. WHILE THE WAY IN WHICH CHILDREN UNDERSTAND MARKETING MAY CHANGE OVER TIME, ITS INFLUENCE DOES NOT. OLDER CHILDREN ALSO TEND TO HAVE POORER DIETS THAN YOUNG CHILDREN AND ARE MORE AT RISK OF OBESITY, MAKING IT EVEN MORE IMPORTANT THAT THEY ARE PROTECTED.

UK LAW DEFINES A CHILD IN A VARIETY OF WAYS, RANGING BETWEEN UNDER 16 AND UNDER 18 YEARS OF AGE, WHILE THE UN CONVENTION ON THE RIGHTS ON THE CHILD DEFINES CHILDREN AS 18 YEARS AND UNDER.

OFCOM HAS ACCEPTED THAT RESTRICTIONS ON TELEVISION FOOD ADVERTISING SHOULD APPLY TO PEOPLE UNDER 16 YEARS OF AGE, AND SINCE UNDER 16S WHO ARE SUSCEPTIBLE TO THE POWER OF BROADCAST ADVERTISING ARE NO LESS VULNERABLE WHERE A DIFFERENT MEDIUM IS USED, IT WOULD BE CONSISTENT, AND APPROPRIATE FOR THE CAP CODE TO ADOPT A DEFINITION OF "CHILDREN" AS THOSE UNDER THE AGE OF 16 THROUGHOUT.

2. ADOPT THE NUTRIENT PROFILING MODEL CURRENTLY USED BY OFCOM TO DETERMINE WHICH PRODUCTS THE CODE SHOULD APPLY TO

ADOPTING THE NUTRIENT PROFILING MODEL DEVELOPED BY THE FOOD STANDARDS AGENCY (FSA) FOR USE BY OFCOM TO REGULATE THE ADVERTISING AND PROMOTION OF FOODS TO CHILDREN WOULD ALSO HELP TO ENSURE THAT CAP REGULATION OF NON-BROADCAST FOOD MARKETING TO CHILDREN IS CONSISTENT WITH THE EXISTING REGULATION COVERING BROADCAST ADVERTISING, AND WOULD HENCE PROMOTE MEDIA NEUTRALITY.

¹⁹ CAP CODE SECTION 47.8. RETAINED AS SECTION 15.15 IN PROPOSED REVISION OF THE CAP CODE.

²⁰ CAP CODE SECTION 47.9. RETAINED AS SECTION 15.16 IN PROPOSED REVISION OF THE CAP CODE.

²¹ HASTINGS, G., STEAD, M., McDERMOTT, L., FORSYTH, A., MACKINTOSH, A.M., RAYNER, M., GODFREY, C., CARAHER, M., ANGUS, K. (2003) *SYSTEMATIC REVIEW OF RESEARCH ON THE EFFECTS OF FOOD PROMOTION ON CHILDREN*. LONDON: FOOD STANDARD'S AGENCY; LIVINGSTONE, S. (2006) *NEW RESEARCH ON ADVERTISING FOODS TO CHILDREN – AN UPDATED REVIEW OF THE LITERATURE*. LONDON: OFCOM; INSTITUTE OF MEDICINE (2006) *FOOD MARKETING TO CHILDREN AND YOUTH: THREAT OR OPPORTUNITY?* WASHINGTON, D.C.: THE NATIONAL ACADEMIES PRESS

THE NUTRIENT PROFILING MODEL IS SCIENTIFICALLY ROBUST AND HAS RECENTLY BEEN REVIEWED BY THE FSA AND FOUND TO BE FIT FOR ITS INTENDED PURPOSE. THE ADOPTION OF THIS MODEL WOULD CONSTITUTE BETTER REGULATION SINCE IT IDENTIFIES “HEALTHY” PRODUCTS, TO WHICH NO SPECIAL STANDARDS OR RESTRICTIONS SHOULD APPLY; AND “LESS HEALTHY” PRODUCTS, MARKETING OF WHICH CHILDREN SHOULD BE PROTECTED FROM THROUGH THE CAP CODE AND/OR OTHER REGULATION.

ADOPTING THIS MODEL WOULD ALLOW THE SKILLS AND POWER OF MARKETERS TO BE USED FOR GOOD, PROMOTING THE CONSUMPTION OF HEALTHIER PRODUCTS TO CHILDREN. IT IS PERVERSE FOR THE MARKETING OF HEALTHY FOODS TO BE RESTRICTED, AND WE WOULD HOPE THAT THERE WOULD BE CONSENSUS AMONG THE ADVERTISING INDUSTRY THAT THIS IS THE CASE.

SUCH AN AMENDMENT WOULD REDUCE THE REGULATORY BURDEN ON BUSINESS BECAUSE THE MARKETING TO CHILDREN OF FOODS DEEMED “HEALTHY” BY THE MODEL WOULD NOT BE SUBJECT TO REGULATION AND WOULD ALLOW ADVERTISERS FREELY TO USE ADVERTISING OF HEALTHIER PRODUCTS TO INCREASE THEIR BRAND PROFILE.

3. INCLUDE EQUITY BRAND CHARACTERS ALONGSIDE LICENSED CHARACTERS AND CELEBRITIES IN THE RESTRICTIONS ON THEIR USE

WHILE THE CURRENT CAP CODE RECOGNISES THAT LICENSED CARTOON AND OTHER CHILD-FRIENDLY CHARACTERS SHOULD NOT BE USED TO PROMOTE PRODUCTS OTHER THAN FRUIT AND VEGETABLES, THE EXCLUSION OF EQUITY BRAND CHARACTERS – CHARACTERS CREATED BY ADVERTISERS TO PROMOTE A BRAND OR PRODUCT – FROM SECTION 47.9 OF THE CURRENT CAP CODE (AND SECTION 15.16 OF THE PROPOSED REVISED CODE) CONSTITUTES A CONSIDERABLE WEAKNESS.

SUCH CHARACTERS ARE USED TO MAKE PRODUCTS APPEALING TO CHILDREN IN THE SAME WAY THAT LICENSED CHARACTERS AND CELEBRITIES ARE, AND ARE RARELY USED TO PROMOTE HEALTHY PRODUCTS: A SURVEY BY CONSUMER GROUP, WHICH?, SHOWED THAT OF 19 OF THE MOST POPULAR EQUITY BRAND PRODUCTS, NONE PROMOTED ONLY HEALTHY PRODUCTS²².

AS FAR AS WE ARE AWARE, THERE IS NO PUBLISHED EVIDENCE TO SUGGEST THAT EQUITY BRAND CHARACTERS ARE ANY LESS EFFECTIVE THAN LICENSED CHARACTERS IN PROMOTING PRODUCTS TO CHILDREN, AND THEREFORE THEY SHOULD BE TREATED IN THE SAME WAY. PARENTS EXPECT THAT THEIR CHILDREN WILL BE PROTECTED FROM MARKETERS USING CHARACTERS TO PROMOTE UNHEALTHY PRODUCTS TO THEIR CHILDREN, AND IT IS INCONSISTENT AND IRRESPONSIBLE FOR EQUITY BRAND CHARACTERS TO BE EXCLUDED FROM THIS CLAUSE IN THE CODE.

INCLUSION OF EQUITY BRAND CHARACTERS IN THE NEW SECTION 15.16, AS WELL AS EXTENDING THIS CLAUSE TO APPLY TO ALL CHILDREN UNDER THE AGE OF 16 (SEE ABOVE) WOULD CLOSE THE CURRENT LOOPHOLE AND BETTER PROTECT CHILDREN FROM UNHEALTHY FOOD MARKETING.

CONCLUSION

GIVEN THE POOR DIET OF THE UK’S CHILDREN, AND RISING RATES OF OBESITY AND DIET-RELATED ILL HEALTH, IT IS VITAL THAT CHILDREN ARE PROTECTED FROM MARKETING FOR

²² WHICH? (2008) *THE CARTOON VILLAINS ARE STILL GETTING AWAY WITH IT*. LONDON: WHICH?

UNHEALTHY FOOD PRODUCTS, REGARDLESS OF THE MEDIUM USED. THE CAP SHOULD MAKE THE FOLLOWING AMENDMENTS TO THE CODE IN ORDER TO BETTER PROTECT CHILDREN FROM UNHEALTHY FOOD MARKETING:

- ADOPT A DEFINITION OF “CHILDREN” AT THOSE UNDER THE AGE OF 16 THROUGHOUT THE CODE;
- INCORPORATE THE NUTRIENT PROFILING MODEL USED BY OFCOM TO DETERMINE WHICH PRODUCTS THE CODE’S RESTRICTIONS SHOULD APPLY TO;
- INCLUDE EQUITY BRAND CHARACTERS ALONGSIDE LICENSED CHARACTERS AND CELEBRITIES IN THE RESTRICTIONS ON THEIR USE.

SUCH CHANGES WOULD ALSO CONTRIBUTE TO MEDIA NEUTRALITY, BETTER ACHIEVING CONSISTENCY BETWEEN THE CURRENT REGULATIONS FOR TELEVISION ADVERTISING OF FOOD TO CHILDREN, CONSTITUTING BETTER REGULATION, AND REDUCING THE REGULATORY BURDEN ON BUSINESS.

CHILDREN’S FOOD CAMPAIGN

JUNE 2009

CONTACT: CHRISTINE HAIGH (CHRISTINE@SUSTAINWEB.ORG)

TESCO WELCOMES THE OPPORTUNITY TO RESPOND TO THE CODE REVIEW CONSULTATION.

AS A RESPONSIBLE RETAILER WE HAVE ROBUST PROCESSES AND PROCEDURES IN PLACE TO ENSURE THAT ALL OF OUR ADVERTISING IS IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS AS WELL AS THE EXISTING ADVERTISING CODES. IN THE INTERESTS OF OUR CUSTOMERS, WE APPLY THE HIGHEST STANDARDS TO ENSURE THAT OUR ADVERTISING DOES NOT MISLEAD OR OFFEND. TO THIS END WE ENGAGE ACTIVELY AND CONSTRUCTIVELY WITH BOTH THE CAP AND THE ASA.

THE ROLE OF CAP AND ASA

WE AGREE THAT FOR THE BENEFIT OF CONSUMERS AND COMPETITORS IT IS VITAL THAT A CLEAR AND COHERENT SET OF RULES BE IN PLACE TO ENSURE THAT ALL ADVERTISERS ACT LEGALLY AND RESPONSIBLY. WE ARE ALSO WHOLLY SUPPORTIVE OF AN ENFORCEMENT SYSTEM WHICH IS TARGETED, PROPORTIONATE, EFFECTIVE, ACCOUNTABLE AND TRANSPARENT.

HOWEVER, WE HAVE A NUMBER OF FUNDAMENTAL CONCERNS WITH THE CAP EXISTING AND PROPOSED RULES AND THE ASA ENFORCEMENT SYSTEM. IN OUR VIEW THESE CONCERNS NEED TO BE ADDRESSED IN ORDER TO ENSURE THE FUTURE EFFECTIVENESS OF THE SELF-REGULATORY SYSTEM. OUR CONCERNS ARE SET OUT BELOW WHILST OUR DETAILED COMMENTS ON THE PROPOSED CODE ARE SET OUT IN THE ATTACHED ANNEX.

CAP AND BCAP (THE “CAP CODES”)

IN RECENT YEARS THERE HAS BEEN SIGNIFICANT DEVELOPMENT IN THE AREA OF CONSUMER PROTECTION INCLUDING RULES ON DATA PROTECTION, DISTANCE SELLING AND, MOST RECENTLY, THE CONSUMER PROTECTION FROM UNFAIR TRADING AND BUSINESS PROTECTION FROM MISLEADING MARKETING REGULATIONS. THE EXISTING LEGISLATION PROVIDES A CLEAR FRAMEWORK FOR ADVERTISERS TO FOLLOW. THE EXTENT OF EXISTING LEGISLATION AND THE NUMBER OF ENFORCEMENT BODIES AVAILABLE IS REFLECTED IN THE CONSULTATION ITSELF WITH NEARLY ALL SECTIONS STATING THE NUMEROUS LAWS THAT ALREADY EXIST IN THE RELEVANT AREA.

GIVEN THE WEALTH OF EXISTING LEGISLATION, THE ADEQUACY OF WHICH DOES NOT APPEAR TO BE IN QUESTION, IT IS OUR VIEW THAT IT IS COMPLETELY UNNECESSARY, DISPROPORTIONATE AND UNDULY BURDENSOME FOR THE CAP TO OVERLAY THAT LEGISLATION WITH A ‘MANDATORY’ CODE. TO DO SO PRESENTS TWO FUNDAMENTAL ISSUES.

FIRSTLY, CONTRARY TO HAMPTON PRINCIPLES, ADVERTISERS ARE FACED WITH HAVING TO INTERPRET AND COMPLY WITH TWO SETS OF RULES – THE LAW AND THE CODES. THIS IS BECAUSE THE CAP CODES DO NOT IN ALL CASES ACCURATELY REFLECT THE EXACT PROVISIONS OF THE LEGISLATION, ALBEIT THAT THE CODES INTEND TO REFLECT THE LAW. ONCE SUCH EXAMPLE IS THAT THE CONCEPTS OF ‘TRANSACTIONAL DECISIONS’ AND THE ‘AVERAGE CONSUMER’ ARE NOT EFFECTIVELY INCORPORATED INTO THE RULES ON MISLEADING ADVERTISING.

SECONDLY, THE CAP CODE OFTEN GOES BEYOND WHAT IS REQUIRED IN THE LEGISLATION, E.G. THE REQUIREMENT THAT CONSUMERS SHOULD BE ABLE TO UNDERSTAND ALL OF THE TERMS AND CONDITIONS BY READING AN ADVERT ONCE. AS WELL AS NOT BEING COMPLIANT WITH HAMPTON PRINCIPLES, THE CODES ARE CONTRARY TO THE REQUIREMENTS OF MAXIMUM HARMONISATION AS IMPOSED BY THE EU. IT IS NOT, WE SUBMIT, FOR THE CAP TO PLACE A MORE DETAILED INTERPRETATION OF THE LAW INTO A ‘MANDATORY’ CODE – THIS IS THE PRESERVE OF THE LEGISLATURE AND THEREAFTER THE COURT.

WE ACCEPT THAT THERE IS A ROLE FOR CAP RULES TO PREVENT CONSUMER HARM, BUT THESE SHOULD BE RESTRICTED TO AREAS WHERE NO LEGISLATION CURRENTLY EXISTS, E.G. MORAL OR SOCIAL HARM, TASTE AND DECENCY.

WE ACCEPT THAT THERE ARE BENEFITS TO A SELF-REGULATORY ENFORCEMENT SYSTEM WHICH CAN SWIFTLY AND EFFICIENTLY DEALS WITH ADVERTISING COMPLAINTS. HOWEVER, IT IS UNNECESSARY FOR THE CAP CODES TO OVERLAY THE EXISTING LEGISLATION IN ORDER TO ACHIEVE THIS. IN OUR VIEW, THERE IS A VIABLE SOLUTION TO RESOLVE THESE CONCERNS, WHICH WE IMPORE THE CAP TO CONSIDER:

- IN THOSE AREAS WHERE LEGISLATION EXISTS ALREADY, THE CAP CODES BE RECAST AS VOLUNTARY GUIDANCE WHICH IS TAKEN INTO CONSIDERATION BY THE ASA, THE OFT AND, ULTIMATELY, THE COURT WHEN DETERMINING IF AN ADVERTISEMENT IS IN BREACH OF THE LEGISLATION. WE ARE CONFIDENT THAT RESPONSIBLE ADVERTISERS WOULD SIGN UP TO AND COMPLY WITH A VOLUNTARY CODE PROVIDED THEY ARE ABLE TO PLAY A MORE ACTIVE PART IN DRAFTING THE CODES AND DETERMINING THE ENFORCEMENT MECHANISMS.
- IT WILL, HOWEVER, BE VITAL THAT THE CAP CODES ACCURATELY REFLECT THE WORDING AND TERMINOLOGY OF THE LEGISLATION AND DO NOT GO BEYOND IT.
- THIS APPROACH WOULD STRIKE THE CORRECT BALANCE BETWEEN ENSURING CONSUMER PROTECTION WHILST REMOVING MUCH OF THE EXISTING UNNECESSARY BURDEN ON ADVERTISERS. THIS WOULD ALSO PRESERVE A SELF-REGULATORY SCHEME. HOWEVER, PLEASE SEE OUR COMMENTS BELOW REGARDING THE NEED TO HAVE AN ADEQUATE ENFORCEMENT SYSTEM IN PLACE.

