



BRIEFING PAPER

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Advertising to children

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Summary

Advertisements and promotions are a feature of modern life. In the UK, the content of advertising, sales promotions and direct marketing across all media, including marketing on websites, is self-regulated by the [Advertising Standards Authority](#) (ASA). It does this by enforcing the Advertising Codes; there are separate codes for non-broadcast and broadcast advertisements. All adverts are expected to be “*legal, decent, honest and truthful*”.

The protection of children sits at the heart of the Advertising Codes. The ASA recognises that because of their lack of life experience, children are less likely to be able to understand and process commercial messages in advertisements than adults. Children are also often more likely to be adversely affected by “inappropriate, scary or offensive images”. The Advertising Codes contain strict rules to protect children (and young people) from potentially misleading, harmful or offensive material. For example, the rules:

- prohibit advertisements from depicting children in hazardous situations or encouraging them to engage in dangerous behaviour; and
- prevent advertisements from undermining parental authority or placing unfair pressure on children to buy products

The Advertising rules are regularly reviewed and updated by the ASA.

The ASA is independent of both the Government and the advertising industry. It is recognised by the Government and other regulators as the body to deal with complaints about advertising. Its remit includes acting on and investigating complaints about advertisements as well as proactively monitoring and taking action against *misleading, harmful or offensive advertisements*, sales promotions and direct marketing. If a complaint about an advertisement is upheld, the advertiser must withdraw or amend the advertisement and not use the advertising approach again. All ASA adjudications are published.

This Commons briefing paper looks at the current advertising regulatory system in the UK, with specific reference to advertising to children. Since this is a huge subject this Paper can, at best, only touch on some of the main points. It draws heavily on the information provided by the ASA on its website.

1. Advertising regulatory system

The UK advertising regulatory system is a mixture of:

- self-regulation for non-broadcast advertising and
- co-regulation for broadcast advertising

The [Advertising Standards Authority](#) (ASA) is the UK's single independent advertising regulator in all mediums. It does this by enforcing the Advertising Codes; there are separate codes for non-broadcast and broadcast advertisements. Broadly speaking, the Codes are designed to ensure that all advertising is '*legal, decent, honest and truthful.*' However, the Codes also include more prescriptive rules for sensitive products such as medicines and alcohol, as well as specific rules for advertising to children.

Advertisements must be "legal, decent, honest and truthful"

The Advertising Codes are written and maintained by two industry bodies:

- The **Committee of Advertising Practice** (CAP) is responsible for the non-broadcast advertising code (print, outdoor, cinema, online, SMS, direct mail etc.).
- The **Broadcast Committee of Advertising Practice** (BCAP) is responsible for the code that covers broadcast advertising (including radio, teleshopping, television text, interactive television advertisements, and the content on self-promotional television channels). BCAP rules cover both the content and scheduling of advertisements.

A self-regulatory system operates in respect of non-broadcast advertising, under the "[UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing](#)," known as the "CAP Code".

Independent self-regulatory system

The system is co-regulatory for broadcast advertising; there is a co-regulatory partnership between the ASA and [Ofcom](#). The "[UK Code of Broadcast Advertising](#)" (BCAP Codes) is known as the BCAP Code.

On 1 March 2011, the ASA's remit was extended significantly to cover marketing communications on companies' own websites and in other third party space under their control, such as social networking sites like Twitter and Facebook. The [CAP Code](#) applies in full to this new space.

This regulatory system is funded entirely by the advertising industry by a levy on advertising spend. According to the [ASA website](#), the levy is currently set at 0.1% on the cost of buying advertising space and 0.2% on some direct mail. This is collected at 'arm's length' on behalf of CAP, BCAP and the ASA by two bodies: the [Advertising Standards Board of Finance](#) and the [Broadcast Advertising Standards Board of Finance](#). The ASA is therefore able to act independently of both Government and industry.

2. Scope of the ASA's remit

2.1 Advertisements covered by the ASA

The ASA will deal with most types of advertisements but not all. The types of advertisements that the ASA will deal with are set-out in **Box 1** below.

Box 1: The types of advertisements regulated by the ASA

The types of advertisements that the ASA will cover, include:

- Magazine and newspaper advertisements
- Radio and TV commercials (not programmes or programme sponsorship)
- Television Shopping Channels
- Advertisements on the Internet, including:
 - Banner and display advertisements
 - Paid-for (sponsored) search
 - Marketing on companies' own websites and in other space they control like social networking sites (Twitter and Facebook)
- Commercial e-mail and SMS text message advertisements
- Posters on legitimate poster sites (not fly posters)
- Leaflets and brochures
- Cinema commercials
- Advertising within smartphone and tablet apps
- Direct mail (advertising sent through the post and addressed to the homeowner personally)
- Door drops and circulars (advertising posted through the letter box with the homeowner's name on)
- Advertisements on CD ROMs, DVD and video, and faxes
- Sales promotions, such as special offers, prize draws and competitions wherever they appear.
- Online behavioural advertising

As outlined in **Box 1** above, the ASA now regulates Online Behavioural Advertising (OBA). In a nutshell, OBA is the practice of collecting information from web browsers so that it can be used to present online advertisements that are more relevant to the user of a particular computer.

