

References to people who are obese in weight loss advertising

CAP and BCAP's regulatory statement on their decision to allow certain providers to make references to obesity



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1. Executive Summary

After a period of public consultation the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) ('the Committees') are amending rules in their Codes to allow advertisers of lifestyle weight loss programmes which meet particular criteria to make reference to obesity in their advertising, and therefore target people who are obese.

Up until now such advertisers have been prohibited from targeting obese people because their programmes do not meet the Codes' requirement that services be supervised by a suitably qualified healthcare professional. The Committees consider that the recognition that some lifestyle weight loss programmes now enjoy as a safe and effective means of losing weight, combined with the seriousness and prevalence of obesity in the UK, warrants a conditional de-regulation to allow some marketers to target people who are obese when they could not previously have done so.

The changes take effect with the publication of this document on **12 November 2015**. Mindful of the potential impact of the rule change CAP and BCAP will undertake a review of the effect of the change in 12 months' time.

2. Background

This section provides only a precis of the policy background and the decision to consult. Readers wishing to see the full background should consult the original [consultation document](#).

2.1 General policy objectives

CAP and BCAP's general policy objective is to set standards to ensure that all advertisements are legal, decent, honest and truthful and prepared with a due sense of social and professional responsibility. CAP and BCAP intend their Codes to be based on the enduring principles that advertisements should be responsible, respect the principles of fair competition generally accepted in business and should not mislead, harm or offend. The Committees are keen to maintain an environment in which responsible advertising can flourish. They intend their 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.

2.2 The Codes and obesity

Both Codes include general rules which apply to all advertising. They also contain a number of sections which deal with sectors or issues that require more detailed rules, for example where the Committees have considered that consumers require greater protection. To that end both the Codes include sections on the advertising of weight loss products and services, and also of medicines and health-related products and services.

Rules in those sections of the Codes enact a general principle that advertising must not discourage essential treatment for certain serious medical conditions. That principle and the rules derived from it are intended to ensure that consumers who have (or suspect they have) a serious medical condition see a suitably qualified healthcare professional in the first instance and are not encouraged by advertisements to do otherwise. CAP and BCAP consider, via their Codes and guidance that obesity is one such condition because of its well established links with various serious medical conditions.

The practical effect of the rules and guidance described above and the ASA rulings which have engaged them has been that marketers offering lifestyle weight loss programmes have not been able to reference obesity in their advertising because the programmes are not directly supervised by medical professionals. This has prevented marketers of such programmes from targeting obese individuals by, for example, referring to obesity through the spoken word, in text or by showing obese individuals. It has also prevented depictions of individuals who have now arrived at a healthy weight if there is an implication that they used to be obese.

2.3 The decision to consult

The prevalence of obesity and its effect on public health is well documented and has been followed by wider public policy initiatives to try and tackle it. In the time since the prohibitions on obesity were put in place, responsible lifestyle weight management programmes have become recognised as safe and effective ways for people to lose weight and a significant number of their self-referring clients are obese. In 2014 NICE updated their public health guidance document PH53, 'Managing overweight and obesity in adults – lifestyle weight management services'. While it does not address the acceptability of

references to obesity in advertising it does, through its recommendations, envisage a substantial role for certain lifestyle weight management programmes as part of a broader strategic approach to managing obesity in the population and does not require medical supervision for such services.

In that light CAP and BCAP decided to examine whether the prohibition on references to obesity by such advertisers might usefully be relaxed to allow some marketers who met particular criteria to make reference to obesity in their advertising and therefore target obese people who might benefit from their services.

3. Outcome

After a period of consultation and careful consideration of all the responses CAP and BCAP have decided to amend the relevant rules in both of their Codes to allow providers of lifestyle weight management programmes meeting certain criteria to make references to obesity in their advertising.

In making that decision the Committees were mindful that obesity and its health impacts are no less serious than before, but they do consider that the broader health and policy landscape has changed sufficiently that it is no longer proportionate to prohibit responsible lifestyle weight management programmes from advertising their services to people who are obese.