IN THE EVENT THAT THE CAP DOES NOT AGREE THAT THE CODES SHOULD BE IMPLEMENTED AS VOLUNTARY, PERSUASIVE GUIDANCE, IN THE INTERESTS OF NOT USURPING THE POWER OF THE LEGISLATURE AND THE COURTS THE CAP SHOULD ENSURE THAT THE EXISTING LEGISLATION IS, IN EFFECT, COPIED OUT INTO THE CODES SO THAT THE LAW IS ACCURATELY REFLECTED AND NOT EXTENDED. THIS WILL ALSO ENSURE COMPLIANCE WITH THE RULES ON MAXIMUM HARMONISATION AND PROVIDE THAT ADVERTISERS DO NOT HAVE TO COMPLY WITH DIFFERENT RULES DEPENDING ON THE ENFORCEMENT AUTHORITY.

ASA ENFORCEMENT

WE NOTE THAT THE ASA IS CONSIDERED TO BE 'ESTABLISHED MEANS' FOR ENFORCEMENT OF ADVERTISING MATTERS. WE RECOGNISE THAT IN APPROPRIATE CIRCUMSTANCES THERE IS A ROLE FOR AN ENFORCEMENT BODY WHICH IS A SWIFT, COST EFFICIENT AND EFFECTIVE MEANS OF RESOLVING DISPUTES AND COMPLAINTS WITHOUT RECOURSE TO THE COURTS. HOWEVER, SUCH A SYSTEM MUST HAVE A MINIMUM SET OF STANDARDS. WE NOTE IT IS CAP AND ASA'S INTENTION THAT THE EXISTING SYSTEM IS TARGETED, PROPORTIONATE, EFFECTIVE, ACCOUNTABLE AND TRANSPARENT. WE AGREE THAT THESE PRINCIPLES ARE THE CORNERSTONE OF GOOD, HAMPTON COMPLIANT ENFORCEMENT. HOWEVER, BASED ON OUR SIGNIFICANT EXPERIENCE WE ARE REGRETFULLY OF THE VIEW THAT THE EXISTING ASA ENFORCEMENT SYSTEM FALLS SIGNIFICANTLY SHORT OF THESE REQUIREMENTS BOTH IN THE UNDERLYING PROCEDURES AND THEIR IMPLEMENTATION IN PRACTICE.

IN PARTICULAR, WE ARE CONCERNED THAT:

- THERE IS NO REASONABLE, MINIMUM STANDARD FOR ACCEPTING COMPLAINTS

OTHER REGULATORS ARE COMPELLED BY LEGISLATION OR CODES TO ENSURE THAT ANY INVESTIGATION AND ENFORCEMENT ACTION IS IN THE PUBLIC INTEREST AND THERE ARE ADEQUATE GROUNDS FOR PROCEEDING, E.G. 'REASONABLE GROUNDS FOR SUSPECTING' A BREACH OF THE RELEVANT RULES.

THE ASA SYSTEM DOES NOT INCLUDE SUCH A REQUIREMENT AND WE STRONGLY BELIEVE THERE NEEDS TO BE A MINIMUM STANDARD BEFORE A COMPLAINT IS INVESTIGATED. IT IS UNDULY BURDENSOME, DISPROPORTIONATE AND UNJUSTIFIABLE TO PURSUE A COMPLAINT WITHOUT ANY PROPER EVIDENCE OF A BREACH OF THE CODE. FOR EXAMPLE, THE ASA SHOULD NOT PRESUME THAT THE CODES HAVE BEEN BREACHED WHERE ONE CUSTOMER IS UNABLE TO OBTAIN A PROMOTED PRODUCT. THERE ARE NUMEROUS REASONS WHICH MAY EXPLAIN THIS INCLUDING, IN SOME CASES, ERROR ON THE PART OF THE CUSTOMER. EQUALLY, IN COMPLAINTS ALLEGING THAT CONSUMERS HAVE BEEN MISLED BY AN ADVERT, WE SUBMIT THAT THE NUMBER OF COMPLAINTS IS HIGHLY RELEVANT IN THIS CONTEXT AND THAT ONE COMPLAINT WOULD BE UNLIKELY TO PROVIDE SUFFICIENT EVIDENCE UNDER THE CONSUMER PROTECTION REGULATIONS THAT THE 'AVERAGE CONSUMER' HAS BEEN MISLED.

IT IS DISPROPORTIONATE AND CONTRARY TO HAMPTON PRINCIPLES TO REQUIRE AN ADVERTISER TO LAUNCH AN INVESTIGATION IN SUCH CIRCUMSTANCES. WE NOTE THAT THE ASA MAY TREAT SUCH CASES AS 'INFORMAL' BUT FROM THE RESPONSIBLE ADVERTISER PERSPECTIVE, WHERE THE OUTCOME OF THE ASA'S DECISION IS IMPORTANT, INFORMAL AND FORMAL INVESTIGATIONS ARE TREATED WITH SIMILAR GRAVITY.

- THERE IS A PRESUMPTION OF GUILT WITH THE ONUS ON THE ADVERTISER TO PROVE INNOCENCE

LINKED TO THERE BEING NO ADEQUATE STANDARD FOR ACCEPTING COMPLAINTS, THE ASA SYSTEM IS PREDICATED ON THE BASIS THAT ADVERTS ARE PRESUMED TO BE IN BREACH UNLESS THE ADVERTISER CAN PROVE OTHERWISE. WHILST WE ACCEPT THERE IS A REQUIREMENT THAT DOCUMENTARY EVIDENCE BE HELD TO PROVE CLAIMS, IT IS CONTRARY TO PREVAILING LEGAL STANDARDS THAT THE ASA DOES NOT HAVE TO MAKE A CASE AGAINST WHICH THE ADVERTISER IS ENTITLED TO DEFEND ITSELF. THIS IS UNDULY BURDENSOME, DOES NOT ACCORD WITH THE ENFORCEMENT SYSTEMS EMBEDDED IN THE APPLICABLE LEGISLATION AND SIMPLY CANNOT BE SUPPORTED

IN PRACTICE, COMPLAINTS ARE OFTEN SO VAGUELY CHARACTERISED THAT THE ADVERTISER IS LEFT HAVING TO PRESUME WHAT COMPLAINT IS BEING LEVELLED AT IT. EQUALLY IT IS NOT UNCOMMON FOR COMPLAINTS TO BE RAISED YET NO ADVERT CAN BE PRODUCED BY THE COMPLAINANT AND THE ADVERTISER IS REQUESTED TO CONDUCT A SEARCH FOR MATERIAL WHICH MAY OR MAY NOT EXIST. WE ARE HAPPY IN ALL CIRCUMSTANCES TO ASSIST THE ASA IN ANY INVESTIGATION, BUT IT IS INHERENT IN ANY ENFORCEMENT SYSTEM THAT THE ENFORCER IS ABLE TO MAKE ITS CASE AGAINST THE ADVERTISER RATHER THAN RELYING ON A SYSTEM OF SELF INCRIMINATION. EQUALLY, IT IS VITALLY IMPORTANT THAT THE ADVERTISER KNOWS THE PRECISE SCOPE AND DETAIL OF THE CASE AGAINST IT IN ORDER FOR THERE TO BE A "LEVEL PLAYING FIELD".

- THE SYSTEM IS ENTIRELY LACKING IN TRANSPARENCY

UNLIKE THE COURT SYSTEM OR INVESTIGATIONS CONDUCTED BY OTHER REGULATORS THERE IS A FUNDAMENTAL LACK OF ABILITY TO MAKE FORMAL, ORAL REPRESENTATIONS TO THE ASA SECRETARIAT. WE HAVE ALSO SUGGESTED ON A NUMBER OF OCCASIONS THAT INFORMAL DISCUSSION OF THE COMPLAINT MIGHT BE A BETTER WAY FORWARD BUT ONLY ONE MEETING HAS BEEN AGREED TO SO FAR ADVERTISERS ARE ALSO DEPRIVED OF THE OPPORTUNITY TO PRESENT THEIR OWN REPRESENTATIONS TO THE ASA COUNCIL OR TO

KNOW WHAT WAS CONSIDERED AND DISCUSSED DURING THE ADJUDICATION PROCEDURE. WHILST WE ACCEPT THAT THERE ARE SUFFICIENT OPPORTUNITIES TO PROVIDE WRITTEN SUBMISSIONS, THIS IS OFTEN INADEQUATE AS

- i) THE ABILITY TO EXPLAIN ISSUES, PARTICULARLY COMPLEX MATTERS SUCH AS PRICING DATA, CAN BE MUCH MORE EFFECTIVELY AND ACCURATELY EXPLAINED IN PERSON
- ii) WRITTEN SUBMISSIONS DO NOT AFFORD THE BEST OPPORTUNITY TO ASK QUESTIONS (BY THE ASA) AND PROVIDE RESPONSE (BY THE ADVERTISER)
- iii) WITHOUT A FACE TO FACE MEETING IT CAN BE DIFFICULT TO ASSESS WHETHER COMPLEX ISSUES HAVE BEEN FULLY UNDERSTOOD – ANY MISUNDERSTANDINGS ARE MORE LIKELY TO COME OUT DURING VERBAL COMMUNICATION
- iv) LACK OF UNDERSTANDING MIGHT MEAN THAT UNDUE WEIGHT IS BEING PLACED ON MATTERS WHICH ARE LESS RELEVANT. THIS COULD BE RESOLVED DURING ORAL REPRESENTATIONS WITH THE OPPORTUNITY TO PROVIDE EXPLANATION TAILORED TO THE IDENTIFIED MISUNDERSTANDINGS.
- v) THE ADVERTISER ACCUSED OF BREACHING THE CODE HAS NO VISIBILITY OF THE DECISION MAKING PROCESS INCLUDING THE TONE AND EXTENT TO WHICH THE ADVERTISER’S ARGUMENTS IN DEFENCE ARE ADEQUATELY MADE OR WHETHER THE ASA’S CASE IS PRESENTED MORE FAVOURABLY OR STRONGLY.

THE CAP/ASA IS EFFECTIVELY THE LEGISLATOR, INVESTIGATOR, JUDGE AND ENFORCER OF THE CODES, AN UNHEALTHY AND UNACCEPTABLE MIX FOR A MANDATORY CODE SYSTEM. THERE IS A CLEAR NEED FOR SEPARATION OF POWERS.

WE APPRECIATE THAT THERE IS A COST ASSOCIATED WITH ALLOWING BUSINESSES TO RESPOND ORALLY. HOWEVER, IN COMPLEX CASES, ASSESSING ‘GUILT’ ON A PAPER BASIS ALONE IS AN INADEQUATE MECHANISM. THIS IS PARTICULARLY SO GIVEN THE POTENTIAL SEVERITY AN UPHELD COMPLAINT CAN HAVE ON THE ADVERTISER IN PR TERMS AND THE ABILITY TO ADVERTISE, ESPECIALLY WHERE THE ADVERTISER IS LIKELY TO HAVE INVESTED SIGNIFICANTLY IN AN ADVERTISING CAMPAIGN. TO THIS END, WE SUBMIT IT IS VITAL THAT ORAL HEARINGS BE PERMITTED IN COMPLEX CASES AND GREATER TRANSPARENCY BE PERMITTED IN ALL CASES GENERALLY. THIS WOULD PERMIT EFFICIENT REMOVAL OF ANY ASPECTS OF CONFUSION, ALLOW QUESTIONS TO BE ANSWERED AND OVERALL RAISE THE INVESTIGATING TEAMS’ KNOWLEDGE OF THE ISSUES AT HAND.

BASED ON EXPERIENCE, THE ASA IS OFTEN UNWILLING TO ENGAGE WITH ADVERTISERS IN THIS WAY DESPITE THE FACT THAT THIS OPPORTUNITY IS AFFORDED IN THE COURTS AND WITH OTHER ENFORCEMENT AREAS.

- THE CODE SHOULD BE INTERPRETED USING PROPER LEGAL PRINCIPLES TO ENSURE CERTAINTY

IN CIRCUMSTANCES WHERE THE ASA IS INTERPRETING THOSE PARTS OF THE CAP CODE THAT ARE INTENDED TO REFLECT EXISTING LEGISLATION, STAFF SHOULD BE ADEQUATELY TRAINED IN BASIC LEGAL PRINCIPLES E.G. APPLYING DEFINITIONS AND TURNING TO COMMON MEANINGS IN THE ABSENCE OF SUCH. WHILST THE ASA IS UNABLE TO TAKE ON THE ROLE OF A COURT OF LAW, A SELF-REGULATORY SYSTEM SHOULD BE IMPLEMENTED IN A WAY THAT ENSURES THE OUTCOME IS LIKELY TO BE BROADLY COMPARABLE WITH THAT OF A COURT. THIS ENSURES CERTAINTY FOR ADVERTISERS AND PREVENTS UNNECESSARY BURDENS WHICH ARISE IF A CAMPAIGN IS PREPARED WITH ALL DUE REGARD TO THE LAW BUT THE ASA TAKES ITS OWN, INCONSISTENT OR NARROWER VIEW.

WE SUBMIT THAT, BASED ON THE CURRENT SYSTEM OF DECISION MAKING, IT IS NEARLY IMPOSSIBLE TO PREDICT WITH ANY CERTAINTY HOW THE ASA MIGHT VIEW A PARTICULAR ADVERT, DESPITE CLOSE REGARD TO THE LEGISLATION AND CODE. THIS FUNDAMENTAL LACK OF CERTAINTY IMPOSES EXCESSIVE BURDENS ON ADVERTISERS. WE ACCEPT THAT THE COPY ADVICE TEAM HAS A ROLE TO PLAY, BUT IN ALL PRACTICALITY, THIS IS NOT A REALISTIC OPTION FOR AN ADVERTISER THAT PRODUCES A SIGNIFICANT LEVEL OF ADVERTISING TO VERY TIGHT DEADLINES. AND, IN ANY EVENT, AN ADEQUATE SYSTEM SHOULD BE SUFFICIENTLY CLEAR THAT THERE IS NO NEED FOR RECOURSE TO COPY ADVICE.

ON A RELATED NOTE, WHILST OUR EXPERIENCE OF WORKING WITH CLEARCAST AND RACC IS VERY POSITIVE, WE ARE DISAPPOINTED THAT PRE-CLEARANCE DOES NOT PROVIDE THE SAME ASSURANCE OF LIKELY (ALTHOUGH NOT GUARANTEED) COMPLIANCE WITH THE CODE THAT COPY ADVICE PROVIDES. THIS IS CONFUSING WHEN CLEARCAST AND RACC ARE ENFORCING THE SAME LEGISLATION AND CODES. THERE APPEARS TO BE NO LOGICAL REASON FOR THIS DISTINCTION IN APPROACH AND WE REQUEST THAT THIS DISCREPANCY BE RECTIFIED SO THAT GREATER COMFORT CAN BE OBTAINED FROM BROADCAST CLEARANCE.