The ASA oversees [rules](#) which require businesses to make it clear when they are collecting and using information for OBA, and to provide a tool so that individuals can choose not to receive it.

2.2 Advertisements not covered by ASA

There are a number of issues that the ASA can't help with. It has published online a comprehensive list of [areas of complaint outside its remit](#). By way of example, types of advertisements not covered by the ASA are set-out in **Box 2** below.

Box 2: The types of advertisements not covered by the ASA

The types of advertisements that the ASA will cover, include:

- Credit advertising – The ASA have powers to investigate financial advertising on television and radio, but complaints about product-related claims in non-broadcast adverts for credit products (such as credit cards, store cards, personal loans and secured loans) should be made to the [Financial Conduct Authority](#).
- Financial advertising - Complaints about product-related claims in non-broadcast advertisements for mortgages, general insurance, investments, pensions, cash savings and bank accounts are dealt with by the [Financial Conduct Authority](#).
- Data protection and freedom of information - The ASA can look into complaints about the use of personal data for marketing by mail, fax and some e-mail as well as the content of advertising that uses those media. However, data protection and freedom of information legislation are enforced by the [Information Commissioner's Office](#).
- Direct mail, telemarketing calls and fax marketing - To reduce the amount of direct mail received, the recipient should contact the [Mailing Preference Service](#) (MPS).
- Discrimination on the grounds of race, sex, age or disability – Advice on discrimination in advertisements and equality law is available from the [Equality and Human Rights Commission](#).
- Editorial content – Complaints about the editorial content of newspapers and magazines should be properly addressed to the [Independent Press Standards Organisation](#) (IPSO); complaints about the editorial content of television and radio programmes (including on the BBC) should be addressed to [Ofcom](#); complaints about the editorial content of BBC programmes can also be sent to the [BBC Trust](#).
- Fly posting – Since most fly posting is illegal, complaints should be addressed to the relevant local council.
- Fundraising - The ASA regulates advertisements that refer to fundraising, but complaints about fundraising in general (for example on–street collections) should be addressed to the [Fundraising Standards Board](#) (FRSB).
- Misleading claims displayed on shop shelves or at till points - This should be reported to the relevant [local authority trading standards](#) department. However, the ASA will look into complaints about any leaflets or brochures that can be taken away from a store; it can also consider complaints about sales promotions that appear in-store.
- Medicines - The ASA can investigate complaints about most medicines advertising. However, depending on the nature of the complaint, it may refer the matter to the [Medicines and Healthcare products Regulatory Agency](#).
- Phone-paid services - [PhonepayPlus](#) (not the ASA) is the organisation that regulates phone-paid services in the UK (the services and goods that can be bought by charging the cost to a phone bill and pre-pay accounts. These include helplines, competitions, downloads, TV voting, news alerts, charitable donations and interactive games.
- Political advertising - All complaints of political bias in television or radio advertising should be made to [Ofcom](#). On its website the ASA states that for reasons of freedom of speech, its remit does not extend to non-broadcast advertisements where the purpose of the advert is to persuade voters in a local, national or international electoral referendum. Complaints about political advertising should be made directly to the party responsible for that advertising.
- Products, services and contractual disputes - Companies' trading practices, contractual matters, the quality of goods and services, claims on packaging and trade names are all dealt with by local authority [trading standards](#).
- Shop window displays - Misleading claims in shop window displays should be reported to the relevant local authority [trading standards](#) department. However, trading standards departments do not investigate complaints about taste and decency. If a member of the public finds a shop window display offensive they are advised to take it up with the shop in the first instance.
- Television and radio programme sponsorship - Programme sponsorship (where the name of the programme sponsor is announced in a 'credit' at the beginning and end of a programme, and when breaks occur in the programme). Complaints of this nature should be properly addressed to [Ofcom](#).

3. British advertising Codes

3.1 Non- broadcast and broadcast codes

A self-regulatory system operates in respect of non-broadcast advertising, under the "[UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing](#)," known as the "CAP Code".

CAP Code

Non-broadcast advertising includes: adverts published in the press, in leaflets, in magazines, in direct mail, or displayed on posters or billboards. It also includes commercial email and text messages and paid for space on the internet.

The system is co-regulatory for broadcast advertising; there is a co-regulatory partnership between the ASA and [Ofcom](#). The "[UK Code of Broadcast Advertising](#)" ([BCAP Codes](#)) is known as the BCAP Code.

BCAP Code

Broadcast advertising includes advertisements that are broadcast on the television or on the radio.

Compliance with the appropriate Advertising Code is mandatory.

3.2 Special rules for sensitive products

The Advertising Codes contain wide-ranging rules designed to ensure that advertising is socially responsible and prepared in line with the principles of fair competition. These broad principles apply regardless of the product being advertised.

