

Featuring children in lottery advertising

Committee of Advertising Practice and Broadcast Committee of Advertising Practice consultation on a new rule to permit children to play a significant role in lottery advertising under limited circumstances

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1. Executive summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (the BCAP Code) are consulting on changes to their rules on featuring children in lottery advertising.

Through discussion with the lottery sector, CAP and BCAP have become aware of a potentially disproportionate impact of their rules on lottery advertising, which can prevent some lottery advertisers from featuring the beneficiaries of their lottery funds in their advertising to an extent that may be overly strict, particularly children's hospice lotteries. This consultation seeks to explore whether the rules should be amended to address this consequence while maintaining a high level of protection for young people.

The Gambling Act (2005) introduced a new licensing regime, which treated lotteries differently to other gambling activities; lotteries must support good causes. As such, the UK Advertising Codes have separate sections for lotteries (CAP section 17 and BCAP section 18).

The existing rules on lottery advertisements prohibit advertisers from featuring under-25s in a significant role if an ad contains an explicit encouragement to purchase lottery products; lottery ads can either feature under-25s in a significant role or they can encourage people to participate. For small organisations who run lotteries benefitting children and young people (such as children's hospices), these rules may have a disproportionate impact because they may not have sufficient resources to produce separate ads to encourage participation and to feature their beneficiaries. The existing rules are:

17.15 Marketing communications for a lottery product may include children or young persons. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role.

17.16 Marketing communications that exclusively feature the good causes that benefit from a lottery and include no explicit encouragement to buy a lottery product may include children or young persons in a significant role.

In the BCAP Code, these rules are 18.6 and 18.7, respectively, and are worded identically to their CAP Code equivalents (except use 'advertisements' instead of 'marketing communications').

This consultation proposes amending the existing rules to allow ads for such lotteries to feature their beneficiaries alongside a call to action to purchase a lottery ticket, but excludes ads featuring scratchcard and online instant-win products from featuring under-25s in significant roles, as the risk profile of such lottery products is potentially higher. The proposal also retains the existing protections for children of ensuring that lottery ads do not contain content that may appeal particularly to them. The proposed rules are:

17.15 [Marketing communications] for lotteries must not feature anyone who is, or seems to be, under 25 years old (under-25s) participating in gambling.

17.16 [Marketing communications] for lotteries which include any reference to scratchcards or online instant-win lottery products must not feature under-25s in a significant role.

Other [marketing communications] for lotteries must not feature under-25s in a significant role unless either:

17.16.1 the under-25s are featured solely to depict the good causes supported by the lottery and there is no explicit encouragement to purchase a lottery product; or

17.16.2 the lottery primarily benefits under-25s (including in a family setting) and the under-25s featured are representative of the primary beneficiaries of the lottery.

The broadcast version of the rules will use ‘advertisements’ instead of ‘marketing communications’, for consistency with existing rules.

The consultation asks whether respondents agree with the proposed rules, and closes at 5pm on 23 January 2020.

2. Introduction to UK advertising regulation

2.1 The Committee of Advertising Practice (CAP)

CAP is the self-regulatory body that creates, revises and enforces the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). The CAP Code covers non-broadcast marketing communications, which include those placed in traditional and new media, promotional marketing, direct marketing communications and marketing communications on marketers’ own websites. The marketer has primary responsibility for complying with the CAP Code and their ads must comply with it. Ads that are judged not to comply with the Code must be withdrawn or amended. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from rulings by the Advertising Standards Authority (ASA), or further sanctions including the denial of media space.

CAP’s members include organisations that represent advertising, promotional and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those organisations 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 Directive 2005/29/EC (on unfair business to consumer commercial practices). Self-regulation is accepted by the Department for Business, Energy and Industrial Strategy and the courts as a first line of control in protecting consumers and the industry.

Further information about CAP is available at www.cap.org.uk.