- NEW ISSUES AND MATTERS OF IMPORTANCE SHOULD BE MANAGED OUTSIDE OF RULINGS

THERE IS AN INHERENT BIAS AGAINST LARGE ADVERTISERS WHEN THE ASA DETERMINES THAT A NEW ISSUE HAS COME TO LIGHT (E.G. TECHNOLOGICAL DEVELOPMENTS WHICH REQUIRE A NEW TERM OR CONDITION TO BE ADDED) OR MAKING CLEAR THAT A PARTICULAR ISSUE IS IMPORTANT E.G. WHAT GOES BEYOND ACCEPTABLE IN A TASTE AND DECENCY CONTEXT. WE ACCEPT THAT IT IS IMPORTANT FOR THESE ISSUES TO BE CLARIFIED SO THAT ADVERTISERS COMPLY FOR FUTURE ADS. HOWEVER, THESE DECISIONS SHOULD NOT BE TAKEN IN THE CONTEXT OF AN INDIVIDUAL ADVERTISER COMPLAINT, PARTICULARLY WHERE THE ADVERTISER WOULD HAVE HAD LITTLE REALISTIC OPPORTUNITY TO KNOW IN ADVANCE THAT THEIR ADVERT WOULD HAVE BEEN NON-COMPLIANT. THE EXISTING ASA APPROACH IS FUNDAMENTALLY DETRIMENTAL TO THOSE ADVERTISERS THAT PRODUCE LARGE VOLUMES OF ADVERTISING AND WHOSE ADS ARE THEREFORE MORE LIKELY TO RAISE THOSE NEW AND IMPORTANT ISSUES FIRST.

- THERE IS NO ADEQUATE MECHANISM FOR APPEAL

THERE NEEDS TO BE AN ADEQUATE LEGAL APPEAL SYSTEM TO A BODY WHICH RECOGNISES ALL OF THE STANDARDS MENTIONED ABOVE. AT PRESENT, THE INDEPENDENT REVIEWER'S POWERS ARE LIMITED TO REQUIRING THE ASA COUNCIL TO RE-OPEN ITS DELIBERATIONS; THERE IS NO POWER TO RATIFY OR OVERTURN AN ADJUDICATION. THIS IS SURPRISING, GIVEN THE IMPLICATIONS OF AN ADVERSE ADJUDICATION BY THE ASA COUNCIL, NOT LEAST THE POTENTIAL DAMAGE TO THE REPUTATION OF THE ADVERTISER. THE CODES ENFORCEMENT PROCESS SHOULD INCLUDE A PROPER JUDICIAL PROCEDURE FOR HEARING APPEALS AGAINST ADJUDICATIONS.

THE CAP AND ASA ASSUME RESPONSIBILITY ACROSS A VERY WIDE RANGE OF AREAS THAT GO TO THE HEART OF CONSUMER PROTECTION. THE CAP AND ASA REMIT HAS THE POTENTIAL TO AND DOES IMPACT SIGNIFICANTLY ON THE DAY TO DAY RUNNING OF A BUSINESS. IN THIS CONTEXT IT IS VITAL THAT THE CODES ARE DRAFTED TO ENSURE THE CORRECT BALANCE BETWEEN CONSUMER PROTECTION AND HAMPTON COMPLIANT REGULATION. EQUALLY, THE ASA SHOULD EMPLOY THE HIGHEST STANDARDS IN ALL OF ITS DECISION MAKING AND WE REQUEST THAT OUR CONCERNS BE ADDRESSED IN THE INTERESTS OF CONSUMERS AND BUSINESS ALIKE.

SHOULD CAP AND ASA FIND IT OF ASSISTANCE, WE ARE HAPPY TO MEET TO DISCUSS OUR RESPONSE IN FURTHER DETAIL.

ANNEX

COMMENTS ON THE CODE PROVISIONS

WE HAVE TAKEN THE OPPORTUNITY TO PROVIDE COMMENTS ON THE SPECIFIC QUESTIONS RAISED AS WELL AS THE CODE PROVISIONS MORE GENERALLY. THESE INCLUDE WHERE THE CODE PROVISIONS MAY ALREADY BE IN EXISTENCE AND NO CHANGES ARE PROPOSED. AS THE CAP IS CONDUCTING A 'ROOT AND BRANCH' REVIEW OF THE CODE, WE TRUST THAT EQUAL WEIGHT WILL BE GIVEN TO ALL COMMENTS.

FOR EASE OF REFERENCE, WHERE OUR COMMENTS RELATE TO A SPECIFIC QUESTION IN THE CONSULTATION, THE QUESTION NUMBER HAS BEEN INCLUDED.

DEFINITIONS/SCOPE

AS STATED ABOVE AND REFLECTED BELOW, THE DEFINITIONS SECTIONS OF THE CODES AND/OR THE RELEVANT SECTION SHOULD REFLECT THE DEFINITIONS CONTAINED IN THE CORRESPONDING LEGISLATION. FAILURE TO DO SO IS TO REFLECT ONLY PART OF THE LAW AND INTRODUCES UNACCEPTABLE UNCERTAINTY FOR ADVERTISERS.

IN PARTICULAR, THE CODES SHOULD INCLUDE A DEFINITION OF ADVERTISEMENT. WHERE THIS TERM IS COVERED BY EXISTING LEGISLATION THE CODES SHOULD ALIGN WITH THE DEFINITIONS OR CONCEPTS CONTAINED IN THAT LEGISLATION E.G. THE BUSINESS PROTECTION AND CONSUMER PROTECTION REGULATIONS. WHAT IS AN ADVERTISEMENT GOES TO THE HEART OF THE CODE AND FAILURE TO INCLUDE A CLEAR DEFINITION PROVIDES THE CAP AND ASA WITH ARBITRARY, SUBJECTIVE OPPORTUNITY TO EXPAND ITS REMIT AT THE EXPENSE OF BUSINESS WHICH IS DEPRIVED OF CERTAINTY.

PART 2 SECTION 3 – MISLEADING

OUR OVERALL COMMENT IS THAT THIS SECTION OF THE CODE SHOULD BE DRAFTED WITH EXPLICIT REFERENCE TO THE TERMINOLOGY, CONCEPTS AND DEFINITIONS USED IN THE CONSUMER PROTECTION REGULATIONS INCLUDING 'AVERAGE CONSUMER', 'TRANSACTIONAL DECISION' AND, FOR THE PURPOSE OF THIS SECTION 'PRODUCT'. FURTHER, ANY 'LIKELY EFFECT' ON CONSUMERS AS STATED IN THE PRINCIPLES SECTION SHOULD BE DETERMINED BY REFERENCE TO THE 'LIKELY EFFECT ON THE AVERAGE CONSUMER TAKING OR DECIDING NOT TO TAKE A TRANSACTIONAL DECISION' OR TO PURSUE A PARTICULAR COURSE OF CONDUCT.

QUESTION 3: WE DISAGREE THAT RULE 3.10 SHOULD BE INCLUDED IN THE CODE. A REQUIREMENT THAT QUALIFICATIONS MUST BE CLEAR TO CONSUMERS WHO SEE OR HEAR THE MARKETING COMMUNICATION ONLY ONCE GOES FAR BEYOND WHAT IS REQUIRED FROM THE CONSUMER PROTECTION REGULATIONS WHICH STATE THAT ADVERTISERS SHOULD PRESUME THAT THE AVERAGE CONSUMER IS REASONABLY OBSERVANT AND CIRCUMSPECT. THIS IS AN ONEROUS REQUIREMENT AND IS PARTICULARLY UNJUSTIFIED FOR PRINT MEDIA WHERE THE CONSUMER WILL HAVE THE OPPORTUNITY TO READ THE TERMS MORE THAN ONCE IF SO DESIRED AND TO MAKE REFERENCE TO OTHER SOURCE MATERIALS, E.G. A WEBSITE.

CLAUSE 3.4.2: THE REQUIREMENT TO STIPULATE THE GEOGRAPHICAL ADDRESS OF THE MARKETER SHOULD ONLY BE REQUIRED WHERE THIS IS 'NOT ALREADY APPARENT FROM THE CONTEXT' OF THE ADVERT AS RECOGNISED BY THE CONSUMER PROTECTION REGULATIONS. FOR EXAMPLE, WHILST IT MAY BE RELEVANT FOR A SOLE TRADER OPERATING IN A SPECIFIC LOCATION TO STATE ITS GEOGRAPHICAL ADDRESS, IN A STANDARD TESCO AD IT SEEMS UNNECESSARY TO INCLUDE THE REGISTERED OFFICE ADDRESS CONSIDERING THAT OUR

BRAND WILL BE CLEAR AND CONSUMERS ARE EASILY ABLE TO DETERMINE OUR CONTACT DETAILS IF NECESSARY. SUCH A REQUIREMENT IS THEREFORE OVER-BURDENSOME AND UNNECESSARY FOR MOST ADVERTISEMENTS.

IT IS IMPORTANT THAT THE CODES DO NOT GO FURTHER THAN THE LAW IN IMPOSING INFORMATION REQUIREMENTS. IT SHOULD ONLY BE A BREACH OF THE CODES TO OMIT INFORMATION IN SUCH A WAY THAT THE CONSUMER IS MISLED BY NOT HAVING IT.

QUESTION 4: CLAUSE 3.11: WE AGREE THAT CONSUMERS MUST NOT BE MISLED BY ADVERTISING, BUT BASED ON THE CONSUMER PROTECTION REGULATIONS THE 'AVERAGE CONSUMER' SHOULD BE ASSESSED AS A PERSON WHO IS REASONABLY CIRCUMSPECT AND OBSERVANT. THEREFORE IN OUR VIEW THIS CLAUSE, REQUIRING ADVERTS NOT TO EXAGGERATE PERFORMANCE, WOULD APPEAR TO GO BEYOND WHAT IS REQUIRED BY THE LAW. FOR EXAMPLE, PROVIDED ADVERTISING CLEARLY AND PROMINENTLY STATES ANY LIMITATIONS E.G. SPEED OR THAT GRAPHICS/IMAGES HAVE BEEN ENHANCED, WE DO NOT BELIEVE THERE IS RISK OF CONSUMER HARM.

QUESTION 5: CLAUSE 3.28.3: WE DISAGREE WITH THE REQUIREMENT IN THIS CLAUSE THAT ADVERTS MUST STATE ANY AGE RESTRICTIONS. AS A RETAILER WE INVEST HEAVILY IN OUR SYSTEMS TO ENSURE THAT AGE RESTRICTED PRODUCTS ARE NOT SOLD TO PERSONS UNDERAGE. THIS IS ANOTHER REQUIREMENT THAT IS DISPROPORTIONATE – FAILURE TO INCLUDE THIS INFORMATION DOES NOT MAKE AN ADVERTISEMENT MISLEADING.

CLAUSE 3.17: THE REQUIREMENT THAT PRICE STATEMENTS MUST NOT MISLEAD BY UNDUE EMPHASIS IS UNCLEAR AND IS A PRIME EXAMPLE OF THE CODES GOING WELL BEYOND THE REQUIREMENTS OF LAW IN THE CONSUMER PROTECTION REGULATIONS. ALTHOUGH GUIDANCE ON PRICE INDICATIONS HAS BEEN PUBLISHED, IT IS NOT MANDATORY. ON THIS BASIS THE CLAUSE SHOULD BE AMENDED OR DELETED ACCORDINGLY.

CLAUSE 3.28: THIS SHOULD BE AMENDED TO REFLECT THE CONSUMER PROTECTION REGULATIONS WHICH STATE THAT REGARD MUST BE HAD TO THE PRODUCT, THE SCALE OF THE ADVERTISING AND THE PRICE OFFERED.

PART 2 SECTION 8 – SALES PROMOTIONS

GENERALLY, WE BELIEVE THIS SECTION IS CONFUSING AS IT COMBINES RULES FOR SALES PROMOTIONS (E.G. MONEY-OFF OFFERS) WITH COMPETITIONS. WHILST THERE IS SOME SIMILARITY BETWEEN THE TWO TYPES OF 'OFFER' THERE IS A SUFFICIENT NUMBER OF DIFFERENCES IN THE APPLICABILITY OF THE RULES THAT THE SECTION SHOULD, IN OUR VIEW, BE SPLIT MORE CLEARLY.

IF IT IS NOT INTENDED THAT SIMPLE PRICE CUT OFFERS AND THE LIKE ARE TO BE GOVERNED BY THESE RULES, A DEFINITION OF "SALES PROMOTION" SHOULD MAKE THIS CLEAR.

A FEW EXAMPLES OF THE RULES WHICH ARE MORE APPROPRIATE TO COMPETITIONS BUT WHICH DON'T EASILY FIT WITH PRICE PROMOTIONS INCLUDE:

- 8.14–8.16 'ADMINISTRATION'
- 8.17 – SIGNIFICANT CONDITIONS FOR PROMOTIONS (THERE WILL BE SOME OVERLAP WITH PRICE PROMOTIONS, BUT THIS IS LIMITED E.G. 8.17.1)

IN THE 'PRINCIPLES' SECTION WE WOULD WELCOME CLARITY AS TO WHAT A 'PREMIUM OFFER' IS. WITHOUT FURTHER DEFINITION THIS COULD MEAN AN OFFER AVAILABLE VIA A

PREMIUM RATE TELEPHONE NUMBER AND/OR AN OFFER RELATED TO A PREMIUM PRODUCT
E.G. TESCO FINEST PIZZA.

CLAUSE 8.4: IT IS UNNECESSARY FOR THE CODE TO STATE THAT 'ALCOHOL MUST NOT BE ON PROMOTION TO ANYONE UNDER 18 YEARS'. THE LAW ALREADY GOES MUCH FURTHER THAN THIS BY PREVENTING THE SALE OF ALCOHOL TO PERSONS UNDER 18 YEARS.

CLAUSE 8.12: THE REQUIREMENT TO OFFER A SUBSTITUTE PRODUCT WHERE AVAILABILITY ISSUES ARISE SHOULD ONLY APPLY WHERE THIS IS PRACTICABLE OR REASONABLE. AS A RETAILER WE TAKE ALL REASONABLE STEPS TO ENSURE THE AVAILABILITY OF OUR PRODUCTS DURING A PROMOTION. OUR PROMOTIONS OFTEN INVOLVE VERY SIGNIFICANT VOLUMES OF PRODUCTS AND IN THOSE CIRCUMSTANCES IT IS HIGHLY IMPRACTICAL COMMERCIALY AND IN TERMS OF OBTAINING STOCK TO ENSURE SUFFICIENT AVAILABILITY OF A SECOND, SUBSTITUTE PRODUCT. THIS WOULD, IN EFFECT, IMPOSE A REQUIREMENT ON RETAILER TO PLAN TWO PROMOTIONS. YET AGAIN, THIS IS BEYOND WHAT THE LAW REQUIRES AND IS A HIGHLY DISPROPORTIONATE BURDEN.

8.17.4 'CLOSING DATES': IT IS IMPORTANT TO RECOGNISE THAT GREATER FLEXIBILITY NEEDS TO BE APPLIED TO PRICE PROMOTIONS IN RELATION TO CLOSING DATES. EVEN WHERE ALL REASONABLE STEPS HAVE BEEN TAKEN TO PLAN A PROMOTION, RESIDUAL STOCK LEVELS AND UNANTICIPATED HIGH VOLUMES OF SALES MAY NECESSITATE CHANGING A PROMOTION END DATE AND, PROVIDED THE CONSUMER IS NOT MISLED, THIS SHOULD BE PERMISSIBLE. IN SOME CIRCUMSTANCES, STATING A PROMOTION END DATE CAN PUT RETAILERS AT A DISADVANTAGE BY REVEALING OFFER LENGTHS TO COMPETITORS. PROVIDED OFFERS RUN FOR A REASONABLE PERIOD ONCE THEY HAVE BEEN ADVERTISED AND CONSUMERS ARE NOT THEREFORE DISADVANTAGED, MANY OF THE RULES REGARDING CLOSING DATES SHOULD NOT, WE SUBMIT, APPLY TO PRICE PROMOTIONS. WE NOTE THAT THIS MAY BE THE INTENTION BEHIND CLAUSE 8.17.4A BUT THE WORDING OF THIS RULE IS CURRENTLY UNCLEAR. WE REQUEST THAT CAP REVISE THE WORDING SO THAT THIS REQUIREMENT IS MADE MORE CERTAIN.

CLAUSE 8.18: WE AGREE THAT, AS PER THE CONSUMER PROTECTION REGULATIONS, ADDITIONAL INFORMATION CAN BE CONTAINED ELSEWHERE IF TIME OR SPACE IN AN ADVERT IS LIMITED. HOWEVER, THE PHRASE 'EASILY ACCESSIBLE' IS OPEN TO INTERPRETATION AND, IN THE INTERESTS OF CERTAINTY, WE WOULD WELCOME CONFIRMATION THAT THIS INCLUDES WEBSITES.