The policy and practical changes are explained in full below and the Code changes themselves are set out in Annexes A and B. CAP are also publishing an updated AdviceOnline entry.

3.1 Definition

Drawing on NICE Guideline PH53 CAP and BCAP are providing the following definition for lifestyle weight management programmes for overweight or obese adults:

Lifestyle weight management programmes for overweight or obese adults are multicomponent programmes that aim to reduce a person's energy intake and help them to be more physically active by changing their behaviour. They may include weight management programmes, courses or clubs that: accept adults through self-referral or referral from a health or social care practitioner; are provided by the public, private or voluntary sector; and are based in the community, workplaces, primary care or online.

3.2 Criteria

In forming their original proposal CAP and BCAP looked to NICE Guideline PH53 and chose criteria which the Committees considered were proportionate and a suitable basis on which the ASA might make enforcement decisions. The Committees remain persuaded that, with some minor modification, those criteria remain the most proportionate and workable options.

CAP and BCAP noted calls from consultation respondents to simply require compliance with PH53 (or specific sections thereof) in their entirety, or to choose different criteria. Although those responses were carefully considered CAP and BCAP were mindful that PH53 is not a regulatory tool for advertising. It is not necessarily the case that a provider needs to meet every criterion. Many of the criteria are simply too granular or broadly written for Code users and the ASA to reasonably be able to use them as a decision-making tool for considering the acceptability of advertisements. The final criteria are set out below with the policy rationale.

- **Programmes must be shown to be effective at 12 months or beyond**

In response to feedback received in consultation, the wording has changed slightly to refer to “or beyond” which accurately reflects the requirement in PH53.

Efficacy at 12 months is important because it requires programmes to deliver weight loss in the longer term, have a greater impact on the individual over time and improve their health outcomes. For this reason it is also a central plank of PH53. CAP and BCAP acknowledge that the weight loss market contains many treatments that are effective within shorter timescales but also note that weight lost on such programmes can often be regained quite quickly. Many respondents asked how efficacy would be assessed. CAP maintains formal [Advertising Guidance](#) which sets out the well-established standards of substantiation that they and the ASA expect marketers to meet when making health, beauty and slimming claims.

Additionally CAP and BCAP understand that it is possible for a programme to last for a period shorter than 12 months but still be shown to be effective at that time. However marketers will need to ensure the evidence of efficacy of the programme itself is robust.

- **Programmes must last at least three months**

CAP and BCAP have decided to implement this criterion but have re-worded it to bring it in line with that used in the NICE Guideline. The Committees note that it caused some concern amongst consultation respondents and therefore offer the following clarification as to the reasons for its inclusion.

CAP and BCAP understand that when NICE conducted their review of the evidence that went on to underpin PH53, none of the effective programmes in the evidence base lasted less than three months. Requiring this as a minimum duration accurately reflects the evidence base and prohibits programmes of a shorter duration than three months targeting obese people.

However the Committees understand that many lifestyle programmes are provided in perpetuity with individuals joining and leaving as they see fit. Some individuals may join and leave the same programmes several times. Programmes provided on an ongoing basis would likely be compliant with this criterion.

- **Programmes must be multi-component; addressing dietary intake, physical activity levels and behaviour change**

This criterion is unchanged since proposal. The need to be multi-component is again a central plank of PH53. CAP and BCAP understand that programmes delivering the components listed have a greater chance of resulting in longer-term weight loss and lifestyle change, than do programmes which deliver fewer components.

- **Programmes must be developed by a multi-disciplinary team; including input from a registered dietitian, registered practitioner psychologist and a qualified physical activity instructor**

This criterion is unchanged since its proposal and is intended to ensure that the components referred to in the previous criterion are developed by those who are suitably qualified to construct them.