2.2 The Broadcast Committee of Advertising Practice (BCAP)

BCAP is the regulatory body responsible for maintaining the UK Code of Broadcast Advertising (the BCAP Code) under agreement with the Office of Communications (Ofcom). Ofcom has a statutory duty, under the Communications Act 2003, to maintain standards in TV and radio advertisements. In 2004, Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in recognition of CAP and the

ASA's successful regulation of non-broadcast marketing for over 40 years, and in line with better regulation principles.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to adhere to the standards set out in the BCAP Code.

BCAP members include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC). Under Section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule-making is transparent, accountable, proportionate, consistent and targeted where action is needed, in accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them.

Further information about BCAP and the AAC is available at www.cap.org.uk.

2.3 The Advertising Standards Authority (ASA)

The ASA is the independent body responsible for administering the CAP and BCAP Codes and ensuring that the self-regulatory system works in the public interest. The Codes require that all advertising is legal, decent, honest and truthful.

The ASA assesses complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's rulings are published on the ASA's website and made available to the media. If the ASA Council upholds a complaint about an ad, it must be withdrawn or amended.

An Independent Review Procedure exists for interested parties who are dissatisfied with the outcome of a case. CAP conducts compliance, monitoring and research to help enforce the ASA Council's decisions. Information about the ASA is available at www.asa.org.uk.

2.4 Funding

The entire system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about Asbof and Basbof is available at www.asbof.co.uk and www.basbof.co.uk.

3. Regulatory framework of the BCAP Code

3.1 Communications Act 2003

The [Communications Act 2003](#) (the Act) sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing

standards for broadcast advertisements. The most relevant standards objective to this consultation is:

[319\(2\)\(h\)](#) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.

The Act requires Ofcom to set and, from time to time, review and revise, a Code containing standards for the content of broadcast advertisements carried by TV and radio services licensed under the Broadcasting Acts [1990](#) and [1996](#). Ofcom has contracted out the setting of advertising standards to BCAP under the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#). That function is exercised in consultation with and agreement of Ofcom.

3.2 Existing rules

The following rules from the CAP Code Lotteries section are under consideration:

17.15

Marketing communications for a lottery product may include children or young persons. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role.

17.16

Marketing communications that exclusively feature the good causes that benefit from a lottery and include no explicit encouragement to buy a lottery product may include children or young persons in a significant role.

In the BCAP Code, these rules are 18.6 and 18.7, respectively, and are the same as their CAP Code equivalents.

Rule 17.15 allows children or young people to feature incidentally in a lottery ad, for example in a crowd shot, but where they are foregrounded or the only people in shot then the ASA is likely to regard them as playing a significant role, in breach of the rule. Rule 17.16 allows marketing communications for lotteries to feature children in a significant role, as long as the ad solely features the good causes supported by the lottery and there is no explicit encouragement to buy a lottery product. Effectively, lottery advertising featuring good causes can either include images of children in a significant role *or* an explicit encouragement to buy; this means that ads for children's hospice lotteries (for example) cannot include images of their beneficiaries alongside an explicit encouragement to buy their lottery products.

4. Proposals

CAP and BCAP understand that some larger lottery providers may raise money for a range of good causes through the provision of a range of lottery products including lottery tickets, scratchcards and online games. These products may be promoted by means of a range of advertising, including some that focuses on good causes and some that explicitly encourages lottery participation. However, smaller providers may be dedicated to a narrower or more specific set of causes and offer fewer products, promoted by more limited means. In such circumstances, and especially if the good causes involved exclusively concern children, it

may be difficult to separate the fundraising cause from the encouragement to participate in the lottery itself. In such cases the lottery rules may be disproportionately restrictive.

CAP and BCAP are minded to amend the rules to allow some lotteries to feature under-25 year old beneficiaries alongside an explicit encouragement to buy a lottery product, but are concerned to avoid creating a regime that could permit irresponsible advertising. With this in mind, CAP and BCAP have considered the risk factors involved and are proposing a rule that balances the legitimate aims of lotteries that support children and their families with the need to prevent problem gambling.