QUESTION 25 - CLAUSE 8.26: WE AGREE WITH THE CAP CODES THAT THE WINNING ENTRY SHOULD BE SELECTED BY AN INDEPENDENT PERSON. HOWEVER, IN OUR VIEW IT IS SUFFICIENT THAT THE JUDGE BE INDEPENDENT FROM THE POOL OF ENTRANTS. THERE APPEARS TO BE NO REASONABLE JUSTIFICATION FOR THE JUDGE TO BE INDEPENDENT OF THE PROMOTER AND INTERMEDIARIES. FOR EXAMPLE, IF A STORE RAN A COMPETITION FOR CUSTOMERS' CHILDREN TO DRAW A PICTURE, THERE APPEARS TO BE NO JUSTIFIABLE REASON WHY THE STORE MANAGER AND ANOTHER EMPLOYEE SHOULD NOT BE ENTITLED TO SELECT THE WINNER PROVIDED THAT THEIR FAMILY AND/OR FRIENDS ARE NOT ENTRANTS.

SECTION 9 – DISTANCE SELLING

OVERALL WE BELIEVE THERE ARE MANY EXAMPLES IN THIS SECTION OF THE CAP EXTENDING ITS REMIT BEYOND REGULATION OF ADVERTISING. FOR EXAMPLE, INFORMATION TO BE SUPPLIED BY TIME OF DELIVERY (9.2), TIMESCALES FOR FULFILLING ORDERS (9.3) AND REFUNDING MONEY (9.4).

WE HAVE NO CONCERN WITH THESE REQUIREMENTS IN PRINCIPLE, WHICH ARE BROADLY REFLECTIVE OF EXISTING DISTANCE SELLING RULES. HOWEVER, WE SEE NO ROLE FOR CAP AND ASA IN ADMINISTERING DISTANCE SALES, AN AREA WHICH IS WHOLLY UNRELATED TO ADVERTISING.

SECTION 15 – FOOD, DIETARY SUPPLEMENTS AND ASSOCIATED HEALTH AND NUTRITION CLAIMS

QUESTION 56 - CLAUSE 15.11.1: THE CODE SHOULD INCLUDE A DEFINITION OF INFANT AND FOLLOW-ON FORMULA. THOSE DEFINITIONS SHOULD BE IDENTICAL TO THOSE CONTAINED IN THE INFANT FORMULA REGULATIONS.

SECTION 18 - ALCOHOL

DEFINITION - THE CODE SHOULD BE AMENDED TO MAKE IT CLEAR THAT ALCOHOLIC DRINKS ARE THOSE OVER 1.2%, NOT AT 1.2%, THE LATTER ALREADY BEING CONTAINED IN THE DEFINITION OF NON-ALCOHOLIC DRINKS.

QUESTION 62 - CLAUSE 18.9: WE SUPPORT THE CHANGES TO THIS CLAUSE BUT NOTE THAT THE WORDING DIFFERS BETWEEN THE CONSULTATION QUESTION SECTION ON PAGE 84 AND THE PROPOSED NEW CODE ON PAGE 168. IN OUR VIEW THE WORDING CONTAINED ON PAGE 84 IS CLEARER.

Question 9

i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on misleading are necessary and easily understandable? If your answer is no, please explain why.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) DO YOU HAVE OTHER COMMENTS ON THIS SECTION?

DRAFT RESPONSE

IN RESPONSE TO QUESTION 9, I WISH TO PROPOSE THE ADDITION OF A NEW RULE (TO BE NUMBERED AS APPROPRIATE) WHICH WOULD ENSURE THAT PREGNANCY COUNSELLING SERVICES DO NOT MISLEAD VULNERABLE WOMEN BY OMITTING TO MENTION IF ABORTION SERVICES ARE NOT OFFERED.

The Report of the House of Commons Science and Technology Committee on the Scientific Developments Relating to the Abortion Act 1967 recommended: 'to ensure that no patients are misled, we ... recommend that the Government consider ways of ensuring that all those claiming to offer pregnancy counselling services ... indicate clearly in their advertising that they do not support referral for abortion.'

The BCAP code Review proposes a new Rule 11.11 which covers this point, and I strongly believe that this should be extended to be clearly included on the revised CAP Code, therefore ensuring that printed advertisements and posters will meet the same criteria.

The CAP Code Review: The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing

Submission by Which?

INTRODUCTION

Which? is an independent, not-for-profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, and books.

A) GENERAL COMMENTS

Thank you for this opportunity to respond to this important consultation. We are broadly supportive of the work that the ASA does through the CAP and BCAP codes. On the positive side we are encouraged that membership is near universal and the complaints handling procedure has been improved in recent years. We were also encouraged to read in the recent annual report that the ASA has been effective in increasing the number of upheld rulings in cases that have been subject to formal investigation. However, whilst this is encouraging, it is a concern that the number of complaints has continued to rise. We also have a number of specific concerns about complaints handling and sanctions.

In addition to our views on the operation of the codes, we also have a number of comments to make on the detail of the codes. Whilst we believe that the CAP and BCAP codes are robust in many respects, there are some areas where we believe they need to be strengthened. We have not commented on all of the questions in the consultation but have kept our comments to the areas in which we have specific experience. In particular, this includes environmental issues, cosmetic surgery, food marketing and responsible lending.

B) OPERATION OF THE CODES

Complaints Handling

We believe that the complaints process has improved over the years. The internet has helped with this and it is welcome that complainants surveyed by the ASA say that the ASA is easy to contact. This is clearly reflected in the high levels of traffic via e-mail and the online complaints form on the ASA website. Whilst these improvements are welcome, we have been disappointed on a number of occasions with the way that some of our complaints have been dealt with. Our concerns in this area focus on both the way in which decisions are made and also with their speed.

On decision making, we are concerned that the ASA's decision-making process seems to focus too heavily on the company being complained about. From our experience, the advertiser can throw considerable resource into defending themselves to the ASA while the complainant is excluded from the discussion process, only being informed of the final result. We have also had occasional concerns about the evidence that is used in order to come to a conclusion. Our complaint that a Rice Krispies advertisement was misleading was not upheld. The most surprising aspect of this was a refusal by the ASA to take account of Food Standards Agency advice on what is classed as high in fat, sugar or salt. It instead based its decision on the arguments put forward by the company concerned, Kellogg's. In light of this, we would like some thought to be given to the independence and transparency of the experts that the ASA consults when adjudicating on technical matters, the breadth of that advice and the weight given to existing advice given by relevant government departments.

Our other concern on complaints relates to speed. In the case of the Ferrero Nutella complaint it took over 5 months for the ASA to reach a final decision. By that point any damage caused by the advertisement was irreversible and the firm in question had been able to generate considerable revenue in the interim. We believe that it is essential that those who flout the rules are dealt with briskly and firmly. Not only are campaigns frequently long finished by the time the ASA makes a ruling, the

ruling can take so long that there's not even a memory of the campaign left in public memory. We would like to see consideration of a time limit for decisions to be completed. This would stop companies dragging out the process to minimise impact on their business if a ruling is made against them.

Sanctions

On sanctions, we are of course aware of the range of sanctions available to deal with transgressors and we are broadly supportive of these. In particular, we believe the power to name and shame is an essential and particularly effective tool. However, we are concerned that in some cases by the time a complaint has been made, investigated and ruled upon, the advertisement has often run its course and so any publication of the adjudication and call for removal of the advert will have little impact. To remedy this, we would like the ASA to consider requiring advertisers to put as much resource into corrective advertising as they have spent on the original campaign. Further to this, in cases of expensive products, advertisers should be required to contact individual consumers directly to correct misleading impressions.

Scope

Our final point on process relates to the scope of the Codes. In particular, we are concerned that areas such as product packaging, sponsorship and company websites are not covered. As stated in the annual report, it is concerning that the ASA were unable to investigate 65% of the 3,571 complaints it received about internet advertising because they were on company websites and therefore outside its remit. Consideration should be given to how to ensure that the information given on these other non-broadcast channels, to which marketing successfully drives ordinary consumers, is legal, decent, honest and responsible.

We note that the ASA is considering extension of the CAP Code to company websites in a separate project. Whilst we wait the outcome of this work, we would like to make the following points:

- > Claims, including green claims, on company websites must be properly regulated. They are an important source of information for consumers and many companies use them to communicate their sustainability policies; and
- > Whoever regulates them must have the resources and expertise to do so, and should do so in a way consistent with regulation of claims in other corporate marketing media. Sanctions must be effective.

Out of interest, Which? quickly collated a few examples of green claims on the websites of some large, national companies:

- > A look at airline websites brought up “Airline A’s steady growth is being achieved in the most environmentally friendly and sustainable way...and Airline A proves that air transport can be environmentally friendly” and “air transport is not the real problem in terms of environmental impacts”. Another website states that Airline B promises “to be environmentally efficient in the air”.
- > An energy supplier that supplies nearly half of its fuel mix from gas, coal and nuclear sources describes itself on its website as “probably the world’s greenest electricity company”.

C) COMMENTS ON CONTENT

Chapter 3: Misleading

Question 4

Do you agree that rule 3.11 should be included in the Code? If your answer is no, please explain why.

We agree that this rule should be included. However, we consider that it would be easier to understand this proposed rule if the term “average consumer” is used instead of “normal use”.

Question 6

Given CAP’s policy consideration, do you agree that rule 3.45 should be amended to require documentary evidence and contact details only? If your answer is no, please explain why.

We would consider it preferable for actual evidence to be retained but limited to a timeframe.

Chapter 8: Sales Promotions

Question 24:

- i) *Do you agree that the present requirement, in CAP rule 35.8, for a promoter to obtain an independently audited statement that all prizes have been distributed, or made available for distribution on a fair and random basis is disproportionate and should not therefore be included in the Code? If your answer is no, please explain why?*
- ii) *Given CAP's policy consideration, do you agree that rule 8.25 should be included in the Code? If your answer is no, please explain why?*

We would like to see more clarity about what is a "suitable independent party" under the proposed rule 8.25. Can this include a member of a different team in the same company who is not involved in the promotion?

Chapter 11: Environmental Claims

General Comments

It is important that consumers are able to trust environmental claims but, at present, they have a low level of trust. 59% of Which? members agreed with the statement that *"Green claims made by products are just marketing hype with little or no substance"*.

A 2009 survey by Which? found that only 21% of members trust that the green claims made by products/companies are always true. Despite this low level of trust in green claims, 56% of people are more likely to buy a product with a green claim than without². Our survey also found that 63% of members agreed that *"there are so many green claims made that I don't know which ones I should respond to"*. IPSOS Mori research too found that 78% of people agree that it is difficult to know which products are better for society and the environment³.

Consumer confidence in green claims needs to be increased and greenwash needs to continue to be tackled. Doing so will also help marketers given that the majority of

¹ Which? online panel omnibus survey 108 23/08. A total of 2,500 online panel members completed the survey and fieldwork took place between 21 and 29 February 2008.

² Survey carried out using the Which? online panel omnibus in February 2009. A total of 1,981 members completed the survey.

³ <http://www.ipsos-mori.com/assets/reports/tuning-point-or-tipping-point.pdf>

consumers are more likely to buy products with green claims. The ASA recognises that *'ambiguous, misleading or exaggerated claims risk generating scepticism and undermine the genuine initiatives that many businesses are taking to be greener'*⁴.

Green claims are becoming more prevalent and many recent ASA adjudications relate to green claims. The ASA has also seen a rising trend in the number of green complaints (although the number of complaints in 2008 was less than in 2007). The ASA has an important enforcement role, giving fair and considered adjudication judgments which strengthen consumer trust. Which? welcomes the increasing emphasis that the ASA has given to green claims in recent years. The training seminars on green claims that it runs and the Copy Advice Service are both useful.

Problems of Duplication

One key concern that we have in this area relates to the overlap and duplication in the rules surrounding green claims. Specifically, we highlight the need to look at the CAP/BCAP Codes and Advice Online, in addition to the Government's Green Claims Code and its accompanying Practical Guidance too as well as international standard ISO 14021 and the Carbon Trust Code of Good Practice. This makes it hard for us, and indeed for consumers, to know where to look for clarity. We would also question whether it is also confusing for the industry.

Which? considers it preferable that the Codes are, and are seen as, the primary source of rules in this area, functioning on a stand-alone basis. However, the Green Claims Code is wider than the CAP and BCAP Codes because it has a wider purpose, applying to all sorts of environmental claims (in addition to advertisements), including labels on products. As the Green Claims Code is currently being revised too, the ASA and Defra, working together, must ensure that the two code review processes deliver Codes that are consistent with each other. They must not be considered separately.

The proposed CAP and BCAP Codes state that advertisers need to 'take account of' the Green Claims Code. It must be made clear what this means. Does this mean that the ASA will find a breach of the CAP/BCAP Code if it sees clear evidence that advertisers have departed from the Green Claims Code? Which? prefers this, because, if not, the principle is meaningless in terms of consumer protection. It won't give consumers any protection if an advertisement complies with the 'spirit' —

⁴ ASA Environmental Claims Survey 2008, page 5 <http://www.asa.org.uk/NR/rdonlyres/363BF883-0686-45AE-BEAO-D1D99507869E/0/EnvironmentalClaimsSurvey2008.pdf>

of the GCC, and not the ‘letter’; and advertisers will not need to pay much attention to the GCC because they can’t be found in breach.

If it *does* mean this, there will be a stronger system but, in light of the non-statutory basis for the GCC, we question how it will work in practice. Key questions relate to the level of awareness and understanding of the GCC amongst advertisers.

We would also question how to ensure that all of these codes stay up-to-date in this fast-moving area. In particular, we recognise the challenges that the ASA already face in this area due to insufficient “*benchmarks, clear advice or guidance from Government*”⁵. We would support the call for the Government to provide clarity at a national level. One reason why consumers are confused is that terms such as ‘carbon neutral’ are poorly defined and therefore understood. The Government needs to do more to ensure that there are definitions⁶, and the ASA, CAP and BCAP need to ensure that the new Code mechanisms take account of changes in such definitions.

We also wonder whether more could be done to bring clarity to the ASA’s own guidance. In particular, we sometimes find it confusing to navigate around the various pieces of guidance, including: the entries in the ASAs’ AdviceOnline database, which currently includes nine entries specifically on environmental claims; the ASA Checklist for Green Advertisers; the International Standard ISO 14021 on Environmental Labels and Declarations; Defra sector-specific guidance on green claims; the Chartered Institute of Public Relations Best Practice Guidelines for Environmental Sustainability Communications; and the Carbon Trust Code of Good Practice for Product GHG Emissions and Reduction Claims.

One option for the ASA, CAP and BCAP would be to consolidate all of their guidance into one online environmental claims section on the ASA website. Split into sections, it would be easier to navigate, allowing updates to be made to particular documents and with links to the relevant parts of the CAP and BCAP Codes. As a public database, this could be accessed by advertisers, consumers and consumer organisations alike.

⁵ ASA Event Report - *Environmental Claims in Advertising: Is green a grey area*, report of a stakeholder consultation seminar held in June 2008, available at <http://www.asa.org.uk/NR/rdonlyres/DF6236CD-B960-46AE-A075-2478DFA0E9/0/EnvironmentalClaimsSeminarReport.pdf>

⁶ The Government is currently consulting on the definition of the term carbon neutral, for example, and states that it will include the outcome of the consultation in the revised Green Claims Code. See page 5, http://www.decc.gov.uk/en/content/cms/consultations/open/carbon_neutrality/carbon_neutrality.aspx

Finally, we would like to ensure that there is an appropriate mix of principles, rules and examples. It is important that general principles are sufficiently broad to cover all types of claims. However, in some cases, they must be more explicit (see detailed comments below) to provide clearer guidance. To support this, more illustrative examples of green claims interpretation would be useful as would making clear that there is additional illustrative guidance available (e.g. in the AdviceOnline database).