In addition, the Codes contain special rules for specified 'sensitive' products, such as:

- alcohol,
- tobacco,
- weight control and slimming products,
- financial products,
- gambling,
- medicines,
- medical devices,
- health-related products,
- beauty products and so on

Advertisements must be socially responsible and prepared in line with the principles of fair competition

These special rules sit on top of the general Code provisions that all advertisements must not *mislead, harm or offend*. In effect, they add an extra layer of protection.

Advertisements must not mislead, harm or offend

Compliance with the appropriate Advertising Code is mandatory (see below).

3.3 Special rules for children

Rules under the non-broadcast (CAP) Code

The underlying principle for non-broadcast advertising (under the CAP Code) is that care should be taken when featuring or addressing children in marketing communications.

The way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered. Marketing communications that are acceptable for young teenagers will not necessarily be acceptable for younger children. The ASA will take those factors into account when assessing whether a marketing communication complies with the Code.

For purposes of the CAP Code a child is someone under 16. **Box 3** below sets out the main rules about advertising and children under the CAP Code.

Box 3: Rules on advertising to children under the non-broadcast (CAP) Code

Harm

5.1 Marketing communications addressed to, targeted directly at or featuring children must contain nothing that is likely to result in their physical, mental or moral harm:

- **5.1.1** Children must not be encouraged to enter strange places or talk to strangers
- **5.1.2** Children must not be shown in hazardous situations or behaving dangerously except to promote safety. Children must not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety. Pedestrians and cyclists must be seen to observe the Highway Code
- **5.1.3** Children must not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision
- **5.1.4** Children must not be encouraged to copy practices that might be unsafe for a child
- **5.1.5** Distance selling marketers must take care when using youth media not to promote products that are unsuitable for children.

Credulity and unfair pressure

5.2 Marketing communications addressed to, targeted directly at or featuring children must not exploit their credulity, loyalty, vulnerability or lack of experience:

- **5.2.1** Children must not be made to feel inferior or unpopular for not buying the advertised product
- **5.2.2** Children must not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a product
- **5.2.3** It must be made easy for children to judge the size, characteristics and performance of advertised products and to distinguish between real-life situations and fantasy
- **5.2.4** Adult permission must be obtained before children are committed to buying complex or costly products.

5.3 Marketing communications addressed to or targeted directly at children:

- **5.3.1** Must not exaggerate what is attainable by an ordinary child using the product being marketed
- **5.3.2** Must not exploit children's susceptibility to charitable appeals and must explain the extent to which their participation will help in any charity-linked promotions.

Direct exhortation and parental authority

5.4 Marketing communications addressed to or targeted directly at children:

- **5.4.1** Must not actively encourage children to make a nuisance of themselves to parents or others and must not undermine parental authority
- **5.4.2** Must not include a direct exhortation to children to buy an advertised product or persuade their parents or other adults to buy an advertised product for them.
- **5.5** Marketing communications that contain a direct exhortation to buy a product via a direct-response mechanism must not be directly targeted at children. Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the marketer.

Promotions

5.6 Promotions addressed to or targeted directly at children:

- **5.6.1** Must make clear that adult permission is required if a prize or an incentive might cause conflict between a child's desire and a parent's, or other adult's, authority
- **5.6.2** Must contain a prominent closing date if applicable (see rule 8.17.4)
- **5.6.3** Must not exaggerate the value of a prize or the chances of winning it.
- **5.7** Promotions that require a purchase to participate and include a direct exhortation to make a purchase must not be addressed to or targeted at children.

Rules under the broadcast (BCAP) Code

The underlying principle for broadcast advertising (under the BCAP Code) is that children must be protected from advertisements that could cause physical, mental or moral harm.

According to the ASA website, the context in which an advertisement is likely to be broadcast and the likely age of the audience must be taken into account to avoid unsuitable scheduling. Advertisements that are suitable for older children and young persons but could distress younger children must be sensitively scheduled or placed.

This section of the BCAP Code should therefore be read in conjunction with **Section 32: Scheduling**. In a nutshell, care must be taken when scheduling advertisements that could frighten or distress children or could otherwise be unsuitable for them: those advertisements should not be scheduled or placed in or around children's programmes or in or around programmes likely to be seen by significant numbers of children. Care must also be taken when featuring children in advertisements.

For purposes of the BCAP Code a child is someone under 16. **Box 4** below sets out the main rules about advertising and children under the BCAP Code.

Box 4: Rules on advertising to children under the broadcast (BCAP) Code

5.1 Advertisements that are suitable for older children but could distress younger children must be sensitively scheduled (see Section 32: Scheduling).

5.2 Advertisements must not condone, encourage or unreasonably feature behaviour that could be dangerous for children to emulate. Advertisements must not implicitly or explicitly discredit established safety guidelines. Advertisements must not condone, encourage or feature children going off alone or with strangers. This rule is not intended to prevent advertisements that inform children about dangers or risks associated with potentially harmful behaviour.

5.3 Advertisements must not condone or encourage practices that are detrimental to children's health.

5.4 Advertisements must not condone or encourage bullying.

5.6 Advertisements must not imply that children are likely to be ridiculed, inferior to others, less popular, disloyal or have let someone down if they or their family do not use a product or service.

