

**ASA system submission to Scottish Government consultation
A Healthier Future – Action and Ambitions on Diet, Activity and Healthy Weight**

1. Background and Introduction

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the ‘ASA system.’
- 1.2. The ASA is the UK’s independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 55 years and the broadcast Advertising Code (written and maintained by BCAP, under contract with Ofcom) for over ten, with our remit further extended in 2011 to include companies’ advertising claims on their own websites and in social media spaces under their control.
- 1.3. We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes undertaking proactive projects and acting on complaints to take action against misleading, harmful or offensive advertisements. We are committed to better regulation principles and evidence-based regulation and, we continually review new evidence to ensure the rules and our administration of them remain fit-for-purpose.
- 1.4. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided nearly 390,000 pieces of advice in 2017.
- 1.5. The ASA is providing this written submission in response to the Scottish Government’s consultation on *A Healthier Future – Action and Ambitions on Diet, Activity and Healthy Weight*.

2. Summary of key points

- 2.1. The ASA system acknowledges the Scottish Government’s concern to reduce levels of obesity in Scotland.
- 2.2. It is commonly accepted that obesity is a multi-factorial disease, which calls for a multi-dimensional set of interventions. In line with better regulation principles, these interventions must be evidence-based, proportionate and targeted at the problem, while minimising any undesirable costs of interventions.
- 2.3. The evidence¹ consistently shows that advertising has no more than a modest influence on children’s food preferences. This is crucial to any consideration of advertising restrictions because it suggests that reducing children’s exposure to advertising for food and soft drink high in fat, salt or sugar (HFSS products) would have no more than a modest effect on their food preferences.
- 2.4. Conversely, the impact of advertising prohibitions on media revenue is known to be significant. This revenue helps to fund the plurality of media enjoyed by children and adults

¹ [CAP Consultation: food and soft drink advertising to children](#), pp 30-48 on the evidence base.

in Scotland and the rest of the UK. Media plurality is fundamental to culture and democracy more generally.

- 2.5. In 2007, Ofcom forecasted that £211 million net would be lost to broadcasters from a 9pm watershed ban on HFSS ads. In deciding to limit advertising restrictions to children's TV only, Ofcom acknowledged that the public health benefits were too uncertain and the cost to broadcaster revenues was too great to warrant tougher restrictions. Any decision to impose tougher regulations in broadcast or non-broadcast media must provide compelling evidence to refute this conclusion.
- 2.6. Today, CAP and BCAP provide comprehensive, cross-media standards on HFSS advertising, which bans HFSS ads in all children's media. These represent some of the strictest regulations in the world and have led to a dramatic reduction in children's exposure to HFSS ads. Viewing advertising restrictions through the prism of one media only fails to reflect the reality of children's multi-media lives and the totality of restrictions in place to ensure food and soft drink advertising remain responsible with particular regard to children and other vulnerable groups.
- 2.7. CAP's non-broadcast prohibitions were introduced as recently as July 2017. In line with better regulation, their consequences (good and bad) should be considered before any additional steps are taken to review the broadcast and non-broadcast rules in the round.
- 2.8. On proposals on outdoor advertising, CAP rules require advertisers to ensure that ads are not placed in media that appeals particularly to under 16's in relation to HFSS.

3. Advertising regulation and HFSS

- 3.1 We recognise the Scottish Government's ambition to reduce obesity in Scotland, with Scotland's obesity rates amongst the highest in the developed world, and the subsequent health and economic impact this has.
- 3.2 Obesity is widely understood to be a complex and multi-factorial disease with a multitude of influences affecting the intake and expenditure of energy. In terms of childhood obesity, the roles and responsibilities of parents and schools are particularly important and acknowledged to be more difficult in the face of, for example, pressure on school and household budgets, constraints on home cooking and the advance of convenience culture and sedentary pastimes more generally.
- 3.3 We therefore recognise and support a multi-dimensional approach to tackling obesity, and feel very strongly that interventions must be evidence-based, proportionate and best calculated to tackle the problem, while minimising any undesirable costs of intervention.
- 3.4 The evidence² consistently shows that advertising has no more than a modest influence on children's food preferences. This is crucial to any consideration of advertising restrictions because it suggests that reducing children's exposure to advertising for food and soft drink high in fat, salt or sugar (HFSS products) would have no more than a modest effect on their food preferences; parents and schools would continue to have the greatest and most direct impact on children's food preferences, which are also shaped by children's access to money and the ease of availability of HFSS products.