It is important that the ASA is given and applies sufficient resources to environmental claims to enable what are often quite technical assessments (e.g. the recent adjudication on the sustainability of biofuels⁷) to be properly evaluated, applying environmental and scientific expertise where appropriate. Where the ASA does not have internal expertise, it must continue to seek independent external expert advice. There may be scope for the ASA to form a panel of experts they can use on a regular basis.

Question 35

Given CAP's policy consideration, do you agree that rule 11.7 should be included in the Code? If your answer is no, please explain why.

We agree that there is a need for Rule 11.7. If not included, there would be a large regulatory hole regarding misleading green claims and the CAP Code would be weaker than the BCAP Code. However, we suggest a small number of changes to the drafting.

The scope of "*Marketing communications must not mislead consumers about the environmental benefit that a product offers*", with two illustrative examples, is not clear. This rule is one of the most fundamental ones and its scope and application should therefore be spelt out. Yet it is not clear on the face of it whether it applies to claims of:

- > A product being the cleanest in its class but yet that product class is inherently damaging to the environment;
- > A product is e.g. biodegradable, but all products used for that purpose share that characteristic.
- > A product 'contains twice as much recycled content than before', if the original amount of recycled material was very small.

⁷ Adjudication of 14 January 2009 http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_45582.htm

Which? considers that the CAP Code should clarify that this Rule is intended to prohibit a broad range of misleading claims, including claims that are not relevant to the product and the environmental issues connected with it. This is critical if the Code is to be comprehensive in its coverage. Additional examples to illustrate this would be useful.

Our second suggestion is around benefits. Green claims generally market green benefits, however on occasion they may relate to environmental 'costs' e.g. to reduction of the adverse impact of the advertiser's own product or the adverse impact of competing products. Which? suggests that the proposed new rule 11.7 be widened to "*Marketing communications must not mislead consumers about the environmental benefit or adverse impact of a product*" to cover these situations.

Question 36:

(i) Taking into account CAP's general policy objectives, do you agree that CAP's rules on Environmental Claims are necessary and easily understandable?

We agree with the need for an environmental claims section. It is important that the CAP Code, like the BCAP Code, includes dedicated rules to provide consumers with a reasonable level of protection and advertisers with reasonable certainty. 'Greenwash' is a significant issue: not only is there a high number of complaints to the ASA about environmental claims, but many consumers find them confusing. Evidence includes:

- > In a 2008 Which? survey of members, 59% agreed with the statement that 'Green claims made by products are just marketing hype with little or no substance'⁴
- > Nearly 60% of consumers say that green claims of the retailers and manufacturers they buy from are either 'not very' (46%) or 'not at all' (11%) credible⁵.
- > The BCAP 2007 research shows a high level of consumer scepticism about environmental claims.

We generally support the new rules as understandable and as an improvement on the current Code but we have some specific comments on drafting.

⁴ Which? online panel omnibus survey 108 23/08. A total of 2,500 online panel members completed the survey and fieldwork took place between 21 and 29 February 2008.

⁵ Research by YouGov for LEK Consulting in 2007, 2,039 UK consumers were interviewed interviewed online for the LEK Carbon Footprint Report
http://www.lek.com/UserFiles/File/Carbon_Footprint.pdf

We support the inclusion of the new Rule 11.2 that *"The meaning of all terms used in advertisements must be clear to consumers"*. This is a key provision that will reduce consumer confusion. It is good to see that the onus is on the advertiser to use terms that, and in a way that, consumers understand. At the same time, Which? agrees with the ASA that a lack of official definitions of terms such as 'carbon neutral' has made assessments of green claims difficult. Government must do more to generate and update official definitions of terms such as this in common use and the ASA, CAP and BCAP need to ensure that the new Code mechanisms take account of changes in such definitions.

We agree with the provisions in Rule 11.4. It is unrealistic to rule out claims that deal only with part of the lifecycle (e.g. the energy efficiency of a television or the water used by a dishwasher). We agree that environmental claims should be based on the full lifecycle, and, if not, that the advertisement must make this clear. In these cases it is important to ensure that the marketing communication states that the claim is based on only part of the life cycle. Another key provision, that we support, is that *'Marketers must ensure claims that are based on only part of the advertised product's life cycle do not mislead consumers about the product's total environmental impact'*.

We find Rule 11.6¹⁰ confusing in a number of ways and so would suggest some alternative wording.

The first sentence does not recognise the reality that any product has some adverse effect on the environment, of varying degrees. Some products have environmental benefits too. For example, a solar panel generates energy but its production also uses energy, raw materials and causes pollution. We suggest an alternative first sentence: *"Marketing communications must not imply that the changing of a formulation to improve the product has an environmental benefit unless the basis for improved total environmental benefit over that of the marketer's previous product is clear"*. The key is to ensure that changes in formulation are only marketed as green when they do lead to a genuine environmental improvement.

We also have concerns about the second sentence: *"Marketers may, however, claim that a product has always been designed in a way that omits an ingredient or process known to harm the environment"*. The damaging ingredient or process omitted might be insignificant in terms of the overall environmental impact of the

¹⁰ 'If a product has never had a demonstrably adverse effect on the environment, marketing communications must not imply that the formulation has changed to improve the product in the way claimed. Marketers may, however, claim that a product has always been designed in a way that omits an ingredient or process known to harm the environment'.

product. The rule should only allow claims that are about changes that are significant in terms of the overall environmental impact of the product (and should be consistent with the proposed 11.4 on life cycle impacts). We also suggest that the rule should only allow claims where competitors' products use that damaging ingredient or process. Otherwise there is surely a risk that this rule will allow irrelevant claims about insignificant environmental impacts.

Finally, it should be made explicit that the CAP applies to services as well as products. The BCAP environmental rules refer to 'product or service' but the CAP rules apply to product only.

CHAPTER 12: MEDICINES, TREATMENTS, DEVICES AND HEALTH

COSMETIC SURGERY

We believe that cosmetic is an area of consumer detriment and one where the Code has not kept pace with market developments. The number of procedures undertaken almost doubled between 2005 and 2007. In 2007, there were some 577,000 cosmetic treatments in the UK, of which 105,000 involved surgery. Expenditure on cosmetic surgery and treatments was forecast to be £1bn in 2008.¹¹

Cosmetic surgery is not like most other products and services. It can involve varying levels of risk, success is not guaranteed, procedures may involve pain and discomfort and a period of recovery, and the results may have only a limited timespan. The cost can be considerable. Consumers may have unrealistic expectations. Some groups of consumers may be particularly vulnerable to advertising which seeks to take advantage of poor body self-image. When cosmetic surgery goes wrong, the results can cause considerable physical and psychological damage.

These factors should be, but are not, reflected in current marketing practices and the CAP. The current sections of the Code dealing with health and beauty products and therapies pre-date the huge expansion in the market for cosmetic treatments and the introduction of new types of treatment, and contain no reference to the advertising of cosmetic surgery.

We have reviewed advertisements for cosmetic surgery in a number of national publications, and we found a number of examples of practices that we believe to be in breach of the general principle in the CAP Code that *"All marketing communications should be prepared with a sense of responsibility to consumers"*

¹¹ Cosmetic Surgery, Market Intelligence, November 2007, [Mintel](#).

and to society” (2.2).

We recognise that the ASA has made rulings and issued guidance on advertisements for cosmetic surgery. However, we believe that specific provisions relating to cosmetic surgery are now needed and that the opportunity should be taken to update and strengthen the Code itself to reflect developments in the market.

Irresponsible advertising practices

Examples of practices that we regard as not showing a sense of responsibility to consumers and society in the advertising of cosmetic surgery, and which we believe should be prohibited, are:

- > Linking cosmetic surgery to happiness, confidence and social success.¹²
- > Encouraging unrealistic expectations as a result of cosmetic surgery procedures, for example by suggesting that cosmetic surgery will provide “a new you”.¹³
- > Encouraging consumers to take decisions about treatment based on the availability of special offers, or discounts linked to a deadline for appointments, and other date-linked incentives which may influence their decision and make it less likely that they will obtain independent medical advice (see below).
- > Implying that gastric balloons and gastric bands provide a lifelong solution to obesity problems.¹⁴
- > Offering cosmetic surgery as a prize or offering gift vouchers for cosmetic surgery (see below).

Overall we suggest that it would reinforce the Code if there was a requirement for advertisements for therapeutic treatments typically offered for purposes of appearance, including cosmetic surgery and non-surgical cosmetic procedures, to show a high standard (rather than just a sense) of social responsibility, given the nature of the services and the need to ensure consistency with codes of medical ethics. This should not be taken as implying that we think that a high standard of social responsibility should not also apply to advertisements for other forms of therapeutic treatment, but our response focuses specifically on advertisements for

¹² For example: “Radiate confidence with cosmetic surgery”, Harley Medical group advertising in *Harle Quatre*, January 2009. Ref Appendix 1a.

¹³ For example: “Call now ... and take that first step to a new you”, Ruboon Medical Cosmetic Surgery, advertising in *Brand new you* magazine, January 2009; “New You” packages for Christmas”, Revitalize in Turkey, advertising in *Brand new you* magazine, January 2009; “A more affordable new you”, Van Canneyt, advertising in *Cosmopolitan*, January 2009; “Improving looks, changing lives...”, Burton Medical, advertising in *Cosmopolitan*, January 2009. Ref Appendix 1b,c,d,e.

¹⁴ For example: “You can lose weight and keep it off to achieve the lifestyle you deserve. Beat obesity. For life”, National Obesity Surgery Centre, advertisement for gastric bands and gastric balloons in *Woman’s Own*, 29 December 2008. Ref Appendix 1f.

cosmetic surgery and treatments. The Code should also refer to the need to comply with the relevant sections of the Independent Health Care Advisory Services' (IHAS) *Good Medical Practice in Cosmetic Surgery/Procedures* (currently under review).¹⁵

Special offers and discounts

We were concerned to find an advertisement offering discounts linked to a specific period.¹⁶ This is in breach of the Guidelines outlined in IHAS's *Good Medical Practice in Cosmetic Surgery/Procedures*, which states that "Advertisements must not offer discounts linked to a deadline date for booking appointments or surgery or other date-linked incentives".

We urge the ASA to amend the Code to reflect the IHAS guidelines. Which? has previously highlighted examples of companies offering time sensitive deals, including:

- > "Save £400 on any cosmetic surgery procedure carried out before 31st Dec 07".¹⁷
- > "£500 Off Breast Enlargement. Up to £395 off Breast Uplifts. All offers are subject to consultation and must be booked and taken before March 31st 2009."¹⁸

Offering cosmetic surgery as a prize

We welcomed the ASA's ruling in 2005 that "A competition in *Zoo* magazine headlined "Win a boob job for your girlfriend" was judged irresponsible by the ASA because of concern that it could coerce women into having a serious surgical procedure".¹⁹ However, in our recent review of magazine advertisements and features we found a reference in an article to cosmetic surgery treatment that had been won in a competition.²⁰ We do not regard the offer of cosmetic surgery as a prize as either responsible or compatible with good medical ethics, and would like to see it expressly prohibited in the Code.

We note that in the US "Participation in a charity raffle, fund raiser or contest in

¹⁵ www.independenthealthcare.org.uk/forum/faq/index.php?topic=1-com_dccman&aski=00c_aosm10a08gr0=1048&emf0=85

Website accessed 7th April 2009.

¹⁶ "Please ask about this month's Special Offer!", The Laser Treatment Clinic, advertising in *Glamour*, January 2009. Ref Appendix 12.

¹⁷ The Hospital Group, featured in *Eve* magazine (Dec 2007), ref Appendix 1b and <http://www.thehospitalgroup.org/>. Website accessed March 2009.

¹⁸ www.surgicare.co.uk. Website accessed 1 April 2009.

¹⁹ ASA Annual Report 2005

²⁰ 'I won a new body in a competition', *Best true life* feature, 30 December 2008. Ref Appendix 1f.

which the prize is any surgical procedure” is regarded as unethical and is prohibited by the Code of Practice of the American Society for Aesthetic Plastic Surgery, an organisation of certified plastic surgeons²¹, and that the practice has been criticised by the British Association of Aesthetic Plastic Surgeons.²²

Gift vouchers and loyalty cards for cosmetic surgery

We also regard the promotion of gift vouchers as irresponsible as it could entice women into having a serious surgical procedure which may be unwanted or inappropriate. A magazine example is “New You packages for Christmas Gift 5% discounted”.²³

A current online example is from Surgicare:

*“Can’t decide what gift to buy?
Why not choose SurgiCare Gift vouchers.
Following requests from a number of our clients, SurgiCare can now offer Gift Vouchers for sale. Available in £25 and £100 denominations, the vouchers can be used towards the cost of cosmetic treatments or cosmetic surgery.
SurgiCare Vouchers make a perfect birthday or Christmas present for that special someone.”²⁴*

We note that our concerns are shared by the British Association of Aesthetic Plastic Surgeons which has criticised cosmetic surgery clinics for high-pressure sales techniques such as loyalty cards that encourage patients to return for multiple procedures and the selling of gift vouchers for surgery.²⁵

Making clear the benefits and risks

A marked feature of the advertisements that we reviewed was the lack of information about risks and the success rates of procedures, or about how long the benefits of treatment might last. This emphasises how important it is that those considering cosmetic surgery obtain independent medical advice.

21 Ethics and plastic surgery, ASAPS press release 20 July 2000: <http://www.surgery.org/press/news-release.php?n=132>. Website accessed 8th April 2009.

22 “Plastic surgeons accused of hare-sell tactics by offering loyalty cards, discounts and prizes”, *The Independent*, 23 September 2005: <http://www.independent.co.uk/life-style/health-and-wellbeing/health-news/plastic-surgeons-accused-of-hare-sell-tactics-by-offering-loyalty-cards-discounts-and-prizes-507994.htm>. Website accessed 8th April 2009.

23 Revlonize in Turkey, advertising in *Brand new you* magazine, January 2009. See Appendix 1c.

24 www.surgicare.co.uk/cosmetic-vouchers.aspx. Website accessed 1st April 2009.

25 “Plastic surgeons accused of hare-sell tactics by offering loyalty cards, discounts and prizes”, *The Independent*, 23 September 2005: <http://www.independent.co.uk/life-style/health-and-wellbeing/health-news/plastic-surgeons-accused-of-hare-sell-tactics-by-offering-loyalty-cards-discounts-and-prizes-507994.htm>. Website accessed 8th April 2009.

The current general provisions of the Code covering health and beauty products and therapies require that “*Marketers should encourage consumers to take independent medical advice before committing themselves to significant treatments, including those that are physically invasive*” (50.6). It is not clear whether this constitutes a specific requirement to include such an encouragement in the advert. If it does, the very low level of compliance that we found suggests that this provision needs to be strengthened.

We propose that there should be a specific requirement to include advice that consumers take independent medical advice before committing themselves to significant treatments, including those that are physically invasive, using a specified wording. A wording might be: “Always consult your GP before proceeding with any significant treatment. All surgery involves risks and success is not guaranteed”.

Definition of “independent” and “impartial” advice and guidance

We found advertisements that used terms used such as ‘impartial’ and ‘independent’ when describing advice provided by medical staff at clinics.²⁶ We are concerned to ensure that such terms are only be used when they are strictly accurate, otherwise consumers may be less likely to consult their own GP.

We propose that the Code should make clear that terms such as ‘independent’ and ‘impartial’ in this context should only be used where those giving the advice are wholly independent of the company providing the service and are not employed by it, or providing services to it under any contract arrangement, or linked to any remuneration structure that involves the targets, incentives or profit-sharing of the clinic providing the treatment, or have any financial interest in it.

We draw attention to the Independent Health Care Advisory Services’ *Good Medical Practice in Cosmetic Surgery/Procedures*²⁷ written to complement the General Medical Council (GMC) publication *Good Medical Practice*²⁸, with particular reference to work carried out in the field of cosmetic surgery. The section on ‘Conflicts of Interest’ states that:

- > “You must act in your patient’s best interests when making referrals and providing or arranging treatment or care.
- > You must not accept any inducement, gift or hospitality that may affect or be

²⁶ For example: “Total focus on YOU, with personal, impartial guidance”, The Cosmetic Surgery Clinic, advertising in *Glamour*, January 2009; “... an impartial, independent referral service for Cosmetic Surgery ...” Ref Appendix 11.