5.7 Advertisements must not take advantage of children's inexperience, credulity or sense of loyalty. Advertisements for products or services of interest to children must not be likely to mislead; for example, by exaggerating the features of a product or service in a way that could lead to children having unrealistic expectations of that product or service.

5.8 Child actors may feature in advertisements but care must be taken to ensure that those advertisements neither mislead nor exploit children's inexperience, credulity or sense of loyalty.

5.9 Advertisements must not include a direct exhortation to children to buy or hire a product or service or to persuade their parents, guardians or other persons to buy or hire a product or service for them.

5.10 Advertisements that promote a product or service and invite consumers to buy that product or service via a direct response mechanism must not be targeted directly at children. Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the supplier.

5.11 If it includes a price, an advertisement for a children's product or service must not use qualifiers such as "only" or "just" to make the price seem less expensive.

5.12 Television only – Advertisements for a toy, game or comparable children's product must include a statement of its price or, if it is not possible to include a precise price, an approximate price, if that product costs £30 or more.

5.13 Advertisements for promotions targeted directly at children:

- **5.13.1** Must include all significant qualifying conditions
- **5.13.2** Must make clear if adult permission is required for children to enter. Advertisements for competitions targeted directly at children are acceptable only if the skill required is relevant to the age of likely participants and if the values of the prizes and the chances of winning are not exaggerated.

5.14 Promotions that require a purchase to participate and include a direct exhortation to make a purchase must not be targeted directly at children. Advertisements for promotions directly targeted at children should comply with Section 28: Competitions.

4. Approach taken by the ASA

As outlined above, there are specific advertising rules to protect children. On its website, the ASA explains its approach as follows:

The protection of children sits at the heart of the Advertising Codes and our work. Our own research with consumers tells us that what concerns them most about advertising is what children may see and hear.

Because of their lack of life experience, children are less likely to be as well equipped to understand and process commercial messages in ads than adults. They are also often more sensitive and likely to be adversely affected by inappropriate, scary or offensive images.

As such, the rules in place to protect them are deliberately strict. Ads must not contain anything that is likely to result in the mental, physical or moral harm of a child.

The rules prohibit ads from depicting children in hazardous situations or encouraging them to engage in dangerous behaviour. They also prevent ads from undermining parental authority or placing unfair pressure on children to buy products. The rules are regularly reviewed and updated in light of the latest research and advertising techniques.

Taken together, the CAP and BCAP Codes (the “Advertising Codes”) contain strict rules to protect children from potentially misleading, harmful or offensive material.

Rules contained in the Advertising Codes state that advertisements addressed to, or targeted directly at, or featuring children should not contain anything that is likely to result in their physical, mental or moral harm. For instance, the rules seek to prevent advertisements from:

- undermining parental authority or placing unfair pressure on children to buy products;
- depicting or encouraging children to engage in dangerous behaviour or talk to strangers

In addition, advertisements directed at children must not:

- exploit their credulity, loyalty, vulnerability or lack of experience
- actively encourage them to make a nuisance of themselves to parents or others
- condone or encourage poor nutritional habits or an unhealthy lifestyle in children
- encourage children to copy any practice that might be unsafe

In effect, the Advertising Codes require advertisements to be targeted responsibly and appropriately, taking into account the likely effect the image or language in any advertisement might have. In recent years, the advertising rules surrounding specific products, such as food and alcohol, have been significantly tightened in response to public concerns about childhood obesity and underage drinking.

12 Advertising to children

When considering whether advertisements that appear in print media are appropriate for children to see, the ASA will take into account the context in which they appear. A risqué advertisement in an untargeted space, such as a billboard, is likely to raise more concerns than if it appears in a targeted medium, such as a women's magazine where children are less likely to see it.

Television and radio advertisements for certain products (e.g. age-restricted video games or alcohol) or those that contain adult, scary or harmful themes, must be scheduled away from programmes or times when children in particular may be watching or listening.

As well as ensuring that advertisements targeted at, or of interest to, children are strictly regulated, the ASA ensure that advertisements aimed at adults do not cause harm or distress to children or young people. This would include, for example, ensuring that advertisements for films do not encourage or condone knife or gun use and that advertisements do not encourage young people to copy irresponsible behaviour.

As outlined above, in March 2011, the online remit of the ASA was extended to cover marketing on companies' own websites and in other online space under their control – such as Twitter and Facebook. In extending the ASA's remit, the aim is to protect children and young people when interacting with the online commercial world.

The crucial point to note is the over-arching social responsibility clause in both the broadcast and non-broadcast Advertising Codes. On occasions where an advertisement adheres to the letter of a Code but runs contrary to the spirit in which it was intended and is, as a result, socially irresponsible, the ASA is able to have it withdrawn. This social responsibility clause provides a 'catch-all' for the unexpected or unintended advertisement. It benefits all consumers but is especially important in providing greater scope to the ASA to protect children.

Over-arching social responsibility clause in both Advertising Codes

5. Specific issues

5.1 Children's recognition of advertising

In April 2017, CAP published [new guidance](#) on ensuring younger children can identify more integrated online marketing.

