

SECTION 5: CHILDREN

Question 12: Given CAP's policy consideration, do you agree that rule 5.7 (promotions including direct exhortations) should be included in the Code? If your answer is no, please explain why.

<i>Responses received in favour of CAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
<p>Advertising Association; Alliance Boots; ASDA; Association for Interactive Media and Entertainment; E.ON; Family and Parenting Institute; An organisation requesting confidentiality Institute of Practitioners in Advertising; Institute of Sales Promotion; Redcats (Brands) Ltd; RWE npower;</p>	<p><i>1. AIME and ISP said:</i> Agreed, although it is suggested that Guidance could usefully be provided on what constitutes "exhortation".</p> <p><i>2. Alliance Boots said:</i> The amendment to include "promotions that contain a direct exhortation" to children to children is again in principle something we would have no objection to. However, there is a lack of clarity around what constitutes a direct exhortation.</p> <p><i>3. GSK said:</i> Proposed rule 5.7 could be clearer. The word "contains" imposes ambiguity about whether a promotional mechanic targeted at children and that ultimately requires a purchase to enter, but does not include a direct purchase exhortation, would be in breach of the rule or not. The consultation note 5.11 uses much clearer wording to clarify that the rule would not be breached. It would be more</p>	<p>1. and 2. CAP sought to reflect, rather than elaborate on, the requirements of the CPRs when it incorporated those requirements into the Code. It could not, therefore, attempt to define "direct exhortation" in the Code because that term is not defined in the CPRs.</p> <p>CAP will, however, consider the possibility of producing Guidance at a later stage if the legal interpretation of "direct exhortation" becomes clear.</p> <p>3. CAP agrees to amend rule 5.7 for the sake of clarity so that it reads: "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." Again, CAP will consider the need for guidance in due course.</p>

<p>2 organisations requesting confidentiality</p> <p>2 individuals</p>	<p>helpful for 5.7 to read “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.”</p>	
<p><i>Responses received against CAP’s proposal:</i></p> <p>Entertainment and Leisure Software Publishers Association Ltd</p>	<p><i>Summaries of significant points:</i></p> <p>1. <i>ELSPA said:</i></p> <p>The wording in paragraph 5.11 of the consultation proposals is more limited than the actual proposed rule in that 5.11 requires “a purchase to participate”. There is an inconsistency here since the wording in proposed rule 5.7 only addresses a promotion and does not state that a purchase is required to participate. The meaning of promotion is also ambiguous although it would suggest a special offer is required. Is this clearly defined elsewhere in the Code?</p> <p>Given that the promotion can be “addressed” to (as well as “targeted” at) a child, query whether a promotional banner with a price would fall within the proposed rule.</p>	<p><i>CAP’s evaluation of those points and action points:</i></p> <p>1. CAP does not agree that there is inconsistency; however, it considers that, by amending it (see 3. above), the rule is likely to be clearer for marketers.</p> <p>Section 8: Sales Promotions includes a definition of promotions.</p> <p>A promotional banner would not be considered a sales promotion under the terms of the Code; likewise, a marketing communication would be unlikely to fall foul of the rule merely because it quoted a price.</p>
<p>Question 13: Given CAP’s policy consideration, do you agree that rule 5.5 (marketing communications containing a direct exhortation to buy a product via a direct-response mechanism) should be included in the Code? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of CAP’s</i></p>	<p><i>Summaries of significant points:</i></p>	<p><i>CAP’s evaluation of those points and action points:</i></p>

<p><i>proposal from:</i></p> <p>Advertising Association; ASDA; Association for Interactive Media and Entertainment; E.ON; Family and Parenting Institute; Institute of Practitioners in Advertising; Institute of Sales Promotion; Proprietary Association of Great Britain; Redcats (Brands) Ltd; RWE npower;</p> <p>2 organisations requesting confidentiality</p> <p>An individual</p>	<p><i>1. AIME and ISP said:</i></p> <p>Agreed with the proviso that the expression “exhortation” be re-examined. What is being addressed here is “promotions targeted at children”.</p>	<p>1. See CAP’s comments to 1. and 2. under question 12, above.</p>
<p><i>Responses received against CAP’s proposal:</i></p>	<p><i>Summaries of significant points:</i></p>	<p><i>CAP’s evaluation of those points and action points:</i></p>

