

Betting websites featuring individuals under the age of 25

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1. Executive summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code), is consulting on a proposal to amend a rule in the gambling section of the CAP Code.

The consultation responds to a concern raised by the Remote Gambling Association (RGA) in the light of CAP's recent decision to extend the remit of the CAP Code to cover marketing communications on marketers' own websites.

The remit extension has brought within remit marketing communications on sports betting websites, including those of RGA members, where betting selections are offered for sale. Rule 16.3.14 of the CAP Code prohibits marketing communications for gambling products featuring people who are or seem to be under the age of 25 playing a significant role. This prevents the use of images of sportsmen and women who are or seem to be under the age of 25 to illustrate a bet offered on a sports betting website where they are the subject of the bet.

Before the remit of the CAP Code was extended, the use of these images was permitted when these websites were regulated only by the relevant gambling regulators, including the Gambling Commission for operators licensed in Great Britain. The RGA has asked CAP to consider if, for reasons set out in this consultation document, the CAP Code should permit the use of images of sportsmen and women who are or seem to be under the age of 25 to illustrate a bet offered on a sports betting website.

When it extended the remit of the CAP Code, CAP announced a two year on-going review in part to address any unforeseen consequences of applying the CAP Code to marketing communications in non-paid-for space online. CAP has considered the RGA's request in the context of the review and, after a pre-consultation exercise, considers that the proposal merits public consultation to help determine if a change to the Gambling section is justified.

CAP is mindful of the need to maintain the protections provided by the Code, in particular, the protection of children (those aged 15 and under) and young people (those aged 16 or 17), but CAP is also keen to ensure that the extension of remit is implemented in a balanced and proportionate manner. In that context, CAP acknowledges that the extension of the CAP Code's remit has prohibited a marketing practice that was previously allowed under the general regime of gambling operator licensing and that was not considered when the rules for gambling advertisements were first consulted upon.

CAP considers its proposed amendment amounts to a modest relaxation of the present rule, affecting a range of content which is likely to be viewed overwhelmingly by those over the age of 18.

CAP proposes to amend rule 16.3.14 in the following manner in response to the concerns raised:

Marketing communications must not:

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

Individuals who are, or seem to be under 25 years old may be featured playing a significant role only in marketing communications that appear in a place where a bet can be placed directly through a transactional facility, for instance, a gambling operator's own website. The individual may only be used to illustrate specific betting selections where that individual is the subject of the bet offered.

The consultation will close at **5pm on Friday 8 February 2013**. The consultation is for eight weeks, with a two week extension in light of the Christmas period. For more information on the next steps see Section 6 and for full details of how to respond to the consultation, please see Annex 1.

2. Introduction to CAP and the ASA

2.1 The Committee of Advertising Practice

CAP is the self-regulatory body that creates, revises and enforces the CAP Code. The CAP Code covers non-broadcast marketing communications, which include advertisements placed in traditional and new media, sales promotions, direct marketing communications and marketing communications on marketers' own websites. The advertiser has primary responsibility for complying with the CAP Code and compliance is not voluntary. Parties that do not comply with the CAP Code could be subject to adverse publicity resulting from adjudication by the Advertising Standards Authority (ASA) or sanctions including the denial of media space, for example.

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

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

Information about CAP is available at www.cap.org.uk, which includes a copy of the CAP Code.

2.2 The Advertising Standards Authority

The ASA is the independent body responsible for administering the CAP Code so that all marketing communications are legal, decent, honest and truthful, ensuring that the self-regulatory system works in the public interest.

The ASA receives and investigates complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's adjudications are published on the ASA's website, www.asa.org.uk, and made available to the media. An Independent Review procedure exists for interested parties. If the ASA Council upholds a complaint, the marketing communication must be withdrawn or amended. CAP conducts compliance, monitoring and research to enforce the ASA Council's decisions.

The ASA's work in regulating non-broadcast marketing communications is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof). The finance board operates independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about the ASA, including the complaint-handling and investigations procedures and the ASA's Independent Review procedure, is available at www.asa.org.uk. Information about ASBOF is available at www.asbof.co.uk.