After a [six month transitional period](#) allowing affected advertisers to bring their advertisements into line with the rules, the guidance came into effect on 1 December 2017. In effect, this means that the ASA can now assess relevant complaints using the guidance.

The Code requires advertisers to take steps to disclose the commercial intent of a communication, if it's not clear from the form of an advertisement or wider context. On its website, the ASA explained its approach as follows:

In 2016, CAP looked at the evidence of how children recognise online ads. Most of the time, even young children have a grasp of the signifiers that identify ads. Understanding that there is a commercial intent behind a communication allows children to assess the messages critically and respond appropriately. Evidence suggests that under-12s struggle to identify more embedded or immersive types of online ad.

The [guidance](#) requires marketers to take extra care when specifically targeting this group and take steps to help children to recognise that they're seeing or hearing and engaging/interacting with an ad. Examples of where the guidance is likely to apply include:

- endorsements by vloggers or bloggers or other online 'influencers' where the endorsement is paid for and controlled by the advertiser;
- video content on third-party sites where the video has the effect of promoting products or a brand;
- marketing communications appearing in virtual online worlds and other games;
- display advertising or other types of advertising that is, by its nature or design, not clearly separated from the surrounding content; and
- advertiser-created games appearing on third-party websites.

The remedy is clearer disclosure.

[...] The exact approach will vary for different platforms or type of marketing communication. However, in principle, they should be prominent, interruptive and sufficient to identify the marketer and the commercial intent. If children are unlikely to grasp the commercial intent because the usual signifiers are not there, marketers need to give them a helping hand.

5.2 Advertisements located close to schools, play areas etc.

Once planning consent has been granted for an advertising hoarding, local authorities generally have no control over the subject matter of advertisements. Complaints about the content of a billboard or poster advertisements should be directed to the ASA.

The placement of an advertisement will have a direct bearing on whether the ASA will judge it to be acceptable. It follows from this that an advert might be acceptable to the ASA if it appears in a magazine intended to be read by an adult but might be unacceptable if it appears on a billboard.

5.1 Children sexual imagery

The CAP Code does not prevent marketers from using images of children but they should do so in a socially responsible manner. On 2 January 2018, rules 4.8 and 4.13 were added to the CAP and BCAP Codes respectively. These rules state that advertisements should not portray or represent anyone who is, or seems to be, under 18 years old in a sexual way. This does not apply to advertisements whose principal function is to promote the welfare of, or to prevent harm to, under 18s, provided any sexual portrayal or representation is not excessive.

ASA rulings published before the 2 January may refer to the age of a child being under 16, however the new rules strengthen the existing position and ensure protection for those under 18, rather than those under 16.

When assessing advertisements, the ASA will consider whether models seem to be younger than 18, as well as their real age. It is not acceptable to present models in a sexual way if they could appear to be under 18, even if they are over 18. In addition, symbols of youth, such as school uniforms, will be unacceptable in an advertisement if used in a sexual context.

5.2 Gambling

The CAP gambling rules apply to marketing communications for “play for money” gambling products and marketing communications for “play for free” gambling products that offer the chance to win a prize or explicitly or implicitly direct the consumer to a “play for money” gambling product, whether on-shore or off-shore. For the purposes of the gambling rules, “children” are people of 15 and under and “young persons” are people of 16 or 17.

The CAP Code states:

16.1 Marketing communications for gambling must be socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited.

16.3 Marketing communications must not:

- 16.3.1 portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm
- 16.3.16 condone or encourage criminal or anti-social behaviour

The BCAP Code states:

17.3 Advertisements must not:

17.3.1 portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm

17.4 Advertisements for gambling must not:

17.4.2 condone or encourage criminal or anti-social behaviour

The ASA has published online a guide on "[Gambling – Advertising Guidance \(non-broadcast and broadcast\)](#)" which makes specific reference to the protection of children and young people.

5.3 Betting and gaming: appeal to children

The [Gambling Act 2005](#) came fully into effect on 1 September 2007. The [Gambling \(Licensing and advertising\) Act 2014](#) took effect on the 1st November 2014. It contains provisions relating to the licensing of gambling operators advertising or offering remote gambling facilities to consumers in the UK. All gambling advertisements must now comply with the law as well as the British Advertising Codes.

Under **Section 16** of the CAP Code, marketers should not exploit the young or vulnerable nor imply gambling can solve financial or personal problems or is indispensable, a rite of passage or linked with sexual success. In addition, under the CAP Code, advertisement for gambling products must:

- Be **socially responsible** - particular consideration is given to protecting children, young persons and other vulnerable persons from being harmed or exploited.
- **Protect children and young people** - betting and gaming advertisements should not appeal to them (e.g. adverts should not reflect or be associated with youth culture).

Be careful with **content** - Marketers should be mindful that the use of cartoons, licensed characters (such as super heroes and celebrities popular with children) must be used with a due sense of responsibility. Various ASA formal rulings have established that ads that are deemed to appeal particularly to children will be found in breach of the Code, even if they appear in contexts where children are unlikely to see them.

5.4 Advergaming

There is an ongoing debate about advergaming (typically electronic games that are used to advertise a product, brand or an organization)

and whether they're suitable for children, particularly when it comes to food and drink advertising.