Entertainment and Leisure Software Publishers Association	<p><i>1. ELSPA said:</i></p> <p>The meaning of “direct exhortation” is unclear. However, 5.5 would seem very wide and it is possible that most advertisements would be considered a direct exhortation to buy.</p> <p>Under the proposed new rule, it would seem that an advertiser would be prevented from sending an email to anyone under 16 years (the definition of a child under the CAP Code) which contained products and prices. However, the scope seems even wider than that. The rule might also catch a poster for a 3+ game containing a statement: “available via the PlayStation Store”. Would that poster be deemed to be “directly targeted at children”?</p>	<p>1. See CAP’s comments to 1. and 2. above.</p> <p>The new rule is not intended to prohibit marketers sending emails to under 16s (subject to the rules in the Database Practice section); it is intended to prevent marketers directly exhorting children to buy a product. CAP considers that the mere inclusion of products and prices in a marketing communication – or information about where a product is available – would not constitute a direct exhortation to purchase.</p>
<p>Question 14:</p> <p>i) Taking into account its general policy objectives, do you agree that CAP’s rules, included in the proposed Children section, are necessary and easily understandable? If your answer is no, please explain why.</p> <p>ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Children rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?</p> <p>iii) Do you have other comments on this section?</p>		
<i>Responses received from:</i>	<i>Summaries of significant points:</i>	<i>CAP’s evaluation of those points and action points:</i>

<p>Advertising Association; ASDA; Association for Interactive Media and Entertainment; Charity Law Association; Consumer Focus; Department for Children, Schools and Families; E.ON; Family and Parenting Institute; Independent Healthcare Advisory Services; Institute of Practitioners in Advertising; Institute of Sales Promotion; Proprietary Association of Great Britain; Redcats (Brands) Ltd;</p> <p>2 organisations requesting</p>	<p>These organisations, and an individual, agreed the rules in the proposed Children section are necessary and easily understandable. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document:</p> <p style="padding-left: 40px;">Advertising Association; ASDA; Association for Interactive Media and Entertainment; E.ON; Family and Parenting Institute; IPA; ISP; PAGB; Redcats (Brands) Ltd; 2 organisations requesting confidentiality</p> <p><i>1. Family and Parenting Institute said:</i> We would like to see these rules given a greater prominence. They should be made more easily available to parents, without the need to wade through what is, essentially, a large and unwieldy document. Parents will only be able to judge whether advertisers are adequately self-regulating by having access to the rules by which advertisers are supposed to monitor their own activity.</p>	<p>1. The CAP Code is published on the CAP website in both html and pdf format and is available to view for free by industry practitioners and consumers alike. CAP considers its rules, including the Children rules, are given adequate prominence, both for marketers and for consumers.</p>
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<p>confidentiality</p> <p>An individual</p>	<p><i>2. Independent Healthcare Advisory Services said:</i> We are disappointed that this section makes no reference to your definition of what / who is a child. We consider that anyone aged 18 and below should be protected under this section.</p> <p><i>3. DCSF said:</i> We are pleased the CAP Code will maintain a separate section relating specifically to children.</p> <p>It would be helpful if the principles set out the position with relation to children and include a principle of the order of: Special care must be taken with marketing communications aimed at children and not exploit their inexperience, credulity or sense of loyalty.</p>	<p>2. The Children section states that, for the purposes of the Code, “a child is someone under 16”.</p> <p>To extend the scope of the Children rules to cover those under 18 would amount to a significant change to advertising policy and practice. CAP has no evidence to suggest that its existing rules are inadequate. Rules in the rest of the Code, such as the general rules on Offence, Misleadingness and Social Responsibility, protect all consumers; the ASA takes the audience into account when it considers complaints about marketing communications. Also, the Code includes rules that proscribe the advertising of some products (for example, alcohol, gambling products and weight control products) to under 18s.</p> <p>3. The overarching Principle of the Children section is that care should be taken when featuring or addressing children in marketing communications. The rules go on to detail how that Principle must be secured; the rules prevent marketing communications from exploiting children’s inexperience, credulity or sense of loyalty. CAP therefore considers its rules address DCSF’s concerns directly.</p>
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The rules relating to marketing communications that contain promotions of appeal to children should stipulate the need for the promotion to be age appropriate.