CAP and BCAP are proposing new rules to replace 17.15 and 17.16 (CAP) and 18.6 and 18.7 (BCAP) to enable lottery ads (whether or not they encourage participation) to feature under-25s if they are representative of the lottery's primary beneficiaries. The proposed new rules clarify that lottery ads featuring under-25s in a significant role would continue to be unacceptable if the ad featured scratchcards or online instant-win products, or depicted under-25s gambling.

Proposed rule

17.15 [Marketing communications] for lotteries must not feature anyone who is, or seems to be, under 25 years old (under-25s) participating in gambling.

17.16 [Marketing communications] for lotteries which include any reference to scratchcards or online instant-win lottery products must not feature under-25s in a significant role.

Other [marketing communications] for lotteries must not feature under-25s in a significant role unless either:

17.16.1 the under-25s are featured solely to depict the good causes supported by the lottery and there is no explicit encouragement to purchase a lottery product; or

17.16.2 the lottery primarily benefits under-25s (including in a family setting) and the under-25s featured are representative of the primary beneficiaries of the lottery.

Interpreting the proposed rule

In order to clarify the terminology used in this proposed rule and how it is likely to be interpreted in practice, some key phrases are explored below:

- *Participating in gambling*

CAP and BCAP consider that in the context of a lottery ad, it is always inappropriate to depict under-25s participating in betting and other forms of gambling.

- *Must not feature under-25s in a significant role*

This minimum age requirement is consistent with other rules in the CAP and BCAP Codes that govern sensitive products that are legally available to those aged 18 or over only.

For example, this requirement is included in CAP and BCAP rules for alcohol advertising, where a high level of protection is warranted for children and young people. The rationale is to ensure there is no confusion about the age of people consuming a product that is

legally available only to those aged 18 or over. Because it may be difficult to correctly identify someone's age in an ad, setting the limit at 25 ensures that those featured in a significant role are clearly old enough legally to buy alcohol. For consistency, current and proposed rules covering lottery advertising use this same requirement.

Continuing the alcohol advertising example, under-25s may appear in an alcohol ad as long as they are not in a significant role. This allows for ads to include group shots, family groups or mixed-age groups in the background of an image, but ensures that those who are not old enough to purchase the advertised product are not featured prominently. The requirement in the proposed rule on lotteries is likely to be interpreted in the same way by the ASA.¹

- *Include any references to scratchcards or online instant-win lottery products*

CAP and BCAP understand that weekly lottery draws are low-risk² in terms of gambling activity and therefore a more liberal approach to regulation may be warranted in cases where beneficiaries are relevant to the advertised product but legally excluded from participating. However, the evidence around scratchcards suggests that the potential for repetitive play and quick rewards might make them higher-risk for problem gambling behaviour and that they can be appealing and accessible to children as young as 11³. As explored below, there are similar concerns arising around online instant-win lottery products⁴ that share many of the same higher-risk attributes. Therefore, CAP and BCAP consider it is proportionate to ensure that this rule specifically prevents ads from referring to such products or explicitly encouraging their purchase if they also feature lottery beneficiaries under the age of 25 in a significant role.

This prohibition is the case whether or not the lottery benefits under-25s or whether there is an explicit encouragement to purchase the lottery product; under-25s may not play a significant role in any lottery ad that references scratchcards or online instant-win lottery products.

- *No explicit encouragement to purchase a lottery product*

As noted above, this is a requirement of the existing rules. With the exception of the new proposed allowance for lotteries primarily benefitting under-25s, lottery ads can either feature under-25s in a significant role *or* they can include an explicit encouragement to purchase the lottery product.