On its website, the ASA has explained its approach to Advergaming as follows:

Advergaming by food companies already have to stick to strict rules and we've banned those that promoted overeating. For example, we upheld a complaint from the Children's Food Campaign (CFC) that a 'Cola Capers' game on a confectionary manufacturer's website irresponsibly encouraged poor nutritional habits and an unhealthy lifestyle in children. We also found that the use of cartoon characters popular with and targeted at primary-school children, to promote foods other than fresh fruit and vegetables was in breach of the rules. We will not hesitate to ban any others that take this approach.

On top of this, CAP published new [guidance on advergaming](#) in 2012 which makes clear that ads should be obviously identifiable as such and that they should be prepared responsibly. In judging whether an advergame sticks to the rules, we take into account the context in which it is made available, any references to the product, brand or organisation in or around the game and the target audience.

We appreciate that evidence shows that children develop at different speeds. In earlier years of childhood, they can struggle to distinguish content from other forms of advertising, that's why we have other rules to make sure ads aren't harmful.

5.5 Food advertising and childhood obesity

Advertising food to children (which is taken to include soft drinks) is an area of significant public concern and debate. Although both the CAP and BCAP Codes are closely aligned, the rules differ. On its website, The ASA has given the following explanation as to why the rules differ:

The rules differ because, as the available evidence shows, media differ; with TV having the most persuasive, albeit moderate, impact on children's food preferences.

This issue is far from black and white. It's important to note that the restrictions around TV ads for HFSS products do not stop children from seeing HFSS TV ads completely, and this is because such an absolute restriction would have been disproportionate to the evidence around advertising's impact on food choices.

The complexity of this debate is perhaps best demonstrated by the key findings from the work of [Professor David Buckingham](#), *The Impact of the Commercial World on Children's Wellbeing*. Carried out on behalf of the Department for Children, Schools and Families and the Department for Culture, Media and Sport, it found that on the issue of obesity and the role of marketing:

"Expert opinion is divided on this issue. Most experts agree that advertising does have some impact, but the evidence is that the impact is very small. [Also], food choice is only one factor in obesity; and other factors – such as the availability and price of food, the influence of parents, patterns of physical activity, and the lack of access to outdoor play areas – play a much greater role."

Non-broadcast (BCAP) Code

Non-broadcast advertising which promotes food to children must be responsible and in line with the CAP Code. This means that advertisers must observe the general rules around advertising to children as well as the sector specific rules related to food claims and promotional marketing for food products. According to the ASA website, the rules are restrictive in order to ensure that:

“[...] food is advertised responsibly. Marketers are urged to advertise their products responsibly, exercise caution and be aware that adverse ASA rulings could bring the industry as a whole into disrepute”. [BCAP Code](#)

The ASA has published a useful guidance note, “[Food and soft drink advertising to children](#)”. A summary of CAP rules on advertising food to children, as highlighted by the ASA, is set out in **Box 5** below.

Box 5: CAP rules on advertising food to children

- **Use health and nutrition claims correctly (rule 15)** - Claims referring to children’s development and health are only acceptable if listed as authorised on the EU register.
- **Do not place adverts for foods which are high in fat, sugar and salt (so-called HFSS foods) in appropriately (rules 15.4, 15.15, and 15.18)**

Adverts for HFSS food/soft drink products must not be directed at people under 16 through the selection of media or the context in which they appear. This means that adverts that directly promote (or have the effect of promoting) HFSS products must not appear in “children’s media” (i.e. media where under-16s are the main target audience) or other media where under 16s make up more than 25% of the audience. In addition, marketers are expected to hold evidence to support their placement choices. Further information is available from the ASA website at: [Food: HFSS Overview](#).
- **Do not promote poor nutritional habits or unhealthy lifestyles.** Adverts should not condone or encourage attitudes associated with poor diets or unhealthy lifestyles (e.g. skipping meals, a dislike of green vegetables, hiding consumption from parental figures, or suggesting that an inactive or sedentary lifestyle is preferable to physical activity). Adverts which are likely to appeal to children may feature the product being consumed, provided consumption is not excessive and the advert does not condone or encourage poor nutritional habits or an unhealthy lifestyle, or disparage good dietary practice.
- **Do not use licenced characters in adverts for HFSS foods where the content targets under 12s.** In addition to the placement restrictions on HFSS adverts, additional content restrictions apply where the advert directly targets pre-school or primary school children (under-12s) through its content. In those circumstances, the use of licenced characters and celebrities popular with children is prohibited (**Rule 15:15**).

However, this prohibition does not apply to non-HFSS product adverts or characters which are owned by the brand itself (“equity brand characters”).

Marketers should also note that although the restrictions apply when the content targets under-12s, they must not feature licenced characters or celebrities popular with children (meaning under-16s).
- **Do not feature promotions in adverts for HFSS foods where the content targets under 12s (rule 15.14).** Promotions are also prohibited in HFSS product adverts that directly target pre-school or primary school children (under-12s) through its content. In Adverts that don’t directly target under-12s through its content, promotions may be included but should not encourage children to eat or drink a product only to take advantage of the promotional offer. In other words, all marketing communications featuring a promotional offer must be prepared with a due sense of responsibility.
- **Do not exploit children’s credulity or “pester power”.** Children’s credulity or vulnerability must not be exploited in advertisements nor should they be exhorted to make purchases or ask their parents or other adults to make purchases for them.