²⁷ www.independenthealthcare.org.uk/joomla/index.php?option=com_docman&task=doc_download&Itemid=35

Website accessed 7th April 2009

²⁸ http://www.gmc-uk.org/guidance/good_medical_practice/index.asp Website accessed 7th April 2009.

seen to affect your judgement. You should not offer such inducements to colleagues.

- > If you have a financial or commercial interest, or are planning to invest in an organisation to which you refer a patient for treatment or investigation, you must tell the patient about your interest.
- > Treating a patient in an institution in which you have a financial or commercial interest may lead to serious conflict of interest. If you do so, your patients and anyone funding their treatment must be made aware of your financial interest.”

Qualifications and experience of practitioners

We would like to see the guidance on cosmetic surgery covering the qualifications and experience of practitioners contained in paragraphs 1 to 5 of the CAP guidance²⁹ incorporated into the CAP Code. We would also like to see paragraph 6 (“Clinics should not link themselves with renowned locations such as Harley Street unless they carry out consultations or surgery there.”) incorporated in the Code, subject to an amendment to say “unless they carry out the majority of consultations or surgery there”.

We support Recommendation 18 of the Expert Group on the Regulation of Cosmetic Surgery that all advertising for cosmetic surgery should include the provider’s registration number with the Healthcare Commission (superseded by the Care Quality Commission as of 1st April 2009).³⁰ We note that some advertisers include the words ‘Healthcare Commission’ and a small logo but this does not explain to readers what the relationship between the advertiser and the regulator is.³¹

Claims regarding surgery

We would like to see paragraph 10 of the CAP Help Note on Cosmetic Surgery Marketing³² incorporated into the Code: “Marketers should not imply that invasive surgery is a “minor procedure” or similar if that claim is likely to mislead as to the complexity or duration of the operation, the pain experienced either during or after the operation, the length of the recovery time or the potential side-effects”.

We would also like to see paragraph 11 of the guidance notes (“Marketers should

²⁹ ASA Advice Online: cosmetic surgery:

http://www.asa.org.uk/cap/advice_online/advice_online_database/Show_Entry.html?advice_online_id=93

³⁰ Expert Group on the Regulation of Cosmetic Surgery Report to the Chief Medical Officer, Department of Health, January 2005: <http://www.bsaoms.org.uk/files/wp-content/uploads/2005/03/Report.pdf>

³¹ For example, The Harley Medical Group as advertised in Company magazine, December 2008. See Appendix 16.

³² CAP Help Note on cosmetic surgery marketing, revised May 2008: <http://www.asa.org.uk/HelpNotes/res/B420E3FF-F1A8-47B6-A9D2-508F9B58258F/CosmeticSurgeryMarketingHelpNote.pdf>

not imply unrealistic claims, for example that the permanent removal of localised areas of fat will prevent subjects from gaining fat elsewhere, that tattoos can be removed without trace or that surgically replaced hair will last permanently or with minimal risk of untoward complications.”) incorporated into the Code, but with an amendment to include examples that better reflect the range of cosmetic surgery procedures now on offer.

Advertising of prescription-only medicines and unlicensed medicines

We welcome the enforcement action taken by the ASA against advertisers that offer or refer to prescription-only medicines such as Botox³³. While the CAP Code states that “Prescription-only medicines may not be advertised to the public” (50.12), it may be that some advertisers wrongly believe that as they are advertising the service rather than the product, they are in compliance.

We have also found advertisements online for the unlicensed medicine Melanotan³⁴. The MHRA states that this is an unlicensed medicine, and therefore is advertised illegally.³⁵ We have recently highlighted these issues in Which? Computing magazine, May 2009 edition.³⁶

We suggest therefore that 50.12 be amended to make clear that the advertising of prescription-only medicines and unlicensed medicines and the advertising of services involving the use of prescription-only medicines and unlicensed medicines are both prohibited.

We have provided a number of documents to support these comments on cosmetic surgery in an appendix to this document. These documents are as follows (Examples of advertisements for cosmetic surgery and/or treatments, in print during December 2008

- a Harley Medical group advertising in *Marie Claire*, January 2009.
- b Rubicon Medical Cosmetic Surgery, advertising in *Brand new you*, January

³³ Advertising Standards Authority, CAP News, ‘Illegal: Advertising Botox, Wiscabel, Wagra, Propecia’. 22 May 2007.

http://www.asa.org.uk/cap/news_events/news/2007/Illegal-Advertising-Botox-Wiscabel-Wagra-Propecia.htm

³⁴ “Sun labs Self Tan, 20% OFF. Beautiful & Natural looking Self Tan. Same day dispatch”

http://shop.ebay.co.uk/?from=R40&trksid=3811313&nkwm=melanotan&sa_cat=melanotan&items=at_low_prices_on_eBay.co.uk and sale items on Melanotan Mayevick, 28 January 2009, http://melanotan-mayevick.com/cap_saleitems.htm. Websites accessed 28 January 2009

³⁵ MHRA press release, 17 November 2008. www.mhra.gov.uk/NewsCentre/PressReleases/COH031008. Website accessed 8th April 2009.

³⁶ ‘Illegal drugs bought on line’, Which? Computing magazine, May 2009.

- 2009.
- c Revitalize in Turkey, advertising in *Brand new you*, January 2009.
 - d Van Canneyt, advertising in *Cosmopolitan*, January 2009.
 - e Burford Medical, advertising in *Cosmopolitan*, January 2009.
 - f National Obesity Surgery Centre, advertisement for gastric bands and gastric balloons in *Woman's Own*, 29 December 2008.
 - g The Laser Treatment Clinic, advertising in *Glamour*, January 2009.
 - h The Hospital Group, advertising in *Eve* magazine, December 2007.
 - i 'I won a new body in a competition', *Best* true life feature, 30 December 2008.
 - j The Cosmetic Surgery Clinic, advertising in *Glamour*, January 2009.
 - k The Harley Medical Group as advertising in *Company*, December 2008

Chapter 14: Financial Products

Responsible Lending

In personal finance, responsibility for advertising is fairly complex. In most product areas, including investments (including pensions), mortgages and insurance, the advertising is controlled by the FSA based on rules in the Conduct of Business handbooks. In contrast, most consumer credit adverts are dealt with by the OFT and fall under Consumer Credit legislation. However, there is a role for the Codes, particularly in terms of non broadcast credit or loan products. We have, on numerous occasions, highlighted in our magazine a number of examples of bad practice and we believe that the Codes could do more to promote responsible lending practices.

A recent complaint that Which? made relates to an advert from Northern Rock which featured a spendaholic frog with the strapline "I've got the urge to splurge". We complained to the ASA on the grounds that this advert breaches the code principle that says adverts should be 'prepared with a sense of responsibility to consumers and to society'. In the same magazine article, we also featured an advert from Virgin's website that promoted a lending product with the words 'Buy a camel, build a shed. Rent a villa, fly to the moon. Pay off debt...if it's legal we don't care. Quick decision, rapid cash.'

As stated, our key wish in this area is that we would like the Codes to pay particular attention to the issue of responsible lending. As a general point, we believe all marketing of credit must be 'socially responsible' and should 'contain nothing that is likely to lead people to adopt styles of borrowing that are unwise'. In this

context, 'unwise' could be further defined as 'a lack of judgment', 'imprudent', 'incautious' or 'rash'.

Chapter 15: Food, Dietary supplements and Associated Health and Nutrition Claims

Which? welcomed the adoption of EC Regulation 1924/2006 on nutrition and health claims made on foods. This included several aspects which should ensure that consumers are not misled by health and nutrition claims on food, including:

- > defining the criteria for use of nutrition claims within an annex to the Regulation
- > ensuring that health claims have to be independently assessed by the European Food Safety Authority (EFSA) and approved by the European Commission and Member States
- > requiring the establishment of nutrient profiles to ensure that health and nutrition claims cannot misleadingly suggest that foods high in fat, sugar or salt, for example, are beneficial for health.

We therefore support the inclusion of the provisions of the Regulation within the review of the CAP and BCAP Codes as they are a legal requirement. The situation is complicated as the Regulation has still not been fully implemented and some aspects, such as the development of nutrient profiles, which should have been agreed by now, are still under discussion. This makes it difficult to be categorical within the Codes at this stage and means that they may need to be updated again shortly to reflect the legal situation. We therefore agree with the proposed wording which advises advertising industry stakeholders to take advice on the effect of the Regulation on their products and associated health claims.

However, although reference is made to the requirements of Articles 8(1), 10(1) and 28; Article 3; Article 9; Article 12, Article 11 and Article 14 are systematically considered in the review, we are concerned that no reference is made to Articles 4, 5, 6 and 7 and believe that these also need to be addressed as:

- > Article 4 establishes conditions for the use of nutrition and health claims in the form of nutrient profiles.
- > Article 5 establishes general conditions ie. the conditions that have to be met for health and nutrition claims to be permitted (eg. that the nutrient or other substance for which the claim is made is contained in the final product in a significant quantity or is in a form that is available to be used by the body).

- > Article 6 explains the level of scientific substantiation required for nutrition and health claims.
- > Article 7 requires nutrition information to be provided if a nutrition or health claim is made.

Advertising and promotion of foods to children

Section 15 of the CAP review and Section 13 of the BCAP review both refer to concerns about the advertising and promotion of foods high in fat, sugar and salt (HFSS) to children.

The CAP Code Review (15.8-15.12) refers to the revisions that were made to the CAP Code in 2008 and states that ‘these changes took account of clear socio-political concerns about the marketing of foods to children and to pre-school and primary school children in particular’. The consultation document refers to the specific changes that were made to the CAP Code (ie. specific prohibitions on the use of celebrities, licensed characters and promotions in food marketing communications targeted directly at pre-school and primary school children). CAP notes *‘the overwhelming and explicit political impetus to tackle TV food advertising to children; the role that dedicated TV programmes and TV channels played in justifying the scheduling restrictions on TV HFSS food advertisements; the audio-visual impact of television and its place in the family home; the significant spend on TV advertising and the comprehensive qualitative and quantitative research that had supported Ofcom’s decision to intervene in TV HFSS food advertisements.’* It states that these factors are not relevant to non-broadcast marketing communications and do not, in themselves, justify equivalent restrictions in other media.

The BCAP Code Review (13.13-13.22) refers to the revised content rules included within the television and radio codes which came into force from 1 July 2007 and 16 December 2007 respectively. No proposals are made to extend these restrictions further.

Although we appreciate the enormous amount of debate that there has already been around this issue and recognise that CAP and BCAP have responded by bringing in new rules, we are concerned that the changes do not go far enough. The Code review does not formally request comments on this issue, but we are concerned that we should not be complacent. Advertising and broader marketing restrictions on HFSS foods targeted at children are just one of many measures that need to be included within a broader strategy to tackle the high rates of obesity and diet-related disease in the UK. This has been recognised within government policy,

including for example 'Healthy Weight' Healthy Lives' the obesity strategy for England which sets out a range of areas where action is needed, including broadcast and non-broadcast marketing to children.

When dealing with a problem that requires a multi-faceted solution, it is all too easy to question the validity of taking action in specific areas that fall within a broader strategy. But failure to take effective action across the many barriers that make it difficult to make healthier choices, will limit the overall public health outcome. This applies as much to action on school meals, food labelling, product labelling - and to the many actions needed to make it easier to be more physically active - as it does to food marketing to children.

We consider that there is a need to go further in relation to both broadcast and non-broadcast marketing.

A broad range of non-broadcast marketing techniques are used to target children with less healthy foods: from internet promotions to competitions and other sales promotions. We recognise that not all of the techniques that are used, such as packaging and sponsorship for example, fall under the CAP Code. However, we are concerned that there is still a lot more that needs to be done in order to deal more effectively with the types of promotions that are CAP's responsibility and to ensure greater consistency of approach with the BCAP Code. The Review is also an opportunity to consider whether some of the areas falling outside of CAP could be brought under its jurisdiction.

Our main concerns with the current CAP Code are:

- > The lack of differentiation between healthier/ less healthy foods, other than for fruit and vegetables which misses an opportunity to creatively promote healthier choices to children.
- > Specific provisions (such as those covering licensed characters and celebrities) only apply to the youngest children.
- > Only general provisions apply to older children, eg. that *'Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children'*.
- > The range of creative techniques that are subject to restrictions is very limited, as with BCAP.

We are also concerned that the changes made to align the two Codes have also resulted in some of the more specific provisions being removed. Reference to encouraging eating or drinking at or near bed time, to eat frequently throughout the day or to replace main meals with confectionery or snack products is now

covered under the broader requirement that *'Marketing communications must not condone or encourage poor nutritional habits or an unhealthy lifestyle in children'*.

In addition, changes made to restrictions covering the use of licensed characters and celebrities seem to have weakened the Code, rather than strengthened it. For example *'Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar'* has been introduced which seems open to misuse.

We therefore consider that the CAP Code should be tightened further in this area so that it:

- > distinguishes between healthier and less healthy (HFSS) foods;
- > protects children up to 16, not just younger children;
- > is extended to cover a wider range of promotions; and
- > clearly specifies the techniques that are used to target children, restricting their use for HFSS food promotion and encouraging their use for healthier foods.

This is an area where Which? has carried out a lot of research as part of our broader work on tackling the issues that consumers tell us makes it more difficult for them to eat healthily and to encourage their children to eat well. We would therefore be happy to provide you with examples of the types of promotions that are clearly targeting less healthy foods to children but currently escape the restrictions.

THE EUROPEAN VERY LOW CALORIE DIET (VLCD) INDUSTRY GROUP IS THE EUROPEAN TRADE BODY FOR MANUFACTURERS AND DISTRIBUTORS OF VLCD PRODUCTS, WHICH PROVIDE WEIGHT LOSS PROGRAMMES DESIGNED FOR THE VERY OVERWEIGHT AND OBESE, PRIMARILY THOSE WITH A BODY MASS INDEX GREATER THAN 30.

VLCDs ARE FORMULA FOOD DIET PROGRAMMES PROVIDING BETWEEN 400-800 KCALS PER DAY WHICH CONTAIN CAREFULLY FORMULATED AMOUNTS OF ENERGY, PROTEIN, CARBOHYDRATE, FAT, FIBRE AND ALL ESSENTIAL MICRO-NUTRIENTS. THEY ARE ALSO NUTRITIONALLY BALANCED, AND ARE DESIGNED TO REPLACE MORE TRADITIONAL MEALS TO GIVE EFFECTIVE WEIGHT LOSS AT PREDICTABLE RATE. THEY ARE FORMULATED TO ENSURE COMPLIANCE WITH ALL RELEVANT LEGISLATION AND TO ENSURE CLIENT WELL-BEING.

VLCDs ARE AIMED PRIMARILY AT THOSE WITH SEVERE WEIGHT PROBLEMS (TYPICALLY A BMI OF 30 OR MORE) AND PROVIDE AN OPPORTUNITY TO HELP THEM MAKE CHANGES IN THEIR DIET WHICH ALLOW THEM TO ADOPT HEALTHIER LIFESTYLES IN THE LONG-TERM.

PEOPLE CHOOSING TO USE A VLCD WILL RECEIVE ADVICE FROM SPECIALLY TRAINED COUNSELLORS ON WHICH PROGRAMMES ARE AVAILABLE AND HOW TO USE THEM PROPERLY. TYPICALLY PROGRAMMES ALSO INVOLVE NOTIFICATION OF THE CLIENT'S MEDICAL PRACTITIONER PRIOR TO COMMENCEMENT OF THE PROGRAMME.

THE VLCD INDUSTRY GROUP WOULD LIKE TO THANK YOU FOR THIS OPPORTUNITY TO COMMENT ON THE REVISION OF THE CAP CODE, WHICH WE WELCOME AS A NECESSARY STEP IN ENSURING THAT THE RULES REMAIN RELEVANT AND UP-TO-DATE.