3. Legislative framework

3.1 The Gambling Act

- 3.1.1 The Gambling Act 2005 (“the Act”) entered fully into force in September 2007. The Act replaced most existing gambling law with a new regulatory system governing all gambling in Great Britain, defined as betting, gaming and lotteries except the National Lottery and spread betting. As such, the Act includes provisions on gambling advertising.
- 3.1.2 To deal with new practices, the Act introduced a broad legal definition of advertising covering remote gambling (e.g. telephone, Internet) and non-remote gambling (i.e. face to face) and marketing arrangements such as brand-sharing.
- 3.1.3 Section 1 of the Act states its licensing objectives:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - Ensuring that gambling is conducted in a fair and open way; and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.

See the full text of the Act [here](#).

3.2 The Act and the ASA/CAP system

- 3.2.1 CAP, the ASA, the Gambling Commission and the Secretary of State (Department for Culture, Media and Sport (DCMS)) share responsibility for the regulation of gambling advertising in non-broadcast media.
- 3.2.2 Under the Act, the Gambling Commission may issue code of practice provisions on gambling advertising in consultation with CAP, the Secretary of State, the gambling industry, problem gambling experts and HM Commissioners for Revenue and Customs. The Commission asked CAP to perform that function in line with its commitment to better regulation principles and to ensure consistency with the broadcast advertising rules.
- 3.2.3 The Gambling Commission can also choose to include other provisions on non-broadcast advertising in its codes of practice and the Secretary of State can make regulations on non-broadcast advertising.

More information on the Gambling Commission can be found [here](#).

3.3 Gambling advertisements and the CAP Code

- 3.3.1 To coincide with the full implementation of the Act in September 2007, CAP introduced new rules to reflect the new regulatory regime and the greater scope for gambling advertising. The rules, along with their equivalents in the UK Code for Broadcast Advertising, were the subject of a joint public consultation in 2006.

Full details of the consultation can be found [here](#).

3.3.2 The CAP Code section on Gambling is intended to ensure that all gambling advertising is socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.

3.3.3 Among the specific rules, there are requirements that marketing communications must not:

- Portray, condone or encourage gambling behaviour that could lead to financial, social or emotional harm;
- Exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons;
- Suggest that gambling can enhance personal qualities;
- Suggest gambling is a rite of passage;
- Be likely to be of particular appeal to children or young persons be directed at those aged below 18 years through the selection of media or context in which they appear; and
- Include a child or a young person.

A full copy of the Gambling Section of the CAP Code is available [here](#).

4. Policy background

4.1 General policy objectives

- 4.1.1 CAP's general policy objective is to set standards to ensure that all non-broadcast marketing communications covered by the CAP Code are legal, decent, honest and truthful and prepared with a due sense of social and professional responsibility.
- 4.1.2 CAP intends the CAP Code to be based on the enduring principles that marketing communications should be responsible, respect the principles of fair competition generally accepted in business, and should not mislead, harm or offend.
- 4.1.3 Within this framework, a key CAP objective is to ensure that the CAP Code adequately protects children and other vulnerable groups, while, at the same time, maintaining an environment in which responsible non-broadcast advertising can flourish.
- 4.1.4 CAP intends its rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that the rules are easily understood, easily implemented and easily enforced.

4.2 CAP's approach to gambling advertising

- 4.2.1 In line with the approach of the Gambling Commission and DCMS under the auspices of the Gambling Act, the CAP Code includes rules designed to allow gambling to be advertised as a responsible leisure or entertainment activity only and to reflect the Government's intention, as expressed in the Regulatory Impact Assessment for the Gambling Act, that "reduction of harm should take precedence over the maximisation of innovation, consumer choice and economic gains".
- 4.2.2 In doing so, the proposed rules reflect the core licensing objectives of the Gambling Act 2005:
 - Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - Ensuring that gambling is conducted in a fair and open way; and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.