Broadcast advertising (BCAP Code rules)

Under the BCAP Code there is a total ban on the advertising of food “High in Fat, Sugar and Salt” (HFSS) during children’s TV programmes, on dedicated children’s broadcast channels and in programmes of particular appeal to children under the age of 16.

Impact of advertising on childhood obesity

In recent years, various groups have raised concerns about the impact of advertising and its potential to be harmful or irresponsible. In particular, there is an ongoing debate about the impact of advertising of sugary food and drinks on levels of childhood obesity. Various campaign groups and health bodies are actively calling for tighter restrictions around this type of advertising on the basis that it has a negative impact on children’s health.

Both the broadcast and non-broadcast Advertising Codes were significantly tightened in 2007. This followed the publication of a Department of Health (DH) “[Choosing Health](#)” White Paper which included a call for the strengthening of the advertising food rules to children, particularly on television, as part of a package of measures aimed at reducing obesity and improving diet and nutrition.

In February 2014, the ASA announced that, along with the CAP, it would undertake work to ensure that the regulation of food and soft drink advertising continued to be effective and proportionate, particularly in terms of protecting children online. This work included:

- Commissioning Dr Barbie Clarke to conduct a comprehensive literature review of the impact of digital and online marketing of food and drink products to children;
- Undertaking a proactive monitoring survey of food adverts, with a focus online, to assess whether there are any problem areas, and
- Taking action to bring advertising that breaks the rules into line

In May 2014, the ASA published on its website a statement on “[Food advertising and children – making sure we have a healthy debate](#)”. It gave its position as follows:

We’re alive to these concerns. The issue of food and drink advertising to children is an important one and a key focus of our policy and enforcement work. Importantly, the protection of children sits at the heart of our work, and reflecting this there are strict, product specific rules, including for food and soft drinks.

For instance, they can prompt concerns about their impact and whether they have the potential to be harmful or irresponsible. It’s these concerns that have generated an ongoing debate around food advertising and children.

Strongly held views

Some health campaigners believe advertising of food and drink to children is harmful and question why we don’t introduce tougher rules or an outright ban.

First and foremost, the rules are already strict and have long prohibited any ad from encouraging poor nutritional habits or an unhealthy lifestyle in children.

Most experts agree that advertising does have some impact, but the evidence is that the impact is very small.

[...]It is not unusual for views to differ about the scope and nature of the rules governing advertising. We often find ourselves in the middle of competing and equally fervent viewpoints about whether the ad rules are too permissive or restrictive. Just as there are numerous campaigning groups who call for advertising bans or further restrictions around various products and services, there are also companies and groups who argue that advertising rules should be liberalised.

It's our job as the advertising regulator to make sure that we maintain a balanced approach, taking into account competing views but all the while making sure the rules are based on evidence.

6. Monitoring and compliance

Compliance with the appropriate Advertising Code is mandatory. The ASA accepts complaints from the public and industry about advertisements that seem to have breached those Codes and all upheld adjudications are strictly enforced by the ASA (see below).

In addition to dealing with complaints, the ASA is required to monitor the media to make sure that the Codes as well as its rulings are adhered to. According to its web site, the ASA concentrates its activities on high-profile sectors (such as alcohol, health and beauty) or sectors with low compliance. If its “Compliance and Monitoring Team” find a breach, they will contact the company or broadcaster responsible and seek an assurance that the advertisement will be changed. The basis of its work is described as follows:

The Compliance and Monitoring Team aims to do most of its work on an informal basis. However, if an advertiser or broadcaster refuses to co-operate, then the team is able to launch a formal investigation and bring the case before the ASA Council.

The ASA also conducts regular compliance surveys into specific media or industry sectors to ensure the Codes are being followed in those areas. Advertisements that appear to be in breach of the Codes are either amended or removed.¹

¹ Advertising Standards Authority website, '[Monitoring Ads](#)', [online] (accessed 23 February 2016)

7. ASA as an adjudicator

7.1 Adjudications

The ASA responds to complaints from consumers and industry about advertisements that appear to have breached the Codes. If a complaint is upheld, then the advertisement has to be withdrawn or amended. The ASA Council is the body that adjudicates on investigations of complaints. The ASA publish rulings on its adjudications every Week. Its rulings are published on its website for five years.

Publication of ASA rulings

The ASA website states that any complaint made by a member of the public about a particular advertisement will remain anonymous; this is the case even if the complaint is upheld and the adjudication published. Since the role of the ASA is to investigate potential breaches of the Advertising Codes, it reasons that naming private complainants would not assist this process or have any bearing on the outcome. However, the ASA usually names competitors in respect of “business to business” complaints and name orchestrated campaign groups when and where these arise.