PLEASE FIND BELOW OUR SPECIFIC COMMENTS:

SECTION 13: WEIGHT CONTROL AND SLIMMING

TARGETING THE OBESE

QUESTION 40

GIVEN CAP'S POLICY CONSIDERATION, DO YOU AGREE IT IS JUSTIFIED TO ALLOW MARKETING COMMUNICATIONS FOR NON-PRESCRIPTION MEDICINES THAT ARE INDICATED FOR OBESITY AND THAT REQUIRE THE INVOLVEMENT OF A PHARMACIST IN THE SALE OR SUPPLY OF THE MEDICINE TO TARGET PEOPLE WHO ARE OBESE? IF YOUR ANSWER IS NO, PLEASE EXPLAIN WHY?

WE FEEL THAT ALLOWING FOR OBESE PEOPLE TO BE TARGETED IS A POSITIVE MOVE. HOWEVER, BY ALLOWING NON-PRESCRIPTION MEDICINES TO TARGET OBESE PEOPLE, BUT PREVENTING FOOD PRODUCTS FROM DOING THE SAME, A PARADOX IS CREATED WHEREBY FOOD PRODUCTS ARE NOW FACING HARSHER ADVERTISING RESTRICTIONS THAN MEDICINES. THERE IS NO OBVIOUS REASON WHY FOOD PRODUCTS, ESPECIALLY THOSE WHICH ARE DESIGNED TO MEET DAILY NUTRITIONAL REQUIREMENTS AND ARE SUPERVISED BY TRAINED COUNSELLORS, SHOULD BE TREATED MORE STRICTLY THAN MEDICINES.

WE UNDERSTAND THE NEED TO HAVE A POLICY IN PLACE THAT ENSURES THAT PEOPLE WHO USE OBESITY TREATMENTS ARE APPROPRIATELY ASSESSED AS TO THEIR SUITABILITY FOR THE TREATMENT AT EACH STAGE

OF THE TREATMENT. VLCD INDUSTRY GROUP MEMBERS HAVE SUCH PROVISIONS IN PLACE BOTH AT THE START OF THE PROGRAMME AND THROUGHOUT THE DURATION TO MINIMISE ANY RISK OF HARM TO PARTICIPANTS. THESE INCLUDE SIGN OFF FROM A GP AT THE START OF THE PROGRAMME AND MONITORING OF PROGRESS THROUGHOUT THE DIET. THE PROGRAMMES ARE ALL DELIVERED BY SPECIALLY TRAINED COUNSELLORS WHO PROVIDE SUPPORT TO THE PARTICIPANTS AND ENSURE THEIR SAFETY. IN ADDITION, UNLIKE LOW CALORIE DIETS, VLCDs SOLD BY OUR MEMBERS ARE NOT FREELY AVAILABLE OVER THE COUNTER, BUT ARE ALWAYS SOLD THROUGH COUNSELLORS, WHO EXPLAIN THEIR USE AND ANSWER QUESTIONS FROM CONSUMERS ABOUT WHAT TO EXPECT WHEN USING VLCDs.

BECAUSE OF THE ABOVE, WE MUST QUESTION WHY FOOD PRODUCTS SOLD BY TRAINED COUNSELLORS CANNOT BE TARGETED AT OBESE PEOPLE, LIKE NON-PRESCRIPTION MEDICINES.

VERY LOW-CALORIE DIETS (VLCDs)

QUESTION 42

GIVEN CAP'S POLICY CONSIDERATION, DO YOU AGREE THAT RULE 13.7 SHOULD REFERENCE 'OBESITY: THE PREVENTION, IDENTIFICATION, ASSESSMENT AND MANAGEMENT OF OVERWEIGHT AND OBESITY IN ADULTS AND CHILDREN' (2006) PUBLISHED BY THE NATIONAL INSTITUTE FOR HEALTH AND CLINICAL EXCELLENCE' AND NOT GOVERNMENT COMA REPORT No.31, THE USE OF VERY LOW CALORIE DIETS? IF YOUR ANSWER IS NO, PLEASE EXPLAIN WHY?

THE VLCD INDUSTRY GROUP AGREES THAT THE CAP CODE SHOULD BE UPDATED SO THAT IT REFERS TO THE MOST RECENT GUIDANCE.

IT DOES, HOWEVER, RAISE THE ISSUE THAT THE NICE GUIDANCE SUGGESTS THAT VLCDs LESS THAN 600KCAL/DAY SHOULD ONLY BE USED UNDER "CLINICAL SUPERVISION". UNFORTUNATELY, THE GUIDANCE DOES NOT DEFINE WHAT CONSTITUTES "CLINICAL SUPERVISION", WHICH LEADS TO A DEGREE OF UNCERTAINTY FOR OUR MEMBER COMPANIES AND THE WIDER VLCD INDUSTRY, AS WE CAN FORESEE THAT WHEN CONSIDERING SPECIFIC ADVERTS, THE ASA WILL NEED TO HAVE A DEFINITION OF WHAT CONSTITUTES "CLINICAL SUPERVISION". HOWEVER, THE VLCD INDUSTRY GROUP, DOES NOT BELIEVE THE ASA IS THE APPROPRIATE BODY TO PROVIDE SUCH A DEFINITION.

IN ADDITION TO THE ABOVE, WE WOULD ALSO LIKE TO POINT OUT THAT UNLIKE THE COMA REPORT, THE NICE GUIDANCE DOES NOT COVER FORMULATION ISSUES. WE FEAR THAT BY REMOVING THE REFERENCE TO COMA COMPLETELY, NEW COMPANIES ENTERING THE MARKET MAY NOT FEEL COMPELLED TO APPLY THE FORMULATION SUGGESTIONS CONTAINED WITHIN COMA, WHICH ARE CONSIDERED BEST PRACTICE BY THE VLCD INDUSTRY GROUP MEMBERS.

WE WOULD ALSO LIKE TO STRESS THAT ALL OF OUR MEMBER COMPANIES REQUIRE OR STRONGLY ENCOURAGE PARTICIPANTS TO GET MEDICAL ADVICE BEFORE THEY START ON A VLCD PROGRAMME. IN ADDITION, OUR MEMBERS' COUNSELLORS ALL RECEIVED DETAILED INSTRUCTION ON CONTRA-INDICATED MEDICAL CONDITIONS AND MEDICATIONS SO THAT THEY ARE WELL-PLACED TO SCREEN CLIENTS THROUGHOUT THE PROGRAMME AND TO ENSURE THAT RELEVANT ISSUES ARE RAISED WITH THE CLIENT'S GENERAL PRACTITIONER IF NEEDED.

OTHER QUESTIONS

QUESTION 43

i) TAKING INTO ACCOUNT CAP'S GENERAL POLICY OBJECTIVES, DO YOU AGREE THAT CAP'S RULES, INCLUDED IN THE PROPOSED WEIGHT CONTROL AND SLIMMING SECTION ARE NECESSARY AND EASILY UNDERSTANDABLE? IF YOUR ANSWER IS NO, PLEASE EXPLAIN WHY?

ii) ON CONSIDERATION OF THE MAPPING DOCUMENT IN ANNEX 2, CAN YOU IDENTIFY ANY CHANGES FROM THE PRESENT TO THE PROPOSED WEIGHT CONTROL AND SLIMMING RULES THAT ARE LIKELY TO AMOUNT TO A SIGNIFICANT CHANGE IN ADVERTISING POLICY AND PRACTICE AND ARE NOT REFLECTED HERE AND THAT SHOULD BE RETAINED OR OTHERWISE BE GIVEN DEDICATED CONSIDERATION?

III) DO YOU HAVE OTHER COMMENTS ON THIS SECTION?

III) WE WOULD LIKE TO ASSURE YOU THAT ALL THE PRODUCTS SOLD BY MEMBERS OF THE VLCD INDUSTRY GROUP COMPLY WITH THE RELEVANT LEGISLATION. OUR MEMBERS' PROGRAMMES ARE SCIENTIFICALLY SOUND AND SUPPORTED BY UP TO DATE SCIENTIFIC RESEARCH, INCLUDING RIGOROUS TRIALS ON PEOPLE. AS WELL AS PROVIDING A COMPLETE MEAL CONTAINING ALL THE ESSENTIAL AMOUNTS OF MACRO NUTRIENTS, VITAMINS AND MINERALS, VLCD PROGRAMMES ARE DELIVERED BY COUNSELLORS WHO HELP THE USERS MAKING THE NECESSARY LONG TERM CHANGES TO THEIR DIET TO SUSTAIN WEIGHT LOSS ONCE THE VLCD PROGRAMME HAS FINISHED.

OBESITY IS A FAST GROWING PROBLEM IN THE UK, AND IS ACCOMPANIED BY WIDE-SPREAD HEALTH PROBLEMS AS WELL AS AN ECONOMIC COST IN TERMS OF EXTRA MONEY SPENT ON HEALTHCARE, LOST PRODUCTIVITY AND INCREASED SICK DAYS AT WORK. WE BELIEVE THAT COMMERCIAL WEIGHT LOSS PROGRAMMES, INCLUDING THOSE PROVIDED BY OUR MEMBER COMPANIES, ARE VERY COST EFFECTIVE AND HAVE AN IMPORTANT ROLE TO PLAY IN HELPING PEOPLE TO LOSE WEIGHT AND SUSTAIN A HEALTHY WEIGHT IN THE LONG TERM. WITH THIS IN MIND, IT SIMPLY DOES NOT MAKE SENSE THAT RESPONSIBLE COMPANIES ARE NOT ABLE TO ADVERTISE THEIR PRODUCTS TO THOSE WHO COULD MOST BENEFIT FROM THEM.

YOU MAY ALSO BE INTERESTED TO KNOW THAT THE INDUSTRY GROUP IS WORKING ON A CODE OF BEST PRACTICE, WHICH WILL PROVIDE THE ASA AND OTHER STAKEHOLDERS WITH A BETTER IDEA OF THE HIGH STANDARDS OUR MEMBERS COMPLY WITH WHILST PROVIDING THEIR VLCD PROGRAMMES.

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

Permitted nutrition and health claims

QUESTION 52

DO YOU AGREE CAP HAS CORRECTLY REFLECTED THE REQUIREMENTS OF ARTICLE 12(B) OF THE NHCR IN PROPOSED RULE 15.6 AND 15.6.6? IF YOUR ANSWER IS NO, PLEASE EXPLAIN WHY.

THE VLCD INDUSTRY GROUP AGREES THAT RULES 15.6 AND 15.6.6 CORRECTLY REFLECT THE REQUIREMENTS OF ARTICLE 12(B) OF THE NHCR.

WHEN INVESTIGATING AN ADVERTISING COMPLAINT RELATING TO THE ABOVE RULES, WE WOULD STRONGLY SUGGEST THAT THE ASA LIAISES WITH THE LOCAL TRADING STANDARDS OFFICE OF THE RELEVANT COMPANY. WE THINK THE TSO'S INVOLVEMENT IS NECESSARY, AS THEY ARE THE ENFORCEMENT AGENCY IN CHARGE OF THE CORRECT IMPLEMENTATION OF THE NUTRITION AND HEALTH CLAIMS REGULATION AND OUR MEMBERS WILL ALREADY HAVE BEEN LIAISING WITH THEM TO ENSURE THAT THEY COMPLY WITH THE APPLICABLE RULES.

The UK Very Low Calorie Diet (VLCD) Industry Group
Representing the interests of manufacturers and distributors of VLCD products in the UK

Shahriar Coupal
CAP
Mid City Place
71 High Holborn
London
WC1V 6QT

15th September 2009

Please respond to:
VLCD Industry Group
222 Southbank House
Black Prince Road
London
SE1 7SJ
0207 793 2537
frances.powrie@whitehouseconsulting.co.uk

Dear Mr Coupal,

I am writing to you on behalf of the Very Low Calorie Diet (VLCD) Industry Group, in order to request a meeting to discuss the CAP and BCAP codes as they apply to VLCDs.

The VLCD Industry Group is the trade body for manufacturers and distributors of VLCD products which provide weight loss programmes designed for the very overweight and obese (typically a Body Mass Index in excess of 30 kg/m²). VLCDs are formula food diet programmes providing between 400-800 kcals per day and come in the form of shakes, soups and bars. These products are nutritionally balanced and contain carefully formulated amounts of energy, protein, carbohydrate, fat, fibre and essential micro-nutrients. Our programmes are not only an effective weight loss method; they also help the customer to work towards results that are sustainable in the long term.

We have responded to the recent consultation on the CAP Code review; however we feel it would be most useful for all parties involved if we discussed some of our concerns in person. More specifically, we would like to discuss the suggestion to replace the reference to the COMA Report No. 31, *The use of Very Low Calorie Diets*, with a reference to the NICE Guidance on Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children.

The NICE guidance suggests that VLCDs providing less than 600kcal/day should only be used under "clinical supervision". Unfortunately, the guidance does not define what constitutes "clinical supervision", which leads to a degree of uncertainty for our Member companies and the wider VLCD industry. It is obvious that when considering whether or not specific adverts adhere to the rules, the ASA will need to use a definition of what constitutes "clinical supervision". In addition, by replacing the COMA Report by the NICE Guidance, any reference to compositional standards will be removed. This could potentially lead to irresponsible companies advertising products which are not in line with industry best practice.

We feel that it would be useful to meet both CAP and the ASA and discuss this issue, and some additional issues further. We feel that by providing you with more information about VLCDs, how they work, the role of our Counsellors and the levels of medical supervision that are currently provided, we can work together to find the appropriate wording for the CAP Code that would provide the most efficient consumer protection.

If you would agree to such a meeting, perhaps you could let me know and I could then be in touch to find a suitable date and time. We would of course be willing to meet CAP and the ASA separately if you feel that this would be more appropriate.

Yours sincerely,



Eileen Skinner
Chair, VLCD Industry Group

CAP CODE REVIEW CONSULTATION: A RESPONSE FROM VOICE FOR CHOICE

Voice for Choice is a national coalition of voluntary organisations working alongside the All-Party Parliamentary Pro-Choice and Sexual Health Group to campaign for a woman's choice on abortion. Our members include *Abortion Rights, Alliance for Choice Northern Ireland, Antenatal Results and Choices, British Pregnancy Advisory Service, Brook, Doctors for a Woman's Choice on Abortion, Education for Choice, fpa (formerly the Family Planning Association), Irish Abortion Solidarity Campaign, Marie Stopes International, Pro-Choice Forum, Reproductive Health Matters*. More information is available from www.vfc.org.uk

AS INDICATED IN OUR COVERING NOTE, WE ARE SUBMITTING THIS RESPONSE TO THE CAP CODE REVIEW CONSULTATION BECAUSE WE ARE RECOMMENDING THAT THE POINTS MADE WITH REFERENCE TO THE BCAP CONSULTATION ARE ALSO APPLIED TO THE CAP CODE. THE POINTS MADE BELOW ARE EQUALLY APPLICABLE TO BROADCAST AND NON-BROADCAST ADVERTISING.

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.'

ANSWER TO QUESTION 147)

YES.

CONDOMS ARE IMPORTANT IN HELPING TO PREVENT UNINTENDED PREGNANCIES. THEY ARE THE ONLY CONTRACEPTIVE METHOD PROVEN TO REDUCE THE RISK OF ALL SEXUALLY TRANSMITTED INFECTIONS (STIs), INCLUDING HIV^{iv}. IN THE INTERESTS OF PUBLIC HEALTH, ADVERTISING FOR CONDOMS SHOULD BE LESS RESTRICTED.

CHILDREN UNDER 10 WILL OBVIOUSLY NOT BE THE TARGET DEMOGRAPHIC FOR SUCH ADVERTISEMENTS, BUT IN ANY CASE, IT IS ACCEPTABLE THAT AS SUGGESTED, CONDOM ADVERTISING MAY NOT BE PERMITTED TO BE SCREENED IN, OR ADJACENT TO PROGRAMMES WHICH THIS AGE GROUP ARE LIKELY TO WATCH.

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?'