² [CAP Consultation: food and soft drink advertising to children](#), pp 30-48 on the evidence base.

- 3.5 In the knowledge that advertising of HFSS products has no more than a modest effect on children's food preferences, CAP nevertheless proposed and introduced, in July 2017, a comprehensive ban on the advertising of HFSS products in all children's non-broadcast media i.e. media attracting an audience where 25% or more of the audience are aged 15 or younger. This covers print, cinema, online - including TV-like content online, such as video-sharing platforms - and social media. The rules also apply to social influencers, in-game advertising and advergames subject to the 25% child audience test.
- 3.6 As part of the consultation process on the new rules, we actively engaged with a range of stakeholders from the ad industry to campaign groups to make sure our proposals for change were in the right place.
- 3.7 The new rules complement the ban on TV, which prohibits HFSS product ads from appearing in and around programmes of particular appeal to children aged 15 or younger, meaning that today the UK upholds one of the strictest regimes for HFSS product advertising in the world.
- 3.8 The new restrictions significantly reduces children's exposure to HFSS product advertising and the opportunities for advertisers to promote HFSS products to children, especially online. We believe the new ad restrictions will have a positive impact in contributing to wider efforts to reduce harm to children.
- 3.9 Moreover, our rules also come in response to changing media habits amongst young people, with Ofcom research showing that youngsters aged 5-15 are spending around 15 hours each week online – overtaking time spent watching a TV set.
- 3.10 We believe that time should be given to allow our new rules to be properly embedded – they've been in place for six months - before any potential rush to introduce further non-broadcast restrictions specific to Scotland. We regularly review our rules to make sure they are being implemented as intended and to take account of any new compelling evidence that would require us to consider changing our rules. We continue to monitor the implementation of the new rules and we are currently looking into a few complaints about ads appearing on social media. We are happy to keep the Scottish Government informed of the outcome of this work.
- 3.11 In order to help advertisers comply with the rules, our Copy Advice team have been providing advice; we've launched a [new online training module](#) to help advertisers get to grips with the broadcast and non-broadcast rules on advertising food and soft drinks to children in non-broadcast media; and we've also produced various pieces of guidance.
- 3.12 This includes [new guidance on non-broadcast ad placement](#) – including online - to protect children and young people when it comes to age-restricted products such as HFSS and alcohol. Linked to this, we also published [new guidance dedicated to children and age-restricted ads online](#) – including HFSS ads. The guidance advises advertisers to use a range of interest targeting factors to complement and address some of the imperfections of self-reported age data. By doing so, advertisers of age-restricted products are better able to reach their target audience, while excluding children and young people who benefit from explicit protections under our rules. We have also produced [guidance on brand advertising](#). If a piece of branding is synonymous with a specific HFSS product, using it even without featuring or referencing the product itself could be a problem. The guidance helps advertisers identify such issues.

- 3.13 When it comes to promotions on packaging and at point of sale, advertisers need to consider using non-product branding or generic branding (provided that it doesn't fall foul of being synonymous with an HFSS product) instead.