4.3 Rule 16.3.14

- 4.3.1 Rule 16.3.14 is one of a number of rules that seeks to respond to the objectives that children should be protected from being harmed or exploited by gambling and that gambling advertisements remain responsible. It requires that:

Marketing communications must not:

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

- 4.3.2 The initial part of the rule amounts to an outright prohibition on the use of children, those aged 15 or under, and young persons, those aged 16 or 17, appearing in marketing communications for gambling products.
- 4.3.3 The age limit on people featured gambling or playing a significant role was chosen because by the age of 25, people clearly look and sound more adult than adolescent. CAP considers that this approach gives more certainty to the advertising industry when creating advertisements and to the ASA Council when deciding if an advertisement has breached the CAP Code. Moreover, it provides that children and young people do not identify, by age, with those playing a significant role or featured gambling.

4.4 Online remit extension

- 4.4.1 The issue addressed in this consultation must be seen in the wider context of a significant recent development in the ASA/CAP system.
- 4.4.2 In March 2011, CAP extended the remit of the CAP Code to cover marketing communications by or from companies, organisations or sole traders on their own websites, including sports betting websites, or appearing in non-paid-for space online under the marketers' control.
- 4.4.3 CAP took into account stakeholder expectations that the ASA regulates organisations' own marketing communications on their own websites. It noted the growing social and political concern to ensure children, young people and vulnerable adults were adequately protected online, and wished to ensure that the same high standards were achieved in marketing communications on websites as in other media. All those factors combined to persuade CAP that its extension of remit was justified.
- 4.4.4 The new remit was framed so as to focus specifically upon material which can be properly accepted as constituting an advertisement or other marketing communication. Other types of website communication including, for example, editorial, public relations, press releases and investor relations material remain outside the remit of the CAP Code and the ASA does not take up complaints about those kinds of material.
- 4.4.5 CAP recognised that the extension of the remit of the CAP Code was a complex undertaking that should be implemented with due flexibility and proportionality. For this reason, CAP, the ASA and Asbof committed to an on-going, quarterly review of the extended online remit with the intention of carrying out a comprehensive review in 2013, to ensure that the UK's advertising self-regulatory system continues to work in the best interest of consumers and the marketing community in the online and offline world.

4.4.6 The three parties invited and encouraged feedback from stakeholders throughout the review period about any aspect of the remit extension with a pledge to act, as appropriate, on the significant comments that they received. It is in that context that the present proposal is made.

For more information on the remit extension, see Extending the Digital Remit of the CAP Code, which can be found [here](#).

5. Proposed amendment to the Code

5.1 Concerns over the application of rule 16.3.14 to websites

5.1.1 Earlier this year, the Remote Gambling Association (RGA) approached CAP on behalf of its members to raise concerns over the application of rule 16.3.14 to gambling operators' websites.

The RGA is a trade association representing gambling operators in the UK and across the EU. For more information on the RGA, please see their [website](#).

5.1.2 RGA members are concerned that the extension of the CAP Code's remit unduly prohibits them from using images of sportsman and women under the age of 25 to illustrate betting selections on sports betting websites where they are offered for sale. The application of rule 16.3.14 to such content results in the disparity of gambling operators being allowed to include images of individual sportsmen and women to illustrate some selections offered, but not others. For example, where:

- A series of markets offered on an individual sport such as 'winner', 'to win 1st set' and 'to serve the most aces' in a tennis match featuring one player who is under the age of 25 and one who is 25 or over; or
- A market offered on a team sport such as a 'player to score' bet in a football match, where certain members of the team are under the age of 25.

5.1.3 Before the extension of remit of the CAP Code, gambling operators were permitted, under guidance from the Gambling Commission, to use images of sportsmen and women under the age of 25. Although mindful of the need to protect children and young people from harm that might arise from gambling marketing communications, the RGA believes that the prohibition is disproportionate and unduly restrictive, especially given the factors presented in section 5.2.