According to the ASA, the vast majority of advertisers and broadcasters comply with ASA rulings; however, for the small minority who don't, there are consequences:

The main aim of the system is to help ensure compliance with the Advertising Codes, rather than punish advertisers. However, some of the sanctions at our disposal can be detrimental to those advertisers who choose to not comply. One of the most persuasive is bad publicity – an advertiser's reputation can be badly damaged if it is seen to be flouting the rules designed to protect consumers.²

7.2 Sanctions: non-broadcast advertisements

In respect of non-broadcast advertisements, the majority of sanctions are coordinated through CAP (whose members are trade associations representing advertisers, agencies and media). There are several CAP sanctions, which can be employed in different circumstances (see **Box 6** below).

Importantly, for misleading or unfair advertising, if an advertiser refuses to comply with the ASA, then legal action may be taken under the [Consumer Protection from Unfair Trading Regulations 2008](#)³ or the [Business Protection from Misleading Marketing Regulations 2008](#).

² Advertising Standards Authority website, '[Monitoring Ads](#)', [online] (accessed 23 February 2016)

³ It should be noted that as of 1 October 2014, new amendments have been made to the [Consumer Protection from Unfair Trading Regulations 2008](#) which give the consumer new rights to redress if they have been the victim of misleading actions or aggressive selling

Box 6: Possible consequences for breach of the CAP Code:

If a non- broadcast advertisement is found to be in breach of the CAP Code, one or more of the following sanctions might be employed depending on the circumstances:

- **Ad Alerts** - CAP can issue alerts to its members, including the media, advising them to withhold services such as access to advertising space.
- Withdrawal of trading privileges - CAP members can revoke, withdraw or temporarily withhold recognition and trading privileges. (For instance, the Royal Mail can withdraw its bulk mail discount, which can make running direct marketing campaigns prohibitively expensive).
- **Pre-vetting** - Persistent or serious offenders can be required by the ASA to have their marketing material vetted before publication. This pre-vetting can last for two years.
- **Sanctions in the digital space** - CAP has additional sanctions that can be invoked to help ensure marketers' claims on their own websites, or in other non-paid-for space under their control, comply with the Codes. Specifically, CAP can ask internet search websites to remove a marketer's paid-for search advertisements when those advertisements link to a page on the marketer's website that hosts non-compliant marketing communications. Marketers may face adverse publicity if they cannot or will not amend non-compliant marketing communications on their own websites or in other non-paid-for space online under their control. Their name and non-compliance may be featured on a dedicated section of the ASA website and, if necessary, in an ASA advertisement appearing on an appropriate page of an internet search website.

7.3 Sanctions: broadcast advertisements

In respect of broadcast advertisements, the responsibility to withdraw, change or reschedule a commercial lies with the broadcasters. This is because broadcasters are obliged by a condition of their broadcast licences to enforce ASA rulings. If a broadcaster persistently runs an advertisement that is in breach of the Codes, the ASA may refer the broadcaster to [Ofcom](#). In turn, Ofcom can impose fines and even withdraw their licence to broadcast.

Although the obligation to comply with the Codes rests with the broadcaster, advertisers also suffer consequences if their broadcast advertisements breach the Codes (see **Box 7** below).

Box 7: Possible consequences for breach of the BCAP Code

If a broadcast advertisement is found to be in breach of the BCAP Code, one or more of the following sanctions might be employed depending on the circumstances:

- They might be subjected to bad publicity generated by an upheld complaint to the ASA.
- Advertisers might also have wasted hundreds of thousands of pounds making the banned advertisement in the first place and lost the revenue that it might have generated.
- Since broadcasters cannot show advertisements that breach the Codes, advertisers might lose prime advertising slots in which a banned advertisement has been booked to appear.
- Finally, any advertisements that break the Codes are disqualified from industry awards, denying advertisers and the agencies that created the advertisements the opportunity to showcase their work.

8. Challenging an ASA adjudication

In certain circumstances, advertisers or complainants (often a member of the public) can request a review of the ASA Council's adjudication. Both sides have **21 days** in which to ask the [Independent Reviewer](#) of ASA Adjudications to review the case. But they must be able to establish that:

- a substantial flaw of process or adjudication is apparent, or
- additional relevant evidence is available

Full terms of reference of the Independent Review procedure for non-broadcast adjudications are set out in the [CAP Code](#) and in the ASA procedures for investigating complaints under the [BCAP Code](#) for broadcast adjudications.

If the Independent Reviewer decides not to accept the request (in whole or in part) because he considers that it does not meet either of the two grounds set out above, he will inform the person making the request accordingly. If the Reviewer accepts a request, he will inform the other parties to the case that a request for review has been accepted and invite their comments on the submission made by the party requesting the review. At the conclusion of his investigation, he will make a recommendation to the ASA Council which may ask for the Council to reconsider its ruling. The Council's adjudication on reviewed cases is final. Adjudications that are revised following a review will be republished on the ASA website.

The ASA is recognised by the court as being a public organisation for the purposes of Judicial Review. However, it should be noted that there are very strict time limits in which to bring Judicial Review proceedings.

Independent review procedure

Judicial review

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