4. Charity Law Association said:

No definition is contained in rule 5 as to what constitutes “moral harm” (rule 5.1). A definition currently used in law of “tending to deprave and corrupt” might be a suitable starting point.

Consider whether it is worth adding a clause to the effect that children should not be shown in any light in which they are acting in an inappropriate manner, either for their age or in respect of accepted social responsibility.

The Principle also makes clear that 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: it states that the ASA will take those factors into account when assessing whether a marketing communication complies with the Code. On that basis, any marketing communication that is not appropriate for the age of the audience to which it is targeted would fall foul of one or more of the rules in the Children section.

4. CAP considers that new rule 5.1 provides the ASA with the scope to decide, on a case-by-case basis, whether a marketing communication complies with the Code. The ASA makes subjective interpretations about whether a marketing communication is likely to cause moral harm to children and CAP does not consider there is a need to provide a definition of “moral harm”.

Rule 5.1 is deliberately principles-based; CAP considers that approach preferable to proscribing specific creative practices that would, in all likelihood, be caught under the general rule if they were likely to harm children.

5. Consumer Focus said:
Consumer Focus wants to see greater consistency in the protection of children aged up to 16 years old with regard to the restrictions for advertising to children in both CAP and BCAP Codes.

We would want to see a tightening up of the proposed principle that 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.

We are concerned about arbitrary distinctions being made. Recent neuroscience research conducted both in the EU and the US suggests that, contrary to previous beliefs, children over 12 do not have adult-like understanding and critical judgement of marketing. Compliance is easier if there is a consistent age limit of application and the minimum should be 16, with consideration of 18 being the minimum in relation to areas such as financial services and explicit material.

5. CAP is unaware of any inconsistency between the new CAP and BCAP Codes that would amount to a more permissive approach, in either broadcast or non-broadcast advertising, regarding the protection of children. None has been identified by respondents to either consultation.

It is unclear how Consumer Focus wants the Principle to be tighter: the Principle states “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”. The ASA will assess complaints against the rules in the Children section, bearing that Principle in mind as it does so.

CAP agrees that children require extra protection from harmful, misleading and offensive marketing than the protection the Code affords to consumers as a whole: the Children section is intended to achieve that aim. CAP has not been made aware of any evidence or arguments that suggest the Children section is inadequate to meet that aim. As CAP states in its comments to 2. above, there are rules in the Code, applicable to marketing for particular products and services, that afford extra protection to the under 18s.

CAP has considered the study cited by Consumer Focus (Pechmann et al), which reviewed earlier research findings about adolescent development

		<p>in neuroscience, psychology and marketing, particularly marketing of addictive products such as tobacco and alcohol. Pechmann et al's literature review highlights three adolescent vulnerabilities:</p> <ul style="list-style-type: none">i. Impulsivity;ii. self-consciousness and self-doubt; andiii. an elevated risk from product use for both alcohol and tobacco. <p>CAP considers the latter not relevant to the proposed Children section; CAP considers other Code sections (Alcohol, and the prohibition on marketing communications for tobacco products) provide adequate protection to children from advertising of those products.</p> <p>CAP agrees that children are more vulnerable to potentially harmful or exploitative advertising: it is for that reason that the new CAP Code affords an extra layer of protection (over and above that provided to consumers in general) to children. CAP does not consider that the Pechmann et al literature review highlights any findings that would warrant either a strengthening of the rules or a complete ban on advertising to children. CAP is therefore confident that its rules are robust.</p>
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