5.2 RGA request for a limited relaxation

5.2.1 The RGA has asked CAP to consider whether rule 16.3.14 could be amended to allow images of sportsmen and women under the age of 25 to be used to illustrate sports betting products at the point of sale on sports betting websites. The RGA's request is specific and does not extend to allowing images of sportsmen and women under the age of 25 being featured in other marketing communications covered by the CAP Code.

5.2.2 The RGA makes several significant supporting points:

- It is illegal to accept bets from people under the age of 18 in the UK. Remote gambling operators advertising in the UK have to abide by strict age verification procedures required by their licence.
- Gambling licences require all customers to open accounts before placing a bet. If the age of the person cannot be verified, any stakes placed will be returned and the account closed. There is no opportunity for those under the age of 18 to bet online, even if they can view the website's contents.
- Research suggests that the number of young people (i.e. 16 and 17 year olds) gambling online is very small. No independent research has shown that online betting is especially attractive to young people.

5.3 CAP's decision to consult

- 5.3.1 CAP assessed the RGA's submissions and carried out its own work to explore the implications of rule 16.3.14's application to marketers' own websites.
- 5.3.2 In deciding to consult, CAP is mindful that the recently extended remit of the CAP Code now covers marketing communications in online environments under existing regulatory regimes. While it strongly believes that the underlying principles of the Code, protecting both consumers and industry, are appropriate to cover marketing communications in this space, at the same time, CAP acknowledges the need for proportionality and the need to recognise the context of the medium in question.
- 5.3.3 As noted in section 4, the online remit extension is subject to on-going review and CAP considers that its decision to consult on this issue is related to the wider on-going process of successfully implementing the online remit extension. At the same instant, however, CAP must meet its objectives in relation to gambling advertising, in particular, the protection of children and young people.
- 5.3.4 As such, CAP has taken into account that the proposal is focused on a narrowly defined type of marketing communication in response to a specific concern. Furthermore, CAP notes the age verification measures in place to guard against individuals under the age of 18 who can access the website actually placing a bet. Indeed, the available evidence suggests that online betting is not a significant area of concern in relation to children and young people.
- 5.3.5 Notwithstanding the age verification measures protecting the transactional facility, in CAP's view there is, in any case, a qualitative difference between content appearing on such websites and other types of marketing communication.
- 5.3.6 Marketing communications on sports betting websites are clearly directed and almost exclusively received by an audience that is, to an extent, self-selecting: it comprises those who have already made a series of decisions to enquire further, either on the basis of advertising elsewhere or a particular interest in the service offered by the website. This audience is narrow and a large part of it is likely to be made up of returning customers who, by virtue of their holding an account, have already been subject to age verification measures.

5.3.7 It is also important to note that marketing communications in other media leading consumers to a betting website are and will remain subject to rule 16.3.14, thereby limiting the potential for wider youth appeal in marketing communications that speak to broader audiences.

5.3.8 In considering the matter, CAP has sought the views of the appropriate statutory authorities, including the Gambling Commission, over whether there are legal or significant regulatory obstacles to consulting on this issue. CAP is satisfied that there are no such obstacles.

5.4 Policy objectives

5.4.1 As well as the general objectives outlined in section 4, in deciding to consult on an amendment to rule 16.3.14, CAP has several policy objectives more specific to the matter at hand:

- The need to ensure that any amendment to the rule continues to accord with the specific requirements and wider objectives of the Gambling Act. In particular, the need to maintain protection for those under 18 years old who may not legally gamble.
- The need to focus the wording of the proposed amendment as narrowly as is possible on the issue identified i.e. the disproportionate application of rule 16.3.14 to prohibit the illustration of some betting selections. Principally, CAP is satisfied that the proposed amendment is worded in a manner that ensures there is no scope for advertisers to use those under the age of 25 to actively endorse betting products or betting more generally.
- The need to maintain a sector neutral approach. Although the RGA focus is on sports betting, CAP acknowledges that other areas of betting exist, for instance, in politics and entertainment. There is therefore a need to avoid privileging sports betting unduly over other areas of betting.
- Although the effect of the proposed amendment focuses on marketing communications appearing on betting websites there is a need, in line with CAP's wider objectives, to maintain proportionately a media-neutral approach in the wording of the amendment so that it does not unduly privilege one medium over another. CAP considers that the proposed amendment, in particular, the reference to the presence of a transactional facility is sufficient to limit its scope to environments that are similar to betting websites, (as discussed in section 5.3) i.e. a self-selecting audience with a negligible proportion of under 18s and licencing requirements requiring robust age verification of transactions.

