

Response of the Equality and Human Rights Commission to the Consultation:

Consultation details

Title:	Gender stereotyping: A consultation on CAP and BCAP's proposal for a rule and guidance to address the use of gender stereotypes in advertising
Source of consultation:	Committee of Advertising Practice and the Broadcast Committee of Advertising Practice
Date:	26 July 2018

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Executive Summary

The Equality and Human Rights Commission ('the Commission') welcomes the opportunity to respond to this consultation on a proposed new rule and guidance on gender stereotyping.

Given our statutory remit under the Equality Act 2006, and our status as a National Human Rights Institution and national equality body for Great Britain, the proposed new rule and guidance are relevant to our work to promote equality by tackling prejudicial stereotypes, and prevent violence against women and girls.

The Commission therefore welcomes this initiative by the CAP, BCAP and the ASA. The Commission considers that the proposed new rule will strengthen the ability of the ASA, as the advertising regulator, to tackle the harm and offence caused by advertisements that promote gender stereotypes and sexual objectification.

The Commission:

- Supports the introduction of the new rule;
- Broadly welcomes the guidance to accompany the rule but considers it should be expanded to:
 - (i) recognise the link between gender stereotyping and gender based violence, and the consequent societal harm such stereotypes may cause;
 - (ii) clarify when adverts for the sex industry will fall foul of the new rule in light of the harm and offence they may cause; and
 - (iii) set out how the ASA will approach compliance with the Public Sector Equality Duty in its adjudication of complaints under the new rule.

Background

1. The Equality and Human Rights Commission ('the Commission') is a statutory body with a specific duty to exercise its functions in a manner that ensures 'each individual has an equal opportunity to participate in society' (section 3(d) of the Equality Act 2006 ('the 2006 Act')). More specifically, the Commission must exercise its powers in a manner that 'promote[s] equality of opportunity' (section 8(1)(c) of the 2006 Act) and 'promote[s] awareness, understanding and protection of human rights' (section 9(1)(c) of the 2006 Act). The Commission is also recognised by the United Nations under the Paris Principles contained in UN Resolution 48/134 as the National Human Rights Institution for England and Wales and for Scotland in respect of reserved matters.
2. The Commission welcomes the proactive approach adopted by the Advertising Standards Authority as the regulator for the advertising industry in presenting the evidence base for tackling gender stereotyping in its report 'Depictions, Perceptions and Harm', and CAP and BCAP's proposal for a new rule to address the ASA report's findings and recommendations.

Legal Framework

3. The consultation document acknowledges that to the extent that the ASA, CAP and BCAP are public authorities, they are required to comply with the Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR) into domestic law.
4. Likewise, to the extent that ASA, CAP and BCAP undertake public functions, they are subject to the Public Sector Equality Duty (PSED) under s.149 of the Equality Act 2010 (EA2010), to have due regard to the need to:
 - eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act;

- advance equality of opportunity between people who share a protected characteristic and those who do not;
 - foster good relations between people who share a protected characteristic and those who do not.
5. Harassment, for the purposes of the EA2010ⁱ, involves conduct that has the purpose or effect of violating a person's dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.
 6. The consultation sets out the requirements of Article 10 ECHR (right to freedom of expression). Other relevant rights under the ECHR include Article 2 (right to life), Article 3 (prohibition on inhuman and degrading treatment), Article 8 (right to physical and psychological integrity), and Art 14 (non-discrimination in the enjoyment of Convention rights). These Articles contain positive obligations on the state to implement measures to prevent violations of the rights, including breaches that may occur as a result of sexual and physical violence against women and girls.
 7. The UK is required to comply with the international human rights treaties that it has ratified and the interpretation of ECHR rights, including their positive obligations, should be informed by them. Treaties ratified by the UK include the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)ⁱⁱ. Article 5 of CEDAW is particularly relevant to the new rule:

Article 5

States Parties shall take all appropriate measures:

- (a) *To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; ...*

8. General Recommendations issued by the CEDAW Committee provide guidance on the interpretation of the Convention. General Recommendation 19ⁱⁱⁱ recognises the link between gender stereotypes, sexual objectification, and gender based violence. General Recommendation 19 states:

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. ...