ANSWER TO QUESTION 62) I)

YES- WE AGREE THAT IT IS NECESSARY TO MAINTAIN A RULE SPECIFIC TO POST-CONCEPTION ADVICE SERVICES. WE ALSO AGREE THAT ADVERTISEMENTS FOR PRE-CONCEPTION ADVICE SERVICES IN GENERAL SHOULD BE REGULATED THROUGH THE GENERAL RULES ONLY. HOWEVER, WE BELIEVE SPECIAL REGULATION IS REQUIRED FOR ADVERTISING ON PRE-CONCEPTION ADVICE SERVICES REGARDING EMERGENCY CONTRACEPTION.

ADVERTISING FOR PRE-CONCEPTION ADVICE ON EMERGENCY CONTRACEPTION REQUIRES SPECIAL REGULATION BECAUSE WOMEN WHO MAY RESPOND TO SUCH ADVERTISING ARE IN AN EXTREMELY TIME-SENSITIVE POSITION. THESE WOMEN MAY BE SEEKING TO AVOID PREGNANCY AFTER THEIR REGULAR CONTRACEPTION HAS FAILED, OR MAY NOT HAVE USED CONTRACEPTION, OR WERE FORCED TO HAVE SEX WITHOUT IT. EMERGENCY HORMONAL CONTRACEPTION (THE 'MORNING-AFTER' PILL OR EC) IS EFFECTIVE ONLY WITHIN 72 HOURS OF UNPROTECTED SEX. EC IS MORE LIKELY TO PREVENT PREGNANCY THE SOONER IT IS TAKEN. TAKEN WITHIN 24 HOURS AFTER UNPROTECTED SEX, EC WILL PREVENT UP TO 95% OF PREGNANCIES EXPECTED TO HAVE OCCURRED IF IT HAD NOT BEEN USED. IF EC IS TAKEN BETWEEN 49 TO 72 HOURS AFTERWARDS, IT WILL ONLY PREVENT UP TO 58% OF PREGNANCIES THAT WOULD HAVE BEEN EXPECTED TO OCCUR. AN EMERGENCY IUD ('COIL') FITTED WITHIN FIVE DAYS OF UNPROTECTED SEX CAN ALSO PREVENT PREGNANCY.'

AT PRESENT THERE IS NO REQUIREMENT FOR SERVICES OFFERING PRE-CONCEPTION ADVICE TO MAKE IT CLEAR WHEN THEY DON'T PRESCRIBE EC. IT IS POSSIBLE THAT NON-EVIDENCE BASED PERSONAL ADVICE MAY BE OFFERED ABOUT EC. EC IS NEITHER IN MEDICAL TERMS, NOR IN UK LAW, AN ABORTION. HOWEVER, AMONGST CONTRASTING ETHICAL VIEWS, THERE IS AN ETHICAL VIEWPOINT THAT CONSIDERS THAT EC 'CAUSES ABORTION'. MULTIPLE RESEARCH EVIDENCE ALSO DEMONSTRATES THAT MAKING EC MORE WIDELY AVAILABLE DOES NOT INCREASE COUPLES' SEXUAL RISK-TAKING NOR DOES IT ADVERSELY AFFECT THE USE OF REGULAR, MORE RELIABLE CONTRACEPTION^{vi, vii, viii, ix, x, xi, xii, xiii, xiv, xv, xvi, xvii, xviii, xix, xx, xxi}

WHILE WE WOULD SUPPORT THE RIGHT OF GROUPS TO OFFER NON-EVIDENCE BASED ADVICE ABOUT EC, WE BELIEVE IT IS NOT ETHICAL FOR ADVERTS TO REQUEST THAT WOMEN SHOULD CONTACT THEM TO DISCUSS EMERGENCY CONTRACEPTION, WITHOUT AT THE SAME TIME MAKING CLEAR THAT THEY WILL NOT PROVIDE EC. THIS MAY DELAY WOMEN FROM ACCESSING EC AT THE POINT WHEN IT IS MOST EFFECTIVE.

WE SUGGEST THAT SIMILARLY TO THE PROPOSED REQUIREMENT IN QUESTION 62/11.11 REGARDING CLARITY IN ADVERTISING RE NON-REFERRAL FOR ABORTION, THERE SHOULD BE CLARITY REQUIRED ON THE PART OF ADVERTISERS PROMOTING ADVICE SERVICES IN CONNECTION WITH EMERGENCY CONTRACEPTION. REQUIRED WORDING MIGHT STATE, FOR EXAMPLE, THAT *'WE DO NOT PRESCRIBE EMERGENCY CONTRACEPTION. THIS IS AVAILABLE FOR FREE FROM THE NHS. IT IS MOST EFFECTIVE AT PREVENTING PREGNANCY THE SOONEST IT IS TAKEN AFTER UNPROTECTED SEX, BUT CAN BE TAKEN WITHIN 72 HOURS. CALL NHS DIRECT ON 0845 4647.'*

SUCH A REQUIREMENT WOULD REFLECT THE CLARITY REQUIRED GIVEN THE URGENTLY TIME-LIMITED NATURE OF THE TREATMENT. WE ALSO FEEL THAT ADVERTISING SHOULD NOTE THAT EC IS AVAILABLE FOR FREE. POSSIBLE USERS OF EC INCLUDE THOSE WITH LIMITED FINANCIAL RESOURCES, PARTICULARLY, BUT NOT EXCLUSIVELY YOUNG PEOPLE. THE COST OF THIS MEDICATION FROM A PHARMACIST IS AROUND £30 WHICH FOR SOME CAN BE PROHIBITIVE. IT IS IMPORTANT THAT PEOPLE WHO SEE ADVERTISEMENTS FOR EC DO NOT GAIN THE IMPRESSION THAT THIS IS A PRODUCT THAT IS SOLELY COMMERCIALY AVAILABLE, GIVEN THE TIME LIMITED NATURE OF THE TREATMENT.

QUESTION 62)

ii) 'GIVEN BCAP'S POLICY CONSIDERATION, DO YOU AGREE THAT 11.11 SHOULD BE INCLUDED IN THE PROPOSED BCAP CODE?'

('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.')

ANSWER TO QUESTION 62) ii)

YES. WE AGREE THAT IT IS NECESSARY TO MAINTAIN A RULE SPECIFIC TO POST-CONCEPTION ADVICE SERVICES. WE AGREE THAT 11.11 SHOULD BE INCLUDED IN THE PROPOSED BCAP CODE.

PREGNANT WOMEN WHO MAY NEED INFORMATION AND SUPPORT ABOUT PREGNANCY OPTIONS SHOULD BE ABLE TO ACCESS THIS FROM NON-DIRECTIVE, INFORMED SOURCES. THESE MAY BE WOMEN WHO ARE UNSURE OF WHAT THEY WANT THE OUTCOME OF THE PREGNANCY TO BE, OR WOMEN WHO HAVE DECIDED THAT THEY NEED TO SEEK AN ABORTION. THIS SITUATION IS COMMON: THE ROYAL COLLEGE OF OBSTETRICIANS AND GYNAECOLOGISTS (RCOG) STATES THAT 'AT LEAST ONE-THIRD OF BRITISH WOMEN WILL HAVE HAD AN ABORTION BY THE TIME THEY REACH THE AGE OF 45'^{xxii}

ALL PATIENTS MUST BE ABLE TO MAKE FREE AND INFORMED DECISIONS ABOUT ACCESSING MEDICAL CARE. A REQUIREMENT AS PER SECTION 11.11 TO STATE CLEARLY IN ADVERTISING WHERE ABORTION REFERRAL IS NOT OFFERED WOULD BE WELCOME. CLARITY IN ADVERTISING IS PARTICULARLY NEEDED WHERE MEDICAL SERVICES NEED TO BE ACCESSED WITHIN A LIMITED TIME. AGENCIES OPPOSED TO ABORTION ARE ENTITLED TO GIVE ANTI-ABORTION VIEWS, BUT ADVERTISING MUST INDICATE WHAT THEIR SERVICE ACTUALLY CONSISTS OF, LEST WOMEN ARE UNNECESSARILY DELAYED FROM ANTENATAL CARE OR ABORTION CARE. SERVICES WHICH DO NOT REFER WOMEN FOR ABORTION (AND MAY HAVE A PHILOSOPHY AGAINST ABORTION) ARE NOT

SUBJECT TO ANY REGULATORY OVERSIGHT. THE DEPARTMENT OF HEALTH'S ADVICE TO THE PUBLIC IS: *'THERE ARE A NUMBER OF ORGANISATIONS ADVERTISED IN PHONE DIRECTORIES AND ON THE INTERNET OFFERING FREE PREGNANCY TESTING AND COUNSELLING. SOME OF THESE ORGANISATIONS DO NOT REFER WOMEN FOR TERMINATION OF PREGNANCY. WE WOULD ADVISE WOMEN TO CHECK THIS BEFORE MAKING AN APPOINTMENT'*.^{xxiii}

SOME UNREGULATED SERVICES DO NOT ALWAYS PROVIDE QUALITY INFORMATION OR MAY NOT ALWAYS BE NON-DIRECTIVE IN THIS AREA.

REQUIREMENTS FOR CLARITY IN ADVERTISING REGARDING ABORTION REFERRAL MAY HELP TO RESOLVE CONFUSION WHERE ANTI-CHOICE CENTRES NAME THEMSELVES VERY SIMILARLY TO DEPARTMENT OF HEALTH-REGISTERED PREGNANCY ADVISORY BUREAUX (PABX), OR ESTABLISH THEMSELVES GEOGRAPHICALLY CLOSE TO REGISTERED PABX.

WE NOTE THAT THE PROTECTIONS AFFORDED BY THE PROPOSED REGULATION IN THE BCAP CONSULTATION WOULD ONLY APPLY TO BROADCAST ADVERTISING. WE FEEL THIS MUST BE ACCOMPANIED BY EQUIVALENT REQUIREMENTS REGARDING NON-BROADCAST ADVERTISING. WE WILL BE RESPONDING ACCORDINGLY TO THE CAP CONSULTATION TO HIGHLIGHT THIS NEED.

ⁱ *Drugs – Facing facts: The Report of the RSA Commission on Illegal Drugs, Communities and Public Policy*, RSA, March 2007.

ⁱⁱ Anderson P et al, 'Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A systematic review of longitudinal studies', *Alcohol & Alcoholism*, Vol 44, No3 pp229-243.

ⁱⁱⁱ Leon D A & J McCambridge, 'Liver cirrhosis mortality rates in Britain from 1950 to 2002: an analysis of routine data', *The Lancet*, 2006, Vol 367, 52-56.

^{iv} <http://www.who.int/mediacentre/factsheets/fs243/en/>

^v 'Emergency Contraception', BPAS, <http://www.bpas.org/bpaswoman.php?page=75>

^{vi} MARSTON C, MELTZER H, MAJEED A. IMPACT ON CONTRACEPTIVE PRACTICE OF MAKING EMERGENCY HORMONAL CONTRACEPTION AVAILABLE OVER THE COUNTER IN GREAT BRITAIN: REPEATED CROSS SECTIONAL SURVEYS. *BR MED J* 2005;331(7511):271-3.

^{vii} MOREAU C, BAJOS N, TRUSSELL J. THE IMPACT OF PHARMACY ACCESS TO EMERGENCY CONTRACEPTIVE PILLS IN FRANCE. *CONTRACEPTION* 2006;73:602-8.

^{viii} GLASIER A, BAIRD D. THE EFFECTS OF SELF-ADMINISTERING EMERGENCY CONTRACEPTION. *N ENGL J MED* 1998;339:1-4.20

^{ix} RAINE T, HARPER C, LEON K, DARNEY P. EMERGENCY CONTRACEPTION: ADVANCE PROVISION IN A YOUNG, HIGH-RISK CLINIC POPULATION. *OBSTET GYNECOL* 2000;96:1-7.

^x JACKSON RA, SCHWARZ EB, FREEDMAN L, DARNEY P. ADVANCE SUPPLY OF EMERGENCY CONTRACEPTION: EFFECT ON USE AND USUAL CONTRACEPTION—A RANDOMIZED TRIAL. *OBSTET GYNECOL* 2003;102:8-16.

^{xi} GOLD MA, WOLFORD JE, SMITH KA, PARKER AM. THE EFFECTS OF ADVANCE PROVISION OF EMERGENCY CONTRACEPTION ON ADOLESCENT WOMEN'S SEXUAL AND CONTRACEPTIVE BEHAVIORS. *J PEDIATR ADOLESC GYNECOL* 2004;17:87-96.

^{xii} LO SS, FAN SYS, HO PC, GLASIER AF. EFFECT OF ADVANCED PROVISION OF EMERGENCY CONTRACEPTION ON WOMEN'S CONTRACEPTIVE BEHAVIOR: A RANDOMIZED CONTROLLED TRIAL. *HUM REPROD* 2004;19:2404-10.

^{xiii} RAINE TR, HARPER CC, ROCCA CH, FISCHER R, PADIAN N, KLAUSNER JD, DARNEY PD. DIRECT ACCESS TO EMERGENCY CONTRACEPTION THROUGH PHARMACIES AND EFFECT ON UNINTENDED PREGNANCY AND STIS: A RANDOMIZED CONTROLLED TRIAL. *J AM MED ASSOC* 2005;293:54-62.

^{xiv} HU X, CHENG L, HUA X, GLASIER A. ADVANCED PROVISION OF EMERGENCY CONTRACEPTION TO POSTNATAL WOMEN IN CHINA MAKES NO DIFFERENCE IN ABORTION RATES: A RANDOMIZED CONTROLLED TRIAL. *CONTRACEPTION* 2005;72:111-6.

^{xv} BELZER M, SANCHEZ K, OLSON J, JACOBS AM, TUCKER D. ADVANCE SUPPLY OF EMERGENCY CONTRACEPTION: A RANDOMIZED TRIAL IN ADOLESCENT MOTHERS. *J PEDIATR ADOLESC GYNECOL* 2005;18:347-54.

^{xvi} TRUSSELL J, RAYMOND E, STEWART FH. RE: ADVANCE SUPPLY OF EMERGENCY CONTRACEPTION [LETTER TO THE EDITOR]. *J PEDIATR ADOLESC GYNECOL* 2006;19:251.

^{xvii} WALSH TL, FREZIERES RG. PATTERNS OF EMERGENCY CONTRACEPTION USE BY AGE AND ETHNICITY FROM A RANDOMIZED TRIAL COMPARING ADVANCE PROVISION AND INFORMATION ONLY. *CONTRACEPTION* 2006;74:110-7.

^{xviii} RAYMOND EG, STEWART F, WEAVER M, MONTEITH C, VAN DER POL B. IMPACT OF INCREASED ACCESS TO EMERGENCY CONTRACEPTIVE PILLS: A RANDOMIZED CONTROLLED TRIAL. *OBSTET GYNECOL* 2006;108:1098-106.

^{xix} POLIS CB, SCHAFER K, BLANCHARD K, GLASIER A, HARPER CC, GRIMES DA. ADVANCE PROVISION OF EMERGENCY CONTRACEPTION FOR PREGNANCY PREVENTION. *COCHRANE DATABASE SYST REV* 2007, ISSUE 2.

^{xx} EKSTRAND M, LARSSON M, DARJ E, TYDÉN T. ADVANCE PROVISION OF EMERGENCY CONTRACEPTIVE PILLS REDUCES TREATMENT DELAY: A RANDOMISED CONTROLLED TRIAL AMONG SWEDISH TEENAGE GIRLS. *ACTA OBSTET GYNECOL SCAND* 2008;87:354-9.

^{xxi} SCHWARZ EB, GERBERT B, GONZALES R. COMPUTER-ASSISTED PROVISION OF EMERGENCY CONTRACEPTION: A RANDOMIZED CONTROLLED TRIAL. *J GEN INTERN MED* 2008;23:794-9.

^{xxii} p1, 'Care of women requesting induced abortion', Evidence-based Guideline Number 7, Sept 2004.

^{xxiii} UK DEPARTMENT OF HEALTH, 'REGISTER OF PREGNANCY ADVICE BUREAUX',

http://www.dh.gov.uk/en/POLICYANDGUIDANCE/HEALTHANDSOCIALCARETOPICS/SEXUALHEALTH/SEXUALHEALTHGENERALINFORMATION/DH_4063860