- *Primarily benefits under-25s (including in a family setting)*

The proposed rule change allows lottery ads, where appropriate, to feature beneficiaries when they would currently be too young to have a significant role in a lottery ad with an encouragement to purchase. CAP and BCAP consider it is reasonable to require that under-25s (including where their whole family benefits) should be the main beneficiaries. That is, lotteries for which only a minority of money raised benefits under-25s should not feature such beneficiaries in ads containing an explicit encouragement to buy. However,

¹ <https://www.asa.org.uk/advice-online/alcohol-featuring-under-25s.html>

² <https://www.asa.org.uk/uploads/assets/uploaded/d26f0886-edba-4ef8-87bcb5c928363381.pdf> p. 7 Problem gamblers tend to participate in multiple activities; those where players can engage in repetitive play with quick rewards are of higher risk...Activities like bingo and lotteries [...] do not fit the characterisation of enabling repetitive play

³ <https://www.gamblingcommission.gov.uk/PDF/survey-data/Young-People-and-Gambling-2018-Report.pdf>

⁴ These are specific lottery products, and are unrelated to the instant-win promotional marketing models subject to rule 8.25 (Promotional Marketing) of the CAP Code

fundraising for organisations that primarily support under-25s but also have services benefiting older people (such as community sporting clubs) would have the leeway to feature their younger beneficiaries in a way that a more restrictive definition would not allow. CAP and BCAP are also aware that some lotteries work together to combine resources and diversify beneficiaries and as a result, a children's hospice lottery that joined forces with, for example, a local adult football team may be able to feature a person under 25 years old in a significant role.

CAP and BCAP consider it is important to avoid creating loopholes which could result in potentially harmful ads. On this point, they consider that a 'primary beneficiary' test would not create such a loophole; it requires that a lottery should primarily benefit under-25s and their families, so an advertiser could not (for example) include a children's charity as a minor beneficiary in order to feature under-25s prominently in their advertising alongside an explicit encouragement to purchase lottery products.

- *Representative of the beneficiaries of the good causes supported by the lottery*

This part of the rule intends to ensure that, where children and young people are featured in a lottery ad, they are directly relevant to the advertised lottery. For instance, a hospice could feature young patients and their families, but a lottery supporting school-building in another country could not feature UK schoolchildren because they do not benefit.

5. Background

In the 2009 Code Review, CAP and BCAP proposed regulating lottery advertising by means of dedicated sections in the Codes; BCAP included a question in its public consultation to ask if it was proportionate to impose rules 18.6 and 18.7 on lottery advertising. A number of respondents wrote in support of the proposal, including the Archbishop's Council of the Church of England and the Charity Law Association, who stated that:

where the good causes of an SLA [Society and Local Authority] lottery are featured, it is appropriate to include under 18s in a significant role provided that there is no explicit encouragement by the lottery product. This is particularly of relevance to the numerous charities which are for the benefit of children. However, the Charity Law Association acknowledges that this needs to be balanced with a need for charities not to be seen to promote irresponsible gambling among younger people.

Christian Concern & Christian Legal Centre opposed the inclusion of rule 18.7 on good causes, on the grounds that it allowed the exploitation of children as beneficiaries of lotteries for the purposes of advertising. In its evaluation of consultation responses, BCAP pointed out that "raising money for good causes is the purpose of all legal lotteries and not an incidental benefit of an essentially commercial activity". Since 2009, the lottery rules have not been reviewed.

Lotteries and scratchcards

Recently, CAP and BCAP have become aware of the way in which hospice lotteries in particular are affected by the rules on lottery advertising. Figures from the Hospice Lotteries Association (HLA) indicate that there are 130 hospice lotteries in the UK. While there is no specific figure on how many of these exclusively benefit children and their families, of the 220 hospices registered with Hospice UK, around 25% support children. In addition, numerous adult hospice lotteries provide support for families including children.

Some of these hospice lotteries include scratchcard products, although the HLA estimates that this makes up less than 1% of total hospice lottery revenue.

It is also common for hospices to diversify their customer base and beneficiaries by linking with other local charities or community groups such as football or gardening clubs.

While children's hospice lotteries have brought a potential issue with the Codes to light, CAP and BCAP would be interested to hear from other lottery providers who might encounter similar challenges. For example, this could include youth sports teams, community projects, and youth homelessness outreach charities.

Evidence base

The research around gambling risk factors suggests that while lotteries themselves are not a significant risk factor for problem gambling, scratchcards present more of a risk and are often available as lottery products.