12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.

9. CEDAW General Recommendations 35^{iv} provides that States should:

37. Adopt and implement effective measures to encourage all media, including advertising and information and communications technologies to eliminate discrimination against women in their activity, including harmful and stereotyped portrayal of women ... These measures should include:

- a) Encouraging the creation or strengthening of self-regulatory mechanisms by the media, including online or social media, aimed at the elimination of gender stereotypes relating to women and men, or to specific groups of women, and to address gender-based violence against women that takes place through their services and platforms,....*

10. The Concluding Observations of the CEDAW Committee's report of its last examination of UK compliance with the Convention published in 2013 noted the Committee's concern about the high degree of stereotyping and use of sexual images of women in

advertising, as highlighted in the Leveson Inquiry. The Committee recommended that the UK Government should continue to work with advertising industries to stop them presenting women and girls in a stereotypical way.^v The UK is currently undergoing a fresh examination by the CEDAW Committee.

11. The UK has also signed and committed to ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Like CEDAW, the Istanbul Convention acknowledges the link between gender stereotypes and gender based violence. Article 12 of the Istanbul Convention provides that:

“Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

12. The Council of Europe has clarified that the purpose of Article 12 of the Istanbul Convention is:

‘..to change the behaviour of men and women, boys and girls, that is currently all too often influenced by prejudice, gender stereotypes or gender-biased customs and traditions, and that helps to perpetrate or condone violence against women.’^{vi}

13. The explanatory notes for this consultation state that children may be particularly vulnerable to internalising potentially harmful stereotypes. This view is supported by the UN Convention on the Rights of the Child (CRC)^{vii}. Article 17 CRC concerns access to information. It states:

‘States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources,

To this end, States Parties shall:

.....

- e) *Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being...'*

14. The CRC's General Comment 16^{viii} on business and children's rights clarifies the relevance of Article 17 to advertising and stereotyping, and the need for regulation:

58. *The mass media industry, including advertising and marketing industries, can have positive as well as negative impacts on children's rights. Under article 17 of the Convention, States have obligations to encourage the mass media, including private media, to disseminate information and materials of social and cultural benefit to the child, for example regarding healthy lifestyles. The media must be regulated appropriately to protect children from harmful information, especially pornographic materials and materials that portray or reinforce violence, discrimination and sexualized images of children, while recognizing children's right to information and freedom of expression. States should encourage the mass media to develop guidelines to ensure full respect for the rights of the child, including their protection from violence and from portrayals that perpetuate discrimination, in all media coverage...*

59. *Children may regard marketing and advertisements that are transmitted through the media as truthful and unbiased and consequently can consume and use products that are harmful. Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct ...*

15. The CRC Committee's General Comment 20^{ix} on the rights of children in adolescence further addresses gender inequalities, discrimination and stereotyping.^x It states:

Girls

27. *During adolescence, gender inequalities become more significant. Manifestations of discrimination, inequality and stereotyping against girls often intensify, leading to more serious violations of their rights, including child and forced marriage, early pregnancy, female genital mutilation, gender-based physical, mental and sexual violence, abuse, exploitation and trafficking...*
28. *States need to invest in proactive measures to promote the empowerment of girls, challenge patriarchal and other harmful gender norms and stereotyping and legal reforms in order to address direct and indirect discrimination against girls.*

Boys

29. *Traditional concepts of masculinity and gender norms linked to violence and dominance can compromise boys' rights. These include the imposition of harmful initiation rites, exposure to violence, gangs, coercion into militia, extremist groups and trafficking. The denial of their vulnerability to physical and sexual abuse and exploitation also poses pervasive and significant barriers to boys gaining access to sexual and reproductive health information, goods and services, and a consequent lack of protective services.*
30. *The Committee urges States to introduce measures to address such rights violations, and encourages them to challenge negative perceptions of boys, promote positive masculinities, overcome cultural values based on machismo and promote greater recognition of the gender dimension of the abuses they experience...*

16. The CRC also requires the best interests of children to be a primary consideration in decisions that affect them (Article 3). This requirement should be reflected in the approach to complaints under the new rule which concern the impact of an advertisement on children.