- **Programmes must be provided by staff who are trained to deliver the programme in question**

When this criterion was proposed it referred only to staff being “trained to deliver them” and has been modified to better clarify its purpose. CAP and BCAP understand that there is no widely-recognised qualification for staff who deliver lifestyle weight loss programmes.

Therefore the criteria is worded more specifically, and requires that staff are trained to deliver the programme in question. Advertisers will need to be able to demonstrate that to be the case.

3.3 The role of PH53 in the new rules

In reading these criteria marketers should have regard to NICE Guideline PH53 because it explains the wider public health policy rationale for the value of such programmes and the evidence base for its various recommendations (including those which CAP and BCAP have included in their rules). The finalised rules recommend this. The Committees also understand that the more criteria are met from the wider guideline the more likely it is that the programme in question will be effective in its aims.

Some respondents expressed concern that the draft rule proposed in the consultation implied the ASA might have regard to the Guideline in deciding compliance with the Code. CAP and BCAP can clarify that it is not their intention for the ASA to test compliance with the wider Guideline. However the ASA may, like marketers themselves, look to it when needing to understand the wider policy context and the evidence and rationale which underpin the criteria in the finalised rule.

3.4 Reference to obesity in the 'Health' Advertising Guidance

CAP Code rule 12.2 and BCAP Code rule 11.3 require marketers not to discourage essential treatment for conditions for which medical supervision should be sought. CAP has published formal Advertising Guidance entitled [Health, beauty and slimming marketing communications that refer to medical conditions](#) which designates obesity as a condition for which suitably qualified medical advice should be sought. Concurrent with this rule change the Advertising Guidance will be amended to make clear that lifestyle weight management programmes meeting the criteria set out in the relevant weight loss rules are an acceptable intervention for obesity. The Advertising Guidance will be updated at the time of publication of this document.

4. Other issues

In addition to this document CAP and BCAP have provided an Evaluation of Responses which answer significant points made to them in the consultation. Some of the key issues and questions from respondents are covered below.

4.1 Categories of obesity

In their consultation document CAP and BCAP asked for views on whether advertisers meeting the criteria might legitimately refer to all tiers of obesity, including the upper tier, obesity III (BMI >40), and therefore target people in all categories. CAP and BCAP understand that NICE Guideline PH53 does not have an upper BMI limit and therefore effective lifestyle weight loss programmes can still be of benefit to people in the upper category. On that basis CAP and BCAP have decided to allow references to all categories, but they intend to review the effect of the change in the rules after 12 months to ensure that any new depictions of those who are obese are not causing harm.

4.2 Limitations of lifestyle weight loss programmes

CAP and BCAP understand that lifestyle weight loss programmes have been shown to be an effective means of achieving weight loss over the longer term but they are not a panacea. On average people attending a lifestyle programme will lose around 3% of their body weight, but this varies considerably. The Committees understand that even this small amount of weight loss can still have health benefits, particularly if it is maintained.

The Codes already require that weight loss advertisements do not make claims as to the specific amount of weight that can be lost by individuals within specific periods of time. However testimonials from those who have lost weight with programmes are permitted, and are common in weight loss advertising. Marketers are advised to have regard to their evidence base when using testimonials that show a greater weight loss than is likely to be experienced by most participants. In such circumstances they should take care not to state or imply that the depicted level of weight loss is to be expected or is a common outcome.

4.3 Depictions of people who are obese

CAP and BCAP are aware that the implementation of this change to their Codes will result in an increased number of depictions of people who are obese in advertisements for lifestyle weight management programmes. The Committees note that being overweight and obesity are major public health issues but ones which are difficult and sensitive for a significant number of people. Through their Codes CAP and BCAP already provide rules which prohibit advertising that is likely to cause serious or widespread offence. Marketers who choose to make use of the revised rule should exercise caution to ensure that their depictions of, and references to, people who are obese are responsible and not likely to cause offence.

4.4 Administrative change to CAP rule 13.2

While making changes to the rules CAP is taking the opportunity to correct a syntax error in existing CAP rule 13.2. The last sentence of the rule as currently worded states:

Marketing communications for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine may nevertheless be advertised to the public.

