

Scheduling and targeting of National Lottery advertising

Committee of Advertising Practice and Broadcast Committee of Advertising Practice consultation on the age used for scheduling and targeting of National Lottery advertising

Issue date: 25/03/2021

Closing date: 06/05/2021



Contents

1. Executive summary	3
2. Introduction to UK advertising regulation	4
3. Regulatory framework of the BCAP Code	6
4. Proposals.....	7
5. Background	9
6. Consultation question	10
7. How to respond and next steps	11
Contact us	12

1. Executive summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (BCAP Code) are consulting on raising the age of the scheduling and targeting rules for lottery ads to 18 for National Lottery products.

CAP and BCAP's practice for the advertising of age-restricted products is to match the targeting and scheduling restrictions to the legal minimum age of purchase or participation. For lottery products, this is current 16 for all forms of lottery.

From 1 October 2021, the minimum age of participation for National Lottery products will rise to 18.

This consultation presents proposed amendments to the CAP and BCAP Codes to raise the minimum age for targeting and scheduling of lottery adverts to 18 for National Lottery products, to match the legal minimum age of participation.

The consultation will close at 5pm on 6 May 2021. For more information on how to respond, please see section 7.

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 Ads that are judged not to comply with the Code must be withdrawn or amended.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.

4. Proposals

4.1 Current rule

The following rules from the CAP and BCAP Codes respectively are under consideration:

CAP

17.14

Marketing communications for lotteries should not be directed at those aged under 16 years through the selection of media or context in which they appear.

BCAP

32.4.1

[These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to persons below the age of 16:]

Lotteries

4.2 Proposed amendment

On the basis of the background and rationale explored below, CAP and BCAP propose amending the above Code rules to raise the targeting/scheduling age to 18 for National Lottery products.

The amended rules are proposed as follows:

CAP

17.14

Marketing communications for lotteries should not be directed at those aged under 16 years (or 18 years for National Lottery products) through the selection of media or context in which they appear.

BCAP

32.4.1

[These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to persons below the age of 16:]

Lotteries, except National Lottery products

32.2.8

[These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:]

National Lottery products

4.3 Intended outcome of amendment

Amending the rules as described would ensure that the CAP and BCAP Codes remain in-step with the legal minimum age of participation for National Lottery products.

5. Background

5.1 Legal changes to minimum age of participation

In 2019, the Department for Culture, Media, and Sport consulted on raising the minimum age for National Lottery participation. In December 2020 they published a statement noting that, although data has consistently shown that problem gambling rates for National Lottery draw-based games and scratchcards are lower than all commercial gambling activities surveyed, some emerging evidence is showing a possible association between recall of playing National Lottery products at the ages of 16 and 17 and problematic gambling, particularly for instant win games such as scratchcards.

DCMS therefore decided to take what it describes as a precautionary approach and raise the minimum age of sale for all National Lottery products to 18 from 1 October 2021. Under current plans, online sales to 16 and 17 year olds will stop in April 2021.

DCMS have noted that parity of minimum age between the National Lottery and society lotteries, which are also currently available to 16 and 17 year olds, needs to be considered. This will be explored during the Gambling Act Review. Until then, there is a different minimum age for National Lottery and society lottery participation.

5.2 Rationale for rule change

It is CAP and BCAP's common practice to use, for the advertising of age-restricted products, the minimum age of purchase or participation to determine the age of the audience at which marketers can direct their marketing through targeting or scheduling. Both Codes therefore use the minimum age of 16 as their basis for targeting and scheduling rules:

CAP 17.14

Marketing communications for lotteries should not be directed at those aged under 16 years through the selection of media or context in which they appear.

BCAP 32.4.1

[These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to persons below the age of 16:]

Lotteries

From 1 October this year, these rules will (for National Lottery products) be out of step with this practice.

CAP and BCAP consider that it is reasonable and desirable to reflect the change in the minimum age of participation by raising the age basis for targeting and scheduling 18 for National Lottery products. Not to do so would, in effect, allow advertisers to direct marketing for these products at consumers who are unable legally to purchase them and who, according to the evidence considered by DCMS, are potentially at risk of harm from them.

6. Consultation question

Proposed rules:

CAP 17.14

Marketing communications for lotteries should not be directed at those aged under 16 years (or 18 years for National Lottery products) through the selection of media or context in which they appear.

BCAP 32.4.1

[These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to persons below the age of 16:]

Lotteries, except National Lottery products

32.2.8

[These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:]

National Lottery products

Question: Do you agree with CAP and BCAP's proposed new rules to raise the age for targeting and scheduling National Lottery products ads to 18? Please set out your arguments for supporting or disagreeing with the proposal.

CAP and BCAP would particularly like to hear from respondents in the lotteries sector, both those connected with the National Lottery and those who are not.

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 games, apps, and digital purchasing.

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 6 weeks, closing at 5pm on 6 May 2021;
- 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 6 May 2021.

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 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.

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](https://twitter.com/CAP_UK)