5.5 Proposal for consultation

5.5.1 Rule 16.3.14 currently states:

Marketing communications must not:

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

5.5.2 CAP proposes the following amendment to rule 16.3.14:

Marketing communications must not:

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

Individuals who are, or seem to be under 25 years old may be featured playing a significant role only in marketing communications that appear in a place where a bet can be placed directly through a transactional facility, for instance, a gambling operator's own website. The individual may only be used to illustrate specific betting selections where that individual is the subject of the bet offered.

5.6 Consultation questions

- 1) Do you agree with CAP's proposal to revise CAP Code rule 16.3.14? If not, please explain why.
- 2) Do you agree to the wording of the proposed amendment to CAP Code rule 16.3.14? If not, please explain why and include any alternative wording that you consider to be more appropriate.

6. Next steps

CAP is committed to considering all responses carefully and with an open mind. Given the sector-specific nature of this consultation, CAP would welcome responses from stakeholders with an interest or expertise in matters related to gambling advertising in particular. Responses from other stakeholders and members of the public are also welcome.

Responses have been invited from a cross-section of interested parties representing both consumers and the industry. Information on how to respond to this consultation can be found in Annex 1.

The following summarises the consultation, evaluation and approval process for the finalised guidance.

- The consultation is for eight weeks, with a two week extension in light of the Christmas period and will close at **5 pm on Friday 8 February 2013.**
- CAP will consider each response carefully and evaluate all significant points made by respondents explaining the reasons behind the decisions it makes.
- The post-consultation evaluation will be published on the CAP website when the outcome of the consultation is announced.

Annex 1: Responding to this consultation

How to respond

CAP invites written comments including supporting evidence on the proposals contained in this document, by **5 pm on Friday 8 February 2013**.

When responding, please state if you are doing so as an individual or a representative of an organisation. Also, please make clear what your individual interest is or who your organisation represents. It will be helpful if you explain fully and clearly why you hold your opinion.

We strongly prefer to receive responses as email attachments, in Microsoft Word format, because that helps us to process the responses.

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

If you are unable to reply by email, you may submit your response by post or fax (+44 (0)20 7404 3404), marked with the title of the consultation, to:

CAP Gambling Consultation
Code Policy Team
Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

Confidentiality

CAP considers that everyone who is interested in the consultation should see the consultation responses. We shall publish all non-confidential responses on our website, www.cap.org.uk, when we announce the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by email or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.

If part of a response is confidential, please put that in a separate annex so that non-confidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

Accessibility

We want our consultation process to be accessible to everyone. If you have particular accessibility needs please contact the Code Policy team and we shall be happy to help.

Telephone: 020 7492 2200
Email: andrewt@cap.org.uk
Fax: 020 7404 3404
Textphone: 020 7242 8159

Note that we do not need a hard copy in addition to an electronic version. Also note that, other than an automated response to responses received by email, CAP will not routinely acknowledge receipt of responses.

According to need, we will endeavour to provide copies of this document in alternative formats upon request.

List of consultees invited to respond

To obtain a variety of opinions, CAP has invited the following key stakeholders to respond to this consultation:

Gambling Commission
Department of Culture Media and Sport
Ofcom

We have arranged for the Gambling Commission to circulate an invitation to respond to their key stakeholders, including licensed gambling operators and civil society organisations with an interest in responsible gambling.

CAP also welcome suggestions of others you think should be informed of this consultation.

More information

If you have any questions about this consultation or need advice on the form of response, please contact CAP's Code Policy team at:

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