Consultation Response

Question 1: Do you agree with CAP & BCAP's proposal to introduce a new rule and supporting guidance into the Advertising Codes? Please include relevant evidence to support your view, whether you agree or disagree with the proposals.

17. Yes. We consider that the new rule will strengthen ASA's ability to take action with regard to advertisements that propagate gender stereotypes. This will help to promote equality and enhance UK compliance with domestic and international human rights law, as set out in the section on the legal framework above.
18. Supporting guidance will help to provide clarity with respect to the operation of the new rule for advertisers and the public, and thereby ensure the new rule is consistently applied and effective.

Question 2. Do you agree with the wording of the proposed new CAP and BCAP rules? If not please include suggestions for how the proposed rules could be improved to achieve the aims set out in this consultation.

19. The Commission considers that the new CAP and BCAP rules as drafted are capable of achieving of their aim of restricting ads that 'portray certain gender stereotypical roles and characteristics,' and provide a clearer basis on which to restrict ads that include 'potentially harmful or seriously offensive depictions of gender stereotypes on the grounds of objectification, inappropriate sexualisation' and depict 'unhealthily thin body images'.
20. Given the need identified in the consultation for such a rule to supplement the existing 'harm' and 'offence' provisions in the CAP and BCAP Codes, its addition appears to be necessary and proportionate to address gender stereotypes that perpetuate discriminatory attitudes and gender inequalities in society.

Question 3. Do you consider the draft guidance to be clear and practicable? If not please include suggestions for how it could be improved to achieve the aims set out in this consultation

21. The Commission welcomes the clarity in the guidance that the new rule will cover gender stereotypes relating to all protected characteristics under the Equality Act 2010, including gender reassignment.
22. The focus of the supporting guidance is on adverts that portray stereotypical gender roles, characteristics (including physical attributes) and behaviours. This emphasis presents a welcome challenge to discriminatory gender norms in society that limit equality of opportunity and entrench inequality.
23. However, no explicit link is made in the guidance between gender stereotypes and gender based violence, despite the recognised connection between them, or in the related guidance on 'Offence: sexualisation and objectification', 'Social responsibility: body image' or 'Children: sexual imagery'.
24. To reflect the requirements of domestic and international human rights obligations, set out above, the Commission considers that the guidance should acknowledge that gender stereotypes, including adverts for the sex industry that objectify and commoditise women's bodies, may cause societal harm by contributing to gender based violence, as well as serious or widespread offence. The guidance should also set out how the ASA will respond to related complaints.
25. This is particularly important with respect to the CAP Code which covers adverts in newspapers, public spaces and online which are unrestricted and to which children may be exposed. The BCAP Code already contains specific restrictions on adverts for the sex industry. For example, it prohibits adverts for prostitution and sexual massage services, for escort agencies on television, and

limits adverts for pornography and telecommunications-based sexual entertainment services to restricted access adult channels.

26. It is the Commission's view that the guidance also provides an important opportunity to set out how the ASA and the ASA Council will approach compliance with the PSED in the adjudication of complaints under the new rule. In particular, it should set out how the ASA will have due regard to the need to eliminate discrimination and harassment, as well as promote equality of opportunity
27. We are happy to meet with the CAP and BCAP should you wish to discuss these recommendations in more detail.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution.

Find out more about the Commission's work at:

www.equalityhumanrights.com

ⁱ Section 26 Equality Act 2010

ⁱⁱ Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

ⁱⁱⁱ Available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en

^{iv} Available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en

^v Paragraphs 32 – 33, Concluding Observations of CEDAW, 2013. Available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

^{vi} Page 7, <https://edoc.coe.int/en/violence-against-women/7140-preventing-violence-against-women-article-12-of-the-istanbul-convention.html>

^{vii} Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

^{viii} Available at: <http://www.refworld.org/docid/51ef9cd24.html>

^{ix} Available at: <http://www.refworld.org/docid/589dad3d4.html>

^x Available at: <http://www.refworld.org/docid/589dad3d4.html>