4. Broadcast – 9pm watershed

- 4.1 With regard to the consultation proposals for a 9pm TV watershed, the rules on TV advertising are set out in the Broadcast Committee of Advertising Practice (BCAP) UK Code of Broadcast Advertising. BCAP authors and maintains the Code and associated guidance under contract with Ofcom. All significant Code changes must be put to public consultation and, ultimately, agreed by Ofcom.
- 4.2 The BCAP Code prohibits HFSS advertising on children's channels, in children's programming and in other programmes that are of particular appeal to children. There are also restrictions on the use of licensed characters and celebrities and promotions in ads appearing outside restricted parts of the schedule that are likely to appeal to pre- and primary school children.
- 4.3 BCAP is an evidence-based regulator. If robust evidence emerges that calls into question its regulation of broadcast advertising, BCAP has a responsibility to formally consider it in line with its contracted-out responsibilities and in keeping with better regulation principles; these principles caution against regulatory burdens, including those caused by public consultation unless they are considered necessary.
- 4.4 BCAP has closely monitored CAP's review of non-broadcast advertising, particularly its consideration of the latest evidence. BCAP notes that CAP's ultimate decision to introduce a ban on HFSS advertising in all non-broadcast children's media further supports the public policy imperative to reduce children's exposure to ads for HFSS products.
- 4.5 The imperative to reduce and not eliminate children's exposure to HFSS ads is telling: it fits with evidence that continues to indicate that TV advertising has only a modest direct influence on children's food preferences, rendering a complete ban disproportionate, unnecessary and unjustified. In other words, the evidence does not equate mere exposure to HFSS ads with harm, and any benefit that may result from a total ban is considered to fall well below the costs and unintended consequences of implementing one.
- 4.6 The question therefore turns to: what level of reduced exposure is sufficient to respond proportionately to the evidence of advertising's impact on children's food preferences? On the basis of the evidence, CAP considered it is proportionate to implement a ban on HFSS ads in all non-broadcast media where children make up 25% or more of the audience. In significant part, this responds to Ofcom research that 12-15 year olds now spend more time online than watching TV; the significant development of online marketing strategies over the previous decade; and, children's increasing access to and engagement with the internet.
- 4.7 Taken in the round, CAP and BCAP now provide comprehensive, cross-media standards on HFSS advertising, which represent some of the strictest regulations in the world and better reflect the reality of children's multi-media lives. The ASA is committed to independently and rigorously enforcing these standards.
- 4.8 CAP's new rules represent a significant change to the status quo and there is a case to be made that the regulations should be allowed time to bite and their consequences (good and bad) considered before any additional steps are taken to review the rules in the round.

- 4.9 Given the evidence of TV advertising's impact has not changed and the key shifts in children's media usage relate to non-broadcast media (and not TV), BCAP is not aware of any new, robust evidence (including evidence considered by CAP) that persuades it to re-examine the conclusions reached by Ofcom when it introduced the current rules.
- 4.10 Following the most thorough review of TV HFSS advertising between 2004 and 2007, Ofcom introduced scheduling bans on HFSS ads around children's programmes and programmes of particular appeal to children with the aim of proportionately reducing children's exposure to such advertising. This led to a 37% reduction in children's exposure to HFSS ads. The new non-broadcast media bans will also have a significant effect in reducing children's exposure to HFSS ads, but the nature of non-broadcast advertising makes it very difficult to quantify exactly how much.
- 4.11 Ofcom concluded that the benefits in terms of public health were too uncertain, and the loss of revenue to broadcasters too great to warrant further restriction. Ofcom forecasted that £211 million net would be lost to broadcasters from a 9pm watershed ban, with adverse consequences for the provision of original UK programming, including children's programmes: in its review of public service broadcasting, Ofcom noted that between 2008 and 2014 the ban on HFSS ads around children's programmes had played a part in reducing by 74% the spend by the commercial PSBs on UK originated children's programmes. Also, many of the 1200 channels that Ofcom licenses attract little or no child audience, so it's not at all clear what a 9pm ban would achieve on those channels. Media plurality in Scotland should be considered by the Scottish Government when it comes to any proposals to further restrict advertising.
- 4.12 As stated, BCAP is not aware of any new robust evidence that persuades it to formally re-examine the proportionality of a 9pm restriction or any other restriction above and beyond the strict rules already in place and strictly enforced by the ASA.
- 4.13 Where children do see HFSS ads, our rules prevent the ads from including misleading nutrition and health claims, encouraging irresponsible eating habits, promoting poor nutritional habits and unhealthy lifestyles, and exploit 'pester power'. The ASA has banned ads that break these rules.
- 4.14 BCAP remains vigilant and will respond to any new evidence or other factors that compel it to formally review the current regulations.

5. Outdoor

- 5.1 With regard to the Scottish Government's proposals to explore ad restrictions in outdoor locations, we regulate the content and placement of ads in outdoor spaces. This means if an ad is for a product (such as HFSS, alcohol, gambling, a premium-rate service or medicine) to which the Advertising Codes apply special scheduling or placement restrictions, advertisers need to ensure that the ad isn't placed in media that appeals particularly to certain groups of people, e.g. people aged under 18 in relation to alcohol ads or under 16's in relation to HFSS or medicine ads. The 25% rule is also relevant here.
- 5.2 Most ambient media is generally targeted; it is not directed at children and is subject to the HFSS placement restriction but its content is controlled by the other HFSS rules. However, certain outdoor environments are likely to slant the audience, for instance, a site's close proximity to a school.

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