A natural reading of that sentence is that “marketing communications... can be advertised to the public” which is incorrect; rather it is non-prescription medicines that can be advertised. The words “Marketing communications for” will therefore be removed. This change is included with the CAP Code changes in Annex A.

5. Next steps

5.1 Implementation

The changes described in this document take effect with the publication of this document on 12 November 2015. The relevant sections of the CAP and BCAP Codes and the Advertising Guidance referenced in section 3.5 will be updated at the same time.

5.2 Review after 12 months

CAP and BCAP consider this change to the rules to be significant. They will therefore conduct a review of the effect of the rules in 12 months' time.

5.3 Advice and guidance

Concurrent with this announcement CAP's Copy Advice team will update the AdviceOnline entry ['Weight Control: Obesity'](#) to reflect the new position.

Annex A: Changes to the CAP Code

Current wording	<p>13.2 Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m². Obesity is frequently associated with a medical condition and a treatment for it must not be advertised to the public unless it is to be used under suitably qualified supervision. Marketing communications for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine may nevertheless be advertised to the public.</p>
Administrative amendment to rule 13.2	<p>13.2 Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m². Obesity is frequently associated with a medical condition and, <u>except where stated in 13.2.1</u>, a treatment for it must not be advertised to the public unless it is to be used under suitably qualified supervision. Marketing communications for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine may nevertheless be advertised to the public.</p>
New additional rule	<p>13.2.1 Lifestyle weight management programmes which meet the following standards may make responsible references to obesity in their marketing communications. These programmes must:</p> <ul style="list-style-type: none"> • be shown to be effective at 12 months or beyond • last at least three months • be multi-component; addressing dietary intake, physical activity levels and behaviour change • be developed by a multi-disciplinary team; including input from a registered dietitian, registered practitioner psychologist and a qualified physical activity instructor, and • be provided by staff who are trained to deliver the programme in question. <p>Marketers should have regard to the guidance on ‘Managing overweight and obesity in adults – lifestyle weight management services’ published by the National Institute for Health and Care Excellence (NICE).</p>

Annex B: Changes to the BCAP Code

Current wording	<p>12.11 Advertisements for weight control or slimming products or services must not be targeted directly at individuals with a Body Mass Index of 30 or above (obesity) or use testimonials or case histories referring to subjects who were or seemed to be obese before using the advertised product.</p> <p>12.11.1 Advertisements for clinics or other establishments that offer treatment under suitably qualified medical supervision and advertisements for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine may nevertheless be targeted at those who are obese.</p>
Administrative change to rule 12.11	<p>12.11 <u>Except where stated in 12.11.1 and 12.11.2,</u> advertisements for weight control or slimming products or services must not be targeted directly at individuals with a Body Mass Index of 30 or above (obesity) or use testimonials or case histories referring to subjects who were or seemed to be obese before using the advertised product.</p>
Additional rule	<p>12.11.2 Lifestyle weight management programmes which meet the following standards may make responsible references to obesity in their advertisements. These programmes must:</p> <ul style="list-style-type: none"> • be shown to be effective at 12 months or beyond • last at least three months • be multi-component; addressing dietary intake, physical activity levels and behaviour change • be developed by a multi-disciplinary team; including input from a registered dietitian, registered practitioner psychologist and a qualified physical activity instructor, and • be provided by staff who are trained to deliver the programme in question. <p>Advertisers should have regard to the guidance on ‘Managing overweight and obesity in adults – lifestyle weight management services’ published by the National Institute for Health and Care Excellence (NICE).</p>

Contact us

Committee of Advertising Practice
Mid City Place, 71 High Holborn
London WC1V 6QT

Telephone: 020 7492 2200
Textphone: 020 7242 8159
Email: enquiries@cap.org.uk

www.cap.org.uk

 Follow us: @CAP_UK