An article published by Journal of Gambling Issues in 2002 notes that *scratchcard gambling could become a repetitive habit for some people because of their integrated mix of conditioning effects, rapid event frequency, short payout intervals and psychological rewards coupled with the fact that scratchcards require no skill and are highly accessible, deceptively inexpensive and available in "respectable" outlets.*⁵

In 2018, the Gambling Commission published research into gambling behaviour among 11 – 16 year olds in Great Britain⁶. This research indicated that scratchcards can act as a 'gateway' to gambling for young people. That report records that:

- The most common gambling activities that young people have spent their own money on in the past week were placing a private bet for money with friends (6%), followed by playing National Lottery scratchcards (4%), fruit/slot machines in an arcade, pub or club (3%) and cards for money with friends (3%).
- For National Lottery scratchcards and online instant win games, the fact that these games are fun to play was the main reason to take part, mentioned by 58% of participants. (11-16 yr olds).
- Among those young people who had ever participated in each activity, the form of gambling that was taken part in most often was National Lottery scratchcards (16% of scratchcard players taking part once a week or more often).

The Department for Digital, Culture, Media and Sport is consulting on potential changes to the minimum age for playing National Lottery products, and one option is to increase the age of scratchcard and online instant win participation from 16 to 18. DCMS makes a distinction between these types of lottery participation on the basis of increased risk over more traditional forms of participation.⁷ Although their consultation notes that online instant-win has more scope for protective measures than scratchcards (due to requiring a personal account) there

⁵ <http://jgi.camh.net/index.php/jgi/article/view/3611/3571>

⁶ <https://www.gamblingcommission.gov.uk/PDF/survey-data/Young-People-and-Gambling-2018-Report.pdf>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817457/Consultation_on_the_minimum_age_for_playing_National_Lottery_games.pdf

are also elements of scratchcard purchasing (including staff involvement and the need to physically visit stores) that are ordinarily barriers to compulsive behaviour and which do not feature online. As such, the DCMS consultation treats these two types of lottery product in the same way because they both have potentially higher risk profiles.

While CAP and BCAP's proposals are very unlikely to permit ads for the National Lottery to feature children in a significant role alongside a call to action to purchase a lottery product, as it does not primarily support under-25s and their families, this research is relevant in that it further indicates that scratchcards are of appeal to young people and may act as a gateway to gambling.

6. Consultation question

Proposed rule

17.15 [Marketing communications] for lotteries must not feature anyone who is, or seems to be, under 25 years old (under-25s) participating in gambling.

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17.16.1 the under-25s are featured solely to depict the good causes supported by the lottery and there is no explicit encouragement to purchase a lottery product; or

17.16.2 the lottery primarily benefits under-25s (including in a family setting) and the under-25s featured are representative of the primary beneficiaries of the lottery.

Question 1: Do you agree with CAP and BCAP's proposed new rules to replace CAP rules 17.15 and 17.16 and BCAP rules 18.6 and 18.7? Please set out your arguments for supporting or disagreeing with the proposals.

7. How to respond and next steps

CAP and BCAP are committed to considering all responses carefully and with an open mind. CAP and BCAP would particularly welcome responses from stakeholders with an interest or expertise in lotteries and gambling risk factors.

The following summarises the consultation process and subsequent stages of CAP's consideration of the proposed changes to the Code:

- the consultation will run for 8 weeks, closing at 5pm on 23 January 2020;
- CAP will consider each response carefully and evaluate all significant points explaining the reasons behind the decisions they make; and

- the evaluation will be published on the CAP website when the outcome of the consultation is announced.

How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5pm on 23 January 2020.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

Please send responses to: AdPolicy@cap.org.uk

If you are unable to respond by email you may submit your response by fax to +44(0)20 7404 3404 or post to: Regulatory Policy Team Committee of Advertising Practice, Castle House, 37-45 Paul Street, London EC2A 4LS

Confidentiality

CAP and BCAP considers that everyone who is interested in the consultation should see the consultation responses. In its evaluation document, CAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation and copies of original consultation responses will be published with 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 nonconfidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

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